

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

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

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Volume 177

Inquiry Proceedings



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Mr. Bruce Gibson, Esq., **for** the RCMP
Mr. David Frayer, Q.C., **for** Minister of Justice
 (Canada), The Hon. Vic Toews
Mr. Marshall Hopkins, Esq., **for** Justice Calvin Tallis
 (Retired)



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Transcript of Proceedings

(Reconvened at 1:13 p.m.)

COMMISSIONER MacCALLUM: Good afternoon.

ALL COUNSEL: Good afternoon.

01:14 5 MR. HODSON: I apologize for the brief
6 delay, Mr. Commissioner, we had a technical
7 challenge with one of the pieces of software. We
8 will be able to see the documents but the touch
9 screen will not work this afternoon at least for
01:14 10 the next while.

11 One other matter. I have a
12 little bit left to do with Mr. Sawatsky regarding
13 his direct involvement for the RCMP in 1992 and
14 onward. I had then proposed to ask Mr. Sawatsky
01:14 15 some questions relating to a different function
16 he currently performs, namely his involvement
17 with the Saskatchewan Police Commission, and I
18 intend to go through and question him about
19 current police practices. They are not directly
01:14 20 related to the work that he did in the Flicker
21 investigation.

22 Mr. Wolch has advised me
23 that, number one, he is going to question
24 Mr. Sawatsky first. He has a trial scheduled out
01:15 25 of the province tomorrow and Thursday, he alerted



1 me to that some time ago, and in the interests of
2 ensuring that Mr. Wolch gets completed today I've
3 agreed with Mr. Gibson and Mr. Sawatsky that I'll
4 leave the Police Commission questioning, which is
01:15 5 not lengthy, but I'll leave it until after
6 Mr. Wolch questions Mr. Sawatsky, if that's all
7 right?

8 COMMISSIONER MacCALLUM: Yes.

9 **MURRAY SAWATSKY, continued:**

10 **BY MR. HODSON:**

11 Q Just before we -- if we could get up 061913. And
12 where we left off last week, Mr. Sawatsky, was in
13 the 1997 time period, early July, and the warrant
14 for the DNA. Before we go to that document,
01:15 15 though, I just want to clarify one matter. You've
16 given some evidence to date about the RCMP
17 investigating information or allegations that
18 originated from David Asper, is that correct, and
19 I think we have seen that through the reports?

01:15 20 A That's correct.

21 Q Can you clarify for us, what was Mr. Asper's role
22 as far as the original complaint or the criminal
23 complaint that the RCMP was investigating?

24 A Well I think it was our understanding that Mr.
01:16 25 Wolch was the complainant, and that others had



1 been assisting him by gathering or reviewing
2 material and had acquired, I guess, perhaps a
3 level of knowledge above Mr. Wolch's in that
4 particular area, and there are times when he would
01:16 5 then ask us to deal directly with that person for
6 a certain piece of information.

7 Q Did you view Mr. Asper as the complainant, or one
8 of the complainants, in the criminal
9 investigation?

01:16 10 A No, I viewed Mr. Wolch as the complainant, and
11 then a host of others, Mrs. Milgaard and Mr. Bruce
12 and Mr. Asper, as providing assistance to assist
13 us with that complaint.

14 Q And sources of information; would that be one
01:16 15 area?

16 A Yes.

17 Q I think, when we left off on Thursday, you had
18 told us about your concerns in providing the
19 affidavit or the, I guess, the affidavit to
01:17 20 support a search warrant for Larry Fisher's bodily
21 fluids; is that correct?

22 A That's correct.

23 Q Maybe you could just go back and refresh us with
24 what was your concern, then, about this time about
01:17 25 Mr. Fainstein's request?



1 A I think, if I recall correctly, I might -- my -- I
2 had two thoughts. One was that we needed to
3 eliminate the best suspect at the time, and I say
4 "at the time", and that should be step one; and
01:17 5 then once that was completed we should move on to
6 eliminating the others. I also had concerns about
7 who should conduct the investigation should any
8 evidence come -- should Mr. Milgaard not be the
9 donor and some other person be identified, namely
01:17 10 Mr. Fisher, how would that be followed up, how
11 would we investigate.

12 Q In July of 1997, what was your understanding as to
13 -- let me back up. If the purpose of getting the
14 DNA testing done was to identify who may have
01:18 15 killed Gail Miller, what was your understanding as
16 to which police force would have the proper
17 jurisdiction for that investigation?

18 A Well of course, as I indicated in June when I
19 testified, any evidence that we found would, of
01:18 20 course, be reported up through to our legal folks,
21 who would then deal with the government or
22 whoever, but it was my own personal view that the
23 police service with jurisdiction was the Saskatoon
24 Police Service and therefore, if evidence came up
01:18 25 to support a charge in the murder of Gail Miller,



1 of course, who was murdered in the City of
2 Saskatoon, any follow-up would be the
3 responsibility or should go to the Saskatoon
4 Police Service first, before anyone else was asked
01:18 5 or became involved.

6 Q And did you have any concerns that the request
7 came from the federal Department of Justice rather
8 than the Saskatchewan Department of Justice?

9 A Well, I guess I was a little surprised, because I
01:18 10 think constitutionally the administration of
11 justice in the province is the responsibility of
12 the Attorney General, so for the federal
13 Department of Justice to be concerned with an
14 ongoing criminal investigation or with furthering
01:19 15 a criminal investigation, it seemed a bit odd to
16 me that they would have that interest.

17 Q If we could go to 061910, and we'll go to that.
18 This is a briefing note that you prepared; is that
19 correct? I think on the third page, just go to
01:19 20 the third page?

21 A Yes, I likely prepared that.

22 Q And if you can just go to the second page and
23 highlight -- sorry -- and the Current Status, just
24 the bottom half, you say here, the current status,
01:19 25 you refer to Mr. Fainstein asking you to obtain a



1 warrant, you talk about the affidavit he provided,
2 you believe it is flawed, and you have concerns
3 about whether or not the *Criminal Code* provision
4 is met; is that correct?

01:19 5 A That's correct.

6 Q And you say here, in the third paragraph:

7 "In this case, this is not
8 true. We have no reason to suspect
9 Larry Fisher is involved nor do we
01:20 10 believe he is involved. Therefore, we
11 cannot swear under oath that we believe
12 'information concerning an offence will
13 be obtained' by testing Fisher's
14 sample."

01:20 15 At this time can you tell us; what was the basis
16 upon which you made the statement:

17 "We have no reason to suspect Larry
18 Fisher is involved nor do we believe he
19 is involved."?

01:20 20 A Well this is a number of years after the
21 completion of our report and, as I indicated, the
22 conclusions of our report was that there was no
23 reason, we had found no reason to believe that Mr.
24 Fisher was involved in -- at that time and, as I
01:20 25 indicated before, my view was that we should first



1 eliminate Mr. Milgaard and then take steps to try
2 and find evidence or grounds to then search for
3 other persons.

4 Q And then, if we can go to the next page, it refers
01:21 5 there in the first full paragraph:

6 "Murray Brown, Sask. Justice,
7 handled the Sec. 690 ... concerns for
8 Saskatchewan. I spoke with him on the
9 phone today and he is of the view that
01:21 10 the Fisher examination can be considered
11 after the Milgaard matter is concluded."

12 Do you recall anything further about that
13 discussion or does this note reflect that
14 discussion?

01:21 15 A This note reflects that discussion, yes, and I
16 recall Murray Brown indicated that he would
17 contact Federal Justice and try and sort it out
18 with them.

19 Q So that if David Milgaard's DNA was tested, or
01:21 20 pardon me, the garments were tested and David
21 Milgaard was eliminated as the donor of that
22 semen, was it your view then, then, that it would
23 be appropriate to test Larry Fisher's for the DNA
24 match?

01:21 25 A Yes, it was.



1 Q You talk here, in the second full paragraph:

2 "I have spoken with Chief

3 Dave Scott, Saskatoon Police Service,

4 and have informed him of the

01:22 5 circumstances surrounding this matter.

6 Saskatoon Police have jurisdiction for

7 any offences which arise in their area.

8 Scott shares our views that there are no

9 grounds to suspect Fisher is involved in

01:22 10 the murder of Gail Miller."

11 And would that be an accurate note?

12 A Yes, it is.

13 Q Can you tell us, was it a concern of yours at this
14 time that there was no police agency investigating
01:22 15 the murder of Gail Miller or investigating Larry
16 Fisher as a suspect?

17 A I think that was part of my concern. I think the
18 other concern, as I indicated before, was that it
19 seemed a bit of a fishing trip, that in my view,
01:22 20 you know, the logical sequence of events was to
21 eliminate one person and then to move on to see if
22 you had grounds to execute a search warrant to
23 obtain bodily substance to work on your next
24 person.

01:22 25 Q What, did you have a concern that a warrant was



1 being sought at a time in which there was no
2 police force that was investigating Mr. Fisher as
3 a culprit, or anybody else for that matter?

4 A Yes. I think, as I indicated, that seemed
01:23 5 unusual.

6 Q And can you tell us, it says here you and
7 Mr. Fainstein are at an impasse; do you -- can you
8 recall what happened with this issue, did --
9 presumably someone did swear an information to get
01:23 10 the warrant?

11 A Yeah, I -- and I'm just not sure how that happened
12 but, I mean, the examination did occur, so yes,
13 obviously somebody did swear an information.

14 Q And did you get back to Federal Justice, then, and
01:23 15 advise that you would not swear the information
16 yourself?

17 A Yes, I did.

18 Q And they pursued other avenues; --

19 A That's correct.

01:23 20 Q -- is that correct? If we can go to 077486. And
21 this is a letter July 21, 1997 from Deputy Chief
22 Norm Doell for Chief Dave Scott to the Minister of
23 Justice, and this would be, I think, three days
24 after the DNA results, and requesting that -- the
01:24 25 Saskatoon police is requesting the Department of



1 Justice appoint another agency to investigate the
2 death of Gail Miller. Were you involved at all in
3 any of those discussions about, once the DNA
4 results came back, about whether it should be the
01:24 5 Saskatoon police or the RCMP?

6 A Yes, I was involved with our senior management,
7 and I --

8 Q And can you recall what considerations were --

9 A I believe it was our view that Saskatoon police
01:24 10 should be offered or given the opportunity to
11 investigate it and then I understand that, after
12 some discussion, Chief Scott decided that
13 Saskatoon police were probably not, in his view,
14 the best to do this investigation --

01:24 15 Q And --

16 A -- for a number of reasons that I'm sure Chief
17 Scott felt were very legitimate, and then I think
18 he made a request of the Attorney General that the
19 RCMP be asked to conduct the investigation.

01:25 20 Q Do you recall being made aware of what those
21 concerns were or having any discussions about
22 that?

23 A No, I don't.

24 Q And then 329914. And this is a media report July
01:25 25 24th, 1997 indicating that you would not be



1 involved in the investigation, and can you tell
2 us, how did that come about? You did not have
3 direct involvement in the Larry Fisher
4 investigation; is that correct?

01:25 5 A I did not. I recall a discussion with the
6 commanding officer, who was Assistant Commissioner
7 Brian Watt at the time, and he sought my advice as
8 to whether or not I should lead up this
9 investigation, and my advice to him was that I
01:25 10 probably should not, that there possibly could be
11 questions around my objectivity and my ability to
12 investigate this. Put it this way, I think I
13 could certainly have investigated, but I think had
14 -- there may be a number of people who may view
01:26 15 it, from an optics perspective, as probably not
16 the best position for the RCMP to put itself into,
17 so my advice to him was that I not conduct the
18 investigation.

19 Q And would your concerns be related to the
01:26 20 conclusions you reached in your earlier
21 investigation?

22 A Yes, they would.

23 Q Just a couple of housekeeping matters, if we could
24 call up 253854, please. And I believe this is a
01:27 25 transcript from a voir dire at the Larry Fisher



1 proceedings, is that correct, at the trial?

2 A Yes.

3 Q And I'll just identify, I don't propose to go
4 through them, but I think there were three, I'll
01:27 5 just put them on the record; here is voir dire
6 number 1; and if we can call up 254025 this is
7 voir dire number 2; and then 254465, and that is
8 the voir dire number 3; is that correct?

9 A Yes, it appears to be so.

01:27 10 Q And would you agree, Mr. Sawatsky -- you've had a
11 chance to review what your evidence was at the
12 time; is that correct?

13 A Yes, I have.

14 Q And do you acknowledge that the evidence you
01:27 15 provided in these three voir dires is accurate?

16 A It was to the best of my ability at the time. I
17 think I pointed out, early in my testimony, that I
18 had been subpoenaed the day before and had
19 appeared very quickly, had no opportunity to
01:28 20 review the RCMP file and had been away from the
21 investigation for some four years, but to the best
22 of my ability what I provided the Court was --
23 certainly was the truth.

24 Q And for the record, I think your concerns were
01:28 25 expressed in the voir dire, in your evidence I



1 think you explained what knowledge you had. So
2 one last item. There was a summary -- perhaps if
3 we could, I don't have the doc. ID, but the list
4 of interviewees, the new doc. ID? Once we get it
01:28 5 up we'll identify it.

6 COMMISSIONER MacCALLUM: This was for
7 Flicker?

8 MR. HODSON: I'm sorry, coming up, the
9 document?

01:28 10 COMMISSIONER MacCALLUM: Interviewees for
11 Flicker?

12 MR. HODSON: Yes. And, Mr. Commissioner,
13 this is a document we prepared, 338922, and it's
14 based upon the records provided to the Commission
01:29 15 by the RCMP, and it identifies, in alphabetical
16 order, the people who were contacted or
17 interviewed, the description of the interviews,
18 the dates, the related doc. IDs, and the
19 interviewers.

20 BY MR. HODSON:

21 Q And I'll maybe just go through for the record and
22 indicate for you, Mr. Sawatsky, because I'll have
23 a couple of questions, the list does not include
24 people that were not formally interviewed either
01:29 25 in person or by phone and so it doesn't include



1 attempted contacts; it does not include contacts
2 with people who were called simply to find out
3 where someone else might be; and I believe the
4 total is 236 people were interviewed in the
01:29 5 investigation. Now I'm not asking you to accept
6 this document as being -- it's not your document,
7 it's ours, but does that accord with your
8 recollection generally, the number of people that
9 your investigators would have interviewed and
01:30 10 investigated in 1992 to 1994 time period?

11 A Yes, that certainly sounds right to me.

12 Q And again, the document, Mr. Commissioner, does
13 refer to doc. IDs for backup and these would be
14 interviews, I think you maybe alluded earlier,
01:30 15 your investigators traveled extensively, did they,
16 in the course of this investigation?

17 A Yes, yes, all the way to Ontario, out to B.C. a
18 number of times, Edmonton, various places in
19 Alberta.

01:30 20 MR. HODSON: Okay. Those are all the
21 questions I have related to the RCMP part of it.
22 I will have questions after Mr. Wolch questions
23 you.

24 BY MR. WOLCH:

01:31 25 Q Mr. Sawatsky, I'm Hersh Wolch and, for the record,



1 counsel for David Milgaard. Before commencing, I
2 would like to thank Mr. Hodson, Mr. Gibson,
3 yourself and the Commission for letting me come in
4 at this point.

01:31 5 A Good afternoon, Mr. Wolch.

6 Q I referred to you as Mr. Sawatsky. Is that the
7 right title?

8 A That's fine, yeah.

9 Q In regards the Flicker, where did that name come
01:31 10 from?

11 A Well, how those names are assigned is the "F" in
12 Flicker stands for the division which is "F"
13 division, so Saskatchewan, and then generally they
14 just pick a word alphabetically, you know, from
01:31 15 the start of the year, the fiscal year to the end
16 of the year, so "L", I guess it was whatever, the
17 fifth, sixth, seventh investigation, a word that
18 started with "L", so I don't think there's any --
19 other than that, there's no particular reason why
01:32 20 the word Flicker was used.

21 Q So somebody picked the world licker?

22 A Flicker.

23 Q But the "F" had to be there.

24 A The "F" had to be there, yes.

01:32 25 Q Okay, all right. Now, would it be fair to say



1 that when you met with what I'll call the Milgaard
2 group, that what you were being told was that
3 David Milgaard was innocent, that the main
4 witnesses lied either through manipulation or
01:32 5 intimidation, that Larry Fisher was guilty and
6 that the evidence of his guilt and involvement was
7 withheld from the Milgaard group going back to
8 1970. Will you agree that was the, basically the
9 position on the more important things taken by the
01:33 10 Milgaard group?

11 A Yes, I would agree with that, sir.

12 Q And you were told pretty early on that the
13 Milgaard people were not particularly relying on
14 Mr. Breckenridge?

01:33 15 A Yes, I recall in the interview that you and I had,
16 Mr. Wolch, that you sort of downplayed his
17 importance, you know, towards the end of our
18 interview.

19 Q Yeah. The points that I mentioned were the points
01:33 20 that the Milgaard group considered to be
21 important, the ones I just mentioned to you now?

22 A Yes, I would agree with that.

23 Q And I note there were words such as conspiracy,
24 obstruction of justice, criminal actions, those
01:34 25 were not the words that were spoken by the



1 Milgaard group, were they, that was an
2 interpretation?

3 A You know, I would have to refer to the tape to
4 determine whether or not you ever said that. I
01:34 5 wouldn't say you didn't, but certainly I think we
6 chose words in your report that put it into the
7 context.

8 Q Yeah. What I'm saying is the Milgaard group was
9 saying here's the facts, here's what we believe
01:34 10 and then the other group, that is, yourself and
11 Alberta, were saying, well, the allegation is
12 criminal conspiracy, well, the allegation is
13 obstruction of justice, when in actual fact what
14 the Milgaard group was doing was saying to you,
01:34 15 Inspector Sawatsky, as you then were, here are the
16 facts, you look at them; isn't that true?

17 A Yes, yes.

18 MR. WILSON: Mr. Commissioner, I must
19 object, Mr. Wolch is attempting to paraphrase an
01:35 20 awful lot of documentary evidence we have in
21 front of this Commission, including the infamous
22 19th of September press conference that broke the
23 so-called Breckenridge conspiracy, cover-up --
24 obstruction of justice, sorry. The words used in
01:35 25 there are somewhat different than the ones now



1 being put to the witness. Similarly, as the
2 witness has said, the transcript of the taped
3 conversation with Mr. Milgaard would have to be
4 looked at. Mr. Wolch is trying to sugar coat a
01:35 5 nasty situation and I would suggest that as a
6 participant in those conversations, it's
7 inappropriate that he do so.

8 MR. WOLCH: I'm asking the witness
9 questions, he's answering the questions. If Mr.
01:36 10 Wilson sometime later on wants to try to ask
11 questions, he can if he wishes, but I'm trying to
12 do things in a practical --

13 MR. WILSON: It's fundamental not to put
14 words in the witness' mouth that are not already
01:36 15 in evidence.

16 MR. WOLCH: This witness is more than
17 capable of taking care of himself.

18 COMMISSIONER MacCALLUM: Well, so far I
19 don't perceive Mr. Wolch to have crossed any line
01:36 20 into suggesting things for the witness' benefit
21 that were for the purpose of his own interests,
22 that is, Mr. Wolch's interest as opposed to that
23 of his client. We have already seen evidence to
24 the effect that -- from this witness in fact,
01:36 25 that Mr. Wolch early on in the investigation



1 seemed to back away from the Breckenridge
2 position, if I can call it that, with a position
3 that had been put forward in the press
4 conference, so that's a fact, there's no doubt
01:37 5 that the press conference reveals what it reveals
6 and I'm well aware of its contents, and I think
7 that Mr. Wolch can continue so long as he remains
8 aware of the fact that he's here to look after
9 his client's interests and not his own. I don't
01:37 10 perceive that he's doing that so far.

11 The last thing you touched
12 on, sir, was the terms criminal conspiracy and so
13 forth, those terms which were reflected in the
14 purpose of the investigation as it seemed to
01:37 15 appear to the investigators to relate to charges
16 under the *Criminal Code*.

17 MR. WOLCH: Yes.

18 A If I could, perhaps I can answer that question
19 perhaps with a little more detail than I did.
01:38 20 When the police are presented with a set of
21 circumstances and they are requested to do an
22 investigation, you need to look at those
23 circumstances to see if there's any allegation or
24 suggestion that there's a criminal offence because
01:38 25 that's what the police investigate, are criminal



1 offences. Had there not been criminal offences,
2 then perhaps we would have viewed this different,
3 so the allegations that you presented to us were
4 such that when we looked at the circumstances,
01:38 5 were allegations of criminal offences such as
6 obstruction of justice. That's why we used those
7 terms because that's what you told us these people
8 were responsible for. Now, you may not have used
9 the word directly obstruction of justice, but
01:38 10 certainly the circumstances would give one reason
11 to believe that that's what we were investigating.

12 BY MR. WOLCH:

13 Q Okay. But criminal acts require there be a
14 willfulness in the most part; do they not?

01:38 15 A That's correct, but you determine that sometimes
16 through investigation.

17 Q Right. But we were alleging that David was
18 innocent and we were right?

19 A That's correct.

01:39 20 Q And that the kids didn't tell the truth and that
21 was right too?

22 A Well, that's not totally right. Some of the
23 things that they said were the truth.

24 Q Well, by chance everybody says something truthful,
01:39 25 but on the crucial points of seeing a murder, as



1 Nichol John supposedly did, that wasn't true was
2 it?

3 A That was not true, no.

4 Q Okay. That's pretty crucial?

01:39 5 A That's very crucial.

6 Q Okay. And that Fisher did it, that's pretty good,
7 that's pretty accurate isn't it?

8 A Yes, we know now that that's accurate.

9 Q You know now, but it was always the case?

01:39 10 A Yes, it was always the case.

11 Q Fisher was always guilty?

12 A Yes.

13 Q David was always innocent?

14 A Yes, yeah.

01:39 15 Q Okay. And it's also true that for whatever reason
16 the awareness of Mr. Fisher was not brought home
17 to anybody supporting David Milgaard for many,
18 many, many years after he was arrested?

19 A Do you want to ask me that again? What do you
01:40 20 mean by anybody?

21 Q Well, Justice Tallis, Mrs. Milgaard, any of
22 Milgaard's lawyers, anybody from October the 8th,
23 1970 until the -- well, the phone call from a
24 stranger brought it to light.

01:40 25 A You know, I can only answer for what's in our



1 report. That's a very broad question. I have a
2 lot of difficulty answering that question.

3 Q Okay. In any event, there were meetings with
4 police and -- that is, local police and with
01:40 5 McCrank and Fraser and yourself held in the fall
6 of '92?

7 A I'm not sure what you mean by police, meetings
8 with police.

9 Q Well, maybe I can go to a document.

01:41 10 A What do you mean?

11 Q 003998. Now, I don't know who authored this, and
12 perhaps somebody can help me, perhaps you can by
13 elimination, it starts off:

14 "- had lunch with Chief Egan, Bob --"

01:41 15 That would be Wars would it be?

16 A Bob Wass, yeah, W-A-S-S.

17 Q Yeah.

18 "...Rick Pearson, Murray Johnston,

19 Murray Swatsky & Neil McCrank & Bruce

01:41 20 Fraser."

21 Can you tell by elimination who the author would
22 be?

23 A You know, I don't recognize that writing and I
24 don't think it was anybody in the RCMP. They
01:41 25 didn't spell my surname correctly.



1 Q It's likely Saskatchewan I think, but --

2 A Yeah, you'll see that my surname is spelled
3 incorrectly there, so I don't think it was anybody
4 that I worked with that would have written that
01:42 5 document.

6 Q Okay. I'm not sure if I can highlight it or not.
7 I guess I can't.

8 "- Neil was a bit uncomfortable with the
9 Feds referring this matter to them as
01:42 10 they were staunch proponents of
11 provincial jur'd...

12 - I suggest this is an "optics" thing."
13 Do you recall who would have said that?

14 A You know, you would have to put that document into
01:42 15 context for me. I don't know when this
16 conversation was, at what point in our
17 investigation.

18 Q It's dated in the top, October the 8th, '92, right
19 at the very beginning.

01:42 20 A Yeah, I see that. Yeah, I see that now.

21 Q I'm sorry I can't highlight, but towards the
22 bottom of the page:

23 "- He needs letter from Cotter re
24 "double referral" which he could live
01:42 25 with



1 - wants copy to Chief Egan to est. his
2 involvement on behalf of us as well as
3 feds."

4 So it must be provincial.

01:43 5 "- Scope of Invest.

6 - agree obst justice but perhaps go
7 beyond Mike Breckenridge's statement -
8 ask Wolch what else they have - expect
9 nothing."

01:43 10 Do you recall that type of conversation?

11 A You know, I don't, but, you know, if I did
12 participate in a meeting, I'm suggesting that
13 perhaps I also would have taken this discussion
14 and made notes of it somewhere and made a report,
01:43 15 so perhaps that's someone else's recollection of a
16 discussion we had. It doesn't refresh my memory,
17 but perhaps my own notes or report would be of
18 assistance.

19 Q Okay. Do the words "expect nothing" seem to
01:43 20 suggest that perhaps at this meeting there was a
21 certain attitude to the complaints?

22 A Well, that may have been someone else's
23 perception. It certainly wasn't mine. I can't
24 speak for someone else who may have written
01:44 25 something like that.



1 Q Okay. Then it goes on:

2 "- Then do review & release statement to

3 Feds & Sask jointly

4 - we'd do joint announcement with Feds."

01:44 5 So you don't remember this meeting at all?

6 A I'm sorry, Mr. Wolch, I can't help you very much
7 with this particular document.

8 Q Just turn the page. I'm sorry, I want the page
9 earlier, two pages earlier then, go back two. It
01:44 10 says:

11 "1) Get McFarland to wait a few days

12 2) Apparently Cotter asked Tait to

13 continue investigation more or less for
14 us

01:44 15 - would be confined to allegation

16 - would be of a criminal nature."

17 That doesn't refresh you at all?

18 A I don't recognize this document. I don't think
19 I've ever seen it before.

01:45 20 Q Just scroll down, and the bottom:

21 "- spoke with Bruce & we appear now to
22 be on the same wave length."

23 A Yes.

24 Q So there's going to be a report, there's going to
01:45 25 be a joint --



1 A I don't believe that's me, Mr. Wolch, and I don't
2 recall that document.

3 Q Oh, no, it's not you, it records you as being
4 there, so it's not you, but you are there
01:45 5 supposedly for this meeting.

6 A Well, I'm not sure if this document is a
7 continuation of that meeting or this is another
8 document.

9 Q Oh, I see, okay. You could be right. So
01:45 10 everybody was on the same wavelength, everybody
11 agreed what was going to happen and everybody was
12 told, I would suggest, to expect nothing?

13 A No, I don't suggest that at all. I think if I can
14 kind of recall this, I know very early on before
01:46 15 we started the investigation there was a
16 discussion amongst the RCMP senior executive and
17 perhaps the Department of Justice and I don't know
18 if Mr. Fraser, McCrank were involved at that time
19 about the scope of the investigation, and it
01:46 20 started out being very narrow, to simply
21 investigate the Breckenridge allegation, and then
22 there was a suggestion that no, perhaps it should
23 be broader. I think when the decision was made
24 that it be broader, that's when we sort of decided
01:46 25 that a more concerted effort, a larger number of



1 investigators, etcetera, was involved, but this
2 particular meeting, like I say, if I had my own
3 notes to refer to, perhaps it would be helpful,
4 but looking at someone else's notes, I don't
01:46 5 recognize that at all.

6 Q Now, I'm interested in how you perceive the
7 decision of the Supreme Court to affect you. Did
8 you take it as having a significant or partial
9 effect on what you were doing?

01:47 10 A You know, Mr. Wolch, I don't think you are ever
11 able to sort of put everything out of your mind
12 with regards to the findings of the Supreme Court
13 and I guess we always felt that if we found
14 anything that sort of conflicted with what the
01:47 15 Supreme Court said, we would certainly report on
16 it and provide it upwards to our legal advisors,
17 but I think you are always conscious when you are
18 doing an investigation that the Supreme Court has
19 looked at a lot of the material we had looked at,
01:47 20 in fact, had gone into perhaps more detail in some
21 areas than we had, and I guess if we had found
22 something that was startlingly different, certainly
23 we would have had to seek advice as to how we
24 handled that particular piece of information.

01:47 25 Q But the Supreme Court had quashed the conviction,



1 had they not, or at least recommended that?

2 A I believe that's the case, yes.

3 Q Okay. And would you not consider that to be of
4 extreme significance?

01:48 5 A Yes.

6 Q Do you know how many times in history they have
7 done that very thing on a 690 reference?

8 A I don't know, but I would suggest it's probably
9 quite rare.

01:48 10 Q It's the only one in history.

11 A I certainly take no dispute with that.

12 Q And that it is quite significant for the court to
13 look at a person who has been in jail for a long
14 time and then say we recommend the conviction be
01:48 15 quashed and at best a new trial ordered?

16 A I think that is significant and I think in this
17 case the Supreme Court certainly said more than
18 simply quash the conviction, I believe there were
19 other aspects to their decision as well, that
01:48 20 wasn't the only thing they said.

21 Q Yeah. Well, particularly back then it was very
22 rare for the, anyone to have a wrongful conviction
23 quashed, at least have a conviction quashed after
24 it's been through the entire appellate process?

01:49 25 A Yes, I think I've agreed with you, that that's



1 rare.

2 Q And I want to glance at the Supreme Court for a
3 moment, 058828, at 31, please. Here's a paragraph
4 that seems to cause some difficulty and I think
01:49 5 you've relied on it to some degree, and I just
6 want to deal with it briefly, and it's -- sorry, I
7 can't highlight, but the last paragraph:

8 "It is appropriate to begin by stating
9 that in our view David Milgaard had the
01:49 10 benefit of a fair trial... We have not
11 been presented with any probative
12 evidence that the police acted
13 improperly in the investigation..."

14 I pause there. We have not been presented, it
01:50 15 doesn't mean it doesn't exist?

16 A I would agree.

17 Q Yeah. And you were told that it wasn't the focus
18 of the Supreme Court, police misconduct was not
19 the issue?

01:50 20 A Was told by whom?

21 Q Myself, among others, but the point was the issue
22 was the conviction, the innocence of David, not
23 whether there's misconduct or not, guilty people
24 can be, have police misconduct, it won't affect
01:50 25 their guilt, if they are guilty?



1 A Are you asking me that question independent of the
2 context of the Supreme Court or in the context of
3 what the Supreme Court said? I'm just not sure
4 where that question comes from.

01:50 5 Q Either one. I mean, surely on wrongful
6 convictions, if the question is posed at this
7 stage of the game the court is looking for
8 innocence, you are not looking for misconduct that
9 doesn't amount to something that would lead to
01:51 10 innocence -- it's the innocence that's the focus
11 is what I'm saying, is the witness lying or not.

12 A In relation to this or just in a wrongful
13 conviction?

14 Q I'm saying they weren't asked the question was
01:51 15 there police misconduct, it wasn't the question.

16 A I'm not sure whether they looked, how extensively
17 they looked at that or not.

18 Q "Nor has evidence been presented that
19 there was inadequate disclosure in
01:51 20 accordance with the practice prevailing
21 at the time."

22 Did you check to see if there was any argument
23 about disclosure?

24 A Well, I think we investigated that as thoroughly
01:51 25 as we could and certainly provided that to our



1 legal advisors who were probably in a better
2 position to make comment on disclosure than we
3 were, so yes, we investigated that as thoroughly
4 as we could, just as we investigated the evidence
01:51 5 of police acting improperly as thoroughly as we
6 could.

7 Q But you were also aware of the fact that you found
8 important disclosure the Supreme Court never even
9 had and I'm thinking about the RCMP reports where
01:52 10 before Milgaard came onto the scene, they believed
11 that the perpetrator was Larry Fisher, unknown at
12 the time?

13 A I think those reports simply said that initially
14 when Saskatoon police started their investigation,
01:52 15 they had looked at whether there was links between
16 the murder and sexual assaults and that's in the
17 Saskatoon police file as well.

18 Q No, but I'm thinking more of the reports that
19 outline why the perpetrator -- there are two RCMP
01:52 20 reports -- why the perpetrator would have been
21 that same predator that gave rise to the newspaper
22 warnings and things like that?

23 A I don't recall that the same way you do. Perhaps
24 we should look at that document.

01:52 25 Q Well, you would -- I thought you were the ones



1 that found it, I thought Murray Brown found it and
2 gave it to you.

3 A That's correct.

4 Q But it was not for the Supreme Court, they never
01:53 5 had it.

6 A I agree with you, that as far as I know the
7 Supreme Court never had that.

8 Q And for sure it wasn't for trial available?

9 A Well, I don't know that.

01:53 10 Q Okay. Take it from me it wasn't, assume it
11 wasn't. If those two weren't available for the
12 Supreme Court or the trial, we cannot agree that's
13 important disclosure?

14 A I would suggest that it likely is but, you know, I
01:53 15 don't know that I'm the best person to comment on
16 that. Like I say, issues of disclosure were sent
17 to our legal folks who provided us with their
18 views on that and I think it's in their report and
19 it's in our report.

01:53 20 Q All right. If we just turn the page, looking at
21 the first new paragraph:

22 "However, fresh evidence has been
23 presented to us. Ronald Wilson, a key
24 witness has recanted part of his
01:53 25 testimony. Additional evidence has been



1 presented..."

2 Regarding the motel.

3 "More importantly, there was evidence
4 led as to sexual assaults committed by
01:54 5 Larry Fisher which came to light in
6 October 1970, when Fisher made a
7 confession."

8 You see that?

9 A Yes, I do, sir.

01:54 10 Q It says it came to light in 1970. Do you know who
11 was aware of it in 1970?

12 A Well, I may need to refer to my report here just
13 to be accurate, you know, in providing my evidence
14 accurately, but I believe sometime in October of
01:54 15 1970 there was, this is when the direct indictment
16 process began and Saskatchewan was contacted and
17 indicates that Mr. Fisher intended to plead
18 guilty. That's my best recall. Like I say, I may
19 need to refer to my report to be more accurate.

01:54 20 Q Okay. But certainly people in authority knew
21 about it, we know Mr. Karst took the statement, we
22 know Mr. Kujawa prosecuted it shortly thereafter,
23 the year after, so we know that, you know that?

24 A Yes.

01:54 25 Q Okay. So they knew about it?



1 A Yes.

2 Q Okay.

3 A Yeah.

4 Q All right. If you go to the next paragraph:

01:55 5 "In our view, this evidence, together
6 with other evidence we have heard,
7 constitutes credible evidence that could
8 reasonably be expected to have affected
9 the verdict of the jury considering the
01:55 10 guilt or innocence of David Milgaard.
11 Our conclusion in this respect is not to
12 be taken as a finding of guilt against
13 Fisher, nor indeed that the evidence
14 would justify charging him with the
01:55 15 murder of Gail Miller."

16 You see that?

17 A Yes, I do.

18 Q The reference to credible evidence. And if we can
19 just go to 33, the second paragraph:

01:55 20 "Third, we are satisfied there has been
21 new evidence placed before us which is
22 reasonably capable of belief and which
23 taken together with the evidence adduced
24 at trial could reasonably be expected to
01:56 25 have affected the verdict. We will



1 therefore be advising ... to quash the
2 conviction... In light of this
3 decision, it would be inappropriate to
4 discuss the evidence in detail or to
01:56 5 comment upon the credibility of
6 witnesses."

7 So they are saying the new evidence is capable of
8 belief?

9 A Yes, I believe that's exactly what they are
01:56 10 saying.

11 Q And could affect innocence or guilt of David
12 Milgaard; right?

13 A At a new trial, yes.

14 Q Yes. And that would include, in particular, the
01:56 15 evidence of Larry Fisher?

16 A That's possible, yes.

17 Q Yet that's evidence you thought didn't mean much?

18 A No, I don't think that's the case at all, sir. As
19 I indicated I believe on Thursday of last week, we
01:56 20 investigated Mr. Fisher as far as we could at the
21 time.

22 Q If we can go to 35.

23 A In fact, I recall writing his lawyer asking to
24 interview Mr. Fisher and told his lawyer that he
01:57 25 was a suspect and Mr. Beresh coming back quite



1 surprised that we would consider him a suspect, so
2 no, I don't agree with you.

3 Q Well, you didn't think there was enough to even
4 get DNA on him.

01:57 5 A No, that's not what I said either. What I said
6 was there needed to be a logical process, a
7 step -- a process of steps taken whereby one
8 suspect is eliminated and then you look to see
9 what grounds you have to get a warrant on the next
01:57 10 suspect. I believe that's what I said. At least
11 that's what I believe should have been the
12 process.

13 Q I hear what you are saying, but why can't you have
14 two suspects, what's the problem with having two
01:57 15 suspects?

16 A There's no problem having two suspects, but in
17 this case I didn't have two suspects, I had one
18 suspect.

19 Q Well, Mr. Milgaard was not convicted when you were
01:57 20 dealing with him.

21 A Well, during our investigation there certainly was
22 no evidence came forward to us that indicated
23 there had been any wrongdoing that we should
24 suggest that Mr. Milgaard was not the person
01:58 25 responsible. However, I will remind you that the



1 focus of our investigation was not on the guilt or
2 innocence of David Milgaard or Larry Fisher, it
3 was about allegations that you made about improper
4 conduct of a number of people, so that was the
01:58 5 focus of our investigation and that's what we
6 looked at.

7 Q But surely if you came to the conclusion that
8 Milgaard was innocent and Fisher was guilty, as a
9 police officer you weren't going to just walk away
01:58 10 were you?

11 A No, and in fact I think it's very early on in our
12 report where we indicate, and I know I told this
13 inquiry, that should evidence come up that would
14 point to anyone, that that would be forwarded
01:58 15 through our legal advisors, Mr. McCrank and Mr.
16 Fraser, onto the Attorney General, and I'm sure
17 the Attorney General would then ensure that some
18 action was taken on that information, but that it
19 was not our role to investigate Mr. Fisher or Mr.
01:58 20 Milgaard's guilt or innocence.

21 Q I'm jumping ahead to the DNA. At that point in
22 time nobody was convicted of the murder of Gail
23 Miller?

24 A That's correct.

01:59 25 Q So what would possibly be the harm of saying to



1 the scientists can you compare the known against
2 the sample -- or the unknown, rather, against the
3 two knowns, Mr. Fisher and Mr. Milgaard? I don't
4 understand your reluctance to do that.

01:59 5 A Well, you know, Mr. Wolch, perhaps if that had
6 come forward very early on in our investigation
7 and there had been a suggestion that we should do
8 the DNA on both persons, I may have viewed it
9 differently, but when our investigation was
01:59 10 complete and I saw no evidence that would point me
11 in the direction of Mr. Fisher and considerable
12 evidence that would still lead me to believe Mr.
13 Milgaard was responsible, I felt it was
14 appropriate that you eliminate people in the order
01:59 15 of importance, and certainly Mr. Milgaard appeared
16 to be the best person at that time; therefore, I
17 felt that he should be eliminated first. Now, I
18 know now that Milgaard is innocent and I have no
19 problem saying that, but at that time we didn't
02:00 20 have the benefit of the DNA analysis.

21 Q Look at the second last paragraph on this page:
22 "While there is some evidence which
23 implicates Milgaard in the murder of
24 Miller, the fresh evidence presented to
02:00 25 us, particularly as to the locations and



1 the pattern of the sexual assaults
2 committed by Fisher, could well affect a
3 jury's assessment of the guilt or
4 innocence of Milgaard. The continued
02:00 5 conviction of Milgaard would amount to a
6 miscarriage of justice if an opportunity
7 was not provided for a jury to consider
8 the fresh evidence."

9 Now, here's a Supreme Court saying that in
02:00 10 reviewing the pattern of Larry Fisher, that that
11 could have a considerable effect and has
12 probative value, it's valuable, yet you are
13 saying that you didn't find that yourself?

14 A That's correct.

02:01 15 Q But yet you say you were guided or influenced by
16 the Supreme Court yet, where they are favourable
17 to David Milgaard, you are not being guided by
18 them?

19 A No, I think I was always conscious of the Supreme
02:01 20 Court's decisions and findings in this case, and
21 certainly we conducted our investigation with the
22 full knowledge of what the Supreme Court said. We
23 certainly went out to find whatever evidence we
24 could.

02:01 25 Q But what I am saying is that the Supreme Court



1 seems to think, obviously, that the Fisher
2 evidence was important?

3 A Yes.

4 Q But you, personally, didn't think so?

02:01 5 A Well, as I told you, we conducted our
6 investigation and we didn't find any evidence. We
7 certainly made the attempts, we did our very best
8 to get as much evidence as we could, we didn't
9 find it.

02:01 10 Q No, but you had the similar act evidence?

11 A That's correct.

12 Q And you had the Supreme Court saying --

13 A That's not enough to convict or charge Larry
14 Fisher, in my view.

02:02 15 Q In your -- okay. But it's still -- you were
16 saying there is no evidence, that's evidence; is
17 it not?

18 A Well, if you are talking about reasonable and
19 probable grounds to lay a charge, I don't believe
02:02 20 it is.

21 Q Well, you had that, you had Mrs. Fisher's
22 evidence; right?

23 A Yes, we did.

24 Q You had a number of jailhouse confessions, three I
02:02 25 think?



1 A Well we certainly had information that you could
2 place a varying amount of reliability upon. I
3 don't believe you could place a lot of reliability
4 upon Mrs. Fisher, we did not view her as being
02:02 5 strongly credible, and same with the jailhouse
6 informants, I mean there's often credibility
7 issues with those.

8 Q And you had location, you had Fisher living in the
9 Cadrain house, you had where articles were found?

02:02 10 A Well that, that's suspicious, I don't believe it's
11 evidence.

12 Q So all that's not evidence? Okay.

13 I'd like to go over a few
14 things with you in the report of Alberta Justice,
02:03 15 the McCrank and Fraser report, which is 032805.
16 You can go to 06 where it starts. It starts
17 off -- and I wish I could highlight:

18 "In late September ... '92, Brent Cotter
19 ... contacted Neil McCrank...",
02:03 20 etcetera. I won't belabour it, that doesn't seem
21 to jive with the October 8th memo, but that
22 doesn't really matter. If we could turn to 07,
23 it says in here that there were 12 members under
24 your direction?

02:04 25 A Well, the number 12 has been used, and the number



1 10 has been used. I can tell you, quite frankly,
2 that there were times when we had more
3 investigators and there were times when we had
4 less investigators, just depending on the issues,
02:04 5 but generally speaking I think 10 or 12 was a
6 pretty steady number throughout the investigation.

7 Q Did you make any use of Rick Pearson?

8 A I know we interviewed Rick Pearson at the very
9 beginning to get a sense for what, the work that
02:04 10 he had done and some of his findings, but he
11 didn't participate in our investigation.

12 Q I don't want to interrupt you, but he was at that
13 meeting October the 8th, so it seems he had some
14 involvement or his name is said to be there?

02:04 15 A That's correct, he participated in a couple of
16 meetings at the beginning of our investigation.

17 Q Yeah. I'm sort of puzzled as to how manpower is
18 assigned, that is when Pearson was doing it all he
19 was by himself, and now we have 10 to 12 members
02:05 20 doing this. It seems -- you see what I am getting
21 at in terms of a weighing of the use of manpower?

22 A Well I think Mr. Pearson's investigation was very
23 narrow in its focus, and it was limited to
24 providing assistance to the Department of Justice,
02:05 25 if my recall is correct. Our investigation was



1 much broader, and of course it was investigating
2 the conduct of a number of people, and some, I
3 forget the number, 65 or 68 allegations that we
4 were able to synthesize from the material that you
02:05 5 provided. So, certainly, I think the scope of the
6 investigations was markedly different.

7 Q If we could turn to page 11, please, I want to
8 focus a bit on the evidence of the key witnesses
9 which you look into and which is in this report,
02:06 10 based on your report, and it starts off under
11 number 2. It is alleged the police pressured
12 these witnesses to assist in convicting Milgaard,
13 not true, all of these witnesses and many more
14 have been interviewed, and when Albert Cadrain
02:06 15 returns to Regina from his trip out west he was
16 arrested for vagrancy -- and I should put, for the
17 record's sake, I am skipping words just for the
18 sake of speed-reading and the document speaks for
19 itself -- vagrancy in early February '69, and it
02:06 20 wasn't until he returned the beginning of March
21 that he became aware of details through a
22 conversation with his mother. After discussing
23 what he knew with his brother and his sister and
24 perhaps his parents went to the police, he thought
02:07 25 Milgaard may have committed the murder.



1 "It has been suggested these allegations
2 are substantial because Cadrain did not
3 mention anything about Milgaard when he
4 was arrested in Regina. The obvious
02:07 5 answer is that Cadrain did not know the
6 details of the murder at that time and
7 therefore could not have suspected
8 Milgaard."

9 Is that your conclusion? Do you --

02:07 10 A Yes, I believe it was. But to be quite frank with
11 you, you read so fast there I couldn't keep up
12 with you, so --

13 Q Oh, I'm sorry, I was going -- I thought you could
14 read faster than I could speak. But take your
02:07 15 time, I don't want to rush you through it, I
16 just --

17 A Yeah, if we could go back to the page --

18 Q Okay. Take your time. I won't read it aloud, you
19 just read it to yourself.

02:07 20 A (Witness reading) Yes, I believe the substance of
21 that is what our report said.

22 Q Yeah. What I am getting at is, or trying to get
23 to, is that in Regina Cadrain was questioned about
24 the murder.

02:09 25 A By Regina Police.



1 Q Yes.

2 A That's correct, yes.

3 Q Yes.

4 A I --

02:09 5 Q And it would have been a murder that occurred the
6 morning he left town?

7 A And a murder, I believe, that occurred near where
8 he lived.

9 Q Yeah. And all he had to do was say he saw blood?

02:09 10 A That's correct, he could have said that.

11 Q He didn't have to know any details?

12 A Right.

13 Q So why -- so why is it said here:

14 "The obvious answer is that Cadrain did
02:09 15 not know the details of the murder at
16 that time and therefore could not have
17 suspected Milgaard."?

18 A Well I think what the suggestion is, is that
19 until, at least our investigation determined that
02:09 20 until Cadrain was at home after his trip and had
21 come back and was sort of provided the details of
22 the murder by members of his family, that he
23 didn't make -- draw a connection. That's what our
24 investigation determined, and I think, I'm
02:09 25 suggesting that's what Mr. McCrank and Fraser are



1 saying here in their report.

2 Q Well as an investigator would you not expect, if
3 he had actually seen blood, when he is spoken to
4 by the RC -- by the Regina Police, "a murder
02:10 5 occurred the morning you left, do you know
6 anything about it", he might have said, "yeah, I
7 saw blood on my friend"?

8 A He wasn't asked that, and there's no evidence to
9 indicate that he made a connection, it was simply
02:10 10 a general conversation put to him by a police
11 officer about a murder that happened in his area,
12 --

13 Q Uh-huh.

14 A -- there is no evidence that he made that
02:10 15 connection.

16 Q Okay. Just scroll down to farther on the -- if I
17 can -- sorry. Okay, I'm pointing in the middle of
18 the top paragraph where it says:

19 "The RCMP ..."

02:10 20 A Yes, I think I'm with you there.

21 Q Yeah:

22 "... have uncovered corroboration for
23 Cadrain's statement to the police from
24 his sister and his brother. He
02:10 25 discussed his concerns about Milgaard



1 with them before going to the police.

2 His younger brother Kenneth, confirms

3 evidence that Milgaard had blood on his

4 clothing ... and the same explanation

02:11 5 for the blood from Milgaard.",

6 etcetera, etcetera. Are you saying you actually

7 put substance in Kenny Cadrain's statement?

8 A I'm saying that we took down the evidence of

9 witnesses, made a record of it, and provided that

02:11 10 in our report.

11 Q Okay. But, here, it --

12 A And that, that's what he told us.

13 Q Okay. But, here, it doesn't say that he was five

14 or six at the time or -- and didn't recall it for

02:11 15 maybe 20 years later?

16 A No, but it certainly says that in our report, and

17 --

18 Q Well --

19 A -- Messrs. McCrank and Fraser had the opportunity

02:11 20 to read our report, and in fact --

21 Q I appreciate that. But, as an investigator, would

22 you have placed credence in the statement of

23 somebody who says "when I was six years old I saw

24 blood, I never told anybody about it, it wouldn't

02:11 25 have been an issue for maybe two months until the



1 murder was even brought to my attention as a
2 six-year-old, I didn't tell anybody about it and
3 now I remember it 20 years later"? That's silly,
4 isn't it?

02:12 5 A I think Mr. Hodson asked me about that and I
6 believe I told him that I didn't feel that that
7 was particularly strong. There may or may not
8 have been blood there and, if there was blood
9 there, it could have been from some other source,
02:12 10 so that was not a particularly strong piece of
11 evidence in my view.

12 Q So okay, well, let's go to Nichol John. She was
13 interviewed for an extensive time and:

14 "Although she appears to have an actual
02:12 15 mental block of the details surrounding
16 the murder, she was not pressured by the
17 police to make the statement she gave at
18 the time."

19 So you concluded she had a mental block regarding
02:12 20 the murder; correct?

21 A I'm not sure if that's our conclusion or their
22 conclusion from reading our report, but I think a
23 number of people told us that she had blocked some
24 of this out or was unable to recall, so whether
02:13 25 that -- those were our words to them or words they



1 have produced themselves, I'm not sure. Perhaps I
2 would need to refer to our report to see what we
3 said about Nichol John.

4 Q Was that your conclusion?

02:13 5 A I think a number of people, I know she had been
6 interviewed by psychologists and psychiatrists,
7 and certainly this had been a traumatic -- there
8 had been some trauma in her life, and certainly
9 she was incapable of recalling some events,
02:13 10 whether you call that a mental block or what I'm
11 not sure.

12 Q Well are you satisfied she didn't see the murder?

13 A I don't think there is a very good chance she
14 did, --

15 Q Well --

16 A -- I think there's a pretty good chance that she
17 simply is unable to recall.

18 Q Yeah, but can't you go farther than 'a pretty good
19 chance'? The fact is she never saw a murder.

02:13 20 A I don't believe she saw David Milgaard commit the
21 murder.

22 Q Do you think she saw Larry Fisher do the murder?

23 A I don't know.

24 Q And nobody else saw it?

02:13 25 A I don't know, Mr. Wolch, you know. Like I don't



1 believe she saw a murder, --

2 Q All right.

3 A -- that murder, that's for sure.

4 Q Okay. So she didn't block one out; correct?

02:14 5 A Well, we didn't know that at the time, we know
6 that now.

7 Q Of course we know it now.

8 A I'm talking about 1993, when we did our
9 investigation, we didn't know that at the time.

02:14 10 Q I'm -- I agree with you. Your whole report is
11 based on wrong premises. You are based on David
12 being guilty, and etcetera, etcetera?

13 A I don't agree with you.

14 Q Well it's based on the premise that David was
02:14 15 likely guilty?

16 A The conclusions are that. The report itself is
17 not based on that. The report --

18 Q Well --

19 A -- was an objective analysis of the information
02:14 20 that we were able to obtain from the witnesses.

21 Q Well, sir, isn't there a huge difference as to
22 whether or not Nichol John saw a murder and
23 blocked it out or never saw a murder; isn't there
24 a big difference?

02:14 25 A Well we now know what we know. We know that she



1 didn't see David Milgaard kill Gail Miller, we
2 didn't know that in 1993.

3 Q Why did she say she did?

4 A Well, I think she said she did one time, and then
02:14 5 another time she said she didn't.

6 Q Why would she --

7 A My belief was, and I think it says -- suggests in
8 our report that she was an unreliable witness, we
9 couldn't rely on her --

02:15 10 Q I understand that.

11 A -- as a witness.

12 Q But why did she ever say she saw a murder?

13 A I have no idea.

14 Q No idea? Okay. It says here:

02:15 15 "Further corroboration that the evidence
16 came from her own knowledge is provided
17 by statements taken by the RCMP from ...
18 Wispirski, whom Nichol John told about
19 Milgaard killing a girl in Saskatoon
02:15 20 prior to giving the statement to the
21 police, and from Nichol John's mother
22 whom she had told at some point in time
23 that she had seen a girl stabbed..."

24 Now when, when, from your investigation, did she
02:15 25 tell Nichol's mother; was that before the



1 statement or after the statement?

2 A Umm, I think I may have to refer to my report, but
3 if my recall is correct it was before the
4 statement.

02:16 5 Q Before the statement?

6 A Before the statement.

7 Q Okay. And, according to this, she told Barbara
8 Berard before the statement?

9 A Yes.

02:16 10 Q But in the statement she says Inspector Roberts
11 was the first time she could remember; doesn't
12 she?

13 A Yup.

14 Q So how can those two go together as corroboration?

02:16 15 A Well, and I think if you refer to our report we
16 say, we suggest that Nichol's evidence is very
17 weak at best.

18 Q Well, but --

19 A And so, and I think this is an example of it, so
02:16 20 obviously I share your perspective on that.

21 Q Yeah, but 'weak', you are saying there is
22 corroboration here from --

23 COMMISSIONER MacCALLUM: Well, he's not
24 saying it.

02:16 25 MR. WOLCH: Okay. But this is a report



1 prepared from your report though, I think, in
2 fairness?

3 COMMISSIONER MacCALLUM: Be careful to make
4 that distinction. You keep accusing him of
02:16 5 being -- as you would the author.

6 MR. WOLCH: Okay.

7 BY MR. WOLCH:

8 Q You read this report over thoroughly before it was
9 published?

02:16 10 A Umm, I don't know if I did have a chance to read a
11 draft of that, --

12 Q Okay.

13 A -- or whether it simply went straight to
14 Saskatchewan.

02:17 15 Q Okay. Now we have:

16 "Ronald Wilson claims he did not witness
17 the murder, but through a number of
18 statements he gave evidence that
19 corroborated some of the evidence of
02:17 20 both John and Cadrain. When in Calgary
21 at the bus depot Milgaard told him that
22 while in Saskatoon he grabbed a girl and
23 tried to take her purse, and because she
24 resisted he had jabbed her with a knife
02:17 25 and put her purse in the trash can."



1 Now I'll go through it, perhaps after the break,
2 in a little more detail, but you have both these
3 kids saying there was a conversation,
4 conversations with Milgaard in Calgary about the
02:17 5 killing or murder of, presumably, Gail Miller;
6 you are aware of that?

7 A Yes, I am, yup.

8 Q How could they make that up if it wasn't fed to
9 them?

02:17 10 A Well, I'm not sure what you are asking me?

11 Q Well how can they both -- well, first of all, that
12 conversation couldn't have happened; correct?

13 A Well, I don't think that was known to us in 1993,
14 that that conversation couldn't have happened.

02:18 15 Q I -- I'm talking today?

16 A You know, I can't comment. I can only tell you
17 what I investigated, what came out in my
18 investigation, and what my report was. Everything
19 that's happened after that I can't comment on.

02:18 20 Q But you are an expert in the field, you are a
21 trained, very highly-ranked RCMP officer with
22 tremendous credentials, surely I can ask you, or
23 from what you learned, all this investigating,
24 that that conversation could not have occurred
02:18 25 with what we know now, not what you knew then,



1 what we know now?

2 A Yeah, but you are asking me to now say, to make a
3 comment that is contrary to my findings in my
4 report simply because of what I know now.

02:18 5 Q Absolutely.

6 A And that's not fair.

7 Q Well --

8 A How can I say to you, "yeah, what we said in 1993,
9 how could we have said that?" We said that
02:18 10 because of the evidence we had in 1993.

11 Q But now is a chance to correct it if you're wrong;
12 is it not?

13 COMMISSIONER MacCALLUM: I don't know how
14 much more correction you want. The man has
02:19 15 acknowledged that he now believes Milgaard to
16 have been innocent, Fisher to have been guilty.

17 MR. WOLCH: Okay, but the point I'm getting
18 at now is -- well I think, Mr. Commissioner, I --
19 it will take me a little while to go through, I'm
02:19 20 happy to go through, I don't know when the break
21 is?

22 COMMISSIONER MacCALLUM: Well, keep going a
23 little while, we started late.

24 BY MR. WOLCH:

02:19 25 Q Okay. If we could turn to 813. Now you're aware



1 of the Mackie summary?

2 A Yes, I am.

3 Q Okay. And that was a main, a main focus of the
4 allegations coming to you?

02:19 5 A Yes.

6 Q That it was all invented ahead of time and these
7 kids were manipulated or coerced into adopting
8 what was being suggested as the summary or theory?

9 A Yes, I believe that was your assertion at the
02:20 10 time.

11 Q That was the assertion?

12 A Yes.

13 Q It was then, it is now. Okay? The last
14 paragraph:

02:20 15 "It is further suggested that
16 support for this allegation is provided
17 by a five page police report ... which
18 allegedly illustrates the fact the
19 evidence of witnesses John and Wilson
02:20 20 was fabricated by the police. The RCMP
21 investigation indicates this summary was
22 prepared during a meeting of the
23 investigators ... after Cadrain had made
24 his statements to police. This summary
02:20 25 appears to be an attempt to pull



1 together all of the known information
2 ... develop a theory of how the murder
3 occurred. The summary ends with a
4 direction as to how the investigation
02:20 5 should proceed ... which would be to
6 conduct further interviews of ... John
7 and ... Wilson. The RCMP suspect the
8 first three pages were prepared by ...
9 Mackie ... last two ... Penkala ... It
02:21 10 is the summary the accusers say
11 corroborate the allegation."

12 Now here's the part that I want to focus on:

13 "Upon a review of the summary and a
14 comparison with the crucial statements
02:21 15 obtained from John and Wilson and to an
16 independent report prepared by ...
17 Riddell ... it would appear the summary
18 is a combination of conjecture and
19 suggestions, and ... the conjecture
02:21 20 vaguely corresponds to some of the
21 points made in the statements by John
22 and Wilson. It is more an indication of
23 good police work than it is coercion of
24 witnesses. We do not see that this
02:21 25 document is supportive of anything,



1 except an indication the police were on
2 the right track."

3 Do you see that?

4 A Yes, I do.

02:22 5 Q Okay. Now, with what you know today, would that
6 be correct?

7 A I -- I'm really uncomfortable suggesting that -- I
8 mean in 1993 we investigated this, for me to now
9 sit here and put my mind around a different
02:22 10 context, a different place in time, it's
11 difficult. In 1993 we have our findings, we did a
12 detailed analysis of that summary report, we
13 reported on it to Mr. McCrank and Mr. Fraser, and
14 this is their interpretation of that report.

02:22 15 Q Yes, but there are people who will say that "this
16 report exonerates us, this report clears us", and
17 I want to make it very clear that you were going
18 on the assumption that there was truth in the
19 police theory that these kids, in part, adopted.

20 A Well I --

21 Q Doesn't it change completely if it was all false,
22 you are not on the right track, you're on the
23 wrong track?

24 A You know, I can't get my head around the fact
02:23 25 that -- what it appears today. I was asked to



1 investigate allegations of wrongdoing in 1993, I
2 investigated those and I reported on them, and
3 those are my findings.

4 Q Yes, but they are based on the premise that there
02:23 5 was truth in what they said, what Wilson and John
6 said, that there was truth in asking for
7 directions, David leaving the car, Wilson leaving
8 the car, "I fixed her", "stupid bitch", all that
9 stuff is presumed to have truth?

02:23 10 A Well I think, if you look back on our analysis,
11 you will find that there were a number of things
12 that they speculate in that summary that were true
13 and corroborated in various ways, and there were
14 some things that they said in that summary that
02:23 15 were not true, and there are additional pieces of
16 information or -- that came out above and beyond
17 that summary.

18 Q I appreciate --

19 A My investigation here was to look at whether or
02:23 20 not there was any evidence from that summary of
21 obstruction of justice and, in my view, there
22 wasn't.

23 Q Well, might you agree that today we have to look
24 at it in a different light, given that we now know
02:24 25 for a fact David was innocent?



1 A I think the fact that David was innocent doesn't
2 change the fact that the investigators here were
3 doing their very best to try and solve a crime
4 back in 1969, and there is no evidence that what
02:24 5 they were doing was inappropriate or evidence of
6 criminal wrongdoing.

7 Q When you analyse the statements of John and
8 Wilson, correct, --

9 A Yes, which we did, yes.

02:24 10 Q -- if you analyse it on the assumption that what
11 they were saying was for the most part true, or
12 considerably true on the core ingredients which
13 implicate Milgaard, you may come to a totally
14 different conclusion than if you investigated on
02:25 15 the assumption that what they were saying was a
16 pack of lies on the core ingredients?

17 A Well I think if you look at our analysis, Mr.
18 Wolch, you'll find that that's not the case, that
19 some of the things that were in the summary were
02:25 20 in fact corroborated, and some of the things
21 weren't. Do you want to go through that analysis,
22 I mean, you'll see.

23 Q Well, I'm going to take you through a bit of it.

24 COMMISSIONER MacCALLUM: Well, Mr. Wolch,
02:25 25 before we do break I have a question about your



1 approach.

2 Surely it was not this
3 witness' function to proceed on any assumption
4 that the witnesses were spouting a pack of lies,
02:25 5 nor was it his function to proceed on the basis
6 that they were telling the truth, he was there to
7 get the evidence, as he said, and he did it to
8 the best of his ability.

9 MR. WOLCH: Yes.

02:25 10 COMMISSIONER MacCALLUM: So it is not
11 fruitful, in my view, to be looking at the
12 problem he faced at that time by reference to
13 what we know now.

14 MR. WOLCH: Well no, I appreciate that, but
02:26 15 what I am saying is, Mr. Commissioner, is that
16 when you go, when you say that "they are on the
17 right track", it means -- is totally different
18 when you know they weren't on the right track,
19 and I want to draw on his expertise. I mean he
02:26 20 has been, with respect, I think quite defensive
21 of his report. I don't, I'm not worried about
22 that.

23 COMMISSIONER MacCALLUM: No, I don't think
24 he is, I think he is being defensive about his
02:26 25 approach, which he is entitled to do.



1 MR. WOLCH: Well, I'll modify it a bit, but
2 I just want to get his expertise.

3 BY MR. WOLCH:

4 Q And might you agree with me that if an
02:26 5 investigator goes into a room with a preconceived
6 idea how a crime was committed, okay, and the
7 witness adopts it, okay, if -- if the preconceived
8 notion turns out to be correct that might be
9 looked at as good police work; right?

02:27 10 A Yes.

11 Q But if it turns out to be wrong, if the witness
12 adopts the preconceived notion and it's not right,
13 then we have a problem?

14 A We very well may have a problem, yes.

02:27 15 Q Yeah. That's what I am getting at. What I am
16 saying is that when -- if you believe that Wilson
17 and John are adopting the theory of purse
18 snatching and that sort of stuff because it
19 happened you may take an approach that it's good
02:27 20 police work, but if what they are adopting didn't
21 happen, then we have a problem?

22 A Mr. Wolch, I believe I answered the question, and
23 my answer is this. We looked at that, at the
24 statements of both witnesses, we compared it to
02:27 25 the summary, and you will find that some parts of



1 that summary are able to be corroborated by
2 what -- by several areas, one of them being -- and
3 you mentioned purse snatching, Mr. Milgaard told
4 his counsel that they were looking at committing a
02:28 5 robbery, so there are aspects of the summary which
6 were corroborated and there were aspects of the
7 summary which weren't corroborated. What we were
8 looking at is whether there was criminal
9 wrongdoing here, we didn't find any evidence of
02:28 10 that.

11 Q Okay. I want to briefly go to the summary at
12 001502. Okay? It's about four down:

13 "- All were out of funds and may have
14 gone driving with a view to getting
02:29 15 money.

16 - On seeing nurse (Miller) she was
17 approached on pretence of getting
18 directions with a view to stealing her
19 purse.

02:29 20 - This would be around funeral home
21 which would coincide with statements of
22 Nichol John - Diwold seeing lights in
23 alley - Doell saying Miller took bus at
24 ... 'N'.

02:29 25 - Wilson appears to be driver of car,



1 therefore, Milgaard would leave car to
2 get purse - having seen Miller closer
3 his sex drive takes over and he forces
4 her down alley to where she is found.
02:29 5 - Nichol John knows or suspects results
6 and leaves car. Runs west on 20th ...
7 is girl seen by Indyk at St. Mary Church
8 ... she changes her mind about saying
9 anything and goes north on ... 'O' where
02:29 10 she meets car again.
11 - Milgaard after murder returns to car
12 with boot and sweater (car possibly
13 followed down lane) to which Wilson
14 objections to and as a result are buried
02:30 15 in the snow.
16 - Purse thrown in garbage on way through
17 alley from Avenue 'N' to 'O' ..."

18 Now "purse thrown in garbage", that's something
19 that did happen; isn't it?

02:30 20 A Yes, I believe it did.

21 Q Okay. Well we'll deal with is there any way that
22 that really did happen between Milgaard, Wilson,
23 and John that morning, "purse thrown in garbage"?

24 A That they are responsible for that? I don't
02:30 25 believe so now, no.



1 Q Okay. We've gone over this many times, I'll skip
2 the rest, but it's their suggestion that Nichol
3 John, Wilson and Cadrain be brought to Saskatoon
4 where with all present the true story can be
02:30 5 obtained even if hypnosis or polygraph are
6 necessary. Do you have any comment on that
7 suggestion?

8 A I quite frankly don't see anything wrong with
9 that. I think what they are doing is suggesting
02:31 10 an operational plan here, a plan of direction from
11 a supervisor or someone in a position of
12 management of the file to the investigators as to
13 what their next step should be. As I mentioned to
14 the inquiry, that's not uncommon, you know, in
02:31 15 police work to form very good, very early leads in
16 an investigation and then develop a plan to follow
17 up on those leads to either disprove or prove
18 them.

19 Q Okay, but that's assuming that these kids have not
02:31 20 told the truth to begin with, I mean, they all
21 have made statements before.

22 A I'm just not sure what they had said up until this
23 point. I think we can go to the analysis and we
24 would find out, but it could be that at this point
02:31 25 they have provided very little. I'm just not



1 sure. I would have to look at the analysis, Mr.
2 Wolch, to be accurate in --

3 Q Accept that they all gave --

4 COMMISSIONER MacCALLUM: Just a minute,
02:31 5 please.

6 MR. WOLCH: I'm sorry.

7 A -- to be accurate in my answer to you.

8 BY MR. WOLCH:

9 Q Please accept that all three gave relatively
02:32 10 consistent statements about that morning in
11 question. The only difference of any note is
12 David mentioned that he had asked an old woman for
13 directions, the rest was basically the same.

14 A That morning?

02:32 15 Q Yes.

16 A That very morning?

17 Q Yes.

18 A I don't think they said really anything.

19 Q Well, no, they made long statements. Were you not
02:32 20 aware of it?

21 A Well, I was aware of it, but the statements really
22 didn't say very much.

23 Q Well, very much to implicate, but they described
24 the morning's activities, they described the
02:32 25 Danchuks, the motel, they described going to



1 Cadraings', they went through that morning.

2 A That's correct.

3 Q There was no mention of anything to do with
4 anybody who could have been Gail Miller with the
02:32 5 possible exception of David saying an old woman
6 was asked for directions or whatever, the other
7 two didn't mention it.

8 A Yeah, I would have to review the statements to be
9 absolutely certain.

02:32 10 Q Okay. So basically, you know, we've used the word
11 recantation, so the May 23rd and 24th statements
12 are really recantations, they are being asked to
13 change, adopt something different; correct?

14 A Well, we looked very closely at those, we did an
02:33 15 analysis of those statements and what we were able
16 to find is that some of the things that they said
17 in those May 23rd and 24th statements were
18 corroborated and others weren't, and some of them
19 were corroborated by what Mr. Milgaard told his
02:33 20 own counsel as to what happened that morning and
21 that was very helpful to us. The police of course
22 didn't have that available to them in 1969, but we
23 did in 1993 -- 1992.

24 Q What about the suggestion hypnosis or polygraph
02:33 25 are necessary?



1 A Again, those are common techniques that are
2 employed by police investigators.

3 Q Hypnotizing people?

4 A Yes, hypnosis is used extensively to help victims
02:33 5 recall, or witnesses recall.

6 Q And in terms of a polygraph, isn't it normal that
7 the polygraph is a witness has made a statement
8 and you want to see if it's true?

9 A Yes. I think that's what their intention was.

02:34 10 Q But they had made statements saying they saw
11 nothing.

12 A Originally, yes.

13 Q Okay. Now, you are aware that Wilson and John
14 were taken and both were spoken to by Mr. Roberts?

02:34 15 A Yes, I am aware of that.

16 Q Now, we know that Roberts spoke to them, we've
17 heard evidence that it was eavesdropped upon or
18 recorded by the police who were all listening, we
19 know that Wilson and John were spoken to many --

02:35 20 COMMISSIONER MacCALLUM: I'm not so sure we
21 heard evidence that the police were all
22 listening. I think the person who put the device
23 in, I think he said he probably -- he couldn't
24 even remember according to him who was listening
02:35 25 or if anybody was listening.



1 BY MR. WOLCH:

2 Q I appreciate that, Mr. Commissioner. It might be
3 a logical conclusion though I suppose, but we know
4 that there was a listening device placed in the
02:35 5 room next door and a number of police officers of
6 senior rank were there. We know that statements
7 were taken from Wilson on two occasions that day
8 and the next and John the next day. Did it ever
9 concern you that we have a remarkable scarcity of
02:36 10 documentary evidence as to what took place in any
11 of these interviews?

12 A Well, certainly I think the more evidence,
13 documentary evidence that we had, the more helpful
14 it would have been, you know, to our
02:36 15 investigation, and I remind you it was about
16 obstruction of justice and wrongdoing, and we
17 certainly interviewed John and Wilson, or
18 attempted to interview Wilson to try and determine
19 if in fact there had been misconduct on the part
02:36 20 of the police or the police had suggested that
21 they adopt certain theories and we were not able
22 to uncover any evidence of that, Mr. Wolch.

23 Q I don't think that was my question. My question
24 was would you now be concerned of the lack of
02:36 25 notes, the lack of reports, the lack of transcript



1 from all that took place over those two days?

2 A I don't recall being particularly concerned in
3 1992, '93 when we did this investigation. I know
4 that we reviewed all the material we had and of
02:37 5 course, as I indicated, we asked the witnesses
6 themselves. What do you mean by concern, am I
7 concerned? Do I -- do you mean do I think
8 somebody did something wrong, do I think somebody
9 is withholding something? We had no evidence of
02:37 10 that.

11 Q I simply asked -- I mean, you were prepared to
12 express concern over how Paul Henderson framed
13 questions. At least Paul Henderson had the
14 benefit -- or you had the benefit of transcript of
02:37 15 what the questions were to offer that concern.

16 A Well, not in all cases.

17 Q Okay. Most cases you had -- in fact, you had --
18 and Paul Henderson was not a police officer. In
19 this case where you have police officers involved,
02:37 20 there is a paucity of documented record. Would
21 that not concern you?

22 A I don't know what your question is.

23 Q We have nothing as to what Roberts said or did.
24 Doesn't that bother you?

02:38 25 A Well, as far as the actions of Mr. Roberts, I



1 mean, he was examined extensively in the Supreme
2 Court, we had the benefit of that transcript, we
3 interviewed him ourselves and we tried to get as
4 much as we could. I think I told this inquiry
02:38 5 earlier that it would have been much more helpful
6 to us had we had his notes, records, charts and
7 those sorts of things.

8 Q But it would have been extremely important to have
9 a record of what he said to the kids and what they
02:38 10 said to him.

11 A It would have been helpful, I agree, it would have
12 been helpful to our investigation. I think I've
13 acknowledged that several times when Mr. Hodson
14 was questioning me.

02:39 15 Q And it's something you would normally expect to
16 have in a police file?

17 A Yes, you would, but I think Mr. Roberts'
18 explanation was that the records had been
19 destroyed or were no longer available.

02:39 20 Q But you would expect them to be on a Saskatoon
21 police file for the prosecutor's benefit and for
22 those acting in the trial?

23 A I don't know if I expected to see them there or
24 not. I think it would have been helpful as I
02:39 25 indicated before, it would have been helpful if we



1 would have had those notes.

2 Q But what Nichol John would have said, did say on
3 May 23rd would have been helpful had it been
4 recorded?

02:39 5 A Yes. I think, you know, from 1969 to today,
6 you'll find that most, particularly in major
7 crimes and serious crimes, most police interviews
8 are taped, audiotaped, certainly audiotaped and
9 sometimes in many cases videotaped. Something
02:40 10 like that would have been very helpful in this
11 investigation, to know exactly what was said to
12 the witnesses and exactly what they said back.

13 Q In terms of Mackie interviewing Nichol John, do
14 you have his notes from the interview, or did you
02:40 15 have?

16 A I would have to look back in the file. I don't
17 have specific recall of that. I know the
18 investigators certainly would have looked at
19 whatever information they had available for them.

02:40 20 Q Would you agree, looking back, that you would have
21 expected to have much more documented than what
22 you found?

23 A I don't recall making particular mental note of
24 the fact that there should or should not have been
02:40 25 more documents provided. We were provided with



1 the full file and we examined all of that
2 documentation.

3 Q I'm focusing on the interviews on May 23rd and May
4 24th, okay. You had very little; did you not?

02:41 5 A You know, I don't recall. I would need to look at
6 my report. I would need to look in those files to
7 find out exactly what we had.

8 Q Now, would I be correct that on that particular --
9 on May 23rd Ronald Wilson made comments that in
02:41 10 some ways supported the Mackie summary and they
11 were recorded in a statement?

12 A I know that Wilson at some point corroborated some
13 of what was in the Mackie summary and in other
14 areas he didn't.

02:42 15 Q Okay. And Nichol John even told Roberts that she
16 had seen the crime, but nobody took a statement
17 from her that day?

18 A I believe she was turned over to the police
19 interviewers that day. They were advised of,
02:42 20 orally of what she had said and then I think they
21 took a statement from her the following day, so I
22 think you are right, I don't think there was a
23 statement taken that day.

24 Q And that's very unusual, would it not be, that you
02:42 25 have somebody who says she saw a murder and you



1 leave it until the next day?

2 A I don't think I uncovered any reason why there
3 wasn't a statement taken that day. Likely -- it
4 could have been done differently certainly, there
02:42 5 could have been a statement taken that day, and
6 one may say perhaps it should have been, but I
7 didn't draw any particular thoughts around why
8 there had been or hadn't been one taken that day.

9 Q That wasn't my question. Would you agree it's
02:42 10 unusual?

11 A No, I wouldn't agree it's unusual.

12 Q I'm going to suggest to you that any police
13 officer who has a witness now saying they saw a
14 murder would record that as fast as they could.

02:43 15 A Well, I can tell you from my experience as a
16 polygraph examiner, Mr. Wolch, that there's many,
17 many times that I got statements from people that
18 furthered the investigation; in other words, I got
19 statements from people that perhaps they had not
02:43 20 been previously disclosed. Very often I turn them
21 over to the investigator, the investigator left
22 with that person, and may have taken a statement
23 then or may have taken a statement the next day,
24 so it's not -- I'm not going to sit here and
02:43 25 suggest that it's unusual that it happened that



1 way.

2 Q I want to turn to Ron Wilson's statement which is
3 065361. In the second paragraph --
4 Mr. Commissioner, before I go further, I'm going
02:44 5 to go through the statement for a bit.

6 COMMISSIONER MacCALLUM: Do you want us to
7 break now?

8 MR. WOLCH: Whatever you say is
9 appropriate.

02:44 10 COMMISSIONER MacCALLUM: That's fine, yeah.
11 15 minutes.

12 *(Adjourned at 2:44 p.m.)*

13 *(Reconvened at 3:12 p.m.)*

14 BY MR. WOLCH:

03:12 15 Q If we could bring up 065361. Now, Mr. Sawatsky,
16 just to set the stage, as I understand it, on May
17 23rd Ronald Wilson made this statement, Nichol
18 John had already verbally somewhere indicated that
19 she had seen the murder, presumably to Mr. Roberts
03:13 20 and to whoever else, but this will be the only
21 written statement taken on May 23rd that I'm aware
22 of. Does that jibe with your recollection?

23 A I would have to refer to my notes and to my
24 report. I'm not certain as to whether there was
03:13 25 another one. I'll take your word for it that that



1 was the only one taken.

2 Q Okay. Now, I don't know if -- I guess we still
3 haven't got that marker working, but he talks in
4 the second paragraph about knives and it's
03:13 5 interesting to note, I would suggest, going down
6 to the last paragraph on that page, now here's
7 what he says happened:

8 "Dave and I got out to push when we got
9 stuck but we couldn't get out. Dave
03:14 10 said he'd go for help and he left and
11 disappeared behind the car. About 15
12 minutes later Dave came back, kind of
13 running and breathing heavy and got into
14 the car. He said something to the
03:14 15 effect that "I got her" or "I fixed
16 her". I said "You what" and that ended
17 the conversation. I don't remember if
18 Dave had his shoes on or off when he
19 left the car. I don't remember just
03:14 20 when we got out, if it was before or
21 after Dave came back to the car that 2
22 men in a cream colored dodge or chrysler
23 pushed us out by hand. I think we were
24 stuck there about 6:30 - 7:00 AM. We
03:14 25 eventually got to Cadrain's about 9:00



1 AM after we drove around, got a map at a
2 motel where Dave had his shoes off, got
3 stuck in the lane."

4 So if you look at this, it would appear that
03:14 5 Nichol John never left the car; would that be
6 fair?

7 A In that particular paragraph, yes.

8 Q Yeah. He says he and Dave got out to push, which
9 presumably Nichol stayed in the car.

03:15 10 A That's presumably a --

11 Q A logical conclusion, okay.

12 A You can presume that --

13 Q Yeah.

14 A -- if you want, yeah.

03:15 15 Q By the way, did it ever cross your mind how
16 bizarre it would be that somebody would commit a
17 rape or a murder or whatever, a robbery, when the
18 get-away car is stuck?

19 A Well, you know, Mr. Wolch, it's my experience that
03:15 20 quite often criminals don't think out their crime
21 all that well and sometimes someone may do
22 something impulsive in front of a number of
23 witnesses that perhaps doesn't make sense either,
24 so yes, one could certainly say that it doesn't
03:15 25 make any sense, but when you sort of balance that



1 with the fact that quite often criminals don't,
2 and when they do something on the spur of the
3 moment don't plan it out, don't take into account
4 those things, so yes, on one hand you could look
03:16 5 at it as a bit surprising and on the other hand
6 you could say, well, I'm not surprised by it, so I
7 don't know if I've answered your question, but I
8 wasn't surprised by it, no, because as I've said,
9 sometimes people do things impulsively that don't
03:16 10 make sense.

11 Q Okay. Something like Larry Fisher grabbing
12 (V4)---, something impulsive?

13 A Possibly, yes.

14 Q Yeah. Okay, now, if just turn to the next page,
03:16 15 and just a few lines down:

16 "This is when Dave told me he hit a girl
17 in Saskatoon, or maybe he said he did a
18 girl in in Saskatoon. I don't remember
19 for sure which. He told me he grabbed
03:16 20 her purse and she fought and he said he
21 jabbed her with a knife a few times, and
22 said he put her purse in a trash can."

23 Now, you didn't know it then, but you know it
24 now, that would be false?

03:17 25 A I believe so, yes.



1 Q Yeah. And it had to come from somewhere to get
2 into Ron's statement?

3 A Yes.

4 Q Now, the next paragraph:

03:17 5 "A little later in Calgary when Nicky
6 and I were together I told her what Dave
7 had told me and she said she already
8 knew. I don't know when he told her.
9 We talked about ditching Dave but we
03:17 10 were afraid of him so we decided against
11 it."

12 Now, that further confuses matters because
13 supposedly Nickey had not remembered anything,
14 she blanked it out or whatever, so now in
03:17 15 addition to her mother and Barbara Berard, we now
16 have Ron Wilson saying that she seemed to have
17 remembered it. Does that cause concern or should
18 it cause concern?

19 A Well, you know, I think as our report indicates,
03:18 20 we never ever were able to get satisfactory
21 responses from Mr. Wilson. We tried a number of
22 times to interview him to find out what went on
23 that morning and, of course, you know, our
24 interviews were sort of less than complete with
03:18 25 him, so yes, I had a lot of concerns with what Mr.



1 Wilson said, but unfortunately, you know, we were
2 never able to interview him to sort of try and get
3 to the bottom of some of those concerns, so we
4 were left with what we were left with and we
03:18 5 reported on that.

6 Q No, I appreciate that, but you do agree with me
7 that now, with the change in circumstances, it
8 puts a whole new light on it?

9 A What do you mean by now, present day?

03:18 10 Q Yeah. Well, you know that that conversation
11 couldn't have taken place?

12 A You know, Mr. Wolch, I think it's unfair of you to
13 ask me to comment on in today's light on what I
14 did in 1993 and, you know, what we know now
03:18 15 changes a lot of things, but in 1993 we had no
16 other evidence, so I would appreciate it if you
17 would perhaps talk about my report and what I did
18 and not what I know today. I think if you want to
19 get at my actions and what I did and the
03:19 20 appropriateness of those, it's fair to put them in
21 the proper context.

22 Q No, but it's quite important that we appreciate
23 that what we know today may very well have changed
24 your report had you known it then.

03:19 25 A It's possible, but I asked you if you would please



1 consider putting it in the context of 1993 when I
2 worked on this and when I had that information
3 available.

4 Q Okay, we'll deal with what you had available. So
03:19 5 this statement here has Nichol in the car --

6 A Well, you presume that, you presumed she was in
7 the car.

8 Q It's logical from reading the statement; is it
9 not?

03:20 10 A You wanted to make that presumption. I agreed
11 with you.

12 Q Okay. But we also know that Nichol is saying that
13 she saw a murder and left the car. Well, let's
14 turn to it, to be fair, 065356. Now, we have to
03:20 15 be cautious here because this is May 24th. You
16 see that?

17 A Yes.

18 Q Okay. But we can assume, I think, that she was
19 generally saying this to Roberts the day before,
03:20 20 the statement they didn't take the day before. Do
21 you follow me?

22 A I think that you can make that assumption, yes.

23 Q Okay. Now, she is saying in the third paragraph:

24 "This knife was a kitchen knife used to
03:20 25 peel potatoes and things like that. It



1 had a maroon handle. This knife was the
2 same as one of a group of knives that I
3 was shown by Mr. Roberts."

4 Now, when you read this you didn't place any
03:21 5 particular weight on that because of what you
6 knew then as compared to what you know now?

7 A Well, I think I told you that I always had
8 difficulty with Nichol's statements because she
9 changed throughout the years, she changed the
03:21 10 things she said, so I don't think we were ever
11 able to place an awful lot of weight on her
12 statements, but I remind you that our
13 investigation was about wrongdoing on the part of
14 police officers and Justice officials and David
03:21 15 Milgaard's guilt or innocence was not the focus of
16 our investigation, so, you know, you need to bear
17 that in mind.

18 Q I understand.

19 A There's no evidence in there that the police have
03:21 20 done anything wrong.

21 Q Well, there's no evidence in there unless the
22 statement was provided by the police or planted by
23 the police or manipulated by the police?

24 A But there's no evidence of that, Mr. Wolch.

03:22 25 Q That's a conclusion?



1 A That's right, that's a conclusion of our
2 investigation, there was no evidence of
3 wrongdoing.

4 Q No specific evidence?

03:22 5 A No evidence of wrongdoing.

6 Q Well, let's look at this, okay, just scroll down.
7 Sorry, go further down, please. Okay, last
8 paragraph:

9 "Ron and Dave got out and they tried to
03:22 10 push the car. They couldn't get it
11 out."

12 Next page:

13 "I recall Dave going back in the
14 direction we had spoke to the girl. Ron
03:22 15 went the other way past the funeral
16 home."

17 So she has Ron leaving the car; right?

18 A Right, yeah.

19 Q But Ron has himself in the car -- I'm sorry, has
03:22 20 her in the car -- sorry.

21 A No, you presumed that.

22 Q Okay. Let me go further, I'm sorry:

23 "The next thing I recall is seeing Dave
24 in the alley on the right side of the
03:23 25 car. He had a hold of the same girl we



1 spoke to a minute before. I saw him
2 grab her purse. I saw her grab for her
3 purse again. Dave reached into one of
4 his pockets and pulled out a knife."

03:23 5 Etcetera.

6 "I don't know if Dave had a hold of this
7 girl or not at this time. All I recall
8 seeing is him stabbing her with the
9 knife.

03:23 10 The next I recall is him
11 taking her around the corner of the
12 alley. I think I ran after that. I
13 think I ran in the direction Ron had
14 gone. I recall running down the street.
03:23 15 I don't recall seeing anyone. The next
16 thing I knew I was sitting in the car
17 again. I don't know how I got back to
18 the car.

19 I seem to recall seeing Dave
03:23 20 putting a purse into a garbage can. I
21 don't remember which time it was or
22 where I was when I saw this."

23 Now, I'm not going to ask you to look at it in
24 what we know today, so we know that he didn't put
03:23 25 a purse in a garbage can even though a purse was



1 found in a garbage can. In her scenario here,
2 she's running out of the car; right?

3 A Uh-huh.

4 Q It's a horribly damning statement for David;
03:24 5 right?

6 A Yes.

7 Q But she's running out of the car. Ron's statement
8 has her in the car. They can't both be right.

9 A Well, I think you said you wanted to presume that
03:24 10 and I gave you that, you can presume that.

11 Q Okay, all right.

12 A You didn't comment whether she was in the car or
13 wasn't in the car.

14 Q Well, if we go further down:

03:24 15 "I recall there were two garbage cans.
16 The one on the left had the lid tipped.
17 I don't recall which one he put it in.

18 The next I remember is
19 sitting in the car. I don't remember
03:24 20 Ron being in the car or coming back. I
21 remember Dave coming back and getting
22 into the front seat of the car. I
23 remember moving over toward the drivers
24 side because I didn't want to be near
03:25 25 him."



1 I mean, that's sort of an understatement, you've
2 just seen somebody murder somebody, but I didn't
3 want to be near him.

4 "I don't remember talking to Ron before
03:25 5 Dave got back. I do not recall Dave
6 saying anything."

7 And then we were driving down the alley, we
8 turned down another alley. Now if you can just
9 scroll down. Next page, please. Please scroll
03:25 10 down, here we are in Calgary again, last three
11 lines:

12 "As I stopped I saw Ron following me.
13 We sat on the steps inside an apartment
14 block. Here Ron told me Dave had killed
03:25 15 a girl in Saskatoon. I told him "I
16 know". "

17 Now, that would be, from an investigator's point
18 of view, kind of a bizarre comment isn't it? You
19 leave it at that, oh yeah, I know, and Ron
03:26 20 telling her when she saw it?

21 A Yeah, I think you would try to get an explanation
22 on that and, like I say, we were unable to do
23 that.

24 Q Okay.

03:26 25 A There are a lot of statements, both of Wilson and



1 John, that we simply couldn't get explanations
2 about.

3 Q Okay.

4 "I do not recall anything further being
03:26 5 said ...

6 I have not told anyone about
7 witnessing this murder."

8 Well that leaves out Berard and everything else.

9 "I didn't recall actually witnessing a
03:26 10 murder until yesterday when I talked
11 with Mr. Roberts. I was aware that
12 however ... I was somehow involved."

13 He:

14 "... showed me a coat. This
03:26 15 coat as I recall is identical to one
16 worn by the girl we spoke to and Dave
17 attacked."

18 Now that is the statement on May 24 but, as you
19 said earlier, we can assume that that was the
03:26 20 gist of what she had said on May 23rd to Roberts
21 and whoever talked to her that day when the
22 statement wasn't taken, but what I'm asking you
23 as an investigator; do you see the problem, that
24 both statements can't jive?

03:27 25 A Yes.



1 Q I mean it's --

2 A I think I told you that we tried our very best to
3 get both of those witnesses to give us what they
4 could and, you know, as I told you, with Mr.

03:27 5 Wilson we had a less-than-satisfactory interview,
6 and Ms. John was simply unable to recall a lot of
7 the events. We did ask them about coercion, we
8 asked them about whether they'd been told to say
9 certain things, and they both said that wasn't the
03:27 10 case. So yeah, there are things about the
11 statements that suggest that perhaps -- that
12 caused concerns, that caused me to say "well
13 lookit, this isn't what this witness said", I
14 think you find that very often, but in this
03:27 15 particular case that really isn't evidence of
16 anything.

17 Q Okay, well, but you have here a situation where
18 Wilson is saying that Nichol John was in the car,
19 he left to push, David came back, etcetera,
03:28 20 etcetera, and Nichol John is saying "Wilson left".
21 You have a major discrepancy; would you not agree?

22 A I -- I think I did agree with you, yeah.

23 Q Yeah. You said that. So what should
24 investigators do at that point?

03:28 25 A Well I think you have to remember what our focus



1 was here. Our focus was on wrongdoing, and so we
2 tried to go as far as we could with this to make a
3 determination as to whether or not this was any
4 indication of any wrongdoing on the part of the
03:28 5 police, we didn't find that.

6 Q Okay.

7 A Wilson was, as I mentioned, less than helpful, and
8 Ms. John was simply unable to recall a lot of the
9 details, so although we tried to see the genesis
03:28 10 of that we were unable to get any further.

11 Q But I'm gonna suggest to you, isn't it obvious
12 that John was not committed to writing until
13 Wilson was spoken to the next day to see if the
14 two stories could coincide, isn't that what
03:29 15 happened?

16 A It may be obvious to you. It wasn't to me at the
17 time.

18 Q Well, let's look at it, let's look at Wilson's
19 second statement. I think that's 065360. This is
03:29 20 the May 24th. Now to put it in sequence, and
21 somebody may correct me if I'm wrong, but I
22 believe this statement was taken and then Nichol
23 John's within a half an hour or so later.

24 "I would like to add further
03:29 25 occurrences to what I said yesterday in



1 my sworn statement. When Dave and I got
2 out to push the first time we were stuck
3 we couldn't push the car so I said to
4 Dave "You go one way for help and I'll
03:29 5 go the other". I went to the corner on
6 the drivers side of the car and walked
7 down the block, I couldn't find help so
8 I went back to the car the same way I
9 had left. The car was still stuck.
03:30 10 Nicky was waiting in the car almost
11 hysterical. I asked her what was wrong
12 and she told me she saw Dave carry or
13 drag a girl down the lane and bring out
14 the knife and stab her a few times."

03:30 15 I think -- and then -- I'm sorry:

16 "Then she broke down again. Dave came
17 back to the car from the back I think
18 and got in beside Nicky. She shrugged
19 away from him. The rest is the same as
03:30 20 I told you in the other statement."

21 Now you'll notice "she shrugged away from him";
22 exactly what Nichol had said in her statement to
23 come?

24 A That's correct, yeah.

03:30 25 Q That's a matter of concern, isn't it, they both



1 adopt that?

2 A Well I think, if you look at the way the
3 statements evolved, it may be an area of concern
4 and it may not. But, like I say, we went into
03:30 5 that as far as we could, we focused on what the --
6 our investigation was all about, and there was no
7 evidence, either from those two witnesses, that
8 they had been coerced into saying that.

9 Q Not --

03:31 10 A That was our investigation.

11 Q Looking at it as you look at it there, does it not
12 appear that on the 23rd the police, however they
13 got the kids to adopt, in general, the summary,
14 ended up with statements that couldn't be read
03:31 15 together?

16 A I --

17 Q By "statement" I mean one verbal, one in writing.
18 They couldn't jive together, Nichol cannot be out
19 of the car and only in the car, it doesn't work?

03:31 20 A Well, you're assuming there. I think I answered
21 the question as to Wilson's account of whether she
22 was in the car or not in the car, he doesn't
23 specifically say.

24 Q But now you have, now you have not only Wilson
03:31 25 going further than the day before, he is saying



1 that Nichol told him that she saw David stab a
2 girl. Which leaves aside the fact that, in the
3 previous statement, he's telling her in Calgary
4 and she's saying "I know", so in Calgary he's
03:32 5 saying "by the way, you know, David did something
6 in Saskatoon", and he is saying it to someone who
7 saw it. It makes no sense but that's neither here
8 nor there.

9 But, in any event, do you not
03:32 10 see how this statement enables the police to go
11 back to Nichol and get her to make that statement
12 because, now, Wilson is out of the car?

13 A You know, the way these statements evolved is not
14 necessarily unusual, because I have seen that
03:32 15 before. And I'm not suggesting for a minute that
16 it's the truth, but I have seen it evolve where
17 one witness is interviewed, then another witness
18 is interviewed, then you go back to the witness
19 and -- who provides you with a little bit more.
03:32 20 You may put a statement to a previous witness that
21 you now know something that another witness has
22 told you. So, in some ways, to have a story
23 evolve over a number of interviews is not unusual,
24 it happens regularly, it happens very often in
03:32 25 investigations. Witnesses and accuseds aren't



1 always forthright and don't always tell the truth
2 when they are immediately spoken to, so to say
3 that one story evolves or that the truth evolves
4 over a series of questioning by the police and
03:33 5 sometimes over a period of time, that's not
6 unusual.

7 Q Okay. Yeah. But given that Nichol was giving the
8 statement basically as we looked at it, would it
9 -- and looking at Ron's, Wilson's statement, would
03:33 10 it not be logical to assume that the investigator
11 went to Ron and said "look, Nichol says, you know,
12 she saw the murder and she ran out of the car and
13 etcetera, etcetera, well you never said that,
14 what's going on", and then Ron gives this
03:33 15 statement to allow for that?

16 A That, that could be exactly what happened. I've
17 done that myself, where I've went to one witness
18 and said "look, the other witness told me this",
19 and the witness can either say "yes, that
03:34 20 happened", or "no, that didn't happen".

21 Q But when the witness suddenly remembers all that
22 shouldn't there be some, a red light going on,
23 like "whoa, what is going on here with these
24 people?"

03:34 25 COMMISSIONER MacCALLUM: I don't know if I



1 understood your question?

2 A Sorry?

3 COMMISSIONER MacCALLUM: Where does it say,
4 in Wilson's supplementary statement that we're
03:34 5 looking at now, that Nicky was out of the car?

6 "The car was still stuck, Nicky was
7 waiting in the car almost hysterical."

8 MR. WOLCH: Oh no, no, I'm sorry, I
9 misstated it. It gave the opportunity for Nicky
03:34 10 to leave the car without him seeing it, he was
11 gone, that is what I meant to say. That is in
12 his previous statement, she couldn't have left
13 the car because he was there; in this one, with
14 him gone, she could have left and come back, his
03:34 15 first statement didn't allow for that
16 possibility, in his first statement only he and
17 David left the car.

18 COMMISSIONER MacCALLUM: Yes.

19 MR. WOLCH: In which case -- and -- but in
03:34 20 this statement, with him gone, Nicky could have
21 left and come back, he wouldn't know that. It
22 doesn't disprove her statement, the first one
23 does, this one doesn't.

24 BY MR. WOLCH:

03:35 25 Q Wouldn't it be important, really important, to



1 have notes or some record of what these kids were
2 told before they made their statements?

3 A It would have been helpful to us, in our
4 investigation, if we had had tape-recorded
03:35 5 interviews, audio statements, that would have all
6 been helpful, more notes would have been
7 helpful --

8 Q But you had neither --

9 A -- to make that determination, yes, it would have
03:35 10 been.

11 Q But you had none of that?

12 A We had just what this Inquiry has seen.

13 Q Yeah.

14 A We didn't have anything more than that, that I am
03:35 15 aware of.

16 Q Okay. Now let us say Nichol John's May 24th
17 statement had been recorded on the 23rd, okay, and
18 so you have her statement and his statement. What
19 should an investigator do when the both
03:36 20 statements, leaving aside the logic in the
21 statements, what should you do when you have two
22 contradictory statements?

23 A Well, I can only speak from my own experience, but
24 certainly what you try to do is clarify those
03:36 25 areas where there's contradictions. But I think



1 you to have bear in mind that rarely do, well,
2 never do two witnesses say -- perceive things
3 exactly the same, so you generally don't get a
4 statement from witness one and witness two that
03:36 5 you can lay over top of each other and they are
6 exactly the same.

7 Q No.

8 A Generally speaking, witnesses will differ on their
9 interpretation of different things, but in a
03:36 10 general sense usually the statements are very
11 close in content and events.

12 Q Well, it's pretty major that Ron Wilson would
13 leave out that Nicky had told him that she saw
14 Dave drag a girl down the lane and stab her,
03:37 15 that's a pretty major omission; correct?

16 A Well I think I told you Mr. Wolch, this is
17 probably the fourth or fifth time, that we did
18 have difficulty with Mr. Wilson's statement and
19 Nichol's statement and we tried our very best to
03:37 20 get from them what really happened that day.
21 Nichol didn't recall very much, she was a very
22 difficult interview, and Mr. Wilson provided us
23 with very little, so it was difficult for us to
24 try and put that all together. But we didn't
03:37 25 find, in our conclusions, we didn't find any



1 evidence of wrongdoing on the part of anyone. I
2 don't know that I can answer that any more
3 completely than that.

4 Q Okay.

03:37 5 A The focus of our investigation was not on David's
6 guilt or innocence and, therefore, we were looking
7 at misconduct of the police. We saw nothing in
8 the process here, the procedures by the police,
9 that were misconduct. Are there questions that
03:37 10 you can draw from comparing the statements, sure
11 there are.

12 Q Okay. But if you have witnesses who give
13 different recounts, and in this case you have not
14 only their original stories, you have these
03:38 15 stories which some might call recantations; is
16 there any duty on the police to try to get them to
17 dovetail?

18 A Would you please explain that, what you mean by
19 that?

03:38 20 Q Well they don't match, should the police just
21 leave that, or should they explore from both
22 parties what's going wrong, or should they try to
23 come up with a consensus view?

24 COMMISSIONER MacCALLUM: Do you mean the
03:38 25 Saskatoon police or his investigators?



1 MR. WOLCH: Anybody, in a general sense?

2 COMMISSIONER MacCALLUM: No, but I think
3 it's important to the witness to know whether
4 your critique applies to the actions of the
03:38 5 Saskatoon police at the time, or the other, the
6 propriety of his investigation.

7 MR. WOLCH: Thank you, sir.

8 BY MR. WOLCH:

9 Q Let's talk generally for a moment. You have
03:39 10 statements that don't dovetail?

11 A Would you explain what you mean by "dovetail",
12 because I think I told you before that when you
13 look at statements of witnesses you generally
14 expect that they -- the events will be described
03:39 15 somewhat similarly, but sometimes one witness will
16 say something that another one didn't, one witness
17 will perceive something differently, one witness
18 may see something that another witness didn't. So
19 I think, when you read statements of witnesses,
03:39 20 you try and read them for their content, you
21 question them, you make a determination through
22 instinct or a gut feeling, or whatever, as to
23 whether they are being truthful with you or
24 withholding things, and then you compare those
03:39 25 statements. And, generally speaking, they are



1 usually pretty consistent.

2 Q So --

3 A There are things -- there are differences in them.

4 Q So might you agree --

03:39 5 A So if that's what you mean by "dovetail", that you
6 could lay one over top of the other, not
7 necessarily; but if by "dovetailing" do they say
8 basically the same thing, yes, I think you do
9 question witnesses to try and determine what they
03:40 10 saw and as to whether or not they saw things
11 similarly, bearing in mind the fact that witnesses
12 often interpret things just a wee bit differently
13 and see things differently.

14 Q Okay. Might you agree with me that, if you are
03:40 15 going to perhaps guide a witness by telling them
16 what somebody else said and see what their
17 reaction is, it is best to do that after you've
18 got their statement?

19 A I don't know why you'd do that before, because
03:40 20 your first opportunity is to allow them to tell
21 you what they told you, so yes.

22 Q I see.

23 A I wouldn't consider it common practice to walk in
24 and say "this is what this witness told me, now
03:40 25 what are you gonna say", you generally sit down



1 with your witnesses and interview them and find
2 out what they have to offer you in a pure version
3 or a forthright manner.

4 Q Okay. And if I might refer, and I probably
03:40 5 haven't got the document number particularly
6 right, but the actual page number is 033876.
7 Okay. For the record, it's document 033872, and
8 perhaps, if we could go back to 72 for a second.
9 I'm just going back there so you can perhaps
03:41 10 familiarize yourself with the document. If you
11 can perhaps just turn the page so you can get more
12 familiar, okay, I think it has to go the other
13 way. Maybe not. No, that's right, go further.

14 A That's --

03:42 15 Q It's paragraph --

16 A I didn't get a chance to read that.

17 Q It's paragraph 6, is the one I want to draw your
18 attention to, but --

19 A But I didn't get a chance to read the page before
03:42 20 that.

21 Q Go ahead, I don't want to take it out of context,
22 go ahead.

23 A *(Witness reading)* Okay.

24 Q Okay. If I can pause there just for a second,
03:42 25 tell me when you've finished reading it, go ahead.



1 I'll stop in paragraph 5.

2 COMMISSIONER MacCALLUM: Whose note is
3 this; do you know?

4 A It's one of the investigator's. If you went to
03:43 5 the last page I could look at the signature and
6 could probably tell you which investigator it was.
7 No signature on that? I'm not certain, then, I'd
8 need perhaps some assistance. Oh, it's from --
9 I'm sorry, I don't recognize the signature. In
03:43 10 the bottom left-hand corner would be the
11 investigator, but I may need some help to tell you
12 who that --

13 MR. GIBSON: Gagne.

14 A Gagne? Thank you.

03:43 15 BY MR. WOLCH:

16 Q Gagne? If we can go back to paragraph 5 -- or
17 what paragraph are you up to, sorry?

18 A I think paragraph 5 was where you wanted to stop.

19 Q Have you read that far?

03:43 20 A I have, yes.

21 Q Now, just briefly, now you know Nichol John was
22 about 16 years of age?

23 A Yes.

24 Q What about the propriety of showing her a
03:44 25 bloodstained nurse's uniform?



1 A Well, you know, that's not a technique that's
2 commonly used, but I know it is used at times, to
3 show someone a photograph of a crime scene or
4 something like that in an attempt to try and get
03:44 5 them to tell you something. It's not a common
6 technique but I know it's, it is used from time to
7 time.

8 Q What about the circumstances here where we know
9 she -- well, there is no reason to believe that
03:44 10 Nichol John had ever seen the uniform in any way,
11 shape, or form, she's 16 years of age, what about
12 the idea of showing her bloodstained clothing,
13 autopsy pictures, things like that; any comment?

14 A Well it may be something that I wouldn't do but,
03:44 15 you know, or I may do depending on the
16 circumstances. But, obviously, he was trying to
17 get further information from her and he thought,
18 as he was doing his interview of her, that that
19 may help him get further information.

03:45 20 Q On the other hand, it may just scare her silly?

21 A Exactly, yes.

22 Q Did she remember being shown that?

23 A I -- I don't recall if she remembered a lot about
24 that interview so, I mean, I'd have to look at the
03:45 25 report to be certain, Mr. Wolch, but I don't



1 recall that she had any recollection, in our
2 interview, of that having happened.

3 Q Okay. Now paragraph 6 is:

4 "After this, Roberts called
03:45 5 for Ed Karst and he discussed both
6 John's & Wilson's statements in their
7 presence in order to eliminate the
8 possibility of any discrepancy when they
9 supplied written statement to Karst."

03:45 10 Any comment on that?

11 A That's, that's not uncommon for someone to take an
12 interview of somebody and then, when you're
13 passing them over to someone else, to say "okay,
14 just so that I've got this right now, this is what
03:46 15 we said", and talk about it. That also provides
16 both Wilson and John an opportunity to say "well
17 no, we didn't say that, I didn't say that, we
18 didn't discuss that". So, generally speaking,
19 it's an opportunity for the investigator or the
03:46 20 interviewer, who's turning someone else over to
21 another interviewer, to say "these are the things
22 that we talked about during our interview".

23 Q Well, no, but the idea of having both John and
24 Wilson present to hear what the other has said?

03:46 25 A Well when he said "in their presence", I'm not



1 sure if that means they were together, or
2 "their presence" being first one and then the
3 other. I don't know from that, we would have to
4 have some clarification on that. But the way I
5 read that, it could be that it was discussed
6 either together, or independently.

7 Q In order to eliminate the possibility of any
8 discrepancy when they supplied written statements,
9 like --

03:46 10 A You --

11 Q -- I thought you said that wasn't a good thing?

12 A I don't think -- I don't recall saying that wasn't
13 a good thing.

14 Q I thought, a few minutes ago, you said it's not a
03:47 15 good thing to do before the written statement.
16 Maybe after, you can, after they have given you
17 their statement you might go and say "here's
18 discrepancies". Here they haven't given written
19 statements and we're trying to avoid
03:47 20 discrepancies; is that --

21 A Well I think that perhaps I wasn't aware of what
22 you were getting at. Obviously, he has sat down
23 with them and conducted a full, or a statement
24 with them and told them everything he knows.
03:47 25 Whether he condensed that to writing or simply



1 took that down orally, I wasn't commenting on, I
2 was commenting on where you walk in cold and you
3 have never talked to somebody and you say to them
4 "lookit, witness X told me this" and you put that
03:47 5 to them. Here, it's obvious that he had discussed
6 fully with both of them, and then he was now
7 saying "okay, I've conducted a full interview with
8 both of these people", in their presence he said
9 to Detective Karst "this is what they told me",
03:47 10 and he told them that in their presence to ensure
11 that he was getting it right --

12 Q Well --

13 A -- and so that they understood what he was telling
14 Detective Karst so that the next day, or later
03:48 15 when Mr. Karst went off to interview them, he knew
16 what they had told Roberts in the room and they
17 knew that he knew that. So I don't see anything
18 wrong with that.

19 But that's totally different
03:48 20 than when you said, before, putting a statement --
21 putting a written -- putting a witness' statement
22 to someone before the written statement. I mean,
23 that's a misleading question, in that these
24 people, they'd been interviewed extensively and
03:48 25 had a chance to provide their full statement



1 before he put this to the next interviewer.

2 Q Okay, well, but there is no written statement at
3 this point in time?

4 A Well, they have a full statement from them,
03:48 5 whether it's an oral statement or a written
6 statement doesn't make a lot of difference, they
7 have -- he has the full circumstances.

8 Q But not recorded anywhere?

9 A Not recorded anywhere, that's right.

03:48 10 Q Okay. And now he is saying to Karst, in the
11 presence I take it of either one or both, "here's
12 what they are saying, we don't want discrepancies
13 in the written statement"?

14 A Exactly. So what he is saying is -- how I take
03:49 15 this, you may look at it differently, but how I
16 take this is he is saying "this witness and I sat
17 down and discussed this case and here's what this
18 witness told me", he did it in the presence of the
19 witness so that the witness knew what he was
03:49 20 telling Detective Karst. That is an opportunity
21 for a number of things, it's an opportunity for
22 the witness to say "no, that's not what I told
23 you", or it's also the opportunity for the witness
24 to know that what they said in there is now known
03:49 25 to the second interviewer.



1 Q And it may be that it's an opportunity for the
2 witness to know what the other witness said?

3 A If it -- if it was discussed with both of them
4 together that's certainly possible, yup.

03:49 5 Q And that could account for both of them talking
6 about having a conversation in Calgary, and things
7 like that, that they were put together and "he
8 says this", so the next day Wilson can say what he
9 wants, add on?

03:49 10 A I don't have any evidence of that happening
11 though.

12 Q Well, you have it right here in the paragraph?

13 A Well no, no, that's not evidence of that having
14 happened.

03:50 15 Q Just a few more areas I want to deal with. You
16 mentioned that David Milgaard attended on you a
17 couple times but didn't contribute very much?

18 A That's true.

19 Q You had been told he wasn't in very good shape?

03:50 20 A Yes, yeah, you -- "in fact I fear", as closely as
21 I can recall to your exact words was, "you likely
22 wouldn't get anything out of him", I think that's
23 what you told me.

24 Q Okay. Knowing he was in jail for all those years
03:50 25 for a crime he didn't commit and went through all



1 kinds of horrible things, that's not surprising to
2 you, is it?

3 A Well, I guess it is and it isn't. I mean I can
4 certainly understand where perhaps David had some
5 mistrust of the police or mistrust of persons in
6 authority, but I guess I also assumed that he may
7 have been prepared, to the extent that he
8 understood that this investigation was in his best
9 interests and that perhaps it would have been
03:51 10 helpful if he could come in and cooperate, so I
11 kind of looked at it two ways, Mr. Wolch.

12 Q Okay. Well as far as his accounting of what
13 occurred, you had access to the notebook that he
14 may or may not have given to Mr. Tallis, but at
03:51 15 least it was written in 1969?

16 A No, I wasn't. I wasn't even aware of that.

17 Q Okay. Let me ask you this: At the end of your
18 investigation I think you said you were of the
19 opinion that David likely did it; is that fair? I
03:52 20 don't want to put words in your mouth.

21 A Well there was nothing in our investigation that
22 would cause me to change and to think that he
23 hadn't done it, I mean, the evidence that we got
24 was the same as had been out there before.

03:52 25 Q Okay. But he --



1 A In fact, we even got some new evidence, for what
2 it's worth.

3 Q Yeah. But, in any event, when you were dealing
4 with him he wasn't convicted of a crime?

03:52 5 A No, I -- we went through what the Supreme Court
6 said together.

7 Q Yeah, okay, no. So I want to make sure I
8 understand. I thought I heard you say to Mr.
9 Hodson that, when you completed your
03:52 10 investigation, you thought that David had
11 committed the crime. Now, if I misheard you, tell
12 me?

13 A No, you heard correctly, that at the end of our
14 investigation I was of the belief that David was
03:52 15 responsible.

16 Q Okay. And I know --

17 A Now I don't feel that now, --

18 Q Obviously.

19 A -- you know. Well, I need to say that, because I
03:52 20 don't want it -- I don't want someone to think
21 that I am doubting Mr. Milgaard's innocence, you
22 know, as was reported in the paper.

23 Q Okay. I wasn't suggesting you were thinking that.
24 But let me ask you this, if you can do it fairly
03:53 25 quickly, and if you can't you can't: But can you



1 tell me, back in 1993, what you thought happened
2 that made -- with David being responsible? What
3 did you think happened?

4 A You know, Mr. Wolch, we ran through a number --
03:53 5 now when you say "happened" you -- happened
6 January 31st, 1969, in the morning?

7 Q Yeah, of course, where did it happen, how did it
8 happen?

9 A We went through a number of scenarios in our
03:53 10 discussions, you know, both as investigators and
11 with our legal support, Mr. Fraser and Mr.
12 McCrank, we discussed a number of scenarios, and,
13 you know, I -- we don't know what happened.

14 Q Well --

03:53 15 A You know --

16 Q Well it's not what you know now, it's what you
17 knew then, what you thought then?

18 A Exactly, yeah, we didn't know what happened.

19 Sorry, --

03:53 20 Q Okay.

21 A -- that was a bad choice of words on my part.

22 Q You ended up thinking he was responsible, so I'm
23 asking you, how did it happen?

24 A Well we based, I guess when I am -- sort of sit
03:54 25 back and say that the evidence was that he was



1 responsible, you base that on what you know. He
2 went to trial, he was convicted at trial, it went
3 to appeal, it went to the Supreme Court, I mean we
4 had nothing to change any of that, so it was our
03:54 5 belief that he was likely responsible.

6 Q No, but -- okay, the end of the trial system he
7 wasn't convicted, so I don't know why you're
8 placing weight on that. But, factually, Gail
9 Miller left her house; what did you think happened
03:54 10 that made Milgaard guilty?

11 A Well, like I say, we had a number of scenarios.
12 We had scenarios where there was two perpetrators,
13 you know, we discussed a number of scenarios.

14 Q Well --

03:54 15 A One of the most difficult things with this case
16 all along has been to try and reconstruct exactly
17 what happened that morning at the crime scene.
18 There's three people who could have helped us who
19 were very little help to us; one was David
03:54 20 himself, another one was Nichol John, and Ron
21 Wilson, and --

22 Q Well --

23 A -- they were unable to give us any good account of
24 their activities that morning.

03:55 25 Q Okay, well, let's pause for a moment. David can't



1 help you, he says nothing happened, he says he
2 wasn't there; how can that help you?

3 A But he did say a number of things to Mr. Tallis
4 that, certainly, were -- could be considered
03:55 5 incriminating, that certainly would be, I guess if
6 you were looking at this as objectively as
7 possible, that would make you be suspicious.

8 Q Suspicious? Okay. But what is a scenario?

9 A You know what, --

03:55 10 Q Could you, as an investigator, place one in your
11 brain?

12 A No. No. But then I remind you, our job was not
13 to investigate the guilt or innocence of David
14 Milgaard.

03:55 15 Q I understand that, but as a human being, you are
16 there, you are believing or thinking that he
17 committed the crime. There must be a scenario
18 that supports it, something.

19 A I'm sorry, like I say, we discussed a number of
03:56 20 different scenarios and we never did settle on one
21 scenario being the theory. We know now that he
22 didn't do it, we know that Mr. Fisher did, but we
23 don't even know what his actions were that morning
24 because he's never confessed.

03:56 25 Q Okay, but you can certainly create Fisher's



1 scenario.

2 A You may be able to. I'm not. I haven't been told
3 what it was.

4 Q How about this, Gail Miller leaves the house, she
03:56 5 walks up O, which is where she walked normally to
6 get the bus, Fisher hides in the alley, drags here
7 in the alley, rapes and kills her. How difficult
8 is that?

9 A Well, that's not what you told me before, Mr.
03:56 10 Wolch, you told me he had a car, he dragged her
11 into the car.

12 Q I haven't gone that far. Dragged her into the
13 car, drove the car back to Pambruns' and walked
14 down the railway track, attacked Miss (V4)---,
03:56 15 went home, yeah.

16 A So it's just as difficult for you as it was for
17 us.

18 Q Well, I have no difficulty.

19 A We didn't settle on a theory.

03:56 20 Q No, no, I've never had a difficulty with that
21 theory. I'm asking you what your theory is?

22 A I told you, we never settled on a theory, that
23 wasn't our investigation.

24 Q Okay. All I'm trying to get at is why you think,
03:57 25 or you thought then that David was guilty when you



1 haven't even got a theory as to how it happened.

2 A I don't know how it happened. Knowing Larry
3 Fisher is guilty, I still don't know what happened
4 at that crime scene that morning.

03:57 5 Q But you can as an investigator put together a
6 theory. I mean, you know his mode of attack,
7 hiding in alleys and grabbing women with knives,
8 women who come off busses, women whom he knows are
9 in the nursing business, you know it. It's not
03:57 10 hard to put it together.

11 A Well, I'm certainly aware of the similar fact
12 evidence and the rapes where we have victims who
13 said what happened. In this particular case the
14 victim was unable to tell us what happened.

03:57 15 Q But --

16 A And I don't have a theory as to how the crime was
17 committed and we didn't develop a theory as to how
18 it was possible for Mr. Milgaard to do it,
19 otherwise that would have probably been in our
03:58 20 report.

21 Q No, I understand that. I'm just curious as to why
22 you would have an opinion that somebody did a
23 crime when you have no theory to base it on.

24 A Well, the focus of our investigation was not David
03:58 25 Milgaard's guilt or innocence and I think we said



1 in the report at the end what our conclusions
2 were. We can agree to differ on that if you don't
3 like those conclusions I guess, but those were our
4 conclusions.

03:58 5 Q Well, you also, as I understand it, came to
6 certain conclusions about Ms. (V4)---. I don't
7 want to put words in your mouth. Tell me, what
8 did you conclude about her attack?

9 A I believe I said I felt her identification was
03:58 10 perhaps unreliable and wasn't convinced in my own
11 mind that it was Larry Fisher who attacked her.

12 Q Okay. But she did identify her attacker as I
13 think between five foot two and five foot four and
14 stocky, so the physical description isn't that far
03:59 15 off.

16 A No, it's not.

17 COMMISSIONER MacCALLUM: When was that, in
18 1969 or --

19 MR. WOLCH: Yes.

03:59 20 COMMISSIONER MacCALLUM: Yes, okay.

21 BY MR. WOLCH:

22 Q But leaving aside her positive ID or whatever it
23 is, but what else caused you to doubt that it was
24 Larry Fisher?

03:59 25 A I think that's the principal reason.



1 Q Just her identification?

2 A Isn't that enough?

3 Q Well, many people are convicted without the victim
4 ever identifying. Other evidence can support it;
03:59 5 can it not?

6 A What other evidence was there?

7 Q Well, let's look at the circumstances. You are
8 aware that where she was attacked was on the path
9 between Pambruns' and the Cadrain house?

03:59 10 A You know, Mr. Wolch, we examined that and we tried
11 to put together as to whether that theory could
12 occur and I think that if you believe that Fisher
13 attacked (V4)---, it almost provides him with an
14 alibi, that it would be very difficult for him to
04:00 15 be in that location. Notwithstanding that, of
16 course, we didn't know about Fisher when we did
17 our investigation, so, you know --

18 COMMISSIONER MacCALLUM: The witness
19 testified at length about this in his direct
04:00 20 examination. Maybe you weren't here.

21 MR. WOLCH: No, I was here.

22 COMMISSIONER MacCALLUM: Were you? Okay.

23 MR. WOLCH: I simply want to challenge him
24 on it.

04:00 25 COMMISSIONER MacCALLUM: Yes. Well, that



1 was another reason, in addition to the
2 identification being weak in his view, he thought
3 that if Fisher in fact had attacked (V4)---, he
4 didn't, he couldn't have attacked Miller, that
04:00 5 was what --

6 BY MR. WOLCH:

7 Q But Miller was attacked around 6:45?

8 A Well, we know the time that she left her residence
9 tentatively and what time her bus was, so I think
04:00 10 we assumed that it would be, you know, in that
11 time frame.

12 Q Give or take?

13 A Yeah, I think that's close.

14 Q A few minutes either way. An attack can take five
04:01 15 or 10 minutes?

16 A It could have taken two minutes.

17 Q Yeah. Driving back to Pambruns' is what, four or
18 five minutes, three minutes?

19 A I think we would have to refer to the report
04:01 20 here --

21 Q Okay, what I'm saying --

22 A -- for some accuracy. I don't recall exactly how
23 we wrote it up, but we can certainly refer to that
24 piece of the report. If you want to take me
04:01 25 there, I would be glad to go there with you.



1 Q I'm not going to take you through it, but I'm
2 always concerned about the scenario where David is
3 involved in the crime gets him to the motel just
4 after seven, and the motel is many times a further
04:01 5 distance than where (V4)--- was hurt, or attacked
6 or whatever.

7 A Well, I think that's your evidence, that it gets
8 him there shortly after seven. I think there was
9 some doubt on the time that we got, so --

04:01 10 COMMISSIONER MacCALLUM: We have evidence
11 from the motel attendant that it was sometime
12 between seven and 7:30 I think.

13 BY MR. WOLCH:

14 Q We started off at seven, shortly after, so
04:02 15 whatever it is, no one is saying that David
16 couldn't get halfway across town, but yet here we
17 have Fisher having to get a matter of yards, 800
18 or whatever it is, but anyway.

19 Now, I touched on it earlier,
04:02 20 but I want to ask it again, the DNA was discussed
21 many times between yourself and McCrank and Fraser
22 about whether it should be tried again or not, and
23 my question, I'm a little unclear as to why it was
24 left in limbo.

04:02 25 A Umm, as I recall, when we initially started our



1 investigation, I think we were all, including Mr.
2 Fraser and Mr. McCrank, of the view that we would
3 likely have a DNA result before we completed our
4 investigation. As we got very close to the end, I
04:03 5 think we were informed that it was unlikely that
6 they would be able to conduct that test on that
7 very small amount of substance and therefore a
8 decision was made that we would complete our
9 investigation without the benefit of that analysis
04:03 10 being completed and I believe that was my advice,
11 but we wouldn't need to refer back I think to some
12 of the documents for me to be accurate with time
13 frames and to put this in perspective.

14 Q Now, at the outset when you and I met with others,
04:03 15 it was understood you would come back and speak to
16 us?

17 A Yes. Yeah, I think we had that understanding.

18 Q Where we could correct or advise or do whatever to
19 give you more information?

04:03 20 A Well, I'm not certain, Mr. Wolch, if that was my
21 understanding. My understanding is that we would
22 provide you with the results and I think that's
23 the undertaking I gave to you.

24 Q Well, that, with respect, doesn't make sense,
04:04 25 because the results are going to come out anyway.



1 A Well, yeah, but you would know them before someone
2 else.

3 Q For what purpose?

4 A Just to inform you because you were the
04:04 5 complainant and that's very often the way that
6 police work is done, is you inform the complainant
7 of the findings once your investigation is
8 complete.

9 Q Well, leaving aside that issue, does it not make
04:04 10 sense that you would come back and say look, I'm
11 finding this, I'm finding that, do you have any
12 comments, is there something I'm missing?

13 A Well, I think if you recall, we did come to you a
14 number of times during the investigation for
04:04 15 clarification and further information.

16 Q Oh, yeah, but at the end of the investigation is
17 there something we missed, David's notebook, look
18 at the rest of the clothes for DNA, whatever.

19 A I can only tell you that my, what I intended to do
04:05 20 was to come and provide you with a report of the
21 findings.

22 Q Okay, but you were overruled anyway, so it didn't
23 really matter.

24 A Correct.

04:05 25 Q With the benefit of hindsight now, do you think it



1 might have been a good idea to come back and say
2 look, here's what we've been told, here's what we
3 are being told, is there anything further we may
4 have missed? What harm could be done by that?

04:05 5 A Well, we did do that throughout the investigation,
6 we came to you with questions, various questions
7 and asked you for your perspective on things.

8 Q Well, on certain points, but on things you may
9 have found or looked at, we had no way of knowing.
04:05 10 How could we know what you were doing?

11 A Like I told you, it was my intention to come to
12 you at the end of the investigation and provide
13 you with the results.

14 Q Okay. Might you agree with me that while your
04:06 15 report and your findings made in the early '90s
16 are important, they may very well have to be
17 looked at in a different light in view of the fact
18 that we now know that David Milgaard is innocent
19 and Larry Fisher is guilty?

04:06 20 A You are going to have to be a wee bit more
21 specific on that. Does it change the actions of
22 people that happened in 1969 or 1970? Absolutely
23 not. Does it change our final line? Absolutely.

24 Q No, but now you can say with certainty that a
04:06 25 witness was lying or not telling the truth when



1 back then you didn't know.

2 A I don't think I can say that with certainty. I
3 think I've told you all along that we had a great
4 deal of difficulty interviewing witnesses because
04:07 5 of their inability to recall and things like that.
6 That doesn't necessarily mean they were lying, it
7 just means that they perhaps are unable to tell us
8 what happened.

9 Q Well, would you agree with me, for example, there
04:07 10 has to be some explanation as to how Nichol John
11 and Ron Wilson made the statements they did when
12 we now know that those statements simply aren't
13 true on the essential points?

14 A What do you mean by the essential points now?

04:07 15 Q Well, seeing a murder, confessing to a murder.

16 A Because there was a lot in their statements that
17 was true and was verified through other means, but
18 as far as some of the points, that's right, they
19 weren't true.

04:07 20 Q I'm talking about the crucial points, the
21 essential points, seeing a murder, confessing to a
22 murder, those are the key points.

23 A Do you want to go through those statements and we
24 can certainly look at what they said that was true
04:08 25 and has been corroborated elsewhere and then we



1 can I guess assume that the other parts aren't
2 true, but to ask me to essentially agree with you
3 that those statements weren't true, I can't do
4 that. I would be pleased to go through them with
04:08 5 you if you want.

6 Q Well, I'll give you a chance, give me your best
7 shot, what's the biggest corroborating fact, the
8 one that came out that was so important?

9 A Well, I think there were a number of things.

04:08 10 Q Like what?

11 A The compact being stuck --

12 Q Pause, one at a time. The compact?

13 A The compact.

14 Q If Gail Miller wasn't missing a compact, how does
04:08 15 that help?

16 A No, I think that's not the suggestion. The
17 suggestion was from you that initially that that
18 was made up, that that was planted by the police,
19 that the police somehow planted that piece of
04:08 20 evidence in their minds.

21 Q Okay, but how does that make their statements --

22 A Well, I think we're at different purposes here.
23 You are trying to get me to tell you why that is
24 evidence of David Milgaard's innocence. What I'm
04:09 25 trying to suggest to you is that we looked at it



1 from the perspective of wrongdoing, and whether or
2 not there is evidence that there was coercion or
3 the police made them say certain things, a number
4 of things that they said have been corroborated by
04:09 5 other means. The compact is one of them.

6 Q Okay. Another one?

7 A David having a knife.

8 Q That's been corroborated?

9 A He told his defence counsel that he had a knife.

04:09 10 Q He said he may have, didn't know.

11 A It seems to me --

12 Q He bought a knife later.

13 A It seems to me he was a little more certain than
14 that, but --

04:09 15 Q But in any event, let's get down to it, seeing a
16 murder, confessing to a murder, talking about a
17 murder, that's all made up; isn't it?

18 A Well, I think we can assume it didn't happen.

19 Q So why did they say it?

04:10 20 A I don't know.

21 Q You have no idea?

22 A They appeared at this inquiry. What did they say?

23 Q It's irrelevant.

24 A They were unable to tell us.

04:10 25 Q No, using your head, what is your belief as to



1 what happened?

2 A Well, I don't know, Mr. Wolch, because, you see,
3 in our investigation we explored that with them,
4 we tried to find out whether they were coerced,
04:10 5 whether there was thoughts put in their mind and
6 they didn't confirm that, so I don't know.

7 Q Okay. But they bought into the police theory?

8 A No, I don't agree with that either.

9 MR. WOLCH: I have no further questions.

04:10 10 BY MR. HODSON:

11 Q I am back. I'll just finish up, Mr. Commissioner,
12 where I intended to go on some Police Commission
13 matters.

14 Mr. Sawatsky, can you tell us,
04:11 15 you are currently the executive director of the
16 Saskatchewan Police Commission; is that correct?

17 A That's correct.

18 Q And how long have you held that position?

19 A Since 1998.

04:11 20 Q And can you tell us just briefly what the police,
21 Saskatchewan Police Commission, what its mandate
22 is?

23 A Yeah, its mandate is the promotion of effective
24 and adequate policing in the province.

04:11 25 Q And would that involve putting in place and



1 administering standards with respect to hiring,
2 training police officers in the province?

3 A Yes, and there are regulations under the Police
4 Act that deal with training, recruiting,
04:11 5 discipline, etcetera. There's I think five
6 regulations. Six actually.

7 Q And can you tell us your roles and
8 responsibilities then as executive director?

9 A Yes, my role is to administer to the Commission,
04:12 10 to set up meetings, to prepare correspondence for
11 the signature of the chairperson, in some cases I
12 also appoint -- sorry, the minister appoints
13 hearing officers. I confirm hearing officers to
14 hear discipline matters, I set up meetings with
04:12 15 the Commission, tele-conferences, and then of
16 course prepare any related correspondence that
17 comes from those meetings. I also have a whole
18 number of other tasks that I perform within the
19 department as well, this isn't my sole function.

04:12 20 Q And can you tell us the role the Police Commission
21 would have as far as overseeing the standards,
22 training, practices and techniques, for example,
23 of the Saskatoon City Police currently?

24 A Currently, yes, the Saskatoon City Police, like
04:12 25 all municipal police services, are required by law



1 to conform to the regulations and the Police Act
2 and the Commission has a role in establishing a
3 policy and procedures manual in auditing police
4 services and in directing the Saskatchewan Police
04:13 5 College which trains all municipal police
6 services, both for basic training and for
7 in-service or progressive training throughout
8 their careers.

9 Q And so are you telling us that the legal regime in
04:13 10 place currently for standards, training, practices
11 of the Saskatoon City Police and its members would
12 be under the purview of the Saskatchewan Police
13 Commission and its regulations?

14 A That's correct.

04:13 15 Q And do you have a fairly good knowledge, sir, of
16 what is in place currently as far as -- and let's
17 focus on training standards, practices,
18 techniques, for police officers?

19 A I supervise the director of the college, I'm not
04:13 20 intimate with what's being provided at the
21 college, but certainly I can say that it's similar
22 to other police training academies nationally and
23 the RCMP as well.

24 Q And can you tell us to what extent if any does the
04:14 25 Police Commission have any dealings with the RCMP



1 who may be providing police services to
2 municipalities in the province?

3 A The Commission doesn't have any oversight role
4 over the RCMP.

04:14 5 Q So it would relate to Saskatchewan municipal
6 police forces; correct?

7 A That's correct.

8 Q And I think in all of the major cities in
9 Saskatchewan, each municipality has their own
04:14 10 police service reporting to a Board of Police
11 Commissioners?

12 A That's correct. There's six major police services
13 in the province and then a number of smaller ones.
14 There are 13 municipal police services all
04:14 15 together in the province.

16 Q And one of the -- we've heard a fair bit of
17 evidence in this inquiry about what happened back
18 in 1969, 1970 and have heard from a number of
19 police officers and other witnesses and retired
04:15 20 police officers about practices and standards in
21 place at the time. Would you agree with the
22 general proposition that in looking at policing in
23 Saskatchewan today, it's different in many
24 respects from how policing was conducted in 1969?

04:15 25 A Yes, I would agree with that.



1 Q And would you again generally, would you
2 characterize that change as being significant?

3 A I would think it's significant. I think major
4 investigations are handled much differently now.
04:15 5 In fact, there's a policy that the Commission has
6 that all major investigations are supposed to be
7 conducted with the use of major case management.
8 Certainly interviewing techniques, interrogation
9 techniques have advanced significantly since, you
04:15 10 know, 1969, so I think there has been a number of
11 changes that have occurred, both in the way major
12 crimes are handled and in the way the police do
13 investigations since 1969.

14 Q And again let's look at a couple of areas, the
04:16 15 techniques that police officers employ in
16 investigations, again contrasting 1969 to today,
17 would there be significant changes in those areas?

18 A I think probably the most significant change would
19 be in the area of how the cases are handled now,
04:16 20 and like I say, they all use major case management
21 now which is very similar to the manner in which
22 we conducted our investigation here under project
23 Flicker where you assign an investigator to be
24 responsible for the file, you assign a case
04:16 25 manager, you assign an exhibit person, and then



1 the investigators are all tasked on various issues
2 and then those issues are all reported back to the
3 major coordinating centre where all the material
4 is handled, so you never really have one or two
04:16 5 investigators doing it all, rather you have a team
6 of investigators investigating various issues that
7 are then brought back and coordinated through the
8 file manager.

9 Q And we've heard mention from a couple of police
04:17 10 officers and retired police officers that back in
11 1969 one area where matters might have been
12 improved upon would be by having a reader or a
13 coordinator, somebody to read everything and be
14 all knowing with respect to what's happening.

04:17 15 Would that be similar to what is the, a leader in
16 the case management?

17 A That's correct, that would be the file coordinator
18 or the senior case manager would be responsible
19 for that.

04:17 20 Q I'm sorry, senior case manager. Would that person
21 be a person who then knows everything, at least
22 have an opportunity to read everything that's done
23 by everybody and coordinate who does what?

24 A That's correct.

04:17 25 Q And so would one of the purposes be to ensure that



1 the right hand knows what the left hand is doing;
2 is that a fair way to put it?

3 A Yes, that would be that person and possibly
4 someone else working with that person, would know,
04:17 5 have total knowledge of the file and what's going
6 on with the file.

7 Q And it's my understanding that the major case
8 management system, if I can call it that,
9 originated with the FBI in the United States; is
04:18 10 that correct, or that has that as its origination?

11 A That's very likely, yes.

12 Q And that it has evolved over the years and is in
13 place in all provinces in Canada?

14 A I believe it is, all police services, the RCMP and
04:18 15 all major municipal or accredited police services
16 use the Canadian Police College and the major case
17 management course is taught at the Canadian Police
18 College, it started about 1990, 1991, somewhere in
19 there. Although major case management was in use
04:18 20 by a number of police services prior to that, it
21 actually became an item on the curriculum at the
22 Canadian Police College in the 1990s I believe. I
23 know I was asked to critique that course at one
24 time and if my recall is correct, it was around
04:18 25 1989 or so that I critiqued it, so basically I



1 think it's safe to say that, you know, most police
2 services are using that. And I think the other
3 thing that I need to add is that it's something
4 that's continually improved upon. In other words,
04:18 5 as new techniques advance or as lessons are
6 learned with regards to the management of the
7 file, those are continually moved into the
8 curriculum and adapted into the curriculum.

9 Q You talked about the Canadian Police College. Can
04:19 10 you tell us a little bit about what they are and
11 what role they would play in educating police
12 officers, not only in Saskatoon, but in
13 Saskatchewan?

14 A Yeah, the Canadian Police College is a national
04:19 15 police service which is, comes under the RCMP, but
16 it's funded for all police agencies in Canada, and
17 the most fairly advanced courses or long-term or
18 long-time courses where it's three weeks, a month,
19 six weeks in duration, most of those courses are
04:19 20 taught at the Canadian Police College. Major case
21 management is one of the cases that's thought at
22 the, or one of the courses that's taught at the
23 Canadian Police College. All accredited police
24 agencies in Canada have access to that and in
04:19 25 Saskatchewan there's a coordinator actually



1 working out of my office that actually assigns
2 people to the courses at the Canadian Police
3 College. That just very recently changed where
4 it's now an internet-based access to enrolment at
04:20 5 the college. All police services in Saskatchewan
6 have the opportunity to go to the Canadian Police
7 College, so, for example, if Saskatoon police, to
8 use Saskatoon, decided they wanted to train
9 another investigator or two investigators in major
04:20 10 case management, they would make application to
11 have those investigators put on a waiting list and
12 through a rotational system they would eventually
13 get a spot at the Canadian Police College and
14 would be provided with that training.

04:20 15 COMMISSIONER MacCALLUM: I missed what you
16 tole me the role of the RCMP is in that?

17 A The RCMP administer or are sort of in proctorship
18 over the college, but the college is actually part
19 of the National Police Service which is intended
04:20 20 to fund all policing in Canada, not just the RCMP,
21 so even though the college comes under the RCMP's
22 umbrella for funding and those sorts of things,
23 it's for all police services, not just the RCMP.

24 BY MR. HODSON:

04:21 25 Q And so for a homicide investigation conducted by



1 the Saskatoon City Police Service today, are you
2 telling us that that investigation would be
3 undertaken using the major case management
4 technique taught at the Canadian Police College?

04:21 5 A I'm certain it would be, yes, and as I indicated,
6 that's a requirement of the policy and procedures
7 manual, but I'm certain that that's how it would
8 be handled today.

9 Q And so we'll get to that. So in Saskatchewan
04:21 10 right now, the Saskatoon City Police Service is
11 required by regulation of the Police Commission to
12 utilize the major case management technique in
13 homicide investigations?

14 A That's correct.

04:21 15 Q What about homicide investigators, can you tell
16 us, are there any requirements for homicide
17 investigators to have any classes or accreditation
18 in major case management before they undertake
19 homicide investigations?

04:21 20 A Yes, and there's also, and I would have to look at
21 the policy and procedures manual to just be
22 certain of the terminology, but there's also a
23 requirement that they be trained in investigations
24 prior to that, so some of the training could
04:22 25 include interviewing techniques, investigation



1 techniques, those sorts of things to prepare them
2 for being a major crimes investigator.

3 Q And --

4 A And generally speaking, major crime investigators
04:22 5 are senior, experienced investigators who have a
6 history of, you know, doing investigations.

7 Q And is it your evidence, sir, then, that the
8 system in place for investigating homicides in
9 Canada is fairly consistent with major urban
04:22 10 police forces; in other words, utilizing the major
11 case management technique?

12 A Yes, I think that's -- it's a pretty common
13 practice.

14 Q Now, let's -- you talked about training
04:22 15 investigators. How are homicide investigators,
16 what training do they receive on how to do a
17 homicide investigation?

18 A There's a number of cases where senior
19 investigators are put on courses where you go from
04:22 20 very basic training where you are sort of taught
21 the fundamentals of interviewing and
22 investigating, to a junior constables course where
23 it becomes a little bit more specific, to a senior
24 constables course where of course it focuses much
04:23 25 more on major crimes, major crime investigation,



1 and then of course a number of the police forces
2 have the option to send their officers to outside
3 agencies for training as well; in other words,
4 they are not just restricted to using the
04:23 5 Saskatchewan Police College or the Canadian Police
6 College, they may send their investigators
7 somewhere else to acquire that expertise if they
8 wish to do that.

9 Q You mentioned the Saskatchewan Police College.
04:23 10 Can you tell us a bit about what it does and where
11 it fits in as far as training, educating police
12 officers in this province?

13 A The Saskatchewan Police College provides all
14 recruit, or basic training for municipal police
04:23 15 officers, and then provides training on a
16 continuum throughout their career, and although
17 the college I think provides about 35 in-service
18 training courses, there are a number that the
19 Commission has mandated through regulation that
04:24 20 all police officers must take. What comes to mind
21 is a race relations course or a cultural awareness
22 course, investigators courses, those sorts of
23 things, those are mandated by the Commission that
24 all municipal police officers must take.

04:24 25 Q Just if we could go back to, we started down this



1 path talking about what systems were now in place
2 as far as, that are different now than back in
3 1969. I want to touch on another one and ask for
4 your comment about the role of forensics in
04:24 5 investigation, police investigations today
6 compared to 1969, and specifically sexual assaults
7 and murders.

8 A Well, I think probably one very important,
9 certainly the advent of DNA has been helpful, but
04:24 10 I think crime scene examiners, the identification
11 people are trained, you know, to examine exhibits
12 and crime scenes perhaps better. I mean, it's an
13 evolving thing, they continue to get better. I
14 think the other noteworthy thing and perhaps big
04:25 15 event in this province, at least in the last
16 couple of years, has been that we've hired a
17 forensic pathologist and our intention is that
18 there will be another one hired this year as well,
19 or in '06/'07, fiscal year '06/'07.

04:25 20 COMMISSIONER MacCALLUM: Who has hired him?

21 A A forensic pathologist.

22 COMMISSIONER MacCALLUM: Yeah, who has
23 hired the pathologist, the Government of
24 Saskatchewan or the college or who?

04:25 25 A Yes, the Government of Saskatchewan, sir. The



1 coroner's service is something that's run actually
2 out of my office, it's one of the programs that is
3 in my area of responsibility, so we hired Dr.
4 Latham who is presently in Saskatoon last year.

04:25 5 BY MR. HODSON:

6 Q And can you tell us, what role would the forensic
7 pathologist add to the tools available to the
8 police in investigating sexual assaults and
9 murders?

04:25 10 A Well certainly, you know, forensic pathology is a
11 discipline unto itself where the examination -- I
12 think a normal pathologist, when they examine a
13 body, are looking for cause of death; I think when
14 a forensic pathologist examines a body they are
04:26 15 looking for, you know, criminal means for
16 gathering evidence and things, so I think their
17 approach is somewhat different than a normal
18 clinical pathologist would do. And, certainly,
19 the expertise is crucial when it comes to helping
04:26 20 the police reconstruct what happened to the
21 victim. Police also have a number of other
22 techniques available that have been refined over
23 the last few years, such as blood, blood pattern
24 analysis, where they are able to analyse patterns
04:26 25 of blood, drippings of blood, to sort of help



1 determine how the blows were -- how the victim was
2 killed, how the blows were landed, etcetera. So I
3 think, you know, crime scene analysis has become
4 much more advanced than it was many, many years
04:26 5 ago.

6 I think the other big change
7 is we have the Violent Criminal Analysis Unit now
8 which assists investigators by providing
9 reconstructing the crime scene as best they can,
04:27 10 and also doing the V.I.C.L.A.S. system, which of
11 course, as we've heard evidence about, tracks
12 patterns of offending and victimization.

13 Q Okay. Just on that last point, then, when we're
14 talking about differences that exist today
04:27 15 compared to what was available in 1969 I think,
16 number one, you've told us that police techniques
17 have advanced and changed, you talked about major
18 case management; secondly, we talked about the
19 area of forensics; third, what about the role of
04:27 20 technology, and in particular the ability of
21 computers to assist the police in investigating,
22 cross-referencing, storing, accessing, etcetera,
23 can you comment on how that advance has assisted
24 or changed the way the police investigate matters?

04:27 25 A Certainly. It, now with the advent of computers,



1 the storage and retrieval is much better. The,
2 you know, the police are capable of indexing
3 things where they can retrieve data. I'll give
4 you an example.

04:28 5 If you were looking for a
6 maroon-handled knife, for example, you could
7 search that particular piece and it would go right
8 throughout your database and it would tell you any
9 instances where that particular object was
04:28 10 mentioned, so information storage and retrieval is
11 much better.

12 Certainly what could be
13 improved upon, I think, is the ability for some
14 police to be able to access what other police
04:28 15 have. We know that information-sharing, at least
16 in this province, is very good, the municipal
17 police share with one another, they share with the
18 RCMP, and vice versa, the sharing is very good.
19 But in some ways, sometimes what could assist them
04:28 20 would be some sort of a common platform for the
21 sharing of information where, for an example, an
22 investigator in Regina who is following up on a
23 request by Saskatoon may be able to actually
24 access those portions of the file that he or she
04:29 25 needs to do their investigation. There could be



1 improvements made there. But I think technology
2 has made significant advancements in the way
3 police can store and retrieve information.

4 I think another big thing that
04:29 5 has made big changes is the fact that statements
6 now, particularly in serious crimes, are generally
7 either audio recorded, and in many, many cases
8 video recorded, so what it does is it gives you
9 the opportunity to provide to the courts the most
04:29 10 accurate account of what the witness said or an
11 accused person said.

12 Q I see it's 4:30, Mr. Commissioner, probably an
13 appropriate spot to break.

14 I will have a few more areas
04:29 15 to cover with Mr. Sawatsky tomorrow, but I'm
16 wondering if counsel -- and we can do it either
17 now or when we break -- just to give me some
18 indication of who will be examining Mr. Sawatsky
19 and then how long? I'm thinking for our next
04:29 20 witness.

21 COMMISSIONER MacCALLUM: Just before we do
22 that, and I take it you've left the subject, so I
23 don't want to forget to ask him.

24 You said there's room for
04:29 25 improvement in the sharing of information between



1 forces, and we had an example here where the
2 RCMP's continuation reports -- the RCMP being an
3 assisting force to the Saskatoon city -- where
4 the RCMP's internal continuation reports went to
04:30 5 the Attorney, the Department of the Attorney
6 General, who was the other contractual side of
7 the policing arrangement in Saskatchewan, but
8 they didn't go down, or in the other direction,
9 let us say laterally to the Saskatoon City Police
04:30 10 so that they formed part of the records of the
11 Saskatoon City Police. Now I'm, I'm curious to
12 know whether that system of demarkation still
13 exists; does an assisting police force give all
14 of its findings and records to the force being
04:30 15 assisted, or does it still regard those as its
16 own property and keeps them?

17 A I think, My Lord, in major case management now, if
18 there were -- if another police service were
19 assisting, as happened there, the RCMP assisting
04:31 20 Saskatoon, there is a very good, in fact I think
21 an almost 100 percent likelihood that if they
22 generated the report as a result of that, that
23 would go back into the major case system and would
24 be fed up.

04:31 25 This report by the RCMP, I



1 guess I looked at that a number of times and I
2 thought to myself "it really doesn't add anything
3 to the investigation" -- I'm referring to this
4 Miller murder now --

04:31 5 COMMISSIONER MacCALLUM: We've heard
6 evidence from the Saskatoon police officers that
7 they knew all this anyway.

8 A Exactly.

9 COMMISSIONER MacCALLUM: But, irrespective
04:31 10 of that factual finding, you can easily imagine
11 cases where that wouldn't be the case, and if the
12 RCMP, in a case like this, investigator found out
13 something and kept it to himself, or to members
14 of his own force, how could that help the person
04:31 15 he was supposed to be helping, namely the
16 Saskatoon police force?

17 A Exactly. And I'm confident that, now, that if the
18 RCMP were following up on a lead provided by
19 Saskatoon police, for example, once they had
04:32 20 completed that it would be fed in the major case
21 management system and would become part of their
22 file so that down the road, if the RCMP destroyed
23 their file because of time requirement, because
24 it's an assisting file and it only needs to be
04:32 25 kept for a specified period of one or two years or



1 something, if that file were destroyed at least
2 the copies of the investigation would still be
3 present on the major case file and would be
4 retained as long as they are required under the
04:32 5 regulations.

6 COMMISSIONER MacCALLUM: Now, you're
7 confident that this would happen, but would it
8 necessarily happen, is there any regulation to
9 oblige collaborating police forces to share
04:32 10 information as a matter of record?

11 A There is a very general comment, I believe in the
12 policy and procedures manual, that talks about
13 cooperation and sharing, but there's nothing
14 specific.

04:32 15 COMMISSIONER MacCALLUM: Should there be,
16 in your view?

17 A Yes, it may be helpful, it certainly may be
18 something you want to comment on.

19 MR. HODSON: I will go through,
04:33 20 Mr. Sawatsky, I will go through that part of the
21 manual with you tomorrow and --

22 COMMISSIONER MacCALLUM: Oh, I was wrong,
23 sorry.

24 MR. HODSON: No, no, there are a few areas
04:33 25 there to cover, but there are some -- I will go



1 through the regulations that do exist as well as
2 the manual and I think that, as Mr. Sawatsky has
3 pointed out, there is a general comment there and
4 I do propose to put to him some specific
5 questions not only of the RCMP but, for example,
6 the Regina City Police and their contact with Mr.
7 Cadrain.

8 BY MR. HODSON:

9 Q If -- is that something that currently, with the
04:33 10 current system -- again, I guess it may be a bit
11 of uncertainty as to what they did in Regina --
12 but is that something that, under the current
13 system, a record of that would end up with the
14 Saskatoon police?

04:33 15 A Yes, I think under the current system that would
16 have been sent right up here to Saskatoon and it
17 would have been put right into the file and of
18 course, you know, then it's there for as long as
19 the file is in existence.

04:33 20 COMMISSIONER MacCALLUM: Okay. Now that
21 will be fine, now ask your question.

22 MR. HODSON: Who intends to examine
23 Mr. Sawatsky. Two? And any estimate of --

24 COMMISSIONER MacCALLUM: Saskatchewan is
04:34 25 ambivalent?



1 MS. KROGAN-STEVELY: Saskatchewan may have
2 one or two short questions.

3 MR. HODSON: Okay. And Mr. Gibson and
4 Mr. Elson?

04:34 5 MR. ELSON: I don't know how long I'm going
6 to be.

7 MR. HODSON: So it may be the morning?

8 MR. GIBSON: 15 minutes.

9 MR. HODSON: Okay. That's helpful. So we
04:34 10 will carry on tomorrow morning.

11 COMMISSIONER MacCALLUM: And with a view to
12 completing Mr. Sawatsky tomorrow morning?

13 MR. HODSON: Yes. Mr. Brown is the next
14 witness, he will be available when Mr. Sawatsky
04:34 15 is done.

16 COMMISSIONER MacCALLUM: Okay. Thanks.

17 (*Adjourned at 4:34 p.m.*)

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Donald G. Meyer, RPR, CSR, CRR, CBC

Official Queen's Bench Court Reporter



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