

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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Volume 26

Inquiry Proceedings



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Transcript of Proceedings

(Reconvened at 10:00 a.m.)

COMMISSIONER MacCALLUM: Morning.

ALL COUNSEL: Morning.

NICHOL JOHN, continued:

BY MR. HODSON: Morning, Ms. John.

A Morning.

Q Yesterday, or Thursday, when we finished off we were -- we had just finished a 1994 interview with the RCMP, and I just want to move on to tie up a few loose ends here. If I could call up document 053353, please. And I think, in I can assist you Ms. John, this is -- is that your handwriting, does it look like, "Kim Rossmo"?

A I'm not sure. Kind of.

Q I think -- okay. What this document is, you will see at the top, it says "received from Nichol Demyen 93-06-04", which is June 4th, '93, two pages, and this is the date that the RCMP interviewed you, and I believe they asked you to write down the dates and names of people who contacted you over the years. If we can just go to the next page, 053354, and you will see Tim Appleton and a date, Dave Roberts, both Globe & Mail, Carl Karp, Neil Boyd; do you see that?



1 A Yes.

2 Q Is this your handwriting?

3 A Yup.

4 Q Do you recall giving the police a list of people
10:07 5 that you -- who would have contacted you from the
6 media?

7 A No, I don't recall doing it.

8 Q Okay. Do any of these names seem familiar to you?

9 A Umm, Neil Boyd does.

10:07 10 Q Okay. And how about Kim Rossmo?

11 A No.

12 Q Do you remember, the names Rossmo and Boyd, I
13 think they were professors at a university in
14 British Columbia and wrote a report, I think in
10:07 15 1991, about the David Milgaard matter; do you
16 remember talking to them at all?

17 A Not really.

18 Q I'm just going to call up a page from their
19 report, the document ID is 040497, maybe we'll
10:07 20 just go to the front page of that.

21 MR. ELSON: Excuse me, Mr. Commissioner,
22 we're having some technical troubles with some of
23 the screens, we're out and Mr. Gibson is out as
24 well.

10:08 25 *(Discussion off the record)*



1 MR. ELSON: We're back. Sorry.

2 COMMISSIONER MacCALLUM: Thanks.

3 MR. HODSON: Is everybody fine? Okay.

4 BY MR. HODSON:

10:08 5 Q This report is dated October 1991 by Neil Boyd, a
6 Professor of Criminology, and Kim Rossmo; do those
7 names sound familiar? I think you said Boyd does?

8 A Boyd does, yes.

9 Q And if I could go to page 040531, or pardon me,
10:09 10 040530, and you will see at the bottom, the
11 conclusion at the very last line, it says:

12 "Ron Wilson now says that he lied at
13 trial, and Nichol ...",

14 next page:

10:09 15 "... Nichol John doesn't want to speak
16 about the case; she has indicated that
17 she would not like to see the case
18 re-opened."

19 And then there is a footnote at the bottom:

10:09 20 "Nichol John, personal communication,
21 September, 1991."

22 Would you have talked to Mr. Boyd or Kim Rossmo
23 in September and told them what's reported in
24 this report?

10:09 25 A I don't believe so.



1 Q You don't believe you did or you don't recall?

2 A I don't recall, but I don't think -- if I remember
3 correctly, when Mr. Boyd contacted me, I said "I
4 don't want to talk".

10:09 5 Q Okay. That's what you recall of that discussion?

6 A Yeah.

7 Q Okay.

8 A Yeah.

9 Q At that time, and again around 1991, would it have
10:09 10 been your view that you did not want to see the
11 David Milgaard case re-opened?

12 A No. My view was I didn't want to talk to anybody
13 regarding this case.

14 Q Okay. Next document is 043831, and this is a
10:10 15 document that -- whereby you waive
16 solicitor/client privilege between yourself and
17 your former counsel, Larry Leslie, for the
18 purposes of enabling the RCMP to conduct an
19 investigation; do you see that?

10:10 20 A Yes.

21 Q And that's your signature where I have circled in
22 red, Nichol Demyen?

23 A Yes.

24 Q And it's dated June 4th, 1993, which I think is
10:10 25 around the date of your RCMP interview; correct?



1 A Umm, okay.

2 Q And you would have -- you waived privilege to
3 allow the RCMP to talk to Mr. Leslie; correct?

4 A Yes, according to this.

10:10 5 Q Well, do you not recall that?

6 A No, I don't recall it.

7 Q Okay. The next document I wish to refer you to is
8 a statement that your parents gave to the RCMP in
9 1993, if I could call up 064788, please. And I
10:11 10 touched on parts of this on Thursday, Ms. John,
11 but I just want to refer to a couple of more
12 statements that they gave to the RCMP. If you
13 could go to page 064801, and Mary is your mother,
14 correct?

10:11 15 A Yes.

16 Q And just at the bottom, Officer Templeton -- and
17 just to put this in time I think is when you
18 returned from the trip in 1969 -- and he says:

19 "CORPORAL JIM TEMPLETON: And how did you
20 find Nichol to be when she returned
21 home.

22 MARY JOHN: Quiet. Very, very.

23 CORPORAL JIM TEMPLETON: Would this be a
24 change for her, to be quiet?

25 MARY JOHN: She was a different quiet, you



1 know? Withdrawn quiet, yeah.

2 CORPORAL JIM TEMPLETON: Did she tell you
3 about any problems that she was having
4 or any concerns that she had?

5 MARY JOHN: She never really, I don't
6 remember her saying anything until
7 later. You know, things were, were
8 said. But I don't, I don't remember if
9 it was then that it was said, before or
10 after the trial. I don't remember,
11 yeah.

12 CORPORAL JIM TEMPLETON: When you're
13 referring to things that she may have
14 said later, is that you talking about
15 before or after the trial now?

16 MARY JOHN: Yeah.

17 CORPORAL JIM TEMPLETON: You don't remember
18 when it was?

19 MARY JOHN: I don't remember when it was,
20 but I remember her and I sitting and
21 talking and her just crying.

22 CORPORAL JIM TEMPLETON: You tell me what
23 she said?

24 MARY JOHN: She said she was in the car,
25 she was sitting in the car, this is how



1 she said to me. And I says, and she
2 says, I can remember her saying, I saw
3 him kill her, I saw him stab her. And I
4 says Nichol, I can remember saying
5 Nichol, how could you see it, I says, it
6 was forty below, I says, and you're in
7 the car and the windows are all steamed
8 shut. At forty below the, the windows
9 are definitely all steamed shut. She
10 says Mom, I scratched it off and I saw
11 it.

12 CORPORAL JIM TEMPLETON: Did she say who
13 him was? Who was she referring to?

14 MARY JOHN: No. She didn't say who him
15 was. I can't remember her saying who
16 him was. But she has been scared of
17 that him for twenty three years so I
18 imagine I know who that him was."

19 Do you recall a discussion with your mother, at
10:13 20 any time, as she has related to the RCMP in this
21 interview?

22 A Not at all.

23 Q Do you have -- did you talk to your mother about
24 the David Milgaard case over the years?

10:13 25 A Oh, the odd thing, but nothing in particular.



1 Q Would you have talked to her in 1969-1970, in that
2 time frame, and told her why you were a witness at
3 the trial and what you saw?

4 A I can't recall.

10:13 5 Q Did you confide in your mother, at that time, in
6 things that were happening in your life?

7 A Umm, we weren't really that close.

8 Q So do you have any recollection of any discussions
9 with your mother about the David Milgaard case and
10:14 10 what you may have observed on January 31, 1969?

11 A No.

12 Q Next, I want to refer to the statement of Barbara
13 Wispinski, whose maiden name is Berard, it's
14 document 023206. And you told us last week that
10:14 15 you remember Barbara Berard, she was a childhood
16 friend of yours, is that correct?

17 A Yes, a school friend.

18 Q School friend. And I think at the time the police
19 picked you up in March of 1969, or thereabouts,
10:14 20 you were actually living at Barbara Berard's home
21 at 817 Victoria Avenue; do you remember that?

22 A Yes.

23 Q So at the time that you returned from your trip
24 with David Milgaard, Ron Wilson and Albert
10:15 25 Cadrain, when you returned to Regina at that time,



1 which was February of 1969, you would have been a
2 close friend of Barbara Berard; is that correct?

3 A I wouldn't say close. She was a friend though.

4 Q And at or around that time you would have been
10:15 5 living in her house with her parents; is that
6 right?

7 A Umm, I think so.

8 Q So for a couple of months there,
9 February-March-April-May, in that time frame, of
10:15 10 1969, you would have been living with Barbara
11 Berard; is that correct?

12 A I believe so, yeah.

13 Q If we could go to -- and this is a statement that
14 she gave to the RCMP, you will see the date,
10:15 15 Templeton and Dyck, on April 18th, 1993 -- and if
16 you could go to page 023037, and just read you
17 some questions and answers here, Ms. John. And
18 this is Officer Dyck questioning Barbara
19 Wisniewski:

10:16 20 "J. DYCK: ... In which manner did you
21 know Nichol John?

22 B. WISNIEWSKI: She lived with myself
23 and my parents in Regina.

24 J. DYCK: ... did you and Nichol John ever
10:16 25 talk about the murder, itself?



1 B. WISPINSKI: Yes.

2 J. DYCK: ... when did she talk to you
3 about that?

4 B. WISPINSKI: ... it was after and it
10:16 5 was in bed one night. We shared a
6 bedroom."

7 Let me pause there. Do you recall that, sharing
8 a bedroom with --

9 A No.

10:16 10 Q Is it possible?

11 A Possible, yeah.

12 Q And then, carrying on, Dyck says:

13 "J. DYCK: This being at whose place
14 now?

10:16 15 B. WISPINSKI: At my parents' place in
16 Regina.

17 J. DYCK: In Regina. And what did
18 Nichol John tell you at that time?

19 B. WISPINSKI: She was afraid that
10:16 20 Hoppy, who was Dave Milgaard, we knew
21 him as Hoppy, would kill her if she ever
22 said anything.

23 J. DYCK: ... O.K. Did she... did she
24 say what he had told her, like specific
10:17 25 words or anything that you can recall?



1 B. WISPINSKI: When he got back to the
2 vehicle that day, what they were going
3 to do was a house break and enter...
4 they were going to B & E a house.

10:17 5 J. DYCK: Which... Which day are you
6 referring to now?

7 B. WISPINSKI: The day that Gail was
8 killed.

9 J. DYCK: O.K.

10:17 10 B. WISPINSKI: He went to check out the
11 house and when he came back to the
12 vehicle, he was full of blood.

13 J. DYCK: Did he make any comments to her?
14 Did she say anything?

10:17 15 B. WISPINSKI: At that time I can't
16 remember. I real... like that was a
17 long time ago, so I really can't
18 remember.

19 J. DYCK: O.K. When was the very first
10:17 20 time you saw Nichol John after the
21 murder?

22 B. WISPINSKI: There was a house in
23 Regina called the Co-op House. It
24 was... a hostel for hitch hikers that
10:17 25 would pass through the city and... I was



1 there, and she... that's where she was
2 dropped off."

3 If I can pause there; do you recall any
4 discussion with Barbara Berard of that nature
10:17 5 that I just read to you?

6 A No, sir.

7 Q Do you recall any discussion with her, at all,
8 discussing David Milgaard's murder?

9 A No.

10:18 10 Q Was she the type of friend that you would have
11 talked to about matters of this nature?

12 A Possibly.

13 Q Now she talks about or she relates, at least she
14 says this is what you told her about going to do a
10:18 15 house break and enter, and that when David got
16 back he had blood on him. Have you ever
17 discussed, with anybody, a house break while you
18 were on that trip in January of 1969?

19 A Not that I recall.

10:18 20 Q Okay. Go to the next page, please, and then this
21 talks:

22 "J. DYCK: ... Did you have occasion ... to
23 talk to any of the people that she had
24 been with. Or if she had been with
10:18 25 anyone else prior to coming to the



1 house?

2 B. WISPINSKI: All she wanted to do was go
3 home to my parents' place.

4 J. DYCK: ... could you add any other
10:19 5 details in regard to the conversation
6 you had with her regarding the murder?

7 B. WISPINSKI: Well she was upset. She
8 never said anything at the house... at
9 the Co-op House... We... left there, we
10:19 10 hitch hiked to my parents' place, which
11 was on Victoria Avenue and... when we
12 got there, she started crying. And I
13 asked her, I said what's the matter?
14 And she said... Hoppy killed someone.
10:19 15 And I said, who. And she... she wasn't
16 sure... all she said was he got back in
17 the car full of blood and he said I
18 killed her."

19 Do you recall a discussion of that nature with
10:19 20 Barbara Berard?

21 A No.

22 Q Okay. Scroll down to the bottom, please, Officer
23 Dyck asks her:

24 "J. DYCK: How many times did Nichol John
10:19 25 talk about the murder to you?



1 B. WISPINSKI: ... a few times. She was
2 afraid to talk about it.

3 J. DYCK: Do you recall what she said on
4 those other occasions?

10:19 5 B. WISPINSKI: Oh. geez... she was afraid
6 for her life and she didn't really want
7 to talk to anyone about it.

8 J. DYCK: Did she talk... tell you about
9 her being questioned by the police?

10:20 10 B. WISPINSKI: She was laying low, is what
11 she was trying to do.

12 J. DYCK: In which respect was she laying
13 low?

14 B. WISPINSKI: Because she didn't want
10:20 15 to talk to the police.

16 J. DYCK: But, did she talk about the
17 police themselves, when she had been
18 interviewed?

19 B. WISPINSKI: By then I think she had
10:20 20 already moved back home. When she was
21 interviewed.

22 J. DYCK: ... so was there anything
23 additional that she might have mentioned
24 on the other occasions where she spoke
10:20 25 about the murder, as opposed to initial



1 time she told you?

2 B. WISPINSKI: Well, you know, all she
3 knew is that he had killed someone in
4 Saskatoon, but at first she didn't know
10:20 5 for sure if it was a male or a female
6 but she did say when he got in the car
7 he said "I killed her".

8 J. DYCK: Do you know if Nichol John ever
9 confided to anyone else regarding this?

10:20 10 B. WISPINSKI: Yes she did.

11 J. DYCK: And who was that?

12 B. WISPINSKI: Cody Crutcher."

13 Do you recall any discussion with Barbara Berard
14 or Barbara Wispinski in the nature that I just
10:20 15 read to you?

16 A No.

17 Q And Cody Crutcher I think you said was someone, a
18 name you recognized?

19 A Yeah.

10:20 20 Q Was he a friend of yours at the time?

21 A I don't think he was a friend.

22 Q Did you confide in Cody Crutcher or talk to him
23 about any matter related to David Milgaard?

24 A I don't believe so, no.

10:20 25 Q Go to the next page, 023041, and in the middle



1 there, Officer Dyck asks her the question.

2 "J. DYCK: Did Nicky tell you anything else
3 about David Milgaard?

4 B. WISPINSKI: Well, when he got in the car
10:21 5 after, he would... he went to check out
6 the house for the B & E he was full of
7 blood and they went to some shopping
8 centre and some... I don't know who...
9 went in... boosted... they didn't have
10:21 10 any clothes with them... or suitcases
11 or... they had left on the spur of the
12 moment and... they went in and boosted
13 him clothes."

14 Do you recall that discussion with Ms. Berard?

10:21 15 A No.

16 Q Next page, please, 023042, and Officer Dyck asks
17 Barbara Wispinski?

18 "J. DYCK: Okay. Do you know what was done
19 with the clothing?

10:21 20 B. WISPINSKI: They disposed of it in some
21 garbage can somewhere in Saskatoon.

22 J. DYCK: Did Nicky tell you that she saw
23 David change in the vehicle?

24 B. WISPINSKI: Yes.

10:22 25 J. DYCK: Okay. Did you have an opportunity



1 to talk to Nicky in and around the time
2 of the trial?

3 B. WISPINSKI: No. Never... after she
4 moved out of my parents' house, I never
10:22 5 seen again for years."

6 Do you recall any discussion with Ms. Berard
7 about David changing clothes in the vehicle?

8 A No.

9 Q Do you recall David changing clothes in the
10:22 10 vehicle?

11 A No.

12 Q Scroll down to the bottom, please, and it says:

13 "J. TEMPLETON: Barbara, when you were
14 discussing what had happened in
10:22 15 Saskatoon... with Nichol John, did she
16 indicate to you that she was...
17 concerned about the police coming to
18 find her?

19 B. WISPINSKI: Yes.

10:22 20 J. TEMPLETON: O.K. And what was she going
21 to do about that?

22 B. WISPINSKI: She was going... she moved
23 back home because she figured by moving
24 back home, that the police would never
10:22 25 look there for her."



1 Did you have that discussion with Barbara Berard?

2 A Not that I recall.

3 Q And do you remember why you would have moved back
4 from Barbara Berard's house to your parents'
10:23 5 house?

6 A No.

7 Q Next page, please, and Officer Templeton asks --
8 if you could just scroll up one line, please:

9 "J. TEMPLETON: And did Nichol John return
10:23 10 to Regina after the trial?

11 B. WISPINSKI: I don't know. I don't know
12 if she did, or not.

13 J. TEMPLETON: Just to get back for a second
14 to... what Nichol John indicated to
10:23 15 you... that had happened in Saskatoon,
16 did she make any comments... concerning
17 other actions of David Milgaard? ...when
18 he returned to the car covered in blood?
19 Did she say anything about that?

10:23 20 B. WISPINSKI: Just that... I didn't
21 mean... this is exactly what she told
22 me... is I didn't mean to kill her.

23 J. TEMPLETON: This is what David Milgaard
24 would have said?

10:23 25 B. WISPINSKI: Said to her and that's what



1 she said to me."

2 Did you have that discussion with Ms. Berard?

3 A No.

4 Q No?

10:23 5 A No.

6 Q And that's different than "I don't recall"?

7 A No, I mean I don't recall, okay.

8 Q Okay. Now next I want to turn to the Larry Fisher
9 trial. You recall testifying at the Larry Fisher
10:24 10 trial do you?

11 A Kind of.

12 Q What do you mean by kind of?

13 A Well, I remember being there.

14 Q And do you remember where it was?

10:24 15 A Um -- Yorkton I think.

16 Q Do you remember who Mr. Fisher's lawyer was?

17 A I don't remember his name.

18 Q Was it Brian Beresh?

19 A Familiar, yes.

10:24 20 Q Do you remember who the judge was?

21 A No.

22 Q Do you remember the name of the prosecutor?

23 A No.

24 Q Do you remember who called you as a witness at the
10:25 25 trial?



1 A I think it was Mr. Beresh.

2 Q And do you know why you were called as a witness
3 at the trial?

4 A No.

10:25 5 Q If I could call up document 309971, please, and
6 this is a transcript, Ms. John, and for the
7 record, Mr. Commissioner, there was a *voir dire* at
8 the Fisher trial to determine whether or not
9 Ms. John's evidence could go in or portions of it,
10:25 10 so there's a transcript of the *voir dire* and as
11 well a transcript of her evidence at the trial
12 proper. Do you remember being examined by lawyers
13 at the trial, Ms. John?

14 A Kind of.

10:25 15 Q Do you remember being under oath in a courtroom
16 with a jury?

17 A I remember being in the courtroom.

18 Q If you could go to page 309982, please, and this
19 is October of 1999 is the date of the trial, okay?

10:26 20 A Uh-huh.

21 Q So this is about four and a half years ago.

22 A Uh-huh.

23 Q And Mr. Beresh, and this is in a *voir dire*, says:

24 "Q Did you -- so you recall this vehicle
10:26 25 getting stuck?



1 A Pardon me.

2 Q Do you recall the vehicle getting stuck?

3 A Yes.

4 Q Okay. Did you see any buildings
10:26 5 around --

6 A Yes.

7 Q ... that you now recall?

8 A Yes.

9 Q What building, please?

10:26 10 A I saw a church."

11 Does that assist your recollection of that
12 morning, Ms. John?

13 A No.

14 Q You would agree with me that in 1999, then 30
10:26 15 years after the event, at least you told the court
16 that you remembered seeing a church?

17 A Right.

18 Q And today you have no recollection of that?

19 A Just the church bells I recall.

10:27 20 Q Okay. Go to page 309987, and again this is the
21 *voir dire*, and it's Mr. Beresh and he asks you the
22 question:

23 "Q Do you recall any events along the way,
24 that occurred from Saskatoon to Calgary?

10:27 25 A Yeah.



1 Q What was that?

2 A I was digging through the glove box
3 and I came across a cosmetic bag."

4 I won't go through all of this. Maybe go to the
10:27 5 next page, 309988, and you are asked:

6 "Q Do you know who grabbed it?

7 A No.

8 Q Or, who threw it out the window?

9 A I don't recall."

10:27 10 So in 1999 at the Fisher trial you remembered the
11 cosmetic bag in the car, but you didn't remember
12 who threw it out the window; is that correct?

13 A That's correct.

14 Q And is that what your recollection is today?

10:28 15 A Yes.

16 Q Page 309990, Mr. Beresh asks you:

17 "Q Do you recall giving the police a
18 statement in March of 1969?

19 A No.

10:28 20 Q You don't recall that?

21 A No.

22 Q Do you recall what other contact there
23 was after that, with the police?

24 A No."

10:28 25 And I think that's the evidence you've given this



1 Commission of Inquiry; is that correct?

2 A Correct.

3 Q Down at the bottom of that page, Mr. Beresh asks
4 you:

10:28 5 "Q Do you have any recollection of how the
6 police treated you while you were in
7 Saskatoon?

8 A Not really."

9 And is that your evidence again before this
10:28 10 Commission of Inquiry?

11 A Yes.

12 Q Page 309999, please, down at the bottom, Mr.
13 Beresh asks:

14 "Q With regard to the January 31, 1969
10:29 15 event, do you know or have a belief as
16 to why you cannot recall?

17 A Something happened, something
18 stressful. That's the only thing I
19 can attribute it to."

10:29 20 Do you recall giving that evidence at the Fisher
21 trial?

22 A No.

23 Q And the answer that you gave to Mr. Beresh,
24 "something happened, something stressful," is that
10:29 25 what you were alluding to on Thursday of last week



1 when you testified that you -- and I'll go through
2 this a bit later -- that something happened?

3 A I would believe so.

4 Q If I could now go to page 310384, and that might
10:30 5 be part of -- the doc ID is 310373 and that's the
6 transcript of Ms. John's evidence at the trial
7 proper, and go to 310384, and here, Ms. John, this
8 is your evidence in front of the jury at Mr.
9 Fisher's trial and being examined by Mr. Beresh on
10:30 10 behalf of Larry Fisher.

11 "Q Tell us about that, what's your best
12 recollection today, please?

13 A We were stuck at the approach to an
14 alley, probably across the sidewalk,
10:30 15 or close to it. It's still dark at
16 that point. I'm by myself in the car
17 and cold. It's really cold out. I'm
18 sitting with my knees either -- I'm
19 not sure if I'm in the back seat or
10:31 20 front seat, but my knees are kind of
21 propped up. I remember hearing church
22 bells, and I looked up and I could see
23 a church at the end of the alley.

24 Q Sorry. You heard church bells, you
10:31 25 looked up and saw a church at the end of



1 the alley?

2 A Yes.

3 Q Okay. Had you ever seen that church
4 before?

10:31 5 A No.

6 Q Okay. So you heard church bells, looked
7 up, saw the church?

8 A Yes.

9 Q Okay. Let me show you D-1, a
10:31 10 photograph, please. Do you recognize
11 that photograph, please?

12 A Excuse me for a minute, please. Yes."

13 Next page:

14 "Q Tell us what you recognize about the
10:31 15 photograph?

16 A I recognize the steeple of the church.

17 Q Is that the church you saw from the
18 alley?

19 A Yes.

10:31 20 Q Okay. At that time where were the other
21 two individuals who had been in the car?
22 Do you have any recollection?

23 A I'm not sure where they were.

24 Q But at this point, I gather from what
10:31 25 you've told us, you were alone?



1 A Yes.

2 Q What's your next recall?

3 A My next recall is it's now daylight
4 and I'm walking down a back alley.

10:32 5 I'm just freezing to death. And I
6 remember a car coming up behind me and
7 saying something "Come on, come on,
8 get in, get in."

9 Q So, the next recall after the alley --
10:32 10 in the alley it was still dark, I
11 understand?

12 A Yes.

13 Q The next recall then is it's light out?

14 A Mhmm."

10:32 15 And I want to show you, Ms. John, Exhibit D-1,
16 the photograph from the Fisher trial. It's
17 actually document ID 241997, but I actually have
18 the actual exhibit from the Fisher trial. Maybe
19 we'll just get it up on screen. And the
10:33 20 photograph that I'm showing you, if you look on
21 the back, it's marked Exhibit D-1. Do you see
22 that?

23 A Yes.

24 Q And that's the photograph that Mr. Beresh showed
10:33 25 you at the Fisher trial and for which you



1 testified as being the church you saw at the end
2 of the alley, and my question is does that
3 photograph, does that church look familiar?

4 A Vaguely.

10:33 5 Q In what respect?

6 A Just the steeple.

7 Q Okay. Now, in fairness, I believe this photograph
8 was taken in the 1990s, it's not a photograph from
9 1969.

10:33 10 A Uh-huh.

11 Q So your evidence today is that the steeple is
12 vaguely familiar?

13 A Yes.

14 Q And familiar to what? What are you relating it
10:33 15 to?

16 A I just have an idea in my head.

17 Q Okay. Is that -- is that the church or the
18 steeple or similar to what you saw when you were
19 in Saskatoon on January 31, 1969?

10:34 20 A I'm not sure.

21 MR. HODSON: Mr. Commissioner, I'm
22 wondering if we may want to mark this as an
23 exhibit. It is an actual exhibit that I received
24 from the court house. Although it's on
10:34 25 CaseVault, perhaps the document with the exhibit



1 number, it might be appropriate.

2 COMMISSIONER MacCALLUM: That's fine.

3 Exhibit number -- what is it, Madam Clerk?

4 COURT CLERK: P-5, My Lord.

10:34 5 COMMISSIONER MacCALLUM: P-5, okay.

6 -->EXHIBIT P-5:

7 PHOTOGRAPH OF CHURCH.

8 BY MR. HODSON:

9 Q If I could now go to page 310410 and this is where
10:34 10 you are being cross-examined by Mr. Johnston who
11 is the Crown prosecutor at the Fisher trial. Do
12 you remember there being a prosecutor there?

13 A Not really.

14 Q Okay. I'll just read you some of the evidence
10:35 15 that you gave to him and he says:

16 "Q I suggest to you, Ms. John, that you
17 testified at David Milgaard's trial that
18 in the months commencing in February of
19 1969 through the summer you were taking
10:35 20 LSD approximately once every three days?

21 A I would agree with you."

22 And if I can pause there. That's what you told
23 this Commission last week; correct?

24 A Yes.

10:35 25 "Q Now, Ms. John, in the statement that's



1 dated May 24, 1969 that Detective Mackie
2 told us he took from you on that date,
3 you say in that statement, Ms. John,
4 that you saw David Milgaard stab a
10:35 5 woman, is that correct?

6 A The statement says that, yes."
7 If I can pause there. Remember we went through
8 in some detail -- you remember the May 24th, 1969
9 statement that we went through last week?

10:36 10 A Is that the first one or --

11 Q The second one.

12 A The second one, okay.

13 Q And that's the one where, as Mr. Johnston points
14 out, you say you saw David Milgaard stab a woman.
10:36 15 Do you remember that statement we went through
16 last week?

17 A Yeah.

18 Q And your answer then:

19 "A The statement says that, yes."

20 Mr. Johnston continues:

21 "Q The statement says that. Would you
22 agree with me that to the best of your
23 knowledge, never once prior to that date
24 have you made that -- had you made that
10:36 25 allegation to anyone?



1 A I have no recall.

2 Q So you would agree with me if I
3 suggested to you that never once prior
4 to May 24, 1969 did you make such an
10:36 5 allegation?

6 A I don't believe I have."

7 And the allegation that he's referring to is that
8 you saw David Milgaard stab a woman.

9 A Okay.

10:36 10 Q And so that's the evidence you gave at the Fisher
11 trial; correct?

12 A Uh-huh, correct.

13 Q And is that truthful today?

14 A Yes.

10:36 15 Q So just so that we're clear, prior to May 24th,
16 1969 you did not make an allegation to anybody
17 that David Milgaard -- that you saw David Milgaard
18 stab a woman?

19 A I don't think so.

10:37 20 Q Okay. And then he carries on, scroll down,
21 please, starting there, he says:

22 "Q Now, by my count, if we count the *voir*
23 *dire* the other day, Ms. John, you've
24 testified under oath six times in
10:37 25 relation to this incident.



1 A Okay.

2 Q And I'm going to suggest to you that not
3 once in the six times that you have
4 testified under oath have you stated
10:37 5 that you saw David Milgaard stab
6 anybody. Is that true?

7 A I would have to agree with you."
8 And is that truthful today?

9 A Yes.

10:37 10 Q "Q So that May 24, 1969 stands alone as the
11 only day in your life when you ever
12 alleged you saw David Milgaard stab a
13 woman. Is that true?

14 A I'm sorry, I lost your question.

10:37 15 Q I'm suggesting to you, Ms. John, that
16 May 24, 1969 is the one and only day in
17 your life that you have ever alleged
18 that you saw David Milgaard stab a
19 woman?

10:38 20 A That I am aware of, I would agree with
21 you."

22 And is that truthful today?

23 A I would agree, yes.

24 Q And:

10:38 25 "Q And that's notwithstanding the fact that



1 police spoke to you repeatedly before
2 that date and you've testified under
3 oath six times since that date?

4 A I'm sorry, I don't understand what
10:38 5 you're... asking me.

6 Q I'm suggesting to you that the police
7 spoke to you repeatedly prior to that
8 day.

9 A Okay.

10:38 10 Q And that you've testified under oath six
11 times since that day --

12 A Mhmm.

13 Q ... and you've never told any of them
14 that you saw David Milgaard stab
10:38 15 anybody?

16 A I don't believe I have."

17 And if I pause there, is that true today,

18 Ms. John?

19 A Yes.

10:38 20 Q If I could then go to page 310414 and again this
21 is Mr. Johnston, the Crown prosecutor in the
22 Fisher trial cross-examining you, and he says:

23 "No. Okay. I'm sorry. But he showed
24 you the photograph --"

10:39 25 And he's referring to Mr. Beresh,



1 "-- and you thought you recognized it?

2 A Yes.

3 Q Detective Mackie just told us that on
4 May 22 perhaps -- or, May 22 he drove
10:39 5 you to within a few feet of that church,
6 do you remember that?

7 A No.

8 Q If I suggested to you that's why you
9 remember the church, would you disagree
10:39 10 with me?

11 A I couldn't disagree with you, no."

12 And is that truthful today?

13 A Yes.

14 Q Next page, 310416, Mr. Johnston asks you:

10:39 15 "Q I suggested to you before that
16 notwithstanding the fact that police
17 officers questioned you numerous times
18 prior to May 24, 1969 you never once
19 told them or made any suggestion to them
10:40 20 that you or Milgaard or Wilson were
21 involved in Gail Miller's death. Would
22 you agree with me?

23 A I would have to agree with you, yes.

24 Q And I suggest that a few moments ago as
10:40 25 well that even though you've testified



1 under oath now six times that you've
2 never once since then alleged that David
3 Milgaard had anything to do with this
4 lady's stabbing. Would you agree with
10:40 5 me?

6 A I would have to agree with you."
7 And are both of those answers truthful today,
8 Ms. John?

9 A Yes.

10:40 10 Q He then says:

11 "Q Could it be, Ms. Demyen, that the reason
12 you have not testified to this is
13 because it didn't happen?

14 A I don't believe so, no.

10:40 15 Q Pardon me.

16 A I said I don't believe so. In my
17 heart I believe that something
18 happened.

19 Q What would ever make you say that?

10:40 20 A There is something in my stomach that
21 says that."

22 And is that question and answer truthful today,
23 Ms. John?

24 A Yes.

10:40 25 Q If I could just call up your transcript from



1 Thursday. I just wanted to go over -- I think
2 it's page 4853, and just before I go into this
3 specifically, I think, Ms. John, if I can
4 summarize, late in the day on Thursday you
10:41 5 testified words to the effect that something bad
6 happened on the morning of January 31, 1969 on
7 your trip, that you think you saw what happened to
8 Gail Miller on the morning and that you saw the
9 murder, and then I asked you what happened and you
10:41 10 said you didn't know, and I just want to go
11 through those portions of that just so that you
12 can see what you had said on Thursday, then I have
13 some questions, and if you could go to page 4853,
14 please. Just one second here. And if we start
10:42 15 there, and I read you something from an RCMP
16 report, and I asked you:

17 "Q Let me pause there. As far as you are
18 concerned today, Ms. John, did something
19 happen on your trip January 31, 1969?"

10:42 20 And you answered:

21 "A After listening to everything and
22 thinking, you know, all the holes that
23 are in my memory, I think something did
24 happen, yes.

10:43 25 Q Something happened on your trip?



1 A Yeah.

2 Q And what do you mean by "something?"

3 A I don't know. There's just too many
4 holes --

5 Q Okay.

6 A -- in my memory.

7 Q When it says something happened are we
8 talking something bad?

9 A I would tend to think so, yes.

10:43 10 Q Okay. And are you talking about -- now
11 we know that Gail Miller was murdered
12 the morning that you were in Saskatoon?

13 A Right.

14 Q Correct?

10:43 15 A Correct.

16 Q Is that what you were talking about?

17 A I don't know.

18 Q And it says --"

19 And I'm referring to the RCMP transcript,

10:43 20 "-- "there's too much, and knowing
21 myself something happened, I saw
22 something--"

23 And my question was,

24 "Q Do you believe that you saw something?

10:43 25 A I think I did.



1 Q Okay. What do you think you saw?

2 A I think that I probably saw what
3 happened.

4 Q To Gail Miller?

10:43 5 A Yes.

6 Q And why do you say that?

7 A Because there's too many gaps in my
8 mind and, when I'm in stressful
9 situations, my mind -- how can I
10:44 10 say -- goes blank."

11 And then I asked you:

12 "Q Okay. What did you see happen to Gail
13 Miller?

14 A I don't know.

10:44 15 Q So I think you said you -- and correct
16 me if I'm wrong -- but that you think
17 you saw what happened to Gail Miller?

18 A I think so.

19 Q You think you saw the murder?

10:44 20 A I think so."

21 Next page, there's just a few more lines, and I
22 asked you:

23 "Q And do you think you were in the alley,
24 then, where her body was found, in that
10:44 25 vicinity?



1 A I think I may have been close, yes.

2 Q Okay. And what causes you to say
3 that -- and I'm sorry if you have
4 already answered this -- but what causes
10:44 5 you to say that you think you were
6 there?

7 A Because of the gaps in my memory.

8 Q Okay. And why does that leave you to
9 conclude that you were there?

10:44 10 A I have no other explanation for why
11 there is gaps, other than the fact
12 that I believe that something
13 traumatic happened to me or I
14 witnessed something traumatic, --

10:44 15 Q Okay?

16 A -- which caused my memory failure."
17 And do you recall giving that evidence last week,
18 Ms. John?

19 A Yes.

10:45 20 Q Now, I think you've testified here that you don't
21 recall what happened on the morning of January 31,
22 1969; is that fair?

23 A Correct.

24 Q And you don't recall, I think you said, seeing
10:45 25 what happened to Gail Miller that morning?



1 A Correct.

2 Q But as the part I just read, you say you think you
3 were there and you think you saw it; is that
4 correct?

10:45 5 A Something in my stomach tells me that I saw
6 something.

7 Q And would it be fair to say that, the part that I
8 just read you about you being there that morning
9 and probably seeing the murder, would it be fair
10:45 10 to say that that's not based on what you recall
11 today of that morning?

12 A Correct.

13 Q And so there are other factors --

14 A Yes.

10:45 15 Q -- that cause you to reach a belief or a
16 conclusion that you saw the murder of Gail Miller
17 and you were there that morning; is that fair?

18 A That I saw something traumatic, yes.

19 Q Well, I think what you said Thursday, you went
10:46 20 further and you said you think you saw the murder
21 of Gail Miller; right?

22 A Possibly, yes.

23 Q And so just so we're clear, you are making that
24 statement, conclusion, belief not based on what
10:46 25 you today recall of that morning, but rather a



1 number of other factors; is that fair?

2 A That's correct.

3 Q And maybe we can just go through some of those
4 factors and ask you, would the statement of May
10:46 5 24th, 1969, that statement that has your signature
6 that you've read a number of times; right?

7 A Uh-huh.

8 Q Yes?

9 A Yes.

10:46 10 Q -- would that statement be a factor in your mind
11 that would influence you reaching the conclusion
12 or belief that you were there that morning and saw
13 the murder of Gail Miller?

14 A I believe so.

10:47 15 Q And would it be the fact that in that statement
16 it's reported that you say you saw something
17 happen; in fact, you say you saw David Milgaard
18 stab Gail Miller in that statement. Correct?

19 A Correct.

10:47 20 Q And so that statement would influence you in
21 reaching the conclusion and belief that you have
22 today; is that fair?

23 A Yes.

24 Q Significantly? Is that a significant factor?

10:47 25 A No.



1 Q What about the fact that in January of 1970 David
2 Milgaard was convicted of murdering Gail Miller,
3 would that have influenced you in reaching your
4 conclusion and belief?

10:47 5 A I don't think so.

6 Q The fact that he was convicted and you were with
7 him that morning, did that influence you in
8 thinking that you must have seen something?

9 A Yes.

10:47 10 Q So the fact that you were with him that morning
11 and the fact that he was convicted in January of
12 1970 of killing Gail Miller, did that cause you to
13 think that maybe you had been there and maybe you
14 had seen something?

10:48 15 A Yes.

16 Q What about the flashbacks that we witnessed last
17 week that you were having about seeing a person
18 over a body, or over another person in an alley
19 and the church, garbage cans, etcetera, have those
10:48 20 flashbacks influenced you in your conclusions and
21 beliefs as to what you may have seen or where you
22 may have been the morning of January 31, 1969?

23 A I don't really think so.

24 Q Okay. Is there anything else then that would
10:48 25 have, other factors that influence your thinking



1 to cause you to think that you were there that
2 morning and witnessed the murder of Gail Miller?

3 A The gaps in my memory.

4 Q Okay. And when you say gaps, it's because you
10:49 5 can't remember things?

6 A Yes.

7 Q And why does that cause you to think that you were
8 there?

9 A I cannot come up with another explanation of why
10:49 10 that happened.

11 Q Of why --

12 A Why the gaps are there.

13 Q Okay. What about your, and we've heard evidence
14 over the last week about your interviews and
10:49 15 meetings with a number of people, Joyce Milgaard,
16 Eugene Williams, the RCMP, Dr. Pulos, Dr. Orne,
17 Dr. Fleming, evidence at the Supreme Court, did
18 those discussions, interviews, exchanges of
19 information influence you in you reaching your
10:49 20 conclusions or beliefs?

21 A I don't believe so.

22 Q Okay.

23 A I'm not sure.

24 Q Anything else that you can think of that, in your
10:49 25 mind, you are relying on to support your



1 conclusions or beliefs?

2 A Not that I can say at the moment.

3 Q What about the fact that David Milgaard has been
4 exonerated for the murder of Gail Miller and Larry
10:50 5 Fisher has been convicted of that murder; you are
6 aware of that?

7 A Yes.

8 Q Has that had any influence on your thinking and
9 your conclusions or beliefs that you were there
10:50 10 that morning?

11 A I don't believe so.

12 MR. HODSON: Ms. John, those are all my
13 questions, I think counsel for other parties will
14 have questions, and I will take a stab at what I
10:50 15 think is partially the order.

16 I believe Mr. Elson has
17 indicated that he intends to go first, and that
18 Mr. Fox may go second, is that --

19 MR. ELSON: Yes.

10:51 20 MR. HODSON: And, if I'm wrong, please
21 speak up. I don't think there is complete
22 consensus on the order of cross-examination so
23 maybe, before I put counsel in an awkward
24 position, I could ask or we could see who wishes
10:51 25 to cross-examine.



1 COMMISSIONER MacCALLUM: How many, please?
2 Just raise your hands. Okay.

3 MR. HODSON: And I should add that
4 Mr. Bottos for -- on behalf of Mr. Tallis will be
10:51 5 here in the afternoon, he may have some
6 questions, I'm not sure if he will or not.
7 Mr. Chivers is here this morning so --

8 COMMISSIONER MacCALLUM: Okay.

9 MR. HODSON: And Mr. Lockyer will be here
10:51 10 at noon and he does intend to cross-examine.

11 COMMISSIONER MacCALLUM: Well he -- the
12 only -- the only thing I can say at this point is
13 that, due to the nature of this witness'
14 testimony, I can't really say that any party is
10:51 15 more adverse than the next, and so I'll have to
16 be somewhat arbitrary if it comes to a contest.
17 But I would think, on the face of it, that
18 Mr. Wolch should go, perhaps go last, and by that
19 time perhaps Mr. Lockyer will be here.

10:52 20 MR. HODSON: Okay.

21 COMMISSIONER MacCALLUM: And, apart from
22 that, I have no strong preference.

23 MR. HODSON: So if --

24 COMMISSIONER MacCALLUM: So if Mr. Elson
10:52 25 wishes, is prepared to go?



1 MR. HODSON: You are prepared to go?

2 MR. ELSON: Yes.

3 COMMISSIONER MacCALLUM: Okay.

4 BY MR. ELSON:

10:52 5 Q Ms. John, my name is Richard Elson, and I'm the
6 lawyer representing the chief of police and the
7 Saskatoon Police Service. I only have a few
8 questions for you, and I don't think I'm going to
9 be very long.

10:52 10 You have indicated in your
11 testimony that there are -- and of course you have
12 indicated that you don't recall with respect to
13 many of the questions My Friend, Mr. Hodson, has
14 put to you -- but specifically you say that there
10:53 15 was a period of your life that is missing and
16 there are gaps in your memory, and specifically
17 gaps in your memory with respect to what occurred
18 on the morning of January 31, 1969; am I being
19 fair to your testimony?

10:53 20 A Yes.

21 Q And it is that gap in your testimony, or your gap
22 in your memory, that has led to your testimony
23 that you do believe something happened on that
24 morning that was bad; is that correct?

10:53 25 A Yes.



1 Q I want to put to you something and ask you whether
2 or not you recall whether or not this might assist
3 in your memory. There has been evidence before
4 this Commission with respect to a church, and you
10:53 5 identify a church from the photograph, albeit in
6 fairness to you, you have only identified the
7 steeple, but you accept that you did identify that
8 church in your testimony at the Fisher trial in
9 1999; is that correct?

10:54 10 A Yes.

11 Q And I appreciate that you are not all that
12 familiar --

13 COMMISSIONER MacCALLUM: Sorry, what year
14 did you say?

10:54 15 MR. ELSON: 1999.

16 COMMISSIONER MacCALLUM: Sorry, 1999.

17 BY MR. ELSON:

18 Q And I appreciate you may not be all that familiar
19 with the geography of west-end Saskatoon, but are
10:54 20 you now aware that the church you identified in
21 the photograph is St. Mary's Church, located on
22 the corner of Avenue O and 20th Street?

23 A Means nothing to me.

24 Q Means nothing to you? So the reference to Avenue
10:54 25 O or 20th Street does not mean anything to you?



1 A No.

2 Q In fairness, if it were -- if the evidence is
3 before this Commission of Inquiry that that is
4 indeed where the church is located, you would have
10:54 5 no reason to disagree?

6 A Correct.

7 Q Do you have any recollection, and let me put it to
8 you, I think I know what the answer is going to
9 be, but do you have any recollection of walking
10:55 10 towards the church at all on the morning of
11 January 31, 1969?

12 A Nothing that I can specifically say, no.

13 Q All right. Do you have any recollection of being
14 out of Mr. Wilson's car on the morning of January
10:55 15 31, 1969?

16 A Not really.

17 Q In fairness, when you say that you have no
18 recollection of having been outside of Mr.
19 Wilson's car, you are not saying that you were
10:55 20 never outside of his car in the morning in that
21 particular area, namely around Avenue O or Avenue
22 N and 20th Street?

23 A That's correct.

24 Q Okay. I wonder if I could have the transcript of
10:55 25 Maria Indyk's testimony brought up.



1 Mr. Commissioner, I'm referring
2 to Maria Indyk's transcript of her testimony at
3 the trial in 1970, the Milgaard trial, and
4 specifically page number 076643, and if -- I
10:56 5 wonder if we could move two pages past that to the
6 page in the transcript that begins 1178 at the top
7 of the page. Do you have that before you, you
8 have that transcript before you, Ms. John?

9 A Yes.

10:56 10 Q You do not know, and do not remember, a Maria
11 Indyk testifying at the Milgaard trial; you would
12 not have had any occasion to meet her?

13 A No, I have no idea who she is.

14 Q By way of background -- and Mr. Commissioner, if I
10:56 15 misstate anything I'm sure I will be corrected --
16 by way of background, Mrs. Indyk, who is now
17 deceased, testified at both the preliminary
18 inquiry and at the trial, and she indicated that
19 she worked at Spotless Cleaners which was in that
10:57 20 area, but before she was to go to work she went to
21 church sometime shortly after 7:00 a.m. on the
22 morning of January 31, 1969, and the church being
23 St. Mary's church on the corner of Avenue O and
24 20th Street.

10:57 25 And if we could begin at page



1 1178, line 10, do you see that, I'll just refer to
2 Mrs. Indyk's testimony and I would ask you whether
3 or not it might refresh your memory, and --
4 whether or not it might refresh your memory and
10:57 5 whether or not you believe you may be the person
6 Mrs. Indyk identified that morning. And just to
7 refer to the transcript, Mr. Caldwell asks a
8 question:

9 "Q Did you meet some person?

10:57 10 A Yes.

11 Q What was the first you saw of the
12 person?

13 A First I seen a white scarf, you know
14 it was dangling in front of her when
10:57 15 she was running crossing Avenue O on
16 to 20th Street. And then she came to
17 my side where was the church and she
18 ran towards me. She stop . .

19 THE COURT:

10:58 20 Q . . just a minute please - she was
21 running and came towards me?

22 A Yes.

23 Q And stopped?

24 A Stop and she looked at me. Neither I
10:58 25 nor she said a word.



1 Q She looked at me what?

2 A She looked at me but no her no me say
3 a word.

4 Q Didn't say a word?

10:58 5 A No; I was taken by surprise you know.

6 MR. CALDWELL:

7 Q And you said neither you nor she said a
8 word?

9 A No. We didn't exchange no words at
10:58 10 all.

11 Q Now, when you first saw her was she on
12 20th Street?

13 A On the 20th Street on the corner.

14 Q Would it be on the sidewalk area?

10:58 15 A On the sidewalk.

16 Q And you said running I think?

17 A She was running.

18 Q And she turned and went up . .

19 A . . she cross - like that was Avenue O
10:59 20 - she cross, came to my side.

21 THE COURT:

22 Q She crossed Avenue O?

23 A Yes.

24 Q And she came to your side?

10:59 25 A To my side and run towards me.



1 Q And were you on the west side of Avenue
2 O?

3 MR. CALDWELL:

4 Q The church side?

10:59 5 A Yes; on the church side.

6 Q And I take it that would put her running
7 up the sidewalk towards you?

8 A Towards me.

9 Q And how close did the person get to you?

10:59 10 A About that. We nearly came face to
11 face and I look at her . .

12 THE COURT.

13 Q . . just a minute. You said "about
14 that" - indicating maybe what - about
11:00 15 two feet?

16 A Maybe two, maybe three; it was no
17 more.

18 MR. CALDWELL:

19 Q Did she stop there?

11:00 20 A She stop. She looked at me and well I
21 guess I stare at her, you know, I was
22 taken by surprise, I just looked at
23 her and then she just ...",
24 and the next few words are inaudible:

11:00 25 "THE COURT:



1 Q She turned with what?

2 A Just - she was looking at me and she
3 just turn like that and walk briskly,
4 that was all - quick walk.

11:00 5 MR. CALDWELL:

6 Q Which way?

7 A North.

8 Q North on Avenue O?

9 A On Avenue O.

11:00 10 Q And this I take it would be all on the
11 sidewalk on the church side?

12 A On the sidewalk on the church side.

13 It was dark but little light from the
14 street that was coming, that's all.

11:00 15 Q How, tell the Court what you saw about
16 this - this was a female person?

17 A Yes.

18 Q How old?

19 A That's one thing, I am no good at
11:01 20 describing age.

21 Q But a mature woman or teenager or what?

22 A She wasn't a teenager; she was a
23 mature woman."

24 Now if I could stop there a moment, but for the
11:01 25 fact that Maria Indyk described the person as a



1 mature woman, and if we were to assume for a
2 moment that perhaps she was mistaken in
3 describing the person she saw as a mature woman
4 would you have any reason to believe that you
11:01 5 either were or were not the person Mrs. Indyk
6 described having seen on the morning of January
7 31, 1969 in that portion of the transcript I have
8 just put to you?

9 A I'm not sure.

11:01 10 Q Now, specifically, there is a reference in
11 Mrs. Indyk's testimony to the person having a
12 white scarf. Now I believe that you have been
13 questioned in the past with respect to what you
14 were wearing that day, and you will recall the
11:02 15 answers you have given previously, as contained in
16 the record, was that you were wearing, I believe,
17 a purple or a maroon coat; do you recall those
18 answers were suggested to you in your testimony
19 last week?

11:02 20 A Yes.

21 Q Do you have any recollection, around the 1969
22 period, of having a white scarf that you commonly
23 wore?

24 A I can't recall.

11:02 25 Q You can't recall? It is possible that you had a



1 white scarf?

2 A Possibly living in Saskatchewan, yes, you would
3 have a scarf.

4 Q Now specifically, I appreciate that you would have
5 a scarf, do you recall whether or not you would
6 have ever had a white scarf around that period of
7 time?

8 A I don't recall.

9 Q Now the period of time that you indicate is blank
10 is roughly that period of time between 7:00 a.m.
11 and 9:00 a.m. on January 31, 1969; is that
12 correct?

13 A Correct.

14 Q And you have previously said, in the past, that
15 you have some recollection of having been outside
16 the car that morning, but you have no recollection
17 as to how you got back into the car?

18 A Correct.

19 Q Now, in fairness to you, Mrs. Indyk then goes on,
20 beginning at the page showing at the top 1182, to
21 describe a second woman she saw that morning. The
22 question begins:

23 "Q Did you see anybody else?

24 A Yes I did.

25 Q How did that happen?



1 A When she pass me and she ran - she
2 didn't run, she walk, you know, brisk.
3 She walk and I hear footsteps. This I
4 can't tell you if that was my
11:04 5 imagination or really but I felt, you
6 know, the way nerves was coming - if
7 she turned to other side of the street
8 and then come back; but that might be,
9 because I was heavily "bra", maybe was
11:04 10 my imagination; and I starts to go and
11 I come to this opening of the lights
12 of the church, you know, and I didn't
13 hear nothing, was quiet. So I just
14 stood, so quiet, so I turn to the
11:04 15 right.

16 THE COURT:

17 Q This is when you got back to the church?

18 A No, on the sidewalk, still on the
19 sidewalk. And then I see another
11:04 20 woman. Well this first was more slim,
21 this other was little heavier - well,
22 that's what I could make it because
23 it's not very good light, yes, she was
24 little heavier and she was walking.

11:05 25 MR. CALDWELL:



1 Q This was a different woman, was it?

2 A Different woman; different walk.

3 Q Alright. Where did you see her?

4 A She was walking on other side of the
11:05 5 street - of Avenue O.

6 THE COURT:

7 Q On the other side of the street from
8 you?

9 A From me.

11:05 10 MR. CALDWELL:

11 Q Going which way?

12 A Going north also.

13 Q And walking on the sidewalk as far as
14 you could see?

11:05 15 A On the sidewalk as far as I could make
16 it out.

17 Q Aside from this being a heavier set
18 person did you notice say the age of
19 this lady?

11:05 20 A I couldn't because time she come up on
21 me - she was very little, you know,
22 but I just caught a glimpse of her
23 beige scarf and black hair just like
24 that, that's all.

11:05 25 THE COURT:



1 Q Beige scarf?

2 A Beige - some kind of - I don't know,
3 that's what it looks.

4 MR. CALDWELL:

11:06 5 Q Did you notice anything else about the
6 second female's dress other than the
7 scarf?

8 A A black coat."

9 Now let me ask you the same question; do you have
11:06 10 any facts within your knowledge that might assist
11 in determining whether you were or were not the
12 second person, possibly, that Mrs. Indyk
13 identified on the morning of January 31, 1969?

14 A No.

11:06 15 Q Now I asked you a question about a white scarf; do
16 you have any recollection of having owned a beige
17 scarf?

18 A No recall.

19 Q And what colour was your hair in 1969?

11:06 20 A Dark.

21 Q Now, Ms. John, one of the last questions My Friend
22 Mr. Hodson put to you was a series of questions
23 with respect to identifying factors which lead you
24 to believe that you did, in fact, see the murder
11:07 25 of Gail Miller on January 31, 1969; you will



1 recall Mr. Hodson's questions and your answers in
2 that respect this morning?

3 A Yes.

4 Q And you indicated -- and in fairness, if I say
5 anything to you that is wrong, please correct me
6 -- you indicated that the statement you gave on
7 May 24, 1969 is a factor that leads you to that
8 conclusion; do you recall giving that answer?

9 A Yes.

10 Q And in fairness to you, you didn't say it was a
11 strong factor, but you did identify it as a
12 factor; is that correct?

13 A Yes.

14 Q Is one of the reasons that it is possibly a factor
15 is because you would not have said anything to the
16 police in May of 1969 that you did not honestly
17 believe to be true?

18 A Correct.

19 Q Now, Mrs. John or Ms. John, from your testimony
20 last week it was apparent from the record that you
21 had made certain comments with respect to the
22 conduct of the police in their interactions with
23 you, and specifically I'm referring to officers of
24 the Saskatoon Police Department as it was then
25 known, and you recall from the record that was put



1 to you that you had made, in the past, certain
2 comments with respect to the conduct of the
3 Saskatoon Police Service; do you recall that?

4 A Umm, a little bit.

11:08 5 Q I'm not asking you if you recall having made the
6 comments, I'm asking you if you recall that
7 information in the record of material Mr. Hodson
8 put to you last week?

9 A I think so, yeah.

11:09 10 Q And specifically -- and I'm not certain whether or
11 not it is necessary to put the record up, if it is
12 I will certainly do so -- specifically, you
13 recall, or rather you recall the transcript that
14 was put to you last week of the interview between
11:09 15 yourself, Mrs. Milgaard, Mr. Merchant, and
16 Mr. Leslie; you recall that?

17 A Yes.

18 Q And do you recall, from looking at that transcript
19 that was put to you last week, that it appears you
11:09 20 told Mrs. Milgaard that you had no particular
21 complaints about the manner in which the police
22 treated you?

23 A Yes.

24 Q And, again, you made similar comments in the
11:09 25 Supreme Court of Canada when you testified in the



1 reference to the Supreme Court of Canada; do you
2 recall that record being put to you and you
3 indicating that you had no specific concerns about
4 the manner in which you were treated in 1969 by
11:10 5 the City of Saskatoon Police Department?

6 A Correct.

7 Q And specifically in the interview with the RCMP
8 Officers Templeton and Dyck you had indicated, and
9 do you recall having seen this in the record last
11:10 10 week, that nothing had occurred in your life up to
11 that point that caused you to disrespect or to
12 distrust the police; do you recall that being
13 contained in the transcript of the conversation
14 you had with Officers Templeton and Dyck?

11:10 15 A Yes.

16 Q Is that still your view, today, that nothing has
17 occurred in your life that --

18 A I'm sorry, I couldn't hear you, someone was
19 coughing.

11:10 20 Q I'll rephrase -- I'll repeat my question. Would
21 that stand the case today as well, that nothing
22 has occurred in your life, specifically involving
23 the Milgaard investigation or the investigation of
24 Gail Miller and your interaction in that process,
11:11 25 that has caused you to disrespect or to distrust



1 the police in any way?

2 A I would agree with you.

3 Q And, indeed, you would agree with me that you have
4 never said anything to anyone, to the best of your
11:11 5 recollection or according to the record that has
6 been put to you, that would lead anybody
7 reasonably to believe that you were unhappy with
8 the conduct of the Saskatoon Police Department or
9 that you regarded the conduct of any of the
11:11 10 officers in the Saskatoon Police Department as
11 being inappropriate?

12 A What I recall, I don't think they were
13 inappropriate.

14 Q And, in fairness, you have never said to anyone
11:11 15 that they were inappropriate; is that --

16 A I don't believe so.

17 Q Thank you. I have no further questions.

18 COMMISSIONER MacCALLUM: Mr. Fox, you want
19 to go next? Oh, I guess it's time for a break.

11:12 20 *(Adjourned at 11:12 a.m.)*

21 *(Reconvened at 11:33 a.m.)*

22 **BY MR. FOX:**

23 Q Thank you, Mr. Commissioner. Ms. John, I'm Aaron
24 Fox, I'm the lawyer for Eddie Karst, that's a name
11:33 25 you mentioned a couple of times, he was a police



1 officer with the Saskatoon Police Service in
2 1969-'70, so I've just got a few questions. I
3 know you've covered much of this ground many times
4 with this Commission already, so just try and be
11:33 5 patient with me and I'll try to get the points as
6 quickly as I can.

7 Just going back to the time
8 period 1969, 1970, we know from the reports and
9 statements and so on that you would have dealt
11:33 10 with various police officers, including members of
11 the Saskatoon Police Service. At this point in
12 time you mentioned the name, or at least last week
13 you mentioned the name Eddie Karst. Do you have a
14 specific recollection of when you would have dealt
11:34 15 with Officer Karst?

16 A Not at all.

17 Q This is just a name that rings I bell, so to
18 speak, but in terms of when you would have dealt
19 with him, no specific recollection?

11:34 20 A Correct.

21 Q And in terms of a physical description, like,
22 could you put a face to him or anything like that?

23 A Not at all.

24 Q In terms of the specific officers that you did
11:34 25 deal with from the Saskatoon Police Service, any



1 recollection of any other names?

2 A No.

3 Q Or any other physical descriptions of those
4 officers?

11:34 5 A No.

6 Q Okay. A couple general questions, and I think
7 you've answered these, but to your recollection,
8 or to the best of your knowledge and belief, would
9 you have answered truthfully the questions that
11:34 10 were put to you by the members of the Saskatoon
11 Police Service?

12 A Yes.

13 Q And we've read your first statement and that's the
14 one that was given in March, 1969 and then the
11:34 15 second statement which was the bigger statement
16 given in May of 1969, and again to your
17 recollection or your belief, were these statements
18 truthful when you gave them?

19 A Yes.

11:35 20 Q And I think it would be fair to say that your
21 second statement contains a fair bit more detail
22 than your first statement, that's obvious I guess
23 from reading it?

24 A Yes.

11:35 25 Q Any feel or thoughts as to why that would be at



1 this point in time?

2 A No.

3 Q Okay. In reviewing the statements, and we've
4 heard through various interviews that took place
11:35 5 all sorts of suggestions about why that statement
6 may have been there or how you may have been
7 influenced and so on, but I note in the first
8 statement you indicated you hadn't seen any blood
9 on David Milgaard the morning of January 31st,
11:35 10 1969?

11 A Is that what the statement said?

12 Q Yes.

13 A Okay, I'll agree with that.

14 Q And it appears as though in the second statement,
11:35 15 given in May of '69, you still say that position,
16 that at the end of the day you still didn't see
17 any blood on David Milgaard that morning. Do you
18 have any recollection of that at this point in
19 time?

11:36 20 A No.

21 Q And do you have any recollection of discussing
22 that, say, with members of the Saskatoon Police
23 Service when you were interviewed?

24 A Not at all.

11:36 25 Q Okay. Mr. Hodson asked you some questions this



1 morning about your observations of David Milgaard
2 stabbing someone or someone being stabbed on the
3 morning of January 31st, 1969, or somebody
4 stabbing someone, not even necessarily David
11:36 5 Milgaard. There's reference to that obviously in
6 your May 24th, 1969 statement. Are you able to
7 say whether or not you had ever disclosed anything
8 like that to anyone prior to May 24th, 1969?

9 A I can't recall.

11:36 10 Q So -- and we're going to hear, I understand,
11 evidence from Barb Berard or Barb Wispinski as
12 she's now known. It's possible you may have told
13 her something about that?

14 A It's possible.

11:37 15 Q You are not able to say that you didn't do that?

16 A No.

17 Q And similarly it's possible you may have made some
18 sort of disclosure to your parents as well prior
19 to May 24th, 1969, that's possible?

11:37 20 A Possible.

21 Q As I indicated, many people or various people over
22 the years have suggested different things that
23 went on in Saskatoon when you met with the
24 Saskatoon Police Service or Mr. Roberts of the
11:37 25 Calgary police department who was dealing with the



1 polygraph May 22nd, 23rd, 24th, 1969. Do you have
2 a recollection of where you spent the night of May
3 22nd or May 23rd, 1969, do you have any
4 recollection of that now?

11:37 5 A No.

6 Q Okay. Do you have any recollection of being
7 hysterical while in police custody on either of
8 those times?

9 A No.

11:38 10 Q And I'm not aware of any occasion where you said
11 that you were in an hysterical condition. Do you
12 have any knowledge of any time when you would have
13 made a statement to that effect?

14 A No.

11:38 15 Q You were -- and, Mr. Commissioner, I'm not going
16 to go through the various interviews where the
17 witness has specifically indicated she had no
18 recollection of words being put in her mouth or
19 being mistreated or coerced, that sort of thing,
11:38 20 you recall those various statements being put to
21 you or interview comments being put to you all
22 throughout last week's evidence?

23 A Yes.

24 Q But you made a comment that you believed that you
11:38 25 hadn't been coerced by anyone to saying something



1 that was false or coerced by the police to saying
2 something that wasn't true and you mentioned
3 something about that's a feeling you have, that if
4 something like that had happened, if you had been
11:39 5 forced to say something that wasn't true, you
6 would have a different feeling about things, do
7 you recall your reference to that, and if I
8 haven't got it right, if you could try and explain
9 if you can --

11:39 10 A If you could be -- explain it a little better?

11 Q Sure.

12 A I'm not quite sure what you are getting at.

13 Q You've indicated you can't say "I have a specific
14 recollection of all of my dealings with the police
11:39 15 in 1969," you are not able to testify to that
16 today?

17 A I have no recollection.

18 Q No recollection of that. But you have been able
19 to say you have no recollection of them
11:39 20 mistreating you in any way?

21 A Right.

22 Q And you said that you would have thought if you
23 had been mistreated by them, you would have some
24 feeling of that, even if you didn't have a
11:39 25 specific recollection, you would have some feeling



1 of that or some reaction towards the police or
2 something like that. Do you recall what I'm
3 referring to?

4 A I think so.

11:40 5 Q Can you comment on that?

6 A No.

7 Q Okay. Let me put it this way. Maybe Mr. Elson
8 covered it adequately already. I take it you
9 haven't been carrying around any ill feeling
10 towards the police as a result of your dealings
11 with them in 1969 or 1970?

12 A Correct.

13 Q And it would be fair to say that if they had
14 mistreated you in 1969 and 1970, even though you
11:40 15 might not recall the full details, you likely
16 would be carrying around some feeling of that?

17 A You would think so, yeah.

18 Q There was a question put to you, and this was at
19 the Supreme Court, and it was at page 552 of the
11:41 20 Supreme Court transcript, you don't need to bring
21 it up, but there was a question put to you about
22 whether you remembered being upset when you were
23 with the police. Do you recall if you were upset
24 when you were with the police?

11:41 25 A Don't recall.



1 Q And I asked that in contrast to a question of were
2 you upset with the police themselves.

3 A Uh-huh.

4 Q Do you have any recollection of that?

11:41 5 A No.

6 Q Is it fair to say, in all fairness, being a 16
7 year old coming to Saskatoon to be asked questions
8 about a murder that you may have had some
9 knowledge of, wasn't exactly a good time?

11:41 10 A Well, I wouldn't think so.

11 Q No. And probably not something you would
12 particularly enjoy?

13 A Probably not.

14 Q Do you know -- it seems as though, at least for
11:41 15 the preliminary hearing and the trial, that your
16 parents were involved in the sense that I think
17 your dad travelled with you to Saskatoon for the
18 preliminary hearing you said and you thought your
19 dad and possibly your mom as well were here with
11:42 20 you in Saskatoon for the trial. Do you have a
21 recollection of that?

22 A Not really.

23 Q Not really. Some vague recollection of that?

24 A Right.

11:42 25 Q Okay. There's an indication, I think this comes



1 from the information from your parents, that they
2 would have been aware that you had come to
3 Saskatoon for the interview with the Saskatoon
4 Police Service in May of 1969. Do you have any
11:42 5 knowledge of whether that was so or not?

6 A I'm sorry, pardon me?

7 Q Sure. You came to Saskatoon in May of 1969 to
8 give that second statement and there's some
9 indication I think from your parents that they
11:42 10 were aware that you were being interviewed by the
11 Saskatoon Police Service. Do you know if that
12 would be the case or not?

13 A I'm not sure. You would have to ask them.

14 Q Yup. In the report, and I'm just moving to a
11:43 15 different subject quickly here, in the report of
16 Lieutenant Short, and this is document 106640, and
17 it's his report, not your statement in any way, he
18 reports about his discussions or information that
19 had been obtained from you concerning your
11:43 20 dealings with David Milgaard and there's some
21 reference to your sexual relations. Do you have
22 any recollection if you conveyed that to
23 Lieutenant Short at that time?

24 A I don't know.

11:43 25 Q It's possible that you may have, at least in some



1 general terms, conveyed to him that there had been
2 a less than satisfactory relationship?

3 A Possibly. I don't know.

4 Q He doesn't use the word rape.

11:43 5 A Uh-huh.

6 Q But he does use the word, I think force is used in
7 there, that's possibly something that you may have
8 conveyed to him?

9 A Possibly. I can't see him using those words
11:43 10 without some --

11 Q Yeah.

12 A Yeah.

13 Q Don't let me cut you off, sorry.

14 A -- without him having some idea, right, why would
11:44 15 he put it in his report.

16 Q Yeah. So likely you would have conveyed something
17 to him that would cause him to --

18 A Yeah, whether it be body language or verbal or
19 whatever.

11:44 20 Q Okay. And then there's a reference to Detective
21 Karst, Eddie Karst's report, that's document
22 106661 which is in April of 1993, and there was
23 reference to the words "animal nature" in
24 referring to David Milgaard and you said, well,
11:44 25 that wouldn't have been, those wouldn't have --



1 you wouldn't have used the words animal nature?

2 A Right.

3 Q You would agree that could certainly be the
4 interpretation that Detective Karst put on it
11:44 5 based on information that they had received?

6 A Correct.

7 Q I'm just going to turn briefly then to -- this
8 would have been about 1980 or '81 and you
9 indicated, at least there's an indication in your
11:45 10 interview with the RCMP that there was some
11 contact by a member of the Saskatoon Police
12 Service that Joyce Milgaard was investigating the
13 matter further, that you might be contacted by
14 either Joyce Milgaard or some of her family, and I
11:45 15 can't remember whether you have a recollection of
16 that now or not.

17 A I have -- if that's the contact when I was working
18 in that restaurant, I briefly or vaguely remember
19 somebody coming there and it is a police officer,
11:45 20 but I don't know what the discussion was or
21 anything.

22 Q Okay.

23 A And I'm not sure if that's even the time frame.

24 Q Okay. And do you know if that would have been
11:45 25 Detective Karst or not?



1 A No idea.

2 Q Okay. In your interview with the RCMP you
3 indicated that the officer that you spoke to told
4 you that it was your choice whether or not you
11:45 5 wanted to speak to Mrs. Milgaard, he didn't tell
6 you that you shouldn't or you should, just told
7 you it was up to you whether you wanted to or not?

8 A I don't know if he did or not.

9 Q And you wouldn't disagree with that, wouldn't
11:46 10 dispute that that is what you may have conveyed to
11 the RCMP when they spoke to you about that?

12 A I would agree with you.

13 Q And no reason to believe that that isn't accurate
14 today?

11:46 15 A Correct.

16 MR. FOX: Thank you. Those are all the
17 questions I have. Thank you.

18 COMMISSIONER MacCALLUM: Thanks. Mr.
19 Kennedy?

11:46 20 **BY MR. KENNEDY:**

21 Q Ms. John, my name is Kennedy, I represent T.D.R.
22 Caldwell who was the prosecutor at the preliminary
23 inquiry and the trial of David Milgaard. I just
24 have a few questions.

11:46 25 In terms -- and what I would



1 like you to do is distinguish between your
2 interaction with the Saskatoon City Police or any
3 other police officers and, if you can, your
4 interaction with the Crown prosecutor and/or the
11:47 5 defence counsel, and this would be in connection
6 with the preliminary inquiry and the trial, so
7 later on in the summer of 1969 through the fall of
8 1969 and then into 1970 when the trial took place.

9 A Okay.

11:47 10 Q Do you have any recollection, first of all, of a
11 specific recollection of meeting anyone on behalf
12 of the Crown prosecutor's office in connection
13 with your preparation for giving testimony at the
14 preliminary inquiry and/or the trial?

11:47 15 A No.

16 Q You indicated earlier on last week in your
17 testimony that you have a vague recollection of
18 meeting one lawyer you believe in the presence, or
19 with your father?

11:47 20 A Yes.

21 Q Do you know whether that would have been before
22 the preliminary inquiry or before the trial?

23 A I'm not sure, sir.

24 Q Do you have any recollection of anyone else being
11:48 25 present at that meeting apart from yourself, this



1 lawyer and your father?

2 A I'm not sure. I don't even know if my father was
3 there.

4 Q Okay. Do you have any recollection of any
5 mistreatment or any inappropriate behaviour or any
6 suggestion about how you should or should not give
7 your evidence at the preliminary inquiry or the
8 trial?

9 A No recall whatsoever.

10 Q Do you have any -- you don't have any recollection
11 of -- do you have any recollection, present
12 recollection of any sense of mistreatment by any
13 lawyer on behalf of the Crown?

14 A If I was to go with my gut feeling now, I don't
15 believe that that would have happened, but I don't
16 know if that happened.

17 Q Okay. Do you have any present recollection of
18 ever having told anyone that you were unhappy with
19 the way you were treated by any lawyer on behalf
20 of the Crown in connection with David Milgaard's
21 prosecution?

22 A No recollection.

23 Q And we certainly haven't heard anything up until
24 now in your evidence that has been put to you that
25 you said to someone that you weren't happy with



1 the way you were handled, if you will, or the way
2 that you were contacted by the Crown prosecutor's
3 office?

4 A Uh-huh, that's right.

11:49 5 Q And I gather that you only have a very, very vague
6 recollection of having testified at all, either at
7 the preliminary inquiry and/or at the trial?

8 A Correct.

9 MR. KENNEDY: I have no further questions,
11:49 10 Mr. Commissioner.

11 COMMISSIONER MacCALLUM: Thanks, Mr.
12 Kennedy. Mr. O'Keefe?

13 **BY MR. O'KEEFE:**

14 Q Good morning.

11:49 15 A Good morning.

16 Q My name is Eamon O'Keefe and I'm representing
17 Larry Fisher. I apologize if I'm going over some
18 of the same territory you've already covered
19 during the course of your testimony, but back in
11:50 20 January of 1969 were you in school at that time?

21 A No.

22 Q Do you recall --

23 A I don't think so.

24 Q I'm sorry?

11:50 25 A I don't believe so, no.



1 Q Do you recall when it was, the last time that you
2 were in school before January of 1969?

3 A No. I think I completed grade 10, so if you do
4 the math, I'm not sure what year that was.

11:50 5 Q Would that have been before January, '69 or after?

6 A Hang on a second. I should have been -- I
7 wouldn't have been in school in '69.

8 Q May have gone back to school after January of '69?

9 A Not until just recently.

11:51 10 Q Okay. The school that you were at previous to
11 January, 1969, do you recall which school that
12 was?

13 A Miller High School.

14 Q And that's in Regina?

11:51 15 A Yes.

16 Q And that's where you did grade 9 and 10?

17 A Yeah.

18 Q Do you recall any of the teachers that you had at
19 Miller High School?

11:51 20 A No.

21 Q Prior to Miller High School, do you recall what
22 elementary school you would have gone to?

23 A I don't know the name of it.

24 Q After leaving Miller High School after grade 10,
11:51 25 or during grade 10, did you get employment?



1 A Yeah.

2 Q What kind of employment?

3 A Waitressing.

4 Q And do you recall where that was?

11:51 5 A I think my first job was at the Husky House
6 restaurant.

7 Q And do you recall approximately where in relation
8 to January, 1969 that job would have been?

9 A No.

11:52 10 Q Do you recall if it was before or after?

11 A I would think it would have been before.

12 Q And in January of 1969 do you recall if you were
13 employed?

14 A I think I was.

11:52 15 Q Would that have been at the Husky House restaurant
16 or would that have been somewhere else?

17 A No, I was working downtown I think.

18 Q Do you recall the type of work that you were
19 doing?

11:52 20 A Waitressing.

21 Q Waitressing. And after January -- excuse me.
22 After January of 1969 did you continue
23 waitressing?

24 A I'm not sure.

11:52 25 Q Do you recall the next job that you had after



1 January of 1969?

2 A I think I got a job at Fellingner's Meat Market.

3 Q While you were in school at Miller High School, do
4 you recall any of your other activities other than
11:53 5 going to school in terms of athletic activities or
6 music, art?

7 A No.

8 Q None of that?

9 A No.

11:53 10 Q Do you recall how you spent your summers while you
11 were in school, the summer holiday portion of the
12 year?

13 A No.

14 Q Did you spend that time generally with your
11:53 15 parents or were you --

16 A We didn't have a whole lot of money, so I would
17 assume it was just staying at home.

18 Q And prior to January of 1969 do you recall where
19 in Regina you were living?

11:53 20 A No.

21 Q Would that have been with your parents?

22 A Probably.

23 Q You don't recall the specific address though?

24 A No.

11:54 25 Q After this trip that took place with David



1 Milgaard in January of 1969, you returned to
2 Regina?

3 A Yeah, I believe so.

4 Q And that was when you went to live with Barb
5 Berard?

6 A Sometime. I'm not sure when.

7 Q Do you recall if that would have been immediately
8 upon your return to Regina?

9 A I'm not sure.

10 Q Do you recall where you lived other than with Barb
11 Berard after you returned to Regina?

12 A I think I moved with my parents after that.

13 Q About how long did you live with your parents
14 after that?

15 A I'm not sure. I got married in April of '70, so
16 up to that point I would believe.

17 Q And in April of '70 then did you leave Regina or
18 did you remain there?

19 A Remained there.

20 Q And do you recall the address where you lived
21 after you were married?

22 A No.

23 Q You've had the opportunity to review the March
24 11th, 1969 statement as well as the May 24th, 1969
25 statement; correct?



1 A Correct.

2 Q And you've reviewed those things several times I
3 take it?

4 A Yeah.

11:55 5 Q Would you agree with me that the March 11th, 1969
6 statement, and I think you've told this to Mr. Fox
7 just a few minutes ago, appears to have a lot less
8 detail in it than the May statement?

9 A Correct.

11:55 10 Q When you look at the March 11th, 1969 statement,
11 does it convey to you the impression that you are
12 trying to provide an alibi?

13 A I never thought about it.

14 Q Okay. Looking at the contents of both of those
11:56 15 statements, and I appreciate that you don't recall
16 specifically the events surrounding the
17 statements, but what you do recall is certain
18 feelings that you have about the incidents of
19 January, 1969 and subsequent events. Do the
11:56 20 statements, when you look at them, convey any
21 feeling to you about what you were sensing at the
22 time in terms of concern about being a suspect,
23 for example?

24 A No.

11:56 25 Q Did you ever -- or have you ever had the



1 impression that there was some concern in your
2 mind that you were a suspect?

3 A I'm not sure.

4 Q One of the reasons, I suppose, that you've
11:56 5 indicated that there are these gaps in your memory
6 you believe is that stress caused the gaps to
7 occur?

8 A Yes.

9 Q There were stressors present from January 31st,
11:57 10 1969 throughout the course of the investigation in
11 the subsequent months?

12 A One would tend to think so, yes.

13 Q Stressors in your life is what I mean.

14 A I'm not sure.

11:57 15 Q The investigation itself, the fact that the police
16 were talking to you I would assume was something
17 you found stressful?

18 A You would think so, yes.

19 Q And I don't want to get too personal with you, but
11:57 20 do you recall any sense of fear not only in
21 relation to the investigation, but fear in
22 relation to specifically your father at that time?

23 A I'm not sure.

24 Q I want to ask you as well about some of your
11:58 25 testimony from Larry Fisher's trial, specifically



1 document 310373 I believe, if we could bring that
2 up, if I have the correct number. Thank you.
3 This is the examination by Mr. Beresh who was
4 counsel for Larry Fisher at the time, and if you
11:58 5 could just go to page 310388, please. You recall
6 discussing at the Larry Fisher trial the makeup
7 bag that you found in the vehicle after leaving
8 Saskatoon?

9 A No.

11:59 10 Q You don't recall being asked questions about that
11 at the trial?

12 A No.

13 Q I'm just going to read you some of the questions
14 and answers. You were asked by Mr. Beresh:

11:59 15 "Q Do you recall the contents?"

16 You said:

17 "A Face makeup.

18 Q Do you recall anything else in it?

19 A I believe there was a piece of ID in
11:59 20 it.

21 Q What kind of ID?

22 A I'm not sure what it was, but it had a
23 picture on it.

24 Q Yes. Do you remember whose picture?

11:59 25 A No, I don't.



1 Q Male or female?

2 A I believe it was female.

3 Q Okay. Do you remember any of the
4 details of that, please?

11:59 5 A No."

6 Do you recall being questioned about that
7 particular issue at the Larry Fisher trial?

8 A No.

9 Q Do you have any recollection, today, of any piece
12:00 10 of ID that you may have seen?

11 A No.

12 Q All right. Thank you very much.

13 A Thank you.

14 COMMISSIONER MacCALLUM: Mr. McLachlin?

12:00 15 **BY MR. McLACHLIN:**

16 Q Good morning, Ms. John. My name is Stephen
17 McLachlin and I'm a lawyer with the Federal
18 Department of Justice.

19 And I think it's fair to
12:00 20 explain, Mr. Commissioner, to the witness that --
21 just to remind her that David Milgaard made two
22 applications to the Minister of Justice for Canada
23 for a review of his conviction for murder, and the
24 first of those was dated December the 28th, 1989.
12:01 25 And the questions that I am going to ask you



1 about, Ms. John, flowed from that application that
2 David Milgaard made to the Federal Minister of
3 Justice, and when she received that application
4 she asked her staff to do various things, and that
12:01 5 included some work done by a gentleman by the name
6 of Mr. Eugene Williams. And my questions for you
7 this morning, Ms. John, will be restricted to
8 asking you to remember as best you can, and talk
9 about your dealings with Mr. Eugene Williams, and
12:01 10 the people that he introduced you to; namely Dr.
11 Lee Pulos, Dr. Russel Fleming, Professor Campbell
12 Perry, and Dr. Martin Orne.

13 First of all, Mr. Eugene
14 Williams, he is somebody whom you do recall?

12:02 15 A I -- from the video that I saw, I now know what he
16 looks like.

17 Q Yes. What does he look like?

18 A For lack of better words, he is a black man.

19 Q He is a person of African origin?

12:02 20 A Yes.

21 Q Yes. And you saw him at the tail end of the
22 video, of the session that you had in
23 Philadelphia, with Dr. Martin Orne; am I right?

24 A Umm, yeah, I think so.

12:02 25 Q Yes. He walked in and sat down at the end of that



1 tape; is that -- does that sound right?

2 A I remember that, yeah.

3 Q Okay. Now when Mr. Williams first contacted you,
4 that would have been in the fall of 1989, I
12:02 5 understand that you were living in Kelowna,
6 British Columbia; is that correct?

7 A I still live in Kelowna.

8 Q Yes. And back in November of 1989, when he
9 contacted you, you were in Kelowna?

12:03 10 A In '89 I was in Kelowna, yeah.

11 Q Right. Now if you could just call up just the
12 front page of document 125206, please. Now could
13 you just enlarge, please, the initial section at
14 the top where the parties are described.

12:03 15 Ms. John, the document that I am
16 showing you appears to be a transcript of your
17 meeting with Eugene Williams and there appear to
18 be four people there: Mr. Williams, a Sergeant
19 Tidsbury, yourself, and a gentleman by the name of
12:04 20 Dale Miller; do you remember those four of you
21 meeting together?

22 A No.

23 Q Okay. You remember that Mr. Williams agreed to
24 come to Kelowna to meet you rather than you having
12:04 25 to travel to Ottawa to meet him?



1 A I'm not sure what the circumstances were.

2 Q Okay. Now when -- you do remember meeting
3 Mr. Williams, however?

4 A Umm, kinda.

12:04 5 Q Okay. Now at the time that you -- at the time, in
6 the fall of 1989, I understand that you had a
7 gentleman companion by the name of Dale Miller?

8 A Yes.

9 Q All right. Just a very basic question: Mr. Dale
12:04 10 Miller has absolutely no relation whatsoever to
11 the murder victim, Gail Miller; is that right?

12 A I don't believe so.

13 Q Okay. Do you remember telling Mr. Williams that
14 you would like to bring your companion, Mr. Dale
12:04 15 Miller, with you to a meeting sort of as a
16 security blanket?

17 A No.

18 Q Okay. Do you remember Sergeant Tidsbury being at
19 the meeting?

12:05 20 A No.

21 Q Okay. When you dealt with Mr. Williams, do you
22 remember that he was open to hearing what you had
23 to say?

24 A I remember him as being a very kind, gentle man.

12:05 25 Q Was he very professional and courteous in his



1 dealings with you?

2 A Umm, I think he was, yeah.

3 Q And he was genuinely interested in hearing what
4 you had to say?

12:05 5 A I think that was his persona, yes.

6 Q And he was asking you to remember, as best you
7 could, about the events of January 1969?

8 A I don't know.

9 Q Okay. And you wanted to help Mr. Williams as best
12:06 10 you could?

11 A Umm, I don't see why not.

12 Q Okay. And did you realize that it was important
13 to try your best to remember what you could or, if
14 you couldn't remember anything, to clarify the
12:06 15 fact that you couldn't remember anything?

16 A Yeah, that's the way it should be done, yes.

17 Q Okay. And your meeting with Mr. Williams and
18 Sergeant Tidsbury that was a voluntary -- you
19 don't remember being served with any subpoenas
12:06 20 forcing you to attend the meetings with those
21 gentleman?

22 A I'm not sure.

23 Q Okay. If I told you it was voluntary you would
24 have no reason to disagree with me?

12:06 25 A That's right.



1 Q Okay. Now, as well, you, last week, had the
2 opportunity to have your memory refreshed about
3 your dealings with a Dr. Lee Pulos?

4 A Uh-huh.

12:06 5 Q You remember watching the tape last week?

6 A Yes.

7 Q And you didn't just go in to see Dr. Pulos cold,
8 it was Mr. Eugene Williams who asked you if you
9 would be willing to go and see Dr. Pulos?

12:07 10 A I'm not sure if he asked me or not, but I ended up
11 attending on Dr. Pulos, so --

12 Q Okay. Do you remember if you signed a consent
13 form before you went in to see Dr. Pulos?

14 A I'm not sure.

12:07 15 Q Okay. And that meeting with Dr. Pulos, you didn't
16 go there alone, you had your mother with you and
17 Mr. Eugene Williams went to that meeting with Dr.
18 Pulos with you?

19 A I'm not sure.

12:07 20 Q Okay. Again, if I told you that your mother was
21 there with you and Mr. Williams was there with
22 you, would you disagree with me?

23 A No, I wouldn't disagree.

24 Q Okay. And that meeting was in Vancouver at Dr.
12:07 25 Pulos' office?



1 A I think so.

2 Q Okay. Do you remember that when the folks got to
3 the meeting with Dr. Pulos, Dr. Pulos sent your
4 mother and Eugene Williams away, and that wasn't
12:08 5 what everybody was expecting would happen?

6 A I don't know.

7 Q Okay. Now the idea of going to see a hypnotist is
8 not something you -- a person does every day, but
9 this wasn't a completely strange idea to you, was
12:08 10 it, Ms. John? The idea of going to see a
11 hypnotist and having -- undergoing a procedure
12 that might help to refresh your memory was
13 something that had been put to you before in your
14 conversation in 1981 with Mrs. Milgaard; right?

12:08 15 A Obviously, yes.

16 Q Okay. Now, after you were finished with the
17 meeting with Dr. Pulos, do you remember
18 Mr. Williams, himself, expressing some misgivings
19 or concerns about the way that interview with Dr.
12:08 20 Pulos went?

21 A I have no memory of that.

22 Q Okay. Yesterday you said that you believed -- or
23 sorry, not yesterday -- last week when you were,
24 or after you had watched the tape, I believe you
12:09 25 testified that you thought you probably were not



1 hypnotized by that interview with Dr. Pulos?

2 A I would agree with that.

3 Q Okay. And you remember Mr. Williams also
4 expressing some concerns?

12:09 5 A No.

6 Q Okay. Did you, did you con -- you spoke your
7 concerns to Mr. Williams when you had them?

8 A I'm not sure.

9 Q Do you remember discussing your impressions of Dr.
12:09 10 Pulos, at all, with Eugene Williams?

11 A No, I don't.

12 Q Okay. Now would you just put up document 031224,
13 it should be the report about the interview with
14 Dr. Russel Fleming, if you could just enlarge the
12:10 15 first paragraph. Now, Ms. John, last week you did
16 testify that you thought you went to see a doctor
17 in a bit of a jail-like setting, and that's
18 something you had a memory of last week?

19 A Yeah.

12:10 20 Q Right. That was Dr. Russel Fleming; correct?

21 A Is that, I'm not sure, is that who it was?

22 Q I'm certain that it was. Dr. Russel Fleming works
23 at the Penetanguishene hospital, which is a secure
24 jail-like facility, --

12:10 25 A Okay.



1 Q -- he is there to this very day. Do you remember
2 going about an hour and a half north of Toronto in
3 order to see that doctor in the jail?

4 A I remember being in a car going somewhere, but I'm
12:11 5 not sure when or where it was.

6 Q Okay. But that was after touching down at the
7 Toronto airport?

8 A Yeah, I'm not sure.

9 Q Okay. Did anybody go with you to see that doctor
12:11 10 in the jail?

11 A I'm not sure.

12 Q Was it a Mr. -- Mr. Eugene Williams?

13 A Possibly.

14 Q All right. Any family members go with you?

12:11 15 A I'm not sure.

16 Q Okay. Do you remember if you signed a consent
17 form to be examined by Dr. Russel Fleming?

18 A I don't remember.

19 Q Okay. Now you had a much more favourable
12:11 20 impression of Dr. Fleming than Dr. Pulos?

21 A Pardon me? I'm sorry?

22 Q You didn't particularly care for Dr. Pulos, I know
23 that.

24 A Yeah, that's what strikes in my mind.

12:12 25 Q And what about Dr. Fleming in comparison to Dr.



1 Pulos; any comparisons?

2 A I don't know. I don't even recall what he looks
3 like.

4 Q Okay. So you can't have an unfavourable or a
5 favourable impression of him?

6 A Correct.

7 Q Okay. Now on November the 15th, 1991, I believe
8 you had an interview with Professor Campbell Perry
9 at the Delta Hotel in Ottawa; is that right?

10 A I'm not sure. Sorry.

11 Q All right.

12 A I -- was that -- was that a tape thing that we saw
13 last week?

14 Q No, we'll get to the tape in just a minute.

15 A Okay.

16 Q Perhaps we could just put up document 031234, and
17 I believe that's 031234, which is the report from
18 Dr. -- Professor Campbell Perry, and if you
19 wouldn't mind just blowing up the first paragraph.
20 Ms. John, this document indicates that Professor
21 Campbell Perry interviewed you at the Delta Hotel
22 in Ottawa, now does that sound right?

23 A Umm, I briefly recall being in a hotel in a room
24 high up, I remember that, but I don't know if it
25 was the Delta or if it was meeting with this



1 doctor.

2 Q Okay. All right. Could we go down to the next
3 paragraph of this document. Now this paragraph
4 indicates that, additionally, Mr. Eugene Williams
12:13 5 was present along with a technician; do you
6 remember Mr. Williams and a technician being
7 present for that interview?

8 A No.

9 Q All right. Did you take away any impressions of
12:14 10 Professor Campbell Perry as being a nice man or
11 something like that?

12 A No.

13 Q All right. Do you remember anything about Mr.
14 Williams offering to leave the room while
12:14 15 Professor Perry did his work?

16 A No.

17 Q Okay. And did you take away any impression of
18 Professor Perry of any sort?

19 A No.

12:14 20 Q Okay. The last thing I want to ask you about is
21 your meeting in January 10th of 1992 with Dr.
22 Martin Orne in Philadelphia. He was the second
23 tape that we watched last week, the much longer
24 one with the older, black gentleman working with
12:15 25 you. You remember Dr. Orne?



1 A Just from the video.

2 Q All right. And do you remember the trip down to
3 Philadelphia?

4 A Not really.

12:15 5 Q Okay. Any family members go with you?

6 A Umm, I don't think so.

7 Q Okay. Now you saw, at the end of the tape, Mr.
8 Williams come into the room and sit down, so you
9 would agree with me that he obviously went to
12:15 10 Philadelphia with you?

11 A Yes.

12 Q All right. Do you remember that Professor
13 Campbell Perry also went to Philadelphia with you?

14 A Umm, no.

12:15 15 Q Okay. Now in comparison with Dr. Pulos, I know
16 you didn't get along very well with him, but how
17 did you find Dr. Orne?

18 A From what I saw on the tape he looked like he was
19 a very nice man. He was very gentle. As far as,
12:15 20 you know, remembering my experience with him, no.

21 Q Okay. It was a positive experience; no reason to
22 disagree with me?

23 A I would agree with you.

24 Q Okay. Now, ma'am, I understand that this work
12:16 25 that you did with Mr. Williams resulted in you



1 receiving some reimbursement of your out-of-pocket
2 expenses for things like travelling, lodging, and
3 meals; do you remember that, not the details but,
4 in general, that you were entitled to get some
12:16 5 reimbursement for those things?

6 A I didn't pay for them, I know that.

7 Q I see. Someone else looked after those for you?

8 A Yes.

9 Q Okay. And what about lost wages? Last week you
12:16 10 testified that you received \$125 a day and I'm
11 asking you to confirm, today, that that was for
12 every day of work that you had to miss?

13 A I would think so, yes.

14 Q Okay. And, apart from having your expenses paid
12:16 15 for by someone else and getting those wage
16 replacement monies of \$125 a day, I'm asking you
17 to confirm that you didn't receive any other
18 rewards?

19 A Not that I am aware of.

12:17 20 Q Okay. You didn't get any gifts or anything for
21 doing this work with Mr. Williams?

22 A No.

23 Q Okay. Thank you very much, Ms. John, those are
24 all my questions.

12:17 25 A Thank you.



1 COMMISSIONER MacCALLUM: Thanks,
2 Mr. McLachlin. Mr. Gibson?

3 MR. GIBSON: Nothing, thank you.

4 COMMISSIONER MacCALLUM: Okay. And --

12:17 5 MR. HODSON: Mr. Commissioner, I think the
6 next one was Mr. Bottos, who is arriving this
7 afternoon. Mr. Chivers is here this morning, he
8 doesn't think Mr. Bottos has questions. After
9 that is Mr. Lockyer and Mr. Wolch, and Mr. Wolch
12:17 10 advises me that his cross-examination is prepared
11 such to follow Mr. Lockyer's; is that right?

12 What I am getting at is I am
13 wondering if we should adjourn until 2:00 for
14 Mr. Bottos, to see if he has any questions, and
12:18 15 then Mr. Lockyer will be --

16 MR. WOLCH: Mr. Lockyer is here right now.

17 MR. HODSON: Mr. Lockyer, you're up at the
18 stand here. Sorry, I'm not sure where -- I was
19 going to suggest we maybe adjourn until 2:00;
12:18 20 does that --

21 COMMISSIONER MacCALLUM: 2:00.

22 MR. HODSON: 2:00? Thank you.

23 *(Adjourned at 12:18 p.m.)*

24 *(Reconvened at 2:00 p.m.)*

02:00 25 **BY MR. LOCKYER:**



1 Q Thank you. Ms. John, I want to start off with
2 something that Commission Counsel already read to
3 you from the interview that you had with
4 Mrs. Milgaard on May the 9th of 1981; do you
02:00 5 remember, parts of that interview were read to you
6 last week?

7 A Yes.

8 COMMISSIONER MacCALLUM: Excuse me, this is
9 Mr. Lockyer, the lawyer for David Milgaard.

02:01 10 A I was going to ask who he was.

11 BY MR. LOCKYER:

12 Q Okay, I'm sitting next to Mrs. Milgaard, I'm
13 representing Mrs. Milgaard, all right, in this
14 Inquiry.

02:01 15 A Okay.

16 Q Okay. And she asked you, in the midst of that
17 interview she said, "So this statement that was
18 read to the Court ...", and this has already been
19 read to you, it's not like I'm reading something
02:01 20 that hasn't already been read out, "So this
21 statement that was read to the Court in that they
22 pointed that you signed on every page and if we
23 look at it logically you would say that probably
24 that statement could have been true," to which you
02:01 25 said, "Yeah, okay, it depends on the circumstances



1 that the statement was made, I'm no dummy, I'm 28
2 years old, if a person is emotionally upset or
3 mentally or under stress or strain, let's face it,
4 you would probably say anything". Do you remember
02:02 5 saying -- or do you remember having that read to
6 you last week, madam?

7 A Yes, I remember that.

8 Q And would that be true today as well, you would
9 say that today, that whether or not you would have
02:02 10 signed something would depend on the circumstances
11 and depend on your emotional condition at the
12 time?

13 A Could you be a little more clear? I'm sorry.

14 Q I'm just asking if you would give the same
02:02 15 answers, today, to a similar question?

16 A Yes.

17 Q You would? And you said, one of the things you
18 said in the midst of that, was, "I'm no dummy",
19 and I want to ask you a little bit about yourself,
02:02 20 because I don't think we've heard much about you
21 in your evidence for the last week, and I'm
22 wondering; are you working at the moment, ma'am?

23 A May I ask what the relevance is, to this hearing,
24 about what my personal being is?

02:02 25 Q Well, you don't ask me questions, I ask you



1 questions.

2 A Okay.

3 COMMISSIONER MacCALLUM: You can answer the
4 question of whether you are working, ma'am,
02:02 5 please.

6 A Okay. Yes, I am.

7 BY MR. LOCKYER:

8 Q And what field of work are you in, ma'am?

9 A Legal field.

02:03 10 Q And how long have you -- so you work in a law
11 office; is that right?

12 A Yes.

13 Q And how long have you been working in a law
14 office?

02:03 15 A Ten years.

16 Q Uh-huh. And is that full-time?

17 A Yes.

18 Q And I know you have been married, you told us you
19 divorced, --

02:03 20 A Yes.

21 Q -- so you have certainly been married at least
22 once; is that right?

23 A Yes.

24 Q And I think you mentioned, at some point, you had
02:03 25 children; is that right, ma'am?



1 A Yes.

2 Q And they are presumably, what, in their twenties
3 now?

4 A They are older.

02:03 5 Q Uh-huh. So when you made that statement at the
6 age of 28, "I'm no dummy", presumably that would
7 be equally true today, you are an intelligent,
8 reasonably educated lady; is that right?

9 A I believe so.

02:03 10 Q Because, as I listened to you last week, there
11 were times that I think you were suggesting, for
12 example at one point in your evidence last week,
13 that you have never really realized why what you
14 -- the document that you signed on May the 24th of
02:04 15 1969 was significant, and I must confess I have an
16 awful lot of trouble understanding how anyone
17 could not realize how that document is
18 significant?

19 A Could you repeat that? I'm sorry, you lost me.

02:04 20 Q Yes. Do you -- you lead -- you did say last week,
21 at one point, that you didn't realize how the May
22 24th, 1969 document that you signed --

23 A Uh-huh.

24 Q -- the statement, --

02:04 25 A Uh-huh.



1 Q -- was significant?

2 A I believe it's significant.

3 Q Obviously it is.

4 A Yes.

02:04 5 Q If that document that you signed, if the contents
6 of it were true, then David Milgaard would have
7 been the murderer of Gail Miller; right? You
8 actually saw him doing it is what you signed;
9 correct?

02:05 10 A If that's what the statement says, yes.

11 Q Yes. So you have known, then, for all these years
12 -- and I'm not surprised to hear it -- that you
13 know why everyone is so interested in the document
14 that you signed on May the 24th of 1969; is that
15 right?

16 A Yes.

17 Q Yes. And you know that for certainly up until
18 1992, and even arguably now, people have been
19 trying to persuade you or get you to say or trying
02:05 20 to get out of you that you will affirm, today,
21 what you signed back then; right?

22 A I would believe so, yes.

23 Q Yes. So for example when you testified in 1992 in
24 the Supreme Court of Canada, you knew very well
02:06 25 that some of the people there who were questioning



1 you, particularly a Mr. Neufeld, wanted you to say
2 that what was in that document of May 24th, 1969
3 was true?

4 A I believe so, yes.

02:06 5 Q Yes. You understood that that's what they wanted
6 you to say?

7 A Well, I can't remember being there, but I'm
8 assuming that's correct.

9 Q Right. And you know that that's what they wanted
02:06 10 you to say at the preliminary hearing in 1969?

11 A I'm assuming that, yes.

12 Q You know that's what they wanted you to say at the
13 trial in 1970?

14 A I assume that.

02:06 15 Q You know that's what Mr. Williams wanted you to
16 say when he questioned you in 1991?

17 A Hmm, I'm not sure what the purpose of my meetings
18 with Mr. Williams were, so I can't comment on
19 that.

02:06 20 Q Well he certainly didn't give you the impression
21 that he was there questioning you on David
22 Milgaard's behalf; did he?

23 A No, --

24 Q No, I didn't think.

02:07 25 A -- I don't believe so.



1 Q And, as well, did you not get the same idea when
2 you were questioned by the RCMP in 1993, Templeton
3 and I forget the name of the other chap who
4 interviewed you?

02:07 5 A My understanding was, of all the questioning, is
6 that they were trying to prod me for something
7 that I didn't have.

8 Q Hmm. They were trying to prod you --

9 A Right.

02:07 10 Q -- to repeat and say what was in that statement
11 was true?

12 A Well not even, not so much that, but just
13 everything.

14 Q I don't know what that means?

02:07 15 A I have forgotten so many things with respect to
16 that matter that I thought that they were trying
17 to help me remember things.

18 Q Well if you take --

19 A That was my assumption. I'm sorry.

02:07 20 Q I mean if you take the hypnosis sessions, and
21 particularly the first one with a chap whose name
22 escapes me but you know the one I mean, the one
23 that was -- what was his name?

24 MR. HODSON: Pulos.

02:08 25 BY MR. LOCKYER:



1 Q Pulos, yes. You remember that?

2 A Yes.

3 Q You watched it last week?

4 A Yes.

02:08 5 Q Yeah. And when he was questioning you, supposedly
6 under hypnosis, he didn't seem too -- the thing he
7 was interested in was to try and have you repeat
8 to him what it was you, quote, "saw" on January
9 31st, 1969; isn't that right?

02:08 10 A Yeah, it looked like it.

11 Q Yeah. I mean he wasn't too interested in how it
12 was you came -- in fact he didn't show any
13 interest in how it was you came to say -- or I'll
14 start again. He didn't show any interest in
02:08 15 trying to see how you came to sign that document
16 on May the 24th of 1969; did he?

17 A Didn't look like it, no.

18 Q No. He was just interested in you, seeing if you
19 would repeat and affirm its truth, --

02:08 20 A Looked like he was.

21 Q -- what was in it? And that's what they were
22 doing to you for years, wasn't it, --

23 A I'm not sure.

24 Q -- when people were questioning you?

02:09 25 A I am not sure what their motives were, sir, I



1 can't --

2 Q Well, it's common sense, isn't it? The prosecutor
3 who is prosecuting David Milgaard is looking for
4 you to repeat that you saw him killing Gail
02:09 5 Miller, I mean that's common sense, isn't it?

6 A Yes, common sense would dictate I guess, yeah.

7 Q Yeah. And, as you said to Mrs. Milgaard, "I'm no
8 dummy"; right?

9 A Right.

02:09 10 Q So "I'm no dummy" means you have got some common
11 sense; right, ma'am?

12 A Right.

13 Q And presumably, through all these years when you
14 sat there being questioned, you have applied your
02:09 15 common sense to the situation at hand; am I right?

16 A I would think so, yes.

17 Q Yes, same here. And no one really, particularly
18 from the prosecution side and arguably not even
19 from Mr. Milgaard's side, at least at the trial,
02:09 20 showed any interest, really, in your original
21 statement to the police, did they, your March 11th
22 statement?

23 A I'm not sure, sir.

24 Q I mean if you remember -- well, certainly from
02:10 25 what was read to you last week from your evidence



1 at Mr. Milgaard's trial in 1970, there was no
2 mention of your statement on March the 11th of
3 1969; was there?

4 A Umm, I'm not sure, I don't recall that part.

02:10 5 Q Well I can tell you, you -- there wasn't.

6 A Okay. I'll agree with that.

7 Q Commission Counsel didn't read anything to you
8 about it, and you can read the whole transcript of
9 your evidence, and it's not mentioned.

02:10 10 A Okay.

11 Q And you remember, you remember the Dr. Fleming who
12 saw you, the chap who was up at Penetang?

13 A I just remember him vaguely.

14 Q No, it was shown to you last week; do you
02:10 15 remember, --

16 A Yes.

17 Q -- when he was -- you were questioned about your
18 encounter with him?

19 A Yes.

02:10 20 Q And do you remember one of the things he said in
21 his report was that he had got this full briefing
22 but, oddly enough, he had never got your March
23 11th statement from the prosecution when they
24 briefed him? He seemed to have everything except
02:11 25 the first statement that you gave the police?



1 A I think he, I think he said that, yes.

2 Q He said it would be interesting to see what it
3 said, do you remember that, or words to that
4 effect? I'm not quoting.

02:11 5 A Yeah, something along those lines.

6 Q Uh-huh.

7 A Yeah.

8 Q And I want to look for a moment at your -- the
9 document that you signed on May the 24th.

02:11 10 You will notice I keep calling
11 it "the document that you signed", I'm not
12 suggesting it's what you said, and I'm going to
13 keep calling it that, "the document that you
14 signed".

02:11 15 And I want to go, I have sort of
16 isolated seven items in there, none of which were
17 in your March 11th statement which was read to
18 you, do you remember the first statement that
19 Commission Counsel read to you last week?

02:11 20 A Yeah, kind of.

21 Q And these are the seven items that suddenly appear
22 in this document you signed on May the 24th, each
23 and every one of which is, in some way or another,
24 potentially incriminating to David. All right?

02:12 25 So I'm going to take you through and, at the same



1 time, take you through what you did with each of
2 those seven items when you came to testify at the
3 preliminary hearing against David and at the trial
4 against David on behalf of the prosecution.

02:12 5 A Okay.

6 Q Okay. And I'm trying to do them in some kind of
7 chronological order. If we imagine -- because
8 that's really what we're doing is we're imagining
9 that these events actually happened, --

02:12 10 A Okay.

11 Q -- all right, so let's imagine them as if they
12 would have happened in a story in a chronological
13 order.

14 A Okay.

02:12 15 Q Okay? The first one is you said that on the way
16 to Saskatoon from Regina you stopped, or the
17 driver stopped -- and I think the driver was
18 Wilson, according to you -- and David went into an
19 elevator and he came out, stole, if you like, a
02:13 20 torch and a knife. And I want to focus only on
21 the knife aspect of this. You remember that that
22 was in your March -- the document you signed on
23 May 24th?

24 A Yeah, I think I remember it being in there, yes.

02:13 25 Q Certainly nothing about it, about him stealing a



1 knife in your March 11th statement, was there?

2 A I can't remember what the statement said, I'm
3 sorry.

4 Q The first one that you gave.

02:13 5 A Yeah.

6 Q Right?

7 A Well it would be easier if it was up in my face
8 and I could say "yes, it's there".

9 Q Well do you remember that -- I'm going to do that
02:13 10 in due course, --

11 A Okay.

12 Q -- it's a bit time-consuming if I do it now as
13 well.

14 A Okay.

02:13 15 Q Do you remember Commission Counsel last week, it
16 was really the -- sort of almost where he started
17 with you, he took you through your March 11th
18 statement?

19 A Yes.

20 Q Remember?

21 A Yes.

22 Q Okay. And your March 11th statement, if you read
23 it, it was a statement of an innocent trip from
24 Regina to Saskatoon where nothing untoward
02:14 25 happened on the way to Saskatoon, in Saskatoon, or



1 after you left Saskatoon?

2 A Okay.

3 Q It was just a trip that, first of all, three of
4 you were making to Saskatoon, then you picked up a
02:14 5 fourth person and went on your way from there to
6 Calgary, Edmonton, B.C.; remember?

7 A Yeah.

8 Q Remember that?

9 A Yeah.

02:14 10 Q Okay. Nothing about David stealing a knife from
11 an elevator?

12 A Okay.

13 Q Right?

14 A Yes.

02:14 15 Q And then, when you came to testify subsequently at
16 the preliminary hearing and at the trial in 1969
17 and 1970, you testified that you recalled David
18 stealing a knife from the elevator; do you
19 remember that? It was put to you by counsel.

02:14 20 A Yes.

21 Q Yes. And kind of interesting, madam, because the
22 owner of the elevator was interviewed by the
23 police and said no knife was stolen. So you seem
24 to have remembered a non-existent fact; do you
02:15 25 know how you did that?



1 A No.

2 Q That's the first of the seven from the May 24th
3 document that you signed, all right?

4 A Okay.

02:15 5 Q The second of the seven in my seven points, if you
6 will, is you said -- you didn't say, I'm sorry, in
7 the May 24th document that you signed it said that
8 on the way from Regina to Saskatoon David talked
9 about the idea of doing a purse snatch. Do you
02:16 10 remember that being in the statement?

11 A Yes.

12 Q In the document. Yes, okay. Nothing about that
13 March 11th; right?

14 A Correct.

02:16 15 Q Right. What does that mean, you've forgotten it?
16 I don't know where we go from there. When you
17 gave your statement on March 11th you forgot this,
18 is that what we assume, or do we just assume that
19 what you said, or the document that you signed is
02:16 20 just rubbish on May 24th?

21 A The way I look at it is that the first statement
22 is like a broad statement and the second statement
23 is much more detailed if I was to examine both of
24 them.

02:16 25 Q The first statement was very long, Madam, it must



1 have taken quite a while to give, it goes over
2 several pages. It's actually twice as long as the
3 document that you signed on May the 24th. It's
4 longer, it's not shorter.

02:16 5 A Okay.

6 Q So that doesn't sound like a very reasonable
7 explanation.

8 A Well, I'm saying that it's broader statements,
9 it's more generalized.

02:17 10 Q We'll go through it in detail. I'll be interested
11 to see how you can call it generalized when we go
12 through it, it's quite meticulous as to what you
13 do from time to time after you've left Regina,
14 come to Saskatoon and moved on from there.

02:17 15 A Okay.

16 Q But we'll be going through it. In any event, that
17 idea that David talked about the idea of doing a
18 purse snatch in the document that you signed on
19 May the 24th you repeated according to what you
02:17 20 said was your memory at the preliminary hearing
21 and the trial. Do you remember that?

22 A I'm sorry, what was your question?

23 Q I say the idea of the -- that was in the May 24th
24 document that you signed, that David talked about
02:17 25 let's do a purse snatch, at some point you then



1 repeated as something that you remembered when you
2 testified at the preliminary hearing and at
3 David's trial? It was read to you last week by
4 Commission Counsel.

02:18 5 A Umm, I was read a lot, sir.

6 Q I can't hear you.

7 A I said I was read a lot, sir, and I'm trying to
8 remember what was read to me.

9 Q Well, if we go to --

02:18 10 A I'm sorry.

11 Q Why don't we have a look at the preliminary
12 hearing for a moment.

13 A Okay.

14 Q Just a page of it. 030692 moving to 030697. And
02:18 15 look just there, Madam. This is the preliminary
16 hearing:

17 "And on the way to Saskatoon --"

18 This is the Crown questioning you in 1969,

19 "-- was there any discussion on what
02:19 20 would or might take place in Saskatoon,
21 among the three of you?

22 A Yes.

23 Q Where - how did this arise?

24 A Just by normal talking.

02:19 25 Q And what was said?



1 A A few things were said about purse
2 snatching and another things.

3 COURT: About which?

4 A Purse snatching."

02:19 5 Do you remember that, ma'am.

6 A I'm reading it here, yes.

7 Q And just so you know, Madam, really for your
8 information, this then became, this notion of a
9 purse snatch and that David talked about the idea
02:19 10 became the basis upon which the police theory
11 revolved as to why David attacked Gail Miller. Do
12 you understand that?

13 A Okay.

14 Q They said their whole theory then became that
02:19 15 David attacked Gail -- I say then, it may have
16 been before this, but Mr. Wolch will ask you about
17 that -- but certainly subsequent to what you said,
18 if not before as well, but subsequent to it the
19 police then developed a theory that the reason
02:20 20 David attacked Gail Miller in the first place was
21 to snatch her purse and then while doing it raped
22 her and stabbed her to death. Did you know that?

23 A No.

24 Q So you see how that document that you signed on
02:20 25 May the 24th, 1969, just that one little aspect of



1 it, acquired an enormous significance? Do you see
2 that?

3 A Yes.

4 Q Yeah. The third of the seven items was that you
02:20 5 talked to a girl, and I stress the word girl, in
6 the area where you said Mackie had -- sorry, I'll
7 do it again. In the document that you signed it
8 said that you talked to a girl in the area where
9 Mackie had driven you the previous day. Do you
02:21 10 remember that?

11 A As in this past week discussing this?

12 Q Yes. In other words, on May 24th, the May 24th
13 document that you signed, you spoke of talking to
14 a girl while you were with David and Wilson and
02:21 15 you talked to her in the area where Mackie had
16 been driving you around on May the 23rd.

17 A Okay.

18 Q Do you remember that?

19 A Yes.

02:21 20 Q Yes. And you also remembered that after speaking
21 to the girl, David then said "the stupid bitch."
22 Do you remember that being in the May 24th
23 document?

24 A Yes.

02:21 25 Q Yes. Something that was nowhere in March 11th of



1 course; right?

2 A Right.

3 Q And at trial you not only adopted that claim that
4 appeared in the May 24th document you signed, but
02:22 5 indeed you supplemented it if you remember from
6 last week by describing the coat that this girl
7 was wearing. Do you remember that?

8 A Yes, I remember that.

9 Q Yes. You described it as a dark coat like a cape
02:22 10 flowing at the bottom. That's what you said in
11 your trial evidence. Do you remember that?

12 A Yeah, I remember reading it this past week, yes.

13 Q Yes. Which gives you a vision, talking of visions
14 which we've heard a little bit about in the last
02:22 15 few days, of a nurse in a uniform doesn't it?

16 A Yeah, I guess so.

17 Q Yeah, it sure does, and low and behold, Gail
18 Miller was a nurse. So you didn't say that on May
19 24th, but somehow you are now remembering what
02:22 20 this woman or girl was wearing when you come to
21 testify at the trial, that she's wearing a dark
22 coat like a cape flowing at the bottom.
23 Extraordinary memory don't you think, Madam, the
24 way it is developed as you go along from 1969 into
02:23 25 1970?



1 A I guess so.

2 Q Yes. As a matter of common sense, it doesn't make
3 any common sense does it?

4 A I'm sorry, I'm not sure what you are asking me.

02:23 5 Q All right. The fourth of the seven items, you
6 said, and I'm summarizing, I'm not quoting, or you
7 said, the document said that you signed, that the
8 car stopped, that David and Ron both got out, went
9 in different directions and then you saw David
02:24 10 stabbing, or going after and stabbing a woman in
11 the lane way. Do you remember that?

12 A Yes.

13 Q Now, that part of the document you signed you sort
14 of half adopted at trial and at the preliminary
02:24 15 hearing; is that right?

16 A I'm not sure.

17 Q Well, you said at the preliminary hearing and the
18 trial that you got stuck, the car got stuck in
19 other words, and David and Ron headed off in
02:24 20 different directions and then you brought it to a
21 stop right there; right?

22 A Okay.

23 Q Remember?

24 A Not really.

02:24 25 Q Well, that's what you've been doing for, I don't



1 know, I've lost count of the number of years now,
2 1969 to now is 45 (sic) years -- 46 (sic) years,
3 that's what you've been doing for 46 (sic) years,
4 isn't it, purporting to not remember what happened
02:25 5 after that, after they went in different
6 directions; isn't that right?

7 A Yes, sir, because I don't remember what happened.

8 Q Uh-huh. And just as a point of interest, when I
9 talk about the document that you signed, and maybe
02:25 10 it's just a memory flaw of his as well, I don't
11 know, but the man who questioned you, a Detective
12 Mackie, when he testified in 1996, didn't seem to
13 remember you saying what that document said you
14 said about seeing Gail Miller being stabbed or a
02:25 15 woman being stabbed by David. Page 205639 is the
16 first page, Mr. Commissioner, of the examination
17 for discovery of Raymond Mackie on May 1st of 1996
18 as a part of the civil suit brought by David
19 against numerous parties, including Mr. Mackie,
02:26 20 and at 205663, if we can start:

21 "Q So there's no reason based on your --"
22 This is Mackie testifying, not you.

23 "-- at least you are aware that some of
24 the evidence against David Milgaard has
02:26 25 fallen apart to some degree, that is,



1 you're aware that Wilson recanted; are
2 you?

3 A I heard somebody say that once, but a
4 little coercion will do that."

02:27 5 That's sort of an interesting remark, that a
6 little coercion might make someone recant. That
7 arguably could be applied to you between March
8 11th and May 24th, but anyway:

9 "Q And Nichol John, of course -- you have
02:27 10 no evidence that she was coerced by
11 anybody, do you, to recant?

12 A I have no evidence, no.

13 Q You're aware that Nichol John, at the
14 trial, failed to confirm that she told
02:27 15 the police she saw the event, basically?

16 A No, I'm not aware of that.

17 Q You didn't know that she said that at
18 the trial?

19 A No.

02:27 20 Q You thought that -- you were basically
21 dealing with Nichol John, primarily
22 weren't you?

23 A I brought her to Saskatoon and took a
24 statement from her.

02:27 25 Q And she told you that she saw David



1 Milgaard stabbing a woman in the alley
2 where -- or at least, going through the
3 motions of stabbing a woman in the alley
4 where Gail Miller's body was eventually
02:27 5 found; is that correct?

6 A I don't think so.

7 Q She didn't tell you that?

8 A I don't think that's what she told
9 me."

02:27 10 Sort of an interesting series of questions and
11 answers on the part of the man who purports to
12 have taken the statement from you on May the
13 24th, 1969 and to have written down the words
14 that you've said; don't you think?

02:28 15 A Yeah.

16 Q The next item of the seven items that appear in
17 the document that you signed on May the 24th of
18 1969 is that you saw David throw or put, I'm not
19 quite sure if it was put or throw, but whichever
02:28 20 it was it doesn't really matter, a purse in a
21 garbage can. Do you remember that?

22 A In the statement, yeah.

23 Q Yes. Now that, of course, when you think about
24 it, is if indeed you saw him do that at the time
02:28 25 you said you did, or if you indeed saw him do that



1 at the time the document that you signed said you
2 did, which was immediately after the stabbing,
3 then for him to be throwing the purse in the
4 garbage can would be deadly evidence against David
02:29 5 as Gail Miller's murderer; wouldn't you agree?

6 A I would agree.

7 Q So guess what, you didn't adopt that at trial
8 either.

9 A Okay.

02:29 10 Q Did you know that?

11 A No.

12 Q So the two most incriminating items you don't
13 adopt at the preliminary or at trial or indeed
14 really ever since. Did you know that?

02:29 15 A No.

16 Q Okay. But everything else leading up to that you
17 did, all right, the knife in the elevator, the
18 purse snatching idea, the talking to a girl in the
19 area and the stupid bitch comment and the car
02:29 20 stopping and then going in their separate
21 directions you adopted.

22 A Okay.

23 Q But you get to the two items which are really at
24 the core and, if true, meant, without question,
02:30 25 that David murdered Gail Miller, you don't adopt;



1 right?

2 A Right.

3 Q That's how it worked out it seems?

4 A Yes.

02:30 5 Q The sixth item, according to my list of seven, is
6 you said -- or rather the document said of May the
7 24th, 1969 -- that you found a cosmetic case in
8 the glove compartment which David grabbed and
9 threw out the window. Do you remember that being
02:30 10 in that May 24th document?

11 A Yes.

12 Q Now, that idea in itself wouldn't -- if that had
13 actually happened, if it were true, that that
14 wouldn't mean that David had murdered Gail Miller,
02:31 15 would it, necessarily?

16 A Correct.

17 Q Right. But as a matter of common sense, you being
18 no dummy, you presumably would have realized that
19 the prosecution would want the jury to believe
02:31 20 that that cosmetic case was Gail Miller's, you
21 obviously realize that; right?

22 A Now I do, yes.

23 Q Well, you must have realized it then too?

24 A I'm not sure.

02:31 25 Q Well, how could you not, Madam, how could you not



1 as a matter of common sense? I think a 12 year
2 old might have worked that out.

3 A I didn't know whose cosmetic case it was.

4 Q No, I'm not asking you whose it was. I'm putting
02:31 5 to you that you knew only too well that the
6 prosecution were alleging that -- were using that
7 evidence, if you like, to suggest that Gail
8 Miller's cosmetic case had found its way into your
9 car and that's why David tossed it out the window,
02:32 10 you knew that; right?

11 A Well, it turns out I guess that's what they
12 suspected, yes.

13 Q And you knew that right from the beginning didn't
14 you?

02:32 15 A No, I won't -- I will not agree to that, no.

16 Q Well, if you ever read, and you don't even seem
17 clear if you ever did read the May 24th document,
18 I think at one point you actually said you may not
19 have read it, you tend to skim things is what you
02:32 20 said to someone, I think it was Templeton of the
21 RCMP, but I may be wrong, but if we assume for the
22 moment if you ever read it, what else were you
23 trying -- if you did sign something saying that,
24 what else were you trying to infer? What else did
02:32 25 you think anyone would think other than that



1 cosmetic case was Gail Miller's?

2 A I agree with that statement, yes.

3 Q Okay, good. But as you've acknowledged, not
4 incriminating to the extent that in itself it
02:32 5 proves David killed Gail Miller if only because
6 you couldn't place that cosmetic case as belonging
7 to Gail Miller, you never tried to say "and I saw
8 her identification in it," for example, did you?

9 A I'm sorry, could you repeat that?

02:33 10 Q Yeah. You never actually -- you never actually --
11 perhaps I'll go back to the statement. The
12 document that you signed never actually purported
13 to claim that you saw her name in that cosmetic
14 case in the form of identification?

02:33 15 A That's correct.

16 Q Correct?

17 A Yes.

18 Q Just that you saw identification?

19 A Yes.

02:33 20 Q Right. But you never said "and it was Gail
21 Miller's identification"?

22 A Correct.

23 Q Of course, if it had been Gail Miller's
24 identification, then it would have been extremely
02:33 25 incriminating to David; agreed?



1 A Agreed.

2 Q How else would it get in the vehicle unless he
3 brought it there; right?

4 A Correct.

02:33 5 Q Did you know, Madam, were you ever told that Gail
6 Miller's cosmetic bag was found in her purse?

7 A I have no knowledge of that.

8 Q Were you ever told that none of Gail Miller's
9 identification was missing?

02:34 10 A I have no knowledge of that.

11 Q So you've never had to say to yourself how could I
12 remember something that doesn't make any sense?

13 A I'm not sure --

14 Q Unless it was someone else's cosmetic case all
02:34 15 together.

16 A I'm not sure what the question is, sir.

17 Q Well, if Gail Miller, if none of her ID went
18 missing and her cosmetic case was found --

19 A Uh-huh.

02:34 20 Q -- then if what was in that statement was true,
21 that there was a cosmetic case in the glove
22 compartment and David tossed it out the window,
23 then it would have to have been someone else's
24 cosmetic case, which is getting very bizarre?

02:34 25 A That's correct.



1 Q It's getting pretty bizarre, don't you think,
2 Madam?

3 A Yes.

4 Q And interestingly, because it wasn't -- well, I
02:34 5 don't know about because, but bearing in mind that
6 that part of the May 24th document wasn't highly
7 incriminating to David, but was just what you
8 might call peripherally incriminating to David, it
9 required some conclusions to be drawn before it
02:35 10 could incriminate David; do you follow me?

11 A Yes.

12 Q Interestingly enough, you adopted the cosmetic
13 case evidence at the preliminary hearing and
14 trial; right?

02:35 15 A I believe so.

16 Q Indeed, you sort of adopted it all the way
17 through; am I right?

18 A I think so, yes.

19 Q Yes. And then the final, the seventh, what I call
02:35 20 the seventh item that appears in this May 24th
21 document is you saying, according to the document,
22 that when you reached Calgary, Ronald Wilson told
23 you that David had told him he had killed a girl
24 in Saskatoon and that you responded "I know." Do
02:36 25 you remember that?



1 A Was that towards the end of the statement?

2 Q It was. It was right at the end of it actually.

3 A Okay.

4 Q Do you want to go to it?

02:36 5 A Yes, please.

6 Q It's 065356 and going to 065358.

7 "The second time in Calgary we got some
8 marijuana which we all smoked. We all
9 got high. Later in the night of the
02:36 10 same day Ron, Albert and Dave smoke
11 grass again and got real high. Ron was
12 driving crazy with the car and I told
13 him to pull over. He did and I took the
14 keys and ran about a block and then
02:37 15 walked a block. As I stopped I saw Ron
16 following me. We sat on the steps
17 inside an apartment block. Here Ron
18 told me Dave had killed a girl in
19 Saskatoon. I told him "I know." I do
02:37 20 not recall anything further being said
21 about the murder."

22 Do you remember that, Madam?

23 A Yes.

24 Q Now, if that were true, what was in the document
02:37 25 that you signed, this document on May the 24th, it



1 would be highly incriminating to David; right?

2 Directly incriminating?

3 A Yes.

4 Q Presumably he's not going to say he killed a girl
02:37 5 in Saskatoon if he didn't?

6 A Yes.

7 Q And then you say "I know." Well, the "I know"
8 would presumably relate back to your earlier claim
9 in this document, according to this document, that
02:37 10 you had actually seen him stabbing Gail Miller;
11 right?

12 A Yes.

13 Q Right. So surprise, you didn't adopt that at the
14 preliminary hearing or at trial did you?

02:38 15 A I'm not sure.

16 Q I can assure you you didn't.

17 A Okay.

18 Q It's hard to read you something you didn't do
19 without reading you everything you said which
02:38 20 would take a very long time.

21 A I'll agree with you.

22 Q All right, thank you. So when we look at this
23 from some kind of perspective, Ms. John, the
24 document you signed on May the 24th, if its
02:38 25 contents were true, meant that David killed Gail



1 Miller; right?

2 A Correct.

3 Q I've sort of compartmentalized it into seven areas
4 you might say. Perhaps it would have been better
02:38 5 in eight or nine, but I did it in seven areas, and
6 we've seen what you adopted subsequently and
7 purported to continue to "remember" and items that
8 you purported to have forgotten, so to speak;
9 right, or not remember in some way or another?

02:39 10 A Okay.

11 Q And you seem to have adopted, without exception,
12 all the peripheral -- I'm not sure peripheral is a
13 very good word -- but all the items on the edges
14 of incriminating David, but none of the items that
02:39 15 directly incriminate David. Is that right? Do
16 you agree with that?

17 A I'm not quite sure which things you are referring
18 to though.

19 Q Well, you didn't see -- you don't know, when you
02:39 20 testify at the trial, you don't remember the
21 stabbing. When you testify at trial you don't
22 remember Wilson's claim of an admission to him by
23 David. When you testify at the trial you don't
24 remember David putting the purse in the garbage
02:40 25 can. When you testify at the trial you don't



1 remember saying to Wilson "I know" when he told
2 you that David had confessed to him.

3 A Okay.

4 Q Those are the things you don't remember.

02:40 5 A Right.

6 Q And they are all quite deadly if you remembered
7 "any of them"; don't you agree?

8 A Correct.

9 Q But you do remember all the other surrounding
02:40 10 events that are introduced for the first time in
11 this May 24th document, the idea of purse
12 snatching, which subsequently became the police
13 motive for David's murder of Gail; the idea of the
14 stealing of the knife at the elevator; the idea
02:40 15 that he talked to a girl in the area where Mackie
16 had been driving you and that when he came to
17 trial that she was wearing what I might summarize
18 as something that looked like a nurse's uniform;
19 and the idea that the car stopped and Ron and
02:41 20 David walked off in different directions and were
21 away for some period of time. Those are the
22 things you adopted. Not directly incriminating of
23 David, but certainly damaging to David; am I
24 right?

02:41 25 A Correct.



1 Q So there's a clear contrast between what you
2 purport to remember at the trial and what you
3 purport to have no memory of at the trial when
4 compared to the document you signed on May 24th;
02:41 5 right?

6 A Correct.

7 Q Right. And I can't help but wonder, Ms. John, if
8 that wasn't your attempt to back off what you had
9 said on May the 24th because you knew it was a
02:41 10 pack of lies?

11 A Are you asking me --

12 Q And --

13 A Sorry.

14 Q -- at the same time to try and keep the
02:41 15 authorities happy by giving them the edges of what
16 was in that May 24th document. Do you think
17 that's a reasonable proposition?

18 A No.

19 Q Do you think -- stop being Nichol John for a
02:42 20 moment and be a third party to this whole thing.
21 Do you think that that would seem like, to a
22 reasonable person, a fair interpretation of what
23 happened here?

24 A Possibly, yes.

02:42 25 Q Yes. It does, doesn't it?



1 A Yeah.

2 Q I mean, it's hard to sort of, to almost avoid that
3 interpretation isn't it, that on March the 11th,
4 the day was basically hunky-dory, you had a drive,
02:42 5 drove a long way, nothing happened. May 24th,
6 suddenly we got all these extraordinary events
7 that have you witnessing a murder and then when
8 you come to testify months later, preliminary
9 hearing, many months later at trial, you forget
02:42 10 what might be called the core of what's in the May
11 24th document, but you give them the periphery;
12 right?

13 A Correct.

14 Q Yeah. And you told everyone always, and I'm going
02:43 15 to suggest this is really a matter of
16 self-preservation, you always told whatever court
17 or person you've been talking to in the last 45
18 (sic), 46 (sic) years, that everything you told
19 the police and everything you've ever told a court
02:43 20 has always been true; right?

21 A Yes.

22 Q You've always maintained that?

23 A Yes.

24 Q Yes. And do you seriously maintain, Ms. John,
02:43 25 that a reasonable person can claim that what you



1 said on March the 11th, 1969 is true and what you
2 said on May the 24th, or what you signed on May
3 the 24th, 1969, is true as well?

4 A Yes.

02:44 5 Q You do. I mean, just take the last bit of March
6 11th, 178559 going to 178561, this is what you did
7 say -- I'm not calling this a document that you
8 signed, I'm saying it's what you said -- this is
9 March 11th:

02:44 10 "All during the morning we were in
11 Saskatoon, the three of us were together
12 and I am sure that David or Ron never
13 left me for more than one or two minutes
14 that morning. Just yesterday or the day
02:45 15 before, Barb Berard, a friend of mine,
16 told me that David had returned to
17 Regina and I think it was him that told
18 her that he was going to be picked up
19 for murder."

02:45 20 If we just take the first part of that, "The
21 three of us were together and I'm sure that David
22 or Ron never left me for more than one or two
23 minutes that morning," that just doesn't jive
24 with what you signed on May 24th does it?

02:45 25 A No.



1 Q No. So what's that mean, you didn't tell the
2 truth on March 11th, you didn't tell the truth May
3 24th, you were in dreamland on one of those two
4 days or what? What's it tell us?

02:45 5 A It almost looks like that I was trying to --
6 what's the word I'm thinking of --

7 Q I can't hear what you are saying.

8 A I'm sorry. On this paragraph here it looks like
9 I'm just trying to not really discuss it, but say
02:45 10 yeah, okay, we were together and, you know,
11 neither one of them left for one or two minutes,
12 you know, end of story, right.

13 Q I'm quite sure it was in response to a question,
14 madam, that the police asked you directly, because
02:45 15 it was what they were interested in was as to
16 whether or not you, the three of you were apart
17 for any length of time, and your response would
18 have been essentially what you say here; right?
19 Right? I don't think this is a free-flowing
02:46 20 statement by you where you are just giving it as
21 it comes into your head?

22 A I don't know.

23 Q All right. I don't think anyone would claim that
24 in this room, maybe I'm wrong, but I kind of doubt
02:46 25 it. So, tell me, is it your position that -- and



1 I don't really understand your position, I'm not,
2 frankly, entirely sure I mind, I care whether I
3 understand it or not, but I think it's helpful
4 just to note it -- is it your position that when
02:46 5 you spoke to the police on March 11th -- and I
6 just take this from your last answer, that answer
7 that you gave a couple of minutes ago -- that you
8 were trying to deceive them?

9 A No, that isn't --

02:47 10 Q No? All right.

11 A No.

12 Q All right. So your position is, on March 11th,
13 you were trying to be honest with the police?

14 A Yes.

02:47 15 Q So, in trying to be honest with the police, you
16 omit telling them all of those seven items that I
17 took you through that are in the document you
18 signed on May 24th; right?

19 A Say that again? I'm sorry.

02:47 20 Q Yes. All those items that I took you through
21 that, I called them seven but I think perhaps it
22 should have been eight or nine, --

23 A Uh-huh.

24 Q -- none of them appeared in what you told the
02:47 25 police on March 11th; right?



1 A Correct.

2 Q So where do we go from there? Did you forget the
3 knife being stolen from the elevator, did you
4 forget the purse-snatching conversation, did you
02:47 5 forget that the car broke down a second time, or
6 actually broke down a first time and then the
7 second time? You see, what -- on March 11th you
8 talked about the other breakdown where the
9 Danchuks were involved, right?

02:48 10 A Right.

11 Q You didn't talk about this supposed earlier
12 breakdown, so did you forget about this, quote,
13 "earlier" breakdown?

14 A I'm not sure.

02:48 15 Q Did you forget about Wilson and Milgaard walking
16 off in opposite directions, did you forget about
17 seeing the stabbing of the nurse as David chased
18 her up the alleyway, did you forget about all of
19 those things, and what Ron Wilson said to you in
02:48 20 Calgary, and the purse being put in the garbage
21 can? You just forgot them, did you, in the six
22 weeks between January 31st, 1969 and March 11th,
23 1969?

24 A Like I told you earlier, I think this is -- this
02:48 25 is not a full picture of what happened.



1 Q Well you just told us that's what you tried to
2 give on March 11th. I asked you if you tried to
3 give --

4 A Understandably so, but when -- if someone does not
02:48 5 ask you a direct question that does not demand a
6 direct answer, you only give them what they want;
7 right?

8 Q Oh, madam, you can be assured the police would
9 have been asking you very direct questions. They
02:49 10 already had a theory as to David perhaps having
11 committed this murder when they questioned you on
12 March 11th, believe me. All right?

13 A Well, I'm only trying to give you a reason --

14 Q All right. Well --

15 A -- for that.

16 Q -- you are not giving me one that would work
17 because the police --

18 COMMISSIONER MacCALLUM: You actually
19 interrupted her. Go ahead and finish what you
20 were saying?

21 A I lost my train of thought. Sorry.

22 COMMISSIONER MacCALLUM: All right.

23 BY MR. LOCKYER:

24 Q You are not giving us one that would work, Madam,
02:49 25 because the police were already onto the idea that



1 maybe David was the one who killed Gail Miller
2 when they questioned you on March 11th.

3 A Okay.

4 Q So, believe you me, they would have been asking
02:49 5 you in detail about what happened that day to see
6 if you would give them something that would
7 incriminate David.

8 A Okay.

9 Q All right? Any other explanation?

02:49 10 A No.

11 Q No. There isn't one, is there? Doesn't make any
12 sense.

13 A No.

14 Q No. That you could have, quote, "forgotten" all
02:49 15 those things. All right?

16 A Correct.

17 Q Leads us to one of two possible conclusions I
18 suggest to you, madam; either what you said on
19 March 11th was the truth, the whole truth, and
02:50 20 nothing but the truth; or when you spoke to the
21 police on March 11th, you purposely didn't tell
22 them the truth. One or the other. Isn't that
23 what it is? Isn't that what you have to come down
24 to?

02:50 25 A Umm, I'm not sure what you are -- you are talking



1 about this statement?

2 Q There is no other reasonable explanation for what
3 you said on March 11th.

4 A Okay.

02:50 5 Q Would you not agree? Matter of common sense?

6 A Could you repeat the question, please?

7 Q Yes; that either on March 11th you told the truth,
8 the whole truth, and nothing the but the truth;
9 or, --

02:50 10 A I told the truth on March the 11th.

11 Q -- on March 11th you purposely concealed from the
12 police that you had seen a murder six weeks
13 before?

14 A I told the truth on March 11th.

02:50 15 Q You did? Okay. Now I wanted to take you through
16 what you said on March 11th, but I want to also
17 take you through what David Milgaard had already
18 said on March the 3rd and what Ron Wilson had
19 already said on March the 3rd, and you will see, I
02:51 20 hope, that the three of you said the same thing,
21 with little differences, one of you would think of
22 an event that the other hadn't thought of, one of
23 you wouldn't think of an event that the other had
24 thought of, do you follow me?

02:51 25 A Follow, yes.



1 Q And I think it's important, madam, that you never
2 sat down with David or Ron Wilson and plotted a
3 story with them about that drive from Regina to
4 Saskatoon and thereafter; did you?

02:51 5 A I don't believe so, no.

6 Q Well you wouldn't have had any cause to; would
7 you?

8 A Why?

9 Q Well I think that "why" is your rhetorical
02:51 10 expression of me suggesting to you you had no
11 cause to; am I right?

12 A Correct.

13 Q All right. Okay. Right, well let's start with
14 what David said on March the 3rd, and this is in
02:52 15 his first interview with the police, it was eight
16 days before they come to you. All right?

17 A Okay.

18 Q And you said, I think you told us you never saw
19 David after this trip, --

02:52 20 A Umm, I don't think so.

21 Q -- again; right?

22 A I don't think so.

23 Q Right. And I don't know what, I'm not sure any of
24 us know exactly what day this trip ended, but
02:52 25 let's say it was something like February the 2nd,



1 February the 3rd, February the 4th of 1969 would
2 be the last time you ever saw David; am I right?

3 A Yes, I would tend to think so, yes.

4 Q Yes. If we go to 31059 -- sorry -- 310 -- my
02:52 5 mistake, 031058, if -- I can't get my head around
6 these numbers, I'm afraid, Mr. Commissioner, maybe
7 by the end I will. And go to 031059, please. All
8 right.

9 Now I'm moving past the
02:53 10 beginning of what David said, I'm sort of at the
11 end of page 2 of it, all right. And we start
12 here, and I'm just going to carry on, if you could
13 just keep moving from page to page. And this is
14 at March 3rd, David is being questioned by -- can
02:53 15 anyone tell me offhand --

16 MR. HODSON: Karst?

17 MR. LOCKYER: Karst? Thank you. Karst and
18 -- is it just Karst?

19 MR. HODSON: Edmondson.

02:53 20 BY MR. LOCKYER:

21 Q Edmondson? And he is asked by, we'll say Karst
22 for the sake of argument. "When did you get to
23 Saskatoon", "In the morning, don't know, light or
24 dark, don't know the day", "Where did you start
02:54 25 from", "Regina", "What road did you take",



1 "Through Davidson, yeah, stopped there, coffee",
2 "When did you leave Regina", "Don't know what day,
3 maybe early morning", "Where did you go", "Looking
4 for Shorty's in Pleasant Hill, spoke to old woman
02:54 5 on the street, asked directions, stopped at motel
6 with carport, maybe got a map, motel was on the
7 perimeter". I don't think they are purporting to
8 write out, they are sort of writing out the
9 essence of what he is saying, do you follow?

10 A Okay.

11 Q Not always quoting it verbatim. "Did you get a
12 hotel room anywhere", "No", "Did you do any
13 sleeping", "I slept sometimes, Ron was driving, we
14 went slow on the road, the car didn't work very
02:54 15 good, stopped sometimes", "Where did you stop
16 first when you got to Saskatoon", "I don't know".
17 Is this all sounding kind of familiar, like your
18 March 11th statement, madam?

19 A Yeah, kind of.

02:55 20 Q Yeah, sure is. "What road did you come in on, 8th
21 or the freeway", "I don't know, I woke up and seen
22 it was a big boulevard", oh, "street, all lights,
23 I think I seen a garage or service garage."
24 Sorry, I just want to catch up. "Did you go
02:55 25 somewhere for coffee or to a house when you got



1 there", "I don't think so, we were looking for
2 Shorty's place", "Who is Shorty", "Albert Cadrain,
3 I met him before, he's been in trouble with the
4 police", "What for", "I don't know", "Where did
5 you look for Shorty", "I figured he lived in
6 Pleasant Hill, I looked for St. Mary's Cathedral,
7 I figured if we found that we'll find Shorty",
8 "Did you find Shorty", "Yes", "Where", "At home,
9 he was sleeping", "What time was that", "I don't
10 know", "Was it daylight", "I think so", "Why can't
11 you remember", "Time doesn't mean anything, or
12 days, maybe year", "Did you stop and talk to
13 anyone else that morning other than the motel
14 operator or the old lady on the street", "I don't
15 know", "Did you have car trouble", "Yeah, we got
16 stuck and the car wouldn't start", "Where", "I
17 don't know, in an alley", "Why were you in an
18 alley", "Looking for Shorty's and the church",
19 "Why would you look in an alley", "I don't know,
20 liked to drive I guess", "can you tell me where
21 from Shorty's place you were stuck in the alley",
22 "I don't know", "Was it around an apartment
23 block", "Yeah, I think so". Then he drew a little
24 map.

25 "How did you happen to get



1 stuck", "A car was ahead of us and got stuck, we
2 tried to push and got struck", "What kind of car
3 was that", "'63 or 4 Ford light-coloured, a man
4 and a woman". Remember the Danchuks?

02:56 5 A The name.

6 Q Yes. "Did they speak to you", "Yeah, the man
7 called for a truck, we all went to his house in
8 the hallway and waited for the truck, the woman
9 brought me a glass of water, they lived in the
02:56 10 basement", "Describe where this house was", he
11 drew some more.

12 "Did a tow truck come", "Yes",
13 "Did he pull you out", "No", "Why not", "He pulled
14 the other guy out, he said we didn't have money so
02:57 15 he left", "What happened then", "The guy in the
16 car tried to help us but the car didn't go", "What
17 did you do then", "He took us to a garage and a
18 truck came", "Which garage", and he drew a map.

19 "What happened then", "He
02:57 20 'boasted' us", "How much did it cost", "The first
21 time he said \$7 when he left, I think \$3 this
22 time", "Who had the money", "I don't know, the
23 girl maybe" -- that would be you -- "that's why we
24 brought her". Sorry, a bit rude.

02:57 25 A Okay.



1 Q "I thought you said you had no money", answer, "We
2 were about broke, I don't know".

3 Now I'm going to cut it off
4 there and, now, I want to go to what you said on
02:57 5 March the 11th, 178559.

6 COMMISSIONER MacCALLUM: Perhaps just a
7 little slower, Mr. Lockyer, when you are reading
8 from the transcript.

9 MR. LOCKYER: I'm sorry, Mr. Commissioner.

02:57 10 COMMISSIONER MacCALLUM: Just perhaps just
11 a little slower.

12 MR. LOCKYER: No, I heard you, yes. I'm
13 just saying I'm sorry I'm reading too quickly.

14 COMMISSIONER MacCALLUM: Okay.

02:58 15 MR. LOCKYER: So this is your statement
16 from March 11th, '69, eight days later:

17 "Ron Wilson, David Milgaard and myself
18 planned on going to Vancouver in
19 Wilson's car. We left Regina at about
02:58 20 1:00 a.m. on the morning after Ron
21 Wilson purchased licence plates for his
22 car. This would be Friday morning. We
23 headed for Saskatoon as Milgaard wanted
24 to pick up Albert ("Shorty") to go on
02:58 25 this trip. On our way to Saskatoon we



1 stopped for coffee at Davidson and we
2 also got stuck in the snow a couple of
3 times on the highway. As near as I can
4 figure out we arrived in Saskatoon
02:58 5 between 6:30 and 7:30 a.m. We started
6 to drive around looking for Albert's
7 place. Ron and I had never been there
8 before but David had and he said that
9 once we got into the area he would know
02:58 10 the house as it was near this gas
11 station.

12 We stopped at this motel to get
13 a map to find out where "Pleasant Hill"
14 area was because David said this was the
02:58 15 area where this "Shorty" lived. David
16 went in in his stocking feet and he got
17 this map. We continued to drive and
18 somehow we got on this street and we
19 wanted to go around the block again so
02:59 20 Ron, who was driving, turned down this
21 back alley and we came across this
22 convertible stuck in the middle of the
23 alley. The guy in this car asked us to
24 give him a push and we did, our car
02:59 25 stalled. We all went into this fellow's



1 house to get warm and he phoned the tow
2 truck. It took the tow truck at least
3 one-half hour. When we first met this
4 other car in the alley, it was just
02:59 5 starting to get daylight. After the tow
6 truck got the convertible going, this
7 fellow drove us to the gas station. We
8 got the tow truck to come back and give
9 us a 'boast' to get our car started.
02:59 10 This was well after daylight. I don't
11 think we ever paid this tow truck
12 driver.

13 We then set out to look for
14 Albert's place and as we drove we saw
02:59 15 this gas station and from there David
16 was able to find the house."

17 I -- it's all most tweedle dum and tweedle dee,
18 isn't it, madam?

19 A Yeah, this one is a little bit more descriptive.

03:00 20 Q David said a few things you didn't mention, you
21 said a few things he didn't mention, in essence
22 the two of you are describing the same events;
23 aren't you?

24 A Yes.

03:00 25 Q Right? In particular, madam, both of you relate



1 how you broke down in Saskatoon once, and that
2 breakdown was behind the convertible that we now
3 know belonged to the Danchuks; right?

4 A Umm, according to this, yes.

03:00 5 Q Yeah, according to what you said to the police,
6 and according to what David said to the police;
7 right?

8 A I agree.

9 Q All right. Now let's look at Ron Wilson and see
03:00 10 what he said on March the 3rd, the same day that
11 David gave his statement. And Ron Wilson, as I
12 recall -- and I'm subject to correction if someone
13 will correct me if I'm wrong -- I think he was
14 imprisoned on March the 3rd when he gave that
03:01 15 statement so -- and it was at the same day, and
16 shortly after David gave his statement, so unless
17 David had run to the jail very quickly and found
18 his old buddy they really didn't have a lot of
19 chances to collaborate. All right? And we know
03:01 20 that you didn't collaborate with either of them
21 when you gave your March 11th statement; right?

22 A Correct.

23 Q All right. So if we go to March 3rd and look at
24 Ron's statement at 042086, and starting at the
03:01 25 beginning, listen to what he said on March the



1 3rd, eight days before you, and the same day as
2 David:

3 "Myself, Nicole John, age 16 years, and
4 David Milgaard, age 16 years, left
03:01 5 Regina in my car, a 1958 Pontiac, green
6 and white with a grey hood, about 1:00
7 a.m. the day after I bought licence
8 plates for this car. I think it was the
9 early morning of the 31st of January.
03:02 10 There was just the three of us and we
11 drove direct to Saskatoon where we
12 planned on meeting Albert, nicknamed
13 "Shorty", who was known to Milgaard. We
14 hoped to get this fellow Albert to come
03:02 15 to Vancouver with us. We arrived in
16 Saskatoon about 5:00 or 6:00 a.m. that
17 same morning and we began driving around
18 looking for Albert's house. I didn't
19 know where this Albert lived but Dave
03:02 20 Milgaard had been there before ..."

21 And I'll just stop there for a moment. It's
22 almost like you and he are reading from the same
23 script, it's so similar, isn't it?

24 A Possible, yeah.

03:02 25 Q You are not, but it sounds -- it's almost like you



1 are, isn't it?

2 A Yes.

3 Q Right? Yeah. So:

4 "I didn't know where this Albert lived
03:02 5 but Dave Milgaard had been there before
6 and would recognize the house which I
7 think was up in the "Peace Hill"
8 district."

9 He meant to say, he should have said Pleasant
03:02 10 Hill:

11 "I was driving and we ended up going
12 down this alley and we came across the
13 this car that was stuck in the middle of
14 the alley."

03:03 15 You notice that, ma'am, he is the third one of
16 the three of you who were in the car all
17 describing the one breakdown behind the Danchuk
18 car; right?

19 A Correct.

03:03 20 Q Yes.

21 "I couldn't get by him and I couldn't
22 back up as my reverse gear was gone. He
23 asked me to give him a push. I did and
24 I stalled my car and couldn't get it
03:03 25 going again. This fellow was still



1 stuck. This car was about a 1966 Impala
2 convertible, red with a white top. The
3 fellow driving was about 23 or 24 years
4 old, 6 feet and fairly big. It looked
03:03 5 to me that he had backed out of his back
6 yard and got stuck in the alley. He
7 said he was driving his wife or
8 girlfriend to work."

9 Remember David said that there were two of them
03:03 10 in the car, he and a woman, --

11 A Hmm.

12 Q -- in the statement that I read to you for the
13 same day? Just interpolating, he did.

14 A Yeah, okay.

03:03 15 Q Believe me.

16 "We then tried for about an hour to get
17 this fellow's car out by pushing. He
18 was still stuck so he invited Dave,
19 Nicole and myself into his house to get
03:04 20 warm while he phoned a tow truck. We
21 waited in the house until the tow truck
22 came which was about an hour and a half.
23 The tow truck pulled him out and then it
24 left. Then this fellow gave us a push
03:04 25 to try and get our car going. When he



1 started to push us, it looked like he
2 was going to get stuck so he then drove
3 us to the gas station, the same one
4 where the tow truck came from."

03:04 5 There is a little difference there, I think you
6 had said the tow truck driver drove you to the
7 gas station, and Wilson seems to recall it was
8 Mr. Danchuk who drove you to the gas station?

9 A Okay.

03:04 10 Q Hardly a major discrepancy, just a minor
11 difference.

12 "We got the tow truck to come and give
13 us a 'boost' and this fellow in the red
14 car drove us back to our car. We got
03:04 15 the car started and the tow truck driver
16 didn't have any change and we told him
17 we would go back to the gas station and
18 pay him. It was \$3.00 but to this date
19 we never did go and pay."

03:05 20 Remember how you and David sort of both gave your
21 different memories of whether or not you paid him
22 and whether it was \$3 or \$10 and so on; remember?

23 Q Yes? Could you speak?

24 A Yes.

03:05 25 Q Thank you.



1 "The fellow in the red car just went
2 into his house and we then drove on to
3 find Albert's place. By this time it
4 was daylight, about 8:00 a.m. or 9:30
03:05 5 a.m."

6 So that's how David's statement began, your
7 statement began, and Ron Wilson's statement
8 began, and you would have to be a fool not to see
9 how similar they are in content; right?

03:05 10 A Correct.

11 Q All right. Three people who haven't discussed,
12 subsequently, a story that they are going to tell;
13 right?

14 A Correct.

03:05 15 Q Certainly as far as you know?

16 A Yes.

17 Q Three people, then, who were all at the same event
18 or series of events at the same time and all
19 described them essentially identically, am I
03:06 20 right?

21 A Correct.

22 Q And none of them, just taking to where we've got
23 to, have related the stealing of a knife in an
24 elevator, none of them have related the
03:06 25 purse-snatching idea, none of them have related



1 the idea that you broke down earlier, none of them
2 have related that Ron gets out the car and goes
3 one way and David gets out the car and goes the
4 other way, none of them have related any incident
03:06 5 happening in an alleyway, none of them related
6 anything about a knife going into a garbage can,
7 none of them have related anything about what
8 David is supposed to have said to -- in Calgary to
9 Ron Wilson; right? None of that?

03:06 10 A Right.

11 Q None of these seven, as I call them, items appear
12 anywhere, at least so far, in any of these
13 statements; is that right?

14 A Right.

03:07 15 Q Okay. This is a good time to break,
16 Mr. Commissioner.

17 COMMISSIONER MacCALLUM: Right. 15
18 minutes.

19 *(Adjourned at 3:07 p.m.)*

03:25 20 *(Reconvened at 3:25 p.m.)*

21 BY MR. LOCKYER:

22 Q All right. If we can now go back to where I had
23 left off on David's statement of March 3rd, madam,
24 which means if we could go to 031058, I'll move on
03:26 25 to 031065. This is just carrying on from where I



1 had stopped. Question, he is asked, this is March
2 3rd of '69, David is being interviewed by
3 Detectives Short and Edmondson, "Did the truck
4 push or pull you", "I don't know, Ron was
03:27 5 driving", "You keep saying you don't know, were
6 you drinking liquor or on drugs", "Not then, just
7 tired", "I would like to know why, if you were
8 looking for a cathedral or Shorty's place, why you
9 went in the alley", "I told you, I like driving,
03:27 10 ask my boss", "Who is your boss", "Roger", "What
11 does he do", and he explains what he does.

12 And then he is asked, "When did
13 you get to Shorty's", "I don't know, I think it
14 was light, maybe 9:00 or 10:00", "And what did you
03:27 15 do then", "Talked to Shorty", "Anything else you
16 did", "I don't know", "Did you have breakfast",
17 "No, they got nothing, I don't know why we
18 crashed, old lady didn't like us, I had a pot of
19 soup", "Did you do anything else there", "I don't
03:27 20 remember, yeah, went upstairs, talked to Shorty's
21 sister, she was still in bed", "Did you pay for
22 the tow job you had", "Yeah", "How much was it",
23 "\$3 I think, I think we gave him \$2 and couldn't
24 make change", and then "(eventually he said he
03:28 25 couldn't remember...", meaning David said he



1 couldn't remember, "...maybe he didn't give him
2 any money because they were saving...) it. And
3 he was asked "Where did this money come from", "I
4 don't know who had it, I think there was a \$5
03:28 5 bill", "How long did you stay at Shorty's", "I
6 don't know", "Did you do anything else at
7 Shorty's", "We waited for Shorty to get ready, he
8 was going with us", "Did you do anything else
9 there", "I don't know", "Did you change clothes
03:28 10 there", "Maybe my pants, there was acid on it from
11 the battery, maybe my shirt, I don't know, my
12 clothes were dirty, I had to change", "Did Ron
13 change", "I think so", "Where are the clothes you
14 took off", "Maybe in the car or Ron's or at
03:28 15 Shorty's or maybe threw them out, had a hole in
16 the crotch, I remember when I got the map at the
17 hotel my crotch was ripped right round", "Did you
18 have blood on your clothes", "I don't know, I
19 don't think so, I suppose you think I had
03:28 20 something to do with the girl", "What girl", "Gail
21 Miller", "Where did you hear that name".

22 It, it's sort of an odd
23 question, because you go back to the beginning of
24 the statement, he was actually asked, he was
03:29 25 told -- and this is if you go back to 031058, the



1 first page -- the police introduced the whole
2 thing by saying:

3 "You may be charged with murder or some
4 related charge due to the death of Gail
03:29 5 Miller in Saskatoon during the morning
6 of January 31st, '69".

7 That's kind of an odd question the police ask at
8 031068, but perhaps we could go back, then,
9 031068, thank you.

03:29 10 Just carrying on where I had
11 stopped, "Did you finally leave Shorty's", "Yeah,
12 Shorty came along", "Where did you go", "We got
13 the car fixed, did you know about the tow", "Did
14 you leave Shorty's by yourself first and drive
03:29 15 away", "Yes, I turned the car around", "Why", "It
16 was across the street, I was putting it on the
17 right side for the suitcase", "Didn't you drive
18 around the block", "Yeah, around up the lane,
19 maybe twice", and he drew up on the map where he
03:30 20 went.

21 "If you were tired and had got
22 stuck in the lane already why did you go in the
23 lane again", "I like to drive I guess", "Did you
24 see any people or police cars when you were
03:30 25 driving round there", "No", "How come you drove,



1 I thought Ron had the keys", "I guess I took
2 them, I like to drive", "Were you in a hurry or
3 excited", "Yeah, I guess, wanted to see my girl,
4 I get excited all the time, see how I am".

03:30 5 And I think that's where Ron
6 said he was called Hoppy; right? You smile; is
7 that right, madam?

8 A I guess so.

9 Q "Where did you go next", "Fixed the car", "Did you
03:30 10 get another tow truck", "Yes, when I drove around
11 the house it got stuck", "Who phoned for the
12 truck", "Shorty I guess", "Are you sure you didn't
13 phone", "I don't know, maybe", "Didn't you make
14 sure you phoned yourself so you wouldn't get the
15 same garage you already owed money to", "Yeah",
16 "Where did you go then", "The truck took us to a
17 garage to fix the car", "Where did the money come
18 from", "I guess Shorty got it", "Isn't it true the
19 only reason you went to Shorty's was for money",
03:31 20 "Yes", "How long did it take to fix the car", "I
21 don't know, left in the afternoon, went to find
22 Shorty's friend, couldn't find her", "Who paid for
23 the garage bill", "Shorty, he got money", "Did you
24 stay at the garage when the car was fixed", "Some
03:31 25 time, I went to the cafe and then for a drink".



1 All right. Now if we go back to
2 your statement for that time period, this is sort
3 of after you get to Shorty's and thereafter, all
4 right, sort of leading up to leaving Saskatoon.
03:31 5 If we can go to 178559, and in particular 178560,
6 starting here three lines into that paragraph:

7 "When we got there ...",
8 meaning to Shorty's:

9 "... David went in the house by himself,
03:32 10 then he called us in. We met Albert,
11 his little brother and his sister".
12 Remember, David talked about seeing the sister as
13 well.

14 A Yes.

03:32 15 Q "We weren't there too long and then
16 Albert's mother came in. I don't know
17 what time it was but it was well after
18 daylight. It could of been noon or
19 later. At Albert's place both David and
03:32 20 Ron changed clothes. Ron's pants were
21 being eaten by acid and David had ripped
22 the crotch out of his pants which were
23 green with some kind of stripe."

24 You catch the similarity between what you have
03:32 25 said and what David had said, right, --



1 A Yes.

2 Q -- about the changing of the clothes.

3 "I think David also had on a brown coat
4 or jacket. I didn't see any blood on
03:32 5 anybody's clothing."

6 You see, there, clearly you have been asked by
7 the police "did you see blood on anyone's
8 clothing", and you said "no", or words to that
9 effect?

10 A Obviously, yes.

11 Q Right.

12 A Yes.

13 Q You follow?

14 A Yes.

03:33 15 Q "David drove the car around the block and
16 it broke down."

17 Remember how David was describing doing the same
18 thing?

19 A Yes.

03:33 20 Q Yes.

21 "We got a tow truck and we all went to
22 this gas station to get the car fixed.
23 We all had something to eat at this cafe
24 across the street."

03:33 25 Remember David mentioned the cafe?



1 A Yes.

2 Q Right. And:

3 "Then after a while myself and Albert
4 went to the Credit Union where Albert
03:33 5 withdrew \$70.00."

6 David hadn't mentioned this, right?

7 A Yes.

8 Q "Then we went to this Variety Store where
9 Albert bought a few things and then back
10 to the gas station. After the car was
11 fixed we drove around looking for
12 Albert's girlfriend as he wanted her to
13 come along."

14 Remember David talked about that?

03:33 15 A Yes.

16 Q "We couldn't find her, then we went to
17 Albert's friend's place to see if he
18 wanted to come with us. I don't know
19 his name and he lived not too far from
03:33 20 downtown and he didn't want to come.
21 Then we left the city and when we got to
22 Rosetown it was still daylight."

23 See how well that seems to fit what David had
24 said?

03:33 25 A Yes.



1 Q If you move down the same page that we're on,
2 starting here:

3 "All during the morning we were in
4 Saskatoon, the three of us were together
5 ...",

6 and I read this to you earlier, if you remember,
7 today?

8 A Yes.

9 Q "... the three of us were together and
03:34 10 I am sure that David or Ron never left me
11 for more than one or two minutes that
12 morning."

13 All right, now, see the similarities in the
14 statements there?

03:34 15 A Yes.

16 Q Let's go to Ron Wilson's, now, for, remember,
17 March 3rd, and see what he had to say for that
18 same time period. 042086, starting at 042087
19 towards the bottom of that page, starting:

03:34 20 "Dave recognized ..."

21 Whoops, I'll go back a line.

22 "Then we drove on to find Albert's
23 place. By this time it was daylight,
24 about 8:00 a.m. or 9:30 a.m. Dave
03:35 25 recognized this gas station with the



1 cafe and from there he was able to
2 direct us to Albert's place. We parked
3 on the front street and Dave went in to
4 see if he was home or up. Dave then
03:35 5 waved to us from the door and Nicole and
6 I also went into Albert's place."

7 Do you remember how David described he went in
8 first, he said the same thing?

9 A Yes.

03:35 10 Q "This was the first time I had ever met
11 Albert. He introduced us to Albert."
12 Meaning Dave did.

13 "We started talking about this trip and
14 Albert decided to come with us. Dave
03:35 15 went out to get his suitcase because he
16 wanted to change his clothes as they
17 were dirty."

18 So all three of you have described the change in
19 clothing; do you remember?

03:36 20 A Yes.

21 Q "When he did this, he drove the car
22 around the block so that it would be
23 parked on the same side as the house.
24 At this time the line to my transmission
03:36 25 broke."



1 So all three of you remembered David driving the
2 car around the block; right?

3 A Yes.

4 Q "I went out and I was mad about this.
03:36 5 We came in and phoned a tow truck and it
6 came and pushed us to the garage. All
7 four of us, Albert, Dave, Nicole and
8 myself, went to the garage. While the
9 garage was fixing the car, we went
03:36 10 across the street to another garage that
11 had a cafe and we had something to eat.
12 Albert and Nicole went to the bank and
13 Albert drew out \$70 for the trip."

14 This is what you said; do you remember?

03:36 15 A Yes.

16 Q "Dave and myself went to the garage where
17 the car was being fixed. It cost us \$26
18 and some cents to have the car fixed.
19 We all went back to Albert's place to
03:36 20 pick up his clothes and then we left to
21 go and look for Albert's girlfriend. We
22 drove around Saskatoon and couldn't find
23 her. About 2:00, 3:00 or 4:00 p.m. that
24 same date we headed out for Calgary.
03:37 25 The reason Dave changed his clothes was



1 because they were dirty. I changed my
2 pants because I spilled battery acid on
3 them. At no time during the time --"

03:37 4 And remember the last bit I read from your
5 statement, and look at this, he's clearly
6 responding again to a police question, just like
7 you were,

8 "At no time during the time we were in
9 Saskatoon was Dave Milgaard out of my
03:37 10 sight for more than one or two minutes,
11 the one time being when he drove the car
12 around the block. This would be well
13 after daylight."

14 Do you think that may have been the one or two
03:37 15 minutes you've been referring to as well, Madam,
16 when he drove around the block?

17 A Possibly, yes.

18 Q Yes.

19 "I never knew of Dave to have a knife."
03:37 20 That again almost certainly in response to a
21 police question. You follow?

22 A Yes.

23 Q Yes.

24 "I am convinced that Dave Milgaard never
03:37 25 left our company during the morning we



1 were in Saskatoon. The coat he was
2 wearing, a brown one -- "

3 Remember, you described him as wearing a brown
4 coat as well?

03:38 5 A Yes.

6 Q "-- is now at my place, as it also has
7 acid burns and the pair of pants he
8 changed is now in my car in the back
9 seat."

03:38 10 And then skipping three lines:

11 "All during this trip there was never
12 any mention about the murder of a girl
13 in Saskatoon. In fact, I didn't even
14 know about this murder until the police
03:38 15 told me today."

16 And that's most of -- I've left out a few lines
17 here and there of no great moment, of Wilson's
18 statement to the police on March 3rd. Now,
19 Madam, let's be a reasonable person if we can, a
03:38 20 reasonable thinking person. You've got three
21 people who were all at the same event at the same
22 time; agreed?

23 A Agreed.

24 Q You, Wilson and David. You all describe the
03:39 25 events of the day independently of each other;



1 correct?

2 A Correct.

3 Q You all describe the events of the day in some
4 considerable detail; agreed?

03:39 5 A I would agree.

6 Q Yes. You all, almost without exception, pick up
7 on the same events having occurred; right?

8 A Yes.

9 Q You all three describe those events almost to the
03:39 10 T in exactly the same way; correct?

11 A Fairly close, yes.

12 Q You all remember little bits and pieces which keep
13 matching the one with the other; right?

14 A Yes.

03:39 15 Q Minor little things like whether you saw Cadrain's
16 sister, like the acid on the jeans, like the rip
17 in the crotch and so on and so forth; right?

18 A Yes.

19 Q You were all, when questioned by the police, being
03:40 20 questioned with certainly David, perhaps Ron, but
21 particularly David, being a potential suspect in
22 the murder of Gail Miller; right?

23 A I believe so.

24 Q I can show you that.

03:40 25 A Yeah.



1 Q Because Cadrain had told the police he had seen
2 blood on David's jeans when he come to the house;
3 right?

4 A I found that out after the fact, yes.

03:40 5 Q Yes.

6 A Yes.

7 Q Neither you nor David nor Wilson, you don't just
8 not confirm that, you deny it; correct?

9 A Pardon me?

03:40 10 Q You deny that that's the case, that he had blood
11 on his jeans?

12 A I don't remember seeing blood on his jeans, no.

13 Q No, I'm talking about what the three of you said
14 to the police.

03:40 15 A Yes.

16 Q Actually, I'm not sure that David denied it, David
17 may not have completely denied it, he said not as
18 far as I know, or words to that effect.

19 A Uh-huh.

03:41 20 Q So do you think a reasonable person, not a cynic,
21 but a reasonable person looking at those three
22 statements, accepting that they were given
23 independently about the same events that the three
24 of you have participated in, might think that what
03:41 25 the three of you was saying was true?



1 A Yes, you would think so.

2 Q You would. And yet on May the 24th, Madam, you
3 are signing a document that gives a completely
4 different story aren't you?

03:41 5 A I wouldn't say completely different, no.

6 Q You don't think a document that says that you
7 witnessed a murder being committed by one of the
8 three of you during these hunky-dory events that
9 took place that you've described on March the 11th
03:42 10 isn't giving a fundamentally different statement?

11 A Yes, it is a different statement, yes.

12 Q Fundamentally? Do you not like the word?

13 A I'm not quite sure what it means actually.

14 Q Utterly, completely, totally different.

03:42 15 A I don't think they were totally different.

16 Q You don't?

17 A No.

18 Q You don't think --

19 A I think there was some things that were in the
03:42 20 first statement that weren't in the second
21 statement. I could be corrected, but --

22 Q I'm not asking you that, I'm asking you if you
23 think what you signed, the document you signed on
24 May the 24th described a wholly different occasion
03:42 25 with a wholly different series of events with a



1 wholly different -- I can't think of the word --

2 A I know what you are getting at.

3 Q -- side to it?

4 A I will agree with you, what you are saying.

03:42 5 Q From this nice series of events of three people
6 sort of bombing into Saskatoon early in the
7 morning, having a little bit of car trouble here
8 and there, basically all friends having a good
9 time, but having to get a car fixed in the
03:43 10 process?

11 A I agree.

12 Q Right. So do you think, Madam, under those
13 circumstances it might be fair to say, well, given
14 what I said on March 11th and given this document
03:43 15 I signed on May the 24th, what happened between
16 March 11th and May the 24th? Do you think that's
17 a --

18 A That's a good question.

19 Q It is. And it's a question I think we've already
03:43 20 seen -- remember I focused, for example, on this
21 retched chap that hypnotized you, or thought he
22 had hypnotized you, Pulos, whatever his name was,
23 the focus was always on tell us what you saw on
24 May -- tell us what that statement said you said
03:43 25 you saw on May the 24th, that's always been the



1 focus of all the questioning of you. The focus
2 has never been what happened between March 11th
3 and May 24th, how did you give one story on March
4 11th and an utterly different story on May 24th.
03:44 5 Do you think that may be a good focus?

6 A Probably, yes.

7 Q Yeah, I think so too. So let's see what happened
8 between March 11th and May 24th and see if we can
9 understand this extraordinary transformation that
03:44 10 happened in that March 11th to May 24th, 10 weeks
11 or so, period. All right?

12 A Uh-huh.

13 Q So we've now moved -- we're going to move, then,
14 from six weeks after the events that took place,
03:44 15 we're going to move on a further eight weeks, or
16 10 weeks, rather, bringing us up ultimately to
17 about 16 weeks after the events that took place
18 when you signed this document that ever since, in
19 the ensuing -- I've been saying 46 years, I should
03:44 20 have been saying 36 years -- ever since, in the
21 ensuing 36 years, one prosecutor and one police
22 officer after another has been trying to get you
23 to adopt; right?

24 A Right.

03:45 25 Q All right. First of all, I think you've



1 acknowledged, I think I'm right in saying, that
2 this March 11th statement, which I've taken you
3 through, not quite all of it today, most of it,
4 and Commission Counsel took you through all of it
03:45 5 last week, is long, detailed; agreed?

6 A Yes.

7 Q It seems like it's describing a normal series of
8 events in a perfectly normal manner?

9 A Correct.

03:45 10 Q You don't sort of read it and go eh, do you, this
11 doesn't make sense. It flows?

12 A Uh-huh.

13 Q It flows naturally, you are describing a series of
14 events in chronological order; are you not?

03:45 15 A Right.

16 Q On March 11th?

17 A Yes.

18 Q As were David on March 3rd, it seems, and Wilson
19 on March 3rd it seems?

03:45 20 A Yes.

21 Q And everything that you are recorded as saying on
22 March 11th seems quite appropriate; you agree?

23 A I agree.

24 Q The next time you speak to the police, Madam,
03:46 25 according to the documentation we have, is March



1 the 18th of 1969, so we've just moved on seven
2 days from your March 11th statement, your first
3 contact with the police, okay. Incidentally,
4 Mr. Commissioner, I think I may have made a
03:46 5 mistake earlier this afternoon. I said that
6 David's statement on March 3rd was given before
7 Ron Wilson's and I'm tending to think that I've
8 got them the wrong way around, I think Wilson's
9 may have come before David's. Does Commission
03:46 10 Counsel know the answer to that?

11 MR. HODSON: I will in a few minutes.

12 MR. LOCKYER: Because as I read what the
13 police were asking David, it seemed to me that
14 they were reflecting back on some of the things
03:46 15 that Ron Wilson had told them, that's what made
16 me think that. I had never put my mind to it
17 before because I read some of the questions they
18 put to David, I got that impression. Can we just
19 wait a minute for that?

03:47 20 COMMISSIONER MacCALLUM: Yes, of course.

21 MR. LOCKYER: Will it take you long?

22 MR. HODSON: Nichol John's statement --
23 sorry, Ron Wilson.

24 MR. LOCKYER: Ron Wilson and David
03:47 25 Milgaard, they were on the same day, they were



1 both on March 3rd, it's a question of who was
2 first.

3 MR. HODSON: I will be more than a minute.
4 I'll let you know.

03:47 5 BY MR. LOCKYER:

6 Q Yeah, all right. So we've moved on a week now,
7 all right, and you are now being spoken to again
8 by Karst again and a new chap called Short, all
9 right. I don't know what his rank was at the
03:47 10 time, but we'll call him a detective for the sake
11 of argument. And I think it might be reasonable
12 to assume, Madam, and maybe you will agree with
13 me, that given what they did to you that day, this
14 was the first attempt to get you to change your
03:48 15 story. I say that because what they did to you
16 that day was something, in my 30 years of
17 practicing criminal law, I've never run into
18 before, they took you to the Regina jail where
19 Mr. Cadrain was and placed you in a room at the
03:48 20 jail with Mr. Cadrain, and I can only assume that
21 was to get you to change your story, because as of
22 March 18th, the only person who had said anything
23 remotely incriminating about David was Albert
24 Cadrain who said he had seen blood on his jeans
03:48 25 when he came to the house.



1 A Okay.

2 Q So that this extra -- you may not think it's
3 extraordinary, but certainly anyone in my practice
4 I think would find it unprecedented, I've never
03:49 5 heard of such a thing, that a witness is taken off
6 the street, taken to a prison to share a cell,
7 with a person of another sex no less, for a
8 discussion in the presence of the police in the
9 prison. Quite extraordinary. And I'm going to
03:49 10 suggest to you, just as a matter of common sense,
11 this was an attempt to get you to change your
12 story. Sound sensible to you?

13 A Yeah, but I don't remember the circumstances or
14 the occurrence, okay.

03:49 15 Q Somehow your mind has forgotten you being taken to
16 a men's jail?

17 A Yeah.

18 Q In Regina, and sitting with a male prisoner to
19 discuss your memory of the events of January 31st?

03:49 20 A Yes.

21 Q Right. In any event, that's what happened, and
22 you didn't change your story, or at least put it
23 like this, Karst, who wrote a report about the
24 occasion, didn't say that you did, so I think we
03:50 25 can probably assume that you didn't. He did



1 simply record you as saying that you thought
2 Cadrain was being truthful, presumably about the
3 blood on the jeans, although quite how you would
4 know that I don't know since you didn't see it,
03:50 5 and that you thought David was a dangerous man and
6 you were scared of him. Do you remember that?

7 A I remember something being read.

8 Q Yes.

9 A Yeah.

03:50 10 Q So it would seem that that first attempt to get
11 you to change your story, March 18th, failed
12 miserably; right?

13 A If that's what it was, yeah.

14 Q Yes.

03:50 15 A Obviously.

16 Q Your second -- the next occasion, so we're now the
17 third time you've talked to the police, is April
18 the 14th of 1969, so we've moved on another four
19 weeks or so from the rather remarkable occasion at
03:51 20 the Regina jail, and this time, rather than
21 interview you at home, they take you to the Regina
22 police station -- they seem to like getting you
23 within these four walls of some institution,
24 right, be it a prison or a police station --

03:51 25 A Sounds like it.



1 Q Yes -- Karst again, with a man called Walters this
2 time, and according to Karst, they conducted a
3 lengthy interview with you and they said, and
4 perhaps we can go to 009254, this is the April
03:51 5 14th occurrence of Karst, they describe you as --
6 just look at -- yes. Sorry, where are we going to
7 start. Starting at further investigation. This
8 is what Karst wrote about this occasion, all
9 right.

03:52 10 "Further investigation of this girl --"
11 Meaning you,

12 "-- when she was interviewed gave one
13 the feeling that she was telling the
14 truth and she emphatically stated she
03:52 15 could not recall any time while they
16 were in the City of Saskatoon during the
17 morning of the murder at which time
18 Wilson or Milgaard had left the vehicle
19 in which they were driving long enough
03:52 20 to commit this offence. She denied that
21 Milgaard had left their vehicle at any
22 time to go to a bathroom or go for a cup
23 of coffee which she could recall."

24 So clearly the police are saying, well, did you
03:52 25 stop at some point and he went to the bathroom,



1 maybe saying to themselves, maybe that's when he
2 could have killed her, or did he stop and go and
3 get a cup of coffee, maybe that's when he could
4 have killed her. Do you see what they are doing?

03:52 5 A Uh-huh.

6 Q Yes.

7 "This girl did, however, state that she
8 felt Milgaard was capable of an offence
9 of this nature."

03:53 10 So they put that in. Now, given that it's now
11 less -- no, it's about a month, four or five
12 weeks that you are going to suddenly say that
13 Wilson and Milgaard left the vehicle and went in
14 opposite directions, how -- can you understand
03:53 15 how you jump from what you said there on April
16 18th to the document you signed on May the 24th?

17 COMMISSIONER MacCALLUM: Was it 18 or 14?

18 I'm sorry, I probably wrote it down wrong.

19 BY MR. LOCKYER:

03:53 20 Q Oh, sorry, the occurrence is dated the 18th, my
21 mistake. The interview is the 14th. I looked at
22 the date at the top.

23 A Now you've lost me, sorry.

24 Q That adds a week on effectively. It's only some
03:53 25 five or six weeks later that you are going to



1 suddenly say, on the contrary, Wilson and Milgaard
2 both left the car and both headed off in opposite
3 directions and then I saw Milgaard commit the
4 murder, so how are you able to explain what Short
03:54 5 recorded you as saying on April the 14th? You
6 can't, can you.

7 A No.

8 Q No. And then:

9 "She was again questioned with regards
03:54 10 to the alleged blood on Milgaard's
11 clothing."

12 That's the -- the alleged comes from Cadrain who,
13 remember, a month before you sat in the prison
14 cell with him; right? You did.

03:54 15 A Pardon me?

16 Q You did.

17 A Yeah, you are telling me I did, yes.

18 Q Well, the police are telling us.

19 A I have to believe you.

03:54 20 Q I'm sorry?

21 A I said and I have to believe you, so --

22 Q Well, you know, I wasn't there, but the police
23 were --

24 A No.

03:54 25 Q -- and they wrote a report about it, so one hopes



1 that they didn't just manufacture something out of
2 thin air.

3 A Yeah.

4 COMMISSIONER MacCALLUM: I heard you
03:54 5 earlier suggesting it was a room and then a cell.
6 Can you tell me which one it was, please?

7 MR. LOCKYER: I'm not sure I can answer
8 that.

9 COMMISSIONER MacCALLUM: There is a
03:54 10 difference.

11 MR. LOCKYER: Mr. Commissioner, I would
12 have to -- a room they call it in the occurrence
13 report. It's 106640, Mr. Commissioner.

14 COMMISSIONER MacCALLUM: All right, thank
03:55 15 you.

16 BY MR. LOCKYER:

17 Q Bottom of the page of the report of -- it's the
18 March 22nd report of Short where he says:

19 "Female Nichol John was located in a
03:55 20 hippie house in Regina and was, after
21 considerable persuasion --"

22 I imagine,

23 "-- brought to the Regina goal and
24 interviewed by Karst and myself and was
03:55 25 placed in a room with Cadrain and



1 allowed to discuss this matter and it
2 was learned from her after this
3 discussion through interrogation that
4 she was of the opinion that Cadrain was
03:55 5 telling the truth."

6 All right? So it looks like even by their own
7 admission, they exercised considerable persuasion
8 on you to get you to go to the Regina jail with
9 them to see Cadrain?

03:55 10 A It sounds like it.

11 Q That's what they say. So going back -- whoops,
12 009254, I didn't mean to lose that. I was just
13 reading this bit to you.

14 "She was again questioned with regards
03:56 15 to the alleged blood on Milgaard's
16 clothing and changing clothing at the
17 Cadrain's residence. However, she
18 states she could not recall seeing any
19 blood on his clothes, and thought he
03:56 20 changed the trousers for the reason that
21 they had been ripped. Questioning of
22 this girl also revealed that her
23 thoughts of Milgaard had been that he
24 acted in a queer manner when in
03:56 25 Saskatoon to the effect that he was



1 always in a rather hurry also that he
2 drove unusually fast when in the car
3 leaving Saskatoon and did not seem to be
4 himself at that time."

03:56 5 That, Madam, for what it's worth, is the first
6 claim that the police are to make that you are to
7 say anything, that you said anything or implied
8 anything about the events of January 31st that
9 suggested David was acting anything other than
03:57 10 normally; right? Just for your information.

11 A Okay.

12 Q And then, interestingly, the author of this
13 report, which is Detective Karst, said, and this
14 is at the next page, 9255:

03:57 15 "Although there are many unanswered
16 questions with regard to Milgaard's
17 activities on that particular
18 morning -- "

19 And just to interpolate if I may, they don't tell
03:57 20 us what those unanswered questions were and for
21 the life of me I don't know what they are, but
22 whatever --

23 "If one is to believe the girl Nichol
24 John, and it appears that she is very
03:57 25 convincing with her story, then there is



1 no way Mr. Milgaard can be connected
2 with this crime."

3 And there, Madam, it might have ended once and
4 for all and we might not be here at all, but
03:58 5 unfortunately that's not where it ended as we all
6 know. Now, that would seem, do you not think, to
7 be a statement by the officer that he thought you
8 were very convincing; right? He says that; does
9 he not?

03:58 10 A Yes.

11 Q Yes. And it's kind of interesting what Karst says
12 about that at a later date, but first of all, he's
13 also -- and I say he. I believe I'm right in
14 saying -- Lieutenant Short, sorry, who was one of
03:58 15 those who had interviewed you on March 18th, had
16 in the meantime drawn a not dissimilar conclusion
17 about what Wilson was saying. If we go to 009238,
18 and I must say, I don't quite know how this
19 report -- sorry, the report, Mr. Commissioner,
03:59 20 actually starts on the next page, it's back to
21 front in the materials, so 239 is actually the
22 first page of 238, and you'll see it's a report --
23 I don't think we've referred to this report yet in
24 the proceedings. I stand to be corrected on that.
03:59 25 It's a report of Short, it's dated March 2nd,



1 which oddly enough means it's dated the day before
2 the March 3rd interview of Ronald Wilson and yet
3 refers to what Ronald Wilson has told the police.
4 If you go to 009238, which is the second page of
03:59 5 this report, Short says, at five:

6 "The four previously mentioned persons
7 arrived back in Regina February 6, and
8 from that point went their separate
9 directions. From the statement obtained
03:59 10 from Wilson, nothing of an incriminating
11 or relevant nature was noted. Wilson
12 was convinced that Milgaard was in no
13 way involved in the murder of Gail
14 Miller, nor could he be of any further
04:00 15 assistance."

16 And that's dated March 2nd, so I can't explain
17 those dates, but in any event, so we seem to have
18 two different officers sort of coming close to
19 the same conclusion. Do you see that?

04:00 20 A Yes.

21 Q But interesting enough, Karst seems to have
22 revised his opinions in the ensuing 23 years,
23 because when he came to testify in the Supreme
24 Court of Canada, he seemed to have a different
04:00 25 version of what he thought of what you were saying



1 to him. If we go to his evidence in the Supreme
2 Court of Canada, 169063, and if we can look first
3 at 169148. See here, we've got Walters is there
4 from the Regina police, so we now know we're
04:01 5 talking about the April 14th interview because
6 that's when Walters was with Karst.

7 A Okay.

8 Q At the Regina police station.

9 A Okay.

04:01 10 Q That's when he wrote that report saying he found
11 you very convincing.

12 A Okay.

13 Q Right?

14 A Okay.

04:01 15 Q Okay. Could you give me the whole page? You've
16 lost me a bit. Thank you. So there's the Ken
17 Walters, you don't need to highlight, just as is,
18 and then as you go down starting here:

19 "Q You located her and she was questioned
04:01 20 again?

21 A Yes.

22 Q And questioned at length?

23 A Yes.

24 Q Were you letting her know you weren't
04:02 25 believing her?



1 A I would think she would be of that
2 opinion."

3 Strikes me as a bit different from what he had
4 written back in, on April 18th when he did the
04:02 5 report. Do you agree?

6 A I would agree.

7 Q Then the next page, please, look at this, same
8 interview:

9 "Q So by that point in time she had been
04:02 10 interrogated several times at length.

11 A Yes.

12 Q And she was being consistent in what she
13 said.

14 A Yes.

04:02 15 Q And you were letting her know in no
16 uncertain terms that the police didn't
17 believe her?

18 A I don't know if I would put it that
19 way, but I had my doubts.

04:02 20 Q And you were conveying them to her, I
21 would think."

22 Was the question to which Karst answered:

23 "A I would think so."

24 Doesn't sound very consistent with what he wrote
04:03 25 on April 18th, 1969; does it, Madam?



1 A Correct.

2 Q And then 169269:

3 "Q How did you feel about Nichol when --"

4 This is Karst again in the Supreme Court of

04:03 5 Canada in 1992. You testified there too;

6 remember?

7 A Briefly.

8 Q You weren't the only one.

9 A Pardon me?

04:03 10 Q I say you weren't the only one who testified.

11 A Yeah.

12 Q Karst was asked:

13 "Q How did you feel about Nichol when you

14 talked to her? I know that there are a

04:03 15 number of times in your reports where

16 you say "if she is to be believed", and

17 that sort of reference. Did you have

18 concerns about what she was telling you?

19 A I did. I had the feeling that she,

04:04 20 for some reason -- maybe because she

21 was afraid, I didn't know. For some

22 reason, I felt she was holding

23 something back. I didn't know why."

24 Again, doesn't sound like what he wrote on April

04:04 25 the 18th, but it might help explain, at least in



1 part, what we know is coming on May the 24th
2 don't you think?

3 A I'm sorry?

4 Q Well, if Karst is making it very clear to you that
04:04 5 he doesn't believe what you are telling him, if
6 you are getting this thrown at you on March 18th
7 in a prison cell, or in a prison room I should
8 say -- I'm sorry, my mistake -- in a room in a
9 prison with someone who is in there for whatever
04:04 10 reason, and then he's saying it to you again four
11 weeks later, you might be starting to get a
12 message, you, the 16 year old Nichol John, don't
13 you think, these guys don't believe a word I'm
14 saying to them?

04:05 15 A One would think so, yeah.

16 Q Yeah, you would. And then Karst, in the same
17 evidence, describes what the whole point of
18 taking -- having said that, let me just go to it
19 just to make sure I describe it right. 169289,
04:05 20 please. Karst is asked about why it is you and
21 Ron are taken from Regina to Saskatoon on May the
22 21st and May the 22nd respectively of 1969. All
23 right?

24 A Okay.

04:05 25 Q Wilson was taken on May 21, Mackie hung around in



1 Regina looking for you, he found you on May 22nd,
2 and then took you to Saskatoon, so that Wilson is
3 there on the 21st and you get there on the 22nd;
4 do you follow?

04:05 5 A Okay, yes.

6 Q Question of Karst at the Supreme Court of Canada
7 in 1992:

8 "Q Was your only purpose in getting these
9 two individuals to Saskatoon to find out
10 once and for all what they knew.

11 A To verify everything that we had
12 suspicions of.

13 Q To find out what they knew?

14 A Yes."

04:06 15 Do you see that?

16 A Yes.

17 Q So now you know why they took you to Saskatoon?

18 A Yup.

19 Q They didn't like what you were saying, they didn't
04:06 20 like what Ron Wilson was saying, and we have seen
21 what you have said on three occasions, now, you
22 basically repeat the same thing?

23 A Uh-huh.

24 Q And you have seen what Ron Wilson said on March
04:06 25 3rd in particular, right, I read it to you this



1 morning -- this afternoon?

2 A Yes, yes.

3 Q Yes. And they didn't believe you. Why? Because
4 they thought David Milgaard had killed Gail
04:06 5 Miller; right?

6 A It sounds like it.

7 Q So they didn't like what you had said to them
8 because, --

9 A No.

04:06 10 Q -- as Karst had put it in his report of April
11 18th, that -- and I, sorry, I forget the words he
12 used so I better go back to them -- he had said
13 "it would appear she is very convincing with her
14 story." Just to focus on you, and if your
04:07 15 "story", quote, unquote, was true as of what you
16 said April 14th and the two previous occasions,
17 then David hadn't done a thing; right?

18 A Umm, I'm sorry?

19 Q That David hadn't got anything to do with Gail
04:07 20 Miller's murder at all?

21 A According, yeah, according to that statement, yes,
22 yeah.

23 Q According to you, according to Ron Wilson, and
24 according to David?

04:07 25 A Of course.



1 Q Right.

2 A Yes.

3 Q So they take you to Saskatoon. And it makes you
4 wonder, doesn't it, just being a reasonable
04:07 5 person, Ms. John, it makes you wonder why would
6 they have to take you to Saskatoon? What's wrong
7 with Regina? That's where you live, why would
8 they have to drive you how far it is between the
9 one city to the other to question you, what is it
04:07 10 they can ask you about in Saskatoon that they
11 couldn't ask you about in Regina? I can't think
12 of anything; can you?

13 A No.

14 Q No. But that's what they did, to find out once
04:08 15 and for all what you knew and what Ron Wilson
16 knew, right?

17 A Yeah, that's what he is saying here, yes.

18 Q Yeah. And when they got you to Saskatoon and when
19 they got Ron Wilson to Saskatoon, by the time you
04:08 20 both left Saskatoon to go back to Regina, madam,
21 you had both suddenly given brand new statements
22 that made it utterly clear that David Milgaard had
23 killed Gail Miller; right? Do you see that?

24 A Yeah, I see what you are saying.

04:08 25 Q See what happened to you, madam, do you see the



1 sequence of events here --

2 A Uh-huh.

3 Q -- that took place, but they had to take you to
4 Saskatoon to do it; right?

04:08 5 A Umm, it sounds like it.

6 Q Karst says so, take him at his word, he is in the
7 Supreme Court of Canada under oath.

8 A Uh-huh.

9 Q Right. So let's look at what happened, what we
04:09 10 can glean from these police documents, as to what
11 happened in those days that seemed to be so
12 important to the next 23 and then 28 years of
13 David Milgaard's life. All right?

14 A Uh-huh.

04:09 15 Q Those days of May 22nd, or May 21st to bring Ron
16 Wilson into the picture, May 22nd, May 23rd, and
17 May 24th, 1969, because if you took those four
18 days out of the calendar David Milgaard wouldn't
19 have spent 23 years in jail for a crime he didn't
04:09 20 commit, so let's see what happened, all right?

21 A Uh-huh.

22 Q May 22nd, we'll deal with you since you are on
23 this witness stand, Ron Wilson is next. On May
24 the 22nd, according to Mackie, he is the one who
04:09 25 found you in Regina, and he took a statement from



1 you on May the 22nd which he tape-recorded, no
2 less. Go to 106676:

3 "In regards to further investigations
4 that have been carried out in regards to
04:10 5 this matter, on May 22nd, while in
6 Regina, Saskatchewan Nicole John was
7 picked up at her home 817 Victoria
8 Avenue Regina, and taken to the Regina
9 City Police Station where she was
04:10 10 interviewed in regards to her knowledge
11 of this offence. This interview has
12 been taped for further reference."

13 Now the tape, it may have been taped for further
14 reference, but somehow it's disappeared off the
04:11 15 face of the earth. But, whatever, the purpose
16 for which it was taped, it wasn't retained for
17 that purpose, but we do have some idea of what
18 you said in that taped statement on May the 22nd
19 because Mackie has testified about it.

04:11 20 Can we go to the Fisher trial
21 in 19 -- no, in 2000, was it?

22 MR. WOLCH: '99.

23 BY MR. LOCKYER:

24 Q '99? Thank you. 310221, and then move on to
04:11 25 310180. So 310221 is where we start, I hope,



1 right. This is Mackie testifying at Larry
2 Fisher's trial for the murder of Gail Miller. He
3 was, as you probably know, convicted. And this is
4 what Mackie had to say in part.

04:12 5 And it's interesting, madam, the
6 way the table is turned in this case, because now
7 we've got Mackie being cross-examined by the Crown
8 prosecuting Fisher, so everyone has sort of
9 swapped roles here, right, --

10 A Uh-huh.

11 Q -- from what you might expect is the norm. And
12 this is the Crown cross-examining Mackie who has
13 been called by Larry Fisher as a witness on Larry
14 Fisher's behalf. The Crown asks:

04:12 15 "Q Who interviewed her ...",
16 meaning Nichol John:

17 "... in Regina in the ...",
18 notice what the Crown calls it:

19 "... so-called taped interview?"

04:13 20 The Crown doesn't seem to have a lot of faith
21 when he calls it the "so-called" taped interview.

22 "A I don't remember.

23 Q Was it you?

24 A It could have been myself. I might
04:13 25 have been present with Ken Walters.



1 I'm don't know, don't remember."

2 Mackie seems to have similar problems to your
3 memory in places here.

04:13 4 "Q Have you ever seen or heard that taped
5 interview since?

6 A No.

7 Q Is it fair to say that, had Nichol John
8 said anything implicating her or
9 Milgaard or Wilson, you would have noted
04:13 10 it in your report?

11 A Probably.

12 Q Ands it's not noted in your report, is
13 it?

14 A No, it isn't.

04:13 15 Q You mentioned in your report, Detective
16 Mackie, that statement from Nichol John
17 where she apparently told you nothing
18 implicating her friends was taped. Was
19 this interview with her taped?

04:13 20 A This one here?

21 Q Yeah?

22 A No.

23 Q Why not?

24 A I don't know."

04:14 25 And then listen to his excuse for not taping the



1 document that you signed on May the 24th, it's
2 kind of interesting:

3 "The only thing I can say is probably
4 because the interview rooms we had at
04:14 5 that time were very bad acoustically."

6 So, because the document that you signed on May
7 the 24th was given in a room that was very bad
8 acoustically, we will never know what was really
9 said in that room, madam. Too bad

04:14 10 A I see what you are saying, yeah.

11 Q Too bad.

12 "Q Did you -- how old was Nichol John at
13 that time, Detective Mackie?

14 A Sixteen.

04:14 15 Q Did you speak to her parents prior to
16 going to her place in Regina?

17 A I don't remember whether I talked to
18 them or I don't know whether she was
19 living at home or elsewhere.

04:14 20 Q Did you warn Nichol John ahead of time
21 that you were coming?

22 A I don't remember."

23 And I think it goes without saying they probably
24 didn't talk to your parents before taking you to
04:15 25 Saskatoon neither; right?



1 A I don't know.

2 Q And then at 310182, which is the next page,
3 question, again the pros -- the Crown attorney is
4 questioning Mackie:

04:15 5 "Q And it's true, Detective Mackie, is it
6 not, that during your conversations with
7 Nichol John all day during May 22, 1969,
8 she didn't say anything to you
9 implicating herself or any of her
04:15 10 friends in Gail Miller's death?

11 A Not that I remember."

12 So we've got yet another day, May 22nd, where you
13 are sticking to your story, madam, what you said
14 March 11th, you are sticking to it --

04:15 15 A Okay.

16 Q -- despite what is happening to you in the
17 meantime; despite the police making it clear,
18 according to Karst, they didn't believe you;
19 despite being taken to a prison for an interview
04:16 20 with an inmate there; despite all those things,
21 and everything else that we've talked about, you
22 stuck to your story May 22nd, right.

23 Then we hear, and we've heard,
24 how you are taken to Saskatoon, you are a
04:16 25 16-year-old, you are driven there on the 22nd to



1 Saskatoon, and according to what Mackie has just
2 said you are still sticking to your story; right?

3 A Correct.

4 Q Yes. And then Mackie, in his evidence at Larry
04:16 5 Fisher's trial, describes the drive-around when he
6 drove you around the area or drove you to where
7 Gail Miller was, in fact, murdered, or at least
8 where her body was found and was most likely
9 murdered, if not right there close to there; all
04:17 10 right?

11 A Okay.

12 Q Certainly, that's where her body was left, let's
13 put it that way.

14 A Okay.

04:17 15 Q 310024. This is Mackie, again at Larry Fisher's
16 trial, and he describes what he did as he showed
17 you around in different extracts from his
18 evidence. And this is when he is being questioned
19 by Mr. Beresh for Larry Fisher, and he is asked --
04:17 20 because, remember, Mr. Beresh's interest is to try
21 and take advantage of your evidence to show that
22 Larry Fisher couldn't have been the one to kill
23 Gail Miller; do you follow?

24 A Yes.

04:17 25 Q So, suddenly, there's this strange role that you



1 have now been moved into where you are sort of a
2 defence witness for Larry Fisher; you follow?

3 A Yes.

4 Q I mean I'm sure you knew that was what was going
04:18 5 on at the time?

6 A Yes.

7 Q Right? I mean you talked about it with Mr. Beresh
8 before you testified, didn't you, you told us
9 about that last week?

04:18 10 A Umm, yeah, I think I talked to him, but I don't
11 know how much, so --

12 Q Right. And Mr. Beresh asks you:

13 "Q Okay. Now, when you got to a certain
14 area around the Pleasant Hill area, did
04:18 15 that change or not change?"

16 Meaning -- sorry, let me go back a bit, at line
17 5. Starting there:

18 "... so when you were driving around
19 with her initially when you arrived in
04:18 20 Saskatoon, what was her disposition,
21 please?

22 A Quite relaxed, as far as I could
23 tell."

24 Nothing unusual.

04:18 25 "Q Okay. Now, when you got to a certain



1 area around the Pleasant Hill area, did
2 that change or not change?

3 A We stopped by an alley on Avenue N,
4 the alley leading to where Gail
04:19 5 Miller's body was found, and she made
6 a comment about a garbage can lid
7 being off. I don't remember whether
8 it was the lid was off and it wasn't
9 off, or vice versa. And she was a
04:19 10 little distraught. Very noticeable
11 change in demeanour."

12 Do you see that?

13 A Yes.

14 Q Right. And it's very interesting, you read that
04:19 15 evidence and you go to what he wrote in his report
16 about that event on May the 29th, he doesn't say
17 anything about you suddenly having a change in
18 demeanour?

19 A No, I don't --

04:19 20 Q But, nevertheless, 50 -- or however many years
21 later it is, 29, 30 years later, he is saying
22 this. Then move to 310148, 310148 he is asked,
23 again by Mr. Beresh:

24 "Q Now, where in relation to where Gail
04:20 25 Miller's body was found did you observe



1 her to become distraught? That is,
2 where was the car physically at that
3 point?

4 A Be on Avenue O.

04:20 5 Q How far from where Gail Miller's body
6 had been found?

7 A I suppose it would be about half a
8 block. Just down -- it's a T lane
9 ..., "

04:20 10 So we now know you are right where Gail Miller's
11 body was found, right, you follow?

12 A Yes.

13 Q "Q Did you say anything to her to cause her
14 to be distraught?

04:20 15 A No, I don't think so.

16 Q Okay. I take it you were in a car that
17 she could see out of?

18 A Yes, a normal sedan car."

19 And then look at how the Crown cross-examined
04:20 20 Mackie on this evidence as to what the real
21 purpose of this trip was. 310183, or perhaps
22 could we go back to 182, I'm sorry. So this is
23 the Crown at Larry Fisher's trial cross-examining
24 Mackie, and he says:

04:21 25 "Q And it's true, Detective Mackie, that



1 you took Nichol John to the area where
2 Gail Miller was killed?

3 A Yes.

4 Q And it's true you drove her down the
04:21 5 back alley where her body was?

6 A I don't recall going through the alley
7 ... end of the alley. I don't recall
8 driving through her through it.

9 Q At which end of the alley?

04:21 10 A Be by St. Mary's Church.

11 Q By St. Mary's Church, was that Avenue O?

12 A Avenue O, yes.

13 Q Why did you take her there?"

14 asks the Crown.

04:21 15 "A Part of re-establishing memory she might
16 have had. Finding out what she knew,
17 where they had been.

18 Q Well, Detective Mackie, these ... March
19 11, 1969 statement that Nichol John
04:22 20 gave, you knew her memory of that date,
21 didn't you?"

22 See, the Crown is saying here -- see how the
23 Crown has reversed their role, now, and suddenly
24 March 11th, in effect, the Crown suggesting is
04:22 25 when you told the truth and got it right; do you



1 see that --

2 A Yes.

3 Q -- in that question? Yes. Did you know that
4 people had been swapping sides with you in this
04:22 5 way over the years, madam?

6 A No.

7 Q No. Answer from Detective Mackie as to whether he
8 knew about your March 11th statement on that date:

9 "A May have, I don't remember.

04:22 10 Q Well I suggest to you, Detective Mackie,
11 that in that statement that she gave to
12 the police on March 11, 1969, she never
13 made any reference to that alley."

14 And for what its worth, madam, he is bang on,
04:23 15 isn't he; you didn't?

16 A I believe so, yes.

17 Q Yes.

18 "A I don't know whether she did or not.

19 Q The reason I ask you this, Detective
04:23 20 Mackie, is that I'm suggesting to you
21 that you took her there so that she
22 could see where Gail Miller had been
23 killed?

24 A I don't know whether I'd put it that
04:23 25 way or not. He was taken there for --



1 to see where they had been and --

2 Q To see what?

3 A I don't -- see where they had been."

4 Which is kind of a strange thing for Mackie to
04:23 5 say, given that, up to this point, you haven't
6 said that you were there, nor has Wilson, nor has
7 David Milgaard, nor has Cadrain, for that matter,
8 but he has assumed that you were there. Do you
9 see that?

04:23 10 A Yes.

11 Q Yes.

12 "A I don't know as I took her there
13 specifically to show her that that was
14 where Gail Miller had been ...",
15 I'm sorry, I'll read that again, I read the
16 emphasis wrong:

17 "A I don't know as I took her there
18 specifically to show her that that was
19 where Gail Miller had been killed.

04:23 20 Q Well why else would you take her there?

21 A Just to re-establish her route through
22 the city and where they had been and
23 not been.

24 Q What do you mean re-establish, Detective
04:24 25 Mackie?



1 A Well, for our information, where the
2 group had travelled through Saskatoon
3 when they came from Regina to
4 Saskatoon.

04:24 5 Q So you took her there hoping it would
6 refresh her memory?

7 A Could have been, yes.

8 Q So you were going to suggest to her this
9 is where you ...",
10 meaning you, Nichol John:

11 "... were?

12 A I wouldn't have done that.

13 Q Well what were you doing then in taking
14 her there, Detective Mackie?

04:24 15 A To just take her there.

16 Q And you don't think that's a suggestion?

17 A Depends on how an individual wants to
18 interpret.

19 Q Okay. Fair enough. Is it possible,
04:24 20 Detective Mackie, that you said to her
21 'this is where we found Gail Miller's
22 purse'."

23 Do you remember the garbage cans, madam?

24 A Yes.

25 Q Yes.



1 "Q ... do you remember?

2 A No, I don't remember saying anything
3 like that. I don't think I would
4 have.

04:25 5 Q Let me just -- I'm sorry, you may have
6 misunderstood the question. I suggest
7 to you, Detective Mackie, that you may
8 simply have said to her 'Nichol, this is
9 where we found Gail Miller's purse? Do
10 you remember it? Is that possible?

11 A Not likely.

12 Q Why?

13 A Not likely.

14 Q Why?

04:25 15 A Not likely.

16 Q Why do you say that?

17 A It isn't likely the way I would have
18 proceeded to do anything like that.

19 Q Again I have to go back, and I hate to
04:25 20 be persistent, Detective, why did you go
21 to that area at all?

22 A Taking her around different parts of
23 the city that she suggested they were
24 in, or re-establish. Some we already
04:25 25 knew they had been to."



1 Now that last answer is quite misleading because,
2 certainly, you had never suggested that you had
3 been to that part of the city where Gail Miller
4 was killed before Mackie took you there; had you?

04:26 5 A I don't know.

6 Q Well, I have taken you through everything you've
7 said.

8 A Yes, yeah.

9 Q Right. And, madam, by the time you come to give
04:26 10 your statement the next day, May the 24th --
11 actually it's not the next day, it's the day after
12 next, I'm sorry, two days later -- you are
13 suddenly purporting to remember the scene, or at
14 least the document that you signed had you
04:26 15 purporting to remember the scene where Mackie had
16 taken you. All right? Look at -- to take your
17 May 24th statement, 065356, if we could go to
18 that. Sorry, I just want to find my version of
19 it, and look at what you said. This is your, the
04:27 20 document you signed on May 24th, right.

21 "After we got to Saskatoon we drove
22 around for about 10 or 15 minutes. Then
23 we talked to this girl. This was in the
24 area where Sergeant Mackie drove me
04:27 25 around."



1 See how you have adopted what Mackie did to you
2 two days earlier?

3 A Uh-huh, yes.

4 Q Well, I don't know if you have adopted it, you
04:27 5 have signed a document that's adopted it, let's
6 put it that like that.

7 A Yes.

8 Q Right?

9 A Yes.

04:28 10 Q Yes. And then if we could look at what Mackie
11 wrote in his report of May 29th, 106676, please.
12 This is Mackie's report which summarizes his
13 version of the events from May 22nd to 24th when
14 he dealt with you. All right?

15 A Okay.

16 Q Do you follow me?

17 A Uh-huh.

18 Q And it's dated May 29th. And he says, he has been
19 driving you around, and then he says here -- I
04:28 20 have just got to find it, it's hard to see, right
21 there, starting:

22 "Then ...",

23 See:

24 "Then we returned to the 200 block

04:28 25 Avenue M South which Nicole John did not



1 recognize as being the location where
2 they had asked the girl for directions."

3 So here, back on the 22nd, you don't recognize
4 the location because, ultimately, you say this
04:29 5 all happened within a block; right? You follow
6 me?

7 A Yes, I follow you.

8 Q And what's even more interesting about that is
9 that up to this point you have never said anything
04:29 10 about asking a girl for directions, this is
11 introduced by Mackie, that you had asked a girl
12 for directions?

13 A Okay.

14 Q You had never said it in any of all of your
04:29 15 previous statements?

16 A I see what you are getting at, yes.

17 Q Maybe on the lost tape of August 22nd, we'll never
18 know, because Mackie seems to have lost it.

19 A Okay.

04:29 20 Q But certainly, if it was there, he didn't record
21 it as such in writing. So there's some cause to
22 believe here, madam, that even using the police
23 own writings, right -- and police are usually
24 fairly careful about what they write -- but even
04:30 25 using their writings they would seem to have,



1 arguably, provided you with this information
2 rather than you providing it to them. Do you see
3 that?

4 A This was before the statement, then, --

04:30 5 Q For sure.

6 A -- is what you are saying?

7 Q Oh yes.

8 A Okay.

9 Q It's before the document you signed on May 24th,
04:30 10 this is written on May 22nd, all right?

11 A Okay.

12 COMMISSIONER MacCALLUM: About time,
13 Mr. Lockyer?

14 MR. LOCKYER: May I just do one more piece,
04:30 15 Mr. Commissioner, it -- which just ties in with
16 the last few minutes. It will only take a
17 minute.

18 COMMISSIONER MacCALLUM: Yes.

19 BY MR. LOCKYER:

04:30 20 Q If we could also go to Mackie's cross-examination
21 at Larry Fisher's trial, 310021, and in particular
22 at 310041. And here, again, we have the Crown
23 cross-examining Mackie. All right. The change,
24 the reversal of roles, and the Crown has just
04:31 25 referred him to this very statement in that report



1 that I just read to you of May 29th from Mackie.
2 Right at the top of the page, sorry, start top
3 line, my mistake:

4 "Q I want to refer to the statement again,
04:31 5 Detective Mackie, because -- and I just
6 want to ask you what you mean in it.
7 'Then we returned to the 200 block
8 Avenue M South, which Nichol John did
9 not recognize as being the location
04:31 10 where they had asked the girl for
11 directions.' "

12 That's the part I just read to you; right?

13 A Yes.

14 Q "What do you mean by that, 'then we
04:32 15 returned to the 200 block Avenue M
16 South, which Nichol John did not
17 recognize as being the location where
18 they had asked the girl for
19 directions?'"

20 Mackie answers:

21 "A I don't know, other than just what it
22 says.

23 Q I'm suggesting --

24 A Whether we had been there previous to
04:32 25 that and returned, I'm not sure."



1 And then the Crown, the prosecutor, puts to
2 Mackie:

3 "Q I want to suggest to you, Detective
4 Mackie, that you had suggested to her
04:32 5 that's where they asked the girl for
6 directions and she didn't agree with
7 you.

8 A Possibly. I don't remember."
9 So you see how, just little bit by little bit, we
04:32 10 can squeeze out of this how the police are
11 leading the 16-year-old Nichol John in the
12 direction they want to take her. Do you see
13 that?

14 A Yeah.

04:32 15 MR. LOCKYER: That's a good time to break,
16 Mr. Commissioner.

17 COMMISSIONER MacCALLUM: Okay.

18 MR. LOCKYER: Thank you.

19 COMMISSIONER MacCALLUM: 10:00 then. Ms.
04:33 20 John, you will acknowledge the usual caution
21 about not discussing this with anyone?

22 A Yes.

23 *(Adjourned at 4:33 p.m.)*
24
25



OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATES:

We, Karen Hinz, CSR, and Donald G. Meyer, RPR, CSR,
Official Queen's Bench Court Reporters for the Province of
Saskatchewan, hereby certify that the foregoing pages
contain a true and correct transcription of our shorthand
notes taken herein to the best of our knowledge, skill,
and ability.

_____, CSR

Karen Hinz, CSR

Official Queen's Bench Court Reporter

_____, RPR, CSR

Donald G. Meyer, RPR, CSR

Official Queen's Bench Court Reporter



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