

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 55

Inquiry Proceedings



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Transcript of Proceedings

(Reconvened at 9:00 a.m.)

COMMISSIONER MacCALLUM: Good morning.

MR. HODSON: One important person I forgot to check for is Mr. Mackie. Mr. Commissioner, Mr. Mackie is here but his counsel, Mr. Shulman, is not, and I don't think Mr. Mackie knows why he is not here.

COMMISSIONER MacCALLUM: Are you okay with that, Mr. Mackie, do you want to continue or do you want to wait?

A I don't know, sir.

MR. HODSON: If you can maybe give me five minutes, I will try and contact Mr. Shulman and find out why he's not here. I'm sorry about that. Maybe that's best, just to check with him.

COMMISSIONER MacCALLUM: No problem. That's fine, we should do that.

(Off record momentarily)

RAYMOND WILLIAM MACKIE, continued:

BY MS. McLEAN:

Q Your counsel is present now; is that correct?

A Yes.

Q If I could have 025629, please. This document, sir, is entitled witnesses required re:



1 preliminary inquiry and I believe that is
2 something that was prepared by Officer Ullrich; is
3 that correct?

4 A I don't know.

09:06 5 Q Are you aware of whose responsibility it was to
6 prepare a list of witnesses that are required for
7 a prelim?

8 A That was Ullrich's.

9 Q And have you ever seen this document before to
09:06 10 your recollection, sir?

11 A No.

12 Q Given that it's created and entitled witnesses
13 required for the preliminary inquiry on August the
14 18th of 1969, it's quite obvious it was prepared
09:07 15 prior to the preliminary hearing?

16 A It would appear that way, yes.

17 Q And if we can look at the bottom of the page, it's
18 a little hard to see because there's been some
19 highlighting, but in this bottom section here,
09:07 20 this is about Nichol John, okay, you see her name
21 there sort of?

22 A It's kind of blacked out. If that's what that is.

23 Q Okay. "Is also known as "Nicky" - (nick-name)"?

24 A Yes.

09:07 25 Q Left Regina about one a.m. with Milgaard and



1 Wilson. You see that?

2 A Yes.

3 Q So it's a review of the anticipated evidence of
4 Nichol John in that respect; right?

09:07 5 A Yes.

6 Q Next page, please, and then it goes on about
7 various things that she can say or is expected to
8 say about the trip en route to Saskatoon, it
9 refers to car trouble, the fact that the car
09:08 10 couldn't be backed out, right, and then we get
11 down to this section here about observing a girl
12 walking in the same direction as they were, David
13 asking directions of the girl, offering her a
14 ride, making the stupid bitch comment, and then
09:08 15 Wilson continues, tries to make a U-turn at an
16 alley, became stuck in the alley entrance. Do you
17 see that?

18 A Yes.

19 Q And that's in accord with what she had told you on
09:08 20 May 24th; right?

21 A As far as I recall.

22 Q Move down, please. Now, this part here, we'll
23 hear evidence later as to whether or not it really
24 was Mr. Ullrich that wrote this. This comment
09:09 25 says:



1 "Note - this area still seems
2 uncertain."

3 And with respect to that, they are talking about
4 the area of the evidence, meaning this encounter
09:09 5 with the girl, asking her for directions and
6 getting stuck in the alley; correct? You
7 understand that?

8 A I guess so.

9 Q "- this area still seems uncertain. Both
09:09 10 Wilson and John who originally claimed
11 to know nothing of the murder now
12 maintain they were stuck and two men
13 came to assist in pushing them free.
14 The police have been unable to locate
09:09 15 these two men. Police believe the first
16 lack of knowledge and now the
17 uncertainty surrounding the facts at the
18 alley entrance may mean Wilson and John
19 either are not telling the entire truth
09:10 20 or are more involved in the offence than
21 they wish to say."

22 Can you help us, sir, as to where Mr. Ullrich
23 would have got the idea that the police believed
24 there's some problem with this evidence of Wilson
09:10 25 and John?



1 A The only place I would know would be the file.

2 Q I'm sorry?

3 A The only place I know would be the file.

4 Q Do you have any recollection of seeing anywhere in
09:10 5 the file any question as to whether or not they
6 were telling the truth about those two statements?

7 A No.

8 Q I haven't been able to find one, but -- and you
9 have no recollection of one either; right?

09:10 10 A No.

11 Q Do you recall any kind of talk around the station
12 at all about how preposterous the accounts of
13 Wilson and John really were?

14 A No.

09:10 15 Q Anybody talk about how bizarre it would be to
16 leave a stuck car and then go and kill somebody
17 within yards of the stuck car?

18 A Do I remember any conversation about that? No.

19 Q Did that ever cross your mind, sir?

09:11 20 A No.

21 Q And Mr. Wolch yesterday was talking with you about
22 how odd it is that Nichol John saw a murder,
23 forgot about the murder, remembered in Calgary,
24 forgot again, remembered again, no talk of that
09:11 25 either?



1 A Not that I remember.

2 Q And never crossed your mind?

3 A Not that I remember.

4 Q And no talk either of Mr. Wilson initially
09:11 5 forgetting that he had got out of the car himself?

6 A I don't remember it.

7 Q And no talk, Mr. Wolch covered this with you I
8 believe as well, no talk about Nichol John seeing
9 a stabbing through a coat which ultimately ends up
09:12 10 not going through her dress?

11 A I don't remember any of it.

12 Q Or indeed there being no evidence of the car being
13 stuck, in addition to the problem about these two
14 men not being around, there's no evidence
09:12 15 available that the car was stuck anywhere?

16 A I don't know.

17 Q You are certainly not aware of ever hearing of any
18 evidence that supported that story are you?

19 A I may have been at one time, but I don't remember
09:12 20 anything about it.

21 Q The next page, please -- next -- next -- and I
22 just wanted to point out to you, sir, that the
23 same comment is made with respect to Mr. Wilson's
24 purported story, it's on page 5 of the document,
09:13 25 it says:



1 "Note - Wilson at first told police he
2 knew nothing of this offence however has
3 since told the story as set out in the
4 brief. There still remains areas,
09:13 5 especially at time of actual offence,
6 which seem in doubt as far as Wilson is
7 concerned."

8 And that's the same kind of thought that had been
9 expressed in that summary; correct?

09:13 10 A Yes.

11 Q And you have no recall of talking about that after
12 the statements had been obtained?

13 A No.

14 Q Could I have 009222, please, and can we show at
09:13 15 the same time on the other side maybe, it's
16 006645. Now, this is a document that you were
17 questioned about yesterday, meaning the May 29th
18 one, and this is the one that has no mention at
19 all of the taking of a statement from Nichol.
09:14 20 Remember?

21 A Yes, I remember you talking about it yesterday.

22 Q The next page of that document, please. So it
23 skips over from the 22nd and then we go to the
24 24th -- sorry, the next page of this document.

09:14 25 Thank you.



1 "On May 24th, I returned to Regina with
2 Ronald Wilson and Nichole John."

3 Do you see that right at the top?

4 A Yes.

09:14 5 Q And then it goes on where you had got a flashlight
6 from Mr. Wilson, you received a sweater from
7 Mr. Wilson that he told you that David had been
8 wearing when they left Regina and then down at the
9 very bottom here, May 27th, if we could blow that
09:15 10 part up, please, you've recorded that on May 27th
11 you went and interviewed Gail Miller's parents and
12 her brother Lloyd about the compact case and
13 compact. Do you remember doing that, sir?

14 A I remember going to Laura, but that's all.

09:15 15 Q Okay. And you recorded here fortunately what
16 information they gave you, which was that Miss
17 Miller had a compact:

18 "... which was possibly one of two or
19 three different, one that she had was
09:15 20 all pink and is believed to be round,
21 and the other was a gold top, black
22 bottom compact. She also had sample
23 tubes of lipstick of Avon products and
24 the plastic cosmetic bag which these
09:16 25 items were contained in was about 7"



1 long and about 5" wide with a zipper
2 along the top, believed to be blue in
3 colour with some sort of design on it."

4 Correct?

09:16 5 A That's what it says.

6 Q And then a little after that you go to speak to
7 Miss Miller's sister Peggy, the next paragraph --
8 over to the next page. You spoke to Gail Miller's
9 sister Peggy and she told you essentially the same
09:16 10 information, that Gail had a round compact that
11 was pink and a gold top, black bottomed one and
12 that:

13 "The cosmetic bag was a blue colour with
14 squares and circles of various other
09:17 15 colours, approximately 7" long and 3"
16 wide with a zipper along the top. The
17 pink compact contained face powder, the
18 gold and black one had face powder and a
19 mirror as well. Also contained in this
09:17 20 case was a long tube which broke up in
21 sections with different coloured
22 lipsticks and a similar item containing
23 eye shadow."

24 You see that?

09:17 25 A Yes.



1 Q And the reason you were asking those questions is
2 because of what Nichol John had told you on May
3 24th about the compact/cosmetic case issue; right?

4 A Something about a compact, yeah, there was a
09:17 5 compact mentioned in the file.

6 Q Okay. If we look to this statement from Nichol
7 John at page 652 of this document, please, this is
8 a statement that you took from Nichol John on May
9 24th, if you could pull up that section. So here
09:18 10 we have Nichol John telling you that on the trip
11 between Saskatoon and Rosetown she had seen in the
12 glove box a cosmetic case,

13 "... which I opened up. There was a
14 compact, 2 lipstick and an eye shadow in
09:18 15 it. I asked whose it was. Nobody knew
16 whose it was. Then Dave grabbed it and
17 threw it out the window."

18 Do you remember her telling you that?

19 A Not specifically, no.

09:18 20 Q Page 654 of the same document, please. So then we
21 get to the end of the, towards the end of the
22 document and it kind of looks like maybe you were
23 asking her some questions to elaborate on it
24 because she returns to the cosmetic case and she
09:19 25 describes the cosmetic case Dave threw away about



1 four inches high and six inches long, it had a
2 zipper on top. I do not recall the colour. It
3 was dirty inside with face makeup. All right?

4 A Yes.

09:19 5 Q And then if we could also look at, instead of
6 Nichol's, if we could look at 002242 and page 44
7 of that, this is Ronald Wilson's statement given
8 May 23rd, this section here, Mr. Wilson tells
9 Detective Karst that:

09:20 10 "On the way to Calgary Nicky found a
11 white or cream coloured compact with
12 flower design, I'm not just sure about
13 the color. She found this someplace in
14 the car. She asked whose it was. I
09:20 15 don't know what he said, he just took it
16 and threw it out the window."

17 So you see that the descriptions given by both
18 Ron Wilson and Nichol John about the cosmetic
19 case and/or a compact do not accord with the
09:20 20 descriptions given by the Miller family?

21 A They are all different.

22 Q And are you aware of Officer McCorriston
23 discovering the purse belonging to Gail Miller in
24 the garbage can?

09:21 25 A I don't remember anything about it.



1 Q You don't remember anything at all about a purse
2 being discovered?

3 A No.

4 Q 106212, please, and at page 214 of this document.
09:21 5 This is Officer McCorrison's description of
6 discovering the purse on February the 3rd of 1969
7 and he goes on to describe the purse and its
8 contents, all right, and he says:

9 "The contents consisted of one
09:22 10 multicoloured oval design pouch with tab
11 fastener and zipper fastener containing
12 one tube Dream-Glo Brush-on eye shadow;
13 One black coloured Emily Rogers make-up
14 pencil with blue plastic tip; One Hazel
09:22 15 Bishop pale pale pearl lipstick; One
16 tube Du Barry Golden Glace lip
17 overglaze; One white tube orange caramel
18 tube of make-up; One Max Factor
19 Hollywood eye shadow in gold tube."

09:22 20 Further down, please, and also:

21 "One clear plastic folder with
22 multicoloured front, tab fastener,
23 containing one tube of make-up."

24 So do you see, sir, that it appears that Gail
09:23 25 Miller's make-up was found in her purse on



1 February the 3rd?

2 A There was one found there according to that.

3 Q I'm sorry?

4 A There was one found according to that report.

09:23 5 Q Well it looks like there is two found, and an
6 awful lot of make-up, right?

7 A Yes, whatever it says there.

8 Q Now going back to the May 29th report -- could I
9 have the page prior to this one, so it would be
09:23 10 223, I guess. Now you have recorded here, and
11 this looks like it will be on, just from where
12 it's located within the statement, the report, it
13 seems to be either May 26th or May 27th, so about
14 three days after you had gotten the statement from
09:24 15 Nichol John which is not referenced in here, you
16 have:

17 "Prior to leaving Regina, I called again
18 at the Wilson home where I interviewed
19 Ron Wilson and his sister in regards to
09:24 20 toque's that might be missing but I was
21 unable to gain any information. I
22 described the toque to them, but they
23 did not recall ever having a toque in
24 the home which the description of the
09:24 25 one we have possession of in regards to



1 this matter."

2 Now the toque that you had possession of, sir,
3 was the blue one that had some blood on it that
4 was discovered in the vicinity of the Cadrain
09:24 5 home and turned over by a neighbour named Helen
6 Gerse. Okay? That's just to provide you with
7 that information. So that the only toque you
8 could have described that you had possession of
9 was this blue toque that finally made its way
09:25 10 into the trial of David Milgaard, okay, do you
11 agree?

12 A Okay.

13 Q And if we go to Nichol John's statement -- so it's
14 006645, and at 006655 of that document, sorry, it
09:25 15 starts at the bottom of the preceding page, 54 --
16 Nichol gives, right after giving the description
17 of the cosmetic case she gives you a description
18 of the clothing that David Milgaard was wearing,
19 and she says, she describes:

09:26 20 "... green with yellow stripped pants,
21 Brown suede Jacket with knit cuffs &
22 knit insert ... black snow boots, long
23 green tooke with other colours possible
24 Red and blue. I think I would know this
09:26 25 tooke if I saw it again. Ron's Brother



1 has mitts like it. The mitts matched
2 the tooke."

3 So does it seem to you, sir, that maybe what you
4 should have been asking the Wilson family about
09:26 5 is a green, a long green toque with other
6 colours, and whether or not they had matching
7 mitts?

8 A Yes, I did, and I was asking about a toque that we
9 had.

09:26 10 Q Pardon?

11 A I was asking, apparently, I was asking about a
12 toque that we had. I don't remember anything
13 about it, I don't remember any of it.

14 Q Right. Do you think it would have been advisable
09:26 15 to ask them about the clothing that Nichol John
16 had described to you, if we were trying to figure
17 out whether David was wearing a bloody toque or a
18 green, long green toque with other colours in it?

19 A I think it is possible. I don't know, I don't
09:27 20 remember what I asked, whether I included any
21 other toques, or I don't know.

22 Q Okay. And in order for somebody to figure out,
23 from reading your report of March the 29th, they
24 wouldn't see that there was a -- a statement from
09:27 25 Nichol John that you were perhaps relying on when



1 you went to do these two things, speak to the
2 Miller family and speak to the Wilson family;
3 correct?

4 A There is no mention of it there.

09:27 5 Q And we also don't have an accurate record -- 323
6 of this document, the one before it -- you report
7 something in this, this statement, about
8 travelling back to, travelling back to Saskatoon
9 with Nichol John, and this is where you seize her
09:28 10 coat and then you take her into -- to Saskatoon.
11 Now this is something you are writing seven days
12 later; correct?

13 A Right.

14 Q And you are writing it after you have already had
09:28 15 an interview with her where you take a statement
16 in which she essentially confirms the theory that
17 you had outlined in the summary; correct?

18 A How do you mean that, ma'am?

19 Q Pardon?

09:28 20 A How do you mean that?

21 Q Well your theory, as outlined in the summary, was
22 that they had asked the girl for directions, all
23 right, and then David had gone and attacked the
24 girl after that, and after they had been stuck,
09:29 25 all right, and Nichol John gives you that in the



1 May 24th statement.

2 A Okay.

3 Q Do you understand what I mean? So when you are
4 writing this on May the 29th, all right -- further
09:29 5 down, please, okay -- now you have got an account
6 here, in this section, about Nichol actually
7 directing you to the lane way on Avenue T and she
8 pointed out a house as being the house where they
9 had been stuck. And I'm just going to advise you
09:30 10 that this is the Danchuk residence, right, where a
11 young couple had been stuck in the snow behind
12 their house, all right, and that the occupants of
13 the Wilson car had stopped to help them and,
14 ultimately, a tow truck has to be called for
09:30 15 everybody. Okay? Do you understand that?

16 A That's what you say, yes.

17 Q Okay.

18 A I --

19 Q Now what you have got here is that she pointed out
09:30 20 the house that, at that location, as being the
21 house where they had got stuck the second time.
22 All right? Now as of May 22nd-May 23rd there is
23 no record of Nichol John or Ron Wilson or anybody,
24 all right, saying that they had been stuck twice
09:30 25 in Saskatoon. Do you think it's possible that



1 your recording of this approximately a week later,
2 after Nichol had told you that they had been stuck
3 twice, was influenced by you knowing that?

4 A No.

09:31 5 Q All right. So you think, despite the fact that
6 Nichol had told you about getting stuck in an
7 alleyway on the 24th, all right, you don't think
8 that that possibly was in your mind when you were
9 writing this report on the 29th?

09:31 10 A No.

11 Q All right. You had an accurate memory on the
12 29th?

13 A No.

14 Q Sorry?

09:31 15 A I was using, when I was writing that up I was
16 using notes that I had made.

17 Q Okay. And those notes have completely
18 disappeared?

19 A To my knowledge.

09:31 20 Q Okay. And then if we look at -- sorry, it's right
21 around the same part, here we are -- you returned
22 to the 200 block, and it says Avenue M but I think
23 we agreed the other day it should say Avenue N,
24 which Nichol John did not recognize as being the
09:32 25 location where they had asked the girl for



1 directions. Okay? And until May the 24th Nichol
2 John hadn't told anybody that they had asked a
3 girl for directions, so can you answer the same
4 question there, were you perhaps influenced by
09:32 5 what she told you on the 24th when you wrote this
6 up later?

7 A Not to any recollection I have. I don't think it
8 would have had.

9 Q Okay. And if she had told you this, either of
09:32 10 these two things on the 22nd, they would have been
11 news to you, they would have been really quite
12 important; did you ask her about them?

13 A I don't remember.

14 Q Okay. If I could have 009264, please. These can
09:33 15 go away.

16 COMMISSIONER MacCALLUM: Are we finished
17 with the make-up?

18 MS. McLEAN: Yes.

19 COMMISSIONER MacCALLUM: What was that all
09:33 20 about?

21 MS. McLEAN: This is, the point is if this
22 had been something that could have been obvious
23 to somebody if they -- if the May 24th statement
24 had even been referenced. Somebody who is
09:33 25 reading this report, all right, reading the



1 allegations that David had thrown out a compact,
2 may put these things together, all right, and
3 realize that this piece of evidence that was used
4 at the trial, all right, could not possibly be
09:33 5 true, along the same lines as what Mr. Wilson
6 ultimately said.

7 COMMISSIONER MacCALLUM: What piece of
8 evidence?

9 MS. McLEAN: That David had thrown out a
09:34 10 compact which is attributed to Gail Miller. It's
11 not what was described by the witnesses.

12 COMMISSIONER MacCALLUM: He told his lawyer
13 he threw out a compact.

14 MS. McLEAN: Pardon?

09:34 15 COMMISSIONER MacCALLUM: He told his own
16 lawyer he threw out a compact.

17 MS. McLEAN: That is a matter about which
18 you will hear evidence but have not yet.

19 COMMISSIONER MacCALLUM: Okay. So you are
20 just saying -- but what's the point with this
21 witness; should the police have known better in
22 putting forward this evidence, is that what you
23 mean?

24 MS. McLEAN: Yes, or perhaps made more
09:34 25 extensive inquiries of Mr. Wilson, right, Ms.



1 John, gone back, perhaps, to the Miller parents.

2 COMMISSIONER MacCALLUM: Because of the
3 differing descriptions?

4 MS. McLEAN: Yes. The allegation at trial
09:34 5 and the implication at trial, all right, is
6 clearly that this is a compact that belonged to
7 Ms. Miller --

8 COMMISSIONER MacCALLUM: Right.

9 MS. McLEAN: -- and it was thrown out in
09:34 10 the sense of throwing out incriminating evidence
11 that would link him to the murder. Okay?

12 COMMISSIONER MacCALLUM: All right. Now
13 you are on 009264?

14 BY MS. McLEAN:

09:35 15 Q Right. Now this is a report that was prepared by
16 Detective Karst on the 25th of May, and it's a
17 reference to the interview of Mr. Wilson on the
18 21st of May in Regina, and you are listed as one
19 of the officers being present along with Detective
09:35 20 Karst, Constable Walters, Constable Dyck, and
21 Detective Karst. And similarly to your interview
22 with Nichol John in Regina, this conversation was
23 taped, and that's something that you said that you
24 would have taped conversations if you had been
09:35 25 directed to by a superior; right?



1 A I would have if I would have been directed to.

2 Q Yes. So according to Detective Karst's report
3 this conversation was taped, and that in this
4 conversation Mr. Wilson said that Mr. Milgaard had
09:36 5 left the car when they had become stuck, and he
6 doesn't say anything in there about how he had
7 left the car as well; all right?

8 A Nothing is said there.

9 Q Now the line here that's interesting is:

09:36 10 "During this conversation with Ronald
11 Wilson, he admitted attending in
12 Saskatoon with Milgaard and Nickey on
13 the early morning of January 31st and in
14 contradiction to his original and other
09:36 15 interviews, he admitted that Milgaard
16 had left the car when they became stuck
17 at approx. 6:45 that morning, while
18 looking for the Cadrain residence."

19 Now the impact of that, sir, is up until May the
09:37 20 21st everything that the police had been told by
21 Nichol John and by Ronald Wilson was that they
22 had never been separated from David in the early
23 morning hours; do you understand that

24 A Okay.

09:37 25 Q So by making this, this statement or admission, as



1 it's called, that David had left the car, right,
2 there is now an opportunity for David to have
3 committed the crime. Okay?

4 A Could be.

09:37 5 COMMISSIONER MacCALLUM: Didn't we hear all
6 this yesterday?

7 MS. McLEAN: Not from me.

8 COMMISSIONER MacCALLUM: No, but --

9 MS. McLEAN: I am going to ask something
09:37 10 else, I just want to make sure that the officer
11 understands, because he tells us he doesn't
12 remember the interview.

13 BY MS. McLEAN:

14 Q And the very specific thing I want to ask you
09:37 15 about, sir, is Mr. Wilson, when he testified here,
16 said it became very clear to him before he left
17 Regina that he was, himself, a suspect, all right,
18 in this offence, all right, and that he was
19 getting the impression that if it wasn't him -- if
09:38 20 it wasn't David, it was him, or it was both of
21 them together. All right. And can you help us at
22 all with the kinds of things that were said to Mr.
23 Wilson in this interview?

24 A No.

09:38 25 Q I want to move to something that you were asked



1 about yesterday, and the document is 325616, and
2 at page 620. This is your interview with
3 Mr. Carlyle-Gordge, and you were asked yesterday
4 about this, and this is the -- your statement that
09:39 5 David had made a comment to you on the plane about
6 demonstrating that he was eating with his left
7 hand, it couldn't be him, and he made a comment
8 about the person being right-handed. All right?

9 A Right.

09:39 10 Q You saw that as some kind of incriminating
11 evidence against David, I would presume?

12 A For use if it's of value, okay, but if it's not
13 that's all right too.

14 Q Okay. And you were talking to Mr. Carlyle-Gordge
09:39 15 I think in 1981, 1983, something like that?

16 A I don't know. Somewhere in the '80s.

17 Q Years after you had retired?

18 A Yes.

19 Q Is that something that you did a report about for
09:40 20 use at Mr. Milgaard's trial?

21 A I don't remember.

22 Q 006795. This is a report that you did do for the
23 chief of police on June the 16th of 1969, and
24 that's about a week and a half after you and David
09:40 25 returned, and he is in custody, and you have made



1 a note here of Mrs. Milgaard's visit to her son,
2 that she had given him a book with Bible study,
3 and then you have:

4 "During conversation Mrs. Milgaard
09:40 5 relayed a message from Mr. Tallis ...",

6 David's lawyer, all right, and the content of
7 that message, and then inquiries about his
8 sleeping habits and disturbing other people and
9 that she had brought him no food. Do you
10 remember having written any kind of a similar
11 note, or made a report of any kind, about
12 anything that David might have said about being
13 right-handed or left-handed?

14 A I don't remember.

09:41 15 Q And this was actually an issue at the trial, sir,
16 about whether or not the offence had been
17 committed by a right-handed or by a left-handed
18 person using his right hand, and nobody came to
19 you and asked you for your evidence about anything
09:41 20 David might have said?

21 A I don't remember.

22 Q As a general principle, sir, do you think that
23 evidence that surfaces for the first time years
24 after should be treated with some degree of
09:42 25 skepticism?



1 A I don't know.

2 Q I want to talk about, just briefly, some systemic
3 issues here, sir. The two interviews with Nichol
4 John and Ronald Wilson in Regina, all right, were
09:42 5 apparently tape-recorded and there's been no
6 ability by anybody, at any time, to find those
7 actual tapes, one of which was kept by yourself,
8 one of which was kept by Detective Karst, or a
9 transcript of them. So what we're left with is no
09:43 10 record of what had actually been said in those
11 meetings. And I think I'm correct that these are
12 the only two witnesses were taken after their,
13 their new statements, to have them sworn in front
14 of a Justice of the Peace. Are you aware of any
09:43 15 other witnesses having been taken to a Justice of
16 the Peace to swear to the truth of their
17 statements?

18 A No.

19 Q Okay. And is this something, as far as you can
09:43 20 recall, that you were directed to do with respect
21 to these witnesses?

22 A Yes.

23 Q And did you -- do you know who it was that
24 directed you to do so?

09:43 25 A No.



1 Q And what explanation was there for why they should
2 go and swear their statements?

3 A I don't really remember. I can assume.

4 Q Okay. And you would assume, based on your
09:44 5 experience as an officer in this case, what reason
6 would there be?

7 A Probably to, i.e. to proceeding other ways with
8 them and using them in Court or something, or --

9 Q Essentially -- I'm sorry, I interrupted you?

09:44 10 A To impress upon them that it's a true statement or
11 whatever. I'm not really sure.

12 Q Okay. And it has the effect, certainly, of they
13 can't move away from that statement without being
14 in jeopardy of perjury charges?

09:44 15 A I don't know whether I would say that or not. If
16 you -- maybe, as an investigator, maybe it would
17 give you a better consideration of having a
18 reliable statement rather than just --

19 Q Okay. So in terms of --

09:44 20 COMMISSIONER MacCALLUM: Forgive me for
21 interrupting, but this jeopardy of perjury
22 business came up time and again in the evidence
23 of Ron Wilson, and I looked up the relevant
24 sections in the *Criminal Code* and I had a very
09:45 25 difficult time understanding whether an



1 out-of-court statement could give rise to a
2 perjury charge, so I don't think it's very fair
3 to ask even a policeman about it. I just put
4 that in for your information, but if you want to
09:45 5 have a look at the code, you can tell me whether
6 it is.

7 BY MS. McLEAN:

8 Q And I think it means -- and the other thing, too,
9 would be giving contradictory evidence, swearing a
09:45 10 statement that is false on material points, all
11 right. So certainly, if I witness had given a
12 statement saying 'I saw a murder', all right, that
13 would certainly be a material point on a murder
14 charge. All right.

09:45 15 And in terms of enhancing the
16 reliability of statements or of ensuring that
17 controversial witnesses, or witnesses whose
18 evidence might be come controversial, are
19 accurately recorded and can be properly evaluated,
09:46 20 would you support a policy that required such
21 interviews to be videotaped?

22 A I don't know.

23 Q And would you support a recommendation that police
24 officers should be trained in the best ways to
09:46 25 elicit accurate and reliable statements from



1 witnesses?

2 A I think probably that's always been that way.

3 Q Okay.

4 A There was available information and procedures
09:46 5 that were available from one time to another time.

6 Q Okay. Did you have specific training in how to do
7 that?

8 A No.

9 Q Okay. And do you think that officers should have
09:47 10 specific training on how to do that?

11 A I'm not in a position to answer that, I don't
12 think.

13 Q You were an officer for how long?

14 A 30 years.

09:47 15 Q Thank you. Back in 1996, sir, you were questioned
16 at the civil suit -- and I don't think we need to
17 bring it up unless you want to -- the document is
18 205639. And I appreciate this was a proceeding
19 that took place prior to the DNA testing, and you
09:47 20 very honestly and forthrightly stated that you had
21 a firm belief at that time in David's guilt, and
22 that the correct person had been apprehended;
23 right?

24 A To my knowledge, yes.

09:48 25 Q And on a number of occasions, there, you referred



1 to your belief in his guilt as supported by the
2 courts. All right. And, actually, maybe we
3 should do the document. It's the 24th page of
4 this document -- sorry, I don't count the other
09:48 5 one. You are being asked, this is the Linda
6 Fisher issue:

7 "Q You figure justice was done in David
8 Milgaard's case; that's the bottom
9 line?"

09:48 10 All right:

11 "A The courts dealt with it."

12 Do you see that as being your answer?

13 A Yes.

14 Q And then on page 26 of the same document you are
09:49 15 asked again:

16 "Q But yet, in your mind, you still
17 entertain no doubt about David
18 Milgaard's guilt, even with a very
19 sketchy recollection of the facts of the
09:49 20 case?"

21 And your answer is:

22 "A That was established 25 years ago."

23 A Yes.

24 Q "Q So no matter what subsequent facts are
09:49 25 uncovered you are still unprepared to



1 entertain any little opening in your
2 mind for reasonable doubt; is that
3 fair?"

4 And your answer was:

09:49 5 "A I'm afraid that's probably right."

6 And then on page 91 of that you are being asked,
7 you are being asked in kind of a hypothetical way
8 questions about the Larry Fisher evidence, and
9 you are being asked what you could have done,
09:50 10 right, if you had known about Larry Fisher back
11 at the time of the murder. Okay, you understand
12 that?

13 A In part.

14 Q And your answer was:

09:50 15 "A If during the investigation that had
16 been carried on in 1969 something like
17 this had come to the attention it would
18 have been investigated. But after
19 Milgaard had been to court before a jury
09:50 20 and convicted, I wouldn't have carried
21 it anywhere because it's a case that's
22 already been dealt with by the courts.

23 Q Okay. And you simply would not have
24 done anything to investigate it under
09:50 25 any circumstances, no matter what you'd



1 learned; is that correct?"

2 And your answer was:

3 "A If something had been brought up to
4 cause it to happen, I might have done
09:51 5 it, but not likely. It's a file that's
6 been completed by the courts. ",

7 So would you agree that your position in regards
8 to the fresh evidence and the Fisher issue was
9 primarily because your belief in kind of an
09:51 10 infallibility of the Court system?

11 A I don't know.

12 Q Is that what you meant by you had been to Court
13 and it had been upheld on appeal and it had
14 already been decided by the courts?

09:51 15 A The courts were there to deal with it and then he
16 was getting me into a hypothetical situation and I
17 wasn't prepared to go there.

18 Q Yeah. But after the courts had dealt with it, you
19 had a firm belief in David's conviction, right, a
09:52 20 firm belief in his guilt?

21 A I would think so.

22 Q And primarily because the courts had already dealt
23 with it?

24 A They dealt with it.

09:52 25 Q Would you agree that there should be education for



1 police officers in particular that the courts are
2 not infallible and that there can be people in
3 jail for crimes that they did not commit?

09:52 4 A I don't know. That's up to other people in other
5 places to make those decisions.

6 MS. McLEAN: Thank you, sir. Those are all
7 my questions.

8 **BY MR. BERESH:**

9 Q Mr. Commissioner, I only have a few questions.

09:53 10 Witness, I want to clarify just
11 one issue that you raised yesterday with
12 Commission Counsel, you were asked about the Larry
13 Fisher trial and your evidence there. You recall
14 that, sir?

09:53 15 A Not really, no.

16 Q Do you recall the question from yesterday?

17 A Not a specific question, no.

18 Q Okay. Well, let me try to help you. He asked you
19 whether or not you testified at the trial and you
09:53 20 said you had?

21 A Yes.

22 Q And he asked you whether you had read the
23 transcript of the trial evidence and I believe you
24 said you had?

09:53 25 A I read some of it.



1 Q Okay. And I take it you read the
2 cross-examination of yourself there?

3 A Some of it. I didn't get time to read everything.

4 Q Okay. I'm interested in this: It appears when
09:53 5 you were asked at that trial a number of
6 questions, that you had a fairly clear recall of
7 the occasion of taking the May statement from
8 Nichol John; is that correct?

9 A If it was on there, yes.

09:54 10 Q Okay. Well, I can take you specifically, but let
11 me assure you that you were asked about the
12 circumstances under which it was taken, whether or
13 not you threatened her, induced her in any
14 fashion, and then subsequently whether you took
09:54 15 her before justice of the peace Robert Taylor?

16 A Yes.

17 Q And you had indicated you had not threatened her,
18 that she gave a statement to you and you
19 subsequently took her before a justice of the
09:54 20 peace?

21 A Right.

22 Q And that would be correct would it?

23 A Yes.

24 Q I don't have to go through it question by question
09:54 25 to ensure that we're dealing with your evidence



1 and your recall?

2 A Right.

3 Q And I gather that would be the last time, that's
4 1999 at Mr. Fisher's trial, that's the last time
09:54 5 before this occasion that you spoke publicly and
6 under oath about your recollection of that event?

7 A Yes.

8 Q Okay. And I take it that we can rely upon what
9 you said at that trial under oath can we?

09:54 10 A I think so.

11 Q As being accurate?

12 A To the best of my knowledge, yes.

13 Q Okay. And I'm interested, you said at that time
14 that it was a practice to take a witness before a
09:55 15 justice of the peace, you recall that?

16 A No.

17 Q Okay. Do you recall now whether or not it was in
18 1969 a practice to take a witness before a justice
19 of the peace, particularly a material witness?

09:55 20 A There was direction to do that. When it occurred
21 or when it started to have to happen I don't
22 remember.

23 Q Okay. Well, the reason I ask is did the practice
24 also include having the justice of the peace
09:55 25 review the statement independently with the



1 witness; that is, reading the statement to the
2 witness or having the witness read the statement
3 before the actual oath is taken?

4 A I don't recall on this particular case whether
09:55 5 Mr. Taylor -- he didn't have the witness read it.

6 Q You don't --

7 A I don't recall him having her read the statement.

8 Q Fair enough, but what was the general practice
9 when you employed the justice of the peace, would
09:56 10 the justice of the peace reread the statement to
11 the witness, would the witness read the statement
12 aloud or to himself or herself before the oath was
13 invoked?

14 A I don't really remember what his procedure was, if
09:56 15 he asked questions about the statement. I don't
16 remember exactly how he proceeded with it.

17 Q But on this -- did you ever have an occasion when
18 someone said I provided the statement, but I'm not
19 going to take the oath?

09:56 20 A No.

21 Q And I take it that's not what occurred here or
22 your best recollection is that that's not what
23 occurred here?

24 A To my recollection, this may be the only statement
09:56 25 I ever took that went through this procedure.



1 Q Okay. So just so we're clear, the 1999 evidence
2 that you gave at the Fisher trial would be your
3 last clear recollection of these events; is that
4 fair?

09:56 5 A

Yes.

6 Q Okay. Finally, sir, in the years that followed
7 the conviction, did you ever hear of any
8 suggestion that the jurors in the Milgaard case
9 had been interviewed or had spoken publicly about
10 the basis for their decision?

09:57 11 A

I'm not aware of anything like that.

12 Q You never heard about that?

13 A No.

14 MR. BERESH: Okay. Those are my questions.

09:57 15 Thank you.

16 BY MR. ELSON:

17 Q Mr. Mackie, my name is Richard Elson, I represent
18 the Saskatoon Police Service. For the record,
19 before today you and I have not spoken to each
20 other; is that correct?

09:57 21 A

Not that I know of.

22 Q And I don't believe you've had any direct or
23 significant contact with any member of our firm
24 with respect to this Commission of Inquiry; is
25 that correct?

09:58



1 A Right.

2 Q Now, I wanted to talk to you a little bit with
3 respect to the organization of the police service
4 in 1969. You indicated that Detective Sergeant
09:58 5 Jack Ward was one of your colleagues; is that
6 correct?

7 A Yes.

8 Q It's my understanding from the annual report which
9 has been marked as an exhibit in these proceedings
09:58 10 that Staff Sergeant Ward passed away in October of
11 1969; is that correct?

12 A He passed away. I don't know when.

13 Q But it would have been roughly, or sometime
14 shortly after the investigation into Gail Miller's
09:58 15 murder; is that correct?

16 A I don't really remember. I think if I remember
17 right, it was during, at some point during that
18 investigation.

19 Q If the annual report were to suggest that he
09:58 20 passed away in October of 1969, you would have no
21 reason to disagree with that?

22 A None at all.

23 Q And in Chief Kettles' portion of that report he
24 advises that Staff Sergeant Ward passed away after
09:59 25 a prolonged illness, and I'm using Chief Kettles'



1 words, he was ill for a significant period of time
2 prior to his death; is that correct?

3 A I believe he was.

4 Q And it was as a result of Staff Sergeant Ward's
09:59 5 illness -- excuse me, Mr. Commissioner, there's a
6 document I asked for.

7 As a result of Staff Sergeant
8 Ward's illness, he was pretty much confined to a
9 desk; is that correct? He wasn't doing any field
09:59 10 work?

11 A No, he wasn't, he was at a desk.

12 Q And he was at work for as long as he possibly
13 could or as long as his health would permit him to
14 do so; is that correct?

09:59 15 A I think so, yes.

16 Q And it was as a result of his illness and the fact
17 that he was largely confined to working in the
18 office that he essentially became the coordinator
19 and the receiver of all the investigation reports
10:00 20 and the statements which were generated in the
21 investigation of Gail Miller's murder; is that
22 correct?

23 A Yes.

24 Q Now, Lieutenant Short at that time, according to
10:00 25 the flow chart that has been presented in



1 evidence, was the head of the detective division
2 at that time; is that correct?

3 A No, second.

4 Q I'm sorry, the second?

10:00 5 A He would be second.

6 Q And who would be the --

7 A Wood.

8 Q My understanding is Superintendent Wood would have
9 been the superintendent of criminal investigations
10:00 10 and that below criminal investigations there was
11 morality, identification and the detective
12 divisions. Do you have a different recollection?

13 A No. Wood's office was in the detective office,
14 the same -- on the third floor of the old police
10:01 15 station.

16 Q Yes.

17 A His office was in one corner and the office that
18 the detective sergeants used was right next door
19 to it. He was not working -- he would probably
10:01 20 know what happened in, say, morality, which was on
21 the main floor, but I don't know how he
22 coordinated that.

23 Q Just so that we can have a, confirm our
24 understanding, I wonder if I could have the flow
10:01 25 chart which actually describes the officers by



1 name and I have that document -- actually, the
2 number has been obliterated on my sheet. If we
3 could just zero in on everything relative to the
4 superintendent of criminal investigations. You
10:01 5 have that flow chart before you? Actually, if we
6 could just include Superintendent Wood's name in
7 that. If we were to look at the highlighted
8 portion of this document which, for the record, is
9 document number 325571, as I understand it, there
10:02 10 were three divisions within criminal
11 investigations and those three divisions or the
12 heads of those three divisions reported
13 specifically to Superintendent Wood. Am I to
14 understand from your evidence, Mr. Mackie, that
10:02 15 this flow chart is inaccurate, that in fact
16 Superintendent Wood was really confined to the
17 detective division?

18 A I would say perhaps he worked more closely with
19 the detective division than the other divisions.

10:02 20 Q If we were to look at that flow chart, and going
21 by your understanding at the time, the flow chart
22 suggests that Superintendent Wood was the superior
23 of Lieutenant Short in the detective division,
24 Inspector Nordstrom in the morality division and
10:03 25 Lieutenant Penkala then in the identification



1 division. Do you have any reason to disagree with
2 that?

3 A No. The only thing that could happen there, Wood
4 pretty well worked the day shift and in the
10:03 5 detective division Charlie Short worked evenings
6 most of the time.

7 Q All right. In any event, we are in agreement that
8 Lieutenant Short would have been the superior to
9 Staff Sergeant Ward; correct?

10:03 10 A Yes.

11 Q And we are also in agreement that Superintendent
12 Wood would have been the superior to Lieutenant
13 Short?

14 A Yes.

10:03 15 Q And would we also be in agreement that Staff
16 Sergeant Ward, with respect to the collection of
17 materials, investigation reports and statements
18 and the like would be reporting to Lieutenant
19 Short who would in turn be reporting to
10:03 20 Superintendent Wood?

21 A Not necessarily. He might have been reporting to
22 Wood. Both Wood and Ward worked in the daytime.

23 Q I'm sorry, I stand corrected, and I understand
24 your evidence. It would be fair to say that Staff
10:04 25 Sergeant Ward would be reporting to Lieutenant



1 Short if Lieutenant Short was available or,
2 alternatively, would be reporting to
3 Superintendent Wood, and presumably Superintendent
4 Wood would be more available during the day shift?

10:04 5 A That's right, and I don't think there was any hard
6 and fast rule that you must report to a certain
7 individual.

8 Q Now, would you expect, and if you don't you don't,
9 would you expect that Staff Sergeant Ward would be
10:04 10 forwarding copies of investigation reports to
11 Superintendent Wood and/or Lieutenant Short?

12 A Not that I'm aware of.

13 Q Not that you are aware of. What would the nature
14 of the reporting be then from Staff Sergeant Ward
10:04 15 to either Superintendent Wood or Lieutenant Short?

16 A I don't really know.

17 Q So it's -- so in light of the fact that you don't
18 know, it's entirely possible that Staff Sergeant
19 Ward was regularly forwarding either investigation
10:05 20 reports, statements or impressions that Staff
21 Sergeant Ward had gained from the investigation
22 reports and the statements he was receiving with
23 respect to the Gail Miller murder?

24 A He may have communicated with them, but I can't
10:05 25 really see taking reports to them other than



1 temporary for them to peruse.

2 Q Now, in addition to Lieutenant Short being the
3 head of the detective division as shown on
4 document number 325571, Lieutenant Short had an
10:05 5 active hands-on, if I can use that phrase, role in
6 the investigation of the Gail Miller murder; is
7 that correct?

8 A In some cases, yes, some part of it he did.

9 Q And indeed, we don't need to go through them,
10:06 10 there are investigation reports which have been
11 authored by Lieutenant Short and we have
12 investigation reports that show Detective Karst
13 and Lieutenant Short from time to time worked
14 together in investigating certain aspects of this
10:06 15 case; is that a fair assessment?

16 A I think I remember some information they had from
17 what I've seen.

18 Q Now, it would be fair to say that much of what a
19 police officer, or more to the point an
10:06 20 investigator will do in any given case depends on
21 impressions that that investigator has of various
22 persons or various witnesses who are interviewed.
23 Is that a fair assessment?

24 A I think it would be.

10:06 25 Q And when I say impressions, perhaps I can be



1 somewhat more specific. There are certain gut
2 instincts that come to the fore in an
3 investigation such as this. Is that a fair
4 comment?

10:07 5 A I think so.

6 Q All right. So when you are interviewing someone,
7 you are assessing whether or not that person is
8 credible, whether or not information that person
9 has is reliable and in many respects you are
10:07 10 relying on your intuition in order to make those
11 assessments; correct?

12 A It would have to be that.

13 Q And not only are you making assessments with
14 respect to the witnesses you interview, you are
10:07 15 also making assessments with respect to the people
16 those witnesses might be talking about? In other
17 words, if you are interviewing witness A and you
18 are getting comments from witness A to talk about
19 person B, you are also developing impressions
10:07 20 about person B?

21 A I would think so.

22 Q Now, in this case when you prepared the summary
23 that has been referred to, and that's document
24 number 006799, I just refer to it for
10:08 25 identification, I'm not specifically wanting to



1 refer to a particular part of that document, when
2 you prepared that document, though, it's my
3 understanding that you had not met with Nichol
4 John; is that a fair comment?

10:08 5 A I don't really remember.

6 Q Right. There's no investigation report which
7 indicates that you had spoken with Nichol John and
8 there's no statement from Nichol John in which
9 your name appears, so it would be fair to say from
10:08 10 that that at the time you prepared the summary you
11 had not interviewed Nichol John; is that a fair
12 assessment?

13 A If that's the way it is in the file, that would be
14 the way it was.

10:08 15 Q And in addition you had not interviewed Ron Wilson
16 or spoken with Ron Wilson prior to preparing the
17 summary; is that correct?

18 A I don't really remember.

19 Q And just -- and I'm talking, and perhaps I'm being
10:09 20 somewhat unfair to you, I'm talking about the time
21 when you prepared the summary without actually
22 identifying it. When you were answering questions
23 of Commission Counsel you indicated that the
24 summary you had prepared and possibly the four
10:09 25 pages preceding it was prepared shortly after you



1 had returned from holidays?

2 A Yes.

3 Q But that you could not be specific as to when it
4 was that you went on holidays?

10:09 5 A That's right.

6 Q I gather that it was sometime in the spring of
7 1969, if we could narrow it down; is that fair?

8 A Sometime March, April.

9 Q March or April?

10:09 10 A March or April, somewhere in there.

11 Q If -- have you tested your memory to determine
12 where you might have gone for your holidays at
13 that time and whether or not that would assist you
14 in identifying the time when the summary was
10:09 15 prepared?

16 A No. I don't remember going anywhere.

17 Q All right. So the summary, document 006799, would
18 have been prepared sometime either in April or
19 perhaps early May of 1969?

10:10 20 A It sounds reasonable.

21 Q And in any event, we have evidence that it would
22 have been prepared prior to a meeting that I
23 understand you were not at, but others were,
24 notably on May 16, 1969, Commission Counsel
10:10 25 referred to that meeting in asking you questions.



1 So it's sometime before May 16th; is that fair?

2 A That would be fair, yes.

3 Q So when you prepared the summary, it would be fair
4 to say that you had to rely, since you had not
10:10 5 interviewed Ron Wilson, had not interviewed Nichol
6 John, and I don't believe you had interviewed
7 Shorty Cadrain either; is that correct?

8 A I don't know.

9 Q I stand to be corrected, the second interview with
10:10 10 Mr. Cadrain may have been by you. But in terms of
11 your assessments of Nichol John and Ron Wilson,
12 you had to rely on the assessments and the
13 impressions of other officers; correct?

14 A It would be because I was using the file.

10:11 15 Q And specifically you would have had to rely on the
16 impressions, for example, of Detective Eddie
17 Karst; correct?

18 A Yes.

19 Q And I acknowledge that Detective Karst is here in
10:11 20 the room, but what's your comment with respect
21 to -- was Eddie Karst a good investigator?

22 A To the best of my knowledge he was.

23 Q And you had opportunities to work with Detective
24 Karst before?

10:11 25 A Oh, I had worked with him, yes.



1 Q And to the best of your recollection, he was a
2 thorough and careful investigator?

3 A Yes.

4 Q And in particular he was careful to assess the
10:11 5 reliability and the credibility of the persons he
6 interviewed?

7 A I don't know as I ever went down that road, but --

8 Q All right. You were also aware, and you've
9 already indicated, that Lieutenant Short was
10:12 10 actively involved in the field in the
11 investigation of Gail Miller's murder; correct?

12 A Right.

13 Q And what was your impression of Lieutenant Short
14 as an investigator?

10:12 15 A I never really worked that much with Lieutenant
16 Short as an investigator.

17 Q All right. The fact that he was a lieutenant and
18 was nominally and perhaps in substance the head of
19 the detective division, somebody wouldn't rise to
10:12 20 that level or to that height of importance without
21 having established a good deal of skill and
22 credibility in the field; is that a fair
23 assessment? If it's not --

24 A I don't really know. I don't know what
10:12 25 departments Mr. Short worked in.



1 Q Now, there is also an investigation report from
2 Sergeant Malanowich and in the flow chart that had
3 been earlier shown there's a Y beside the yank and
4 I'm assuming that the Y refers to youth, that he
10:13 5 was in the morality division and he was primarily
6 assigned to the investigation of youth matters.
7 Are you aware of that?

8 A He was in charge of a youth section that they had
9 developed.

10:13 10 Q And that was a youth section that as developed
11 within the morality division; is that correct?

12 A I'm not sure how --

13 Q In any event, Sergeant Malanowich was not within
14 the detective division?

10:13 15 A No.

16 Q Had you had an opportunity to assess Sergeant
17 Malanowich's skills in the conduct of
18 investigations and the interview of witnesses?

19 A Not that I remember.

10:13 20 Q But you in reviewing the material and in reviewing
21 Sergeant Malanowich's involvement, you would have
22 to rely on his impressions of the witnesses he
23 interviewed as well; is that correct?

24 A Yes.

10:13 25 Q Now, when you prepared the summary in late April,



1 or in April or early May of 1969, at that time you
2 were aware that Albert Cadrain had come forward
3 voluntarily with information implicating David
4 Milgaard, you were aware of that?

10:14 5 A If it's in the file that way, yes.

6 Q And specifically he had come forward on two
7 occasions, March 2nd and then had been
8 subsequently interviewed on March the 5th, and I
9 understand that you prepared the investigation
10:14 10 report with respect to the March 5th interview,
11 and it's fair to say from the investigation
12 reports and from the statements that were received
13 that Albert Cadrain's statement implicating David
14 Milgaard had not changed on the two occasions he
10:14 15 had interviewed him. That was your understanding?

16 A I don't really remember, I'm sorry.

17 Q All right. I'm sorry, I didn't refer to the
18 specific document, but I believe it's the
19 statement of March 5, 1969 of Albert Cadrain.

10:15 20 A I think I can say if the documents don't indicate
21 change, that's all I have to go by.

22 MR. HODSON: 006723. It's the March 5
23 statement?

24 MR. ELSON: March 5.

10:15 25 MR. HODSON: Yeah.



1 BY MR. ELSON:

2 Q Before you is a statement of Albert Cadrain dated
3 May 5, 1969 and if we could turn to -- that is in
4 your handwriting; is it not, Mr. Mackie?

10:15 5 A Yes, it is. Yes.

6 Q And in taking this statement of March 5, there's
7 evidence before the Commission there was a
8 statement dated March 2nd, 1969. In taking this
9 statement, you would have, after taking this
10:15 10 statement it would be fair to say that in
11 preparing the summary you would have looked at
12 both statements to determine whether or not there
13 was any substantial difference between Albert
14 Cadrain's story between March 2nd and March 5;
10:16 15 correct?

16 A I don't know.

17 Q If we were to assume for the sake of argument that
18 Albert Cadrain's story with respect to the
19 identification of blood on David Milgaard's
10:16 20 trousers did not change between March 2nd and
21 March 5, you would agree with me that that would
22 be a factor that would tend to suggest that Albert
23 Cadrain's story was reliable?

24 A I would think so, yes.

10:16 25 Q Now, with respect to Nichol John, you were aware



1 that she had given a statement March 11, 1969,
2 which is document 006662, and that statement was
3 also presented to you by Commission Counsel, and I
4 don't need to go through the details of the
10:17 5 statement, but it was your understanding that the
6 first statement from Nichol John did not implicate
7 David Milgaard in any way?

8 A I'm sorry, I don't remember.

9 Q You don't remember. If I could actually have
10:17 10 document number 106640 which is an investigation
11 report dated March 18, 1969 brought forward, and
12 if we could go to the, I believe the second
13 page -- I'm sorry, back to the first page.
14 Highlight this portion. At the bottom of the
10:18 15 first page of Lieutenant Short's investigation
16 report Lieutenant Short talks about a trip that he
17 and Eddie Karst -- the entire report relates to a
18 trip that he and Eddie Karst had taken to Regina
19 along with Albert Cadrain and that Albert Cadrain
10:18 20 and Nichol John had met and from that statement it
21 says:

22 "Also female Nichol John was located in
23 a hippie house in Regina and she was
24 after considerable persuasion brought to
10:18 25 the Regina gaol and interviewed by Karst



1 and myself and was placed in a room with
2 Cadrain and allowed to discuss this
3 matter and it was learned from her after
4 this discussion that through
10:19 5 interrogation that she was of the
6 opinion that Cadrain was telling -- "

7 If we could turn the page,

8 "-- was telling the truth and that
9 everything he said was exactly what had
10:19 10 happened on this trip. She was of the
11 opinion that Milgaard was of a dangerous
12 character and that he had forced her to
13 have intercourse etc. several times and
14 she was afraid of him."

10:19 15 And then it goes on with Lieutenant Short giving
16 his impression after having interviewed Nichol
17 John.

18 "It is my opinion that Milgaard is a
19 dangerous person and it is known that he
10:19 20 had a record as a juvenile for several
21 serious offences."

22 So he gives an impression not only from having
23 interviewed Nichol John, but also from having
24 assessed the record. In reviewing that document,
10:20 25 is it your view, looking at this from the



1 perspective of hindsight, that Lieutenant Short's
2 description of what Nichol John said to him on
3 that occasion and his impression gained from the
4 information he had received would have played a
10:20 5 role in the summary that you had prepared in the
6 spring of 1969?

7 A I don't really know, but I doubt it. I don't
8 think I was dealing with credibility as much as
9 things that were in the file that were leading
10:20 10 down a given path towards a certain -- to a
11 possible conclusion.

12 Q You would agree with me, though, that this
13 document -- or that the information that was
14 gleaned from Nichol John on the occasion of this
10:21 15 interview in March of 1969, that would have been
16 something that would have been available to you
17 when you prepared the summary; correct?

18 A Yes.

19 Q And would you agree with me that the impression
10:21 20 that David Milgaard is a dangerous person, and
21 that David Milgaard may have had forced
22 intercourse with Nichol John, would have been a
23 factor in the impression the police service had
24 about the person under investigation?

10:21 25 A I would think it probably did.



1 Q If I could have investigation report 106661
2 brought forward, I believe it's a report dated
3 April 18th, 1969. This is an investigation report
4 dated April 18th, 1969 with respect to, notably,
10:22 5 an interview that took place on April 14, 1969,
6 and I believe the author of the investigation
7 report is Detective Karst. Now we have had some
8 difficulty identifying when you would have
9 prepared the summary. Is it possible that the
10:22 10 summary would have been prepared after you would
11 have read this investigation report, after April
12 18, '69?

13 A I don't know.

14 Q If we could turn to the second page, 662,
10:22 15 Detective Karst interviews Nichol John, and it's
16 fair to say that in that statement she does not
17 implicate David Milgaard -- and I'm sorry, I'm
18 being unfair, there was no statement -- but from
19 the information gleaned in the investigation
10:23 20 report it is apparent that, on that occasion, she
21 does not implicate David Milgaard. But Detective
22 Karst makes a comment, and if we could just
23 highlight this paragraph please, Detective Karst
24 writes:

10:23 25 "Although there are many unanswered



1 questions with regards to Milgaard's
2 activities on that particular morning,
3 if one is to believe the girl,
4 NicholJohn, and it appears that she is
10:23 5 very convincing with her story, then
6 there is no way in which Milgaard can be
7 connected with this crime."

8 If the suggestion is being made, and I suggest
9 that it is being made in the course of this
10:23 10 Commission, that there was a bulls-eye planted on
11 David Milgaard around this time, it would be fair
12 to say that Detective Karst wasn't the one making
13 that bulls-eye; was he?

14 A No.

10:24 15 Q Having said that, he does identify 'unanswered
16 questions' -- and those are Detective Karst's
17 words -- or certainly -- and would it be fair to
18 say that it was the existence of those unanswered
19 questions that played a role in your preparing the
10:24 20 summary that you did in the spring of 1969, that
21 you wanted those questions answered?

22 A I don't really remember.

23 Q Is it not reasonable for us to infer that that's
24 one of the things you wished to do, namely to have
10:24 25 the unanswered questions that Detective Karst



1 identified answered?

2 A To have a case recorded, they should be.

3 Q And in fact, if we were to scroll down to the
4 bottom of that page, the paragraph -- yes -- in
10:25 5 the bottom paragraph Detective Karst indicates:

6 "A blood sample was taken from Cadrain
7 one week ago by Dr. Cross at University
8 Hospital however to date of writing this
9 report we have been unable to obtain the
10:25 10 results of this."

11 It would be fair to say that certainly in April
12 of 1969 the Saskatoon Police Service still had
13 somewhat of an open mind that there was now some
14 question as to whether or not Albert Cadrain was
10:25 15 telling the truth and possibly whether or not
16 Albert Cadrain could be a suspect himself; is
17 that a fair assessment?

18 A It would be.

19 Q And there would be no reason to take a blood
10:25 20 sample of Albert Cadrain unless one were concerned
21 or one believed Albert Cadrain was a suspect who
22 either should be implicated or eliminated; is that
23 a fair conclusion?

24 A I guess it would be.

10:26 25 Q And if we could turn to the last page, the last



1 paragraph, please. That last paragraph refers to
2 an investigation of Leonard Woytowich, and not
3 specifically Leonard Woytowich as a suspect, but
4 rather as a friend of Albert Cadrain's. If we
10:26 5 look at that paragraph it says:

6 "It is also known that through inquiries
7 made to 218 Ave. D South where I
8 interviewed Leonard Woytowich, that
9 contrary to Cadrain's story he was in
10:27 10 fact smoking pot or weed on the night
11 prior to the murder which Cadrain denied
12 when I originally interviewed him."

13 So it would be fair to say that Detective Karst
14 was still maintaining an open mind with respect
10:27 15 to the credibility and reliability of Albert
16 Cadrain's story, in other words this is not -- or
17 Albert Cadrain's story is not something that's
18 being accepted as gospel; is that a fair
19 conclusion to draw from this?

10:27 20 A Yes.

21 Q And that would be a conclusion you would have
22 drawn as well from the investigation reports,
23 assuming this was available prior to preparing
24 your summary; is that correct?

10:27 25 A Probably, but I don't know.



1 Q If I could have the investigation report of
2 Sergeant Malanowich, which is 106643, brought up
3 please. And I wonder, beside it, if I could have
4 the transcribed statement of Sharon Williams,
10:28 5 which is 178577, brought up. Before you,
6 Mr. Mackie, there is an investigation report of
7 Sergeant Malanowich to the left and a transcribed
8 statement of Sharon Williams to the right. It's
9 my understanding Sharon Williams at that time was
10:28 10 16 years of age, and it's my understanding that
11 Sergeant Malanowich was specifically dispatched to
12 Alberta in order to take the statement because of
13 his experience in dealing with youth matters, and
14 because of the fact that this was a fairly young
10:28 15 witness. It would be fair to say that you would
16 have had available to you both the investigation
17 report of Sergeant Malanowich and the statement of
18 Sharon Williams prior to preparing the summary
19 that has been the subject of much of your
10:29 20 evidence; is that correct?

21 A If it was on the file at that time, I would.

22 Q And I don't mean to go through a great deal of
23 detail, but Sharon Williams describes certain
24 conduct on the part of David Milgaard not only in
10:29 25 1969 but beforehand, which, not to put too fine a



1 point on it, makes certain negative comments with
2 respect to Mr. Milgaard's character. And as a
3 result of that information, if we were to identify
4 this paragraph, Sergeant Malanowich comes to his
10:30 5 impression, after having received all this
6 information, and he says, and I quote:

7 "Now dealing with the statement received
8 from Sharon Williams-it is quite obvious
9 from talking to her that she thinks that
10:30 10 David Milgaard is capable of murder.

11 She was queried twice on this point and
12 she definitely without hesitation stated
13 this. She stated quite honestly that
14 she got suckered in by this boy and when
10:30 15 she realized that he was taking
16 advantage of her she broke relations
17 with him, ...",

18 carrying on in the -- with that paragraph she
19 says, and I quote -- or pardon me, Sergeant
10:30 20 Malanowich says, and I quote:

21 "She gave the impression that she liked
22 her sex relations at times with this boy
23 and went along with him in this regard
24 but then when she refused him he got
10:31 25 violent and forced her and she admits it



1 is at these times that she thought he
2 was abnormal and a violent type of
3 person."

4 I had earlier asked you, Mr. Mackie, about
10:31 5 impressions that you would gain not only from
6 interviewing witnesses, but also impressions you
7 would have gained from other police officers who
8 interviewed witnesses. Would you agree with me
9 that the impression Sergeant Malanowich gave, and
10:31 10 assuming that it is corroborated and backed up by
11 the statement Sharon Williams gave, that this
12 would be a significant factor to take into
13 account in the preparation of the summary that
14 you did?

10:31 15 A It should have been, probably was. I don't really
16 remember any of that.

17 Q And, but if this investigation report and
18 statement was available at the time you prepared
19 the summary you would agree with me that these
10:32 20 documents would have been read by you prior to
21 completing the summary?

22 A Yes, I would have probably read that, but I'm not
23 really sure. I don't know.

24 Q Assuming they were read by you prior to preparing
10:32 25 the summary they, again you would agree with me



1 that they would confirm that David Milgaard was a
2 person of interest, and that steps should be taken
3 either to eliminate him as a suspect or find
4 evidence which further implicates him?

10:32 5 A Yes.

6 Q And you would agree with me, to again use the
7 words of Detective Karst, that this kind of
8 information raises unanswered questions?

9 A Yes, it does.

10:32 10 Q And you would also agree with me that it was
11 incumbent upon the Saskatoon Police Service, at
12 that time, to try to answer those unanswered
13 questions?

14 A Yes.

10:32 15 Q And it would be fair to say that, in that context,
16 your summary and the four pages identified, or
17 that were prepared that immediately preceded the
18 summary, that if I can use the phrase it was
19 essentially a 'blue sky' type of document, you
10:33 20 were painting a scenario which may be proven to be
21 so or which may not be proven to be so?

22 A I think that's the road I was going down.

23 Q Now the summary -- and perhaps we should have that
24 document brought up, 006799 -- I'm referring to it
10:33 25 as the 'summary' but, in fairness, the summary is



1 actually only on the last few pages, I believe
2 it's -- begins on 803. This document, which you
3 prepared, there is evidence before this Commission
4 that the summary -- and I believe it was through
10:34 5 Lieutenant Penkala, I stand to be corrected by
6 other counsel or/and also by the transcript --
7 that the summary may have been one of the
8 documents that was considered at a meeting which
9 took place on May 16th, 1999 -- or I'm sorry --
10:34 10 1969?

11 A It's possible.

12 Q And I wonder if we could have that document
13 brought up side by side with it? And I'm
14 referring to, I believe it is Sergeant Riddell's
10:34 15 report, which is 250609 dated May 21, 1969. And
16 if we could have the next page, please. In
17 paragraph 3 it just identifies who was at the
18 meeting; Superintendent Wood, Lieutenant Penkala,
19 Lieutenant Short, Staff Sergeant Edmondson from
10:35 20 the RCMP, and also I gather we can infer that
21 Riddell was at that meeting as well since -- in
22 fact he actually says he attended the meeting.
23 Now you were not at that meeting and it would be
24 fair to say that you today, and perhaps even
10:35 25 shortly after that meeting took place, have



1 absolutely no idea as to the extent to which your
2 summary, the document on the left, was used or was
3 discussed at the meeting on May 16, 1969; is that
4 correct?

10:35 5 A That's right.

6 Q Now the information that was contained in the
7 summary, and the information that was contained in
8 the few pages that immediately preceded the
9 summary, not only were you aware of the
10:36 10 information gleaned from the statements and the
11 investigation reports but you would agree with me
12 that Lieutenant Short would almost certainly, or
13 probably, have been aware of the contents of those
14 investigation reports and statements; is that a
10:36 15 fair conclusion?

16 A I think so.

17 Q Particularly since not only were you reporting to
18 Lieutenant Short, but also Staff Sergeant Ward, to
19 the extent his health permitted him to continue to
10:36 20 be at work, would also have been reporting to
21 Lieutenant Short and Superintendent Wood?

22 A Yes.

23 Q So it's fair to say that Lieutenant Short and
24 Superintendent Wood were probably just as aware of
10:36 25 the material you had reviewed to prepare the



1 summary as you were?

2 A You could assume that. I don't, I don't know what
3 they were aware of.

4 Q It would be reasonable to assume that, would it
10:37 5 not?

6 A I think so.

7 Q Lieutenant Short is passed away but I believe we
8 will be hearing from Superintendent Wood in due
9 course. If there was any information in the
10:37 10 summary that was incorrect it is conceivable, if
11 not probable, that Superintendent Wood and
12 Lieutenant Short would have corrected those errors
13 at the meeting on May 16th, 1969?

14 A I don't know.

10:37 15 Q You don't know?

16 A No.

17 Q It's entirely possible that, if there were any
18 errors -- you don't know whether or not any errors
19 that you made in the summary were corrected in the
10:37 20 discussion on May 16th, 1969?

21 A No I don't.

22 Q And you would agree with me that there is no way
23 you were preparing that summary as a document to
24 present to Mr. Caldwell and say 'this is it, run
10:38 25 the prosecution based on this'?



1 A No, it wasn't for that purpose, it was for our use
2 to continue the investigation.

3 Q And so when I refer to that document as a 'blue
4 sky document' where you are basically
10:38 5 brainstorming and asking yourself various
6 questions and presenting certain issues, that's
7 essentially what that document was; correct?

8 A Yes.

9 Q It was a document that you were using to present
10:38 10 to Lieutenant Short to suggest that David Milgaard
11 should still be considered and assessed as a
12 suspect in this case?

13 A Yes.

14 Q Now finally, Mr. Mackie, My Friend Mr. Wolch
10:38 15 yesterday cross-examined you with respect to the
16 statement from Nichol John, and indeed that was
17 picked up by the media in reports that I have
18 heard this morning and also read in the newspaper.
19 My Friend Mr. Wolch put it to you that there would
10:39 20 be no possible explanation for Nichol John to say
21 that she saw a murder that she did not see unless
22 she had been coerced. You were not present when
23 Art Roberts received the information that he did
24 from Nichol John; is that correct?

10:39 25 A Right.



1 Q Were you aware of Art Roberts, Officer Roberts --
2 I can't remember his rank -- but Officer Roberts'
3 expertise in witness interviews at that time?

4 A No I wasn't.

10:39 5 Q Were you aware that he subsequently published a
6 book on the conduct of witness interviews?

7 A No I didn't.

8 Q Now in terms of assessing other possible motives
9 for Nichol John to say what she said, is it not
10:40 10 conceivable that one of the other options or one
11 of the other motives would be fear of David
12 Milgaard, fear of the person being suspected?

13 A To the best of my recollections of dealing with
14 Nichol she was very afraid of David Milgaard.

10:40 15 Q Hence, one of the reasons she didn't want to stay
16 at the Ritz Hotel when she was being interviewed
17 in May of 1969?

18 A Yes.

19 Q Is, is it also not possible -- were you aware
10:40 20 that, in the course of the interviews that were
21 conducted in May of 1969, that Nichol John and Ron
22 Wilson had an opportunity to speak to each other?

23 A I don't know.

24 Q You were not aware of that?

10:40 25 A No.



1 Q Is it not conceivable that she was perhaps
2 persuaded by Ron Wilson to implicate David
3 Milgaard?

4 A I don't know. It's -- I suppose, if they were
10:41 5 together, it's possible.

6 Q And, indeed, are you aware of the evidence that
7 Mr. Wilson gave before this Commission of Inquiry
8 to the effect that he had, indeed, attempted to
9 persuade Nichol John to implicate David Milgaard?

10:41 10 A Don't know anything about that.

11 Q Thank you, Mr. Mackie, I have no further
12 questions.

13 COMMISSIONER MacCALLUM: How many more?

14 MR. HODSON: I believe Ms. Wempe, Ms. Knox,
10:41 15 and there are just the two left, is that right?
16 So it might be appropriate to break.

17 COMMISSIONER MacCALLUM: All right.

18 MR. HODSON: And then ...

19 *(Adjourned at 10:41 a.m.)*

10:41 20 *(Reconvened at 11:00 a.m.)*

21 MR. ELSON: Mr. Commissioner, the reason
22 I'm at the podium is not to ask any further
23 questions, but in the interests of ensuring that
24 whatever facts are put to the witness that are
11:01 25 put as a preamble to a question, I have to rise



1 with apologies and say that there was a fact I
2 put to the witness that my colleague Ms. Knox has
3 pointed out was incorrect. And she is right, it
4 is incorrect.

11:01 5 I had earlier said, in
6 prefacing a question with respect to Sergeant
7 Malanowich, that Sergeant Malanowich had been
8 dispatched to Edmonton specifically for the
9 purposes of interviewing Sharon Williams. It has
11:01 10 been pointed out to me that my information in
11 that respect was wrong. Sergeant Malanowich was
12 actually in Edmonton to do an assessment of the
13 Edmonton youth division, because Saskatoon was
14 interested in forming a youth division, happened
11:01 15 to be in Edmonton at the time, and as a result of
16 him happening to be in Edmonton at that time was
17 then asked to interview Sharon Williams. It
18 wasn't that he was specifically dispatched from
19 Saskatoon for that purpose.

11:01 20 So, in an effort simply to
21 ensure that the record is correct with respect to
22 any preface to a question, I simply rise to make
23 that clarification.

24 COMMISSIONER MacCALLUM: Thanks.

11:02 25 **BY MS. KNOX:**



1 Q Mr. Mackie, my name is Catherine Knox and I, just
2 for the record, I would ask if you would confirm
3 that you and I don't know each other, I introduced
4 myself to you yesterday, and we have not discussed
11:02 5 in any manner whatsoever your involvement in the
6 Milgaard investigation or the questions I'm about
7 to ask you?

8 A That's right.

9 Q Okay. Now, sir, you are aware that my office,
11:02 10 Mr. Halyk in particular who you know, and I, are
11 acting on behalf of T.D.R. Caldwell, Bobs Caldwell
12 as you refer to him in your evidence, and you know
13 Mr. Caldwell to have been a prosecutor for many
14 years during your career as a Saskatoon Police
11:03 15 Service officer, as I understand it?

16 A Yes.

17 Q Okay. Now I don't have a lot of questions for
18 you, which will please everybody to hear, but what
19 I want to do is just take a little bit of time and
11:03 20 go over some of the evidence that you gave
21 yesterday in respect of your memory of the timing
22 of your review of the Milgaard file and, in
23 particular, the summary, the typed summary we have
24 which you believe that you prepared as a result of
11:03 25 your coming back from holidays and deciding just



1 to take a look because the file, if I believe the
2 term you used, the investigation appeared to be
3 stagnating a bit?

4 A Yes.

11:03 5 Q And I'm referring particularly in that regard to
6 document 006803, the one-page typed summary that
7 we have before us, if I could have that brought up
8 please.

9 A Yes.

11:04 10 Q Now as I reviewed your, listened to you yesterday
11 and reviewed the transcript of your testimony this
12 morning, am I correct in understanding that you
13 believe this is the summary that you prepared as a
14 result of you sitting down with what was existing,
11:04 15 probably in Detective Sergeant Ward's office, and
16 going through the information that was on the
17 file?

18 A That's where it would have come from.

19 Q Yeah. And you have agreed or you, or that it --
11:04 20 with Mr. Elson's questions that it was likely that
21 you looked at a whole bunch of information
22 including witness statements, investigation
23 reports, occurrence reports, you know, maybe even
24 lab reports, whatever, to draw out this
11:04 25 information?



1 A That's the only way I could create it.

2 Q Okay. Now nobody has referenced it with you, but
3 there was a statement taken from David Milgaard
4 early in the investigation, when his name was
11:04 5 brought into it by Albert Cadrain as a possible
6 suspect he was contacted and a statement was taken
7 from him, which I presume would have been on your
8 file and which you would have looked at?

9 A I presume. I don't remember.

11:05 10 Q Okay. Well since, particularly, you were focusing
11 on him would it make sense that you would have
12 looked at anything that he might have said, any
13 lab reports about his blood type, given the
14 forensic evidence, and things like that?

11:05 15 A Looked at anything that -- relating to the line of
16 thought we were going on.

17 Q Okay. And, sir, if in that statement David
18 Milgaard had said that the morning they came into
19 town they stopped a woman, and I think his
11:05 20 language was they stopped an older woman to get
21 directions, would that have been information that
22 could have been or would have been in your mind
23 when you were assessing whether he was a viable
24 suspect or a person of interest as you were
11:05 25 reviewing this complete file?



1 A I don't really know, I don't recall that
2 particular statement, but --

3 Q But if it was there?

4 A If it was there it would have probably been looked
11:05 5 at.

6 Q If it was there you would have looked at it, and
7 if you looked at it, it would have been a factor
8 that you considered?

9 A It may have.

11:06 10 Q Okay. Now, sir, in terms of preparing this your
11 evidence yesterday was that when you prepared it
12 you wrote it out by hand?

13 A Yes.

14 Q And when you went and met with Lieutenant Short
11:06 15 you took the handwritten, your handwritten notes
16 basically -- and I visualize you sitting there,
17 you have got a file that's a foot thick and you
18 are going through and you are making notes on a
19 piece of paper, kind of like I was jotting down
11:06 20 notes this morning to do this with you?

21 A It might have been refined a little past that.

22 Q Yeah, but it was a handwritten thing?

23 A Yes.

24 Q Okay. You didn't sit down and dictate your notes
11:06 25 about your review of the file and your



1 identification of Mr. Milgaard as perhaps a
2 suspect who should be looked at more when --
3 before you went to your meeting with Lieutenant
4 Short; did you?

11:06 5 A Not that I remember.

6 Q Okay. And you indicated that you have a clear
7 memory that you and Lieutenant Short met with my
8 client, Mr. Caldwell?

9 A Yes.

11:06 10 Q Did you make any notes -- and I have to say to you
11 Mr. Caldwell's evidence, as I understand it at
12 this point in time, is that he has no memory of
13 the meeting, but if you remember it he has no
14 doubt it happened, so I'm not here to suggest to
11:07 15 you the meeting didn't happen, those aren't my
16 instructions -- but did you make any notes of the
17 meeting?

18 A Not that I remember.

19 Q Okay. Now in the usual course of practice, if you
11:07 20 were going to talk to a prosecutor about a file,
21 would you have made notes or would that, in the --
22 early in an investigation, have been more of a
23 casual 'what do you think about this', 'what do
24 you think about that' kind of conversation?

11:07 25 A I think the latter. I think just the discussion



1 with Mr. Caldwell was as to what his thoughts were
2 and what we were trying to proceed with.

3 Q Okay. And you indicated that -- well, okay, so
4 you told me that you didn't make any notes. Do
11:07 5 you know whether your handwritten notes were
6 shared with Mr. Caldwell as in did you take him,
7 take them to the meeting, was he provided with a
8 copy of them?

9 A I don't know as he would be provided with a copy.
11:07 10 I'm sure we probably took anything like that with
11 us.

12 Q Just on a practical detail, back in 1969, could
13 you have made a photocopy of a handwritten
14 document? Did Xeroxing exist or were we still
11:08 15 using the monks in the basement?

16 A I'm not sure. I think they had a Xerox but I
17 don't know.

18 Q Don't know? Okay. When you made your notes do
19 you recall, or in your course of practice if you
11:08 20 were making notes -- and assuming for a moment
21 that the Xerox hadn't been invented or brought
22 into the police station yet -- did you make your
23 notes on carbon paper or would you make a single
24 copy to be dictated and transcribed later?

11:08 25 A Initially, I don't know as I would have been



1 thinking about transcribing it or making a copy of
2 it.

3 Q But when --

4 A But we used a lot of yellow paper and that's
11:08 5 probably what was used.

6 Q Okay, but was that carbonised paper --

7 A No.

8 Q -- or it was just regular paper?

9 A Just regular paper

11:08 10 Q Okay. So when you are handwriting, the original
11 is the only document that you are making, I take
12 it?

13 A That's right.

14 Q Okay. Now at any -- you indicated that you think
11:09 15 you prepared the content of this document, you are
16 presuming that it was as a result of your
17 handwritten notes being dictated and left with the
18 stenotypist, who worked in the police departments
19 in those days, to reduce your dictation to
11:09 20 writing?

21 A The detective division had a steno available,
22 shared between detective division and ident., I
23 may have handwritten and had that steno type it as
24 to dictating it.

11:09 25 Q Okay. Now can you tell us, today, whether this



1 typed copy that we have in document 006803 had any
2 -- is the exact copy of your handwritten notes
3 that you took to Lieutenant Short, and that you
4 and he would have had with you when you went to
11:09 5 see Mr. Caldwell, or do you know whether additions
6 or changes were made to it prior to it being put
7 into the form that we have today?

8 A I don't know.

9 Q Looking, for example, at the part on the bottom
11:09 10 that says Suggestions, do you know if those were
11 your suggestions that -- could they have been
12 suggestions that came as a result of Lieutenant
13 Short thinking about this meeting with other
14 officers, brainstorming, as we know a
11:10 15 brainstorming meeting took place on May the 16th
16 with the RCMP present, with Superintendent Wood
17 present, but without you being there; do you know
18 where -- when and how these suggestions came
19 about, or whether they are yours or they were the
11:10 20 result of a group effort?

21 A They could have been. I don't know.

22 Q Okay. So you have no idea whether this was on
23 your original handwritten note or whether it's
24 even your ideas or a combination of the ideas of
11:10 25 others, I take it?



1 A That's right, I don't.

2 Q Okay. Now, sir, do you know or can you say with
3 certainty that the bulk of this is an accurate
4 replication of your handwritten notes or could
11:10 5 that, too, have been changed, modified, and added
6 to as a result of Lieutenant Short becoming
7 involved, maybe Mr. Caldwell having some
8 discussion with you, and the big discussion that
9 took place in -- with Superintendent Wood,
11:11 10 Lieutenant Short, Mr. Edmondson and others on May
11 16th; do you if any of this -- they could have
12 made changes to your handwritten additions, done
13 anything to add to it at that point in time?

14 A I don't know.

11:10 15 Q Okay.

16 A I'm not even positive I made this. I'm assuming
17 that I probably did.

18 Q But at the end of the day, you don't know if this
19 is your work product, it may be a combination of
11:11 20 yours and others, it may be exclusively yours, any
21 number of possibilities exist ultimately?

22 A Right.

23 Q And I'm not saying that as a criticism, we're
24 trying to get a sense of who knew what when and
11:11 25 what was created when and I understand you say you



1 don't know?

2 A I don't know.

3 Q You may have contributed to this, others may have
4 contributed to it, you don't even know when it was
11:11 5 typed?

6 A Right.

7 Q Or whether it's the fullness of your own notes or
8 additions by others. Now, sir, some questions
9 were asked of you yesterday with respect to the
11:11 10 time that you would have prepared this and again I
11 understand you know that you went on holiday for a
12 period of time during the course of the
13 investigation, but your notebooks were destroyed
14 after you retired, so you have no way of
11:11 15 recreating your personal schedule back in March,
16 April, May, 1969?

17 A Right.

18 Q Okay. I wonder if I could bring up document --
19 and again, please don't hear me criticizing you,
11:12 20 I'm just looking to do some clarification here. I
21 wonder if we can bring up document 325863 which
22 was prepared by Commission staff and referred to
23 you by Mr. Hodson in his examination of you. Now,
24 you've had an opportunity to look at this document
11:12 25 and you remember what he explained to you is that



1 the first column, documents, dates of reports and
2 notes that were authored by you and it runs
3 starting January 31st, which was the date of Gail
4 Miller dying, and this goes up until July, at
11:12 5 least July 3rd, 1969 where there's notes in your
6 handwriting or signed by you and reports dictated
7 by you, signed by you, bearing the various dates
8 between January and July, 1969. You basically
9 have had a chance to look at that?

11:12 10 A I saw it. I didn't study it or anything.

11 Q You haven't done a comparison, but if we assume
12 this is accurate, this would show times when you
13 had to be at work because you wrote notes or
14 authored reports on these dates?

11:13 15 A Yes.

16 Q Okay. And then there is, the second column has a
17 listing of reports and notes authored by others
18 that talk about your involvement in the
19 investigation and the column is shorter, but these
11:13 20 two, they run from January 31st, '69 until August
21 26th, '69?

22 A That's what it says there, yes.

23 Q Okay. And if we -- I didn't go through all of
24 them last night or this morning, but if we go
11:13 25 through them, at various points and times other



1 officers talk about times you were with them or
2 things you did that show you were at work on these
3 dates or around these dates?

4 A Right.

11:13 5 Q You agree with that?

6 A Yes.

7 Q And then the last column of course is the witness
8 statements and these run between February 1st and
9 June 12th and each document has a date of a
11:13 10 statement taken from a witness and you looked at
11 some of them, generally they are in your
12 handwriting and they bear your signature as a
13 witness?

14 A Yes.

11:14 15 Q So again we could pretty reasonably conclude that
16 you were working the dates that these statements
17 were taken?

18 A I would have been.

19 Q Okay. Now, without any degree of proficiency
11:14 20 because my office is one of the unfortunate
21 businesses in the city that hasn't had phone, fax
22 or internet service since Tuesday due to a
23 construction accident, I had pulled up a calendar
24 for April, 1969, and I apologize,
11:14 25 Mr. Commissioner, I couldn't make copies and these



1 are just rough notes that I made, but I want to
2 walk the witness through a little bit of the
3 calendar for April, '69 and May, 1969. Now, Mr.
4 Mackie, looking at the dates contained in that
11:14 5 document -- if we could keep up document 325863
6 because I can't put up my own calendar, it's rough
7 notes -- looking at the dates in the calendar and
8 looking at this document, I can advise you that
9 April 4th, 1969 was a Friday and that's the day
11:15 10 that you took a statement from Giles Beauchamp,
11 the document number on that statement is 006295,
12 and you indicated, or Mr. Hodson discussed that
13 with you, that's the young boy who found Gail
14 Miller's wallet?

11:15 15 A Yes.

16 Q And you have a memory that you went to the
17 Beauchamp residence and you talked to that young
18 boy, you went back to him, to the median and you
19 found some other stuff on April 4th, 1969, so we
11:15 20 know you were working that day?

21 A Yes.

22 Q Okay. Then we have another report from you on
23 April 7th, 009251, that again would indicate that
24 you were probably at work on April 7th?

11:15 25 A Yes.



1 Q As I'm doing the calendar, and that's a Monday,
2 the next place that you show up, or your name
3 shows up that I can find, and this is not an
4 exhaustive list by any means, is Constable
11:15 5 Cressman wrote a report, or Detective Cressman
6 wrote a report on the 17th of April saying he got
7 a photograph from you that he showed to the (V1)-,
8 (V1)--- (V1)- woman who was the sexual assault
9 victim, and that's documented in his report
11:16 10 004103 -- 102, I'm sorry -- so that doesn't show
11 us that you were at work, but somehow Detective
12 Cressman was able to get contact with you around
13 that time, and then we have a period of time
14 between the 18th and the 25th where there's no
11:16 15 indication of any documentation from you, so
16 that's potentially a week you could have been on
17 holiday?

18 A Yes.

19 Q Okay. And then the week of the 29th, which is the
11:16 20 28th being the Monday, 28th of April, on the 29th
21 there's a report done by you, document number
22 106667, that shows on the 29th you interviewed a
23 young man by the name of Cherneske, you went to
24 the Red Cross and you were doing active work on
11:17 25 the file the week of the 29th of April.



1 A Yes. The date there says the 30th, but --

2 Q Yeah, I think your report was done on the 30th,
3 but the actual visit with Mr. Cherneske, according
4 to my read of the report, was the 29th, but we
11:17 5 know 29th, 30th you appear to be in the office?

6 A Yes.

7 Q Okay. Then again, and not meaning to suggest that
8 I have an exhaustive list, there's a notation that
9 on May 4th in -- if you could just bear with me a
11:17 10 moment, Commissioner, I have to find my place.

11 May 4th in document 025596, which is part of a
12 report authored by Chief Penkala who was then in
13 identification, there's an exhibit report about a
14 knife that was turned over to you, a

11:17 15 wooden-handled knife and subsequently destroyed,
16 the date of destruction appears to be May 4th, so
17 Mr. Hodson and I took a quick look at that, we
18 can't tell whether or not you were there, but

19 certainly there's some activity on the file by you
11:18 20 that bears a date May 4th, 1969, and again now

21 looking at the calendar, May 4th, 1969 was a
22 Sunday. Looking at the calendar for the week of
23 May 5th and looking at the dates in this, the
24 chronology prepared by Commission staff, there

11:18 25 doesn't appear to be any activity by you that



1 would indicate that you were at work at all the
2 week of May 5th. Would you agree with that?

3 A Yes.

4 Q And the May 5th being the Monday of course. If we
11:18 5 look at the next week, which the Monday starting
6 May 12th, there's a lot of activity taking place
7 on the file, but no activity to indicate that you
8 were working the week of May 12th?

9 A Right.

11:18 10 Q So there's a two week block where -- well, really
11 a three week block with the exception of the one
12 exhibit report on the May 4th Sunday that you
13 don't appear to be doing any active work on the
14 file that I can find based on looking at the
11:19 15 chronology in this list prepared by Commission
16 staff?

17 A Right.

18 Q My question to you then is, is it possible that
19 the time that you were away on holiday could have
11:19 20 been in this week of May 5th, May 12th, we talked
21 about the possibility of it being in April, but
22 would you agree that it's also possible that it
23 could have been the May 6th, May 12th week, or May
24 5th, May 12th week?

11:19 25 A From that it would appear it was probably in May.



1 Q Okay. And if we go forward on the calendar, in
2 fact we have a report prepared on the 21st of May
3 by the RCMP, I think it's the 21st of May, the
4 RCMP officer prepared a report documenting a
11:19 5 meeting that occurred on May 16th, 1969 that was
6 attended by Inspector Wood, Detective Penkala I
7 guess he would have been at the time, Lieutenant
8 Short, Mr. Edmondson of the RCMP and another RCMP
9 officer, and if we could bring up that report,
11:20 10 052961, please, and if I could go to the next
11 page, please. You'll see that this report is, as
12 I've said, dated May 21st, 1969 and if we go to,
13 and this has been shown to you before just as a
14 quick reminder, go to item 3, he says on May 16th
11:20 15 he attended a meeting at Saskatoon Police Service
16 for purposes of reviewing investigation and
17 deciding what further course of action was open
18 that would bring this to successful conclusion.
19 We see the list of people there. You are not
11:20 20 there, the chief is not there, but he does note
21 the chief is not there which would indicate this
22 was a big meeting, like, if they were talking
23 about having the chief present. Now, Mr. Elson
24 went over with you the information that would have
11:21 25 been in the possession of these gentlemen,



1 Superintendent Wood, Lieutenant Penkala,
2 Lieutenant Short, Staff Sergeant Edmondson and the
3 author of the report at the time they attended at
4 the meeting. You had testified earlier, as other
11:21 5 officers, that from the 31st of January forward a
6 lot of meetings took place within the Saskatoon
7 Police Service among the officers who were
8 involved in this investigation. Did I hear you
9 correctly in that regard?

11:21 10 A I think that was right.

11 Q And you indicated as well that the purpose of
12 these morning meetings that any investigator who
13 was on duty usually attended was so that all of
14 you could share with each other the information
11:21 15 that you were finding as a result of the
16 investigation?

17 A Right.

18 Q So -- and I understood you to say, and others to
19 say, that Chief Kettles was at the meetings
11:22 20 sometimes, Superintendent Wood was there,
21 Detective Sergeant Ward was there, Lieutenant
22 Short was there, Penkala was there, anybody in the
23 building who was involved in the investigation
24 generally came to these morning meetings that now
11:22 25 would be referred to as briefings?



1 A Yes.

2 Q So on a day-to-day basis, everybody who was
3 involved in the investigation to a degree would
4 have been kept current as to what the
11:22 5 investigators were finding?

6 A Yes.

7 Q Okay. And to your knowledge, did that kind of
8 ongoing, if not daily, frequent exchange of
9 information continue through, up through the
11:22 10 period in time even when you were on vacation?

11 A I don't know when they ceased to continue. I
12 don't know how long they continued.

13 Q You don't know how long?

14 A No.

11:22 15 Q But during the time that they were going on,
16 everybody was being kept in the loop as it were
17 about what each officer was finding, what each
18 officer knew, and I take it part of those
19 briefings was discussing implications of pieces of
11:23 20 information you were finding, avenues of
21 investigation, various leads and that kind of
22 thing?

23 A That's the sort of thing that would have been
24 brought out.

11:23 25 Q Okay. So in -- and I'm going to ask this because



1 I had a sense of wanting to say in fairness to
2 you, when Mr. Wolch put it to you yesterday that
3 your summary was pretty brief and it talked about
4 only things that might implicate Milgaard, it
11:23 5 didn't talk about things that would exonerate him,
6 if your summary was in the group meeting on May
7 16th, all of those officers had a history on that
8 file, didn't they, and they would have had an
9 historical information base because they were
11:23 10 involved in or kept briefed on the investigation
11 from January 31st forward to this May 16th
12 meeting?

13 A I think they would all have a personal knowledge
14 of what was happening and what had been happening.

11:23 15 Q Yeah. This wasn't a case, like we talk about now,
16 like you took a cold case, a file that had been in
17 dead storage for six months, six years or 20 years
18 and you pulled out little pieces of it and you
19 went to a bunch of guys and said hey, what about
11:24 20 this, without them knowing the full picture, or
21 most of the full picture?

22 A I would think that's correct.

23 Q These were guys that were in the loop from the
24 get-go?

11:24 25 A Yes.



1 Q Okay. Now, sir, is it possible, and this is
2 just -- I'm entirely asking you to engage in
3 speculation with me, but is it possible that your
4 summary wasn't even prepared at the time of that
11:24 5 meeting, if, for example, you were away on
6 holiday, and that may in fact account for why you
7 weren't at the meeting on May 16th, that
8 Lieutenant Short came out of that meeting and as a
9 result of that discussion that the police officer,
11:24 10 the RCMP officer describes as being a lengthy
11 discussion about where to go with this
12 investigation, that you then undertook the task of
13 trying to look at the whole file and figure out
14 where you should go at the suggestion of
11:25 15 Lieutenant Short as an example?

16 A It's possible, but now that you've got some dates,
17 I don't really remember them.

18 Q Okay.

19 A My recollection is that coming back from being
11:25 20 away for a period of time and reading the file to
21 see what was being done.

22 Q Okay. So it's possible, but you don't know?

23 A That's right.

24 Q Okay. And, sir, the next chronology of dates that
11:25 25 show up on this file, there's that meeting with



1 Lieutenant Short and others that you are not at on
2 the 16th as documented by the RCMP officer and
3 according to the chronology set up by the staff
4 and the information that's available in the file,
11:25 5 it looks like that the next documented involvement
6 you had on the file was that following Monday.
7 The meeting would have taken place on Friday, the
8 16th, between Lieutenant Short and others, and on
9 Monday, according to the, to a report prepared by
11:26 10 Lieutenant -- or Detective Karst, you and he
11 travelled to Regina and the purpose of going to
12 Regina was to talk to, to locate Nichol John,
13 locate Ron Wilson, talk to some other witnesses to
14 get some more information about what they knew
11:26 15 about David Milgaard and to follow up on some of
16 the suggestions in the summary?

17 A Yes.

18 Q Okay. And, sir -- Mr. Commissioner, for purposes
19 of reference, it's probably well known to
11:26 20 everybody, that report documenting his departure
21 for Regina is contained in 009264. Now, sir, Mr.
22 Hodson didn't ask you, and I don't know, I don't
23 think anybody else asked you, but do you have any
24 specific independent memory of what you and
11:26 25 Detective Karst did once you got to Regina on the



1 21st of May, '69 with the purpose of locating
2 Wilson and others and looking for other
3 information that might assist you in checking out
4 the viability of David Milgaard as a suspect,
11:27 5 possible perpetrator in this incident?

6 A That's on the 22nd?

7 Q Yeah.

8 A No, I have no recollection at all.

9 Q There's some documentation in the report done by
11:27 10 Detective Karst that you and he went to the office
11 of the Department of Social Services to talk with
12 workers, a worker for Nichol John, a youth worker,
13 probation officer I think would be his job title,
14 a probation officer, but that you went and talked
11:27 15 with a Don Robertson about Nichol John who was on
16 probation at the time. Do you remember going to a
17 meeting with a Mr. Robertson?

18 A No.

19 Q Okay. Is it possible that that meeting happened
11:27 20 and you just don't remember it?

21 A Yes.

22 Q And if Detective Karst did a fairly
23 contemporaneous report that it happened and
24 suggested that Mr. Robertson said that he couldn't
11:27 25 give you a whole lot of information about Nichol



1 John but he could say that she had told him she
2 wasn't personally involved in a murder in
3 Saskatoon doesn't trigger any memory for you?

4 A No.

11:28 5 Q Now, the report also documents, and it has been
6 suggested to you by other witnesses, that on the
7 21st you and Detective Karst and others did an
8 actual interview with Ron Wilson and you talked to
9 him some more about that January 31st trip --

11:28 10 A On the 21st?

11 Q On the 21st.

12 A Okay.

13 Q Do you have any memory of actually sitting down
14 and talking to -- not taking a statement from him,
11:28 15 but sitting down and talking to Ron Wilson, I
16 believe at the Regina City Police station, on the
17 21st -- sorry, 22nd of -- I think it was the
18 22nd -- no, it was the 21st, sorry, 21st, that you
19 guys would have talked to Ron Wilson and said you
11:28 20 wanted to talk to him some more about that
21 statement he had given back in March about their
22 trip to Saskatoon with David Milgaard and what
23 happened when they got to the city. Do you
24 remember having a conversation or a meeting with
11:29 25 Ron Wilson?



1 A No.

2 Q Do you remember the decision, how the decision
3 came to be made that Detective Karst would
4 transport Ron Wilson back to Saskatoon and you
11:29 5 would stay in Regina continuing to try to locate
6 Nichol John?

7 A I don't recall it. I assume that's the reasoning.

8 Q Okay. Do you remember or have any memory of, in
9 your efforts to locate Nichol John, going to her
11:29 10 parents' house, not being able to go -- nobody
11 being there, talking to a friend of Nichol John's
12 by the name of Barbara Berard?

13 A I don't remember it at all.

14 Q Okay. Do you remember having a conversation with
11:29 15 any young woman during that search for Nichol John
16 where she told you that after Nichol came back
17 from that trip with Milgaard and the others in
18 January she was upset, she kept talking about
19 stuff that had happened in Saskatoon, but she
11:29 20 wouldn't complete the statements, that she was
21 nervous, she was upset, she seemed afraid?

22 A I saw that in one of the reports that she showed
23 me, but I have no personal recollection of it.

24 Q Okay. Mr. Wolch asked you yesterday why, I think
11:30 25 it was Mr. Wolch who asked you yesterday about the



1 decision to let, or place Nichol John in the
2 police women's section when she came to Saskatoon?

3 A Yes.

4 Q And you said that it was because she told you that
11:30 5 she was afraid or you believed she was afraid of
6 David Milgaard and that was the reason you
7 arranged for her to stay in those accommodations
8 rather than putting her at the Ritz Hotel which
9 had been offered to her?

11:30 10 A Yes.

11 Q If you had talked to her friend Barbara Berard and
12 Barbara had told you that after Nichol came back
13 she seemed, I'm going to use the term skittish, if
14 you know what that means, but just nervous,
11:30 15 afraid, a little tense, kind of started to say
16 stuff about her trip and Mr. Milgaard but then
17 would stop because she seemed scared, would that
18 have been a factor that was fresh in your mind in
19 making the decision that you would put her in the
11:30 20 women's unit as opposed to putting her in the Ritz
21 and causing you to give some credence to her
22 suggestion to you that she was scared?

23 A I don't think so.

24 Q Okay. If I could just have a moment,
11:31 25 Mr. Commissioner, I'm almost finished here.



1 It was suggested to you at
2 various points in time through Mr. Hodson, Mr.
3 Wolch and Ms. McLean and others that some of the
4 information that appears in your summary would
11:31 5 appear not to be consistent with what was
6 contained in statements that you had gotten from
7 Nichol John and statements from Ron Wilson and
8 others, but there seemed to be more information in
9 your summary than is documented in the statements.
11:31 10 A I remember them asking that.
11 Q Just as a practical consideration in 1969, when
12 you had contact with suspects, witnesses, any
13 individual as part of your investigation, did you
14 make a note of everything that was said to you?
11:32 15 A Not likely.
16 Q Okay, and let's talk about Nichol John for a
17 moment. You had spent some time in Regina on May
18 22nd looking for her, you found her and talked
19 with her in Regina as I recall the file
11:32 20 information. Would you agree?
21 A Yes.
22 Q You drove her from Regina to Saskatoon, and were
23 you in a police car?
24 A I don't know.
11:32 25 Q Must have been, but somehow --



1 A Not necessarily. It might have been a personal
2 vehicle because they paid mileage.

3 Q But you came by vehicle, you didn't go by air, you
4 and she drove?

11:32 5 A No.

6 Q And the distance now for me driving from Saskatoon
7 to Regina is about two and a half hours. Would it
8 have been about, a bit longer maybe than that, but
9 in any event, you would have spent two or three
11:32 10 hours in her company just driving, physically
11 driving from Regina to Saskatoon; would you not?

12 A Yes.

13 Q You and she would have been talking in the car I
14 take it, that wouldn't have been a ride that you
11:33 15 would have completed with her in silence?

16 A I don't remember any conversation at all.

17 Q Would it make sense to you that during the course
18 of that time that you and she were driving that
19 you might have talked a little bit about why she
11:33 20 was coming back, the investigation that you were
21 doing and that she might have said stuff to you
22 that stuck in your mind, but you were driving, you
23 are not documenting it in a notebook and you don't
24 run back to the office and do a report to
11:33 25 summarize what she said? Common sense?



1 A I would say that I would have avoided any
2 conversation along that line.

3 Q Okay. When you were back in --

4 COMMISSIONER MacCALLUM: I'm sorry, you
11:33 5 would have what?

6 A I would have avoided conversation of that type.

7 BY MS. KNOX:

8 Q When you were back in Saskatoon and you took her
9 over to the west side, at that point in time you
11:33 10 took her for the specific purpose of gathering
11 information for your investigation; would you
12 agree with that?

13 A Yes.

14 Q And at that point in time you didn't have a tape
11:34 15 recording with you, you weren't making notes, you
16 were talking to her though about this incident and
17 necessarily would not have been able to document
18 everything she was saying and might not have put
19 everything that she was saying in your file, notes
11:34 20 when you made them or your report when you made
21 them on May 29th?

22 A It's possible.

23 Q Yeah. Well, as an example, you've indicated more
24 recently that at some point when you were talking
11:34 25 with her she told you personally she was raped by



1 David Milgaard and it was said to you yesterday
2 that that doesn't appear in your reports anywhere
3 that you did back in '69. Would you agree that
4 that doesn't appear in your reports?

11:34 5 A Not in my reports, not that I saw.

6 Q But you do have a clear memory that she told you
7 that?

8 A That is a recollection that seems to be there.

9 Q Yeah.

11:34 10 A Whether it's from somebody else's report or from
11 her, I couldn't say.

12 Q You talked about her saying he raped her in
13 Victoria Park in Regina?

14 A That's what I recall, yes.

11:35 15 Q And that would have been a fairly important piece
16 of information to have gotten from her if you got
17 it back in '69?

18 A Yes. It indicates a mentality of an individual.

19 Q Yeah, put a red flag up about Mr. Milgaard given
11:35 20 the nature of your investigation. The fact that
21 you didn't document it doesn't indicate that it
22 wasn't said does it?

23 A No, not really.

24 Q And if she told you at some point in time or she
11:35 25 told Detective Karst that the person that Milgaard



1 was referring to in his early statement that they
2 had stopped, the woman they asked for direction
3 might have been a nurse, the fact that nobody put
4 that in a report doesn't mean it wasn't said does
11:35 5 it?

6 A Not really.

7 Q No, any number of possibilities. And about the
8 toque, if she said something to you about a toque,
9 the fact that it didn't get in a report doesn't
11:35 10 mean it wasn't said?

11 A Right.

12 Q Because this wasn't the space Odyssey and every
13 word and interaction wasn't being recorded to be
14 reproduced later through audiotape recordings or
11:36 15 anything, back in '69 technology still would have
16 been pretty unsophisticated around recording,
17 audio recording and stuff?

18 A Portable tape recorders of some type.

19 Q But you didn't have the convenience we have today
11:36 20 that you could sort of flick a switch, put a
21 little thing in your pocket and be recording
22 everything that was going on or anything like that
23 did you?

24 A Not that I'm aware of.

11:36 25 Q No, it was much more obvious kind of recording



1 methodologies at that time. It was said to you
2 today by Ms. McLean that the idea that Nichol John
3 could have seen something horrible, buried it or
4 forgotten about it, then recalled a little bit of
11:36 5 it and then forgot about it again and then
6 remembered a little bit of it again seems kind of
7 silly, and I'm not ascribing that word to
8 Ms. McLean, but the sense she was giving was that
9 as a police officer you should have realized that
11:36 10 had this whole prospect of her recovering memory
11 and getting bits and pieces back and forgetting it
12 again made no sense. Back in 1969 was the
13 terminology hysterical and amnesia a term known to
14 you, where somebody could be so frightened by
11:37 15 something that they just block it out of their
16 minds?

17 A I know those two words, but whether I used them in
18 relation to this file, I don't know.

19 Q Okay. But the idea that somebody could be so
11:37 20 scared by something that they forget about it was
21 not unforeseeable I take it in 1969?

22 A I had some knowledge of things like that
23 happening, but where I acquired the knowledge from
24 I don't know.

11:37 25 Q Okay. The idea that somebody could be so scared



1 that they would claim not to remember something
2 they really remembered was also not a concept that
3 was just impossible I take it?

11:37 4 A It wouldn't be an unusual situation in some
5 circumstances.

6 Q Okay. And then various points have been made with
7 you about why you would think when these, Ron
8 Wilson and Nichol John started telling a different
9 story in May than they had told back in March when
11:38 10 they were initially interviewed, it has been
11 suggested that you should have been suspicious of
12 that. Do you remember that being suggested to you
13 in a time in --

14 A Yes.

11:38 15 Q Do you also remember that back in March of 1969,
16 that when Nichol John and Ron Wilson gave their
17 initial statements to the police, that you were
18 able to establish through their own words and
19 through independent evidence that in fact they
11:38 20 lied in those initial statements about parts of
21 what had happened on that trip from Regina? Do
22 you remember them lying about breaking into an
23 elevator?

24 A I remember something about them breaking into an
11:38 25 elevator. Whether they lied about it, I don't



1 remember.

2 Q Well, in their initial statements I'm going to
3 suggest to you one of them said they came direct
4 to Saskatoon, I think that was Ron Wilson, Nichol
11:39 5 said that they might have got stuck in the snow a
6 couple of times, but there was nothing in their
7 initial statements to suggest that they had
8 engaged on a drive from Regina that included
9 making stops to find goods or money or whatever,
11:39 10 that they were committing crime, or one of them
11 was committing crime along the way?

12 A I don't remember.

13 Q Okay. If, in fact, you established when you
14 talked with them May 21st and May 22nd that they
11:40 15 had in fact lied about little details in their
16 initial statements, would that have caused you to
17 cast a -- more suspicion on the entirety of their
18 statements?

19 A Well I suppose it would.

11:40 20 Q Yeah. And if, in fact, you found out in the
21 course of talking to them in May, or talking to
22 one of them in May, that not only had they lied
23 about their routing and the fact that they had
24 engaged in some criminal enterprise back in -- on
11:40 25 the way to Saskatoon, that when they were leaving



1 Regina they had talked about doing break and
2 enters, rolling somebody, committing criminal
3 activity to get money; would that have raised your
4 antennae of suspicion about them and made it more
11:40 5 likely that you would be willing to accept that
6 they had lied about bigger things?

7 A As a supposition, probably, whether it would have
8 then I don't know.

9 Q As a seasoned police officer, or relatively
11:41 10 seasoned of that day, if you found out somebody
11 was lying about the little things, could that
12 cause you to be a little bit more concerned that
13 they might have lied about the bigger things as
14 well?

11:41 15 A I think it would be.

16 Q And, sir, just a couple of questions with respect
17 to your dealings with Mr. -- my client, Mr.
18 Caldwell. Apart from the meeting that you know
19 that you and Mr. Short went to when you were
11:41 20 looking at the possibility of further
21 investigation of Mr. Milgaard as a suspect, do you
22 ever have any memory of other meetings that you
23 would have had with him?

24 A No.

11:41 25 Q Now did Mr. Caldwell, at any point in time to your



1 memory, ever ask you to cover up evidence about
2 the rapes that were considered for a while to be
3 possibly committed by the same person who killed
4 Gail Miller?

11:42 5 A No.

6 Q Did he ever ask you to suppress any evidence?

7 A No.

8 Q Did he ever ask you to keep information out of
9 reports that you prepared that were to be used in
10 the course of the trial?

11:42

11 A No.

12 Q Did he ever ask you to tailor your evidence that
13 you would give at your prelim -- at the
14 preliminary inquiry or the trial with respect to
15 the entirety of your investigation?

11:42

16 A No.

17 Q When you left the department in 1978 you indicated
18 that basically you had a plan when you went in,
19 you were going to work 30 years and then you were
20 going to have a different life?

11:42

21 A Right.

22 Q You moved out to Emma Lake and basically cut your
23 ties with the Saskatoon Police Service?

24 A Yes.

11:42 25 Q When you say you cut your ties with Saskatoon



1 Police Service did you also pretty much cut your
2 ties with Saskatoon and other players in the
3 criminal justice system, and I'm thinking of Mr.
4 Caldwell and others in the prosecutors office,
11:42 5 defence lawyers, anybody that you had to put up
6 with in the 30 years that you were a police
7 officer; did you basically lose contact with all
8 of them?

9 A Yes.

11:43 10 Q And in the early '80s, when you got the call from
11 Peter Carlyle-Gordge about wanting to talk to you
12 about the Milgaard investigation and prosecution,
13 you indicated in your evidence that you wanted to
14 talk to Mr. Caldwell before you spoke to him?

11:43 15 A Right.

16 Q And you indicated, yesterday, that Mr. Caldwell
17 basically said to you 'go ahead'?

18 A That's right.

19 Q Okay. He didn't in any way discourage you or
11:43 20 suggest to you 'you better be careful, you know,
21 there might be some bad things that we did here
22 that this guy might find out about, you don't want
23 to go there', never said anything to you to cause
24 you to think he had any hesitation that you should
11:43 25 be fully open, frank, and available to this writer



1 who wanted to do a story about this case; did he?

2 A No, I think it was the opposite.

3 Q He encouraged you, didn't he?

4 A I think so.

11:43 5 Q Because he had a belief that you and he and others
6 had done a good job in this case and you had found
7 the person who killed Gail Miller; didn't he?

8 A Well I think there were other people who did a
9 good job, I don't know about myself, but --

11:44 10 Q Okay. I'll take your bashfulness on that point.
11 But when you spoke to him he just said to you
12 'yes, you go right ahead, why don't you'?

13 A Yes, more or less like that.

14 Q Okay.

11:44 15 A I don't remember the conversation but --

16 Q And did he tell you -- and he hasn't told me the
17 answer to this question, I don't know the answer
18 -- but did he tell you that he was going to meet
19 with him and talk with him, share the file with
11:44 20 him, that he himself had no personal hesitation in
21 being open, frank, and available to him?

22 A If I remember correctly he said this chap had been
23 to see him already about it.

24 Q Okay. So nothing to indicate that this man,
11:44 25 T.D.R. Caldwell, had any anxiety, any nervousness,



1 or was looking to hide a bad deed from his past or
2 your past; was there?

3 A None at all.

4 Q Thank you very much. I have no further questions.

11:45 5 **BY MS. WEMPE:**

6 Q Good morning, Mr. Mackie. You will be happy to
7 know that I am the last lawyer to ask you
8 questions, and I will be very brief.

9 I'm representing the RCMP here
11:45 10 and I basically just want to ask you a couple of
11 questions about when they came out to see you.

12 You have some memory of when
13 they came out to talk to you about the Miller file
14 back in 1993?

11:45 15 A I'm told they come up to Emma Lake to see me one
16 time but I don't remember that.

17 Q Okay.

18 A That 303 Streb, I remember them being there.

19 Q Okay. And I think the RCMP report that was
11:45 20 referred to earlier had your sister's address on
21 it?

22 A That's right.

23 Q And do you recall meeting with them at your
24 sister's place?

11:45 25 A That's the only one I remember.



1 Q Okay. And is that here in Saskatoon?

2 A Yes.

3 Q Okay. And was that -- did that occur in her
4 living room or kitchen?

11:46 5 A No, they had a kind of a den.

6 Q Okay. And so it was a casual, informal sort of an
7 interview?

8 A Very much so.

9 Q Okay. Just an open conversation, nothing like a
11:46 10 prelim or a trial?

11 A No, nothing like that.

12 Q Okay. And you were not under any legal
13 obligations to speak with the RCMP at that point;
14 were you?

11:46 15 A Not to my knowledge.

16 Q There was no subpoena?

17 A No.

18 Q No. And they couldn't force you to talk to them
19 about anything?

11:46 20 A I guess not.

21 Q And you testified earlier that you chose not to
22 review any of the material that they presented to
23 you?

24 A That's right.

11:46 25 Q And why was that again?



1 A I just wasn't interested in it.

2 Q Okay. And you would agree that they couldn't
3 force you to review that material?

4 A There was no attempt to make me review it.

11:47 5 Q Okay. Now you testified earlier that you retired
6 from the force in 1978 and that you had not looked
7 at the Miller file after 1970 basically; is that
8 correct?

9 A That's right.

11:47 10 Q So, when the RCMP questioned you, you wouldn't
11 have looked at the Miller file for over 23 years
12 then?

13 A That's right.

14 Q Okay. And you also testified earlier that the
11:47 15 RCMP -- that you told the RCMP that their
16 investigation was not money-wise because there had
17 not been any sort of coverup at any level, and by
18 that comment -- you also testified earlier that
19 you weren't aware of why the RCMP interviewed you
11:47 20 or why they were questioning you, but do you think
21 that by that comment you might have had some
22 knowledge that the RCMP were investigating
23 wrongdoing on behalf of the Saskatoon City Police?

24 A I suppose I might have had some knowledge of some
11:48 25 of it, but I avoided anything along that line, and



1 I guess the other part of it was just my personal
2 opinion that --

3 Q Okay.

4 A -- people were wasting tax dollars.

11:48 5 Q Now you told the RCMP that the summary document
6 that everyone keeps referring to, when they talked
7 to you in 1993 you told them that you did not
8 author that summary document, is it possible that
9 at the time you simply just didn't recall
11:48 10 authoring the summary document due to the fact
11 that you hadn't reviewed the file in over 23 years
12 and chose not to review any of the materials?

13 A It's possible. I'm not even sure that I authored
14 it, even now.

11:48 15 Q Okay. Now you also testified earlier that you
16 don't recall the RCMP showing you that summary
17 document when they came out to interview you?

18 A They may have shown it to me but --

19 Q That was my next question.

11:49 20 A Uh-huh.

21 Q Is it possible that they did show it to you but
22 that you just don't recall?

23 A That's right.

24 Q Okay. Umm, could I bring up document 035018.

11:49 25 Actually, that's the page number, the first page



1 is 035012, and then go through it. Perfect.

2 Now you testified earlier in
3 relation to these comments right in here, I think
4 those are it, you testified earlier that you
5 agreed with these comments but that you had some
6 problems adopting the comment about jealously
7 guarding territories; do you remember testifying
8 about that yesterday?

9 A Yes, I remember something about it.

10 Q Okay. Is it possible that you may have made some
11 comments along these lines that could have been
12 interpreted by an officer in that way?

13 A Yes, I don't -- and I would think that the -- I
14 don't recall anything being withheld in regard to
15 the Miller file, but with other general workings
16 in the department.

17 Q Okay. Now further down, just on that same page,
18 you also testified that you do not recall telling
19 the RCMP that Albert Cadrain was an informant.
20 We've heard other witnesses testify that Albert
21 Cadrain was an informant for the Saskatoon City
22 Police, and it would be consistent for you to say
23 that as well, is it possible that you may have
24 told the RCMP that but just simply don't remember
25 telling them it now?



1 A If they made notes that I said that, I won't argue
2 with them, I don't remember.

3 Q Okay, thank you very much, those are all my
4 questions.

11:51 5 COMMISSIONER MacCALLUM: Thank you.

6 MR. HODSON: I do not have any re-exam, Mr.
7 Commissioner, and I don't see anybody else.

8 COMMISSIONER MacCALLUM: Okay. Thank you,
9 Mr. Mackie, thank you very much for coming, you
11:51 10 are excused.

11 MR. HODSON: Thanks very much, Mr. Mackie.

12 I see it's 10 to 12:00, Mr.
13 Commissioner, what -- maybe I'll just outline our
14 plans as far as witnesses.

11:51 15 We have Dave Wilton who is
16 here, and Mr. Bennett, both of whom will be very
17 short witnesses. Mr. Wilton may be five or ten
18 minutes, Mr. Bennett may be a little longer, and
19 then Mr. Passet.

11:51 20 I feel a bit like the teacher
21 on the last day of school before holidays about
22 letting class out early and wondering whether we
23 should just go ahead and try and do the three
24 with a short break after the two. I have talked
11:52 25 to the Court Reporters. Our options are to call,



1 I think, Mr. Wilton and Mr. Bennett, who have
2 been waiting this morning, I would like to get
3 them in and out, then either take a break for an
4 hour and bring Mr. Passet back at 1:30, or just
11:52 5 take a short break and try and get him done.
6 It's fine either way. I think --

7 COMMISSIONER MacCALLUM: Let's hear two of
8 them now, please.

9 MR. HODSON: Pardon me?

11:52 10 COMMISSIONER MacCALLUM: We'll hear two of
11 them now, then, please.

12 MR. HODSON: Sure. If Mr. Wilton --

13 **DAVID ALAN WILTON, sworn:**

14 COMMISSIONER MacCALLUM: How do you spell
11:53 15 your middle name, sir?

16 A Alan, A-L-A-N.

17 **BY MR. HODSON:**

18 Q Morning, Mr. Wilton. Thank you for agreeing to
19 testify before the Commission. I understand you
11:53 20 currently reside in Saskatoon?

21 A Yes, that's correct.

22 Q And that you joined the Saskatoon Police Service
23 at the rank of Constable in 1965 and retired with
24 the rank of superintendent in '97; is that
11:53 25 correct?



1 A That's correct.

2 Q And I have just a few questions about your
3 involvement in the Gail Miller murder
4 investigation. Back in January of 1969 you were a
11:53 5 constable; is that correct?

6 A That's correct.

7 Q And were you on patrol?

8 A Yes I was.

9 Q And, just briefly, what did a patrol constable do;
11:53 10 what were your duties?

11 A Normally I was assigned to walk the beat or
12 perhaps drive a district car.

13 Q And when you say 'walk the beat' you would be out
14 on the streets?

11:54 15 A Yes.

16 Q And as far as -- do you recall the Gail Miller
17 murder and the investigation?

18 A Yes I do.

19 Q And what involvement did you have in that
11:54 20 investigation?

21 A Very little other than I recall coming to work on
22 a day shift the day of the Gail Miller murder and
23 when I arrived at the police station we were
24 advised there had been a murder on the west side.
11:54 25 I recall it was a very cold day, about minus 40



1 with ice fog, and I recall being sent out with
2 others to the area to comb alleys for any possible
3 clues. I was sent out to an alley in the area,
4 just an alley, which I checked, found nothing
11:54 5 unusual, and then I was sent on my way to my
6 regular duties which -- whatever they were.

7 Q And do you recall who would have been giving you
8 the direction at this time?

9 A It would have been a staff sergeant or a sergeant,
11:54 10 but I can't recall which one.

11 Q In patrol or in detectives?

12 A In patrol.

13 Q Do you recall who was in charge of the Gail Miller
14 investigation?

11:55 15 A No, I don't know.

16 Q I would like to turn your attention to a report,
17 106547, and this is a police report dated February
18 15th, 1969, and that's your name at the bottom,
19 Mr. Wilton?

11:55 20 A Yes, it is.

21 Q And you have had a chance to review this report to
22 prepare for your evidence at this Inquiry?

23 A I'm aware of it.

24 Q Yeah.

11:55 25 A There was -- yes.



1 Q And maybe we'll just go through it. And it
2 details February 15th, '69, 4:30 a.m., which would
3 be two weeks after the Gail Miller murder, and it
4 starts off:

11:55 5 "At 3 a.m. this date I spoke to Sid
6 Sargent ... Warman Road ...",
7 and goes on to talk about a description of a
8 woman near Avenue N and 20th Street, which was
9 near a bus stop that Gail Miller caught, and
11:55 10 described a woman similar to a nurse's cape,
11 etcetera. Do you have any recollection today,
12 Mr. Wilton, of this conversation with
13 Mr. Sargent?

14 A No I don't.

11:56 15 Q And as far as practices at the time, if we go back
16 again to 1969, it appears that you would have
17 prepared this report to detail what Mr. Sargent
18 told you at the time?

19 A Yes.

11:56 20 Q And it doesn't identify here whether this was by
21 phone or in person. Are you able to shed any
22 light on that? It's at 3:00 in the morning.

23 A No, I'm not. I can only assume I was working
24 patrol shift, night shift, --

11:56 25 Q Yes?



1 A -- and the person approached me either on the
2 street or around the police station, and I can't
3 recall where.

4 Q So you are saying it was likely an in-person
11:56 5 meeting as opposed to the phone?

6 A Yes.

7 Q And I don't propose to go through this in detail,
8 we went through it with Mr. Sargent -- or when
9 Mr. Sargent testified, but I think you would have
11:57 10 known at the time, Mr. Wilton, about the death of
11 Gail Miller?

12 A Yes I did.

13 Q And you would have known the name Gail Miller at
14 the time, that would have been familiar to you?

11:57 15 A Yes.

16 Q And would you have been aware of the general area
17 where the murder took place, and where Ms. Miller
18 lived and where she caught the bus, based on your
19 lane walking, if I can call it that?

11:57 20 A Yes, I would have.

21 Q And I take it, from this, is it fair to conclude
22 that this information here, that someone saw a
23 woman standing at the bus stop at the south curb
24 wearing a blue or what appeared to be a blue coat
11:57 25 similar to a nurse's cape, this woman also wore



1 white nylons, a white dress and may have been
2 wearing a hat, and then a young male person
3 staggering in that direction; would it be fair to
4 say, Mr. Wilton, that you would have connected
11:57 5 this to the -- to being a possibility that that
6 may have been Gail Miller that Mr. Sargent saw
7 based on this description?

8 A Yes, I would probably have thought that, or
9 referring to that case.

11:58 10 Q And in fact, if we can just scroll up, this is a
11 report prepared on the Gail Miller file, and if we
12 see 641, and then if we could just scroll down to
13 the bottom. You write:

14 "Perhaps photos could be shown to
11:58 15 Sargent and identification made."

16 And so I take it that that would be your
17 suggestion to others in the police force that
18 some follow-up should happen; is that right?

19 A Yes, that was my suggestion at the very end, yeah.

11:58 20 And looking, again, to the top there where I
21 mentioned the Gail Miller murder --

22 Q Yes?

23 A -- I knew that this was probably referring to that
24 case.

11:58 25 Q And so as far as the information -- or pardon



1 me -- the investigation report, Mr. Wilton, was
2 this the document or the mode of communication
3 where officers would communicate to those in
4 charge of an investigation of what you had saw,
11:58 5 what you had observed, and what further work might
6 need to be done?

7 A Yes, this would have been the practice at the
8 time, I would have taken a report, being in the
9 middle of a night shift, and left it for the day
11:59 10 shift, whoever had the file.

11 Q And so it would be your expectation, then, that
12 this report would go to someone, someone in charge
13 of the Gail Miller file; correct?

14 A Yes.

11:59 15 Q And that that person, or some persons, would read
16 it; correct?

17 A Yes.

18 Q And that those persons, then, would decide what
19 follow-up steps, if any, should be taken?

11:59 20 A Yes.

21 Q Is that fair? And I take it, sir, that -- did you
22 understand that you had any further
23 responsibility, other than preparing this report,
24 in following up with Mr. Sargent?

11:59 25 A No I did not.



1 Q And if Mr. Sargent would have told you on the, at
2 the meeting that you detail here that, instead of
3 describing a woman in a nurse's cape, that he
4 actually saw Gail Miller and that he knew Gail
11:59 5 Miller, is that the type of information you would
6 have recorded in this report?

7 A Oh yes.

8 Q So the fact that you don't have her name written
9 down here, is it fair to conclude that -- that, at
12:00 10 least according to your practice, that you don't
11 believe he would have told you that?

12 A It's fair to conclude that I put in here what he
13 told me.

14 Q And so if he would have said 'I saw someone, it's
12:00 15 Gail Miller, I know Gail Miller from a party', are
16 you telling us, based on your practices, that's
17 what you would have put in here?

18 A I feel quite sure that, if he had said it was Gail
19 Miller, I would have put it in there.

12:00 20 Q Okay. Now we've heard evidence from Mr. Sargent,
21 and I believe you had a chance to review his
22 evidence before the Inquiry, is that correct, a
23 transcript of that?

24 A Just this report.

12:00 25 Q This report? Okay. Mr. Sargent testified before



1 the Inquiry that he never did get any follow-up
2 call from anyone, and there's nothing in the
3 police records to indicate that any follow-up was
4 done, although your report, sir, is on the file.
12:00 5 I'm wondering if you can offer us with any
6 explanation as to how that may have happened that
7 there would be no follow-up with Mr. Sargent?

8 A No I can't.

9 Q Those are all my questions, Mr. Wilton, if other
12:01 10 counsel have -- I don't believe there's any
11 cross-examination. Thank you very much.

12 A Thank you.

13 COMMISSIONER MacCALLUM: Thanks for coming,
14 Mr. Wilton, you are excused.

12:01 15 MR. HODSON: We'll call Maurice Bennett,
16 please.

17 **MAURICE HERBERT BENNETT**, sworn:

18 COMMISSIONER MacCALLUM: Have a chair.

19 **BY MR. HODSON:**

12:03 20 Q You can be seated. Good afternoon, Mr. Bennett.
21 I understand you reside in or near Saskatoon; is
22 that correct?

23 A Yes.

24 Q And your current age?

12:03 25 A 50 -- 73.



1 Q 73. You use that other one for other occasions,
2 do you?

3 A Maybe.

4 Q I understand, sir, that you started with the
12:03 5 Saskatoon City Police Service in 1954 and retired
6 as staff sergeant in 1986; is that correct?

7 A Yes.

8 Q And we'll just quickly call up your service
9 record, 325555, please.

12:03 10 A The -- every place I worked?

11 Q No, we'll go through here.

12 A Oh, okay.

13 Q I'll just -- you take a look at the screen,
14 Mr. Bennett, and I'll just quickly go through.
12:04 15 This is a document that the city police service
16 provided indicating that you started as a
17 constable and retired as a detective staff
18 sergeant, and the time frame I'm interested in is
19 if we look at June 10th, 1969 -- I didn't draw
12:04 20 that very well -- that you were a detective. So
21 that at the time of Gail Miller's murder you were
22 a detective; is that correct?

23 A Yes.

24 Q And then April 8th, 1971 you moved to a morality
12:04 25 sergeant; is that right?



1 A Yes.

2 Q And if we could just quickly call up the
3 organizational chart please, 325571 please, and if
4 we could just call up that area please. At the
12:04 5 time of Gail Miller's murder, this is an
6 organizational chart, and I think it lists you
7 amongst other detectives, Mr. Bennett, at the
8 time, and that as detective sergeants were Mackie,
9 Reid, Porter, and Ward; do you remember those
12:05 10 gentlemen?

11 A Yes.

12 Q And so they would be senior officers to you at the
13 time, detective sergeants?

14 A Yes.

12:05 15 Q Above them would be Lieutenant Short and over
16 here, we don't see him, was Jack Wood?

17 A That's right.

18 Q That would be the organizational chart at the
19 time?

12:05 20 A Yes.

21 Q Now I want to ask you about a couple of specific
22 parts or roles you played in the Gail Miller
23 murder investigation. Do you recall, do you
24 recall the Gail Miller murder and the
12:05 25 investigation and your role in that?



1 A Yes.

2 Q And, briefly, can you tell us what, what role did
3 you play in that investigation?

4 A Umm, --

12:05 5 Q And I'll go through the documents with you, sir,
6 in a moment.

7 A Okay.

8 Q So I'm just looking for your general involvement.

9 A Umm, we did a house-to-house search -- or not a
12:05 10 search but a check, --

11 Q Okay?

12 A -- on 20th Street West.

13 Q Right.

14 A Umm, --

12:06 15 Q I believe there is a document -- I'll show you
16 these -- dealing with the (V4)---- (V4)--- -- a
17 woman who made a complaint on the day of the
18 murder about an assault; do you remember that?

19 A Yes.

12:06 20 Q And, as well, I think you were involved with a
21 lady by the name of Marie Indyk who was at the St.
22 Mary's Church that morning and made some
23 observations; do you remember that?

24 A Well, since I have gone through my notes, yes.

12:06 25 Q Okay. Maybe what we will do is we'll start with



1 document 106110, please. Do you remember,
2 Mr. Bennett, who was in charge of the
3 investigation?

4 A Well not for sure, just by looking at the reports,
12:06 5 that's all.

6 Q And --

7 A I think it was Reid.

8 Q Reid? Okay.

9 A Yeah.

12:06 10 Q And what about Mr. Mackie, do you --

11 A Yes, he was involved also.

12 Q And were there normally detectives or detective
13 sergeants in charge of a file?

14 A Yes.

12:06 15 Q So here's a report of January 31st, 1969, which is
16 the date of the murder, and that's your name down
17 at the bottom; correct?

18 A Yes.

19 Q And you have had a chance to review this report in
12:07 20 the last while; is that correct?

21 A Yes I have.

22 Q And if we could just -- it talks about a radio --
23 start at the top and we'll call that out so you
24 can see it a bit better. It starts off here:

12:07 25 "A radio call was received to see a



1 (V4)----- (V4)--- of 331 Ave. H So. in
2 regards to an incident that took place
3 at 7:07 A.M. this date.

4 I interviewed her in regards to
12:07 5 this and a wittness statement was taken
6 from her. There is no seperate report
7 made on this as she would not have
8 complained about this untill hearing of
9 the murder."

12:07 10 And so do I take it from that, Mr. Bennett, that
11 that's something that she would have told you?

12 A Yes.

13 Q And so that the practice would be had there not
14 been a Gail Miller murder, and Ms. (V4)--- would
12:07 15 have called in with a complaint of an assault, I
16 take it you would have opened up a new file; is
17 that right?

18 A Right.

19 Q And is it fair to take it from this that
12:08 20 Ms. (V4)--- was providing this information to the
21 police because of her becoming aware of the Gail
22 Miller murder?

23 A I wouldn't know, or I don't recall it, I should
24 say.

12:08 25 Q And so I take it you would have made a decision



1 not to open up a new file for (V4)---- (V4)---; is
2 that --

3 A Hmm --

4 Q Based on what she told you?

12:08 5 A I don't know if I did or I didn't, I can't recall,
6 anyway. I would have opened -- did it this way if
7 I was instructed to do it that way.

8 Q What, instructed by senior officers?

9 A Yes.

12:08 10 Q So I take it -- and I don't think there is a
11 separate file that has an investigation of
12 (V4)---- (V4)---'s assailant?

13 A I don't think so, no.

14 Q Okay. So if we could then go down, and I won't go
12:08 15 through it in detail, it just talks about her
16 story. And I take it, Mr. Bennett, what was your
17 practice at the time as far as interviewing
18 witnesses, witness statements, and making notes?

19 A The practice?

12:09 20 Q Yes?

21 A Well usually I would do it at the police station,
22 I don't know if this was done at the police
23 station or not, and I would take the information
24 from her that she gave and then probably show
12:09 25 photographs.



1 Q Okay. And again, we have been through this with
2 other witnesses before, but she describes a male
3 person grabbing her, running his hand up and down
4 her legs, and threw her books down, and she says
12:09 5 it took place on Avenue H South at 7:07 a.m. on
6 the morning of January 31, '69. Is it fair to
7 conclude, Mr. Bennett, that at the time you took
8 this statement, that (a) you would have been aware
9 of the Gail Miller murder that morning; is that
10 fair?

11 A Yes.

12 Q And, generally, the time of -- the time frame of
13 the murder, as to when, at least generally it was
14 early in the morning that it was believed that she
12:10 15 was murdered?

16 A Yes.

17 Q And the location, you would have known where the
18 murder -- where the body was found, at least, on
19 that date?

12:10 20 A Yes.

21 Q Now when you took Ms. (V4)---'s statement, sir,
22 did you -- tell us what, what sort of went through
23 your mind as to whether, whether this fit in in
24 any way with the Gail Miller murder, and if so,
12:10 25 how?



1 A I don't recall, no.

2 Q Okay. But I take it, since it's a report on the
3 Gail Miller file, that it would have been
4 information -- the (V4)---- (V4)--- information
12:10 5 would have been information relevant to the Gail
6 Miller murder investigation; is that fair?

7 A Probably.

8 Q And would that be because one, one possibility
9 might have been that the person who assaulted
12:10 10 Ms. (V4)--- may have been the same person who
11 killed Gail Miller?

12 A I don't really know, no.

13 Q So you went out, were asked to take a statement,
14 went out and got the statement and prepared a
12:10 15 report, sent it in for others to deal with; is
16 that --

17 A Yes.

18 Q And if we go down, it has a description here, and
19 it also talks about, it says (V4)---- (V4)--- was
12:10 20 transported to the police station and groups of
21 photos shown to her, and then your description,
22 and then you identified the pictures picked out by
23 her as somewhat resembling the person were as
24 follows, and I think if we can call up document
12:11 25 056414, I think the doc ID is 056410, if we can



1 just actually call up the photos for a moment,
2 please, and I believe, sir, these would be the
3 photos, they match the numbers in the report, so
4 would these be photos that you would have in a
12:11 5 system at the police station that you would --

6 A Probably, yes.

7 Q And there's also another reference to a photo, I
8 think 057764 -- actually, if you can just put the
9 photos on the right-hand side and call up the
12:11 10 investigation report, please. The photos on the
11 right-hand side. And if we look here you'll see
12 the photo numbers, if you can just call out that,
13 have a number, for example, this one L13359 and we
14 see there L13359, I take it that was some indexing
12:12 15 or some identification number for these photos?

16 A Yes.

17 Q And then if you could just scroll down a bit on
18 the left-hand side it also -- sorry, it refers to
19 a Regina photo number 10010, and then scroll down
12:12 20 a bit further, it says the sex crime photo shown
21 to her and picked out, one as being somewhat like
22 the person Nelson Wolfleg which -- I'm not sure if
23 it's noted, but I believe maybe that photograph
24 there. So would this be a standard process, to
12:13 25 have photographs shown to complainants?



1 A Yes.

2 Q And so in your report then you would list these
3 photo numbers and I take it then investigating
4 officers could go and find those photos and do
12:13 5 whatever needed to be done with them?

6 A I imagine so.

7 Q I wonder if you can go back just to the main
8 investigation report, please, and then just down
9 at the bottom, please, and it talks about, it
12:13 10 looks like you did some follow-up calls to check
11 out the story of Ms. (V4)--- and you called at 223
12 Avenue H South where this girl says she waved to a
13 Mrs. Otchewat. Mrs. Otchewat was not at home, but
14 her daughter will have her call the station upon
12:13 15 her return, and then is that your handwriting at
16 the bottom, sir?

17 A Yes, it is.

18 Q It says:

19 "Received call from Polly Otchewat that
12:14 20 she recalls (V4)---- ran by shortly
21 after 7 a.m."

22 So I take it, sir, that once you were done with
23 Ms. (V4)--- -- actually, I'll just call up her
24 statement too, 006404, and this is a statement of
12:14 25 (V4)---- (V4)---, January 31st, '69. Is that



1 your signature at the bottom left?

2 A Yes, it is.

3 Q And is the body of this statement your
4 handwriting?

12:14 5 A Yes, it is.

6 Q And so would you have simply asked Ms. (V4)--- to
7 tell you her story and you write it down; is that
8 your practice?

9 A Yes.

12:14 10 Q Now, if we can just call out and zoom in that area
11 at the top left, there's some handwriting that
12 says IND, which I think is indecent assault, not
13 connected. Is that your handwriting?

14 A I don't think so.

12:15 15 Q Okay. And I think, Mr. Bennett, in fairness, I
16 think we've seen that on some other statements
17 prepared by other officers, similar handwriting to
18 that, so you are saying you don't think it's
19 yours; is that fair?

12:15 20 A That's right, yes.

21 Q As far as making an assessment, sir, of where and
22 how, if anywhere, the (V4)---- (V4)--- information
23 would fit into the Gail Miller investigation, did
24 you play any role in that, sir?

12:15 25 A No. Not that I recall anyway.



1 Q As far as dealing with (V4)---- (V4)---, tell us
2 then what you viewed your role?

3 A Well, according to the report, I took the
4 statement from her, had her view the photos and
12:15 5 then I believe took her home.

6 Q And then prepared reports to others?

7 A Yes.

8 Q And did you understand then that someone else,
9 someone else in the police service then would
12:16 10 consider where and what to do with this
11 information?

12 A Yes.

13 Q And did you do any follow-up work with
14 Ms. (V4)---?

12:16 15 A I don't think so.

16 Q And I don't believe there's anything in the
17 reports, sir.

18 A No.

19 Q And so as far as trying to figure out how that
12:16 20 might fit into the Gail Miller murder, was that
21 something you relied upon others or --

22 A Yes.

23 Q And why was that?

24 A I don't really know.

12:16 25 Q Were you -- let me put it this way. I think you



1 said earlier, were you simply following
2 instructions and doing tasks assigned to you, was
3 that your role in the investigation?

4 A Yes.

12:16 5 Q So you do what was asked of you and report and
6 wait for the next assignment?

7 A That's right.

8 Q If we could turn to 106113, please, again this is
9 a report the date of the murder, and it looks like
12:16 10 you and Mr. Hein went to check out some dry
11 cleaning establishments, I don't propose to go
12 through that, but I take it someone would have
13 asked you or directed you to do that?

14 A Yes.

12:17 15 Q And again you would do what was asked, prepare a
16 report, send it in and let someone else decide
17 what to make of it?

18 A Yes.

19 Q If we could go to 106234, please, this is a report
12:17 20 of February 6, '69, and that's your name down at
21 the bottom; correct?

22 A Yes, it is.

23 Q And if we could just call out the bottom half, it
24 appears from this note that you interviewed a lady
12:17 25 by the name of Mary Gallucci:



1 "... who stated that she takes the bus
2 at Ave. 0 and 20th Street every day.
3 She stated that on Thursday morning,
4 Jan. 31st., she recalls a girl get on
12:17 5 the bus at the above with her. She
6 describes this girl as follows. Younger
7 girl, dark hair, wearing white dress and
8 stockings, dark coat believed cloth and
9 could be brown, no hat and believes to
12:18 10 have had a white scarf. She has seen
11 her on the same bus before but does not
12 think seen on Wed. There was also a
13 young man get on the bus with the who
14 was a construction worker wearing blue
12:18 15 jeans and a hard hat, possibly yellow.
16 This man comes from Ave. 0 South of 20th
17 Street. He has been getting on the bus
18 at the same time since that day. She
19 does not think she could identify."

12:18 20 Do you have any recollection of this interview
21 with Mary Gallucci?

22 A No, I don't.

23 Q Now, Mr. Bennett, we have heard other evidence to
24 suggest that -- in fact, Mrs. Gallucci testified
12:18 25 before the Inquiry that both Gail Miller and Larry



1 Fisher both caught the bus on occasion or
2 frequently at Avenue O and 20th Street and that it
3 may well be that Ms. Gallucci was describing here
4 in this report both Gail Miller and Larry Fisher
12:19 5 and as well the reference here to Ms. Gallucci
6 saying that she did not think she saw her on
7 Wednesday and there's an issue here as to the
8 dates, whether that should be the 30th or not.
9 Again, would you have done any follow-up on this
12:19 10 after you got this information?

11 A I don't believe so.

12 Q And again would you prepare the report, send it in
13 and wait for further instructions?

14 A Yes.

12:19 15 Q If we could go to 009333, please, and this is a
16 report of February 5th, '69 and that's your
17 report; correct?

18 A Yes.

19 Q And this details that, we'll just call out that
12:19 20 part, you and Detective Hein checking houses and
21 businesses on 20th Street and had an occasion to
22 interview a Mrs. Marie Indyk, and does that name
23 sound familiar, Mr. Bennett?

24 A Other than when I see it in the report.

12:20 25 Q Do you recall, and I think down at the bottom you



1 indicated she was a Russian immigrant and had some
2 difficulty I think conversing with you. Do you
3 recall, do you have any recollection of meeting
4 with this lady?

12:20 5 A That part I think I remember, yes.

6 Q And tell us, what do you remember?

7 A Well, I thought she was very suspicious -- ah,
8 superstitious as to what took place.

9 Q When you say as to what took place, are you
12:20 10 referring to the murder?

11 A What she was referring to.

12 Q Okay. And do you recall anything else about your
13 meeting with her as to what she told you, your
14 perceptions of her?

12:20 15 A No, I don't remember it, no.

16 Q And this describes her telling you and Detective
17 Hein that she noticed a woman coming on 20th
18 Street from the east and stopped and looked at her
19 and the look on this woman's face scared Mrs.
12:21 20 Indyk. The woman turned and walked away, church
21 lights went on, and a description, and then if we
22 can just scroll down, please, and you write in
23 your report:

24 "Mrs. Marie Indyk is Russian and has
12:21 25 some difficulty with her English. She



1 is almost sure that she could recognize
2 the face again if seen. The look that
3 this woman gave her was enough to scare
4 her.

12:21 5 Mrs. Indyk was informed that
6 there might be someone up to see her
7 this evening regarding this matter."

8 So I take it at this time, Mr. Bennett, that you
9 and/or Mr. Hein would have thought that Mrs.
12:21 10 Indyk observed things the morning of the murder
11 and may have some helpful information?

12 A Probably. I don't recall it now.

13 Q And just for the record, we'll just call it up
14 quickly, 009225 is the statement of Mrs. Indyk,
12:21 15 and it was given that evening and it looks like
16 Constable Gabruch went up and saw her and took a
17 statement. Does that look right?

18 A Probably. I don't know.

19 Q If we can call up 106254, please, and this is a
12:22 20 lengthy report, you can't see it very well, but at
21 the top it's Bennett and Hein, February 7th, 1969.
22 If we can just call that out, please.

23 A Yeah.

24 Q And there's a listing, pages of listings of names
12:22 25 and addresses that appear to be sort of a



1 door-to-door search, and do you recall generally
2 you and Detective Hein going door to door at or
3 around the time of the Gail Miller murder?

4 A Yes.

12:22 5 Q And was it an extensive door-to-door search?

6 A Yes.

7 Q And would somebody have told you which streets and
8 which houses to go to?

9 A I believe so, yes.

12:22 10 Q And do you know who that was?

11 A I'm not sure. I thought it was Jack Wood, the
12 person in charge of detectives.

13 Q And so you would have been given a specific area
14 to go check?

12:23 15 A Yes.

16 Q And do you know if other officers were checking
17 other areas?

18 A Oh, I don't know.

19 Q And was it your decision as to what streets to go
12:23 20 knock on doors or was that directed to you?

21 A That was directed to us.

22 Q We've heard some evidence, Mr. Bennett, that the
23 houses south of 20th Street may not have been
24 checked much or at all and that most of the
12:23 25 checking was done north of 20th Street. Do you



1 remember that?

2 A Yes, partially, yes.

3 Q And do you know why? Are you able to confirm that
4 the checking of houses was north of 20th just by
12:23 5 your recollection?

6 A No, I don't recall that part.

7 Q Do you know of any reason, if that were to be the
8 case, that houses south of 20th Street were not
9 checked, would there be any reason for that?

12:24 10 A Other than we were told to check 20th Street West
11 from Avenue H I believe to Avenue W.

12 Q If we could just maybe call up the map, please,
13 quickly, one of the maps. Actually, if we go back
14 to the map, I think map C that has the city on it,
12:24 15 please, and so here's -- yeah, here's 20th Street
16 here, Mr. Bennett, and here's 22nd Street, the
17 body was found here, and I think you said north of
18 20th Street and from W to H which is over here; is
19 that right?

12:25 20 A You said north of 20th? No, it was --

21 Q North of --

22 A It was straight up 20th Street both sides.

23 Q So up 20th Street on both sides of the street?

24 A Yeah.

12:25 25 Q Okay, I'm sorry. From H to W?



1 A Uh-huh.

2 Q But you were not asked to check south of 20th
3 Street; is that right?

4 A No.

12:25 5 Q Okay. And in fact we have a map over there that
6 we've prepared that has gone through all of your
7 reports and identified those houses that you
8 checked and I think that's consistent with that.
9 I don't think there's a need to go through that.
12:25 10 What would you be checking when you went door to
11 door, what was the purpose of that?

12 A Looking for anybody that witnessed anything that
13 particular morning.

14 Q And other than that, Mr. Bennett, there doesn't
12:25 15 appear to be any further involvement of you in the
16 file. Do you recall having any dealings with
17 Albert Cadrain, Ron Wilson, Nichol John, David
18 Milgaard?

19 A No.

12:25 20 Q And you did not testify at Mr. Milgaard's
21 preliminary hearing or trial?

22 A No.

23 Q You did not testify at Larry Fisher's preliminary
24 hearing or trial?

12:26 25 A No.



1 MR. HODSON: Those are all my questions,
2 Mr. Bennett. Other counsel may have
3 cross-examination. Once? Twice? You are done.
4 Thank you very much.

12:26 5 COMMISSIONER MacCALLUM: Thanks, Mr.
6 Bennett, you are excused.

7 MR. HODSON: It's 12:25. We have Mr.
8 Passet left. Mr. Hardy tells me he will be maybe
9 half an hour in chief.

12:26 10 MR. HARDY: Maybe.

11 MR. HODSON: Maybe.

12 COMMISSIONER MacCALLUM: 1:30 then.

13 MR. HODSON: 1:30, sure.

14 *(Adjourned at 12:26 p.m.)*

01:31 15 *(Reconvened at 1:30 p.m.)*

16 COMMISSIONER MacCALLUM: Mr. Hardy?

17 MR. HARDY: Our next witness is Vern
18 Passet.

19 **VERNON ARTHUR PASSET**, sworn:

01:31 20 MR. HARDY: Good afternoon, Mr. Passet.
21 Thank you for attending to give testimony, and,
22 Mr. Commissioner, I should introduce as well
23 Marvin Henderson who is here as Mr. Passet's
24 counsel this afternoon.

01:32 25 COMMISSIONER MacCALLUM: Mr. Henderson.



1 BY MR. HARDY:

2 Q Mr. Passet, I understand you presently reside in
3 Saskatoon?

4 A That's right.

01:32 5 Q And what is your age, sir?

6 A 78.

7 Q And you were previously a Saskatoon city police
8 officer?

9 A That's right.

01:32 10 Q And can you tell us when you began with the force
11 and when you retired from the force, please?

12 A June the 16th, 1952, retired in 1982.

13 Q And what was your rank or position with the force
14 at the time of your retirement?

01:32 15 A Staff sergeant.

16 Q And if I take you back to the time period that
17 we'll be talking of, 1968, 1969, early 1970s, can
18 you recall what your position was with the force
19 at that time?

01:32 20 A Yes, I was with the K-9 section.

21 Q And were you a dog handler?

22 A Yes, that's correct.

23 Q And is it possible that during that time period
24 you were also identified as a morality sergeant?

01:33 25 A That's correct.



1 Q And would that mean that as a dog handler you
2 worked with the morality division?

3 A Yes, it was.

4 Q And perhaps you could very briefly, again I'm
01:33 5 referring to that time period, just tell us about
6 your day-to-day tasks as a dog handler with the
7 force, a little bit about what you would do on a
8 day-to-day basis?

9 A Roughly on a day-to-day basis there was schools
01:33 10 that would call you in for demonstrations, you had
11 lectures pertaining to the aspects of the dog
12 section, what it might do and what it might not be
13 able to do.

14 Q And were you involved in investigations I assume?

01:33 15 A Yes.

16 Q And you had used the dog on occasion in those
17 investigations?

18 A Yes, I did.

19 Q And generally what was the nature of your use of
01:33 20 the dog in those circumstances?

21 A We had attended on break and enter scenes, yeah,
22 missing person scenes, murder scenes.

23 Q And who would you generally receive your
24 assignments from?

01:34 25 A From the staff sergeant's office at the police



1 station.

2 Q And what would be your method of reporting after
3 an attendance on a given investigation, do you
4 recall what reporting you would do and how that
01:34 5 process would work?

6 A The staff sergeant's office would give me a brief
7 run-down as to what had taken place and they would
8 send me to that destination basically and then you
9 had to decide from there what way you are going to
01:34 10 go or how you were going to range the dog or cast,
11 whichever the case may be, and had to go from
12 there.

13 Q And I assume that work would largely be a matter
14 of the dog following some scents and giving you --

01:35 15 A On a line, yes.

16 Q Okay. And again going back to your reporting,
17 would you leave a written report following an
18 attendance with the dog?

19 A Yes, I would.

01:35 20 Q And that report would make its way back to the
21 file I take it that related to the particular
22 investigation?

23 A Yes, it would.

24 Q And I want to take you back to 1968, Mr. Passet,
01:35 25 and I'm wondering if you recall being involved in



1 the investigation of a rape where the
2 complainant's name was (V1)--- (V1)-?

3 A Very vaguely.

4 Q What do you recall of that matter?

01:35 5 A I was sent to the scene where she was taken down,
6 if I recall this right, or correctly, and
7 attempted to get a track there, but unable to due
8 to vehicle traffic, pedestrian traffic.

9 Q And perhaps what I'll do, Mr. Passet, is refer you
01:36 10 to a document that we have, it's document ID
11 074797, it's a little bit grainy, but you see at
12 the top here reference is made to (V1)--- (V1)
13 (V1)-. Can you see that, Mr. Passet?

14 A Thank you, yes.

01:36 15 Q And the date being October 22nd, 1968?

16 A Right.

17 Q I see an occurrence number up here of 10173 of
18 '68. It would appear morality officer Cressman is
19 noted here, perhaps as the officer in charge of
01:36 20 this particular investigation. Do you recall that
21 by chance?

22 A Not completely, not completely.

23 Q And if we just look generally at the report, I'm
24 not going to read out the report in its entirety,
01:37 25 it looks like you were requested to attend at the



1 scene with the tracking dog and in particular you
2 had learned that the morality section was
3 interested in locating a pair of blue jeans --

4 A Yes.

01:37 5 Q -- apparently owned by the complainant. Does that
6 fit with your recollection?

7 A Yes, it does, yeah.

8 Q And the report goes on to speak about your efforts
9 in terms of locating those jeans, I don't believe
01:37 10 that the dog was able to locate them, did locate a
11 black nylon stocking which apparently did not
12 belong to the complainant, and goes on to indicate
13 a couple of other matters again not directly
14 connected to Ms. (V1)-'s situation. Does this
01:37 15 report, would that generally fit with your
16 recollection of your involvement on this
17 particular matter?

18 A Yes, it would.

19 Q And I'm wondering, do you recall at or around the
01:37 20 same time the investigation of a second rape in
21 the same vicinity, the complainant's name in that
22 case was (V2) (V2)- (V2)----- . Do you remember
23 that case, Mr. Passet?

24 A Vaguely, yes.

01:38 25 Q And do you know whether you had any involvement in



1 that particular matter?

2 A Not too much as I recall, but again, it was rather
3 difficult in view of the circumstances, maybe
4 other traffic, etcetera.

01:38 5 Q And we don't have a report on an attendance by
6 yourself in relation to that matter, although we
7 have very little from the original investigation
8 material relating to Ms. (V2)-----, but your
9 recollection then for us today is that you had
01:38 10 some involvement and perhaps of a similar nature
11 to that noted in this particular report?

12 A Yes, I did.

13 Q Okay. And am I correct, Mr. Passet, that you had
14 some involvement as well in the investigation of
01:38 15 the murder of Gail Miller?

16 A Yes, I did.

17 Q And could you at the outset perhaps just very
18 generally outline what you recall were the tasks
19 that you attended to in relation to that
01:39 20 investigation?

21 A Yes, I received a call to attend in the 1400 block
22 20th Street West just behind Westwood Funeral
23 Chapel and I arrived there at approximately
24 quarter to nine I believe and I noticed two of our
01:39 25 plain-clothes members down a back alley. By this



1 time I was now on Avenue O, the 200 block. When I
2 saw the two plain-clothes members down the alley,
3 I thought this would be a good place to start with
4 the dog and range or cast. Bearing in mind it was
01:39 5 42 below zero that morning, it would be very
6 difficult for dogs to do any work, but however, we
7 got down to the Westwood Funeral Chapel and there
8 was an indent in the snow, a fairly large one, two
9 members attending told me that that's where the
01:40 10 body of the late Gail Miller was, so from there I
11 ranged the dog again and this portion, I'm not
12 sure if he went right across the street, I can't
13 recall. Now, that would be the 200 block Avenue N
14 south to the back alley there. There was every
01:40 15 indication that a vehicle had been stuck in the
16 snow there, the snow was soiled with carbon
17 monoxide so to speak, or a dark colour, maybe
18 blotches of oil on it. There was also tracks, so
19 to speak, in and around which the vehicle might
01:40 20 have been, but the tracks weren't legible enough
21 to tell how many or whether they were a man, woman
22 or whose they were, but I just assumed that it was
23 people that owned the vehicle or had been in it or
24 walking around. No indication of a shovel being
01:41 25 used yet.



1 Q Okay. And I want to back you up for a moment, I
2 want to cover this information in detail. You
3 talked about attending at the scene. Was this the
4 date of the Gail Miller murder, at least when her
01:41 5 body had been found, do you recall was this
6 January 31st, 1969?

7 A Yes.

8 Q And you had been called to the scene?

9 A Yes.

01:41 10 Q Do you recall who had instructed you to attend at
11 the scene?

12 A No, I don't. It came from the staff sergeant's
13 office at the police station. I don't recall who.

14 Q And did I hear you correctly that your
01:41 15 instructions were to attend at the 1400 block of
16 20th Street?

17 A Yes, just behind Westwood Funeral.

18 Q And were you aware of the nature of the
19 investigation that was ongoing at this location
01:42 20 when you were called to the scene?

21 A No.

22 Q And I take it, and correct me if I'm wrong, but I
23 think I heard you say that you started some work
24 and then looked down the alley and noticed two
01:42 25 plain-clothes officers?



1 A That's correct.

2 Q And you went to speak with them?

3 A Yes.

4 Q And, I'm sorry, I'm probably making you repeat
01:42 5 yourself, but can you tell me what was it that you
6 said you did from that point forward?

7 A I started out at the entrance to the lane.

8 Q And, sorry, I'm going to interrupt you for a
9 moment. Which entrance are you referring to, and
01:42 10 perhaps it might be useful if we brought up a map
11 and maybe we can look at that together, Mr.
12 Passet, as we're talking about this. If we could
13 bring up 180089, please. I'll let you get
14 familiar with that. I think we could probably
01:42 15 focus in on the block here, please, I'll let you
16 get your bearings there, Mr. Passet. The top of
17 the page would be north, you see 20th Street here?

18 A Yes.

19 Q This is what we understand to be the 1400 block of
01:43 20 20th Street?

21 A Correct.

22 Q 21st up here?

23 A Yeah, you are right.

24 Q The Westwood Funeral Home here?

01:43 25 A Correct.



1 Q That looks familiar to you, you've got your
2 bearings on that?

3 A Yes, I have.

4 Q And you, when you talk about searching or
01:43 5 attending initially at the 1400 block of 20th
6 Street, am I to understand that you were searching
7 on the 20th Street side?

8 A No, I was in the back alley, yeah.

9 Q Okay.

01:43 10 A And right at the 200 block Avenue O South.

11 Q And do you recall whether the body, once you had
12 attended in the alley, was the body of Gail Miller
13 still at the scene or had it been removed?

14 A It had been removed.

01:43 15 Q And who was left at the scene do you recall?

16 A As I recall it, I think it was Detective Parker at
17 that time and I'm not sure whether it was
18 Detective Reid or maybe retired Chief Penkala,
19 there was only two there, and I can't recall who
01:44 20 the other two were for sure.

21 Q And again, do you recall what time in the morning
22 it was that you were attending in that back alley?

23 A 8:45 to my watch.

24 Q And if we've heard in evidence, and the reports
01:44 25 seem to bear this out, that the body was not



1 removed from the scene until approximately 9:45,
2 is it possible that you are mistaken with respect
3 to the time that you attended at the scene?

4 A That's very possible, yes.

01:44 5 Q In any event, the body was no longer there?

6 A That's correct.

7 Q And I think I heard you say that the officers had
8 shown you an indentation in the snow and indicated
9 that that was where the body had been, did I hear
01:44 10 you correctly?

11 A No, not quite. That's where the dog was headed
12 for and located it. I made inquiries as to what
13 this was about.

14 Q Okay. And --

01:45 15 COMMISSIONER MacCALLUM: The dog headed for
16 what?

17 A Pardon me, sir?

18 COMMISSIONER MacCALLUM: The dog headed for
19 what?

01:45 20 A The indentation in the snow.

21 COMMISSIONER MacCALLUM: Where the body had
22 been?

23 A Yeah, that's correct, sir, yeah.

24 COMMISSIONER MacCALLUM: All right.

01:45 25 BY MR. HARDY:



1 Q And you determined that that was where the body
2 had been after the dog had gone there and you made
3 inquiries?

4 A Yes.

01:46 5 Q And when we look at this map, can you show us
6 where you recall that indentation being?

7 A Yes. It was almost directly behind one of the
8 Westwood Funeral door homes -- or doors I should
9 say.

01:46 10 Q So if I point, and you will see --

11 A Right where --

12 Q -- that arrow, and if I move upwards a little bit,
13 it was somewhere in that vicinity?

14 A That's correct.

01:46 15 Q And it was from that point that the dog did some
16 further tracking I think I heard you say?

17 A Yes.

18 Q And did I hear correctly that the dog moved in
19 this direction, towards Avenue N?

01:46 20 A That's correct.

21 Q And your recollection is is that the dog actually
22 crossed Avenue N to the other side of the street?

23 A To my recollection, I think he did, yes.

24 Q And that's when you noticed I think what you are
01:46 25 describing to us as -- and perhaps, I don't want



1 to put words in your mouth, was -- what did you
2 notice, exactly, at that point again?

3 A There was indications that perhaps a vehicle had
4 been stuck there.

01:46 5 Q Would --

6 COMMISSIONER MacCALLUM: In the alley?

7 A In the alley.

8 BY MR. HARDY:

9 Q You're talking about --

01:47 10 A Just into the alley, sir.

11 Q I'm sorry, what did you say, Mr. Passet?

12 A Just across Avenue N into the approach of the
13 alley, right where the --

14 Q Sort of right here, where I'm drawing those lines?

01:47 15 A That's it.

16 Q And was it two tire tracks, one tire track, what
17 was it that --

18 A No, it looked, it appeared to be the whole body of
19 a car that had been sunk into a snow drift and,
01:47 20 other than that, tracks around it.

21 Q And what sorts of tracks were those?

22 A Well I took it they were human tracks but you
23 couldn't indicate exactly from the scuff marks in
24 the snow all around the front of the car and
01:47 25 either side of it.



1 Q And I don't necessarily understand dog handling in
2 these circumstances, but was it a case where the
3 dog had led you to this location, or was it a case
4 of the dog continuing walking and you noticing
01:47 5 this location?

6 A No, he led me.

7 Q And he would have given you some signal that he
8 had found something, picked up a scent or followed
9 a scent to that location?

01:48 10 A Yeah, followed around the whole vehicle, the whole
11 front of the vehicle.

12 Q Okay.

13 A And then he stopped, and that's as far as he is
14 going.

01:48 15 Q Okay. And we've heard in evidence, and I think
16 it's quite well established, Mr. Passet, that
17 Ms. Miller's body was actually not located in the
18 spot that we have been discussing but, instead, it
19 was located in this north-south section of the
01:48 20 alley approximately 50 feet north of the
21 intersecting portion -- and I'm not doing a great
22 job of that -- but approximately where that arrow
23 was pointing. Is it possible that you are
24 mistaken about the location where the initial
01:48 25 indentation in the snow was that the dog had



1 proceeded to?

2 A It's possible, but why he would go to that
3 particular location that I mentioned earlier, and
4 when I was told that was where the body had been
01:49 5 located, now I really have no explanation on that
6 one.

7 Q And that's really all we can try to establish,
8 Mr. Passet. I think what I am hearing you say is
9 you have a positive memory that the location was
01:49 10 actually behind the Westwood Funeral Home, that
11 you made inquiries of the officers present, and
12 they had indicated that that was where the body
13 had been?

14 A That's right.

01:49 15 Q Okay. And would you have done up a report in
16 relation to this attendance, Mr. Passet?

17 A Yes, I did.

18 Q And perhaps I'll back up for a moment. We've
19 gotten to the point where the dog has taken you to
01:49 20 the scene of the vehicle; do you recall what
21 happened after that point in time?

22 A Nope. I left.

23 Q Would you have reported your findings to one of
24 the officers present?

01:49 25 A Yes, I did.



1 Q And do you recall who you --

2 A Who I -- no, I don't recall which one it was.

3 Q And what would you have told them?

4 A I told them there was a vehicle that had been
01:50 5 stuck, and I said 'other than that I can't tell
6 you anything more about it', I said 'there's
7 footprints around it, or would appear to be
8 footprints, but not legible enough to tell whether
9 they were male, female prints or what, scuffed in
01:50 10 the snow'.

11 Q And did you point out the location for the
12 officers?

13 A Umm, I think -- no, I don't think I did, no.
14 'Just across the alley', I think I mentioned,
01:50 15 that's all.

16 Q What, exactly, would you have said to them?

17 A 'There is indications of a vehicle that might have
18 been stuck just over across the alley'.

19 Q And what do you mean when you say 'across the
01:50 20 alley'?

21 A Well, actually in the next alley going from
22 where -- the one that we had left. Now that would
23 be in the 1300 block 20th Street --

24 Q And --

01:50 25 A -- and the approach on that on the west end.



1 Q And you would have said that to the officers or at
2 least one of the officers?

3 A Yeah, that's true.

4 Q And were you left with the impression that whoever
01:51 5 you were speaking to heard and understood the
6 information that you provided to them?

7 A Yes.

8 Q Do you recall them making any comment to you?

9 A Nope.

01:51 10 Q And your best recollection, then, is that you then
11 left the scene?

12 A Yes I did.

13 Q And would you have left a written report in
14 relation to this attendance?

01:51 15 A Yes I did.

16 Q And, generally, what form would that report take?

17 A That would be on a Dog Report Form.

18 Q And what information would you have set out on
19 that form?

01:51 20 A Everything as I previously mentioned just now.

21 Q And where, then, would that report be filed?

22 A I'm not too familiar with the administration of
23 the force, but my superior would have got it, who
24 would perhaps have been the member in charge of
01:51 25 the Gail Miller murder. Now that could have been



1 Superintendent Wood, could have been Lieutenant
2 Short, but -- or Detective Sergeant Mackie, but it
3 would have gone through one of those routes.

4 Q And just help me follow through with that process.
01:52 5 Would you have dictated this report or was this a
6 handwritten report?

7 A No, it was dictated.

8 Q And so --

9 A Umm, yeah, I think it was dictated. I'm not
01:52 10 exactly sure but --

11 Q And who would type up that report, then, for you?

12 A One of the stenographers in central records.

13 Q And would you, then, deliver that report to the
14 officer that you were just speaking of?

01:52 15 A No, I wouldn't, no.

16 Q That was your expectation?

17 A No, it would leave central records and find its
18 way through to my superior.

19 Q And you are quite certain you left a report in
01:53 20 relation to this matter, Mr. Passet?

21 A Yes I did.

22 Q And I ask you that because we've done a fairly
23 extensive review of all of the documents, I have
24 never seen a report of this nature relating to
01:53 25 your attendance on January 31st, would you have



1 any explanation why we don't have that report
2 today?

3 A Nope, I wouldn't.

4 Q Okay. And would you have verbally reported your
01:53 5 findings to anyone beyond who you have already
6 told us?

7 A Not that I recall.

8 Q Okay. And I should confirm, Mr. Commissioner,
9 there is a reference, and I'll turn to a document,
01:53 10 it's document ID 045802. And, Mr. Passet, we
11 understand this is a document that would have been
12 created eventually by the case preparation
13 officer, Elmer Ullrich, and it's just one page of
14 a larger document that he prepared, and on this
01:54 15 particular page he set out a number of witnesses,
16 and he indicates that they are not listed. And
17 we'll hear from Mr. Ullrich in relation to what
18 that means, but you will find your name down the
19 page -- and perhaps if we could blow up that
01:54 20 portion, please, if we can even go just to a --
21 the entry relating to Mr. Passet, it's right here.
22 Can you see that all right?

23 A Yes I can, thank you, yeah.

24 Q I see the reference:

01:54 25 "Sgt. V.A. Passet. Used police dog on



1 Jan. 31st and again May 27/69".

2 We'll go on to talk about that second date in a
3 moment. That's the only reference we've found to
4 that attendance, and is it your expectation that
01:55 5 that reference relates to the attendance that
6 you've described to us, Mr. Passet?

7 A Yes.

8 Q And beyond the individuals that we've mentioned,
9 including two of the three officers I think that
01:55 10 you named who were possibly at the scene -- and I
11 think you said Reid, Parker, Penkala -- beyond
12 those three would there be anybody else that you
13 spoke to relating to this attendance and this
14 information?

01:55 15 A No.

16 Q Okay. And am I correct -- and we'll cover this a
17 little bit later, Mr. Passet -- but am I correct
18 that the first time that you spoke about this
19 particular recollection was to Commission staff in
01:56 20 preparation for your testimony at this Commission
21 of Inquiry?

22 A Basically, yes.

23 Q Okay. And, again, we'll cover that a little bit
24 further. You have, though, talked to other
01:56 25 parties relating to your involvement on the



1 Milgaard investigation -- or Miller investigation
2 in '69 through the years?

3 A Yes, I did.

4 Q Including the RCMP in 1993?

01:56 5 A Yes, I did.

6 Q Okay. And we'll take a look at those notes from
7 those meetings in a moment. Is there anything
8 else relating to that January 31st attendance,
9 Mr. Passet, that we haven't covered that you feel
01:56 10 is relevant?

11 A No, basically I think that is it.

12 Q Okay. Do you recall any further investigative
13 efforts that you attended to in relation to the
14 Miller murder investigation on January 31st?

01:56 15 A On or about May 27th, maybe, I received
16 instructions from Detective Sergeant Ray Mackie to
17 search the ditches on the highway going to
18 Rosetown and perhaps take in the ditches of
19 Highway 60 going to Pike Lake, which I did. It
01:56 20 took approximately two days to do this. I don't
21 recall whether it was the first or the second day
22 that I suspended the search at about quarter to
23 6:00. Detective Sergeant Mackie came out to check
24 on me, I guess they hadn't heard from me so he
01:56 25 came out to check, and there was a severe



1 thunderstorm, a thunder and lightning storm, and I
2 was in the process of calling the search off then,
3 and which Detective Sergeant Mackie told me to do
4 also. So, anyway, that was it for one of those
01:56 5 two days, it finished at quarter to 6:00, and in
6 my recollection I think it was the first day.

7 Q And this search, again, was in connection with the
8 Miller murder investigation?

9 A Yes it was.

01:57 10 Q And do you recall what, in particular, you were
11 searching for?

12 A I was informed that it was a compact, a lady's
13 compact.

14 Q And was it just Mr. Mackie who was providing you
01:57 15 with instructions in relation to this matter?

16 A Yes.

17 Q And I take it, then, that you took the dog out to
18 this particular location that you have been
19 referring to?

01:57 20 A Yes I did.

21 Q And searched the both sides of the highway?

22 A Yes.

23 Q And do you recall what the results of that search
24 were?

01:57 25 A Definitely no compact. There was a penny match



1 folder, I think with a name on it, as I recall;
2 there was wedding invitation, I don't recall whose
3 name that was. Umm, basically, that was just
4 about it.

01:57 5 Q And, and help me understand, and I -- hopefully we
6 don't have to go into too much detail, what --
7 what would the dog be looking for? How would the
8 dog know what it was looking for or sniffing for?

9 A He wouldn't know what he was looking for except
01:58 10 just any object that happened to be out there
11 would come in. Happened in the past on other
12 incidents, old overshoes and what have you, so if
13 it would have been out there it would have come
14 in.

01:58 15 Q So any object that may have had a living scent on
16 it, or a human scent, am I hearing that correctly?
17 There would have been nothing, though, that the
18 dog would have known to connect the matter to the
19 investigation?

01:58 20 A No.

21 Q Okay. Maybe I'll -- we'll take a look at the
22 report for a moment if we could. It's document ID
23 009287, does this look like one of the dog case
24 reports that you were speaking of earlier,
01:58 25 Mr. Passet?



1 A Yes it does.

2 Q And it looks like it's referring to occurrence
3 number 641, we know that's the Gail Miller murder
4 investigation. And Detective Sergeant Mackie,
01:59 5 again, he was the instructing officer, I take it,
6 on this matter?

7 A Correct.

8 Q Date of the report, May 27th?

9 A Correct.

01:59 10 Q And is that the date that you would have completed
11 this report?

12 A Yes.

13 Q If we move down the page I see -- and I'm sorry,
14 maybe if we could blow up the top half of the
01:59 15 page -- date and time requested May 27th; date and
16 time arrived at scene May 20th -- I'm going to ask
17 you to resolve those dates in a moment but maybe
18 we'll continue through the report -- regular
19 patrol; 16 hours employed on the case; searching;
01:59 20 no trail; you mentioned the type of terrain,
21 weather conditions. And then if we can go down
22 the page, please, to Details of Action Taken it
23 looks like you report:

24 "On May 27 & 28, I was instructed by
01:59 25 D/Sgt. R. Mackie to employ the tracking



1 dog on an area search. This was to
2 include both sides of Highway 7 to the
3 junction of 60.

4 The detectives were interested
02:00 5 in locating a cosmetic case belonging to
6 the late Miss Miller, which they were
7 hoping might still be in the ditch from
8 January 31st.

9 Many objects were retrieved by
02:00 10 the dog including a wedding invitation
11 which took place January 30th. However
12 no cosmetic case or portion of same
13 located. A total of 26 miles of
14 territory searched."

02:00 15 The name of the dog, 'Wojeck', and then 'Sgt. V.
16 Passet'. Would that contain the details of your
17 search, Mr. Passet?

18 A All except for the date, May the 20th. I strongly
19 suggest that that was my error.

02:00 20 Q A typographical error?

21 A Yes.

22 Q And maybe if we could go back up to that entry,
23 please, that seems to make sense. It looks like
24 you were requested to undertake this task on May
02:00 25 27th, the entry relating to May 20th I believe



1 should be the date and time that you actually
2 arrived at the scene?

3 A Yeah, on the 27th.

4 Q Would it strike you that that should have likely
02:01 5 said May 27th?

6 A That's correct.

7 Q Okay.

8 A And I would suggest that was my error.

9 Q And would this be a matter where you had received
02:01 10 instructions from Detective Sergeant Mackie, is
11 this something that you would immediately attend
12 to?

13 A Yes.

14 Q Okay. And a quick question, you use the phrase
02:02 15 cosmetic case and this might be difficult, but if
16 I take you back to 1969, what did that mean to
17 you? What were you looking for?

18 A Well, I thought it could be a woman's compact with
19 make-up in it, a round metal case, or it could
02:02 20 have been in a case with other incidentals. It
21 didn't matter to me really. If there was any
22 scent on any of them, it would have come up.

23 Q Okay. And is there anything else that you recall
24 in respect of this attendance then, Mr. Passet, or
02:02 25 have we covered it?



1 A Basically, yes.

2 Q And you would have verbally reported your findings
3 as well?

4 A Yes.

02:02 5 Q And to whom?

6 A Detective Sergeant Mackie.

7 Q Okay. And do you recall any other involvement in
8 the Gail Miller murder investigation, Mr. Passet?

9 A No.

02:02 10 Q I'm just going to show you a couple of brief
11 references. If we could turn firstly, please, to
12 document ID 106108, if you could focus in maybe on
13 the top half of that page. Again, this is
14 relating to occurrence number 641, Mr. Passet, and
02:03 15 you'll see that instructions were received from
16 Lieutenant Short, it's Constable Gabruch's report.
17 Yourself and Constable Gabruch are asked to
18 determine the bus operator, and this is January
19 31st, who would have been operating the Pleasant
02:03 20 Hill route. It looks like you talked with a
21 Douglas Star, John Husulak is identified and you
22 speak with him at his home. The time of the
23 report noted is 10:30 p.m. and Husulak it appears
24 states to you that at about Avenue O and 20th
02:03 25 Street he would ordinarily have a male passenger



1 who appeared to be a construction worker wearing a
2 red hard hat and approximately 20 years old,
3 however that particular morning that gentleman was
4 not around. Do you recall this discussion with
02:04 5 bus driver Mr. Husulak?

6 A Very vaguely, yes.

7 Q Can you add anything to what's reported here in
8 terms of your recollection?

9 A No, I can't.

02:04 10 Q Do you remember receiving this information
11 relating to a construction worker wearing a red
12 hard hat, being approximately 20 years old who
13 wasn't on the bus that morning?

14 A Yes, I do, vaguely.

02:04 15 Q Okay. Again, anything to add other than what's
16 reported here?

17 A No.

18 Q And do you remember any significance attaching to
19 those descriptors in the context of the Gail
02:04 20 Miller murder investigation?

21 A No.

22 Q I'm going to turn your attention to one further
23 involvement in this matter you apparently had, Mr.
24 Passet. Do you recall speaking with a (V6)---
02:05 25 (V6)-?



1 A No, I don't.

2 Q Okay. I'll refer you to an investigation report,
3 it's document ID 106175, if we can turn actually
4 to page 106177 and perhaps focus just very briefly
02:05 5 again, Mr. Passet, it's relating to the Gail
6 Miller matter, and I noted at the bottom of the
7 page it looks like you were the author of this
8 report. If we can go back up to the top, please,
9 received this information on February 3rd, and it
02:05 10 looks like you received some information on
11 February 2nd actually from a Raymond Morin, that
12 he indicated that he was aware of a woman by the
13 name of (V6)--- (V6)- who had been indecently
14 assaulted approximately a week prior, and the
02:06 15 report goes on to give a description, this is
16 Mr. Morin's description I assume following his
17 discussion with Ms. (V6)-, and the report
18 continues from there. Does that refresh your
19 memory at all, do you remember a discussion with
02:06 20 Raymond Morin relating to a (V6)--- (V6)-?

21 A I recall talking to Raymond Morin, yes, and I was
22 the author of that report, but I can't place that
23 lady at all.

24 Q Okay. Did you know who Mr. Morin was?

02:06 25 A Yes.



1 Q So you had had other separate dealings with him?

2 A Yes.

3 Q But you don't recall Ms. (V6)-?

4 A No, I don't.

02:06 5 Q If we could go down the page a little bit, please,
6 I see this entry at the very bottom of the page,
7 Mr. Passet:

8 "This report was left in the event that
9 it might help out the caption noted
02:07 10 file."

11 And what was your thought process there in
12 leaving that comment?

13 A Well, I thought maybe if this person that
14 committed this offence was apprehended, it might
02:07 15 fit in with the Gail Miller file.

16 Q And so this wouldn't be a matter then that you
17 would open a separate file in relation to?

18 A No.

19 Q Okay. And I'll have you look at the second last
02:07 20 paragraph, I just note the first sentence:

21 "Morin did suggest that he preferred a
22 member of the detective's department
23 interview her in preference to the
24 Morality section."

02:07 25 Can you give us any insight into that comment



1 apparently by Mr. Morin?

2 A Mr. Morin had a record with the police department
3 from liquor offences, bootlegging, etcetera, and
4 therefore he really didn't want to associate with
02:08 5 the morality section at all, but myself, I got
6 along good with him.

7 Q And with respect to this report, do you recall any
8 follow-up, Mr. Passet?

9 A No.

02:08 10 Q And it does appear eventually that a statement was
11 taken by yourself. Do you recall taking a
12 statement from (V6)--- (V6)-?

13 A Vaguely, yes.

14 Q And maybe we'll turn to that document, please,
02:08 15 006486, I note the date is February 18th. I
16 believe the date of the initial report was
17 February 3rd. Do you have any recollection of
18 what had happened in the interim in terms of this
19 particular attendance, do you know whether you
02:08 20 took this upon yourself to visit with Ms. (V6)- or
21 you had been instructed by someone to see
22 Ms. (V6)-?

23 A No, I undertook that one myself.

24 Q Okay.

02:09 25 A But I don't recall the lady at all.



1 Q And is that your handwriting on this statement,
2 Mr. Passet?

3 A Definitely.

4 Q And if we turn to the fourth page, you see perhaps
02:09 5 a signature at the bottom. Is that your
6 signature?

7 A Yes. It has been printed, but actually it's
8 not -- I didn't write that.

9 Q You didn't write that?

02:09 10 A No, I did not.

11 Q Do you know who would have written that?

12 A No, I don't.

13 Q Is it possible that you did not take this
14 particular statement from Ms. (V6)-?

02:09 15 A The handwriting previous, that's mine.

16 Q And perhaps we'll look briefly at portions of this
17 statement, if we could go to the first page, and
18 maybe start here, that paragraph, please, it
19 appears that Ms. (V6)- indicated as follows, I'll
02:10 20 read some of this to you, Mr. Passet:

21 "On Wednesday on January 15th
22 or 22nd about two weeks before the
23 Miller murder I was on my way to the Hi
24 Low Mart or Confectionery at
02:10 25 approximately 6:00 p.m.



1 As I neared the lane near
2 Lindsay Place I noticed an auto right
3 behind Greystone Court. There was one
4 man in it and the lights were out. I
02:10 5 never thought to much of it at the time.

6 When I neared the corner of the
7 apartment a man came up from behind me.
8 He was so sudden I never heard him. His
9 first approach was to grab me by the
02:10 10 private part. Then he said I don't want
11 to hurt you. These were the only words
12 he said. At this point he then tried to
13 undo the zipper on the front of my
14 siwash sweater. He now left me with the
02:10 15 impression he was trying to get at my
16 breasts."

17 Move to the next page, please. I think I will
18 read this statement to you, Mr. Passet, just so
19 we cover it on the record.

02:11 20 "When he couldn't get the zipper undo so
21 he tried to rip it. He didn't have a
22 good hold on me and I was moving ahead.
23 So he was only able to hold me with one
24 hand and work with the other.

02:11 25 At this time I was wearing pink



1 slacks, black high snow boots, blouse,
2 siwash and a coat over my siwash.

3 About at this time I stumbled
4 and fell on one knee. I got to my feet.
02:11 5 I then noticed a man seated in a car in
6 front of the building with the motor
7 running. I first froze wondering what
8 to do. In the mean time my assailant
9 was behind me. He had slackened up some
02:11 10 of his struggle.

11 At this time I felt a bump from
12 my assailant. I then screamed as loud
13 as I could. My assailant then got an
14 arm my throat. At this time the man in
02:11 15 the car came running around the corner
16 and stood. My assailant now took his
17 arm away and sort of had a hold of my
18 coat by the side.

19 Then the man who got out of his
02:11 20 car was still standing wondering as if
21 to intervene or not. I then said this
22 man and I was half crying. The man in
23 the car now came running.

24 My assailant was now a short
02:12 25 distance from me. I had previously



1 whirled around to face him. I stated
2 what kind of an animal are you. By this
3 time the man in the car had now come
4 over.

02:12 5 At this point my assailant had
6 his hand under his sweater. It appeared
7 he may have had something there and was
8 trying to make a decision as to what he
9 should do. Then my assailant got a
02:12 10 frightened look on his face. He then
11 ran around the corner towards the Hi
12 Low.

13 I then explained to the man in
14 the car what happened. He said he
02:12 15 couldn't walk me home."

16 And it goes on to say that he and his wife ended
17 up driving Miss (V6)- home. If we could move to
18 the next page, please, it says, starting at the
19 top:

02:12 20 "The person that assaulted me is
21 described as follows:
22 Eyes - large and dark
23 Complexion a little dark or olive like a
24 Spaniard, Arab or Hindu
02:12 25 Hair - black unruly (very)



1 Height - 5 feet 2 inches to 5 feet 6
2 inches

3 Stalky build but not fat

4 Age - middle thirty's. May have had a
02:13 5 thin line mustache

6 Clothes - ski type sweater with with
7 metal buttons. This garment was dark
8 blue but not navy - I believe his
9 trousers were light color.

02:13 10 If I saw this person I believe
11 I can identify him. He spoke with what
12 appeared to be a bit of an accent."

13 Reading that statement, does that refresh your
14 memory at all, Mr. Passet, in terms of
02:13 15 information you received from Ms. (V6)-?

16 A Yes, it does.

17 Q Would that be an accurate account of the
18 information she provided to you?

19 A Yes, it would.

02:13 20 Q And again it doesn't appear that you opened a
21 separate file in relation to this matter, but
22 instead directed that this statement be filed on
23 the Gail Miller murder investigation file. Can
24 you tell us your thought process there?

02:13 25 A Yes. (V6)--- (V6)- didn't want to pursue it, so



1 that's why I took the statement in detail in case
2 it fit with the Gail Miller.

3 Q Okay. And did you have any other involvement, I
4 think you've already confirmed that for us, Mr.
02:14 5 Passet, in the Gail Miller murder investigation
6 from the best of your recollection?

7 A No.

8 Q No involvement with Albert Cadrain, Nichol John,
9 Ron Wilson or David Milgaard?

02:14 10 A No.

11 Q I'm going to turn your attention for a moment to
12 1971. Do you recall the investigation of a rape
13 in the Avenue V area, 100, 200 block Avenue V, the
14 complainant's name being (V5)-- (V5)---?

02:14 15 A Yes, vaguely, vaguely.

16 Q Okay. Do you recall having some involvement in
17 that investigation?

18 A Yes, I appeared with the service dog on that one.

19 Q Similar sort of attendance as you mentioned on the
02:14 20 other two?

21 A Yes.

22 Q Just for reference, I'll note the document number,
23 070545, I don't think we need to bring that one
24 up, but it's a report by Gus Weir and it simply
02:15 25 indicates that Mr. Passet was asked to do some



1 tracking in relation to this investigation, and
2 the next one being 105209, perhaps we could just
3 briefly bring that one up. It refers to your
4 efforts here, Mr. Passet, I won't read all of
02:15 5 those to you, but it appears that you used the dog
6 to track from the location of the rape and perhaps
7 if we could pick up -- just give me a moment. I
8 think it suffices to say that you tracked these
9 footprints for a portion of time until you reached
02:16 10 about the 100 block Avenue W and made your way
11 across to another property and it looks like, if
12 we read just the last portion, the dog led you to
13 a location and it says:

14 "It was determined that the person
02:16 15 making these tracks had gotten into a
16 vehicle in the back yard as the
17 footprints ended abruptly at a set of
18 fresh tire marks at this location."

19 I take it that this would be an accurate
02:16 20 account -- I know we haven't read the full
21 paragraph, Mr. Passet, but from what I've
22 generally described to you, does that fit with
23 your recollection in terms of your involvement in
24 this particular matter?

02:16 25 A Yes it does.



1 Q Okay. And so I think we've established, now, that
2 you had some involvement in the (V1)--- (V1)-'s
3 rape investigation, the (V2) (V2)- (V2)-----
4 investigation, and the (V5)-- (V5)--- rape
02:16 5 investigation, but do you --

6 COMMISSIONER MacCALLUM: What was that last
7 one, 105209?

8 MR. HARDY: Yes, the last one I was
9 referring to was (V5)-- (V5)---, the report was
02:16 10 relating to (V5)-- (V5)---.

11 COMMISSIONER MacCALLUM: Oh, okay. Okay,
12 go ahead?

13 BY MR. HARDY:

14 Q Okay. Do you recall the resolution of those three
02:16 15 matters, Mr. Passet?

16 A No, I never heard anything more about them.

17 Q Okay. Do you have any knowledge of the attendance
18 of Eddie Karst and Inspector Nordstrom in
19 Winnipeg --

02:17 20 A No.

21 Q -- in 1971 in relation to those matters?

22 A No I don't.

23 Q Okay. And I -- do I understand correctly,
24 Mr. Passet, that you visited with the RCMP in 1993
02:17 25 with respect to an investigation that they were



1 conducting into this matter?

2 A That's correct.

3 Q And then perhaps I'll just briefly refer you to
4 some of their notes. If we could turn first,
02:17 5 please, to document ID 046845, if we could go to
6 page 046848, please. And again, Mr. Passet, these
7 are notes that one of the RCMP officers would have
8 taken following their meeting with you in 1993,
9 and it looks like it may have taken place March
02:18 10 9th, 1993?

11 A That's correct.

12 Q I'll just refer you to some portions of this
13 report. It states, starting at the bottom of that
14 page:

02:18 15 "In this particular matter he was
16 advised and requested by D/Sgt. Mackie
17 to search an area as mentioned in
18 Passet's report."

19 Again, I believe this is the highway search that
02:18 20 we had talked about, Mr. Passet.

21 "Although Passet did not recall
22 specifically why he was requested to
23 search the area in question he did
24 recall that he was to search for a
02:18 25 cosmetic case. He recalls that he



1 walked out 13 miles on one side of the
2 road (ditch) then back 13 miles on the
3 other side. He filed his report. I
4 showed him the report and he said it
02:18 5 would be the one he submitted as dated
6 May 27/69. The one thing we did discuss
7 was the fact that on his report it says
8 that the 'DATE AND TIME REQUESTED MAY
9 27/69 and the DATE AND TIME ARRIVED AT
02:19 10 SCENE May 20/69'. These should actually
11 be reversed and was a mistake."

12 Very quickly, I don't want to dwell on this, I
13 think your evidence for the Commission today, Mr.
14 Passet, has been that the reference to May 20th
02:19 15 was likely a typographical error on your part --

16 A Yes.

17 Q -- as opposed to a reversal of those dates. Is it
18 most likely that the date and time you were
19 requested to attend at the scene was the May 27th
02:19 20 date that we noted?

21 A That's correct.

22 Q Okay. And just reading on at the bottom of the
23 page:

24 "He said of course the dog had no scent
02:19 25 to follow and merely had the dog 'sniff'



1 13 miles out and 13 miles back. He
2 confirms the rest of the report making
3 reference to the weather, articles
4 located and the fact that the cosmetic
02:19 5 case nor portion thereof was located.
6 Passet spent 16 hours searching but it
7 was not located. The search went on for
8 two days with a total of 26 miles being
9 covered.

02:19 10 Passet had no other involvement
11 with this case. He did not speak to any
12 witnesses and filed his report."

13 And would that be an accurate account of
14 information that you provided to the RCMP in
02:20 15 1993, Mr. Passet?

16 A Basically, yes.

17 Q Okay. And we're agreed that you did not provide
18 them with any information relating to your
19 attendance at the scene on January 31st as you've
02:20 20 described for us today?

21 A No.

22 Q Would there be a reason that you did not tell them
23 about that information?

24 A Not really. I think I might have mentioned it,
02:20 25 maybe, but nothing come out of it so we didn't



1 pursue it too much.

2 Q And I don't mean to be insensitive on this,
3 Mr. Passet, but is it possible that, with respect
4 to that recollection relating to January 31st,
02:20 5 that you are mistaken and that that did not
6 actually occur in relation to the Gail Miller
7 murder investigation?

8 A Umm, what do you mean, what didn't occur?

9 Q The events that you've described for us in terms
02:20 10 of having the dog at the murder scene and the dog
11 tracking to a location, apparently, where a
12 vehicle was stuck? I'm just wondering if there is
13 any chance that you are mistaken in relation to
14 that recollection and perhaps that attendance
02:21 15 could have related to a different investigation?

16 A No, not to a different investigation, no.

17 Q You are quite certain it related to the Gail
18 Miller murder investigation and took place on
19 January 31st?

02:21 20 A Yes.

21 Q And did I hear you say that, with respect to your
22 meeting with the RCMP -- I'm sorry I'm going
23 back -- but did you say you may have mentioned it
24 or you didn't think it was important so you didn't
02:21 25 mention it?



1 A I think I may have mentioned it, but it wasn't
2 that important, perhaps.

3 Q And were you aware of some of the theories
4 relating to this case that followed the initial
02:21 5 investigation and followed the trial of David
6 Milgaard?

7 A No.

8 Q Okay. Did you hear ever, in later years, that
9 there was a theory that perhaps a vehicle that the
02:21 10 Milgaard group had been using was stuck in the
11 vicinity that morning?

12 A I think I did later on, but just where it was
13 actually stuck, I didn't hear that.

14 Q And when you say 'later on' do you know when that
02:22 15 was?

16 A Oh, months after.

17 Q And is it possible that you came up with this
18 recollection of your attendance that morning after
19 you had heard that information?

02:22 20 A No.

21 Q Okay. Just one further RCMP report I want to
22 refer you to, Mr. Passet, the document ID is
23 034631. If we could turn, please, to page 034632,
24 again one of the officer's notes relating to his
02:22 25 visit with you, Mr. Passet, March 9th, 1993. If



1 we could focus beginning at the top, I'll read
2 this to you:

3 "After having made arrangements to see
4 Passet, patrol was made to the Saskatoon
02:22 5 Provincial Court House where he is
6 employed. We spoke for quite some time
7 and discussed his involvement with
8 Mrs. Bedford. He recalled that he did
9 not see Mrs. Bedford during his stint as
02:23 10 dog man. He said he thought he received
11 calls from her when he was in uniform
12 and it was not uncommon for all kinds of
13 people to see Mrs. Bedford from time to
14 time.

02:23 15 He can't recall his involvement
16 in the Gail Miller murder and there was
17 very little left to discuss relative to
18 this file."

19 And then if we could go to the next page, which
02:23 20 is 034631, just concluding -- sorry, I'll read
21 from, it picks up on the previous page:

22 "He did recall seeing Mrs. Bedford
23 during his time on the force. She was
24 said to have E.S.P. and many people
02:23 25 would see her from time to time. Passet



1 doesn't recall utilizing the services of
2 Mrs. Bedford while he was on the Dog
3 Section."

4 And they then indicate that they are going to
02:23 5 conclude that particular matter. Do you recall
6 discussing Mrs. Bedford with the RCMP officers,
7 Mr. Passet?

8 A Yes.

9 Q And did you have or do -- can you share with us,
02:24 10 if you have, any idea why they were asking you
11 about Mrs. Bedford?

12 A I had seen Mrs. Bedford quite a few years before,
13 and that was in regards to another murder file,
14 and I wasn't with the canine section at that time,
02:24 15 I was with the morality section. Anything she had
16 to say, you read it in the paper the day before,
17 but I listened to her at that time, took it all
18 in, and didn't discourage her, but I didn't
19 encourage her either.

02:24 20 Q And who was she, what did she do?

21 A She was a domestic housewife as far as I know.
22 Umm, anything else, I don't know.

23 Q And the reference to ESP, is that why you would
24 have talked to her, or I think you mentioned in
02:25 25 the report that others talked to her; is that your



1 recollection?

2 A Vaguely, yes. I spoke to her, but I don't know, I
3 can't recall who else spoke to her. But --

4 Q And you would, you would have spoken to her for
02:25 5 assistance or seeking assistance in relation to an
6 investigation?

7 A Nope. She called me so I'm going over to listen.

8 Q Okay. And she's providing information?

9 A Yes.

02:25 10 Q And when you say 'many people' or 'all kinds of
11 people would see Mrs. Bedford from time to time'
12 who are the people that you are referring to?

13 A Well there was, I think, one or two members of the
14 force, I don't recall who they were. But as far
02:25 15 as many people, no, there wasn't many people.

16 Q Okay. And from the best of your knowledge and
17 recollection did Mrs. Bedford have anything to do
18 whatsoever with the Gail Miller murder
19 investigation?

02:26 20 A No.

21 Q Okay. Thank you, Mr. Passet, those are all the
22 questions I have.

23 A Thank you.

24 Q My friends may have or may not have questions for
02:26 25 you.



1 BY MS. KNOX:

2 Q Mr. Passet, my name is Catherine Knox, and I'm the
3 lawyer who -- I introduced myself, I work with
4 Mr. Halyk, who you know, and our office represents
02:26 5 Mr. Caldwell. And I just have, I think, two quick
6 questions for you.

7 When you were talking about, and
8 when your report from 1969 indicates that on May
9 27th-May 28th you did the search at the request of
02:26 10 Detective Sergeant Mackie and you went 13 miles
11 one side of the highway, 13 miles the other side
12 of the highway for about 26 miles, just for the
13 record that's only a small portion of the highway
14 between Saskatoon and Rosetown; isn't it?

02:27 15 A Yeah, it is.

16 Q Yeah. In fact I was out there yesterday and, if
17 I'm remembering correctly, it's about 115-125 K
18 one way?

19 A Approximately.

02:27 20 Q So -- and the part that you did, did you start
21 close to Saskatoon and go out, or did you go
22 further out and start somewhere along the way?

23 A No, I started closer in to the city.

24 Q Okay. So you did the first section of the highway
02:27 25 for about 13 K?



1 A That's correct.

2 Q And if there was a cosmetic bag thrown out
3 anywhere beyond 13 miles, or thereabouts, of
4 Saskatoon towards Rosetown, you didn't search that
02:27 5 area, and you have no knowledge of any other
6 person with a dog going out and searching the rest
7 of that stretch of highway?

8 A No.

9 Q Okay. Now -- and there's only one other area I
02:27 10 want to raise with you, and it just arises out of
11 Mr. Hardy's last couple of questions to you, and
12 it was about your memory of having worked on the
13 Miller file on January 31st, 1969 and about seeing
14 some tracks where a car was stuck?

02:28 15 A Yes.

16 Q I apologize to the staff, I didn't copy down the
17 document number, I wasn't expecting to go to this,
18 but do you remember him showing you a witness list
19 that was prepared probably by Mr. Ullrich, and
02:28 20 down toward the bottom of the page it made
21 reference to you and the involvement you had in
22 the file?

23 A Yes.

24 Q Okay. And in that little summary that the case
02:28 25 prep officer or whoever he was, Mr. Ullrich did,



1 he referred to you being involved in the file both
2 on January 31st, 1969 and on May 27th, 1969; am I
3 remembering that correctly?

4 A Yes.

02:28 5 Q And when looking at the RCMP report, when the RCMP
6 came and saw you in 1993 it looks like they showed
7 you -- and this document is up now, thank you,
8 it's 045802 -- it looks like, from the notes, that
9 the police officer or the RCMP officer showed you
02:28 10 your May 27th report because you talked to him
11 about the date May 20th. So you had a document
12 put to you that you could use to refresh your
13 memory, I take it, about May 27th?

14 A Vaguely, yeah. I don't completely recall that,
02:29 15 but it must have been there or I wouldn't have --

16 Q Since there is no record, or nobody can find your
17 report that you say you did on January 31st, I
18 presume the RCMP didn't show you a report by you,
19 then, that had been prepared by you on January
02:29 20 31st, 1969?

21 A No.

22 Q And they didn't show you this note or this list
23 from Mr. Ullrich, or whoever prepared it, showing
24 that you did have some involvement in the file on
02:29 25 January 31st, 1969?



1 A No, they didn't show me that.

2 Q Had you been shown that note or that list prepared
3 by the case management officer might that have
4 jogged your memory so that you would have, in
02:29 5 fact, told the police in 1993 about being involved
6 in the file on January 31st, 1969?

7 A No, I was never shown the list at all.

8 Q Okay. So you had nothing to jog your memory?

9 A Nope.

02:30 10 Q This was 1993, and except for that May 27th-28th
11 dog person report, that's the only thing you had
12 seen in the file in -- '69, '79, '89 -- 20 odd
13 years?

14 A That's correct.

02:30 15 Q Okay. So does it surprise you that you might not,
16 then, have remembered that you had a brief
17 involvement in the file on January 31st, 1969?

18 A Oh, I remembered that.

19 Q But right in that meeting with the police officer
02:30 20 you didn't think to tell the police officer,
21 probably?

22 A No, no.

23 Q Okay. And after that police officer came and saw
24 you in 1993, and up til today, have you had lots
02:30 25 of time and have you spent more time thinking



1 about those year -- or those days that you worked
2 on the Milgaard file?

3 A Yes, a little bit, yes.

4 MS. KNOX: Thanks. I have nothing further.

02:31 5 MR. HODSON: I think that's all.

6 COMMISSIONER MacCALLUM: I just have some.

7 MR. HODSON: Oh.

8 **BY COMMISSIONER MacCALLUM:** You are quite sure, Mr.

9 Passet, that when you arrived at the scene behind
02:31 10 the funeral chapel you were directed to a large
11 indentation in the snow and the dog went there
12 directly did it?

13 A Yes, he did.

14 COMMISSIONER MacCALLUM: All right. And
02:31 15 then he left and he ran across avenue -- or
16 Avenue N to the entrance of the east/west alley
17 on the 1300 block?

18 A Yes.

19 COMMISSIONER MacCALLUM: And there he
02:32 20 stopped at what appeared to be indentations made
21 by a car which was stuck?

22 A That's correct, sir, yes.

23 COMMISSIONER MacCALLUM: And I heard you
24 say that you saw some, I thought you said CO
02:32 25 stains to indicate that a car had been there?



1 A Soil stains which appeared to be carbon monoxide
2 or oil stains.

3 COMMISSIONER MacCALLUM: Well, we know that
4 carbon monoxide is a colourless gas, sir, but I
02:32 5 think it's common knowledge that a vehicle
6 standing over snow when it's running will leave
7 carbon particulate and water where the exhaust
8 pipe was. Is that what you saw?

9 A That's right, sir, yes.

02:32 10 COMMISSIONER MacCALLUM: And just describe
11 precisely what marks you did see there for me
12 would you?

13 A There was two marks as we mentioned, but then
14 there was tracks around the vehicle.

02:33 15 COMMISSIONER MacCALLUM: What about the
16 tire tracks, you said the vehicle was obviously
17 stuck?

18 A There was indication where the wheels had been
19 spinning, sir.

02:33 20 COMMISSIONER MacCALLUM: Okay.

21 A But no distinct tire track imprint.

22 COMMISSIONER MacCALLUM: Oh, yeah, but
23 spinning wheels?

24 A Yes.

02:33 25 COMMISSIONER MacCALLUM: Uh-huh. Plus this



1 black material on the snow?

2 A That's correct sir, yes.

3 COMMISSIONER MacCALLUM: Okay. Anything
4 arising from that, counsel?

02:33 5 MR. HARDY: No.

6 MR. HODSON: I think we're all done with
7 you, Mr. Passet.

8 COMMISSIONER MacCALLUM: Thanks very much,
9 Mr. Passet, you are excused.

02:33 10 MR. HODSON: Those are all the witnesses
11 for today, Mr. Commissioner, and I think we're
12 adjourned until August 15th at the Sheraton
13 Cavalier I believe.

14 COMMISSIONER MacCALLUM: Okay.

02:33 15 MR. HODSON: At one o'clock.

16 COMMISSIONER MacCALLUM: August the which?

17 MR. HODSON: August 15th.

18 COMMISSIONER MacCALLUM: Sheraton, one
19 o'clock?

02:33 20 MR. HODSON: Yes.

21 COMMISSIONER MacCALLUM: Thank you.

22 (Adjourned at 2:33 p.m.)

23

24

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1 **OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATE:**

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6 notes taken herein to the best of my knowledge, skill, and
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