

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
Radisson Hotel at
Saskatoon, Saskatchewan

On Thursday, June 2nd, 2005

Volume 47

Inquiry Proceedings



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JOSEPH PENKALA, CONTINUED

- BY MR. HODSON

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1 Transcript of Proceedings

2 (Reconvened at 9:04 a.m.)

3 COMMISSIONER MacCALLUM: Good morning.

4 ALL COUNSEL: Good morning.

09:04 5 JOSEPH PENKALA, continued:

6 BY MR. HODSON:

7 Q Good morning, Mr. Penkala. I'm just going to go
8 over a couple of points that arose out of
9 yesterday's evidence. We talked about the autopsy
09:04 10 and your dealings with Dr. Emson and I asked you
11 about your experience with him and I think you
12 told us that you had worked with him on many
13 occasions prior to the Gail Miller autopsy; is
14 that correct?

09:04 15 A Yes.

16 Q And was your relationship with Dr. Emson at the
17 time, would you describe it as a good one?

18 A Yes.

19 Q Was he in any way intimidating to you as a police
09:04 20 officer in the autopsy room?

21 A No.

22 Q Did you have any concerns about communicating
23 questions, issues, concerns to him?

24 A Never.

09:05 25 Q What about your observations with Thor Kleiv and



1 Dr. Emson, to the extent that you observed the
2 interaction between Dr. Emson and Thor Kleiv, did
3 you see anything there?

4 A We had the finest co-operation from Dr. Emson.

09:05 5 Q And as well we talked about, and I won't go over
6 it again, but the vaginal aspirate that was
7 removed from Gail Miller's body on January 31,
8 1969 that was looked at by Dr. Emson under a
9 microscope but not retained, and you also told us
09:05 10 on February 4th, 1969 that you found two frozen
11 lumps of snow. You recall us going over that?

12 A Yes.

13 Q And I'm wondering, Mr. Penkala, whether the
14 failure, and maybe that's the wrong word, the fact
09:05 15 that the vaginal aspirate was not retained on the
16 day of the autopsy, did that in any way motivate
17 you to go back to the scene to look for evidence
18 of semen or body fluids?

19 A No.

09:06 20 Q And as well yesterday we talked about, and we'll
21 talk about it a bit more, this issue of the
22 secretor status and I think we've heard and we'll
23 hear more about the fact that the frozen lumps
24 were identified as being from a donor who was an A
09:06 25 secretor; correct?



1 A Yes.

2 Q And just so that we're clear here, as an
3 investigative tool what does the fact that --
4 let's assume for the moment that the substance
09:06 5 came from the perpetrator of the attack. What
6 does the fact that it is identified as A secretor
7 allow you to do as an investigator?

8 A Generally the blood grouping is simply that, it's
9 blood grouping. My understanding is about 60
09:07 10 percent of the population would be of the grouping
11 of A which is the grouping that's significant in
12 this case. The evidence of grouping is certainly
13 not for identification purposes, it's basically an
14 element of elimination. If the elimination was
09:07 15 necessary, it would be -- a purpose, for example,
16 if you had an entirely different blood grouping,
17 you would certainly realize that any one with an A
18 blood grouping would not in any way be associated
19 with that, so it's simply elimination -- an
09:07 20 elimination bit of evidence that would be gathered
21 by using the blood grouping aspect.

22 Q So in this case I believe, for example, Ron Wilson
23 was tested to have blood type B I believe and is
24 what you are saying then that assuming that the
09:08 25 frozen semen came from the perpetrator of the



1 attack, the fact that it is tested as A secretor
2 would exclude Ron Wilson because he is blood type
3 B; is that --

09:08 4 A Well, the secretion aspect, my understanding
5 again, but I'm not qualified in that area, that
6 there are some blood groupings of A that can be
7 secretors; in other words, they secrete the
8 antigens into their other biological fluids,
9 whereas other people are not secretors, and of
09:08 10 course you wouldn't find antigens in other
11 biological fluids of that same body.

12 Q Right. So in the case of a suspect in the Gail
13 Miller investigation who was of a blood type A,
14 are you saying that that person then would not be
09:09 15 excluded by virtue of the testing of the frozen
16 lump of snow?

17 A That's right.

18 Q And we'll deal more with the secretor and
19 non-secretor a bit later. If we could just call
09:09 20 up document 009276, please, and we went through
21 this yesterday and I just want to highlight a
22 couple of portions before we turn to the RCMP
23 response. This was the February 7th letter where
24 you sent a number of exhibits to the RCMP lab and
09:09 25 at the end of the day yesterday we identified the



1 March 12th response and I just want to highlight a
2 couple. Again, we remember Exhibit A was the
3 black coat, Exhibit F was the white nurse's
4 uniform of Gail Miller, Exhibit I was the two
09:09 5 plastic vials of the unknown yellowish substance
6 in frozen state and that's what you found in the
7 snow; correct?

8 A Yes.

9 Q And then if we could turn to the next page, and
09:10 10 you had asked the lab to try and identify human
11 seminal stains on the coat, panties, stockings
12 slip and dress, and as well we went over this
13 yesterday, you had asked the lab to take a look at
14 the vials of the frozen lumps of snow, number 1,
09:10 15 to determine the presence of spermatozoa, two, to
16 establish whether it's human. Do you recall us
17 going over that?

18 A Yes.

19 Q If we can now call up document 105542, please, and
09:10 20 this is where we left off yesterday and we had
21 talked about, or you advised us that this would be
22 the reply you got back from the Crime Detection
23 Lab March 12th, 1969 which is about a little over
24 almost five weeks after you sent your request in
09:11 25 and I think you told us that that happened on



1 occasion; is that --

2 A Yes, this would be more of the way it is as
3 opposed to being different.

4 Q And I think if we just go through paragraph 1
09:11 5 general, they are identifying the exhibits that
6 were received from Thor Kleiv and again they use
7 your same lettering; is that correct?

8 A Yes.

9 Q And so the black coat, the white uniform dress and
09:11 10 the sample of liquid, and I think you had told us
11 that you put each of the frozen lumps in separate
12 vials or bags; is that correct?

13 A Yes.

14 Q So they've identified them as I1 and I2, and then
09:11 15 down at the bottom they identify the purpose, to
16 conduct a serological examination of those
17 exhibits, and if you can go to the next page,
18 please, and they go on to -- perhaps if we could
19 just go and get page 1 on the left-hand side, page
09:12 20 2 on the right-hand side, and so if we look at the
21 conclusions, Exhibit G, which is over here, that
22 is the Gail Miller blood sample, so conclusion 1
23 is that Gail Miller's blood type is group O;
24 correct?

09:12 25 A Yes.



1 Q Secondly, human blood of group O was found on
2 Exhibits H, one knife blade?

3 A Yes.

4 Q And that's the knife blade. Three -- actually, I
09:12 5 should just go back up under data. So you'll see
6 under number 1, Exhibit G, being Gail Miller's
7 blood, was examined to determine its blood group.
8 2, Exhibit H, being the knife, was examined for
9 the presence of blood, and then you'll see under
09:13 10 3, it says Exhibits A, B, C, D, E, F, and that
11 would be Gail Miller's clothing, and I1 and I2
12 being the frozen lumps of snow, were examined for
13 the presence of human seminal fluid; correct?

14 A Yes.

09:13 15 Q Paragraph 3, the report says human seminal fluid,
16 highly probably from the secretor of group A was
17 found in Exhibit I1 sample of liquid. If I can
18 pause there, Mr. Penkala, does what this report
19 say is that the RCMP lab tested and confirmed the
09:13 20 frozen lump of snow, at least in I1, as being
21 human seminal fluid?

22 A Yes.

23 Q And is that what you had asked them to do?

24 A Yes.

09:13 25 Q And as well if you could go down to number 4 -- or



1 let me just pause there back on number 3. It says
2 human seminal fluid highly probably from a
3 secretor of group A was found in exhibit, and then
4 if you go down to remarks, and I'll just read
5 that, it says:

6 "With reference to paragraph 3 of the
7 conclusions, a "secretor" may be defined
8 as a person who secretes their ABO blood
9 grouping substances (antigens) in their
09:14 10 other bodily fluids. Approximately 80
11 percent of the population comes under
12 this category. As approximately 40
13 percent of the population is group A and
14 80 percent of these are secretors, about
09:14 15 32 percent of the population would be
16 secretors of group A."

17 So if I understand that correctly, what they are
18 saying is that there's a group of people that
19 secrete, (a), that are group A, and (b), secrete
09:14 20 antigens into their blood?

21 A That's correct.

22 Q And there are group A people who do not secrete
23 their antigens into the blood and therefore would
24 be different from the group A that does secrete;
09:14 25 is that correct?



1 A That's my understanding, yes.

2 Q And that if you compare, and I don't want to get
3 too technical here, I just want to know your
4 understanding, but if you compare the bodily
09:14 5 fluids, let's say semen, of a person who is a
6 group A secretor, you will find A antigens in the
7 semen or bodily fluids; correct?

8 A That's my understanding.

9 Q And if you test someone who is group A, a
09:15 10 non-secretor, that you will not find the A
11 antigens in the bodily fluids unless blood found
12 its way into the bodily fluids; is that correct?

13 A That's my understanding, yes.

14 Q So we find on item 3 -- is this where, Mr.
09:15 15 Penkala, in the investigation you would have
16 concluded that the perpetrator of Gail Miller's
17 murder was highly probably from -- highly probably
18 a group A secretor?

19 A Yes.

09:15 20 Q And then it goes on to say -- now let me pause
21 there. Would that require an assumption that what
22 you found in the snow came from the perpetrator?

23 A Yes, I think that would be fair, yes.

24 Q And number 4, human seminal fluid was found on
09:16 25 Exhibit B, one pair of pink panties, and then



1 number 5, if you could just call out number 5,
2 please, the RCMP lab concluded no seminal fluid
3 was found on Exhibits A, which is Gail Miller's
4 black coat, C, which is her panty girdle, D, her
09:16 5 half slip, E, her brassier, and F, her uniform
6 dress, or I2, the second lump of snow; correct?

7 A Yes.

8 Q Are you aware, Mr. Penkala, that in 1997 when
9 testing was done by a lab in England I believe to
09:16 10 match DNA, that there were either semen and/or
11 sperm, or certainly DNA, found on I believe the
12 dress and I believe the coat as well. I'm not
13 sure if there's DNA lifted from the coat, but
14 certainly stains. Were you aware of that?

09:17 15 A In a very general sense, yes.

16 Q I'm wondering -- I'll maybe just call up document
17 075303 -- 075303, sorry -- and this is a report
18 prepared by Michael Barber for Mr. Fainstein of
19 the Department of Justice. If you go to the next
09:18 20 page, please, and the date is September 18th, 1997
21 and it's further to the interim report dated July
22 18, 1997 which I believe was the first report
23 reporting on the DNA results of the tests done.
24 If we could then go to the next page, please, and
09:18 25 we will be hearing other evidence about this



1 later, but this refers to items relating to the
2 body of Gail Miller and the crime scene and you'll
3 see, and they use a different exhibit number, but
4 they have the underpants, extracts that I think
09:19 5 were taken earlier, the dress, the nurse's uniform
6 and the coat, and then if we could go to page
7 075307, and dealing firstly with the report on the
8 dress, Dr. Barber states:

9 "The dress is a white, short sleeved,
09:19 10 assistant nurse's uniform.

11 This item is stained with blood
12 over much of its surface, the heaviest
13 areas being at the right breast region
14 and at the lower back right.

09:19 15 The whole of the inner and
16 outer surfaces were AP tested for the
17 presence of semen. A moderately strong
18 positive reaction was obtained from the
19 lower left back near the bottom edge.

09:20 20 (I denote this area 1). This area was
21 cut out for sperm slide preparation and
22 DNA STR analysis. Microscopic
23 examination of an extract of area 1
24 confirmed that semen is present and
25 showed that it contained an abundance of



1 sperms."

2 Then carrying down to the coat:

3 "Dark coloured coat with fur trimmed
4 collar and cuffs.

09:20 5 The coat bears wide spread
6 bloodstaining, the heaviest being at the
7 collar region. I noted the presence of
8 six stab cuts at the central area of the
9 back of coat, but these were not
09:20 10 examined in detail.

11 The whole of the inner and
12 outer surfaces of this item were AP
13 tested for the presence of semen. A
14 strong positive reaction was obtained
09:21 15 from the inside lower left near the
16 edge. (I denote this area 1). Part of
17 area 1 was cut out for sperm slide
18 preparation and DNA STR analysis. No
19 sperms were found on microscopic
09:22 20 examination of an extract of this area
21 and so the presence of semen could not
22 be confirmed."

23 Then he goes on to say:

24 "It is apparent that area 1
09:22 25 of the coat corresponds approximately to



1 area 1 of the dress both being at the
2 lower left near the edge. When the
3 dress is placed over the top of the
4 inside of the coat in a manner that
5 simulates the relative positions of the
6 coat and dress when they are worn
7 together and when the wearer is lying
8 down, then area 1 on the dress is
9 situated directly on top of area 1 of
09:22 10 the coat. If the semen was deposited
11 directly onto the dress and then seeped
12 through on to the coat below then this
13 could explain the absence of sperms on
14 the coat. Sperms themselves, although
09:22 15 small, are particulate whereas AP is
16 present in the seminal fluid. The
17 tightly-woven fabric of the dress may
18 have filtered and retained the sperms
19 whilst allowing the fluid containing AP
09:22 20 to pass through onto the coat."

21 And then it says no experiments were done.

22 Now as I read that, Mr.

23 Penkala, it seems to be saying that they found
24 the presence of semen on both the coat and the
09:22 25 dress; did you agree with that reading?



1 A That's my understanding of it, yes.

2 Q And I'm not asking for any scientific analysis, or
3 that, but whether you are able to offer any
4 explanation as to why that may -- that was not
09:23 5 found in 1969 when you had asked the lab to check
6 for it?

7 A I couldn't possibly, in that I have no way of
8 knowing. I was going by the initial analysis that
9 were conducted by the Crime Detection Laboratory
09:23 10 which is, if my memory serves me right, indicate
11 that there was no presence of seminal stains on
12 the garments.

13 Q And just to be clear, back in 1969 you were not
14 looking for the semen to do a DNA test, were you?

09:23 15 A That's correct.

16 Q And I think you told us yesterday DNA was not on
17 the radar screen; is that correct?

18 A Yes.

19 Q And I believe you told us that what you were
09:24 20 trying to identify, the purpose in trying to
21 identify the semen on the coat or dress would be
22 for what purpose?

23 A Umm, for the purpose of positively indicating that
24 it was a sexual, assault, and the possibility of
09:24 25 getting an indication that the person that



1 deposited there was of a particular blood
2 grouping, which would provide greater access to
3 finding a suspect for the offence.

09:24 4 Q Now if we could just go back, or we don't have to
5 call it up, but again on the frozen lump of snow,
6 then, were you satisfied in 1969, based on the
7 RCMP lab report, that it was human semen as
8 opposed to from some other source?

9 A As a result of the lab return?

09:25 10 Q Yes?

11 A Oh yes.

12 Q Now were you aware in 19 -- I think 1990, some
13 reference being made publicly to the frozen lumps
14 of snow either being dog urine, or possibly being
09:25 15 dog urine or allegations of that nature?

16 A Yes, I remember that.

17 Q And what do you recall from that?

18 A Well I -- I was -- I was disappointed with that
19 kind of journalism and --

09:25 20 Q And why that --

21 A Pardon me?

22 Q I'm sorry, carry on?

23 A I was disappointed with the kind of journalism
24 that identified that, and it was obvious that the
09:25 25 person that provided that information was not



1 fully aware of the details of the examination and
2 all the details surrounding the investigation.

3 Q I'm wondering if I might just call up a couple of
4 documents. First is 204511, and these may be
09:26 5 documents that you haven't seen before, Mr.
6 Penkala, but I'll just go through. This is June
7 1, 1990, and it's a letter from C. Merry to David
8 Asper, and I think it says here in this
9 paragraph -- actually, just go to the top, just,
09:26 10 it says:

11 "I have examined the forensic evidence
12 presented at the trial.

13 From this I do not believe that
14 the possibility can be excluded that the
09:26 15 frozen yellowish substance found near
16 the body of the deceased was dog urine,
17 from a dog positive for a blood group
18 antigen cross reacting with the human
19 blood group A."

09:26 20 And then carrying down:

21 "Approximately 50% of dogs are known to
22 have the Tr antigen which cross reacts
23 in this manner.

24 Such dog urine might well also
09:26 25 contain spermatozoa."



1 Now I believe this is the origination of the dog
2 urine theory, Mr. Penkala. Now did you ever talk
3 to anyone, and I'm not sure whether that's male
4 or female, Merry, Associate Professor; did you
09:27 5 ever receive a call from that person, talk to
6 them about what testing you did with the frozen
7 lumps?

8 A No.

9 Q If we could then go to the next page, please, and
09:27 10 which is a June 4th, 1990 letter, and this is from
11 Dr. Markesteyn; did you ever deal with a Dr.
12 Markesteyn?

13 A No.

14 Q Did you ever talk to Dr. Markesteyn to your
09:27 15 recollection?

16 A No.

17 Q He was the Chief Medical Examiner, Department of
18 Justice, Province of Manitoba at the time?

19 A I knew that, yes.

09:27 20 Q And were you aware that he was making comments
21 about the frozen sample or the frozen lumps of
22 snow you found?

23 A Yes.

24 Q If we could just go to page 204518, and this is a
09:28 25 letter from Dr. Markesteyn to David Asper, he



1 said:

2 "Yellowish stains in snowbanks most
3 commonly find their origin, not in human
4 ejaculates, but in urine, most commonly
09:28 5 of canine origin. I have been informed
6 that male dog urine often contains
7 semen. 'Unused' semen in dogs is not
8 reabsorbed but is secreted in the urine.
9 Dogs urinate over other dogs' semen
09:28 10 and/or urine to establish territory."

11 And then just carrying down into this paragraph,
12 please, it says:

13 "Human semen does not freeze into a
14 yellowish stain at -40 degrees F. In
09:28 15 fact, it is white and difficult to spot
16 in snow other than through special
17 techniques such as ultraviolet light
18 exposure, etc. One of the two yellowish
19 lumps was found to contain semen; the
09:29 20 other one, although it looked the same,
21 did not contain semen or any other human
22 material in that it did not contain, we
23 are informed, blood, sweat, tears or
24 saliva. Dr. Emson examined the material
09:29 25 prior to having it sent to the Crime



1 Laboratory in Regina. He has informed
2 me that he was sure it was semen, but,
3 that he could not say from what species
4 it originated."

09:29 5 If I can pause there, did you ask Dr. Emson to
6 test the semen for human origin?

7 A I don't recall asking him to, whether it was human
8 or not, I -- that I don't recall, and I don't
9 believe that would have taken place at that
09:29 10 particular time.

11 Q And then it goes on to say:

12 "The Serology Section determined it to
13 be not only semen but of human origin."

14 And does that accord with your understanding of
09:29 15 what Mr. Paynter did?

16 A Yes.

17 Q "In order to reach a firm scientific
18 conclusion whether the semen retrieved
19 from the snowbank four days after the
09:29 20 assault was indeed human one needs to
21 review the methodology used by the
22 serologist at that time and thus one
23 needs to review the notes that were made
24 at that time."

09:30 25 And then scroll down:



1 "I have been informed that the original
2 notes on which this evidence by Staff
3 Sgt. Paynter was based are no longer
4 available. Staff Sgt. Paynter informed
09:30 5 me that he does not remember (some 20
6 years after the event) whether or not he
7 performed specific tests to determine
8 the human origin of these specimens."

9 Are you able to tell us, Mr. Penkala, from your
09:30 10 own knowledge -- and I should advise Mr. Paynter
11 will be called as a witness -- but are you able
12 to, from your own knowledge, comment on that?

13 A This, no, this is the first that I have heard of
14 this and I have no knowledge at all.

09:30 15 Q And then the report goes on to say:

16 "The fact that the semen contained an
17 A-antigen does not make it human nor, I
18 am informed, does the enzyme test for
19 phosphatase used at that time make it
09:30 20 human. The human antibody test doesn't
21 make it human if there was any
22 contamination with human blood. The
23 only way of excluding this semen from
24 being of non-human origin would have
09:31 25 been the morphology and/or species



1 specific antigen-antibody reaction
2 tests."

3 Now back in 1969, Mr. Penkala, are you satisfied
4 that the RCMP Crime Detection Lab would have done
09:31 5 the test to determine whether it was human semen
6 or not?

7 A Yes, I have total faith in their diagnosis.

8 Q Now that report is June 4th, 1990. If I could
9 call up 325015, and this is an article two days
09:31 10 later in *The StarPhoenix* July 6th, 1990, and if we
11 could just call out that portion, please, and it
12 says:

13 "In the report, Dr. Peter Markesteyn
14 says investigators failed to eliminate
09:32 15 the possibility that the two yellowish
16 frozen lumps were dog urine. They were
17 found by then lieutenant Joe Penkala -
18 now Saskatoon's police chief",

19 Mr. Penkala, did you take steps to eliminate the
09:32 20 possibility that the two yellowish frozen lumps
21 were dog urine?

22 A No.

23 Q Did you ask the lab to determine whether it was
24 human?

09:32 25 A I did.



1 Q In your mind, or in your view, did that exclude
2 the possibility that it was dog urine?

3 A Yes.

4 Q It goes on to say:

09:32 5 " 'The evidence doesn't exclude
6 it (as dog urine),' Markesteyn said from
7 Winnipeg. 'There are various sources of
8 yellowish stains in a snowbank.'

9 David Asper, Milgaard's lawyer,
09:32 10 is more blunt about the report.

11 'It concludes that what Penkala
12 found in the snow could very well be dog
13 urine,' said Asper."

14 Did you have any discussions with David Asper at
09:33 15 that time, Mr. Penkala, about what tests you did
16 to determine whether the frozen lumps were from
17 human origin?

18 A No.

19 Q And then, if you could scroll over to the top of
09:33 20 the next column, it says:

21 "In an interview, Markesteyn
22 said dog urine also contains both the A
23 antigen and semen, leading him to
24 question the value of such evidence.

09:33 25 'I said it was on very shaky



1 scientific grounds, if indeed not
2 erroneous.'"

3 And again, I think you have told us already, but
4 did you ever talk to Dr. Markesteyn about the
09:33 5 tests you did on the frozen lumps of snow to
6 determine human origin?

7 A No I did not.

8 Q And then, next, if I could call up 105155, please.
9 And I believe this, I'm not sure if there is a
09:33 10 date on here but I believe June 7th, 1990 comes to
11 mind, but in any event I'll see if I can clarify
12 that for the record. But if we could just call
13 that out, it says:

14 "Milgaard guilty, former police chief
09:34 15 Penkala maintains".

16 If I could just enlarge that area, please.

17 COMMISSIONER MacCALLUM: What date was
18 that, sorry?

19 MR. HODSON: I believe it's June 7th, 1990.
09:34 20 I will double-check and confirm that. I believe
21 it's, if you look at the content, it appears to
22 be around the time shortly after Dr. Markesteyn
23 and David Asper make their comments in the paper,
24 but I will see if we can find a dated copy in our
09:34 25 database, and confirm it on the record.



1 COMMISSIONER MacCALLUM: Thanks.

2 BY MR. HODSON:

3 Q And it says:

4 "Former police chief Joe Penkala
09:34 5 says he's had it with the 'rumours and
6 innuendo' surrounding the David Milgaard
7 case.

8 'It's a bunch of garbage and
9 the media's promoting it,' he said
09:34 10 during an impromptu interview Wednesday.

11 He was referring to media
12 reports, and the subjects of those media
13 records, which question Milgaard's guilt
14 in the 1969 slaying of Saskatoon nursing
09:35 15 assistant Gail Miller.

16 He was an investigating officer
17 who discovered what was believed to be a
18 semen sample at the murder site four
19 days after Miller's death.

09:35 20 Penkala Wednesday said he still
21 believes Milgaard is guilty of Miller's
22 murder. There's something beyond
23 altruism driving those who would claim
24 otherwise, he said.

09:35 25 'There are people who have



1 motives that are not being explained.'

2 There's a hidden political
3 agenda being pursued by those who would
4 like to see Justice Minister Kim
09:35 5 Campbell dethroned, he said.

6 The media is pumping the story
7 for its own purposes, he suggested, and
8 there are authors who stand to gain by
9 the promotion of the notion Milgaard is
09:35 10 innocent.

11 Penkala said forensic reports
12 claiming the semen sample he found in
13 the snow does not link Milgaard to the
14 crime and may even be dog urine cannot
09:35 15 be trusted.

16 'How can you go 20 years back,
17 and he says 'Well, it could have been
18 dog urine?''

19 To the contention by some that
09:35 20 Saskatoon police missed the real killer,
21 a serial rapist, Penkala said, 'If there
22 was the slightest bit of evidence, he
23 would have been charged.'"

24 Now, generally, does that article accurately
09:36 25 quote what you would have said to them?



1 A In generalities, yes.

2 Q Is there anything there, that I have read through,
3 that you say does not represent what you would
4 have told the media?

09:36 5 A No, it -- I was responding in frustration, because
6 there was an awful lot of aggressive, aggressive
7 seeking of explanations from me, and I was not
8 prepared to comment on the issues. As far as I
9 was concerned I was aware that there had been a
09:36 10 conviction of David Milgaard, I was aware that he
11 had appealed that conviction and was denied
12 further action on it, and under the circumstances
13 I was of the conclusion that David Milgaard was
14 guilty, and I expressed that, yet I did have to
09:37 15 respond to aggressive questioning by the media and
16 persistent questioning by the media.

17 Q What about the allegation that what you found was
18 dog urine and not tested, how -- did that concern
19 you?

09:37 20 A Well it, you know, I guess personally it hurt me,
21 suggesting that I didn't know the difference
22 between the two, and of course in reality I
23 understand that one could be mistaken for the
24 other through a visible -- view -- visual
09:37 25 examination, but I know what happened. I know



1 that that was retained, it was sent away for
2 analysis, and the analysis came back, and I had
3 faith in the analysis that resulted from that
4 examination by the Crime Detection Laboratory.

09:37 5 **Q** And at this time you were the chief of police,
6 were you, when you made this?

7 **A** Yes.

8 **Q** What -- and maybe this is a difficult question to
9 answer -- but how did that affect your
09:38 10 frustration, I think you said were your words,
11 with the media and the -- I don't want to put
12 words in your mouth, but the aggressive nature, I
13 think were your words; how did that impact on your
14 dealings with, with this -- with the matter?

09:38 15 **A** Oh, I don't think it affected my views on, on the
16 issue, on the issue of the conviction of David
17 Milgaard with the information that I knew. But
18 the relationship with the media did not, did not
19 slow down, and I -- I suspect that there were
09:38 20 other issues that would cause the media to promote
21 any particular cause in an attempt to embarrass me
22 or the -- or my management.

23 **Q** Did you have any concern with the media stating
24 that David Milgaard maintains his innocence and
09:39 25 thinks he was wrongfully convicted and should be



1 entitled to have a, have that set aside, or a
2 process in place to set it aside?

3 A Oh, I think, I think those, those suggestions were
4 made, and I simply would not enter into
09:39 5 controversy with them on the issue, and I think
6 that frustrated the media.

7 Q But back to my question. Would the fact that the
8 media and/or David Milgaard is saying 'I'm
9 innocent, I was wrongfully convicted, there were
09:39 10 problems in the investigation, I want to have my
11 situation reviewed, I want my conviction set
12 aside", things of that nature; would that be
13 something that would frustrate or bother you, Mr.
14 Penkala, at the time, or did it, just that type of
09:39 15 --

16 A I don't think so. I maintained that Mr. Milgaard
17 was -- had the right to appeal his conviction and
18 that I would, that I could understand that, and I,
19 you know, I had no objections to that taking
09:40 20 place, and I understood that he had done that, and
21 still the conviction stood, as far as I was
22 concerned it was a, it was an issue that was
23 finished and I didn't have to become involved in
24 it any further. And I never received any
09:40 25 direction, as the chief of police, from any source



1 suggesting that this matter should be investigated
2 by the Saskatoon Police Department.

3 Q And was it your understanding that you would need
4 such a direction before you would re-open an
09:40 5 investigation?

6 A Well, in my own judgement I would not re-open that
7 without, without supposedly the Justice
8 Department, provincial Justice Department giving
9 direction.

09:41 10 Q And why would you need their direction, and based
11 on your judgement?

12 A Simply because, as far as I was concerned, the
13 matter now lay in the hands of the Justice
14 Department. There was a conviction by a
09:41 15 legitimate Court and denials had existed for
16 appeal, you know, why would we go over that ground
17 again.

18 Q Umm, just -- and I'll touch on this a bit later,
19 what -- those steps in a different context, but
09:41 20 just back to this issue of the media. At this
21 time of I believe this newspaper article, and you
22 refer to Justice Minister Kim Campbell, Mr.
23 Milgaard had applied to the Federal Justice
24 Minister under a section of the *Criminal Code* to
09:41 25 have his conviction reviewed, and I believe at



1 this time it was in the process of being reviewed
2 by the Federal Justice Minister. Did the fact
3 that Mr. Milgaard was taking that step, and the
4 media was publicizing the fact that he was taking
09:42 5 that step, did that frustrate or concern you?

6 A Well, it obviously frustrated me, and I regret
7 having included that in my, in my response to the
8 media, --

9 Q That --

09:42 10 A -- that -- but it was obvious to me that it was
11 political, an attempt to politically involve the
12 conviction of David Milgaard.

13 Q Yes. Let me ask it a different way. Was it the
14 fact that the media was reporting on Mr.
09:42 15 Milgaard's efforts and the efforts of others to
16 have his conviction set aside, your frustration,
17 or was it the manner in which some of the media
18 was portraying it?

19 A It's because of the frustration of some of the
09:42 20 media, yes.

21 Q And can you tell us, what was it that offended you
22 or frustrated you at the time in the way that the
23 media was portraying Mr. Milgaard's efforts?

24 A Well, it's somewhat of a long story, because there
09:43 25 was a historic kind of a buildup of my



1 relationship with the media. They start out very
2 gently, and if they do not get what they need or
3 want then it gets aggressive, and sometimes it
4 even gets nasty and it starts to get personal, and
09:43 5 I don't think I'm different than anybody else, it
6 bothers me, it hurts me, and I would have hoped
7 that they would do their business, they would do
8 their investigation and have the facts correct
9 before they start making statements to the general
09:43 10 public, because I have to live in the light of the
11 general public and the public form opinions on the
12 basis of the media.

13 Q And are you able to give us any examples from your
14 recollection, Mr. Penkala, of instances where the
09:44 15 facts, in your view, were wrong that they
16 reported?

17 A I, at this stage I don't, I don't have any
18 specifics, but there were many issues. I was the
19 chief of police for ten years, I had to respond to
09:44 20 many, many situations. In police work it seems
21 that you can't do anything wrong when you are
22 addressing the people that are supposedly
23 perpetrators of some kind of an offence, or of
24 that nature, so often these issues would become
09:44 25 local issues within the media, and this is where



1 the rhetoric would come out, and if they would
2 have taken the time to be more cautious about
3 looking into the facts and the specifics of the
4 incident they would realize that what they were
09:45 5 dispelling was not accurate.

6 Q Would you acknowledge that some of what they were
7 reporting was accurate?

8 A Well it's a, it's always the situation, you just
9 have to have a speck of accuracy, a speck of --
09:45 10 oh, how would I put that -- there has to be a
11 cause, but then from then it goes all over the
12 place.

13 Q Okay. Let me use the example I just showed you
14 about the reporting on the dog urine, the one that
09:45 15 you were involved in; tell us, is that something
16 that you felt the media did not portray
17 accurately?

18 A I, I believe that, yes.

19 Q And why?

09:45 20 A Well, they never approached me, and I don't know
21 if they approached the Crime Detection Laboratory.
22 They sat in, I'm sure the media had records of
23 sitting in on the actual testimony from within the
24 trial of David Milgaard, that's public record, yet
09:46 25 they felt, felt quite at ease to be able to



1 publish it the way it is there.

2 Q I'll come back to some of these media issues a bit
3 later, Mr. Penkala.

4 If we could just go back, then,
09:46 5 to this report on the secretor issue. Did you,
6 and I'll go through some documents, but did you
7 subsequently do some, obtain some samples from
8 David Milgaard and have them tested to determine
9 his status, his blood grouping and secretor
09:46 10 status?

11 A Yes.

12 Q And what do you recall it showing?

13 A In, in discussions, in conversation with Staff
14 Sergeant Paynter from the detection laboratory he
09:47 15 had suggested that what we would -- we could do is
16 ask and receive samples from David Milgaard by
17 simply having him chew on some filter paper and
18 then, and then supply that or return that to him,
19 and he would be able to make an analysis on
09:47 20 whether that would indicate that he was a secretor
21 or not. We did that, and it was not a -- it was,
22 it was a -- my understanding was that this was not
23 an examination that they knew one way or another,
24 they weren't satisfied with the results and they
09:47 25 had indicated that we should make another attempt



1 to, to get biological fluids so that that test
2 could be made, and I don't think there was an
3 opportunity to do that, it was -- Mr. Milgaard had
4 been arrested and the charges were proffered.

09:48 5 Q And so, at the time of his charging, arrest, and
6 the time of his trial, would it be fair to say
7 that you had not determined that he was an A
8 secretor or that he may have been an A
9 non-secretor?

09:48 10 A My version of it was that that it was an undecided
11 or an unestablished fact.

12 Q Okay.

13 A Or not a fact, but an unestablished issue.

14 Q If we could just go back to 10 -- sorry -- to
09:49 15 105542, please, and go to the second page. You
16 will see just here, this is the Serology Section,
17 if we can go to the next page, please, we'll see
18 down at the bottom it says?

19 "Exhibit G ...",
09:49 20 which is Gail Miller's blood sample:
21 "... was transferred to Mr. ... McLeod
22 of the Toxicology Section of this
23 Laboratory on March 11 ... The remainder
24 of the exhibits will be transferred to
09:49 25 Corporal ... Molchanko of the Hair and



1 Fibre Section as soon as possible."

2 So am I correct in understanding that the
3 Serology Section provided their report on March
4 12th answering what they could answer of your
09:49 5 request, and then sent the samples to Toxicology
6 and Hair and Fibre to do --

7 A Yes.

8 Q -- the remainder of the work; is that fair?

9 A Yes.

09:50 10 Q And then if we go to 105544, please, and this
11 would be the March 27th, 1969 -- or is there, have
12 I got the wrong doc. ID for that or is that, is
13 there a different version -- March 27th, 1969,
14 Hair and Fibre, and I'll see it says here, we see
09:50 15 it says here:

16 "No copies elsewhere"

17 where it says:

18 "Copies to";

19 do you know what that means?

09:50 20 A I'm not sure, that's a letter from the crime lab,
21 and I'm not quite sure what the significance of
22 that is.

23 Q Okay. I see it's, I think, on all of their
24 reports. If you could go to -- then to just go
09:50 25 through again:



1 "The following exhibits were received on
2 ..."

3 March 17th from Paynter, and then again lists the
4 same exhibit items. If you could just move that
09:51 5 to the left-hand side and call up the next page,
6 please, and we'll see here on the right-hand side
7 what it is they are doing. First, to examine the
8 nurse's uniform:

9 "... the name badge back which bears
09:51 10 fibre, and determine the nature of the
11 fibre",

12 look at the uniform with the ripped seams and
13 zipper, examine the coat and determine whether
14 the cuts in the coat are consistent with the
09:51 15 knife blade, examine the button to determine
16 whether it was ripped off and under what
17 circumstances, to examine Exhibit B, which are
18 Gail Miller's panties, to look at the tear and
19 determine whether it was torn or cut, and then to
09:51 20 examine the hair and whether it has any
21 similarities to the -- or sorry -- to examine the
22 hair in Exhibit I, which is the frozen lumps of
23 snow, and determine whether it is any similarity
24 to J and K, which are the controlled head and
09:52 25 pubic hair of Gail Miller; is that correct?



1 A Yes.

2 Q And then data, they go ahead and tell what they
3 do. If you go to the -- if we can go to page 3 on
4 the right-hand side, please, and here's their
09:51 5 conclusions, number 1, a tuft of brown fibres was
6 found adhering to the back of the name badge on
7 Exhibit F. These fibres were identified as
8 viscose rayon and wool. They did not originate
9 from any of the clothing exhibits received?"

09:51 10 And it goes on to say where this material could
11 have come from. Do you know in the course of the
12 investigation whether the fibres, the brown
13 fibres on her name badge were ever matched or
14 used to either identify or eliminate a suspect?

09:51 15 A I have no knowledge that that was ever identified.

16 Q And then it goes on to say the tear in the dress
17 was from applied force rather than regular wear
18 and tear and the zipper was pulled apart rather
19 than being opened conventionally, and I take it
09:52 20 this was information you were seeking to help you
21 understand what may have happened?

22 A Yes.

23 Q They go on to say, six cuts were found in the back
24 of Exhibit A, which is the black cloth coat. The
09:52 25 cuts were approximately the same width as the



1 knife blade, Exhibit H, which is the knife blade
2 you found. The cuts could have been produced by
3 the knife blade, Exhibit H, or any other similar
4 object. And I take it, Mr. Penkala, that that --
09:52 5 was it your understanding that they could say it's
6 similar, they couldn't say for certain that it was
7 the knife blade?

8 A That would be my understanding, yes.

9 Q And again the opening in the panties was not a
09:52 10 tear but normal wear and tear, and then it says
11 six human pubic hairs were removed from one of the
12 vials from Exhibit I, that's the lump of snow.

13 These hairs had characteristics which were similar
14 to those found in the human hair sample, Exhibit
09:53 15 J, which was a control sample from Gail Miller. A
16 common origin is possible. And so did that lead
17 you to conclude that those were Gail Miller's
18 pubic hair in the frozen lumps of snow you found?

19 A I think it was -- it just says human hair.

09:53 20 Q Well, it says they were similar and a common
21 origin is possible.

22 A Oh, yeah, and it does mention pubic hair, yeah.
23 Now, my reading --

24 COMMISSIONER MacCALLUM: I don't think he
09:53 25 answered your question.



1 BY MR. HODSON:

2 Q No, he didn't, no. Am I to read this that it's
3 not excluded and that it's possible that it's her
4 pubic hair or is it more certain than that? What
09:53 5 was your understanding or what did you take from
6 this report?

7 A My understanding of that type of analysis is that
8 hair certainly can be identified as coming from a
9 similar source, but specific identification is
09:54 10 probably impossible, that's my personal
11 understanding, and that question should be best
12 put to the technician that made the examination.

13 Q And we will hear from him on that. I'm just
14 wondering from your -- did you understand from
09:54 15 this report that the pubic hair, or that the hair
16 found in the frozen sample was Gail Miller's pubic
17 hair?

18 A Yes, in general I was satisfied that the deposits
19 in the snow were somehow related to the victim.

09:54 20 Q And then I see it goes down to say that the knife
21 blade was transferred to MacDonald in firearms
22 section and some of the remaining exhibits were
23 stored at the lab, and I take it that was common
24 practice in case you needed to do further tests?

09:55 25 A Yes.



1 Q If we could then call up 105552, please, and we'll
2 just follow the trail here. Here's the toxicology
3 report and it's referring to the two vials of
4 blood and I don't need to go through it other than
09:55 5 they find no alcohol or drugs in the blood of the
6 victim, and I think you told us earlier that you
7 would do that test to see whether that could give
8 you some clue as to the victim's activities or
9 things of that nature; is that fair?

09:55 10 A Yes.

11 Q Now if we could just go back to, just what we've
12 covered is we covered your February 5, 1969 letter
13 to the RCMP, the crime index, I went through the
14 February 7th when you sent the exhibits in and
09:56 15 went through the reports you got back from the
16 RCMP. I now want to go back to February of 1969
17 and just follow through chronologically some of
18 your activities, and I have a couple of
19 investigation reports I just want to show you that
09:56 20 detail some other work. First is 106520 and this
21 is a report of Detective Hanson, February 11,
22 1969, and just call out that paragraph, please,
23 and this just talks about a search warrant at a
24 fellow's house and then goes on to say it was
09:56 25 searched thoroughly and completely by Lieutenant



1 Penkala, Kleiv, Reid and Mackie. I take it, Mr.
2 Penkala, that you would have been involved in this
3 type of investigation work then on the Gail Miller
4 matter?

09:57 5 A I obviously was in this case, yes.

6 Q And would it be because it's a -- let me ask it
7 this way. Were there some parts of the
8 investigation where you would, you and Thor Kleiv
9 and others would be involved, did it have to have
09:57 10 an identification aspect to it before you would be
11 involved?

12 A I would suggest that the reason that we were there
13 is because we had been initially at the scene, the
14 detective investigators would have called for the
09:57 15 warrant, I would assume that there was a warrant
16 for the search of the house, they had their
17 reasons to search the house, and they would seek
18 our attendance so that we might recognize
19 something that would connect to the murder.

09:57 20 Q If we could call up 106527 and this is a report of
21 Detective Sergeant Reid, February 12, '69, and
22 again there's just a reference here, Mr. Penkala,
23 the next day where you and Reid and Porter
24 interviewed a Mrs. Barbara Spence, I think that's
09:58 25 unrelated to Les Spence, about, I think it's a



1 suspect or a person of interest, Arthur Redman.
2 Again, can you tell us the extent to which you
3 would have been involved in that or why you would
4 have been involved in that?

09:58 5 A I have absolutely no recollection of this at all
6 and I don't recall seeing this report before.

7 Q Would there be occasions where you would be asked
8 to help out on some interviews and things of that
9 nature, and I'm talking again in a murder
09:59 10 investigation.

11 A Very seldom in interviews.

12 Q If I could call up 009327 and this is a report of
13 yours dated February 9th, 1969, just call that
14 out, please, it says:

09:59 15 "On February 18th, 1969, I contacted
16 Dr. Ian MacDonald, Department of
17 Psychiatry, University of Sask.,
18 regarding this case. The purpose of the
19 consultation was to obtain professional
09:59 20 opinion on the type of person who may be
21 capable of this type of crime.

22 Dr. MacDonald was advised of
23 the general facts concerning this case
24 and was shown photographs of the scene
09:59 25 and the victim.



1 Dr. MacDonald will submit a
2 written report of his opinions in this
3 case, he did not offer an opinion at the
4 time and preferred to further study the
10:00 5 facts."

6 And I take it that you did what was reported in
7 this report?

8 A Yes.

9 Q What was your purpose in asking Dr. MacDonald to
10:00 10 take a look at the facts in the case?

11 A Dr. MacDonald is a psychiatrist and we, I guess I
12 thought -- and I'm sure the investigators were
13 involved in this in seeking any information they
14 can to establish a profile of the person that
10:00 15 might be responsible for this type of a crime.

16 Q Had you done this on previous occasions?

17 A I can't think of a specific one, but I know that
18 this is done on many occasions. Sometimes even
19 hypnosis is introduced to help witnesses remember
10:00 20 what took place.

21 Q Did you ever get a response from Dr. MacDonald to
22 this?

23 A I'm not aware that there was ever a response to
24 this.

10:01 25 Q Do you recall ever talking to him after this



1 instance about what you had asked him to look at?

2 A I didn't have an opportunity to do that. I
3 assumed that if he would have responded, it would
4 have been on the file.

10:01 5 Q And I don't believe there is a written report, at
6 least in our records.

7 A Okay.

8 Q I also understand in February of 1969 at some
9 point at the crime scene there were some tents set
10:01 10 up and the area was melted; is that right?

11 A Yes. As I had said before, I made many visits
12 back to the scene with the hope that something
13 physical would appear and assist us in our
14 investigation and eventually there was a large
10:01 15 plastic tent placed over the area where the body
16 had been found and construction burners were
17 placed in the tent and the snow was melted right
18 down to the ground and that took place.

19 Q And do you recall whether anything was found that
10:03 20 may have been linked to the murder?

21 A I have no recollection that anything of
22 significance was found.

23 Q Do you have a recollection of an officer finding a
24 bone-handled hunting knife in that back alley area
10:03 25 after the murder?



1 A I recall mention of a bone-handled knife but I
2 don't know, other than just general knowledge,
3 whether I read it in some of the reports or
4 somebody spoke to me about it. I'm not aware that
10:03 5 I ever saw the knife.

6 Q I believe it was an Officer Oliver; does that
7 sound familiar?

8 A I know there's an Officer Oliver, yes, but I don't
9 know.

10:04 10 Q Do you recall considering whether there was
11 another knife involved in the murder other than
12 the knife blade you found under the body?

13 A Umm, that aspect was introduced or suggested on a
14 number of occasions, and I believe there were some
10:04 15 knives that were presented which I don't think
16 really played a part in, in -- and eventually
17 didn't have anything to do with the scene.

18 Q If we could call up 105520, please, and this is
19 your report dated February 27, 1969. And you
10:04 20 have, you have reviewed this report before, I
21 believe?

22 A Yes.

23 Q And it's called Ident Report and I just want to,
24 we will likely spend some time with this report,
10:05 25 and I wish to go through parts of it. Can you



1 tell us, generally, what was the purpose of this
2 report?

3 A The purpose of this report was to avail the
4 investigators of the known circumstances that we
10:05 5 had and give them an indication of what they might
6 look for to help them in regards to solving that
7 crime.

8 Q So this would be ident. saying 'here are some,
9 here is some evidentiary matters that we've
10:05 10 gleaned from what we have looked at, and this
11 might assist the investigators in --'

12 A Yes.

13 Q '-- the case'. And it starts off saying:

14 "In the event a search is being made in
10:05 15 connection with the Miller murder case,
16 the following articles should be sought
17 and may be of evidencial value:",
18 and the first one is:

19 "A knife handle, red maroon plastic
10:06 20 smooth handle, blade broken off at
21 handle, (cut-all brand vegetable paring
22 knife)."

23 and then a handwritten 'located', just ignore
24 that for a moment, and I believe you had told us
10:06 25 yesterday that you had gone out and identified or



1 found a knife that the blade, at least, matched
2 the blade you found under the body; is that
3 correct?

4 A Yes.

10:06 5 Q And it had a maroon handle?

6 A Yes.

7 Q And I think we know from other evidence that on
8 March 2nd, about three days later, Daniel Hounjet
9 found a maroon handle in his back yard; do you
10:06 10 recall, do you recall that being reported?

11 A I'm aware of that, yes.

12 Q Yes. And so on this date what you are telling the
13 investigators is 'lookit, we think the murder
14 weapon had a maroon handle, and look for it
10:06 15 because it may have some value'?

16 A Yes.

17 Q Is that fair?

18 A Yes.

19 Q And again it says:

10:06 20 "A matching knife to the above
21 mentioned, handle will be the same,
22 knife blade longer and serrated the
23 length of the blade."

24 And I take it that comes from the fact that, when
10:07 25 you purchased the knife, it came in a two-knife



1 set; is that correct?

2 A That's my recollection at this stage, yes.

3 Q And it was a longer knife, and to state the
4 obvious, if you could find someone with a matching
10:07 5 knife that might have some help in determining --

6 A That would be the purpose, yes.

7 Q Yeah. And:

8 "Blood stained underclothing of a
9 suspect male."

10:07 10 And what caused you to say that that may be of
11 value?

12 A First of all the victim had bled, and I was also
13 knowledgeable about the fact that there was a
14 possibility that the suspect would have
10:07 15 transferred some of the blood to himself, so that
16 would be the purpose of it.

17 Q And you also go on to say:

18 "Blood stained trousers, particularly
19 the fly area."

10:08 20 Would that be the same?

21 A Well it's consistent with what obviously happened
22 there.

23 Q Right. And, in your judgement, were you at this
24 time thinking a significant amount of blood, small
10:08 25 amount, or were you able to identify --



1 A Just, I don't think, I don't think we were in a
2 position or I was in a position to say what
3 amount, just that that's a possibility.

4 Q Now based upon your observations of the body and
10:08 5 your experience, then, were you thinking at this
6 time that the victim -- or pardon me -- that the
7 assailant would have likely had blood on his
8 clothes right after the attack?

9 A Umm, that would -- that certainly crossed my mind,
10:08 10 yes.

11 Q And then you go on to say:
12 "Outer or outdoor garments with dark
13 brown cuffs, collar or entirely of the
14 same dark brown fibrous material,
10:09 15 (related to tuft of fiber found under
16 the name badge of victim)."

17 I take it that that came from the fibres under
18 the badge and you thought that that badge might
19 have picked up fibres from the perpetrator; is
10:09 20 that fair?

21 A Yes.

22 Q And next:
23 "Black cloth covered button, one and a
24 half inch diameter, missing from
10:09 25 overcoat of victim, may bear part of the



1 coat material which would have been torn
2 away with the button."

3 So this is the missing button from the coat?

4 A Yes.

10:09 5 Q And:

6 "Other possible items which may be
7 missing from the victim are:

8 A sanitary pad belt."

9 And why did you think that might have been
10:09 10 missing?

11 A The pathologist had suggested that the victim was
12 in a premenstrual state and she may have been
13 wearing a pad.

14 Q And then you say:

10:10 15 "A white silk head scarf, believed to
16 have initials G. ...",

17 I'm assuming that's:

18 "... M. on this scarf."

19 Why did you -- why were you looking for that?

10:10 20 A I think somewhere someone had suggested that that
21 person was seen with a white scarf and I am simply
22 just, it's not my knowledge but I'm kind of aware,
23 I think members of the victim's family had
24 suggested that she was in the habit of wearing a
10:10 25 white head scarf.



1 Q And when you say you got that from another source
2 would you have read the investigation reports
3 prior to preparing this February 27th report?

4 A Either read the report or had, through
10:10 5 consultation, received that information --

6 Q Okay.

7 A -- from investigators.

8 Q And then it goes on to say:

9 "A wallet and contents, (personal
10:11 10 papers, photographs, etc.)"

11 Why would you be looking for that?

12 A Well that was missing, there was nothing there,
13 and obviously most people carry a wallet or a
14 purse or --

10:11 15 Q Now I believe Detective McCorrison found the
16 purse on February 3rd; is that correct?

17 A That, that, that's probably true. That's right,
18 the purse was found, and obviously the -- there
19 was articles of this, like a wallet was not in the
10:11 20 purse.

21 Q Okay.

22 A That's possibly where it came from, yes.

23 Q And then you go on to say:

24 "Further regarding this case, the knife
10:11 25 blade which was found at the scene bears



1 markings of sharpening and a knife
2 sharpener could possibly be identified
3 with the knife blade. This should be
4 kept in mind and seized in search of
10:11 5 suspect and household."

6 And I take it that's based on your observation of
7 the knife blade?

8 A Yes. That's another way of connecting a sharpened
9 knife with a sharpener which might be in
10:12 10 possession of someone that is responsible for the
11 crime.

12 Q And then the paragraph here, I won't go through
13 it, but just identifying foreign fibre collected
14 in colours and you say:

10:12 15 "These fibres have little value for
16 identification purposes at this time and
17 are mentioned for the information of the
18 investigator should a suspect come to
19 light."

10:12 20 And I take it you are saying 'lookit, if you find
21 a suspect, these fibres might be of more value'?

22 A Yes.

23 Q 'But of little value if you are just out looking'?

24 A Yes.

10:12 25 Q Now, if we go down, it says:



1 "The similarity of our departments
2 occurrences numbers 10173/68 ...",
3 which is the (V1)--- (V1)- rape:
4 "... and 10910/68, ...",
10:12 5 which is the (V2) (V2)----- rape or file:
6 "... complaints of rape, with this
7 murder investigation, lists the
8 following items which are reported
9 missing, identifiable and could be of
10:13 10 evidential value."

11 Sorry, I didn't read that right:

12 "... the following items which are
13 reporting missing, identifiable and
14 could be of evidential value."

10:13 15 And I take it at this time, February 7th, 1969,
16 Mr. Penkala, in your mind you were seeing a
17 relationship between the Gail Miller murder and
18 the (V1)- and the (V2)----- rapes; is that fair?

19 A Yes.

10:13 20 Q And am I right in this report what you are saying
21 is 'the similarity of these two occurrences' at
22 the bottom, what you are doing is saying 'here are
23 two rape files which are similar and here are some
24 items from those rape files that, if we find,
10:13 25 might be of assistance in not only the rape files



1 but the Gail Miller investigation'; is that a fair
2 statement?

3 A Yes, that's correct.

4 Q If we can then go to the next page, please, and
5 you identified, here, a number of items:

6 "A lady's white trench coat, brown trim
7 at the collar and pockets."

8 And maybe if we could just put that document on
9 the left-hand side, please, and on the right-hand
10 side call up document 087736, so if we try and
11 compare. So the first item:

12 "Lady's white trench coat, brown trim at
13 the collar and pockets."

14 We go over here, and (V2) (V2)- (V2)-----'s
15 statement, she says she was wearing a white
16 trench coat with brown trim at collar and
17 pockets; am I correct that -- and I think she,
18 later on, states that 'the assailant picked up my
19 coat, dress and my bra and ran off', so am I
20 correct in saying that the (V2)-----'s statement,
21 or information like this, caused you to say
22 'lookit, let's try and find a white trench coat,
23 (V2) (V2)-----'s' white trench coat, because that
24 may lead us to the perpetrator of the Gail Miller
25 murder'?



1 A That would be the purpose, yes.

2 Q And then second we have a 'bright orange dress',
3 and 'bright orange dress'; 'white brassiere', and
4 I think there is a reference there; if we skip
10:15 5 down, the lady's blue jeans, I'll come back to
6 that, I think that's (V1)--- (V1)-; 'a jackknife,
7 silver coloured handle with two black dots on it',
8 and in (V2)-----'s statement she talks about 'a
9 jackknife with a silver-coloured handle with two
10:15 10 black dots', I take it that's what you are
11 referring to?

12 A Yes.

13 Q You also say 'a white hard hat, described as
14 dirty', and down here (V2)-----'s, Ms. (V2)-----'s
10:16 15 describes the fellow who raped her as wearing a
16 white hard hat; so I take it that's the connection
17 there?

18 A Yes.

19 Q And, as well, 'a rough cloth material jacket with
10:16 20 gold and black checks, smelling of oil and gas',
21 again we see that in (V2) (V2)- (V2)-----'s
22 statement; correct?

23 A Correct.

24 Q And then if we go to -- and, as well, I think the
10:16 25 work boots are identified there.



1 If we could then, just on the
2 right-hand side, call up statement 011827, and
3 this is the (V1)--- (V1)- statement, and if we
4 could go to page 011829 of that and, again, where
10:17 5 she describes that the assailant grabbed her blue
6 jeans, and I think that's lady's blue jeans there;
7 is that correct, on the -- your report?

8 A Yes, it's obvious that's where it came from.

9 Q And then down, if we go to the next page of the
10:17 10 (V1)- statement, she describes the assailant as
11 wearing dark-coloured clothing, trousers and
12 sweater, and so I take it that corresponds with
13 what's in your investigation report?

14 A Yes.

10:17 15 Q So who -- and actually, if we go down here, it
16 says:

17 "The above information has been left to
18 assist investigators in this file."

19 Who would have got your February 27th,
10:17 20 investigation report?

21 A I would assume those investigators that were
22 assigned to investigate the Miller murder.

23 Q And I think you told us yesterday that it would
24 end up one copy would go to central records, --

10:18 25 A Yes.



1 Q -- one copy would go back to you, and two copies
2 would go to Mackie and Reid, being the detectives
3 in charge; is that --

4 A Yes.

10:18 5 Q Do you recall any discussion with any officers
6 about what you have identified in this report?

7 A I don't have any recollection of that at this
8 stage. I'm sure I would have as time went on.

9 Q There is a reference in here to the white hard
10:18 10 hat; do you recall any other reference or
11 discussion or note about looking for a person with
12 a hard hat in connection with the Gail Miller
13 murder?

14 A Nothing more than, than the fact that, that one of
10:18 15 the complainants had mentioned a white hard hat.
16 That's my only recollection.

17 Q Now you are aware, sir, that there is a report, I
18 think dated February 3rd, 1969, where Detective
19 McCorriston encountered Larry Fisher at or near
10:19 20 the bus stop on Avenue O and 20th Street, got his
21 name, address, and noted that he was wearing, I
22 believe, a yellow hard hat; are you aware of that
23 report?

24 A I'm not aware of that report, and I'm -- and
10:19 25 I'm -- you know, I may be, I may have just



1 forgotten, but I don't recall that.

2 Q That --

3 A I know that, I know that Gerry McCorrison had
4 been canvassing the neighbourhood and I knew that
10:19 5 he had encountered Larry Fisher, and that's
6 basically the extent of my understanding of that
7 incident.

8 Q And so the report, and I don't think we need to
9 call it up, but identifies Fisher's name and
10:19 10 address, and we now know that Mr. Fisher has been
11 convicted of the rapes and the murder, but to go
12 back -- and see if you can help us out on this --
13 when you sent this report through to the detective
14 sergeants in charge, based on your understanding
10:20 15 of how things worked at the time, would someone
16 take this report and say 'okay, let's pore through
17 all the investigation reports and see if we can
18 find any people who have a hard hat and go follow
19 up'?

10:20 20 A That would be quite a normal approach to
21 investigations, yes.

22 Q Okay. But as far as your recollection of the hard
23 hat, beyond what's in this report, do you recall
24 anything else about hard hats in the -- or people
10:20 25 with hard hats in the course of the investigation?



1 A No.

2 Q And so based on this report, then, in your view,
3 sir, if you encountered a person of interest that
4 had a hard hat, would that cause you to be more --
10:21 5 'suspicious' is maybe the wrong word, but more
6 alert to that person as a suspect?

7 A Oh, certainly, certainly.

8 Q And would that be because (V2) (V2)- (V2)-----
9 identified her assailant as having a hard hat and
10:21 10 you identified some similarities that caused you
11 to believe it may be, the murderer of Gail Miller
12 may be the same person who attacked (V2) (V2)-
13 (V2)-----; is that correct?

14 A Yes.

10:21 15 Q So, Mr. Commissioner, this might be an appropriate
16 spot to break.

17 COMMISSIONER MacCALLUM: Okay. 15 minutes
18 then.

19 (Adjourned at 10:22 a.m.)

10:42 20 (Reconvened at 10:42 a.m.)

21 BY MR. HODSON:

22 Q Mr. Penkala, I'm just going to call up a few
23 documents here that deal with the tent structure,
24 etcetera. First, if I could call up 046099, and I
10:43 25 think this is a newspaper article, we can't see it



1 very well, I have some better photos, but February
2 28th, 1969, if we could just call out that area.
3 And it talks about the Saskatoon Police, in their
4 continuing investigation in the death, have begun,
10:43 5 you will see it there, have begun to melt the
6 snow. It's not a very good copy. Does that sound
7 about the right time, the end of February, Mr.
8 Penkala, or was it possibly earlier than that?

9 A Well, obviously, the snow melting occurred after
10:43 10 the 31st of January --

11 Q Right?

12 A -- because that was the date of the discovery of
13 the victim, and that tent wasn't up on February
14 the 4th when I returned to the scene.

10:43 15 Q So that it was sometime after that?

16 A It would have been sometimes after that.

17 Q If we could call up document 073387, and again I
18 think we see a better, if you could call out that,
19 these are old photographs, but is that --

10:44 20 A That depicts what I recall, yes.

21 Q So you have covered the area, put a heater in
22 there, melted it to see if you could find anything
23 in the snow?

24 A Yes.

10:44 25 Q If I could also call up 105522, please. Now this



1 is a report February 28th, '69, by Officer Kleiv
2 and just call out that top paragraph, please. It
3 says:

4 "While attending at the murder scene,
10:44 5 February 28, 1969, with Cst. Oliver, a
6 search was conducted of the area where
7 snow has been melted by mechanical means
8 and the following described knife was
9 found by Cst. Oliver. This knife was
10:45 10 lying on the bottom 2 X 4 stringer of
11 picket fence which borders the west end
12 of the property numbered 221 Ave. N.
13 So., 1 1/2 feet north of the south fence
14 line of this property.

10:45 15 Description, Blade measures
16 3 3/8 inches long, bone handle measurers
17 2 5/8 inches long. Total length of
18 knife is 6 inches.

19 The blade is quite sharp and
20 had very little rust adhering to the
21 blade. It is believed that the knife
22 was equipped with a small compass which
23 is mounted in the side of the handle.
24 There is a circular hole on onse side of
10:45 25 the handle of this knife where the



1 compass is mounted.

2 I called at the front of 221
3 Ave. N. So. and there spoke with Brian
4 Bentley ...",

10:45 5 etcetera. Now just scroll down:

6 "The knife has been initialed by Cst.
7 Oliver and myself and is stored in my
8 locker."

9 Were you aware, Mr. Penkala, of the discovery of
10:46 10 this knife?

11 A Not at the time of this report, no.

12 Q Would you subsequent, prior to the conclusion of
13 the David Milgaard criminal proceedings, did you
14 become aware of this?

10:46 15 A During the, during the ongoing investigation I had
16 heard about this knife, but I don't even recall
17 seeing this report and I would have had no reason
18 to have this report, simply because it doesn't
19 involve me and I was not in charge of the
10:46 20 coordination of the investigation of the crime.

21 Q Would, again, would someone take this knife and
22 consider whether or not it was used in the murder?

23 A Well the purpose that it was retained, obviously,
24 is to connect it with the murder, I -- it doesn't
10:46 25 indicate here what had happened with it.



1 Q Yeah. I don't believe that it was ever sent to
2 the lab or that any further testing was done, and
3 we will hear evidence indicating that it was
4 returned to Constable Oliver I think a couple of
10:47 5 days before the end of David Milgaard's trial, so
6 I don't believe it was tendered as evidence there.
7 I'm just wondering if you can help us understand
8 whether something was done with this knife to
9 either eliminate it as being related to the
10:47 10 murder, or identifying that it was, or whether any
11 steps were taken.

12 A I can only surmise that when the knife was found,
13 and I assume it was found in the immediate
14 vicinity of where the victim was found, --

10:47 15 Q Yes.

16 A -- I would assume that it was considered, but that
17 it obviously wouldn't have had fingerprints, I
18 don't know whether it was examined or not but it
19 obviously wouldn't have had fingerprints on it,
10:47 20 obviously no indication of blood stains, and I
21 don't know, maybe the knife was identified and
22 associated with somebody. I have no idea.

23 Q But finding a knife near the murder scene would be
24 an important piece of evidence to either eliminate
10:48 25 or confirm; would it not?



1 A I would suggest that it would be, yes.

2 Q And do you recall any discussion with Dr. Emson or
3 anybody else, at the time, with the possibility of
4 there being two knives involved in the stabbing of
10:48 5 Gail Miller?

6 A I don't recall ever discussing whether there was
7 two knives involved. There was certainly sharing
8 of information about the blade that was found,
9 because I found the blade after the body was
10:48 10 removed, and the measurements of the blade were
11 described to him.

12 Q Who would be responsible on the investigative team
13 to either -- or to make the decision that this
14 knife would be excluded as evidence in the
10:48 15 investigation and subsequent prosecution?

16 A Well whoever is in charge of coordinating the
17 investigation.

18 Q So if -- and I believe you said it's Mackie and
19 Reid that were the assigned officers; is that
10:49 20 correct?

21 A That's kind of my knowledge, that they were the
22 two, two senior NCOs that were involved in that.

23 Q So you are saying it would be their responsibility
24 to decide where, if anywhere, this knife fits in
10:49 25 in the investigation?



1 A Yes.

2 Q If we could -- and again, just on this, do you
3 have any other recollection of this knife and any
4 connection with the investigation and --

10:49 5 A No.

6 Q If we could call up 055837, please. And, again,
7 here's some better photographs. I believe the top
8 left, that is the melting structure over the area
9 where the body is found, correct?

10:50 10 A Yes.

11 Q And I think photo 22 is the knife blade; is that
12 correct?

13 A It looks like it, yes.

14 Q And down in the bottom left, and we have seen this
10:50 15 before, and I'm -- am I to take it that that would
16 be the replica knife that you would have purchased
17 at the Metropolitan Store?

18 A I would think that that's what it is, yes.

19 Q Go back to the full photo, please, and then next
10:50 20 page -- or is there a next page to that? That's
21 fine. Okay.

22 If we could now turn to an RCMP
23 report, if we could call up 250597, please. And,
24 again, we went through, before the break, your
10:50 25 February 27th, 1969 ident. report where you said



1 'be on the lookout for these items from the
2 (V1)-/(V2)----- rapes, they may assist in the Gail
3 Miller investigation'; correct?

4 A Yes.

10:51 5 Q And this is a report -- if we could just go to the
6 next page, please -- this is a report by Corporal
7 Rasmussen of the RCMP; do you recall dealing with
8 Corporal Rasmussen in 1969?

9 A Umm, not specifically. I have seen this report
10:51 10 before but I don't have a specific recollection of
11 dealing with Rasmussen. I know, I know the
12 person.

13 Q Pardon me?

14 A I know him, but I don't have --

10:51 15 Q Do you have -- okay. Do you have any, and you may
16 have told us this yesterday, I think you said that
17 some RCMP were involved in the Gail Miller
18 investigation; is that right?

19 A Yes, and I think he was one of them, and Staff
10:51 20 Sergeant Stan Edmondson was the other officer, and
21 there was a James Riddell, which was a, he was an
22 inspector, he was also involved.

23 Q And I believe we've heard evidence that they would
24 have been involved in not only helping the police
10:52 25 outside their municipal boundaries, but they would



1 also be helping on the investigation within the
2 municipal boundaries?

3 A Yes.

4 Q Is that fair?

10:52 5 A Yes.

6 Q And I think we've heard evidence that they would,
7 on occasion, be called in to help out the local
8 police force; is that fair?

9 A Yes.

10:52 10 Q Now this report, this copy, it's dated 'received'
11 by the Attorney General's Department,
12 Saskatchewan, May 16th, 1969, it's a report dated
13 May 7th, 1969. And there is no record of this
14 report being in any of the police, Saskatoon City
10:52 15 Police files that were provided to the Commission,
16 and I'm wondering, Mr. Penkala, whether you can --
17 whether you are able to tell us whether or not the
18 RCMP reports -- and I believe the RCMP officers
19 reported up the line to their superior officers --
10:53 20 whether those reports were ever shared with the
21 Saskatoon City Police Service; do you know if that
22 happened?

23 A Umm, I don't recall seeing this report until I was
24 approached by your office.

10:53 25 Q Okay.



1 A So I didn't see this report before, although the,
2 I'm somewhat acquainted with the conditions that
3 are mentioned within the report.

4 Q Right. And I guess what I am trying to find out
10:53 5 is whether you can tell us whether or not a copy
6 of this report would have been provided to the
7 Saskatoon City Police at the time and put on the
8 investigation file for city police officers to
9 read?

10:53 10 A I can't, I can't answer that, I don't know.

11 Q If it had been put on the Gail Miller file, do you
12 think it's something you would have read?

13 A Well I certainly did delve into the file from time
14 to time and I, you know, I don't recall seeing it
10:54 15 at all.

16 Q And if it turns out that the evidence is that it
17 was not, that in other words the RCMP did not
18 share their reports with the Saskatoon City Police
19 at the time, instead they reported up, and perhaps
10:54 20 vice versa, are you able to help us understand why
21 that might have been?

22 A I think they would be -- and when I say 'they',
23 the RCMP -- would be responsible, in this case it
24 was Inspector Riddell, I think he would be
10:54 25 obligated to accommodate and account for his



1 actions, and this would be the way he would do it,
2 reporting to his principals as opposed to having
3 any accountability to our department. The
4 evidence, I'm sure whatever is related to the
10:55 5 actual investigation, I'm almost certain that that
6 was already known by our department.

7 Q And how are you able to say that?

8 A Well just simply by the fact that I recognize the
9 things that are mentioned here, yes.

10:55 10 Q So -- I'm sorry --

11 A I didn't have a copy of the letter.

12 Q So if we have the Saskatoon City Police doing
13 their investigation, recording notes, preparing
14 reports to communicate what they found and sent it
10:55 15 up, or sent it to the people in charge to
16 disseminate as to who they wish, and the purpose
17 of that would be so that the Saskatoon Police
18 force would be knowledgeable about what's
19 happening; is that fair?

10:55 20 A Yes.

21 Q And I think you told us, yesterday, that the
22 officers assigned -- or someone who was in charge
23 of the file would be responsible to gather
24 information, read it, understand it, decide what
10:55 25 to do, who to do it, when to do it; those types of



1 things?

2 A Yes.

3 Q And would you agree that, for that person to do
4 that job, it would be helpful to have information
10:56 5 like this, being the RCMP reports?

6 A Well, it may have been helpful, and I have no idea
7 why that doesn't show up in the actual file. But
8 what I am suggesting is that, in all likelihood,
9 the investigators were aware of the contents of
10:56 10 this letter.

11 Q And that's based on your observations at the time,
12 then, or your experiences or what?

13 A Just on my experience, yes.

14 Q All right. So if we go to this report, and again
10:56 15 it's dated May the 7th, and it, I think it's the
16 first report that Corporal Rasmussen prepared and
17 has various dates on it, if we could go to page
18 250602, please.

19 A I, just --

10:56 20 Q Oh, sorry?

21 A I just have to -- I'm not -- I think I have
22 confused this, I think I have confused this report
23 with another one.

24 Q Okay.

10:57 25 A This is, this is not Riddell's report, eh?



1 Q No, I'm sorry.

2 A Okay. No, I'm not aware of this report, and I --

3 Q Okay. I will call up, if you will just give me a
4 moment --

10:57 5 A I'm sorry, I should have, I should have been more
6 careful.

7 Q Yeah. You are referring to the report about the
8 May 1969 meetings?

9 A Yes.

10:57 10 Q Yes.

11 A That's the one I'm thinking of, yes.

12 Q Yes, and I'll call that report up later.

13 A All right.

14 Q And that is a report that details those events.
10:57 15 So just to be clear, then, this report of
16 Rasmussen's you are not familiar with?

17 A Not at all, no.

18 Q Okay. If we could again go to -- we'll see, here,
19 Mr. Rasmussen reports by dates as to what's
10:57 20 happening. This is on March 10th, 1969. If we
21 could just go to the next page, please, and again
22 I just wanted to show you the March 10th, it
23 carries on, and if we could call out the bottom
24 two paragraphs, please. And you will recall that
10:58 25 the RCMP lab report was actually dated March the



1 12th, '69, remember when I showed you that, about
2 the secretor?

3 A Yes.

4 Q And so it appears that this may have been dealing
10:58 5 with that time frame. It says:

6 "Our Crime Detection Laboratory at
7 Regina advised that seminal fluid found
8 at the scene was very probably from a
9 secretor of Group A. The lab defined a
10:58 10 'secretor' as a person who secretes
11 their AB blood grouping substance and
12 other bodily fluids. Lab. report
13 attached.

14 It is mentioned that during the
10:58 15 late fall of 1968 the local police
16 department had reports of two rapes and
17 one attempted rape. These
18 investigations were conducted by the
19 City Police with negative results.
10:58 20 Persons involved were as follows."

21 And you will see the (V1)-, (V2)-----, (V3)-----
22 rapes, dates, and times. And it says:

23 "In these three instances the M.O. was
24 similar in that the male approached his
10:59 25 victim from the rear, covered their



1 mouth with his hand and pointed a knife
2 into their back, forcing them down the
3 lane. The descriptions of the assailant
4 given by all three were very similar and
10:59 5 it appeared that the same person was
6 involved. The assailant would force his
7 victim to undress at knife point and
8 always managed to stay in the shadows or
9 behind them in order that his identity
10:59 10 would not be detected. He would then
11 have the victim lie on her coat at which
12 time intercourse would take place. In
13 the (V3)----- case, the assailant was
14 scared away as a result of lights of a
10:59 15 vehicle approaching down the lane."

16 And would you agree that, as Rasmussen has
17 described the three, that's similar to what you
18 had in your February 5, '69 report to the crime
19 index; correct?

10:59 20 A Yes, yes.

21 Q Other than you didn't refer to the (V3)-----
22 attempted rape?

23 A That's correct.

24 Q All right. Now is it possible you and Rasmussen
10:59 25 would have discussed this, these similarities or



1 these files?

2 A I don't have any recollection of that. I would
3 suggest that he probably worked with the field
4 investigators that were assigned to this file.

11:00 5 Q And can you tell us what, what Rasmussen's
6 observed here about the similarities and what you
7 have told us you observed of the similarities, can
8 you help us in determining how widespread that
9 information or view would have been held within
11:00 10 the police force and, in particular, the officers
11 investigating the Gail Miller murder?

12 A Well it was a, it was a terrible crime that had
13 occurred, and I don't think there was anyone in
14 the police force that didn't know something about
11:00 15 that particular thing, so I think the information
16 was very general throughout the police force. I
17 think every police officer would have been
18 challenged and would want to contribute to the
19 solving of that crime. I would be very surprised
11:01 20 if there was any other kind of a view in amongst
21 the officers within the force.

22 Q And let me talk specifically about the view that,
23 as both you and Rasmussen have expressed it, that
24 the MO was similar between the earlier sexual
11:01 25 assaults and the Gail Miller murder. That's the



1 view I'm asking you about, as to how -- I mean
2 we've heard you go through your report saying
3 'there are similarities, it may be the same person
4 or it's likely the same person', or whatever terms
11:01 5 you used; Rasmussen said 'lookit, there are
6 similarities', and my question is are you able to
7 tell us whether others involved in the
8 investigation of the Gail Miller murder would have
9 also at least been aware of the earlier rapes, the
11:01 10 similarities, and perhaps a theory that they were
11 somehow connected?

12 A I would be surprised if, if they didn't, they
13 weren't aware.

14 Q And when you say 'they' who are you referring to?

11:02 15 A The investigators. I should point out that the
16 police force represents, at that time represented
17 about 200 uniformed members or police -- not
18 uniformed but police members, and they have
19 varying responsibilities, and sometimes it's not
11:02 20 possible for some of those duties to really get
21 involved in knowing the ins and outs of an
22 investigation. Now if there was a general
23 interest, those people would certainly -- could
24 contact one of the investigators, and I'm quite
11:02 25 sure that they would be updated and advised of



1 what was going on.

2 Q Let me put it this way; would all of the
3 detectives involved in the Gail Miller murder
4 investigation, do you believe or were you of the
11:03 5 view that they would have both known about the
6 earlier sexual assaults and the similarities, and
7 the theory that it may be the same assailant?

8 A I would think so, although the, although the rapes
9 would have been assigned to the morality section,
11:03 10 and there was a separation in --

11 Q Okay.

12 A -- actually, there was a floor of separation
13 between.

14 Q But neither you nor Rasmussen were in morality,
11:03 15 and both of you appeared to have reached the view
16 --

17 A Yes.

18 Q -- that there may be some connection?

19 A Yes.

11:03 20 Q So I guess -- what about the decision-makers, if I
21 can call it that, the people leading the Gail
22 Miller murder investigation; can you tell us
23 whether or not, based on what you knew and
24 observed, whether those people -- and I'm talking
11:03 25 about Mackie, Reid, Short, Wood, even Kettles --



1 would they have been familiar with the earlier
2 rapes, the similarities, and this theory that they
3 may be connected?

4 A I would think they would be.

11:04 5 Q Do you have any reason to believe that they
6 wouldn't be?

7 A No.

8 Q So then, if we go down to paragraph 20 here,
9 Rasmussen writes:

11:04 10 "As none of the exhibits obtained in any
11 of the above cases have been analyzed by
12 our Laboratory, it was suggested that
13 this be done in order to establish
14 whether or not the person responsible in
11:04 15 these incidents was the same one
16 responsible for the Miller murder.
17 Accordingly, on 20 March 69 exhibits
18 obtained from (V2) (V2)- (V2)----- and
19 (V1)--- (V1)- were transported to the
11:04 20 C.D.L., Regina for serological
21 examination. These included two smears
22 on microscope slides, one pair of blue
23 panties and one plaid jacket. Results
24 of this examination indicated
11:04 25 agglutinogens of Type A were found on



1 the blue panties and plaid jacket. No
2 attempt could be made to determine the
3 agglutinogens on the slides as they did
4 not provide enough sample for the tests.
11:05 5 It is not known if (V1)- is a Group A
6 secretor however, an attempt is being
7 made by the Saskatoon City Police to
8 obtain further samples such as saliva
9 for further examination. Statements
11:05 10 originally obtained from these girls by
11 the Saskatoon City Police are attached."

12 And I'll go through those tests but it appears
13 here, Mr. Penkala, that, according to Rasmussen,
14 he says it was suggested that some tests be done,
11:05 15 and I'll go through those tests. Do you know who
16 made that decision to go and test the
17 (V1)-/(V2)----- physical evidence to see if it
18 would connect to the physical evidence in the
19 Gail Miller case?

11:05 20 A Umm, I don't know who made the, who made the
21 decision. I think that possibly I wrote the
22 instructions to the lab to seek that analysis to
23 be done on this, on these articles, as I
24 understand them.

11:05 25 Q And you would have been involved, then, in both



1 the decision to do it and actually sending and
2 reviewing the tests; is that fair?

3 A Well, the way things worked the ident. section was
4 responsible for preparing the reports for
11:06 5 investigators, and often you weren't directly
6 involved in the matters at hand but you were asked
7 to prepare the direction report and send it off to
8 the Crime Detection Lab.

9 Q So on February 27th we saw your report identifying
11:06 10 the similarities, 'be on the lookout for these
11 items from the (V1)-/(V2)----- rape, they may be
12 connected to the Gail Miller murder', and then
13 within 10 or 12 days -- or perhaps 12 days after
14 because it wasn't until March 12th that you got
11:06 15 the forensic information back; correct?

16 A Yes.

17 Q So at or about that time a decision was made to
18 send the (V1)-/(V2)----- materials to test it and
19 compare it to some of the Gail Miller physical
11:06 20 evidence; is that fair?

21 A That's fair, yes.

22 Q And then Corporal Rasmussen says, if you can
23 scroll down, paragraph 21:

24 "As a result of the foregoing, it is
11:07 25 felt there is a strong possibility the



1 three rapes and the murder are directly
2 connected. In view of this, extensive
3 interrogation was conducted with
4 (V2)----- with negative result. She,
11:07 5 however, did indicate and named a person
6 who was later interrogated and submitted
7 to a blood test which indicated he was a
8 member of the O Group. These three
9 girls have been interviewed at length to
11:07 10 no avail. All stated that they have not
11 seen a person as described in their
12 statement nor have they any idea who may
13 have been responsible."

14 So it appears, here, that (V2)----- was
11:07 15 re-interviewed, and I believe it was Officer
16 Riddell who may have done that. Were you aware
17 that the RCMP officers then interviewed either
18 (V1)- and/or (V2)-----?

19 A Not, not until now.

11:06 20 Q So if we call up 324671, please, and this is a
21 letter dated March 18th, 1969 from you to the lab
22 and you'll see it deals with the alleged rape,
23 (V2) (V2)- (V2)----- and (V1)--- (V1)-; is that
24 correct?

11:07 25 A That's correct.



1 Q And if we could just go back to the full page,
2 please. Sorry. We believe that this document --
3 this document was provided to the Commission by
4 you a couple of months ago, Mr. Penkala, and we
11:07 5 were not able to locate another version of this
6 document in the documents we received from the
7 other parties, and I see that it's got the file
8 numbers up there and I think those were the (V1)-
9 and (V2)----- files; is that correct?

11:07 10 A That's right, and I see the absence of the Miller
11 file number on that document.

12 Q And would that explain why a copy of this letter
13 may not have been on the Gail Miller file?

14 A That's a possibility, yes.

11:07 15 Q Now, in sending this letter, would it be fair to
16 say that at least one of the reasons you were
17 sending this information to the lab was to assist
18 in the Gail Miller murder investigation?

19 A Oh, I would certainly think so, yes.

11:08 20 Q Now, obviously -- it would obviously be in respect
21 of the (V1)-/(V2)----- investigations as well;
22 correct?

23 A Yeah. I'm just checking to see if there's any
24 reference --

11:08 25 Q There is actually, the report 138/69, March 12th,



1 is the Gail Miller report.

2 A That's right, so there is a reference.

3 Q And my understanding is that the RCMP, when they
4 would send a report back, they would have their
11:08 5 own report number; is that right?

6 A Yes.

7 Q And I'll show you that in a moment. So if we look
8 at this, you were sending to the lab the vaginal
9 smear of (V2) (V2)- (V2)----- and you recall
11:08 10 yesterday that I suggested to you that in the
11 investigation of the rape of (V2) (V2)- (V2)-----,
12 the police, or the autopsy -- not the autopsy, her
13 medical examination, the police obtained a vaginal
14 smear or the contents of her vagina. Do you
11:09 15 recall that?

16 A I remember, yes.

17 Q So it appears here that whoever was investigating
18 the (V2)----- rape took the step of preserving at
19 least a vaginal smear; is that correct?

11:09 20 A Yes, it would appear that way, yes.

21 Q And would that be standard procedure, to get that
22 physical evidence?

23 A Yes. This would be something that would be, in
24 most cases, would be required, yes.

11:09 25 Q And then Exhibit B is one pair of lady's green



1 panties, stained, I will show you a document in a
2 moment that shows that comes from (V1)--- (V1)-,
3 and as well one blue plaid lined jacket, fur
4 collar, also from (V1)-. The purpose you asked
11:09 5 them was to examine A, B and C for the presence of
6 human semen and if present attempt to establish
7 ABO agglutinogens. So what you are asking them to
8 do is to check these for semen, number 1, and
9 number 2, check if there's any antigens in there;
11:10 10 is that right?

11 A That's correct.

12 Q And would it be fair to say that you are trying to
13 find, to see whether or not the semen on the (V1)-
14 and (V2)----- garments also contain the A antigen;
11:10 15 is that fair?

16 A That's fair.

17 Q And if it did, that would at least, maybe not
18 confirm, but suggest that it may have been the
19 same person who committed those rapes as the
11:10 20 murder?

21 A Yes.

22 Q And on the flip side, if we talk about
23 elimination, if it came back and the semen had a
24 different -- did not, was not consistent with an A
11:10 25 secretor, you might be able to eliminate the fact



1 that the perpetrator of the rape was the same
2 person who committed the murder; is that fair?

3 A Yes.

4 Q And the remarks here, you go on to say, this
11:10 5 examination may be investigatively related to
6 previous examinations conducted by your laboratory
7 in connection with Exhibit I (sample of liquid),
8 and we know that's the frozen lumps of snow;
9 right?

11:11 10 A Yes.

11 Q See your report 138/69, March 12th, '69, and
12 that's the report we spent some time on this
13 morning; correct?

14 A That's correct. That number represents the lab,
11:11 15 that's the lab number, that 138, yes.

16 Q Right, yes. So if we could then quickly call up
17 042511 and this is the exhibit report, remember we
18 talked about this yesterday, there's the
19 occurrence number for the (V1)- file and there's
11:11 20 the reference to the blue panties and as well the
21 blue checked cloth coat, so again that's, you
22 would have got those exhibits from the (V1)- file,
23 locker -- I don't know, whosoever locker in the
24 morality office?

11:12 25 A That's Cressman, yes.



1 Q So you would have gone -- you would have got from
2 Cressman's locker the (V1)- exhibits so you could
3 send them to the lab, or someone would have?

4 A Well, I would have prepared the instruction letter
11:12 5 and I don't know how that got transferred to
6 Regina to the crime lab. I may -- in all
7 likelihood I had nothing to do with the physical
8 contact with the exhibits, I simply prepared the
9 report for the investigators and somebody
11:12 10 delivered it directly to the crime lab.

11 Q Okay. Then if we can go to 324672, please, and
12 again this document, Mr. Penkala, is one that you
13 provided to us and which is not included in the
14 documents, the police file documents we have
11:13 15 received from other sources, and I note the
16 occurrence numbers on the top. Would that be a
17 possible explanation as to why this would not be
18 on the Gail Miller file?

19 A Yes, because I recognize those occurrence numbers
11:13 20 as being the two murder files -- or two rape
21 files.

22 Q Why did you save this document and the previous
23 one I showed you, why did you keep those
24 personally?

11:13 25 A I don't know how they -- other than the fact that



1 somehow they came to my attention. The one, I
2 authored it, so I would have kept a copy of that
3 because I authored it. This one would have come
4 back and I don't recall specifically, but
11:13 5 obviously it was of interest because there is a
6 connection to the Miller murder in --

7 Q And I'm talking -- oh, I'm sorry?

8 A In regards to making reference to the two, to the
9 Exhibit I which was the frozen samples that were
11:14 10 sent at an earlier date.

11 Q Should these have been, and the letter being what
12 you sent to the lab and this reply, should these
13 not have been put on the Gail Miller murder file
14 at the time?

11:14 15 A They should have been, but the mail system,
16 while -- you see, I obviously received copies
17 because they were in my possession as copies, so
18 there's a mail system that existed at the time and
19 that coordinator of the mail would have, and it
11:14 20 was usually Mr. Keelan, he would have known that
21 this has to be shared between a number of
22 different occurrences.

23 Q So in this case, if it's not -- let me rephrase
24 that. You certainly received a copy of this at
11:15 25 the time?



1 A Yeah, and I don't know how, I just -- obviously I
2 received it.

3 Q And we see the stamp here of the Saskatoon Police
4 Department, so it would have been received by you
11:15 5 through the police department?

6 A That stamp was not placed by me, it was placed by
7 somebody that sorts the mail.

8 Q Right. So if one copy came in at the time, was
9 there any way to copy incoming mail?

11:15 10 A I don't really know. I'm not sure when I received
11 this copy.

12 Q Let's --

13 A It appears to me that the copy was a photocopy, so
14 I don't know if we had photocopiers in '69 or not.

11:15 15 Q Yeah. I'm led to believe that there were not, but
16 I'm not sure. We'll maybe wait to see --

17 A Nor am I.

18 Q -- if someone can confirm that. Did the RCMP lab
19 reports come in duplicate or triplicate do you
11:16 20 remember?

21 A You know, I don't remember. I don't remember.

22 Q So if you would have received the only copy of
23 this document, for example, I'm not saying you
24 did, but if you did, what would have been your
11:16 25 practice as to what you would have done with this?



1 A Oh, I would have ensured that there was a copy
2 went down to the main file.

3 Q Okay.

4 A To the master file.

11:16 5 Q So you had mentioned --

6 A Well, actually I would have attempted to copy the
7 article for my own purpose if I required it,
8 otherwise that copy would have gone, that original
9 copy would have gone to the master file.

11:16 10 Q And I believe you said that what you have on your
11 personal file, the binders that you provided to us
12 a couple of months ago I think you said was a
13 photocopy, so is another possible explanation that
14 at some later point, in other words, after the
11:16 15 investigation, you had a copy obtained for your
16 own personal file?

17 A Yes.

18 Q That's a possibility as well?

19 A Absolutely.

11:17 20 Q And are you able to tell us what you think may
21 have been the source of the document that you
22 have, when and how you got it?

23 A Other than I have a physical copy of that thing, I
24 really can't tell you much more than that. It's
11:17 25 certainly information that would be vital to the



1 investigation that was going on at the time.

2 Q And the version of the document you have is not an
3 original document, but actually a photocopy; is
4 that correct?

11:17 5 A It's a photocopy, yes.

6 Q And I should add, Mr. Commissioner, Mr. Penkala
7 provided us with copies of all the documents and
8 that's what's in the database. He also has the
9 original books which Mr. Hardy and I have gone
11:17 10 through to identify what might be, what appears to
11 be photocopies and what not and obviously in due
12 course I think if those need to be inspected for
13 that purpose, we can arrange that. There is one
14 document I think that we did identify as being a
11:18 15 carbon copy as opposed to a photocopy that may be
16 the document that originated in '69, but when we
17 get to that I'll identify it.

18 So back on this document, these
19 are the results of the (V2)----- and (V1)- test.
11:18 20 Would you have discussed the results with other
21 officers or shared the information if you didn't
22 share the paper?

23 A Oh, more than likely, but, you know, I don't
24 recall at this time.

11:18 25 Q Would it have been your practice then -- I mean,



1 obviously you sent the reports in, or the samples
2 in to get some testing done and some results back
3 to find out whether there's a connection. Would
4 it be safe to assume that you would have shared
11:18 5 that information with other investigators?

6 A I think it needs to be explained that when the
7 direction is sent to the crime lab, generally the
8 response to the requested examination would go to
9 the specific file. In this case it was the two
11:19 10 rape files and I may never see those responses
11 because of the situation that I was in, I was in a
12 different area of responsibility, I wasn't in
13 charge of the investigation of the Miller murder
14 even though I had a lot to do with it and I had a
11:19 15 lot of interest in it, but I was not necessarily
16 privy to all the information that was coming
17 through.

18 Q But this report when it was received by the police
19 department would be directed to you; would it not,
11:20 20 initially?

21 A Not necessarily, although the handwriting on the
22 top is my handwriting. I had put those numbers up
23 there.

24 Q So for the record, OCC number 10173/68 and
11:20 25 10910/68, that's your handwriting?



1 A That's my handwriting.

2 Q So are you saying you may not have received this
3 back in April of 1969?

4 A I may not have received it that early, yes.

11:20 5 Q Or prior to the decision to charge David Milgaard,
6 did you receive it prior to then?

7 A That's a possibility, yes.

8 Q Well, I maybe don't follow. Let's just go back.
9 The letter you sent to Kerr is signed by you for
11:20 10 James Kettles, Chief of Police, the reply that
11 comes back is for the Chief of Police, so the RCMP
12 is sending back a reply to your letter to them?

13 A Yes.

14 Q Now, February 7th, '69 when you sent in the first
11:21 15 lab results, on March 12th you got a response,
16 right, and I take it you got that one?

17 A Yes.

18 Q And that was given to you when it came in?

19 A Yes.

11:21 20 Q Is there any reason to think that this reply was
21 also not given to you since you are the one who
22 made the request?

23 A Well, as I attempted to explain before, the
24 investigation was in the hands of the detective
11:21 25 division and I don't have specific knowledge of



1 what occurred other than that eventually I have a
2 copy and I identified the copy with the occurrence
3 numbers of the two rapes that occurred in 1968.
4 I'm afraid I can't add anything other to it and I
11:21 5 wasn't the person that would, without question,
6 receive all the copies returned from the crime
7 lab. They came to a central mailing sorter who I
8 believe was Mr. Keelan, he would open the mail,
9 all the mail and he would sort the mail, this
11:22 10 belongs to this office, this belongs to this
11 office, and things relative to the occurrences and
12 cases he would recognize and he would ensure that
13 the master copy was preserved for the master file.

14 **Q** So on this file, the occurrence number is not on
11:22 15 there, the names (V2)----- and (V1)- are. Are you
16 saying he may have checked and said okay, whoever
17 is in charge of (V1)- and (V2)-----, I will give
18 them the lab results?

19 **A** Yes, that would probably be the way he would deal
11:22 20 with it, yes.

21 **Q** When you sent in requests to the RCMP lab for
22 testing, were there ever occasions where the
23 response from the RCMP lab to your request would
24 go directly to the investigating officers first?

11:23 25 **A** Oh, yes, most of the time.



1 Q So if you sent in on a case please test to find
2 out whether the blood type and A, B and C,
3 etcetera, it happened that it would come back and
4 go directly to the officers without you knowing
11:23 5 about it?

6 A Yes, except that there was the kind of
7 communications that the coordinating officers
8 would know that there would be an interest and
9 they would obviously acquaint me with the results.

11:23 10 Q So let's take a look at this, and again we've
11 identified A is (V2)-----, B and C is (V1)-,
12 examined for the presence of human seminal fluid,
13 and it says human seminal fluid was found on A, B
14 and C, so if I'm to read that correct, the RCMP
11:24 15 said yes, there's human seminal fluid in the
16 vaginal smear from (V2)-----, it's also on (V1)-'s
17 blue panties and her plaid jacket; is that
18 correct?

19 A That's the way I understand it, yes.

11:24 20 Q Go to the next page, please, call out number 4,
21 conclusions -- is it agglutinogens, am I
22 pronouncing that right?

23 A You are asking the wrong person.

24 MR. ELSON: Agglutogens.

11:24 25 BY MR. HODSON:



1 Q Agglutogens. Why didn't you tell me that earlier,
2 Mr. Elson -- of type A were found in the stained
3 areas tested on B and C, and these are the (V1)-
4 garments, and am I correct in saying that the
11:24 5 semen on the (V1)- garments was consistent with a
6 donor who was an A secretor?

7 A That's the way I would interpret it, yes.

8 Q And it goes on to say, in fact, with reference to
9 paragraph 2, this indicates that some portions of
11:25 10 the stained areas were produced by a person of
11 group A, however, there is no way of knowing
12 whether this portion was the seminal fluid, blood,
13 or both, and then it talks about no attempt could
14 be made to determine the presence of agglutogen on
11:25 15 Exhibit A as a smear on slides does not provide
16 enough for the tests, and then they go on to say
17 that the above results would become more
18 significant, however, if it were known whether or
19 not (V1)--- (V1)- was a group A secretor. In
11:25 20 order to determine this, it is suggested that a
21 blood sample and saliva sample from this person be
22 submitted for examination. The saliva sample
23 could be best obtained by having Miss (V1)- chew
24 lightly on a piece of cloth, etcetera, dried and
11:25 25 return it. So I take it what they are saying



1 here, Mr. Penkala, that on the (V1)- garments
2 there is semen that contains A antigens and it
3 would be more helpful to confirm whether or not
4 (V1)- was an A secretor because if she was not an
11:26 5 A secretor, then likely the blood or the antigens
6 in the semen would be the perpetrator; is that
7 fair?

8 A I think that's a fair conclusion, yes.

9 Q And if (V1)- was an A secretor, you have a bit of
11:26 10 a problem because it could be her antigens in the
11 semen; is that a fair summary?

12 A That's consistent, yes.

13 Q So let's go to 004102, please, and this is a
14 police report dated April 15th, 1969. If we can
11:26 15 just go to the next page, please. Actually, we
16 can't see it on this copy. This is a report of
17 Bev Cressman, I'm not sure why, mine shows the
18 names on the bottom, it may have been cut off, but
19 this is a report by Bev Cressman, and if we can
11:27 20 just go back to the first page, please, and you'll
21 note that the report from the RCMP lab that I just
22 referred to was dated April 1, received by the
23 police on April 3rd, and this talks about
24 Cressman. Now, I believe Cressman was the officer
11:27 25 in charge of the (V1)- file if I'm not mistaken,



1 the (V1)- file?

2 A I don't know.

3 Q So I take it it's possible that the RCMP lab
4 report went straight to Cressman?

11:27 5 A That's not usually the way -- that's not usually
6 the process, although Cressman would obviously
7 need that copy.

8 Q What would be the process, I'm sorry?

9 A The process would go through the central mailing.

11:27 10 Q Right. And would central mailing give it to
11 Cressman?

12 A And then central mail would ensure that it got
13 attached to the appropriate file.

14 Q So it's possible that Cressman got the
11:28 15 (V1)-/(V2)----- lab results being the first, other
16 than the mailing room, the first police officer
17 who got that report?

18 A That's a possibility, yes.

19 Q And so here's his report, it's on the Miller
11:28 20 murder file, and he talks about going to the
21 (V1)--s' home and that I wished a saliva test and
22 a blood test from her. She agreed to this and was
23 transported to the police station, and then if we
24 could scroll down a bit further and it talks about
11:28 25 a saliva test was taken from Miss (V1)- as per



1 instructions from the crime lab in Regina,
2 etcetera, and stored in his locker. She was then
3 taken to the St. Paul's Hospital and a blood
4 sample was taken, and so it would appear then at
11:28 5 least on that date, that Cressman did what the
6 RCMP lab requested, go and get a blood and a
7 saliva sample from (V1)-; is that fair?

8 A Yes.

9 Q If you could then call up 105548, please.

11:29 10 A I just want to draw your attention to the fact
11 that Detective Sergeant Ray Mackie is mentioned in
12 the report, so that would indicate that there was
13 collaboration with Detective Sergeant Ray Mackie.

14 Q Okay, thank you for pointing that out. If we
11:29 15 could then call up 105548, please. So here we are
16 April 11th, 1969 and I was not able to locate a
17 letter going from the city police to the RCMP lab
18 with the items, but we'll see from this report,
19 again I think 286/69 is the file, the RCMP file
11:30 20 number from their April 1 report, okay. This one
21 comes back, though, and we see up here, it's got
22 641/69.

23 A That's my writing again and it is the file number
24 for the Miller murder.

11:30 25 Q Right. And we know from this letter here, E33,



1 that this is on the police files, it was on the
2 Gail Miller file.

3 A Okay.

4 Q So this one was on the Gail Miller file. Would
11:30 5 you have written that on there at the time then?

6 A I had written it at some point because I recognize
7 my own lettering or figures.

8 Q Sorry?

9 A I recognize the written portion, yes.

11:30 10 Q And again this is pretty much, at least from this
11 part, identical to the April 1 report in that it's
12 to the Chief of Police, it refers to (V2)----- and
13 (V1)-. Is there any reason you would have put the
14 Miller murder number on this one and the
11:31 15 (V1)-/(V2)----- file on the other report?

16 A Obviously there's a connection between these and
17 that's why I would have -- and it was deposited in
18 the Miller murder file, so that would be the
19 reason for that.

11:31 20 Q So if we go down, we see that the lab received D,
21 the blood sample, E, the saliva sample, which I
22 believe is (V1)--- (V1)-'s samples, and then
23 scroll down to number 4, the conclusion, Exhibit
24 D, one liquid blood sample was found to be of
11:31 25 group O. No agglutogens of blood groups A or B



1 were found in Exhibit B, the saliva sample. So I
2 take it from this that the conclusion is that the
3 semen sample from (V1)-'s clothing contained A
4 antigens and was identified to come from an
11:31 5 assailant who was an A secretor; is that fair?

6 A Yes.

7 Q And the test that we just looked at excluded the
8 fact that the blood or antigens in the semen
9 sample could have come from (V1)--- (V1)- because
11:32 10 she was blood type O; is that fair?

11 A Yes.

12 Q And that the (V2)----- smear was not sufficient to
13 allow you to test for whether or not the assailant
14 was an A secretor; is that fair?

11:32 15 A That's the way I read it, yes.

16 Q So as of this date -- and you would have got this
17 document, is that fair, April 11th, '69, that
18 would have come to your attention?

19 A Oh, yes, that was in my possession, there's no
11:32 20 question about that.

21 Q And can we conclude from that that at least on
22 that date you would have confirmed that comparing
23 the physical evidence in the Gail Miller murder,
24 namely, the semen associated with Gail Miller, the
11:32 25 frozen lumps of snow, if you were to compare that



1 with the physical evidence in the (V1)--- (V1)-
2 case, namely, the semen found on her clothing,
3 that a comparison of those two was consistent with
4 there being the same assailant, in other words,
11:33 5 both A secretors?

6 A Yes.

7 Q And I believe in the RCMP report we saw a
8 percentage, I think 32 percent of the people may
9 be A secretors. Do you recall seeing that in the
11:33 10 very first --

11 A My recollection of that is that 80 percent of the
12 population are A antigen grouping.

13 Q Right.

14 A And then there's a portion of that that are not
11:33 15 secretors and that's where the 32 percent I think
16 comes in as I recall the lab describing that.

17 Q And I'm not sure much turns today on the exact
18 percentage, but would it be fair to say that there
19 was a fair, a significant percentage, i.e., over
11:34 20 20 percent let's say, of the population that would
21 be A secretors?

22 A I'm not quite sure.

23 Q Well, my question is this, and I think you said
24 earlier when we started this morning that
11:34 25 identifying a sample and saying it's from a donor



1 who is an A secretor can only be used to
2 eliminate, not identify a suspect. Right, you
3 said that?

4 A Yes.

11:34 5 Q And then in identifying a suspect, I think the
6 reason you said you couldn't use it to identify a
7 suspect is because there is lots of A secretors
8 out there?

9 A That's right.

11:34 10 Q And my earlier question was to try and get a
11 percentage to that, and I thought the RCMP report
12 said that, doing some calculation, it was about 32
13 percent of the population were secretors. Let me
14 just find that.

11:35 15 A I think Dr. Emson also made some references to
16 those stats.

17 Q Let's call up 105542, please, and go to the next
18 page, and here's where the RCMP lab says
19 approximately 80 percent of the population comes
11:35 20 under this category. That means someone who
21 secretes their ABO blood groupings.

22 "As approximately 40 percent of the
23 population is group A and 80 percent of
24 these are secretors, about 32 percent of
11:35 25 the population would be secretors of



1 group A."

2 You see that?

3 A Yes.

4 Q So am I right in saying that when you've
11:35 5 identified that the assailant, based on the
6 physical evidence, of Gail Miller and (V1)---
7 (V1)- was an A secretor, you were narrowing it
8 down to approximately 32 percent of the
9 population. Is that a fair --

11:35 10 A That's the way I would understand it, yes.

11 Q Now, where did that evidence fit in, Mr. Penkala,
12 when you were looking in May of 1969 at David
13 Milgaard as a suspect in the Gail Miller murder?
14 How --

11:36 15 A This evidence that --

16 Q Yes.

17 A I was going to suggest, I'm not sure when I
18 received that report. The binder of reports that
19 I had was an accumulation of reports and I don't
11:36 20 know for sure if I can pinpoint when I received
21 it. I think you are suggesting that I received it
22 appropriately right after the examination and the
23 report was made and I don't know if I know that or
24 not.

11:36 25 Q Fair enough, and maybe I should have made that



1 clear. The April 11th, '69 report that confirmed
2 (V1)- was group O, are you able to tell us when
3 you either received the report or became aware of
4 that information?

11:37 5 A I can't pinpoint that, no.

6 Q Would that not be something you would want to
7 follow up on, sir?

8 A It would be if there was a direct involvement in
9 looking at the cases side by side which obviously
11:37 10 there's every indication that there was a
11 connection now and very much so that there was a
12 connection between the rapes and the Miller
13 murder.

14 Q Well, let me back up. You've told us on February
11:37 15 5, '69 you connected the two rapes with the murder
16 in some way in the report?

17 A Yes.

18 Q February 27th you actually went out and said look,
19 investigators, look for these items in the
11:37 20 (V1)-/(V2)----- rapes, they may help us on Gail
21 Miller because of the similarities?

22 A Yes.

23 Q We then know in April that physical evidence is
24 sent to the RCMP lab by you on the first occasion,
11:38 25 right, you signed the letter, so you would have



1 known that you were sending (V1)-/(V2)-----
2 materials to the lab?

3 A Right.

4 Q And you specifically asked them to compare any
11:38 5 stains or any physical evidence on the garments
6 with the frozen lumps of snow; right?

7 A Yes.

8 Q So at least we know you did that?

9 A Yes.

11:38 10 Q Would it not seem reasonable, Mr. Penkala, that
11 you would want to find out the answers to that, in
12 other words, you had drawn the connection, the
13 physical evidence was being sent to assist you in
14 this theory that they may be connected; is that
11:38 15 fair?

16 A Oh, yes.

17 Q Would it not be reasonable that you would seek out
18 and get that information if it wasn't sent
19 directly to your desk?

11:38 20 A Very much so, yes.

21 Q And so is it possible that -- let's go to mid May
22 and I'll be talking about this later -- in mid May
23 when there's a discussion of David Milgaard as a
24 suspect, are you suggesting that it's possible you
11:39 25 didn't know at that time that (V1)--- (V1)-'s



1 assailant was also likely an A secretor?

2 A I don't have any specific recollection, although
3 the documentation certainly suggests that there's
4 a connection there.

11:39 5 Q Let me put it this way -- I'm sorry?

6 A And as I said before, the responsibility for the
7 investigation of the Miller murder did not lay
8 solely with me, I played a part in it and mostly
9 requesting my services in various aspects of the
11:39 10 investigation, so there is a possibility for not
11 being informed, not receiving the documents
12 because the first, in the first instance that
13 information should go to the investigators.

14 Q We will get into a bit later today a meeting in
11:40 15 mid May with senior officers where I believe there
16 was a discussion, a fairly detailed discussion
17 about is Mr. Milgaard our suspect and if so --

18 A Yes.

19 Q The fork in the road, is that a fair way of
11:40 20 putting it, we either pursue him or we eliminate
21 him?

22 A Yes, and I have recollections of that.

23 Q And you were at that meeting with some senior
24 officers; is that fair?

11:40 25 A Yes.



1 Q Is it not -- in the course of that discussion
2 would there have been a discussion about the
3 related sexual assaults and about the fact that,
4 the similarities that you've identified?

11:40 5 A There's a document that identifies and summarizes
6 the issues that were -- I think it's the same
7 meeting that we're referring to and I don't have
8 that document before me, but there were a number
9 of different issues that were brought up at that
11:40 10 meeting and had been discussed and looked at.

11 Q And (V1)--- (V1)-'s name or the (V1)- file is on
12 there and I guess my point is this, Mr. Penkala,
13 if at that meeting you had not been aware of the
14 test results which confirmed that (V1)-'s attacker
11:41 15 was an A secretor, and I don't mean to overstate
16 that, I appreciate that the physical evidence
17 suggests that there's an A antigen in there, but I
18 think in your understanding that would mean the
19 perpetrator was an A secretor; correct?

11:41 20 A That makes sense, yes.

21 Q So at that meeting if you had gone in, and you
22 hadn't heard yet whether or not (V1)-'s attacker
23 was confirmed as an A secretor, would you not have
24 gone and checked that out and said hang on a
11:41 25 minute here, I had connected these two and I was



1 doing some physical tests in my capacity as the
2 ident lieutenant and I asked the lab six weeks ago
3 to tell me whether or not (V1)-'s attacker was an
4 A secretor, I haven't got that report yet, it
11:42 5 seems to me that you would have that, Mr. Penkala.

6 A That's logic, yes.

7 Q And can we leave it on this basis, you are saying,
8 number 1, you don't recall receiving the
9 information; is that what you are telling us?

11:42 10 A I don't recall, no.

11 Q And number 2, you are saying that we can't rely on
12 the fact that the systems in place would direct
13 the lab result reports to your desk because they
14 sometimes didn't?

11:42 15 A That's correct.

16 Q And third, you are saying but given all the
17 circumstances, you are prepared to say look, I
18 likely had it, I likely got it by mid May -- and I
19 don't want to put words in your mouth so you tell
11:42 20 me if I'm not --

21 A And that's right, I could have had it at that
22 particular time, I don't -- I just simply don't
23 recall. Unfortunately I didn't date it when I
24 received the copy.

11:43 25 Q But if you didn't have it in mid May, would you



1 not agree that it's something that you viewed as
2 important and you would have gone out and found
3 it?

4 A I would think so, yes.

11:43 5 Q I'll just now turn back to a couple of other items
6 of physical evidence. If we could call up 009244,
7 and this is March 19th, 1969, it's the Gail Miller
8 file and it's your letter again to the lab and we
9 see some new exhibit numbers here, L, the
11:44 10 handbag -- or coloured handbag with the Bank of
11 Montreal folder, snow boots, we now see the maroon
12 plastic knife handle and vacuum collection from
13 the black fur trimmed coat, Exhibit A, three
14 envelopes, and Exhibit A we know is Gail Miller's
11:44 15 coat; right?

16 A Yes.

17 Q And what you are asking the lab is:

18 "To conduct soft x-ray fingerprint
19 examinations of Exhibit L, the handbag,
11:46 20 the snow boots",

21 and it says:

22 "Developed impressions will require
23 elimination by our department."

24 What does that mean?

11:46 25 A We were searching, we wanted the articles checked



1 for fingerprints, and because of the nature of the
2 surfaces of particularly leather or plastic,
3 certain kinds of plastic, we asked the crime lab
4 to do a specific -- or a different, a special
11:46 5 examination, they call it an x-ray, x-ray
6 approach, and that's what, that's what this
7 request is, to examine these articles via the
8 x-ray method to see if there's any fingerprints on
9 them. And they are -- and the elimination, the
11:46 10 elimination, if fingerprints were found we would
11 have attempted to eliminate, because we would
12 suspect that the victim's fingerprints would be on
13 the article, --

14 Q I see.

11:47 15 A -- so we could do that locally as opposed to --

16 Q I see. And then you say, number 2:

17 "Physically match the knife handle with
18 Exhibit H, the knife blade",
19 which you had already sent in, correct:
11:47 20 "to establish that they were at one time
21 part of each other"?

22 A Yes.

23 Q And that was the knife handle found in Hounjet's
24 back yard?

11:47 25 A On my understanding, that's where it was found,



1 yes.

2 **Q** Did you search for fingerprints on the knife
3 handle?

4 **A** I didn't have anything to do with the knife
11:47 5 handle, I don't know if -- I don't think it was
6 turned over to me.

7 **Q** And so if -- Thor Kleiv may have been the one who
8 dealt with that?

9 **A** Yeah, I'm sure that whoever dealt with it would
11:47 10 have examined it for fingerprints. It obviously
11 lay in the snow and in the weather, the
12 possibility is not very positive to find
13 fingerprints under those circumstances, but I
14 don't know, I have no idea what happened there.

11:48 15 **Q** I'm sorry, does cold weather or snow erase
16 fingerprints or eliminate fingerprints?

17 **A** Umm, certain conditions do, yes.

18 **Q** Snow and cold?

19 **A** Umm, in some cases, yes.

11:48 20 **Q** And we'll deal with Mr. Kleiv about this, but
21 would it be standard practice to check that knife
22 handle for fingerprints?

23 **A** Oh yes, yes.

24 **Q** And then item 3, you are examining the vacuum
11:48 25 collection which you got from her coat to



1 establish foreign material which may be of
2 assistance to this investigation, and so, what,
3 you would have vacuumed stuff out of her coat; is
4 that --

11:48 5 A Yes, there is a special attachment with a filter
6 collection -- collector on it, and you vacuum the
7 garment for minute particles, and the idea being
8 that there may be something foreign there that can
9 later be associated with -- with something that
11:49 10 would lead to the perpetrator of the crime.

11 Q Okay. So if we could call up 105550, which is
12 part of 105549, and this appears to be at least
13 from the Chemistry Section April 18th, 1969; did
14 you get a copy of this?

11:49 15 A I, I would think so, yes.

16 Q And why do you say that?

17 A Umm, because it seems to be directly related to
18 the Miller, Miller murder.

19 Q And what would distinguish this report from the
11:49 20 earlier April 3 report or the April report on
21 (V1)-/(V2)----- that you said you may not have
22 received?

23 A Simply because it involved the morality section as
24 opposed to the detective section and the sorter,
11:50 25 the sorter, the mail sorter may have -- may have



1 not twigged on to the fact that it belongs in two
2 places, not in just one place.

3 Q What's the difference between a morality or
4 detective file for the mail sorter when they get a
11:50 5 lab report in? Are you suggesting that if it
6 relates to a detective file, you are likely to get
7 it, if it's a morality file you may not?

8 A Well, each department has its own assigned files,
9 --

11:50 10 Q Yes?

11 A -- so when, when correspondence comes in, one copy
12 goes directly to the master file and then there is
13 a decision made to separate it. And, come to
14 think of it now, the copies -- there were copies,
11:51 15 there were additional copies come from the lab --
16 they would be sent either to the detective
17 division or the morality division, or wherever,
18 wherever there is an indication that that
19 particular file is being coordinated and
11:51 20 investigated.

21 Q Okay. I'm sorry, did you say you now recall that
22 they were, that they did come in duplicate?

23 A It seems, now, that they did come, because there
24 was a, somewhat of a hard copy and then there was
11:51 25 a lighter kind of, in those days it was a kind of



1 an onion-skin copy that was less bulk.

2 Q Okay. So when the lab reports were received the
3 master copy or the original, if I can call it
4 that, would go to the master file in central
11:51 5 registry?

6 A Well that's, that was the intention, that would be
7 very closely guarded by the central records
8 coordinator.

9 Q And then the carbon copy or copies, --

11:51 10 A Yeah.

11 Q -- I still don't understand, Mr. Penkala, what the
12 difference would be as to why you would be more
13 likely to get the copy when you are working on a
14 detective file versus when you are working on a
11:52 15 morality file, and maybe I didn't understand your
16 evidence right?

17 A Well, let me see, how can I explain that. When an
18 occurrence happens and a report is left, there's
19 an initial assignment of that investigation either
11:52 20 to morality, detectives, traffic, maybe even to
21 patrol. The original copy stays in central
22 records as a master, as part of the master file,
23 and then each of those departments, or wherever
24 it's assigned, they have the responsibility to see
11:52 25 the investigation and conclusion of that matter



1 because it's fallen within their, within their
2 realm of responsibility.

3 Now if it, if there's an
4 association between two departments, well then
11:53 5 they would get together and collude and share
6 information, but if it was a matter that is
7 strictly detectives, chances are it would only
8 remain with the detectives, and there would be a
9 copy in central records under the master file.

11:53 10 So, so I think that's got to be
11 kept in mind. And of course it's, it doesn't
12 necessarily make the system foolproof, it's simply
13 the division of duties and responsibilities, but
14 it does create problems because one can have
11:53 15 information that the other is not aware of.

16 Q Okay. Let me give you this example, Mr. Penkala,
17 and maybe we can clear this up. Let's say on a
18 given day Detective Sergeant Ray Mackie, on a
19 murder file, says 'here is a sample of blood',
11:53 20 either you are working with him but somehow it
21 comes to you, 'that needs to be sent to the RCMP
22 lab to determine something about the blood', okay,
23 blood type for example; and on the same day
24 Officer Cressman is working on a rape file and he
11:54 25 comes to you and says 'here is a vial of blood, I



1 need you to check blood type', so you are working
2 on two completely unrelated files, both officers
3 want the blood checked, you send two letters to
4 the RCMP lab, one with the detective file number,
11:54 5 one with this file number. You send it, a week
6 later two separate reports come back reporting on
7 the blood type, and it's in this form to the chief
8 of police; tell me whether or not you are going to
9 get copies of both of those or whether there is a,
11:54 10 whether you are more likely to get the one you are
11 working on with Mackie or Cressman, or would both
12 copies go to you?

13 A No, I -- there is a possibility I wouldn't receive
14 either one, because those are assigned to
11:54 15 detectives or to morality, and I would receive
16 copies, because, for example, the detective
17 coordinator would say 'look, we've got to check
18 with ident. and see if there's anything more',
19 that's when it would come to ident. attention.

11:55 20 Q So let --

21 A I was the author on the submissions because that
22 was the policy they wished us to follow, so if an
23 investigator required an analysis he would come to
24 ident. and say 'I would like this prepared and
11:55 25 seek direction or provide direction to the lab so



1 that we can transport this exhibit to the lab for
2 these analyses'.

3 Q So do I understand this correctly that Mr. Keelan
4 or whoever -- and I'm talking 1969 --

11:55 5 A Yes.

6 Q -- when he received in the mail room each of these
7 two reports, one homicide, one rape, he would send
8 the copies to Mackie and Cressman, and Mackie and
9 Cressman would then decide whether or not you get
11:56 10 a copy?

11 A Yeah, I wouldn't necessarily be on his list of
12 distribution.

13 Q On Keelan's?

14 A That's right.

11:56 15 Q Okay.

16 A So any, any information that I would gain in
17 ident. would be on my own initiative, because I'm
18 involved or that it would be brought to my
19 attention simply because of the knowledge of the
11:56 20 involvement of the ident. section.

21 Q So there wasn't an automatic system in place to
22 ensure that you got lab results back when you sent
23 in requests?

24 A That's correct.

11:56 25 Q Okay.



1 A And I'm sorry that we got into this because I
2 should have explained that in the very beginning.

3 Q Yeah, no, and I think where we got into this, Mr.
4 Penkala, is when I asked you about this document
11:56 5 and you told me that you would have received that?

6 A Yeah.

7 Q And I asked you 'well why do you know you received
8 this one when you didn't receive the earlier
9 ones', so are we any --

11:56 10 A I --

11 Q -- closer to understanding why you would have got
12 this one and not the (V1)-/(V2)----- ones?

13 A I understand now, and that would be because of my
14 own initiative, I would have wanted to see this
11:57 15 and I would have made a point of ensuring that I
16 got a copy of it.

17 Q But would you not also wanted to have seen the
18 (V1)-/(V2)----- report?

19 A Oh, certainly, yeah.

11:57 20 Q So can we take it from that that, if you hadn't
21 received it directly, you would have sought it
22 out?

23 A Oh, for -- yes.

24 Q So if we can go back to this, we don't need to
11:57 25 spend too much time, but I take it you were trying



1 to identify some of the fibres in the coat; is
2 that fair?

3 A Yes.

4 Q And this just talked about some materials and soil
11:57 5 found in there, and I take it nothing ever became
6 of this, did it?

7 A Yeah, it's pretty standard type of materials that
8 they found in those vacuums.

9 Q Okay. If we could call up 105555, please. And
11:58 10 again, this is the Firearms Section, it's a
11 follow-up of their report, and if you could just
12 call up -- actually, go to the next page, please.
13 And they confirm that the knife handle was broken
14 from -- or the knife blade was broken from the
11:58 15 handle and no fingerprints could be found on the
16 handbag, the folder, and the boots; is that
17 correct?

18 A Yes.

19 Q If we could call up 019342, please, and this is a
11:58 20 report of yours, Mr. Penkala, April 7th dealing
21 with the wallet, and I just want to draw your
22 attention to that part. Do you recall getting the
23 wallet, I think it was from Ray Mackie found the
24 wallet?

11:59 25 A Yes.



1 Q And it says here:

2 "The exhibits were examined for
3 fingerprints without success, the
4 wallet, a course grain leather will be
11:59 5 forwarded to the laboratory for soft
6 x-ray fingerprint analysis".

7 Do you believe that was done?

8 A I believe it was.

9 Q And were fingerprints obtained from that wallet?

11:59 10 A No, I -- my understanding is there were no
11 fingerprints on it.

12 Q Mr. Commissioner, this might be an appropriate
13 spot to break for lunch, I'm moving to a different
14 area.

11:59 15 COMMISSIONER MacCALLUM: Okay.

16 (Adjourned at 11:59 a.m.)

17 (Reconvened at 1:30 p.m.)

18 BY MR. HODSON:

19 Q Good afternoon, Mr. Penkala. I would now like to
01:31 20 turn to when you and others started to have
21 dealings with David Milgaard in the course of the
22 investigation and do you remember, and again I'll
23 refer you to some documents, and I can certainly
24 go there now if you like, but just generally what
01:32 25 involvement you had directly with David Milgaard



1 in the investigation.

2 A At one point I was involved in obtaining saliva
3 samples from David while he was at the police
4 station and this was before he was arrested.

01:32 5 Q Do you recall having any other dealings with him?

6 A No. I was then, the second time I was involved
7 with him in person was when he was arrested and I
8 fingerprinted him. The policy is that people
9 charged with indictable offences are to be
01:32 10 fingerprinted and photographed and I was involved
11 in that process.

12 Q Okay. And I'll get to those documents in a bit.
13 If you could just call up document 106660, please,
14 and this is a report by, it says Morality Sergeant
01:33 15 Oleksyn. Was he the morality sergeant at the
16 time?

17 A Yes.

18 Q And it states here that he and Lieutenant Short
19 interviewed David Milgaard. I'm just wondering,
01:33 20 would that be unusual for a morality sergeant to
21 be interviewing a suspect in a murder case?

22 A Not necessarily. Generally there's dependence on
23 one another to assist in cases and whatever the
24 needs were, they obviously would call upon one
01:33 25 another to deal with it.



1 Q So if a detective thought that someone in morality
2 had some time and was maybe a person with a good
3 skill set, they could call on that person to
4 assist on some matter?

01:34 5 A That's right.

6 Q And were there any hard and fast rules that would
7 prevent -- did you need approval, did a detective
8 need approval to get a morality sergeant to assist
9 on a detective file?

01:34 10 A Not generally, but just out of courtesy you would
11 obviously contact the supervisor of the department
12 that you were seeking the assistance from.

13 Q And it appears from this report that Mr. Milgaard
14 agreed to give a sample of blood for grouping
01:34 15 purposes and would it be fair to say, and again
16 this is April 17th, would it be fair to say that
17 you were checking his blood type to compare it to
18 the lumps, the frozen lumps of snow and the
19 evidence you had with respect to the A antigens in
01:35 20 that?

21 A Yes.

22 Q And if you scroll down to the bottom, it says:

23 "At 11:00 p.m. I turned over the vile of
24 blood to Lieutenant Penkala for grouping
01:35 25 in the a.m. of April 18th, 1969."



1 And if we can go to 256195, please. This has got
2 some handwriting on it, but this is an April
3 18th, '69 report, Lieutenant Penkala, and just
4 call out that area, please, and this says:

01:35 5 "At 11:00 p.m. April 17/69 I received
6 one vial of blood from Detective
7 Oleksyn. The exhibit was sealed ... and
8 is alleged to be the blood sample from
9 David Milgaard."

01:35 10 Then:

11 "On April 18th, '69, I took this exhibit
12 to the Saskatoon Red Cross office at 4th
13 Avenue and 20th Street and had a portion
14 of the sample diluted and tested for the
01:36 15 blood group. Mrs. Charlotte Bertoia
16 conducted this test and established the
17 group as type A."

18 If I pause there, can I take it you did that, Mr.
19 Penkala?

01:36 20 A Yes. It should be deleted, not diluted, the
21 sample deleted and tested.

22 Q Oh, I see, okay.

23 A Yes, I was involved in that. Out of expediency we
24 went to the Red Cross for an immediate
01:36 25 confirmation of what the blood grouping would have



1 been.

2 COMMISSIONER MacCALLUM: What do you mean
3 deleted, sir?

4 A Deleted from the vessel in which the original
01:36 5 blood was --

6 COMMISSIONER MacCALLUM: Oh, okay. Thank
7 you.

8 BY MR. HODSON:

9 Q And then it goes on to say that you then retained
01:36 10 the blood to send it to the Crime Detection Lab
11 presumably to check for secretor status; is that
12 correct?

13 A To re-establish the grouping, to establish the
14 group.

01:37 15 Q What was the purpose of going to the Red Cross to
16 do it?

17 A To get an immediate grouping.

18 Q What if that had shown that Mr. Milgaard was blood
19 type B or O, what would you have done?

01:37 20 A In all likelihood that would have given us an
21 indication that maybe Mr. Milgaard was not
22 involved.

23 Q So then it says -- well, let me go a bit further
24 on that. Would you have eliminated him as a
01:37 25 suspect?



1 A Well, you would have to take the entire knowledge
2 of the case into account, but I would generally
3 say that if the, if the concerns were about the
4 blood grouping and reliance on the blood grouping,
01:38 5 yes, that would have eliminated David Milgaard.

6 Q So then you go:

7 "On April 18th, '69 at 10:45 a.m., I
8 obtained two saliva samples from David
9 Milgaard while he was in the detective
01:38 10 office in the presence of Detectives
11 Karst and Barrett. These saliva samples
12 will be forwarded to the Crime Detection
13 Lab for establishing the agglutinogens."

14 Have I got that right?

01:38 15 A Yes.

16 Q And I take it that if the blood type had been type
17 B or type O, would you have gone back to get a
18 saliva sample from Mr. Milgaard?

19 A It wouldn't have been necessary in my opinion.

01:38 20 Q So am I to take it from that or from your
21 statement or your evidence, Mr. Penkala, that the
22 grouping by the Red Cross of type A caused you to
23 go to Mr. Milgaard and get a saliva sample so you
24 could do the following step of testing for
01:39 25 secretor status?



1 A That's correct.

2 Q And if I could call up 325073, and that's from the
3 notebook, I don't propose to go through it because
4 I think it's, it reflects what's in the report,
01:39 5 but those would be your notes that you took on
6 that day about, I think it was with respect to the
7 blood and saliva samples?

8 A Yes.

9 Q If I can then call up 105585, please, and this,
01:39 10 you've seen this report before, this is the
11 exhibit and seized article record. That's your
12 signature; correct?

13 A Yes.

14 Q Bottom right. So this is Mr. Milgaard's blood
01:40 15 sample and his saliva sample and you've got
16 forwarded to Crime Detection Laboratory April 20th
17 via Ident Officer Grant; is that correct?

18 A That's correct.

19 Q If I could call up 105528, please, and when we get
01:40 20 to the second page you'll see that this is your
21 letter, Mr. Penkala, and it's got the Gail Miller
22 file number and the RCMP lab, 138/69 file number,
23 which I think corresponds to the Gail Miller lab
24 testing; correct?

01:40 25 A That's right.



1 Q And so this, you are sending, if we could just
2 call out this area, please, the black leather
3 wallet, which we've talked about, the victim's
4 sweater, and that's the one that Parker picked
01:41 5 out, right, or found in the snow?

6 A I believe that's right.

7 Q And the blue wool blanket, that's from the funeral
8 home which they had put over the body which I
9 presume you are checking for fibres?

01:41 10 A Comparison, yes.

11 Q And the blue wool toque I believe is from Helen
12 Gerse, a neighbour of the Cadraains; do you recall
13 that?

14 A Yes.

01:41 15 Q And then here we go to Exhibit T, U and V. T
16 would be the sample of blood (suspect) and I
17 believe that is David Milgaard; correct?

18 A Yes, it would be, yes.

01:41 19 Q And then the sample of saliva which is Exhibit U,
20 and there's two pieces of cloth, and Exhibit V,
21 the control sample of head hair (suspect), and
22 that would be David Milgaard's hair; correct?

23 A Yes.

01:41 24 Q And then purpose, again item 1 is to do an x-ray
25 exam on the wallet; number 2, to look at the



1 sweater and the blanket and compare it to previous
2 fibres, and go to the next page, please, 3,
3 examine the blue wool toque for the presence of
4 human blood and if present establish blood group.

01:42 5 Examine the exhibits for presence of human hair
6 for identification. This exhibit had been exposed
7 to climactic outdoor conditions. And I believe
8 this is the toque that we've heard evidence on
9 already that was found by Helen Gerse in I think
01:42 10 her front yard at some point, I think she said
11 after the murder, and turned over to Detective
12 Karst in early April, 1969. Does that sound --

13 A That's my recollection, yes.

14 Q And do you remember whether you inspected that
01:42 15 toque at all for blood?

16 A Did I inspect it?

17 Q Yes.

18 A I don't remember, but I submitted it to the lab
19 for the purposes of examining it for blood.

01:42 20 Q And then number 4, you say examine Exhibit T, the
21 blood sample, to establish, and again this is Mr.
22 Milgaard's, to establish ABO blood grouping in
23 connection with this file, particularly previous
24 Exhibit I, liquid sample, and that's the frozen
01:43 25 lumps of snow that you sent in previously;



1 correct?

2 A That would be it, yes.

3 Q And then you go on to ask examine U, saliva
4 sample, to establish ABO agglutinogens in
01:43 5 connection with this file, particularly previous
6 Exhibit I, liquid sample. One control sample of
7 cloth is being forwarded for test purposes if
8 required. And so I take it that is to check Mr.
9 Milgaard's saliva to see if he's a secretor?

01:43 10 A Yes.

11 Q And then 6, the head hair sample is forwarded for
12 identification or elimination purposes regarding
13 examinations in this file. So were you asking --
14 were you doing anything more than just saying
01:43 15 here's the head hair, save it and we'll check
16 later, or what were you asking there?

17 A Well, I believe that probably that was to
18 establish whether there was any comparison with
19 the hair that was found in the frozen substance
01:44 20 that was submitted earlier.

21 Q Okay. So now if we could call up 105553, please,
22 and this appears to be the reply to your April 21
23 letter. Now, I note, Mr. Penkala, that this is
24 now two days later that you get the report back
01:44 25 which is significantly shorter than the five weeks



1 of the first report. You would agree with that?

2 A Yes, that's true.

3 Q And was there some more urgency placed on this or
4 was it just that there was less to do at the lab
01:44 5 or are you able to help us out?

6 A I really wouldn't have any way of knowing.

7 Q Would there be occasions where you would call them
8 and say look, can you speed this up, we have a
9 suspect and we need to know?

01:44 10 A Oh, yes, yes, there would be -- they would
11 accommodate special requests, that could have
12 possibly happened.

13 Q And again we see the standard RCMP report and they
14 go through the exhibit numbers and again I think
01:45 15 the ones we're concerned with here, the blue
16 toque, David Milgaard's blood, David Milgaard's
17 saliva and David Milgaard's hair sample; correct?

18 A Yes.

19 Q And if we could then just leave page 1 up on the
01:45 20 left and go to page 2 on the right, please, and
21 then if we take a look at the conclusions, the
22 first one is Exhibit T, which is again David
23 Milgaard's blood sample, was found to be of group
24 A, and that confirms what the Red Cross found for
01:46 25 you; correct?



1 A Yes.

2 Q And second, human blood of indeterminate group was
3 found on Exhibit, the one blue toque; correct?

4 A Yes.

01:46 5 Q And I take it that the lab could not identify the
6 blood type on the toque. Is that what they mean
7 by indeterminate group?

8 A That's what I understood, yes.

9 Q And then no antigens of blood groups A or B were
01:46 10 found in Exhibits U1 or U2 which we see down here
11 are David Milgaard's saliva samples; correct?

12 A Right.

13 Q So am I to read this correct that in this test the
14 RCMP failed to find the A antigen in David
01:46 15 Milgaard's saliva sample?

16 A That's correct.

17 Q Now, does that, at that time did you understand
18 that to be that he was a non-secretor?

19 A That would be the conclusion, yes.

01:46 20 Q And I think you had earlier said that the frozen
21 lump of snow, the A secretor status was being used
22 to eliminate suspects. Was there any reason that
23 you did not eliminate David Milgaard at this time
24 due to the fact that this test showed that he was
01:47 25 blood group A but a non-secretor?



1 A My recollection of this incident and these
2 examinations was that there wasn't a specific
3 verifiable, positive response to the test for the
4 secretion from the saliva samples.

01:47 5 Q And where did you get that understanding from?

6 A I think that that probably came from Bruce
7 Paynter.

8 Q And so is what you are saying is despite the fact
9 that this test did not disclose antigens in Mr.
01:47 10 Milgaard's saliva, you felt that there was still a
11 possibility that he was a secretor?

12 A Well, I recall suggestions that if it was an
13 improper medium to get the saliva sample, it would
14 interfere with the test. I gather, if I recall
01:48 15 correctly, there was several suggestions that
16 suggested that the test was not a positive,
17 reliable test.

18 Q And who would have been involved in those
19 discussions?

01:48 20 A Well, presumably I was involved and I believe that
21 I probably spoke to Bruce Paynter directly,
22 probably by telephone.

23 Q And would you agree, sir, that if this test was
24 conclusive that David Milgaard was a non-secretor,
01:48 25 in other words, that you were satisfied based on



1 the tests that he was not a secretor, would that
2 have, in your mind, eliminated him as a suspect?

3 A Yes.

4 Q And so at this stage, and you tell me if I'm
01:49 5 summarizing this correctly, the test did not
6 establish that he was a secretor, but -- didn't
7 establish that he was a secretor, but didn't
8 establish that he was not a secretor either?

9 A That's the way it was observed, yes, or noted,
01:49 10 yes.

11 Q Did it occur to either you or Mr. Paynter or
12 people that you talked to that the test was done
13 correctly and that the result was correct?

14 A Well, unfortunately that's beyond my capability.
01:49 15 I have to depend on the technician at the lab to
16 do that and the results of -- and his statements
17 suggested that, you know, there's -- it's an
18 unreliable test.

19 Q Now, we had just previously gone through the (V1)-
01:49 20 test and I think we read where Bev Cressman had
21 heard you on I think the medium and sent it in.
22 Was it not the same type of thing as you did for
23 Mr. Milgaard as you did for --

24 A Basically the same.

01:50 25 Q Now, hers was blood type O?



1 A Yeah, that's true.

2 Q Did you decide to do another test then to verify
3 this?

4 A I don't think there was an occasion to do another
01:50 5 test. I don't recall a second opportunity to do a
6 test, a second test on David.

7 Q And I don't believe, at least I haven't seen it in
8 the documents, Mr. Penkala, where a follow-up test
9 was done, so from this point through until the
01:50 10 time that David Milgaard was convicted, what was
11 your understanding, in your words, as to whether
12 or not the frozen lump of snow that you found near
13 the body either implicated or exculpated David
14 Milgaard?

01:50 15 A My personal view was that he was not eliminated
16 from the possibility that the deposit in the snow
17 was, that he was connected with that.

18 Q And on what basis did you have that belief?

19 A Well, he was A group -- he was A group. While it
01:51 20 wasn't a positive indication that he was A
21 secretor, there was also a lack of support to
22 verify that he in fact could have been a secretor.

23 Q And are you aware, Mr. Penkala, that many years
24 later, I believe in the early 1990s, and we will
01:51 25 hear evidence on this, and I'm not sure if this is



1 in dispute, but that the RCMP did a test and found
2 that Mr. Milgaard was in fact an A secretor?

3 A Yes, I learned of that years later, yes.

4 Q In the 1990s?

01:52 5 A Yes.

6 Q Just back on why wasn't a further test done. Mr.
7 Milgaard wasn't arrested until June 2nd I believe,
8 this is April 23 or April 25.

9 A I would suggest that a possibility is that when he
01:52 10 voluntarily came and provided a blood sample and
11 that original sample of, for the secretor test,
12 that he was allowed to leave and when he left he
13 wasn't available to reconnect with him. Now, I'm
14 only surmising that, I don't know that for a fact.

01:52 15 Q Do you recall, you were present when -- or were
16 you present when David Milgaard was asked for his
17 blood and/or his saliva?

18 A He wasn't present when he provided the blood.

19 Q And were you present when he was asked for the
01:53 20 saliva sample?

21 A Yes, I did the test, I provided the filter paper
22 that was recommended and he chewed it for me and
23 then gave it up to me.

24 Q Do you recall telling him what it was you were
01:53 25 getting him to do this for?



1 A I'm sure I did. I don't -- he was very
2 co-operative. No, there was no reason to.

3 Q Would he have been told by you or others that this
4 was in connection with the murder of Gail Miller?

01:53 5 A Again, I don't know whether that discussion got
6 that specific between myself and him because
7 literally I was brought into the picture simply to
8 get the saliva samples and I think it was
9 Detective Karst and Barrett that were actually,
01:53 10 had brought him or -- I assume they invited him to
11 provide the sample.

12 Q So he would have been dealing with other officers?

13 A Yes, yes.

14 Q And so they may have had some discussions with
01:54 15 him?

16 A Yes.

17 Q And do you recall any discussions that you had
18 with him then?

19 A I don't recall anything other than the fact that I
01:54 20 requested, described what I wanted and he was
21 co-operative in all aspects.

22 Q Would you have said words to the effect that we
23 have semen near the body and we're testing to see
24 whether it matches your blood and saliva or words
01:54 25 to that effect, would you have been that specific?



1 A I have no recollection, but I don't think that I
2 would have brought that up.

3 Q And why not?

4 A Simply because of the kind of secondary role that
01:54 5 I played in that issue.

6 Q If we could call up 105558, please, and this is a
7 May 5, '69 lab report and it's again addressed to
8 the Saskatoon Chief of Police, it's got the Miller
9 murder file number, and here, we don't have a
01:55 10 transmittal, but here it says these exhibits were
11 received from Constable Dyck of the Regina police
12 on April 30th and it's a blood and saliva sample
13 of Ron Wilson. Were you aware that Mr. Wilson was
14 asked for a blood and saliva sample?

01:55 15 A At some point I did because I did learn that he
16 was of a different blood grouping than David and
17 the other person that was involved, Nichol John.

18 Q And do you know if Nichol John was asked for blood
19 and saliva?

01:55 20 A I don't know about whether she was asked, but I
21 believe that her blood grouping was known.

22 Q And why would the police be getting Ron Wilson's
23 blood type and saliva sample?

24 A Well, I would again surmise that it is because he
01:56 25 was in Saskatoon with David Milgaard at the time



1 of the Miller murder.

2 Q And so his blood group is group B, so would it
3 be -- would this cause -- or let me back up.

4 Sorry, Mr. Penkala. Do you recall whether or not
01:56 5 the police viewed Ron Wilson as a suspect to your
6 knowledge?

7 A Whether they --

8 Q Did you view Ron Wilson as a suspect in the murder
9 of Gail Miller?

01:56 10 A Well, I guess an associate of that group that
11 morning, it was David and Wilson and Nichol John,
12 I was aware of that. Whether we considered -- I
13 think basically the appropriate way to approach
14 this is that they were there and I suppose you
01:57 15 would call them suspects, but we were more
16 interested in establishing something to prove
17 their involvement if there was an involvement.

18 Q And so would this test be done then to either
19 eliminate or support Ron Wilson as a suspect then?

01:57 20 A I would suspect that that would be the purpose.

21 Q And did this test result, his blood group B,
22 eliminate him as a suspect if he was one?

23 A Well, it certainly could in some conditions of
24 that situation that existed. He certainly would
01:57 25 be eliminated from having deposited that exhibit



1 that was in the snow.

2 Q So that this would eliminate him as the donor, if
3 I can call it that, of the semen in the snow?

4 A Yes.

01:57 5 Q And do I take it from your answer then that that
6 didn't necessarily eliminate him from being
7 involved with, for example, David Milgaard and
8 Nichol John in the murder?

9 A I would think not, yes.

01:58 10 Q So you agree with that?

11 A Yes.

12 Q Now I want to go ahead to May of 1969 and I
13 believe, Mr. Penkala, that there was a meeting of
14 minds, if I can call it that, in mid May, 1969 to
01:58 15 review where the Gail Miller murder investigation
16 had gone to that date and where it might go into
17 the future; is that a fair characterization of the
18 meeting?

19 A Yes. There were a number of meetings, but there
01:58 20 was one in particular, I think May the 17th if I'm
21 correct.

22 Q Okay, of 1969?

23 A Yes.

24 Q And who do you recall being at the meeting?

02:01 25 A Well I recall Staff Sergeant Stan Edmondson, Jim



1 Riddell from the RCMP, Inspector Jim Riddell,
2 Superintendent Wood, I believe that Lieutenant
3 Short was there, umm --

4 Q Do you recall if Detective Sergeant Mackie was
5 there?

02:01

6 A Not at this stage, I don't recall, but I think
7 there is a letter which Inspector Riddell left and
8 he --

9 Q Yeah, what --

02:01

10 A And I would agree with the contents of that
11 letter, and he named --

12 Q 250609, please, and this is a report dated May 21,
13 1969. I can tell you that on the last page it's
14 signed by Inspector Riddell, and I believe this is
15 the report you were talking about earlier, Mr.
16 Penkala; is that right?

02:02

17 A Yes.

18 Q And maybe we'll just go through parts of this, I
19 don't know if we've covered this before, but
20 paragraph 1 -- and this is Riddell's -- who is the
21 Inspector, it's his report, it says:

02:02

22 "As a result of a request from the
23 Saskatoon City Police S/Sgt. Edmondson
24 and Cpl. Rasmussen of our Saskatoon
25 G.I.S. were detailed to provide

02:02



1 full-time assistance to that Force in
2 the investigation of the above offence.
3 These members worked very closely with
4 members of the Saskatoon City Police CID
02:02 5 and an outline of the assistance
6 provided and the results are contained
7 in report dated 7 May 69 submitted by
8 that Section."

9 And that's the report of Rasmussen that I
02:02 10 referred to earlier?

11 A Yes.

12 Q "In addition to the foregoing, I
13 personally spent the following days in
14 Saskatoon assisting with this
02:03 15 investigation: ...",

16 and it says:

17 "Investigation to date has failed to
18 reveal the person responsible or the
19 this offence."

02:03 20 And that's dated May 21, 1969. And, Mr. Penkala,
21 can you confirm that it appears from this that
22 Edmondson and Rasmussen were provided full-time
23 assistance to the Saskatoon Police force for at
24 least a part of the investigation; does that
02:03 25 accord with your recollection?



1 A I know that they were involved in assisting us,
2 yes.

3 Q And then if we can scroll down to paragraph 2:

02:03 4 "On 3 Apr 69 I personally met with the
5 Chief of the Saskatoon City Police and
6 advised him that this Force would be
7 withdrawing S/Sgt. Edmondson and Cpl.
8 Rasmussen from full-time assistance on
9 this investigation. The Chief was
02:03 10 advised that we would continue to
11 co-operate fully with his Force and we
12 would certainly continue to provide
13 assistance on a part-time basis. I
14 might state that Chief Kettles expressed
02:04 15 his appreciation to this Force for the
16 assistance received and he fully
17 realized that due to other commitments
18 we could not continue indefinitely to
19 provide full time assistance."

20 And, again, does that accord with your
21 recollection of when -- or do you have any reason
22 to doubt what Inspector Riddell --

23 A No, that's my understanding.

24 Q So here we get to the meeting, and he says:

02:04 25 "On 16 May 69 I attended a meeting at



1 the Saskatoon City Police office for the
2 purpose of reviewing this investigation
3 and deciding what further course of
4 action was open that would bring this
02:04 5 matter to a successful conclusion. Also
6 present at this meeting were Supt. J.
7 Wood, Lt. J. Penkala, Lt. C. Short ...
8 and S/Sgt. Edmondson ... Chief Kettles
9 was not present as he was required to
02:04 10 proceed to Moose Jaw on that date."

11 And so you would agree with who Inspector
12 Riddell, as to who he says was at this meeting?

13 A Yes.

14 Q And what prompted this meeting; can you tell me?

02:04 15 A I'm not certain what prompted this particular
16 meeting, but there were other meetings that had
17 occurred, and the prompting would have been to
18 acquaint each other with our knowledge of the case
19 and review the direction in which the
02:05 20 investigation should go.

21 Q But what was the purpose of this meeting?

22 A I would suggest that probably this meeting was
23 called by Inspector Riddell, by the sound of this,
24 but there were other meetings that were of similar
02:05 25 nature, as I recall, and didn't involve the RCMP.



1 Q And what do you recall the, just generally I mean,
2 what -- tell us what, what was the outline of what
3 was discussed and what was concluded at this
4 meeting?

02:05 5 A Well I don't have a, I don't have a direct
6 knowledge of it, nor did I make any notes of the
7 meeting other than just indicated that I had
8 attended a meeting, so I -- I really am not in a
9 position to, to identify the specifics of that
02:06 10 meeting, other than the fact that it was obviously
11 about the investigation.

12 Q What, was there a reason you didn't make notes in
13 your notebook of this meeting?

14 A No, no specific reasons. I guess an investigation
02:06 15 of this nature goes on and on, and it's a repeat
16 of information that you already know, and I
17 suppose because it's nothing new you don't make
18 notes.

19 Q Maybe we'll just go through and read Inspector
02:06 20 Riddell's comment here. Could you scroll down,
21 please. It says:

22 "After a great deal of discussion it was
23 agreed that David Milgaard could be
24 considered as the prime suspect in this
02:06 25 case and that further efforts should be



1 made to eliminate or implicate him in
2 this offence. From previous reports
3 submitted, it will be noted that
4 Milgaard plus one Ron Wilson and a girl
02:07 5 by the name of Nichol John were in
6 Saskatoon on the day the Miller girl was
7 murdered. These three people had driven
8 from Regina to Saskatoon arriving there
9 during the early hours of 31 Jan 69.
02:07 10 They apparently drove around the
11 immediate area where the murder took
12 place looking for the residence of one
13 Albert Cadrain. They arrived at
14 Cadrain's residence at approximately
02:07 15 9:00 AM on the morning of the murder.
16 Albert Cadrain lives at 330 Ave. O South
17 and the Miller girl lived at 130 Ave. O
18 South. Cadrain states that on the
19 morning Milgaard arrived at his house,
02:07 20 he recalls seeing blood on his clothing
21 and that Milgaard changed his clothing
22 at the house. The Miller girl's,
23 wallet, which had been missing for some
24 time, was located on 4 Apr 69 on the
02:07 25 boulevard next to the residence of



1 Albert Cadrain. It was obvious that
2 this wallet had been thrown there when
3 there was snow on the ground and was
4 discovered when the snow had melted.
02:08 5 Also found in that same area was a
6 two-toned bluish toque and examination
7 at our Laboratory indicates the presence
8 of human blood of an indeterminate
9 grouping. According to the girl Nichol
02:08 10 John, she recalls that Milgaard was
11 wearing a toque at some time during
12 their association. Both Ron Wilson and
13 Nichol John to this date maintain that
14 Milgaard was never out of their company
02:08 15 during that morning and therefore could
16 not be responsible for this offence.
17 These few facts are mentioned here to
18 indicate why Milgaard is considered a
19 prime suspect."

02:08 20 If I could pause there. Would that be a fair
21 summary, Mr. Penkala, of the evidence that you
22 had at the time that indicated Mr. Milgaard
23 should be a suspect or a prime suspect?

24 A Yes, that, that's consistent with, with the
02:08 25 general knowledge that I had concerning that



1 meeting.

2 Q And, when you went to that meeting, did you
3 consider David Milgaard to be the prime suspect?

4 A Yes.

02:08 5 Q And on what basis?

6 A Basically the same, the same identified issues
7 that are listed here.

8 Q So what Inspector Riddell indicates when he wrote
9 here, 'here's what we have to this date', that was
02:09 10 basically the same information that you had and
11 was the basis upon which you felt David Milgaard
12 was a prime suspect?

13 A Yes, and as I said before, I think -- I think
14 everybody present at that meeting was already
02:09 15 knowledgeable of those facts, and he obviously
16 summarized it and provided a report --

17 Q Okay.

18 A -- concluding --

19 Q But as far as the question of what you thought at
02:09 20 the time, and the basis of that thought, you are
21 saying what Riddell recorded is basically what you
22 thought at the time?

23 A Yes, yes.

24 Q And so paragraph 5 says:

02:09 25 "If Milgaard is, in fact, responsible,



1 it is felt that both Wilson and John
2 should have some knowledge of this
3 offence as they were with him that
4 morning. It is quite possible that
02:10 5 Wilson and John are not telling the
6 truth about their activities that
7 morning because they are implicated or
8 they fear Milgaard. Milgaard, of
9 course, has been questioned and denies
02:10 10 any knowledge of this offence and due to
11 his character and make-up, further
12 questioning has revealed nothing."

13 Now if I can pause there, would it be fair to say
14 at this time -- and again the May, I think it's
02:10 15 May 16th, '69 -- your view and the view of other
16 officers, was it the view of all the other
17 officers at that meeting that David Milgaard
18 should be considered a prime suspect?

19 A I would think so. You know, it's -- that's a
02:10 20 difficult question for me to answer, because a lot
21 of these issues that are being raised I was not
22 specifically involved, so --

23 Q Did anybody -- sorry?

24 A -- so I'm relying on what I heard from other
02:10 25 investigators and the likes of that, and I think



1 it's -- I need to make that clear; that my
2 decision was made on the basis of what I knew and
3 not necessarily from what I personally knew.

02:11 4 Q Fair enough. What you are saying is there was a
5 body of information gathered that might, might be
6 viewed as implicating David Milgaard?

7 A Right.

02:11 8 Q And you were privy to that information whether you
9 got it personally or from reading reports or from
10 other officers or wherever?

11 A Right.

12 Q And you relied on that body of information to say,
13 in your mind, 'I think David Milgaard is a prime
14 suspect'?

02:11 15 A That's correct, yes.

16 Q And my question is, at the meeting, did any of the
17 other officers who were there, Wood, Short,
18 Riddell or Edmondson, did any of them say 'lookit,
19 I don't think he is a prime suspect --'

02:11 20 A I --

21 Q -- or 'I have doubts'?

22 A I don't recall any different thinking at that
23 meeting at all.

02:12 24 Q And at that time, Mr. Penkala, would you agree
25 that neither Ron Wilson nor Nichol John had



1 provided the police with any, any evidence that
2 would be incriminating -- well, 'incriminating --
3 they did not give you any evidence that implicated
4 David Milgaard in the murder, did they, other than
02:12 5 maybe being in the area?

6 A Again, I don't believe there was, and I wasn't
7 involved in that aspect, but I don't believe there
8 was anything at that point. I think that one of
9 the reasons that this meeting was more or less put
02:12 10 together is to establish a means of trying to
11 verify some of these gaps within the
12 investigation. That's my perception of why this
13 meeting took place. And I know that prior to this
14 meeting, other meetings that we had, there were
02:12 15 questions that were raised, you know, questions of
16 a nature which, you know, 'we don't have
17 explanations from people that were with David that
18 morning'.

19 Q At this meeting, Mr. Penkala, was it a case where
02:13 20 you people went in and said 'lookit, we either
21 have to decide whether David Milgaard is a suspect
22 and if so pursue him, or if not eliminate him',
23 was it that, or was it a case of saying 'lookit,
24 he is a prime suspect, we've got to figure out
02:13 25 what we need to do to pursue it to, again, either



1 establish it or eliminate him'?

2 A I'm not sure if it was this meeting or some of the
3 other meetings we had, but that obviously took
4 place during the process.

02:13 5 Q And then, if you can just scroll down, and at this
6 time David Milgaard had been interviewed and had
7 denied any involvement; correct?

8 A Umm, I wasn't really aware of that aspect of the
9 investigation, but from the information that I had
02:14 10 privilege to see after, it appeared that initially
11 there was no information from Wilson.

12 Q And then Riddell says:

13 "The Saskatoon City Police will be
14 requestioning Ronald Wilson and Nichol
02:14 15 John to establish what knowledge they
16 have of this offence. They plan on
17 asking both subjects to submit
18 voluntarily to a 'lie detector test' to
19 ascertain if they are being completely
02:14 20 truthful as to their knowledge of this
21 matter. The Calgary City Police have a
22 polygraph machine and an operator and
23 the Saskatoon City Police have been in
24 contact with that Force and arrangements
02:14 25 have been made to have the operator come



1 to Saskatoon to conduct such tests
2 should Wilson and John consent."

3 So I take it at this point, either at the meeting
4 or prior, there had been a decision made to try
02:14 5 and get Wilson and John to submit to a polygraph?

6 A And that, that coincides with my general knowledge
7 of the investigation up to that point.

8 Q And they also talk about Calgary Police having a
9 machine and operator, and that the Saskatoon
02:15 10 Police Force have been in contact with that force,
11 so prior to this meeting did you understand that
12 arrangements had already been made to try and get
13 a polygraph fellow in?

14 A We don't, I don't know that for a fact, but I do
02:15 15 recall that that thinking was expressed at the
16 numerous meetings that we had up to this point.

17 Q So if we go back, and let's just talk about this
18 time frame, mid-May; where is the theory that the
19 perpetrator of the Gail Miller murder also
02:15 20 committed the rapes of (V1)- and (V2)-----? I
21 don't think that's mentioned in this report. What
22 was your thinking, at the time, as to how that fit
23 into the theory that David Milgaard was the prime
24 suspect?

02:16 25 A As it relates to the murder or --



1 Q Yes.

2 A -- to the rapes?

3 Q No, let me state that again. You had earlier told
4 us that you had a view or a theory that the
02:16 5 murderer of Gail Miller could have been the same
6 person who committed the (V1)- and (V2)-----
7 rapes --

8 A Yes.

9 Q -- based on the similarities and, in fact, took
02:16 10 steps to notify other police officers about the
11 similarities, had physical evidence tested, and I
12 think you have said -- and I don't know the exact
13 adjective you used, but it was strong or there was
14 some type of connection --

02:16 15 A Yeah.

16 Q -- that was significant; is that fair?

17 A Yes.

18 Q And so I'm trying to understand at what point, or
19 how did you justify that view with the view here
02:16 20 in mid-May when you have said 'lookit, David
21 Milgaard is a prime suspect or the prime suspect'?

22 A I, I don't know what happened to that tangent of
23 the investigation which dealt with the alleged
24 rapes or with the rapes that we had on file, but
02:17 25 the concentration seemed to go from the total



1 package to the specific murder of Gail Miller.

2 Q And that's what I want to explore a bit with you,
3 Mr. Penkala. So did anybody, at this meeting, say
4 'hang on a minute here, what about these rapes,
02:17 5 what about these similarities, how can it be David
6 Milgaard who committed this murder, he wasn't here
7 when these rapes took place', or 'he couldn't have
8 been the person who committed the rapes', or a
9 discussion of that nature; was there anything like
02:17 10 that?

11 A I'm sorry, I can't, I don't recall any of that
12 type of conversation, but it could have very well
13 taken place.

14 Q Given your views expressed in your February 5,
02:17 15 1969 letter to the RCMP Crime Index, your
16 investigation report of February 27th, 1969, what,
17 would it not be reasonable to think that you might
18 have said something at this meeting about the
19 rapes and how they might connect and how that
02:18 20 might fit in?

21 A Well I would suggest that that was all known, but
22 I don't have any recollection that during the
23 meeting this was dwelled upon, but I would be -- I
24 would be certain that the people would have known
02:18 25 of the previous connections between the rapes the



1 previous year and the attempt to connect it with
2 the murder of Gail Miller.

3 Q So you are telling us you think that knowledge and
4 information would have been on the table,
02:18 5 certainly in the minds of those people who were at
6 the meeting?

7 A Yes.

8 Q And in fact we're talking with, other than Chief
9 Kettles, we're talking the senior people; Wood,
02:19 10 Penkala, Short, Edmondson and Riddell?

11 A Yes.

12 Q Right? That's the top brass of both the RCMP and
13 the city police that were involved in this
14 investigation?

02:19 15 A Yes, and they would have obviously had to be aware
16 of all the circumstances up to that point.

17 Q Now I haven't found anything, or I haven't seen it
18 and I may have missed it, in the documents of the
19 police where they say David Milgaard -- either
02:19 20 'David Milgaard is a suspect in the
21 (V1)-/(V2)----- rapes' or 'he is not a suspect, he
22 could not have done them', and I'm just wondering
23 if it's a case of, let's go to May of 1969; was it
24 the view of the police that David Milgaard was not
02:19 25 a suspect in the (V1)-/(V2)----- rapes? And I



1 haven't seen anything that said he didn't -- he
2 wasn't in the city at the time, but I believe that
3 was the case, or was it a case that you weren't
4 sure and you thought he might have but you just
02:20 5 didn't pursue it?

6 A I, I suspect that the concentration was on the
7 Miller murder, and there may have well been some
8 examination establishing that David Milgaard
9 couldn't have possibly been responsible for the
02:20 10 rapes that happened the previous year, I don't
11 know that, because it wouldn't really have been in
12 my jurisdiction to be involved in those aspects of
13 it.

14 Q But it would seem that, if there was some evidence
02:20 15 to suggest that David Milgaard had committed the
16 (V1)-/(V2)----- rapes, that that would have been
17 pursued, and tried to identify where he was on
18 those days, things of that nature?

19 A That would have been the logical approach, yes.

02:20 20 Q And can I take it from, or can we take it from the
21 fact that there's nothing mentioned in here, that
22 Mr. Milgaard would have been eliminated as a
23 suspect in the (V1)-/(V2)----- rapes if he ever
24 was one, or are you not able to tell us?

02:21 25 A I'm not aware of seeing anything that specifically



1 eliminated him.

2 Q So if we assume for the moment that David Milgaard
3 is eliminated, is not a suspect in the
4 (V1)-/(V2)----- rapes for whatever reason, okay,
02:21 5 would it be fair to say that your -- the theory
6 that the same person committed the (V1)-/(V2)-----
7 rapes also killed Gail Miller because of the
8 similarities, then that would eliminate David
9 Milgaard as a suspect in the Gail Miller murder;
02:21 10 wouldn't it?

11 A Well that's difficult to answer, and I think we
12 dealt with that to some extent, and that was that
13 many of these rapes have a consistent similarity
14 to them. I recall discussing the knife. The
02:22 15 knife is a very common kind of a weapon or, or an
16 instrument that's useful in day-to-day life, and
17 so these things are -- the approach could have
18 been similar so, you know, simply because there is
19 a similarity I don't think that it's necessary to
02:22 20 believe that it's the same, it's the same
21 perpetrator.

22 Q So is what you are saying, there can't be
23 certainty?

24 A That's right.

02:22 25 Q Yeah. So let me try this again. The fact that,



1 if David Milgaard was eliminated as a suspect in
2 the (V1)-/(V2)----- rapes, would it be fair to say
3 that that would cause you some pause or some
4 concern in connecting him to the Gail Miller
02:22 5 murder simply because -- I'm not saying for
6 certain, I'm not saying it would eliminate him,
7 but it might cause you some doubt as to whether he
8 was a suspect or a proper suspect?

9 A Well if I was, if I was the -- if I was an
02:23 10 investigator of the case I would certainly
11 consider that, and of course my difficulty is that
12 my responsibilities didn't go that far, --

13 Q And --

14 A -- and basically the issues that have been covered
02:23 15 here, I'm somewhat on the circumference of all of
16 this, simply because of the position that I was in
17 and because of some involvement from the scene of
18 the Miller murder, --

19 Q But the invest --

02:23 20 A -- so I find it kind of difficult to provide you,
21 provide you a specific answer to questions as you
22 ask.

23 Q Fair enough. Now the investigator in charge, I
24 think you have told us, is Ray Mackie, and he is
02:23 25 not at this meeting, is he?



1 A Pardon me? No, he wasn't, apparently.

2 Q And was the purpose of this meeting, though, was a
3 high-level overview of where things were at and, I
4 think you said, what steps needed to be taken to
02:24 5 fill in the gaps?

6 A Yes, I said that, yes.

7 Q And so would this not be a meeting of senior
8 police officers to determine what steps should be
9 taken in the next while to pursue a prime suspect?

02:24 10 A I would -- yes, of course.

11 Q And I have used the words 'a prime suspect' and
12 'the prime suspect' and maybe there is a
13 difference. In your view at the time, sir, was
14 David Milgaard 'the prime suspect' or 'a prime
02:24 15 suspect'?

16 A I would say he was a suspect.

17 Q Were there any other suspects at that time?

18 A No, not to my knowledge.

19 Q So now let's go back, May of 1969, at this time.
02:25 20 And if you had -- and I take it, at that time,
21 were you aware of Larry Fisher?

22 A No.

23 Q If, at that time, there was information that
24 identified a suspect in the (V1)-/(V2)----- rapes,
02:25 25 it was not David Milgaard, someone else that was



1 there that was a prime suspect in the rapes of
2 (V1)- and (V2)-----; would that be a factor that
3 you would take into account in identifying a prime
4 suspect for the Miller murder?

02:25 5 A Well, again, if I had been the prime investigator,
6 it certainly would have been for me. I think
7 every investigator looks at these things through
8 his own eyes, through his own methods, and I don't
9 know if I can answer that question for you.

02:25 10 Q Well let's take off your hat as investigator,
11 let's put on your hat as Joe Penkala attending a
12 meeting with five senior officers on May 16th,
13 1969 to discuss the course of the investigation,
14 what gaps need to be filled in in the
02:26 15 investigation of David Milgaard, wearing that hat
16 at that level at that meeting; and then my
17 question is would that have been a factor, if
18 there had been a suspect for the sexual assaults
19 that had not been solved, that you had linked as
02:26 20 similar to the Gail Miller murder, my question is
21 would that have been a factor in you identifying a
22 prime suspect in the Miller murder? Not as lead
23 investigator but in the role you have described
24 you played at that meeting.

02:26 25 A Obviously if there was, if there was a suspect for



1 the rapes and in light of the similarities,
2 obviously there is two possibilities, even though,
3 even though in this case they were looking at
4 David Milgaard there was another, another suspect
02:26 5 out there.

6 Q And would the presence of another suspect for the
7 (V1)-/(V2)----- rapes lessen the attention you
8 might have paid to David Milgaard as a suspect in
9 the Gail Miller murder?

02:27 10 A Well I, I simply would suggest that if you had two
11 suspects, two different individuals, even at -- as
12 you, you consider a high-level meeting, that would
13 have come out, 'we have two people that are
14 suspects, not just one, we have two people, now
02:27 15 how are we going to deal with this, what do we
16 have in regards to this suspect, what do we have
17 in regards to the second suspect'. That's quite a
18 standard approach to investigating and
19 administering the investigation of a serious
02:27 20 crime.

21 Q If Larry Fisher would have walked into the police
22 station on May 15th, 1969 and said 'lookit, I
23 raped (V1)-/(V2)----- and I attempted to rape
24 (V3)-----', would you in any capacity, and would
02:28 25 the other investigators, have pursued him as a



1 suspect in the murder of Gail Miller?

2 A Absolutely.

3 Q And how would you rank the pursuit of him as a
4 suspect versus how you pursued David Milgaard as a
02:28 5 suspect at that time?

6 A I'm not, not so sure that it would be any
7 different, other than what sifted out of those
8 investigations. If Larry Fisher had come in and
9 admitted to the rapes, that would have put up a
02:28 10 signal that there is now a second suspect, if --
11 taking for granted that Milgaard was the first
12 suspect.

13 Q Yes.

14 A Now we have a second suspect, I'm sure that the
02:28 15 investigation and those people that were
16 controlling it would have said 'now we've got to
17 ascertain, factually, the circumstances so that we
18 can sort this out'.

19 Q Did the fact that, in mid-May, that there were no
02:29 20 other suspects play a role in how you pursued Mr.
21 Milgaard as a suspect?

22 A I'm not, I'm not certain --

23 Q Well let me try this again. Here we are 3 1/2
24 months after the murder and we have seen, and
02:29 25 certainly heard in this Inquiry, the number of



1 officers who were investigating, the number of
2 leads that were followed, and I think as of May
3 15th or May 16th, other than David Milgaard, would
4 it be fair to say that there was no one else, as
02:29 5 an identified person on the radar screen, as a
6 suspect for the Gail Miller murder; is that fair?

7 A That's right.

8 Q If we're talking about what's on the radar screen,
9 would you agree that there might be an
02:29 10 unidentified person on the radar screen, being the
11 person who committed the (V1)-/(V2)----- rapes,
12 except you didn't know who that was; is that fair?

13 A Yes.

14 Q So, other than those two, there was no one else on
02:30 15 the radar screen; correct?

16 A That's correct.

17 Q And my question is, is at that time was there some
18 concern or pressure or something that said
19 'lookit, we have got to, we've got to do something
02:30 20 here', and if you would have had -- and so my
21 question is did that influence how you pursued Mr.
22 Milgaard as a suspect, or was it how you pursue
23 any other suspect?

24 A Well I'm not, I'm not sure, I'm not sure how, how
02:30 25 that is to be answered, because generally a



1 suspect is a suspect, and you pursue the suspect
2 until you eliminate him or provide yourself with
3 sufficient evidence to, to charge that person.
4 You don't have a suspect in another case, that
02:31 5 doesn't necessarily mean that the circumstances
6 are of a nature that you need to, you need to
7 bring that other case in on one which is starting
8 to show some factual indication that this person
9 is responsible for this particular incident.

02:31 10 Q And if we look at, again, the factors that caused
11 you to think him to be a prime suspect, would they
12 be that he was in the vicinity of the murder that
13 morning, is that -- that's one; correct?

14 A Generalities, yes.

02:31 15 Q And, secondly, that Albert Cadrain had said he saw
16 blood on David Milgaard's clothing that morning;
17 correct?

18 A Yes.

19 Q And was there anything else that comes to mind as
02:31 20 to what caused you to consider him to be a prime
21 suspect?

22 A Well I think, generally, it was on the basis of
23 the information that was provided by Mr. Cadrain
24 of the circumstances; the time frame within which
02:32 25 Milgaard, Wilson and John were in the vicinity;



1 the fact that at one point Wilson and John made
2 statements which supported the circumstances that
3 were made that certainly put the three people at
4 the, at the point; and, of course, attempt to
02:32 5 connect them with the murder that occurred at that
6 location.

7 Q I'm sorry, you are referring to Wilson and John.
8 I'm talking about May 16th, at that time, and I
9 believe at that time, we can go to the statements
02:31 10 if you wish, I believe -- I mean, they were
11 certainly in Saskatoon and in the area because
12 they went to the Cadrain house. Was there
13 something more than that that caused you to --

14 A Well, there's my -- again, because I wasn't
02:31 15 involved specifically with those interviews, but I
16 was aware that Wilson and Nichol John had been
17 approached. I'm not fully acquainted with what
18 they learned from the initial responses, but I
19 think there was sufficient information that
02:31 20 suggested that they had been in Saskatoon and I
21 think it started to unravel from that point, and
22 when I mean unravel, that's when the decision was
23 made to attempt to verify the statements of Wilson
24 and John and I think they were eventually brought
02:32 25 to Saskatoon, but --



1 Q I'm sorry?

2 A Go ahead.

3 Q I think, Mr. Penkala, on May 16th, prior to that,
4 Ron Wilson, Nichol John had given statements that
02:32 5 yes, they were in Saskatoon that morning with
6 Milgaard, but their statements were to the effect
7 that he had not left their sight, in fact, it's
8 referred to in Riddell's report here, for more
9 than a couple of minutes, and so my understanding,
02:32 10 at least of what was in those statements at the
11 time, is that no, that they were saying, not
12 completely consistent, but between Nichol John,
13 Ron Wilson and Milgaard, that he was not away from
14 them to have committed the crime. In fact, in
02:32 15 paragraph 5, if we could call up 250610, please,
16 go to the next page, you'll see here both Ron
17 Wilson and Nichol John to this date maintain
18 Milgaard was never out of their company during
19 that morning and therefore could not be
02:33 20 responsible for this offence. So at that time
21 would you agree that Wilson and John were both
22 saying he was not out of our company to have
23 committed the offence?

24 A Well, again, I'm in a situation where I don't
02:33 25 think I can answer that. I think there's a



1 disbelief of these two witnesses, that would be my
2 perception.

3 Q That's fair enough, and that's exactly what I'm
4 asking you, Mr. Penkala, just to tell us what you
02:33 5 were thinking at the time, and I believe at the
6 time Wilson and John had given statements that
7 said, basically, Milgaard did not leave their
8 company and therefore could not be responsible for
9 this offence and David Milgaard said the same
02:34 10 thing. What caused you to, in light of that,
11 consider him to be a prime suspect?

12 A Because of the element of disbelief of these two
13 witnesses. That was the impression that was given
14 at that meeting. The report is actually that of
02:34 15 Inspector Riddell. He obviously believed that,
16 so, you know, I can only suggest that there was a
17 convincing, general attitude that this wasn't
18 finished and we had to pursue it to get some facts
19 one way or another.

02:34 20 Q Was it the view of those at this meeting, sir,
21 that Wilson and John and Milgaard were not telling
22 the truth when they gave their statements?

23 A I would suggest that that's, that was the general
24 consensus of that group.

02:35 25 Q And that is why you said let's bring them in,



1 Wilson and John, and do the lie detector test?

2 A That would be a logical aspect of that intention,
3 is to verify their statements, their initial
4 statements.

02:35 5 MR. HODSON: Mr. Commissioner, I know we're
6 sitting until 3:30, I'm wondering if this might
7 be -- if we're going to take a short break.

8 COMMISSIONER MacCALLUM: Yes, it is. 15
9 minutes, please.

02:35 10 *(Adjourned at 2:35 p.m.)*

11 *(Reconvened at 2:50 p.m.)*

12 BY MR. HODSON:

13 Q Mr. Penkala, I just want to call up portions of
14 your diary, and it's page 325057, please, and this
02:51 15 is May 15th and you'll see meeting re: Miller,
16 4:20 p.m. Do you see that?

17 A Yes.

18 Q And then as well if we could go to the next page,
19 please, it looks like there's another meeting,
02:51 20 Superintendent Wood office re: Miller, and that
21 16th coincides with the report in Inspector
22 Riddell's report; correct?

23 A That's correct.

24 Q And when I was asking you questions about the May
02:51 25 16th meeting, I take it there was a meeting the



1 day before as well on the Miller murder?

2 A It would appear it was the day before, yes.

3 Q Or two meetings; is that right?

4 A A meeting on the 16th and -- on the 15th and a
02:51 5 meeting on the 16th, yes.

6 Q So who would have been at the meeting on the 16th,
7 do you know?

8 A I don't know, I didn't note, other than the fact
9 that the meeting was scheduled for Superintendent
02:52 10 Wood's office and it was about the Miller case.

11 Q I have read somewhere along the way, Mr. Penkala,
12 a reference to the fact that at this meeting of
13 May 16th, 1969 referred to by Riddell, that
14 Superintendent Wood needed some convincing to be,
02:52 15 to the view that David Milgaard should be a prime
16 suspect. Do you recall Superintendent Wood
17 expressing concerns about David Milgaard as a
18 suspect?

19 A I don't recall it at that meeting, but I do recall
02:52 20 Superintendent Wood not being convinced that
21 Milgaard was responsible. It seems to me that in
22 my thinking that it was earlier than that meeting
23 of May the 16th and the reason for that is I have
24 recollections of Lieutenant Short and myself and I
02:53 25 think we were the only three people, including



1 Superintendent Wood, that discussed this and we
2 raised the things that we knew about the case and
3 while some of those issues were somewhat
4 coincidence, I think we persuaded him that it
02:53 5 needed to be looked at more closely.

6 COMMISSIONER MacCALLUM: Can you use the
7 names, please, who persuaded whom?

8 A Lieutenant Short and myself went in to see
9 Superintendent Wood and it was obvious that
02:53 10 Superintendent Wood was not convinced at that
11 stage that Milgaard and company were involved and
12 we went in and explained some of the circumstances
13 that were known and a lot of the issues that were
14 coincidence, and is it a coincidence that they
02:54 15 were at the scene at that particular time, items
16 of that nature which weren't resolved, and I think
17 at that point he had changed his mind and started
18 to look at this based on the facts that were
19 presented.

02:54 20 BY MR. HODSON:

21 Q And you think this meeting was prior to May 16th?

22 A I would suggest it was prior to May 16th, yes.

23 Q Would it be in, for example, the first two weeks
24 in May or are you able to help us out on that?

02:54 25 A My recollection is that Short and myself were



1 discussing it in the identification, which was
2 just across the hall, in the identification
3 section and we were brainstorming actually and
4 knowing that the superintendent wasn't exactly
02:55 5 convinced and it was right from that point, just a
6 random meeting, just walked in on him and
7 described our feelings and circumstances.

8 Q And you said you and short had to convince him, so
9 do I take it from that that you and --

02:55 10 A Well, I say we convinced him. I know that from
11 that point on there was a change in his directions
12 and his attitude towards the investigation as it
13 went on.

14 Q So I take it prior to this meeting Superintendent
02:55 15 Wood did not view, to your knowledge, David
16 Milgaard as a suspect?

17 A My recollection was that there had been some,
18 there had been some involvement with the Milgaard
19 group, I'll call them the Milgaard group, and the
02:56 20 word from that initial thing I think indicated to
21 him that that was the wrong direction to go.

22 Q Let me just pause there. So the indication from
23 Superintendent Wood was that he did not -- the
24 wrong direction to go, in other words, don't
02:56 25 pursue Milgaard, Wilson, John as possible suspects



1 or Milgaard as a suspect?

2 A Well, I don't think he said don't pursue it, but I
3 think in his mind, in his mind it seemed like he
4 wasn't prepared to accept the necessity to put
02:56 5 resources towards, in that direction.

6 Q So at that time Superintendent Wood was saying, or
7 had the view, at least according to your
8 understanding, that David Milgaard as a suspect
9 ought not to be pursued with police resources?

02:57 10 A Well, obviously there's a concern about the use of
11 resources to the greatest benefit and if you are
12 going to be chasing rainbows, you are not going to
13 fulfil your needs. I think that's what was meant
14 by that.

02:57 15 Q So that Superintendent Wood didn't feel that
16 further investigation work towards David Milgaard
17 was prudent at that time; is that a fair --

18 A That was my understanding, yes.

19 Q And that you and Lieutenant Short disagreed with
02:57 20 that; is that fair?

21 A Yes, and I think there were others too, but
22 superintendent -- or Inspector Short and I were
23 the ones that had been discussing it and I recall
24 that specific meeting in that we just simply, from
02:57 25 our conversation, we went right into his office



1 and laid out some of our thoughts.

2 Q Why did Superintendent Wood -- do you know what
3 caused him to think that the Milgaard angle should
4 not be pursued?

02:58 5 A I don't know.

6 Q And can you tell us what you and Inspector Short
7 would have told him to convince him to change his
8 view?

9 A Well, a lot of it was when we looked at the, what
02:58 10 was known, it was somewhat -- was it coincidental
11 that the Milgaard group were in Saskatoon at the
12 scene at approximately the time that the Miller
13 murder had occurred, issues of that nature, and I
14 think when those issues were all kind of put
02:58 15 together, it started to gel as now maybe there is
16 something to this.

17 Q Now, do you know where Ray Mackie fit into all of
18 this? Now, he was the detective sergeant in
19 charge.

02:59 20 A Yes.

21 Q Was he involved in these discussions?

22 A At times he was. You know, I don't know
23 specifically, but he was -- he and Lieutenant
24 Short would have had more to do with the hands-on
02:59 25 operation of the investigation.



1 Q Now, did you need, or did the force -- did
2 Superintendent Wood have to be on side with
3 respect to the pursuit of David Milgaard as a
4 suspect in order for that to happen?

02:59 5 A I would think so because someone would have had to
6 contact the Calgary Police Department, seek the
7 approval of that department to obtain the services
8 of the polygraph operator.

9 Q So just by way of, and we talked about the
03:00 10 organizational chart a couple of days ago, or
11 yesterday, about the chain of command, and I think
12 what you told us was, you know, detective
13 sergeants in charge of the file can sort of
14 co-ordinate the investigation, on occasion they
03:00 15 have to go to their superior, in that case
16 Lieutenant Short, and on occasion go up to
17 Superintendent Wood for approval to do certain
18 things. Is that fair?

19 A Yes.

03:00 20 Q And so routine investigation, for example,
21 bringing in a suspect and interrogating them,
22 Mackie didn't have to go to Short and Short didn't
23 have to go to Wood to do that did he?

24 A No.

03:00 25 Q And is what you are telling us that by this stage



1 of the investigation, be it early May, '69, that
2 at that stage, based upon Superintendent Wood's
3 views of Milgaard as a suspect, that whether it be
4 Mackie, Short, you or whoever, if the Saskatoon
03:01 5 Police Force was going to take the step of
6 pursuing Milgaard as a suspect, by bringing in Art
7 Roberts to polygraph Ron Wilson and Nichol John,
8 that you would have to get approval from
9 Superintendent Wood?

03:01 10 A That would be the normal course of action, yes.

11 Q And so if Superintendent Wood had not changed his
12 view, sir, then I take it Roberts would not have
13 been brought in to interview Wilson and John?

14 A That would be my view, yes.

03:01 15 Q Now, I'm going to call up a document, we have two
16 versions here, the first is 051284. Have I got
17 the right doc ID? Is this the one that we're
18 using for -- if you could maybe get the right --
19 I'm sorry, for the record, it's 006799, is that
03:02 20 right? And this is a five page document, Mr.
21 Penkala, that -- why don't we just go through the
22 pages. The first page -- and you are familiar
23 with this document?

24 A I've seen it before, yes.

03:02 25 Q And in fact you have a copy of this document in



1 your binders that you provided to us --

2 A Yes.

3 Q -- a couple of months ago. And we'll just go
4 through this quickly and then come back to some
03:02 5 points. So it talks about the (V1)- rape and then
6 it talks about the Miller file and has a number of
7 page numbers. Do you see that?

8 A Yes.

9 Q Do you know what the page numbers refer to?

03:02 10 A I don't know.

11 Q I think what we've been able to determine is that
12 the police reports were assembled in some fashion
13 and an officer numbered each page so that you
14 could identify where they are. Was that a
03:03 15 practice that existed at the time?

16 A Well, in some cases, yes, especially lengthy
17 investigations.

18 Q If we could go back to the full page, please, and
19 you'll see here statement 9, I believe each of the
03:03 20 statements was also numbered. Do you recall that
21 being a practice at the time?

22 A I don't recall that, but it doesn't surprise me.
23 This is a normal approach to this.

24 Q And if we could go through to the next page,
03:03 25 please, and you'll see this talks about Nichol



1 John, the Wilson blood groups, Albert Cadrain.
2 Next page, please. Statements of Aline, it should
3 be Celine, Sharon Williams, Wally and
4 Mrs. Danchuk. May 6, '69, Lieutenant Penkala, it
03:04 5 says contacted Paynter - crime lab. Paynter
6 cannot say saliva test for secreter was positive.
7 If cloth used for sample had soap in fiber it
8 would destroy ABO antigens. Do you recall that
9 discussion with Paynter?

03:04 10 A Yes.

11 Q And do I take it from that that on May 6th, '69
12 you would have talked to him about David
13 Milgaard's secretor test; is that fair?

14 A I would assume that that's what happened, yes.

03:04 15 Q And Paynter told you he can't say that it's
16 positive and he's saying that if the cloth had
17 soap, it could destroy the A antigen; is that
18 right?

19 A That's right, yes.

03:04 20 Q And then the next page, and again has some
21 comments there, and so there's a four page summary
22 I believe of police reports and statements, and
23 then can you go to the next page, please, and this
24 has got at the top summary and then a number of
03:05 25 points, which I'll go through, and then a



1 suggestion at the bottom, Nichol John, Wilson and
2 Cadrain be brought to Saskatoon with all present.
3 The true story can be obtained even if hypnosis or
4 polygraph are necessary. Do you recall seeing
03:05 5 this summary before?

6 A Yes.

7 Q And then the next page, please, is a drawing, and
8 is that your handwriting?

9 A That is my handwriting, yes.

03:05 10 Q Are you able to tell us what this document is that
11 I just went through, and I'll go through it in
12 detail, but --

13 A It's obviously a summarization of facts during the
14 investigation relative to the Miller murder and
03:06 15 then it's summarized in the final page and I think
16 this was on the back of the original, I'm not
17 sure, but my recollection is that it was pointed
18 out to me, at some point it was suggested that I
19 had put this summary together, and of course I
03:06 20 wasn't sure if I had or not because I was aware of
21 all the aspects of it and I'm convinced that I was
22 not the author of that, but on the back of it
23 somewhere during discussions, a diagram, a very
24 rough diagram was drawn and I recognized my
03:06 25 handwriting.



1 Q Just go back to the previous page, please, and I
2 think this is the summary that you said that you
3 did not prepare; is that right?

4 A I'm convinced now that I didn't prepare that.

03:07 5 COMMISSIONER MacCALLUM: Did not?

6 A Did not prepare it.

7 BY MR. HODSON:

8 Q And is this a document, being four pages, which
9 appear, and we'll go through them, but they appear
03:07 10 to summarize evidence relating to David Milgaard
11 as a possible suspect based on police reports and
12 statements, the first four pages. This page
13 appears to be a summary of thoughts, theories or
14 ideas; is that fair?

03:07 15 A That's right, yeah.

16 Q Would this document be something that you had, Mr.
17 Penkala, at or about the time of your mid May,
18 either the 15th or the 16th of May, '69 meeting?

19 A It could very well be. It would be along the
03:07 20 lines of what's in this summary, yes.

21 Q And it talks here about John, Wilson, Cadrain be
22 brought to Saskatoon for hypnosis or polygraph and
23 we know that on May 23rd, '69 Wilson and John were
24 interviewed by Roberts; correct?

03:08 25 A Yes.



1 Q So would it be fair to assume that this document
2 was prepared before Roberts was brought in, before
3 May 23rd?

4 A Yes, of course.

03:08 5 Q And then if we could just go back to the previous
6 page -- in fact, the one previous, please, page 3
7 of this, you'll see at the bottom May 6, '69, it
8 talks about your contact with Paynter, so would it
9 be fair to say that sometime between May 6th and
03:08 10 before May 23rd -- well, it would actually be
11 before that because this document talks about
12 contacting Roberts doesn't it?

13 A Yes.

14 Q And so would it be reasonable to conclude that it
03:09 15 may have been a document that was part of the mid
16 May, '69 meetings that you've talked about?

17 A I would suggest that it could very well be.

18 Q And I believe that we will hear evidence from
19 Detective Sergeant Ray Mackie that he prepared the
03:09 20 summary, if I can call it, the summary page, but
21 that he did not prepare the first four pages, but
22 that it may well have been put together by the
23 case preparation officer or someone else who may
24 have been asked to put together a summary of all
03:09 25 the evidence in the statements and investigation



1 reports to date. Does that sound like --

2 A That would not be an unusual approach.

3 Q And so let me outline what may have happened, and
4 again we'll be hearing evidence from other parties

03:09 5 on this, but I just want to get your take on it,

6 that Detective Sergeant Mackie would prepare the

7 summary outlining, based on his investigation to

8 date or what he knew of the matter, as some ideas

9 and theories, and I believe he will testify that

03:10 10 it was taken to Lieutenant Short and Lieutenant

11 Short in turn either took it to, it may have been

12 to the prosecutor, it may have been to others at

13 the time to discuss, but we'll hear that evidence

14 down the road, and that Lieutenant Short may have

03:10 15 asked someone to prepare a summary from the police

16 files that may be the first four pages. Does that

17 sound --

18 A That sounds like a reasonable approach, yes.

19 Q But do you have any personal knowledge of that?

03:10 20 A No, not really.

21 Q Now, this document was in your files. If we could

22 just call up 324874 and you'll see identification

23 copy at the top; correct?

24 A Yes.

03:11 25 Q And when I looked at the version of the document



1 you gave us, it appeared to be an original typed
2 carbon copy. Is that -- are you able to verify
3 that?

03:11 4 A That would have been -- carbons were used at that
5 time, yes.

6 Q And are you able to confirm that for us?

7 A Well, yes, I have my copy here.

03:11 8 Q I'm wondering, maybe what we'll do is this, when
9 we're adjourned for the day, when we come back on
10 Monday, if over the course of the weekend you
11 could take a look at it and just whether you are
12 able to verify it as being an original carbon, if
13 you are able to tell us, an original carbon copy.

14 A Yes.

03:11 15 Q Okay?

16 A Okay.

17 Q And so are you able to acknowledge that you would
18 have had this document in mid May, 1969?

03:12 19 A I don't know if I can give you a date, but that
20 sounds reasonable, yes.

21 Q So before Art Roberts was brought in, you would
22 have had this document?

23 A It's kind of obvious that that would have been the
24 case, yes.

03:12 25 Q And if we could just go -- and maybe for the



1 record we should be referring to the one doc ID
2 that we're using for this document, I'm sure this
3 document will be referred to by others, and it's
4 at 006799. Have I got that right? And if we just
03:12 5 start to go through this, Mr. Penkala, I think it
6 may identify what had existed on the files at the
7 time and you'll see here reference to the (V1)-
8 rape, the location, the description of the
9 assailant, 18 years, 5'2" tall, small, dark hair,
03:13 10 short at back and over face at front. Do you know
11 if that description at the time fit the
12 description of Mr. Milgaard?

13 A It could have I guess. I think he was younger,
14 but, you know, I think it could. He certainly had
03:13 15 dark hair, he was small, he may have been taller
16 than the 5'2" that's identified there, I'm not
17 positively sure, but it's close enough that it
18 could be a consideration.

19 Q And so, at this time, it identifies a couple of
03:15 20 things, and we've referred to this already with
21 other witnesses, that (V1)- was shown 19
22 photographs spread on a table from which she
23 picked Milgaard and another, and (V1)- of blood
24 group O, and (V1)- clothing revealed to crime
03:15 25 laboratory that her attacker was A group secretor.



1 So it appears at this time, at least in this
2 document, it confirmed that the police force knew
3 that (V1)-'s attacker was revealed to be an A
4 group secretor; is that fair?

03:15 5 A Yes.

6 Q And then if we could just scroll down here, and
7 these item numbers, these items I think are the
8 exhibit numbers, item I, to two lumps frozen in
9 snow under where body was found, identified as
03:16 10 sperm of A group blood secretor, contained pubic
11 hair of Gail Miller who was O blood group; item S,
12 blue wool toque found in the yard, found human
13 blood too minute to group; wallet found in the
14 snow in front of 326 Avenue O; and brown fibre
03:16 15 found on name pin of Gail Miller. So this appears
16 to be -- and please correct me if I'm wrong --
17 information from the police file that might be
18 considered in deciding whether or not David
19 Milgaard was a prime suspect; is that fair?

03:16 20 A I think it's fair, yes.

21 Q And then it goes on to talk about Mrs. Marie Indyk
22 in a statement 7:05 a.m. near Avenue O and 20th
23 Street and describes a woman running across the
24 street distressed, looked distressed, and a
03:16 25 description; Henry Diewold, the caretaker at St.



1 Mary's opening the church and seeing a car
2 headlights; do you recall looking at that
3 information?

03:17 4 A I remember, I remember being acquainted with it
5 before, yes.

6 Q And, in fact, was there not a theory at the time
7 that Mrs. Indyk may have seen Nichol John, or
8 that's what was thought, running from the car?

03:17 9 A Umm, that was the conclusion I came to with, with
10 the approach that I had to the circumstances, yes.

11 Q And why did you reach that conclusion?

12 A Umm, because of a statement that suggested that --
13 I'm not sure now, because this was, this was prior
14 to, prior to obtaining statements from Nichol
03:17 15 John, this?

16 Q Yes.

17 A Yeah.

18 Q Pardon me, she had given one statement I believe
19 on March 11th, 1969.

03:17 20 A Yeah, it was the latter, --

21 Q The other --

22 A -- the latter statement that tied in with this I
23 think.

24 Q Okay. So is what you are saying is after her May
03:18 25 24th statement you concluded that that's who



1 Mrs. Indyk saw?

2 A Yeah.

3 Q Is that correct?

4 A Well I, I'm not sure just where this information
03:18 5 came from, but when, when I look at the total
6 package, it was consistent with --

7 Q Okay?

8 A -- statements that were later obtained from Nichol
9 John.

03:18 10 Q And Henry Diewold saw a car in the intersection of
11 the T alley where the body was found; is that
12 right?

13 A Yes, I remember seeing that. I don't know what
14 investigator had established that.

03:18 15 Q Yes.

16 A But yes.

17 Q Did you reach the conclusion, at this time, that
18 that may have been the Milgaard vehicle in the
19 alleyway?

03:18 20 A Well at some point that's how it came together for
21 me, yes.

22 Q And then here, Simon Doell rides bus to work and
23 is certain Gail Miller caught bus at Avenue N and
24 20th, and do you recall how that fit in, if at
03:19 25 all, in --



1 A I'm not certain about that. I think it has
2 reference to the fact that Gail Miller was in the
3 habit of taking the bus and she would have caught
4 the bus at Avenue N and 20th Street.

03:19 5 Q Do you recall any discussion about why she would
6 catch the bus at Avenue N when she lived on Avenue
7 O and the Avenue O bus stop would be closer?

8 A Umm, no, I don't recall anything, but there would
9 be -- sometimes the bus doesn't stop at every
03:19 10 block, so that might have been the bus stop.

11 Q In this case, Mr. Penkala, we have heard evidence
12 that the bus did stop at Avenue O and Avenue N and
13 that -- do you recall any discussion with any of
14 the police at the time about trying to figure out
03:19 15 what bus stop Gail Miller would have been --

16 A No.

17 Q -- attending?

18 A No.

19 Q If we can go to the next page, please, we now have
03:20 20 Nichol John, and you will see the March 11th
21 statement, and we have reference here to coming to
22 Saskatoon January 31, it says:

23 "- Milgaard wore brown suede jacket with
24 lighter color knit cuffs, collar and
03:20 25 stripes on front.



1 - Dark color toque - which she has not
2 seen since."

3 And did you connect, I know on the previous page
4 we talked about brown fibre found on the name pin
03:20 5 of Gail Miller; did you put some significance on
6 the fact that there was brown fibre on the name
7 tag and the fact that Milgaard wore a brown suede
8 jacket?

9 A That was certainly a possibility, but I don't know
03:20 10 if we ever recovered a garment as described there.

11 Q I don't recall seeing that test being done, Mr.
12 Penkala, but my question is at the time, let's go
13 to May '69, mid-May '69 and looking at this
14 report; did you, in your mind, conclude that the
03:21 15 fact that there was fibre, brown fibre on Gail
16 Miller's name tag and Nichol John described
17 Milgaard as wearing a brown suede jacket with
18 coloured, lighter-coloured cuffs and collar, that
19 there might be a connection there that might
03:21 20 incriminate him?

21 A Yes.

22 Q You did?

23 A Yes.

24 Q So that that, would that be a factor, then, in
03:21 25 mid-May '69 as to why you thought David Milgaard



1 was a prime suspect?

2 A It would have been another element, yes.

3 Q And then it says here:

03:21 4 "- Dark coloured toque - which she has
5 not seen since."

6 How, if at all, did the toque fit into your
7 thinking on Mr. Milgaard as a suspect?

8 A Umm, again it's something that other investigators
9 had obviously unearthed, and I know that the toque
03:22 10 was eventually found in the vicinity of where
11 Cadrain lived, in that block.

12 Q Were you ever able to link that toque to David
13 Milgaard?

14 A I'm not aware that that was ever done.

03:22 15 Q And then, again, there is a reference to:

16 "- Admits Milgaard acted strange on AM,
17 January 31, 1969",

18 would that have been something that you took into
19 consideration?

03:22 20 A Well I think, again, that was something that was
21 garnered from investigators in their -- in their
22 statements or talking to people.

23 Q I appreciate that, but if we -- it's in this
24 document, and my question is is that something
03:22 25 that would have been a factor in you concluding



1 that David Milgaard should be considered a prime
2 suspect, the fact that one of his travelling
3 companions has told the police he acted strange
4 that morning?

03:23 5 A Well, yes, and what -- what I am aware of is that
6 when they arrived at Shorty Cadrain's house it's
7 reported that Milgaard had left the house and
8 taken off with the vehicle and was gone for a
9 short period of time and then returned, and then
03:23 10 later the car had some mechanical difficulties and
11 they ended up in a service station several blocks
12 away from the Cadrain residence, and I recall
13 seeing something to the effect that Milgaard can
14 -- insistently wanting to get into the vehicle
03:23 15 which was in the shop being repaired. Those are
16 some of the things that I recall from the --

17 Q And --

18 A -- general information that I was -- I had, I had
19 seen.

03:24 20 Q And would that cause you to be suspicious of his
21 behaviour?

22 A Well it's, again, it's another factor, it's
23 another factor that is consistent with a person
24 having a -- having some difficulties.

03:24 25 Q And explain how that would raise your level of



1 suspicion that Mr. Milgaard may have been the
2 killer of Gail Miller?

3 A Well I -- it's all, you know, did he have
4 something in the car that he wanted to get and get
03:24 5 rid of, you know, all of these things are all
6 possibilities. There was the incident that I
7 spoke of, he, as I recall he -- it wasn't his car,
8 but he took the car and drove it away from the
9 Cadrain household and then came back later, it's
03:25 10 odd that he would do that, what was his purpose in
11 doing that. And then later, in the service
12 station where they were getting the car repaired
13 he kept insisting on getting into the car and the
14 mechanics, they didn't want him there, and the
03:25 15 thought would cross your mind if he was so anxious
16 to get into his car what would be the purpose, is
17 there something in the car that he needed to get
18 to dispose of, whatever.

19 Q And so that was a piece of the puzzle, in your
03:25 20 mind, that raised your --

21 A Suspicions.

22 Q -- your suspicions?

23 A Yes.

24 Q And would you be thinking that this is something
03:25 25 that needs to be answered or are you thinking



1 'boy, this means he committed the murder'?

2 A No, I think what it does is it needs to be
3 investigated and some established fact be brought
4 into that aspect of it.

03:26 5 Q Then it says next:

6 "- Admits seeing nurse (looked like
7 nurse) near funeral home. Asked for
8 directions."

9 What do you recall about that statement from
03:26 10 John?

11 A I think that comes from the statement of Nichol
12 John.

13 Q Now when we looked at the March 11th, '69
14 statement, which I think was the only statement
03:26 15 she had given prior to the, yeah, prior to the May
16 24th, '69 statement, I don't believe there's any
17 mention in that statement by her about seeing a
18 nurse near a funeral home and asking directions,
19 and I'm wondering -- and I can bring up the
03:26 20 statement if you like -- but I'm wondering if you
21 recall whether this information may have come from
22 some other source, or do you remember discussing
23 this?

24 A No, I don't know. I do know that at some point
03:26 25 there was reference to identifying a person on the



1 street looked like a nurse. Because I wasn't
2 specifically involved I have only this general
3 kind of --

03:27 4 Q It was in the statements of Wilson and John May
5 23rd and 24th, and I believe it may have also been
6 in an earlier statement of David Milgaard about
7 stopping a person for directions. I don't know, I
8 stand to be corrected on that, I will check that
9 before Monday.

03:27 10 A I'm wondering whether this, this summary of facts,
11 is -- whether this summary of facts is
12 representing the time prior to March the 11th, or
13 of March the 11th, maybe it's for a later date.

03:27 14 Q I think, Mr. Penkala, that what, what the document
15 does is I think everything stated there is in the
16 March 11th statement of Nichol John, but I believe
17 the reference -- and maybe for Monday what I will
18 do is I will get those and call them up and show
19 them to you, but I guess for your purposes I was
03:28 20 just trying to find out if you know whether, let's
21 say mid-May 1969, whether there was any
22 information from Nichol John directly, indirectly,
23 in writing, verbally, that suggested she saw a
24 nurse, or looked like a nurse, near a funeral home
03:28 25 and asked directions. Do you know, do you recall



1 any of that?

2 A I --

3 Q Prior to --

03:28 4 A Only in a very general sense. Obviously, if that
5 information was obtained from Nichol John, there
6 should be some documentation and somebody attached
7 to that documentation that literally provided that
8 information.

9 Q Okay. Fair enough. The -- it goes on to say:

03:29 10 "- Nichol John wore purple parka with
11 brownish white fur trim on hood and on
12 bottom, slacks."

13 I don't know if there's any significance about
14 that, is there, about --

03:29 15 A It all seems to fall into the, kind of the same
16 category, and simply I was not specifically
17 involved, and I can't really say one way or
18 another.

19 Q And then Nichol John says:

03:29 20 "- Saw no blood on Milgaard's trousers
21 but admits he changed at 334 Avenue O
22 South, because they were ripped."

23 Do you recall discussing or being aware, in
24 mid-May '69, about Milgaard changing his pants at
03:29 25 Shorty Cadrain's house?



1 A I recall, I recall those facts being discussed,
2 yes.

3 Q And did that cause you to be more suspicious of
4 Mr. Milgaard as a suspect?

03:29 5 A Yes. Again, it's another element that --

6 Q Okay. And then, as well:

7 "- Wilson and Milgaard changed at
8 Wilson's home in Regina because of acid
9 ... information of Mrs. Wilson."

03:30 10 Is that something, where does that fit in, if
11 anywhere, in your thinking?

12 A Again, it's information that I learned sometime
13 during the process of this investigation, and I
14 can't put a time on it. There should be
03:30 15 documentation to connect it to an investigator and
16 probably a document.

17 Q And then it says here, in John's statement, it
18 says:

19 "- Says friend Barb Berard was told by
03:30 20 Milgaard that he was going to be picked up
21 for murder."

22 Do you recall that?

23 A I recall seeing that before but, again, it's the
24 same category, it's -- I'm not sure where or when.

03:30 25 Q So does something like that factor into your



1 thoughts about whether or not he may be a suspect
2 by what he may say to people about the matter?

3 A I would suggest that all those issues, subject to
4 being correct, would certainly indicate that
03:31 5 there's an involvement and that a closer look
6 needs to be taken.

7 Q So the fact -- so explain for me how this last
8 point that I have circled with Milgaard saying to
9 Barb Berard that he was going to be picked up for
03:31 10 murder; how would that cause you to be more
11 suspicious of him?

12 A Well I think it refers to their trip that they
13 took to Calgary and Edmonton, and some of the
14 activities that took place, and I recall seeing,
03:31 15 seeing information that suggested that these
16 things occurred and happened, but I -- it's not of
17 my own.

18 Q No, I appreciate that, Mr. Penkala. What I am
19 getting at here is what's -- you reached the
03:32 20 conclusion in mid-May, you told us, that David
21 Milgaard was a prime suspect based on information
22 gathered by others. This document, you have told
23 us, you think would have been prepared at or
24 around that time, and that you may have had it or
03:32 25 reviewed it, and it may be a summary of all of the



1 evidence relating to David Milgaard; is that fair?

2 A Well, you know, there is a possibility that, that
3 this portion is for a later date, and the summary
4 that was attached to this, as I understand it,
03:32 5 maybe it was the summary that, that initially was
6 used, and I'm wondering whether this information
7 may have been the preparation for, for presenting
8 to the prosecutor.

9 Q And it may well be, Mr. Penkala. The only, I
03:33 10 guess, comment would be there is no reference to
11 the May 24th statement of Nichol John where she is
12 reported to say she saw David Milgaard stab her,
13 and so I'm not -- I'm just saying that that, that
14 there has been some suggestion that this was
03:33 15 before the May 24th meeting, but again I --

16 A And I would be only guessing at, at, at the
17 conclusions that I am making on this, because I
18 wasn't directly involved in --

19 Q I think --

03:33 20 A -- in all these issues, except that I am familiar
21 with all these things and somewhere along the
22 line, through the breadth of the entire
23 investigation, these things did occur.

24 Q This -- it's 3:30, Mr. Commissioner, which I think
03:33 25 is our breaking time, so I think we can adjourn



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until Monday at 1:00.

COMMISSIONER MacCALLUM: See you on Monday
then.

(Adjourned at 3:34 p.m.)



OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATES :

We, Karen Hinz, CSR, and Donald G. Meyer, RPR, CSR,
Official Queen's Bench Court Reporters for the Province of
Saskatchewan, hereby certify that the foregoing pages
contain a true and correct transcription of our shorthand
notes taken herein to the best of our knowledge, skill,
and ability.

-----, CSR

Karen Hinz, CSR

Official Queen's Bench Court Reporter

-----, RPR, CSR

Donald G. Meyer, RPR, CSR

Official Queen's Bench Court Reporter



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