

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
Sheraton Cavalier Hotel at
Saskatoon, Saskatchewan

On Thursday, September 15th, 2005

Volume 71

Inquiry Proceedings



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Transcript of Proceedings

(Reconvened at 9:00 a.m.)

COMMISSIONER MacCALLUM: Good morning.

ALL COUNSEL: Morning.

MR. HODSON: Morning, Mr. Commissioner. We have two witnesses today. The first is Bruce Lafreniere. Come up to the witness stand, please.

BRUCE CHARLES LAFRENIERE, sworn:

BY MR. HODSON:

Q Good morning, Mr. Lafreniere.

A Morning.

Q Thank you for appearing before this Commission. I understand that you are 55 years of age; is that correct?

A That is correct.

Q And reside outside of Saskatoon; is that correct?

A Yes.

Q And I understand that you grew up in North Battleford and went to school with Larry Fisher; is that correct?

A Yes.

Q And, as well, with a fellow by the name of Arnold Poitras, P-O-I-T-R-A-S?

A That's correct.



1 Q And did you know Linda Fisher growing up?

2 A Very casually.

3 Q And I understand, did you become aware at some
4 time in 1969-1970 of the Gail Miller murder and
09:03 5 David Milgaard's conviction of that murder?

6 A Pretty much everyone in Saskatchewan knew that,
7 yes.

8 Q And so that was something you would have been
9 aware of at the time through the media?

09:03 10 A Yes.

11 Q And back at that time, and again the late '60s, do
12 you -- did you encounter Larry Fisher? Did you
13 know him at that time?

14 A Well I knew him prior to that, and yes, I met him
09:04 15 sometime in the '60s in front of the Hudson's Bay
16 downtown.

17 Q In Saskatoon?

18 A That's correct.

19 Q And is there something that stands out from that
09:04 20 encounter?

21 A Umm, he gave me a really odd feeling. He looked,
22 he didn't look like when I knew him in high
23 school, he was very -- I don't know, he just
24 looked different and gave me a very creepy
09:04 25 feeling.



1 Q Yeah. Did you become aware, in the years after,
2 that Mr. Fisher had been convicted of crimes both
3 in Saskatchewan and in Manitoba?

4 A Yes. I remember there was a rape in North
09:04 5 Battleford of an elderly woman that he was
6 convicted of, and I believe he cut her throat at
7 the same time.

8 Q I believe that was in 1980. And (V10) (V10)-,
9 does that name sound familiar, or do you recall
09:04 10 the --

11 A I don't recall the name.

12 Q And so at that time would you have been aware --
13 were you living in North Battleford at that time;
14 do you remember?

09:05 15 A Umm, I believe I was, yes.

16 Q And so you would have been aware of Mr. Fisher's
17 conviction of that crime; is that correct?

18 A Yes.

19 Q Were you aware of previous convictions of Mr.
09:05 20 Fisher at that time?

21 A I don't know if it was that time, but some --
22 there was a period when I did become aware of
23 other convictions that he had been sent away for.

24 Q Okay. I understand that at some point, sir, you
09:05 25 had an occasion to discuss Mr. Fisher with Arnold



1 Poitras or Poitras; is that correct?

2 A That's correct.

3 Q And can you tell us about that?

4 A Umm, I'm not remembering the -- I can't remember
09:05 5 the exact date. The conversation went somewhat
6 that he told me that someone had told him that his
7 wife, at the time the -- when Gail Miller was
8 murdered, that he came home, changed his clothes,
9 he had blood on his clothes, and went back to work
09:05 10 again.

11 Q Okay. So let's just back up. So Arnold told you
12 that he had heard, from someone else, this
13 information?

14 A That's correct.

09:06 15 Q And did he tell you who he had heard this from?

16 A If I remember correctly it was his sister-in-law.

17 Q And was that Doris Poitras?

18 A Yes.

19 Q And so Arnold told you that he heard from Doris,
09:06 20 and Doris had heard from Linda Fisher, is that
21 correct?

22 A That's correct.

23 Q So the information you received from Arnold
24 Poitras, you believe, originated with Linda
09:06 25 Fisher; is that correct?



1 A Yes.

2 Q And tell us again that Linda Fisher had said what,
3 through Doris, to Arnold, to you?

4 A That Larry had gone to work, came home, changed
09:06 5 his clothes because he had blood on them, and then
6 went back to work.

7 Q And is there anything else that you recall Arnold
8 Poitras telling you?

9 A Umm, no.

09:06 10 Q And do you remember, time-wise, when this would --
11 when this discussion would have been with
12 Mr. Poitras, year?

13 A I believe it was in the early/mid-'80s.

14 Q Okay. Do you remember where it took place?

09:07 15 A I think, I'm not sure, I think it might have been
16 at the Beaver Hotel in North Battleford but I'm
17 not, I couldn't be certain exactly.

18 Q And at the time that you had this discussion with
19 Mr. Poitras would you have been aware, at that
09:07 20 time, of the fact that Mr. Fisher was in jail for
21 the assault on (V10) (V10)-?

22 A Yes.

23 Q And when you heard this information tell us what
24 went through your mind?

09:07 25 A Well I asked him if he told anybody.



1 Q And what did he say?

2 A He said he hadn't, and I said "well somebody has
3 got to tell somebody".

4 Q Okay. And why did you tell him that?

09:07 5 A Well obviously, if there was an innocent person in
6 jail, somebody had to be told.

7 Q Okay. At that time did you, in your mind, either
8 draw a conclusion or at least suspect that Mr.
9 Fisher may have been responsible for Gail Miller's
09:07 10 murder?

11 A Well at that time it seemed kind of obvious that,
12 if he was already in jail for the, almost the same
13 type of crime, that yeah, it seemed like a normal
14 conclusion.

09:08 15 Q Had you been aware at that time, Mr. Lafreniere,
16 whether -- aware of efforts by Mr. Milgaard in the
17 media disputing his conviction or professing his
18 innocence for the crime; were you aware of any of
19 that?

09:08 20 A I couldn't tell you for sure.

21 Q Okay. So then after you had this information from
22 Mr. Poitras what did you do, what did you do with
23 this information?

24 A Umm, I went to -- I happened to be working up in
09:08 25 Shellbrook and I went to the RCMP in Shellbrook,



1 told them what I had heard, and left it at that.

2 Q And when you went in to the RCMP, how long after
3 your discussion with Mr. Poitras would that have
4 been, approximately?

09:08 5 A I don't know. I might have thought about it for a
6 week or so, but I think, pretty much the first
7 opportunity I got, I told who I thought would be
8 appropriate.

9 Q And what caused you to go in to the Shellbrook
09:09 10 RCMP?

11 A Well I worked there at the time and it was, it was
12 convenient, and I also knew the officer there
13 somewhat through work because of our safety
14 liaison with our company and the RCMP.

09:09 15 Q And who was the officer that you knew at the
16 Shellbrook detachment?

17 A It would have been Simington.

18 Q Would that have been Bill Simington?

19 A I couldn't tell you his first name.

09:09 20 Q And prior to going in to the detachment you had
21 met Mr. Simington before; is that correct?

22 A Yes, he -- through work, some of our safety
23 meetings, yeah.

24 Q And so tell us, or tell us what you recall of your
09:09 25 meeting with the RCMP?



1 A Umm, I had just got in there, I asked to speak
2 with him, told him that I had some information
3 that might be important. I told him what I had
4 heard, I can't remember if he took any notes, and
09:10 5 that was pretty much it.

6 Q And so you would have told -- did you tell him
7 where you got the information from, for example,
8 Arnold Poitras?

9 A Yeah, I believe I must have, I -- like we're
09:10 10 talking several decades ago so --

11 Q Right. Any reason you wouldn't have told him
12 everything that Arnold Poitras told you?

13 A No, I would have told him exactly what I heard.

14 Q And, again, would you have told him that it
09:10 15 related to the Gail Miller murder?

16 A Yes.

17 Q And do you think you would have mentioned the name
18 David Milgaard in that discussion?

19 A Yes.

09:10 20 Q And at that time, when you went in, again -- and
21 you may have answered this already -- did you have
22 a view, at that time, as to whether or not Mr.
23 Fisher either was or may have been responsible for
24 the death of Gail Miller?

09:10 25 A Well I thought that there was a definite



1 possibility that he was responsible, yes.

2 Q And is that what prompted you to go in to the
3 police?

4 A Absolutely.

09:10 5 Q And then how did you leave it with Mr. Simington?

6 A I just assumed that he would follow up on it and
7 the correct action would be taken.

8 Q Now there is a date in some of the documents that
9 suggests that encounter took place in 1986; are
09:11 10 you able to --

11 A I --

12 Q -- agree with that or are you --

13 A I would think that was somewhat close, yes. I
14 can't give you an exact time or date.

09:11 15 Q And then I understand at a later point you had
16 occasion to talk to Mr. Hersh Wolch, legal counsel
17 for Mr. David Milgaard; is that correct?

18 A Yes. That would have been in, I think, 1990.

19 Q Okay. And then tell us about that, please?

09:11 20 A I had heard through the news media that
21 Mrs. Milgaard was looking, or the family was
22 looking for any information that might pertain to
23 her son's case, and I wasn't sure if they had ever
24 gotten that information.

09:11 25 Q When you are talking 'that information' you are



1 talking about Larry Fisher?

2 A That's correct.

3 Q Okay. So what did you do?

4 A I phoned him up and told him I had some
09:12 5 information for him.

6 Q Okay. And did you speak directly to Mr. Wolch?

7 A Yes I did.

8 Q There's phone records and a date that suggests
9 that it was on February 26th, 1990; does that
09:12 10 sound about right?

11 A That's about right, yes.

12 Q And tell us, to the best of your recollection,
13 what you would have told Mr. Wolch?

14 A Umm, I believe I told him I thought I knew who the
09:12 15 killer was, and he was in jail for the same crime
16 or a somewhat similar crimes, and had been
17 convicted of other rapes, and that his name was
18 Larry Fisher.

19 Q And did you tell him about the information Arnold
09:12 20 Poitras gave you about Linda Fisher saying he came
21 home with bloody clothes?

22 A I believe I did.

23 Q Okay. Did you provide Mr. Wolch with your name?

24 A No I didn't.

09:12 25 Q And why not?



1 A Umm, I -- I just wanted to be anonymous. I
2 thought I would tell him what I knew, if I could
3 help, fine.

4 Q And did you leave him with any way to contact you?

09:13 5 A Yes, I did. I told him that he could call me, if
6 he could get -- contact me through CJWW and use
7 the name 'Bud'. That's just an old nickname I
8 had.

9 Q Right. And so, what, he would call the station
09:13 10 and do what?

11 A Just say he wants to talk to Bud. I never really
12 thought that he might try and get ahold of me, and
13 I wasn't sure if I could provide any more
14 information anyways, so --

09:13 15 Q Now -- and I'll show you some documents in a
16 moment -- you ended up being dubbed with the alias
17 Sidney Wilson; have you -- did you ever use the
18 word 'Sidney Wilson' in your discussion with
19 Mr. Wolch?

09:13 20 A Never.

21 Q Do you know where that came from?

22 A Haven't a clue.

23 Q So when you talked to Mr. Wolch you didn't give
24 him the name Sidney Wilson; is that right?

09:13 25 A No. The only one I used was Bud.



1 Q If I could call up 001814, please. And, Mr.
2 Lafreniere, this is a letter from Hersh Wolch to
3 Mr. Eugene Williams, who was a lawyer with Federal
4 Justice, and I'll just call this part out. And
09:14 5 this letter Mr. Wolch is reporting his
6 conversation with you to a lawyer with Federal
7 Justice and it goes on to say, Mr. Wolch -- in
8 fact I think the letter is from David Asper, I'm
9 sorry. Did you ever talk to David Asper?

09:14 10 A No I did not.

11 Q Okay. So you had one call with Hersh Wolch and
12 that's all; is that correct?

13 A That's correct.

14 Q And it says, 'This letter will confirm the
09:14 15 substance of our telephone conversation on
16 February 28th, 1990.'

17 I think that's the conversation
18 between Asper and Williams.

19 'Mr. Wolch was contacted on
09:14 20 Monday, February 26th, 1990, by an individual who
21 identified himself as Sidney Wilson?'

22 And I think you have told us
23 that that wasn't the case; was that correct?

24 A That's correct.

25 Q 'This individual refused to provide any details of



1 his personal identity and we do not have a
2 telephone number or anything of that nature to
3 identify him. Mr. Wilson informed us that he knew
4 the true identity of the killer of Gail Miller.
09:15 5 He advised that the true killer's name was Larry
6 Fisher, an individual who is apparently from North
7 Battleford, Saskatchewan. Furthermore, Mr. Wilson
8 advised that Fisher had arrived at home on the
9 morning of January 31st, 1969 covered with blood,
09:15 10 and that Fisher's wife had seen this. Fisher's
11 wife then apparently heard of the murder later
12 that day and concluded that Fisher may have had
13 some involvement. Fisher's wife then apparently
14 told Wilson who claims that he went to the police
09:15 15 a number of years ago with this information. We
16 further understand from Wilson that Larry Fisher
17 is currently in prison serving a sentence arising
18 from a rape or murder or both.'

19 Now this part here about,
09:15 20 'Fisher's wife then apparently heard of the murder
21 later that day and concluded that Fisher may have
22 had some involvement.', do you recall if that was
23 information that you would have (a) heard from
24 Arnold Poitras and (b) told Mr. Wolch?

09:15 25 A I couldn't be certain about that. All I know is



1 that he told me that he came home with blood on
2 his clothes, she saw it and he changed, but that
3 would be a normal conclusion I would assume.

4 Q So it's possible that this piece of information
09:16 5 that has the brackets there:

6 "Fisher's wife then apparently heard of
7 the murder later that day and concluded
8 that Fisher may have had some
9 involvement."

09:16 10 Is that possible that Mr. Poitras told you that?

11 A It's possible.

12 Q Do you have a recollection of that?

13 A No, I do not.

14 Q And then apart from the name Sidney Wilson and
09:16 15 your comments with respect to that sentence about
16 Linda Fisher concluding that Larry Fisher may have
17 had some involvement, is the balance of that
18 paragraph correct, does it accurately reflect what
19 you would have told Mr. Wolch in your phone call?

09:17 20 A That's correct, except she never ever talked to me
21 about him.

22 Q Oh, I'm sorry, thanks for pointing that out.
23 Fisher then apparently told Wilson and I think
24 what you are saying is it went through, from Linda
09:17 25 to Doris Poitras to Arnold Poitras to you; is that



1 correct?

2 A That's correct.

3 Q And you would have told Mr. Wolch that; is that
4 correct?

09:17 5 A I'm assuming so.

6 Q Let me go back. Would you have given him the name
7 Arnold -- any names, Arnold Poitras or Doris
8 Poitras?

9 A I might have. I can't remember our exact
09:17 10 conversation to be honest.

11 Q I think in fairness, in the documents I don't
12 think there was any information -- I think the
13 police looked for Sidney Wilson for a couple of
14 years and finally found you through phone records.
09:17 15 Does that sound correct?

16 A That is correct, yes.

17 Q So I think from that, the inference might be drawn
18 that no other information may have been given, but
19 do you have a recollection of that, of giving them
09:18 20 any name or any information that might lead back
21 to your identity?

22 A No, I didn't want my identity known.

23 Q If we could call up 045168, please, and again this
24 is just a memorandum from the Federal Justice
09:18 25 lawyer Mr. Williams to his file and it talks about



1 a conversation with David Asper, and he says:

2 "Mr. Asper provided some additional
3 details concerning the arrangements that
4 were made with "Sidney Wilson". Mr.
09:18 5 Asper said that initially they were
6 instructed to call radio station CJWW in
7 Saskatoon and to leave a message at the
8 reception desk for "Bud". Thereafter, a
9 message would be broadcast to the
09:19 10 informant alerting him to call Mr.
11 Asper's office. However, they did not
12 have to do that as it appears that Mr.
13 Asper's office did not resort to this
14 procedure because Mr. Wilson's call made
09:19 15 these arrangements unnecessary."

16 I'm not sure what that means.

17 "Mr. Asper indicated that he was making
18 inquiries at the radio station to
19 determine the identity of the individual
09:19 20 who had made these arrangements."

21 I'm not clear what that's about, but your
22 conversation with Mr. Wolch was not prompted by
23 any call to the radio station or anything of that
24 nature?

09:19 25 A No, no, it just popped into my head. He asked me



1 how do I contact you and I just thought, well, I
2 just happen to listen to that radio station a lot.

3 Q If we could call up 045233, please, and this is a
4 note, and I believe it's a note prepared by a
09:19 5 Saskatoon city police officer regarding a call
6 with Eugene Williams. The date isn't clear there,
7 but I think it would be sometime after your call
8 to Mr. Wolch, and:

9 "- Mr. Williams advises that a Sidney
09:20 10 Wilson approached council for David
11 Milgaard."

12 And this information -- and I want to draw your
13 attention here, this note says, and it's
14 referring to you:

09:20 15 "- He was not only interviewed by
16 police, but also by Mr. T.D.R. Caldwell,
17 Crown Prosecutor."

18 Did you ever talk to Mr. Caldwell about the
19 information you gave to Hersh Wolch?

09:20 20 A No, I did not.

21 Q And I believe there's a few other documents that I
22 think explain that that may have been put there in
23 error, Mr. Commissioner. So you've never talked
24 to Mr. Caldwell?

09:20 25 A No.



1 Q And as far as being interviewed by police, were
2 you interviewed by police about the information
3 you had?

4 A Sometime in 1993 I was, yes.

09:20 5 Q Okay. But prior to talking to the RCMP in 1993
6 when they located you, had you ever been
7 interviewed by police with respect to the
8 information you had about Larry Fisher?

9 A Never, no.

09:21 10 COMMISSIONER MacCALLUM: By Saskatoon City
11 Police?

12 A No.

13 BY MR. HODSON:

14 Q And in fairness, this may be referring to your
09:21 15 discussion with Mr. Simington of the RCMP. Did
16 you believe that was an interview with him?

17 A I don't know if you would call it an interview,
18 but yes, I did see him.

19 Q Do you remember if he asked you any questions?

09:21 20 A No, I can't remember him asking me any questions.

21 Q Okay.

22 A I'm not saying he didn't, but I can't remember.

23 Q Then if we could call up 035707 which is I think
24 doc ID 035694. I think at some point in 1993 you
09:22 25 were contacted by the RCMP; is that correct?



1 A That is correct.

2 Q And tell us about how that came about, what
3 happened?

4 A I received a phone call at work from one of the
09:22 5 RCMP officers asking if he could meet and discuss
6 what I had told Mr. Wolch and we arranged a
7 meeting and I told him pretty much the same thing
8 that I told Mr. Wolch.

9 Q And at that time is it fair to say that it was
09:22 10 your belief that no one knew your identity; is
11 that --

12 A That is correct, yes.

13 Q And did you come to learn how the RCMP found you?

14 A I assumed they had tracked me down from my
09:22 15 conversation with the RCMP in Shellbrook and they
16 said no, that's the first time they heard of it
17 actually.

18 Q Okay. So when they approached you, you said you
19 thought it was because of your contact with Mr.
09:23 20 Simington?

21 A That's correct.

22 Q And then did you subsequently learn how they
23 tracked you down?

24 A Yes, through my phone records.

09:23 25 Q And I think, and I don't propose to call them up,



1 Mr. Commissioner, but one of the documents is a
2 search warrant that the RCMP obtained to get the
3 phone records showing incoming calls to Mr.
4 Wolch's office and I think that's how it was
09:23 5 identified. We'll maybe just go through this
6 report. These are the notes that the officers
7 made of their meeting with you and I just want to
8 go through and ask you some questions about them,
9 and just scroll down here, it says:

09:23 10 "Mr. Lefreniere appeared to be very
11 concerned prior to the interview but
12 only to the extent that he appeared to
13 have something on his mind. I explained
14 the terms of reference and mandate of
09:23 15 our investigation and that we had become
16 aware that he may be able to assist us.
17 He was not told of the execution of the
18 search warrant nor anything specifically
19 related to the file. Neither Milgaard
09:23 20 nor Fisher were mentioned initially
21 during the introductory remarks."

22 Does that sound correct as far as the -- maybe we
23 can go through it all before you -- do you
24 remember the start of the meeting, the
09:24 25 introductory remarks?



1 A I think it was, they asked me if I had made a
2 phone call to Hersh Wolch.

3 Q Okay. We'll go through maybe the next page,
4 please, 706, it says:

09:24 5 "Lefreniere asked if our meeting related
6 to what he had spoken to Sgt. Bill
7 Simington of Shellbrook Detachment about
8 during the mid 1980's. We said that it
9 didn't and in fact, we were not familiar
09:24 10 with that conversation at all. He then
11 stated that he would start at the
12 beginning and proceeded to account for
13 his knowledge of the matter. He stated
14 that:

09:24 15 - he is from North Battleford and knew
16 Larry Fisher when they were boys.
17 Lefreniere knew Fisher to be a nice guy
18 and they were friends.
19 - he knew Linda Fisher as well but
09:24 20 hasn't seen or spoke to her in many
21 years. He met Larry in the late '60s on
22 2nd or 3rd Avenue in Saskatoon and had
23 not seen him in some time. Lefreniere
24 stated that Larry was either on drugs or
09:25 25 something because his eyes were



1 terrifying. Lefreniere said that this
2 meeting had such a profound effect on
3 him that he wouldn't turn his back on
4 Larry when they parted company. Fisher
09:25 5 made the hair on his neck stand up,
6 Lefreniere commented."

7 Again, would that be an accurate recording of
8 what you would have told the RCMP?

9 A Exactly.

09:25 10 Q Scroll down:

11 "- over the ensuing years, Lefreniere
12 became aware that Larry Fisher had
13 committed the rape in 1980 in North
14 Battleford. It is apparent that he may
15 not have been aware of the rapes in
16 Winnipeg or Saskatchewan. Lefreniere
17 was informed of this by me during our
18 conversation and seemed genuinely
19 surprised at this new information."

09:25 20 Again, do you recall that happening, is that an
21 accurate account?

22 A It seems like it, yes.

23 Q And I think what this is referring to, that in
24 addition to the (V10) (V10)- matter, Larry Fisher
09:25 25 had been convicted of two rapes and a robbery in



1 Winnipeg, three rapes and an indecent assault in
2 Saskatoon in 1968, '69 and '70. Do you recall the
3 RCMP telling you about that?

4 A Yes.

09:26 5 Q And it appears from this note that this was new
6 information for you; is that correct?

7 A That's correct.

8 Q If you could scroll down:

9 "- prior to 1985-1986 or near that time,
09:26 10 he was informed by Arnold Poitras
11 (related to Doris Poitras who is an
12 acquaintance of Linda Fisher) that Linda
13 had apparently said that on the morning
14 of the murder on 69 Jan 31, Larry came
09:26 15 home with blood on his clothing. This
16 information concerned Lefreniere so in
17 or around 1986, he decided to do
18 something about.

19 - he was in Shellbrook, Sask during 1986
09:26 20 and attended Shellbrook Detachment where
21 he states that he spoke to Sgt. Bill
22 Simington. Lefreniere stated that he
23 informed Sgt. Simington of the above
24 information and his suspicions but he is
09:26 25 unaware of any action taken. He liked



1 Sgt. Simington and was treated well by
2 him, but again, was not made aware of
3 any action taken."

4 And is that an accurate recording of what you
09:27 5 would have told him?

6 A Yes.

7 Q And:

8 "- around 1989 to 1990, it was apparent
9 that his information had not been acted
09:27 10 on because Mr. Milgaard and his lawyers
11 had been soliciting the public for
12 information. Lefreniere then contacted
13 Mr. Wolch's office by telephone and
14 first spoke to his secretary. He was
09:27 15 then referred to Mr. Wolch. Lefreniere
16 states that he called from his
17 residence.

18 - he informed Mr. Wolch that Linda
19 Fisher saw Larry the morning of the
09:27 20 murder and that the latter had blood on
21 his clothing. Lefreniere never spoke to
22 Linda about this matter.

23 - he used the name "Bud" and stated that
24 he could be reached at radio station
09:27 25 CJWW. Further contact never occurred."



1 Is that an accurate account of what you would
2 have told him?

3 A Yes.

4 Q "- he has never spoken to anyone about
09:27 5 this matter other than ourselves, Sgt.
6 Simington, Poitras and Mr. Wolch. He
7 has never been approached by anyone
8 else. He may have told his ex-wife.
9 - he is not aware of the name Sidney
09:27 10 Wilson. He stated that he may have
11 heard it before, he is unsure, but he
12 used the name "Bud". Lefreniere asked,
13 "Why would I use the name Sidney Wilson
14 when I said to ask for Bud?"

09:28 15 And again, is that an accurate account of what
16 you would have told him?

17 A Yes.

18 Q "- he confirmed that he has never spoken
19 to Mrs. Milgaard or anyone else
09:28 20 investigating on her behalf.
21 - he does not know Bryan Wright (Linda
22 Fisher's ex common-law husband), or
23 David Wilson (as noted in this file)."

24 Is that correct?

09:28 25 A That's correct.



1 Q "- he is concerned over Larry Fisher
2 learning of the information provided to
3 us, that is, that Lefreniere has stated
4 that he was told of Larry with blood on
09:28 5 his clothing. His area of concern lies
6 in the safety of his family once Larry
7 is released."

8 Again, is that an accurate account of what you
9 would have told him?

09:28 10 A That is correct.

11 Q And then it goes on:

12 "Mr. Lefreniere would not consent to
13 providing a statement as it was his wish
14 to remain completely out of the picture.
09:28 15 I stated that we could not guarantee
16 that his name would not be released but
17 I did add that his concerns would be
18 noted. It is his wish that his identity
19 and address not be released for reasons
09:29 20 cited above."

21 Again, is that something you would have told the
22 RCMP?

23 A Yes.

24 Q Then after the RCMP, did you ever talk to anybody
09:29 25 else either with the police or government or



1 anybody in authority about any of these matters?

2 A No.

3 MR. HODSON: Thank you, Mr. Lefreniere,
4 those are my questions. I'll check and see if
09:29 5 other counsel have questions. I believe that
6 Ms. McLean and Mr. Gibson have questions.

7 COMMISSIONER MacCALLUM: Okay.

8 **BY MS. McLEAN:**

9 Q Good morning, sir. My name is Joanne McLean and I
09:29 10 represent Joyce Milgaard and also for today's
11 purposes I'm here also on behalf of Mr. Wolch who
12 is David's lawyer who was unable to be here today.
13 On behalf of the Milgaard family, I first want to
14 thank you for making that call to Mr. Wolch back
09:30 15 in 1990. It's probably the most important phone
16 call in this entire case.

17 You made that call, sir, as you
18 told us, in response to the plea that
19 Mrs. Milgaard had put out to the public?

09:30 20 A That's correct.

21 Q And in part it was because it appeared that
22 nothing had happened about the original report
23 that you had made; is that fair?

24 A Yes.

09:30 25 Q When you spoke to Mr. Wolch, it's apparent to you



1 now that within a couple of days of that call Mr.
2 Wolch had passed on information to the
3 authorities?

4 A Apparent to me now, yes.

09:30 5 Q We had that letter up initially, you saw it was
6 dated February 28th, the letter from Mr. Asper?

7 A Uh-huh.

8 Q And the substance of the information that you had
9 given to Mr. Wolch was contained in that letter?

09:31 10 A Yes.

11 Q And it's become apparent to you over the last
12 years that people were very, very anxious to talk
13 to you after 1990; is that fair?

14 A Yes.

09:31 15 Q Mr. Wolch wouldn't have had, given that he's given
16 the information to the authorities immediately, he
17 wouldn't have had any reason to pass on any
18 information that was not, to his belief, correct;
19 right?

09:31 20 A Yes.

21 Q It would have defeated the purpose?

22 A Yeah.

23 Q And if he's not going to give accurate information
24 as far as he knows about how to contact you, it's
09:31 25 not going to do anybody any good is it?



1 A That's correct.

2 Q I appreciate it's very difficult for you to
3 remember now a conversation that you had in 1990,
4 particularly one where you were hoping to be
09:32 5 completely anonymous; right?

6 A That's correct.

7 Q And you were contacting the law firm and you had
8 to go through I guess the receptionist first;
9 right?

09:32 10 A Yes.

11 Q And then you had to talk to Mr. Wolch's secretary.
12 Do you remember that?

13 A Vaguely, but --

14 Q And then finally you get to Mr. Wolch?

09:32 15 A Right, that's correct.

16 Q Now, you were calling hoping to be completely
17 anonymous. Is it possible, sir, that when you
18 called, the receptionist or the secretary asked
19 you for a name and you just immediately gave a
09:32 20 name that came into your head?

21 A It's possible.

22 Q And that name may very well have been Sidney
23 Wilson?

24 A I don't recall ever using that name. The only one
09:33 25 I used was Bud.



1 Q Now, you remember that very clearly because that's
2 Mr. Wolch saying to you specifically how do I get
3 in touch with you?

4 A Yes.

09:33 5 Q And you quickly had to think of a way that he
6 could get in touch with you?

7 A That's correct.

8 Q And you thought of Bud, your nickname --

9 A Uh-huh.

09:33 10 Q -- and the radio station you listened to?

11 A Right.

12 Q And that's very clear in your mind because that
13 was something that would possibly result in
14 another conversation between you; right?

09:33 15 A That's correct.

16 Q But when you are first calling, you just want to
17 call Mr. Wolch, you just want to tell him Larry
18 Fisher may well be the killer you are looking for?

19 A Uh-huh.

09:33 20 Q And get on about your life?

21 A That's correct.

22 Q And a secretary or receptionist says to you when
23 you say can I speak to Mr. Wolch, they say who's
24 calling, please, possibly you simply said Sidney
09:34 25 Wilson just to get through?



1 A I can't ever recall using that name, but I guess
2 anything is a possibility.

3 Q Okay. And in 1993 when you first spoke to the
4 police, it was some three years afterwards?

09:34 5 A That's correct.

6 Q And at the time that you first spoke to the police
7 in 1993 about that, you told them apparently that
8 you didn't think you had used the word, the name
9 Sidney Wilson?

09:34 10 A I didn't think, yeah, and I don't think so now
11 either, but --

12 MS. McLEAN: I think that's everything,
13 sir, and thank you again for making that phone
14 call.

09:35 15 A You're welcome.

16 **BY MR. GIBSON:**

17 Q Good morning, Mr. Lefreniere, my name is Bruce
18 Gibson, I act for the RCMP.

19 A Good morning.

09:35 20 Q And I'm just going to spend a little bit of time
21 talking about your contact with the RCMP, with Mr.
22 Simington, again with the officers in 1993, and
23 some of what we are going to talk about we've
24 covered a little bit with Mr. Hodson, so I'll try
09:35 25 not to repeat that too much. I'm wondering if we



1 could put up document 035694 and go to page 705 of
2 that document, please. Just at the bottom there
3 it says:

4 "Prior to 1985-1986 or near that time,
09:36 5 he was informed by Arnold Poitras
6 (related to Doris Poitras who is
7 an acquaintance of Linda Fisher) that
8 Linda had apparently said that on the
9 morning of the murder on 69 Jan 31 Larry
09:36 10 came home with blood on his clothing.
11 This information concerned Lefreniere so
12 in and around 1986, he decided to do
13 something about it."

14 And if I recall your testimony earlier, you said
09:36 15 that you think, and again I appreciate this is
16 going back a number of years, that that
17 conversation likely occurred in North Battleford
18 at the Beaver Hotel and that shortly thereafter,
19 within a matter of weeks or months, I don't think
09:36 20 you can pin the time down exactly, you went into
21 Shellbrook RCMP; is that correct?

22 A That's correct.

23 Q And you weren't living in Shellbrook at the time
24 but were working there, or I'm just not too clear
09:36 25 on that.



1 A I had an apartment there that I stayed in during
2 the week and went back to my farm which was just
3 north of North Battleford on the weekends.

4 Q If we could just scroll down to the next
09:37 5 paragraph:

6 "- he was in Shellbrook, Sask during
7 1986 and attended Shellbrook Detachment
8 where he states that he spoke to Sgt.
9 Bill Simington. Lefreniere stated that
09:26 10 he informed Sgt. Simington of the above
11 information and his suspicions but he is
12 unaware of any action taken. He liked
13 Sgt. Simington and was treated well by
14 him, but again, was not made aware of
09:27 15 any action taken."

16 And your recollection, because you knew the man,
17 is that it was Bill Simington or Sgt. Simington
18 that you spoke with that day?

19 A That's correct.

09:37 20 Q And it says here that you liked him and were
21 treated well. Did you get the impression from him
22 that he was attentive to what you were raising?

23 A Yes, he was.

24 Q And did he seem concerned about the information
09:37 25 that you were passing along?



1 A Somewhat. I can't remember exactly to be honest
2 with you.

3 Q Either way, he was not dismissive of the
4 information that you were relaying to him?

09:38 5 A No, he was not.

6 Q Okay.

7 A He thanked me for it, I remember that, for coming
8 in.

9 Q All right. Now, that information that was passed
09:38 10 on was I guess in a rather circuitous route in the
11 sense that it was Linda Fisher to Doris to Arnold
12 to you; is that fair to say?

13 A That's correct, yes.

14 Q And your recollection is that there wasn't any
09:38 15 follow-up with you, but do you know if there was
16 any follow-up with Linda Fisher?

17 A I would have no way of knowing that.

18 Q Okay. And when you left the detachment after
19 speaking with Sgt. Simington, do you recall if he
09:38 20 advised you as to what steps he was going to take?

21 A No.

22 Q Okay. So you were left unaware as to what he
23 might do with that information; is that fair to
24 say?

09:39 25 A That's correct.



1 Q And to your knowledge, at that time, was Linda
2 Fisher living in the Shellbrook area or was she
3 living in Saskatoon or did you know where she was
4 living?

09:39 5 A I had no idea where she was living.

6 Q But to your knowledge, did you know at least if
7 she was living in Shellbrook?

8 A No.

9 Q No, she wasn't, or no, you didn't know?

09:39 10 A I didn't know where she was living. She possibly
11 could have been, but I did not know where she was
12 living.

13 Q Okay, that's fair, thank you. So if I understand
14 your information correctly, you are not aware of
09:39 15 Sgt. Simington, if he passed information along
16 within the RCMP or if he passed that along to
17 another police agency or whether someone within
18 the RCMP passed that along to another policing
19 agency?

09:39 20 A I'm not aware of that at all.

21 Q All right. And are you aware that Linda Fisher
22 had attended at the Saskatoon police station in
23 1980 with a concern about Larry Fisher and the
24 Gail Miller murder and her suspicions that he
09:40 25 could have been involved in that murder?



1 A No, I was not aware of that.

2 Q Just for the record, Mr. Commissioner, that
3 statement of Linda Fisher, 1980, is 004921. I
4 don't propose to go through that with
09:40 5 Mr. Lefreniere, but just to reference that.

6 COMMISSIONER MacCALLUM: Okay.

7 BY MR. GIBSON:

8 Q If we could go to page 701 of this document,
9 please, and in this paragraph here you reference
09:40 10 the information that you've discussed earlier in
11 your testimony and then in this paragraph along
12 here it says:

13 "Mr. Lefreniere would not consent to
14 providing a statement as it was his wish
09:40 15 to remain completely out of the
16 picture."

17 And I guess if I heard your evidence correctly,
18 you were concerned about your safety, your
19 family's safety and that you wanted to sort of
09:41 20 stay in the background on this if at all
21 possible; is that correct?

22 A That's correct.

23 Q Do you recall back in 1986 when you went to see
24 Sgt. Simington whether you provided a statement at
09:41 25 that time or did not wish to provide a statement



1 at that time?

2 A I didn't provide a statement. Like, a written
3 statement?

4 Q Yes.

09:41 5 A No, I did not.

6 Q Did you have similar concerns at that time as
7 well?

8 A I probably would have, but I don't know if I ever
9 brought that up with him or not.

09:41 10 Q Okay. But your recollection is that you did not
11 provide a statement at that time?

12 A That's correct.

13 Q Okay. And do you recall whether Sgt. Simington
14 was taking notes or was filling out a form or
09:41 15 where your interaction took place with him? Maybe
16 we can just try to flush that out a little bit.

17 A I don't recall him taking any notes.

18 Q Okay. It's possible that he could have taken
19 notes?

09:42 20 A He could have, but I don't remember him writing
21 anything down.

22 Q Okay. And again, do you recall roughly how long
23 your conversation was with Sgt. Simington?

24 A 15, 20 minutes.

09:42 25 Q Okay. And so during that time he may have taken



1 notes or he may not have, you are not in a
2 position to say; is that fair?

3 A I cannot remember him taking any notes, no.

4 Q And when the RCMP came out to see you in 1993, I'm
09:42 5 assuming, and correct me if I'm wrong, it doesn't
6 appear from the '93 continuation reports here,
7 they never sat down and interviewed you and showed
8 you copies of a statement of yours or any notes
9 that Sgt. Simington took during your interaction
09:42 10 with him in 1986?

11 A No. If I recall correctly, that was the first I
12 heard of that, was at that meeting.

13 Q Right, okay. And subsequently they never came
14 back to speak with you in 1993 about your contact
09:43 15 with Sgt. Simington?

16 A No one contacted me again.

17 Q And again, if we could just call up another
18 document here, 035665, and if we could go to 66 of
19 that document, please, and again this is a
09:43 20 continuation report where the RCMP are following
21 up with respect to your contact with Sgt.
22 Simington, all right, and if we can just call that
23 paragraph up, please, and the officer that's
24 completing these notes indicates:

09:43 25 "I spoke to Sgt. Corbett, in charge of



1 Shellbrook Detachment. He was not
2 familiar with Bruce Lefreniere and had
3 no knowledge of the incident."

4 Now, this is in 1993. Were you still in
09:43 5 Shellbrook in 1993, Mr. Lefreniere, or not? I
6 think you were in Saskatoon at that time.

7 A Yes, I was in -- I was only in Shellbrook for a
8 short period of time.

9 Q Okay. It goes on to say:

09:44 10 "An indices check was conducted and I
11 was told the results were negative. Had
12 there been a file, it would have been
13 destroyed some time ago. No record of
14 the file exists."

09:44 15 And were you ever in subsequent discussions with
16 the RCMP or anyone else ever informed that any
17 paper trail that may have been in existence at
18 one time in regards to your contact with Sergeant
19 Simington in 1996 -- or sorry, 1986 would no
09:44 20 longer have been in existence in 1993?

21 A I'm not sure of your question.

22 Q Okay, I'm sorry, I'm probably not phrasing it very
23 well. I'm assuming, and correct me if I'm wrong,
24 your evidence is that you didn't have any further
09:44 25 contact with the RCMP after that initial 1993



1 contact with respect to your dealings with
2 Mr. Wolch and dealings with Mr. Simington; is that
3 correct?

4 A That's correct, yes.

09:44 5 Q So no one ever came and talked to you about the
6 records having been destroyed, if there were any
7 records of your dealings with Mr. Simington?

8 A No one talked to me about any records being
9 destroyed, or any records, for that meter.

09:45 10 Q Okay. And, again, it's not really a fair question
11 to put to you but just as a matter of record --
12 and, again, there will be other individuals that
13 will give evidence on this -- that those records
14 of your contact with Mr. Simington, by the time
09:45 15 the RCMP went and followed up on that in 1993, if
16 there had been any records in existence, or any
17 notes or any statements or anything like that,
18 they would have been routinely destroyed?

19 A I see.

09:45 20 Q And all I'm asking you is that was never brought
21 to your attention?

22 A No, it wasn't.

23 Q Okay. Thank you very much.

24 A You're welcome.

09:45 25 MR. HODSON: Thank you very much, Mr.



1 Lafreniere, those are all our questions. Thank
2 you very much for appearing before the
3 Commission.

4 A You're welcome.

09:46 5 COMMISSIONER MacCALLUM: You are excused,
6 Mr. Lafreniere, thank you very much.

7 A Thank you.

8 MR. HODSON: The next witness is Mike
9 Robinson.

09:46 10 **MICHAEL FREDERICK ROBINSON, sworn:**

11 COMMISSIONER MacCALLUM: Have a seat, Mr.
12 Robinson.

13 **BY MR. HODSON:**

14 Q Thank you, Mr. Robinson, for agreeing to testify
09:46 15 before the Commission.

16 I understand you are a resident
17 of Saskatoon; is that correct?

18 A I am.

19 Q And your age, sir?

09:46 20 A 66.

21 Q And your handicap? No, I won't ask that. No, I
22 know that that's more precious than your age, sir.

23 I'm going to question you today
24 about a polygraph you conducted on Larry Fisher in
09:47 25 1990 and, as well, some questions on witness



1 interrogation. And maybe just for the record,
2 sir, did you conduct a polygraph examination of
3 Larry Fisher in 1990?

4 A I did.

09:47 5 Q And before we get into that I'll maybe just go
6 through your resume, and I have a copy that's
7 somewhat dated, but we'll start there. 020161.
8 And I'm going to have some questions not only on
9 polygraph but as well on witness interrogation,
09:47 10 Mr. Robinson, so I want to spend just a bit of
11 time going through this so that we can hear what
12 your experience was at the time. And I think that
13 this is a 1992 version of your resume; is that
14 correct? It was part, it was attached to the
09:47 15 polygraph report.

16 A Then it would be, yes.

17 Q Yes. And engaged RCMP 1960, maybe you can just
18 tell us generally, you were with the RCMP for how
19 long?

09:48 20 A I retired in 1980.

21 Q And so there for 20 years; is that correct?

22 A Correct.

23 Q And, when you retired, what was your rank and
24 position with the RCMP?

09:48 25 A I was a staff sergeant stationed in Ottawa,



1 Ontario, and I was the National Polygraph
2 Coordinator for the RCMP.

3 Q And, again, if you could maybe just give us a
4 quick rundown of your career with the RCMP as to
09:48 5 what -- I understand a lot of it dealt with
6 polygraph; would that be fair?

7 A Umm, the latter part of my career, umm --

8 Q What about the early part?

9 A Earlier I was involved mainly in what we called
09:48 10 general detachment duties, stationed in a number
11 of different detachments throughout Saskatchewan,
12 doing general police duties.

13 Q And did you investigate homicides?

14 A Umm, generally, most of the detachments I was at I
09:48 15 was usually the lead investigator for the more
16 serious incidents.

17 Q And so would it be fair to say that you had a fair
18 bit of experience, then, in serious crime
19 investigation?

09:49 20 A Yes.

21 Q Interrogated suspects?

22 A Yes.

23 Q Over your career a significant number, hundreds,
24 thousands?

09:49 25 A Certainly hundreds.



1 Q And then, according to the resume, it says that in
2 1975 you were selected for polygraph training and
3 then attended the National Training Centre of
4 Polygraph Science in New York in January 1976; is
09:49 5 that correct?

6 A That's correct.

7 Q And would that be when you started your polygraph
8 training?

9 A That's right.

09:49 10 Q And then attended the Michigan, U.S.A., for
11 advanced polygraph training with Michigan State
12 Police, as well Vancouver, polygraph seminars in
13 various locations, lectured on polygraph
14 throughout Canada; did you teach polygraph and
09:49 15 have taught polygraph?

16 A Umm, I've certainly lectured on polygraph. There
17 was a school formed, the Canadian Police College,
18 in '79, that I was instrumental in the formation
19 of it, and I lectured at the first class and
09:50 20 retired shortly after that in 1980. So I did
21 lecture to the first class that went through the
22 Canadian Police College.

23 Q And then so here in 1979 you were appointed the
24 Polygraph Coordinator for the RCMP; is that right?

09:50 25 A That's correct.



1 Q And then retired in 1980, formed an investigative
2 firm, continued to conduct polygraph examinations,
3 and I understand to this day, sir, you still
4 conduct polygraph examinations?

09:50 5 A Yes I do.

6 Q Now at this time it says that you had conducted
7 approximately one thousand examinations; any idea
8 where that number is today?

9 A Umm, probably somewhere between, probably 1700 to
09:50 10 2000.

11 Q And in addition to the polygraph work, again
12 post-1980 in your work as a private investigator,
13 would you be involved in interrogating people for
14 various purposes?

09:51 15 A Not to the extent I was as a member of the RCMP,
16 but somewhat.

17 Q And I will be asking you a bit further about this
18 later, but on occasion when you were asked to do
19 polygraph work, would that sometimes include an
09:51 20 element of interrogation?

21 A Sometimes.

22 Q And sometimes not?

23 A Sometimes not, no.

24 Q Yeah. And so let's turn to the Larry Fisher --
09:51 25 we're done with that resume -- your involvement



1 with Larry Fisher. So that was 1990. Prior to
2 that, prior to being asked to conduct the
3 polygraph on Mr. Fisher, had you any involvement
4 in the Gail Miller murder investigation or the
09:51 5 investigation of David Milgaard?

6 A Umm --

7 Q Prior to the polygraph?

8 A Very little. There was some contact, I can't
9 remember if it was through the Milgaard family or
09:51 10 their solicitors out of Winnipeg, in an effort to
11 locate some potential witnesses for the Centurion
12 group, I believe it was called.

13 Q Yeah, and I think, was that Michael Breckenridge?
14 And I'll have a document to show you later; is
15 that --

16 A No, that was not Breckenridge.

17 Q Oh, so it was finding some witnesses?

18 A Yes.

19 Q And would that have been after your polygraph of
09:52 20 Mr. Fisher?

21 A No, it was well before that.

22 Q So Centurion Ministries. What about back in 1969
23 and 1970, were you involved in the original
24 investigation into the death of Gail Miller?

09:52 25 A No.



1 Q If we could just call up a document, 002369, and
2 just, Mr. Robinson, I'm just going to go through a
3 few documents that show the setup of the
4 polygraph. This is an RCMP report, it's dated I
09:52 5 think August 28th but it refers to events back in
6 June, and it's a Rick Pearson. Did you know Rick
7 Pearson, do you know him?

8 A Yes, I do, yeah.

9 Q And it talks about -- and this is Mr. Pearson's
09:52 10 report June '90, when:

11 "... been working through Mr. Fisher's
12 lawyer, Mr. Harold Pick, ... of the
13 Legal Aid central office ... An
14 agreement has been worked out whereby
09:53 15 Larry Fisher will provide two of our
16 original three requests:"

17 Next page:

18 "He will provide a statement relative to
19 questions concerning his activities
09:53 20 during the time of Gail Miller's
21 murder."

22 And:

23 "2) Mr. Fisher agreed to submit to a
24 polygraph examination, provided it was
09:53 25 administered by a non-police operator.



1 Mr. Pick advised that if the results of
2 Fisher's polygraph test show him to be
3 honest, all charts and interview results
4 would be provided. If the test results
09:53 5 were not in favour of Fisher, nothing
6 would be released to the Crown."

7 Let me just pause there. 'Non-police operator';
8 is that a term, Mr. Robinson, that is used in the
9 polygraph industry or does that just mean someone
09:53 10 other than a current police officer?

11 A Yeah, it's -- I guess that's the police way of
12 referring to a non --

13 Q Okay.

14 A -- a non-policeman.

09:53 15 Q Okay. And in your experience are there occasions
16 when people who are asked to take a polygraph will
17 request someone other than a police officer to
18 conduct the test?

19 A Yes.

09:54 20 Q And what would be their reasons for that?

21 A Umm, I think it's probably their solicitors are
22 concerned, possibly concerned that if their client
23 failed the polygraph there may be an interrogation
24 following the examination.

09:54 25 Q What --



1 A Some, frankly, just don't trust the results, they
2 feel there may be a bias.

3 Q Okay. So on occasion, in your experience,
4 suspects, then, who agree to a polygraph on
09:54 5 occasion may go to a private polygraph operator;
6 is that your experience?

7 A That's correct, yeah.

8 Q And I presume, in some other cases, they will
9 agree to be polygraphed by the police; is that
09:54 10 fair?

11 A Yes.

12 Q And I'll talk about, ask about this a bit later,
13 but the science of the polygraph and the actual
14 tests and the test results, should it make a
09:54 15 difference whether it's done by a police or a
16 non-police operator?

17 A No, it shouldn't.

18 Q Okay. And we'll talk a bit more about the
19 pre-interview, etcetera, a bit later, but I take
09:55 20 it the science of the test of the non-police
21 operator is the same science used by a police
22 operator; is that fair?

23 A Well, I can only speak for myself, --

24 Q Yeah?

09:55 25 A -- and certainly it's the same. I can't speak for



1 all private examiners. I would say the ones in
2 Canada are probably primarily ex-police officers.

3 Q Yeah, and so as far as the technique and how it's
4 done, it should be the same if it's done by the
09:55 5 police or not?

6 A Yes, --

7 Q Fair enough.

8 A -- it should.

9 Q And then this goes on to say:

09:55 10 "In our efforts to gain the co-operation
11 of Mr. Fisher, we had no alternative but
12 to agree to the conditions laid out.
13 Mr. Pick then arranged for the services
14 of polygraph operator Mike Robinson
15 ...",

16 and so is that accurate, was it Mr. Pick that
17 asked you to conduct the test?

18 A Yes it was.

19 Q And you knew him at the time to be a Legal Aid
09:56 20 lawyer; is that right?

21 A That's correct.

22 Q And the Legal Aid lawyer for Larry Fisher?

23 A Yes.

24 Q And then 010016. And again this a document, Mr.
09:56 25 Robinson, that's prepared by Eugene Williams, who



1 was the Federal Justice lawyer working on an
2 application made by David Milgaard; did you ever
3 deal with Eugene Williams, do you remember that at
4 all?

09:56 5 A No.

6 Q This is June 28th, 1990, so about ten days before
7 the test, and it just talks about:

8 "Mr. Pick indicated that he would be
9 prepared, in the interest of his client,
09:56 10 should his client agree, to conduct a
11 polygraph test of Larry Fisher.
12 Mr. Pick is confident that Mike
13 Robinson, an experienced polygraph
14 technician, could conduct a satisfactory
09:57 15 session. Mr. Pick said that he would
16 also provide the test results to us if
17 the test results were inconclusive or
18 "clear"."

19 What are those, are those terms 'inconclusive' or
09:57 20 'clear', are those polygraph terms?

21 A Inconclusive is. 'Inconclusive' simply means no
22 determination can be made. When he uses the word
23 'clear', that's not a term we would use, but I
24 take it that means truthful.

25 Q Okay. And then it goes on to say:



1 "However, Mr. Fisher's current emotional
2 and psychological state, is such that
3 Mr. Fisher is not yet prepared to be
4 interviewed or to undergo the polygraph
09:57 5 test."

6 And I take it, and I'll ask a bit more about this
7 when we get to the test, is that a factor that
8 must be taken into account by a polygraph
9 operator?

09:57 10 A Yes.

11 Q Is it an important factor?

12 A Very.

13 COMMISSIONER MacCALLUM: What was it again,
14 sir?

09:57 15 MR. HODSON: The emotional and
16 psychological state of the --

17 BY MR. HODSON:

18 Q What do you, is there a term for someone who
19 undergoes the test, do you call them a suspect,
09:57 20 subject, witness?

21 A Generally they are -- well they are all subjects,
22 of course.

23 Q Subjects?

24 A Primarily, they are suspects.

09:58 25 Q Okay.



1 A I have never seen this document before and I see
2 it's dated prior to my examination. I had no
3 knowledge, prior to attending at the Psychiatric
4 Centre, that it was common knowledge that he was
09:58 5 going through the emotional and psychological
6 state he was when I met with him.

7 Q Okay. What, maybe tell me from your recollection,
8 then, what -- how it came to be that you conducted
9 the polygraph?

09:58 10 A Well I was contacted by Mr. Pick, who asked if I
11 would attend to the Regional Psychiatric Centre in
12 Saskatoon where Mr. Fisher was incarcerated, and
13 conduct a polygraph examination on him. Umm, I
14 knew I was to meet with Rick Pearson, the
09:58 15 sergeant, and that he would provide me with the
16 background investigation reports that were
17 required, and based on that, I went to conduct the
18 exam. Again, I had no idea that it was, appeared
19 to be fairly common knowledge that he was under a
09:59 20 great deal of stress prior to me attending.

21 Q Okay. And how would that take impact on your ability
22 to conduct a polygraph?

23 A Well, it would probably result in an inconclusive
24 examination.

09:59 25 Q And why is that?



1 A The person wasn't psychologically, physiologically
2 or psychologically fit to undergo an examination.

3 Q So if we could maybe call up 020162. And this is
4 a copy, I think, of your report of July 10th, 1990
09:59 5 to Mr. Pick; is that right?

6 A That's correct.

7 Q And this would be your report on the polygraph?

8 A Correct.

9 Q Maybe we'll just go through this. Call out the
09:59 10 first paragraph, it says, 'On the 5th of July,
11 1990 you contacted me and advised that you were
12 representing Mr. Larry Earl Fisher who is

13 presently serving time at the Saskatoon Regional
14 Psychiatric Centre. A Mr. David Milgaard is

10:00 15 presently serving time for a murder committed on a
16 Saskatoon woman by the name of Gail Miller some 21
17 years ago. Milgaard and his family have

18 maintained his innocence throughout these years

19 and have recently attempted to link Mr. Fisher to

10:00 20 Gail Miller's murder. You have discussed this
21 matter with Mr. Fisher and he is prepared to
22 undergo a polygraph examination on this matter.'

23 And it was scheduled on July

24 9th. Now I understand, Mr. Robinson, the

10:00 25 polygraph is a voluntary thing; is that correct?



1 A That's correct.

2 Q And that, if the subject does not wish to undergo
3 the test, it can't be done; is that --

4 A Correct.

10:00 5 Q -- obvious?

6 A Yup.

7 Q And so it looks as though, does this sound right,
8 that the 5th of July when you were first retained?

9 A Yes.

10:00 10 Q And then it says, 'On the 6th of July, 1990 I met
11 with Sergeant Rick Pearson of the Royal Canadian
12 Mounted Police, Saskatoon GIS. We met for some
13 considerable period of time and fully discussed
14 this matter so that I could properly conduct this
10:01 15 polygraph examination.'

16 What would be the purpose, Mr.
17 Robinson, in this meeting and getting this
18 information?

19 A Well, to properly conduct a polygraph examination
10:01 20 I have to be cognizant of all the case facts
21 surrounding the incident, I certainly have to know
22 time, dates, places, what occurred, what the
23 investigation showed, so the more I know the
24 better polygraph examination I can conduct.

10:01 25 Q Okay. And so it's not a case of simply showing up



1 and saying "did you kill Gail Miller, yes or no"
2 and reading the charts?

3 A No.

4 Q It's a bit more, and I'm sure we'll hear about
10:01 5 that, a bit more work needs to go into it?

6 A Yes.

7 Q And so as a polygraph operator, then, are you
8 telling us you would need to have a pretty good
9 understanding of the relevant facts?

10:01 10 A I should know as much as there is to be known
11 about it, yes.

12 Q And would that be -- would that assist you in
13 framing the right questions then?

14 A That's correct.

10:01 15 Q Would it be a factor in your pretest interview
16 with the subject?

17 A Yes.

18 Q Now do you have -- do you recall the discussion
19 with Rick Pearson?

10:02 20 A Umm, all I kind of remember is I read a lot of
21 material. I think I was there for the better part
22 of the day, as I recall, reading material and
23 discussing aspects with Pearson.

24 Q And would you, what, would you have read police
10:02 25 reports from back then or --



1 A Yes.

2 Q And do you remember what Rick Pearson told you
3 about the case or what he thought or --

4 A No.

10:02 5 Q And then did you have an understanding of what it
6 was that caused certain people to say that Mr.
7 Fisher was a suspect?

8 A Umm, I don't know if I remember specifically. I
9 know it had to do with the occurrences that
10:02 10 occurred in Saskatoon in '69, a matter that
11 occurred a number of years later in Battleford,
12 umm --

13 Q Do you recall anything being discussed with you
14 about Larry Fisher's ex-wife, Linda Fisher, and
10:03 15 some accusations --

16 A Yes.

17 Q -- and information she had provided?

18 A Yes I do.

19 Q And anything else that was incriminating of Mr.
10:03 20 Fisher; do you remember anything that sticks out?

21 A Umm, one of the things that sticks out was that he
22 was residing in the same address as Milgaard's
23 friends that he was coming to visit. That
24 certainly stuck out in my mind.

10:03 25 Q Okay.



1 A Umm, as far as actual case facts now, I don't
2 remember a lot of them.

3 Q Okay. Do you think, though, that you would have
4 been satisfied that you had a pretty good handle
10:03 5 on the facts, though, after the meeting?

6 A Yes.

7 Q And did you form any impression whether Rick
8 Pearson was -- did the RCMP or Mr. Pearson have a
9 view, at the time, as to whether Mr. Fisher was a
10:03 10 suspect, wasn't a suspect, anything of that
11 nature?

12 A Well, I assume they must have considered him a
13 suspect, they were requesting that he be
14 polygraphed so --

10:04 15 Q Okay.

16 A -- I assumed they treated him as a suspect.

17 Q And then it says, 'On the 9th of July, 1990 I met
18 with you', being Harold Pick, 'and reviewed the
19 case facts as I understood them as a result of my
10:04 20 meeting with Sergeant Pearson.'

21 So it appears that you then met
22 with Mr. Fisher's lawyer to get his side of it;
23 would that be fair?

24 A No, I just wanted to make sure that my
10:04 25 understanding of the case facts was as Harold's



1 were and that we were on the same page, I guess.

2 Q Okay. And then it says on the, I think on the
3 9th, the polygraph test was conducted. Do you
4 have a recollection of actually doing the test
10:04 5 with Mr. Fisher?

6 A Yes, I, I have some recollection of it.

7 Q And it says, 'The purpose of the polygraph
8 examination was to determine if Mr. Fisher is
9 telling the truth when he claims he did not murder
10:04 10 Gail Miller.'

11 And then it talks about the
12 pretest interview. I'm wondering, Mr. Robinson,
13 if you could just give us a summary of the
14 polygraph and how it works and in a general way?

10:05 15 A Umm, --

16 Q If --

17 A -- all right.

18 Q If that's possible.

19 A Okay. I'll try to be as brief as I can. It's an
10:05 20 instrument that records physiological emotions
21 from inside the body, it is recorded on a graph
22 with pens, it's measuring upper and lower
23 respiratory, it's measuring the rise and fall in
24 blood pressure, it's measuring heart rate, it's
10:05 25 measuring galvanic skin response, which is changes



1 in perspiration, and those are maintained on a
2 permanent graph on the polygraph.

3 What the polygraph does is
4 record changes, emotionally, that occur within
10:05 5 that person, again, physiological changes. We
6 usually refer to them as the fight-or-flight
7 syndrome, those things, those emotions that arise
8 when people are faced with different things,
9 anger, fear. The fear of being caught in a lie
10:06 10 causes physiological changes in the body, and it's
11 those changes we're looking for, and we're
12 comparing those changes on what we call the
13 relevant questions to what is called controlled
14 questions.

10:06 15 Q Okay. If we can just pause there, so then what
16 the machine does, then, is graphs changes in the
17 body's response to certain questions; is that --

18 A If there are changes.

19 Q If there are changes?

10:06 20 A It's recording, it's recording those things that
21 I've said, and if changes are occurring it's up to
22 me to interpret them.

23 Q Okay. And so one would be to establish a base
24 line; is that --

10:06 25 A No. I've often heard that. It's not really a



1 base line, a person's emotions are a person's
2 emotions, whatever they are. I mean someone may
3 come in and have a heart rate in excess of 100
4 throughout a polygraph examination and it doesn't
10:07 5 mean they are being deceptive to the issue, it's
6 the changes that may occur.

7 Q So, and I apologize for being simplistic, but
8 would it be a case where if you were to ask me a
9 question and I was truthful and you knew I was
10:07 10 truthful, compared to a question that I answered
11 as a lie, which you and I both knew was a lie, it
12 would be the change in my body's reaction when I
13 was --

14 A Yeah, certainly I should see a change, yeah.

10:07 15 Q Okay. And so it's a case of saying when you ask a
16 subject a question that you know you are getting a
17 truthful response, versus a question that you know
18 you are getting an untruthful response, you would
19 expect to see a change in their body response; is
10:07 20 that fair?

21 A That's correct.

22 Q And then you then set up some questions that allow
23 you, as the operator, to ask the questions so that
24 you can -- and I think you called them, what are
10:08 25 the three, the criminal questions?



1 A There's 'criminal' or 'relevant', --

2 Q Or relevant?

3 A -- the two terms they are called.

4 Q And so you've explained, I think, the -- now as

10:08 5 far as the science is concerned, if -- does it

6 always work in the sense that can I, if -- do

7 something so that my lies and my truthful

8 statements show the same on the graphs?

9 A Umm, no, but there's things that people try on a

10:08 10 polygraph. I mean some people come in who are

11 deceptive but they are placed in a position they

12 feel they have to take the polygraph so they try

13 to, quote, "beat it".

14 Q Yes?

10:08 15 A And there's certain things people try, I mean I've

16 heard of people placing tacks in their shoe, and

17 at what they think is an appropriate time they

18 will press their toe into the tack to give

19 themselves pain and cause a reaction. Umm, simply

10:08 20 not sitting still, moving around, coughing, those

21 type of things prevent someone from properly

22 conducting an examination. We're trying to record

23 those inner physiological responses and, if

24 someone is moving, you are not going to get them.

10:09 25 Q So that there are things, either deliberately or



1 unintentionally, that a person can do that would
2 thwart --

3 A Yeah. And I mean, again, there's taking of drugs
4 and alcohol, but to make a difference they would
10:09 5 have to take so much alcohol or drugs that it
6 would be obvious to someone seeing them --

7 Q Okay.

8 A -- that they had done something like that.

9 Q Okay. So now tell us about the questions, how
10:09 10 many questions, and tell us how you come up with
11 the questions?

12 A Well there is a total of ten questions on a
13 polygraph examination, three of them are called
14 the crime or relevant questions, and three of them
10:09 15 are called the control questions. The other four
16 questions are there for different reasons that
17 really wouldn't be worthwhile explaining to you
18 here.

19 Q Okay.

10:10 20 A The important ones are the relevant and control
21 questions, and --

22 Q Okay. And so the relevant questions would be, and
23 is -- there is three, is three considered the
24 right number, or --

10:10 25 A That's considered the right number, yes.



1 Q Okay. So there would be three questions relating
2 to the crime, and how would you devise those
3 questions?

4 A Umm, based on the case facts, also based on that
10:10 5 person's intelligence and understanding of the
6 issue itself, certainly in words that that
7 individual clearly understood. It's very
8 important that the relevant or crime questions be
9 very clear to the individual so that he
10:10 10 understands just what the questions are about.

11 Q If we took an individual, let's say Mr. Fisher,
12 and have him conduct five different polygraphs on
13 the same day with five different operators, would
14 we get five different sets of the ten questions?

10:10 15 And I appreciate that it depends on who the
16 operators are but --

17 A Yeah.

18 Q -- would they be close?

19 A Yeah, I would say they would be pretty close,
10:11 20 yeah.

21 Q Okay. But there, would there be some subjective
22 element in the operator, the operator would come
23 up with the questions; is that --

24 A Yes.

10:11 25 Q Okay.



1 A The operator does. It's done in conjunction with
2 the subject too, --

3 Q Okay.

4 A -- as far as the wording, but yeah, it's -- I mean
10:11 5 it's ultimately the examiner who is going to
6 decide on the questions.

7 Q Can we just go to the next page, I think we'll see
8 the -- these would be the three relevant
9 questions, is that right, the crime questions?

10:11 10 A That's correct.

11 Q And so number 1, 'About January 31st, '69, near
12 Avenue O and 20th Street, did you personally stab
13 Gail Miller?', and then, 'Did you repeatedly stab
14 a woman known as Gail Miller?', and then, 'Are you
10:11 15 the person who caused Gail Miller's death by
16 stabbing her?' Now those are all --

17 A The same question, --

18 Q Yeah. Asked --

19 A -- and worded slightly different, in three
20 different ways.

21 Q Okay.

22 A It's the same, it's one issue, a single issue.
23 Polygraph is a single-issue examination, and this
24 is a single issue, "did you stab Gail Miller?"

10:12 25 Q So when you say 'single issue', that means you are



1 trying to get one issue tested on the exam?

2 A That's correct.

3 Q And so tell us the control questions, then, what
4 is the purpose of the control questions?

10:12 5 A Well prior to the developing of control questions,
6 before they existed, all there was was relevant
7 questions and irrelevant questions, and the

8 relevant questions in this case would be the three
9 that appear on the screen here, and irrelevant
10:12 10 questions would be such things as "are you wearing
11 brown shoes", "are you sitting in the Sheraton
12 hotel", those would be the irrelevant questions.

13 And, of course, the concern at some point in time
14 I guess during the development of the polygraph
10:12 15 examinations was that the irrelevant questions

16 didn't have enough impact on the subject and that
17 their psychiatric -- psychological set was
18 directed to, only to the crime questions, and

19 questions of that nature could have such an impact
10:13 20 that would it be possible to cause a reaction even
21 though you were truthful, and I think yes, it

22 would be. So all --

23 Q So -- oh, sorry, go ahead, carry on?

24 A So what was developed then was control questions,
10:13 25 and the basis of control questions is to give the



1 truthful person somewhere else to respond,
2 somewhere for his emotions to be released on
3 another question, other than a crime question, if
4 they were telling the truth.

10:13 5 Q Yeah. Can you give me an example of a case, where
6 there were no control questions, what the risk
7 might be?

8 A Well, if there was simply no control questions, I
9 would suggest that the subject's attention and
10:14 10 everything would be diverted to those, that
11 question, that issue of a murder. The other ones
12 are so insignificant that there is nowhere --
13 there is no response could be given as to whether
14 or not you are wearing brown shoes or not as
10:14 15 compared to "did you stab someone", so there's
16 very danger that there would be a false polygraph
17 examination.

18 Q So do I have this right, then, if you asked me if
19 I was wearing brown shoes, I would say "no", if
10:14 20 you asked me if I murdered someone, that even if
21 I'm telling the truth when I say "no" that my -- I
22 might get a little more upset in answering; is
23 that correct?

24 A Yes. That's the fear of the way it used to be.

10:14 25 Q And so the control question would be to give me



1 another question where I could get that, some
2 other tough questions where it might have an
3 elevated response; is that fair?

4 A Right, right.

10:14 5 Q And I think you had -- there was an example I
6 think you had provided earlier Mr. Robinson, to me
7 at least when we were discussing this, about theft
8 or stealing, is that -- maybe if you could share
9 that example?

10:15 10 A Certainly. That's an easier way, maybe, than
11 this.

12 Q Sure.

13 A The example I gave you is if you were there as a
14 suspect in a theft, and the theft could be this
10:15 15 glass here, and you were in to see -- well I was
16 there to test you to see if you had been
17 responsible for stealing that glass, and the three
18 questions would revolve around the theft of that
19 glass, they would be such things "on a certain
10:15 20 date did you steal this glass belonging to the
21 Sheraton", "right now can you take me to that
22 glass belonging to the Sheraton", those would be
23 the type of questions that I would ask.

24 But what I would do to you is
10:15 25 introduce the control questions, and I don't



1 really tell the person why I'm introducing the
2 control questions, I don't say to them that "these
3 questions are being devised to give a truthful
4 person somewhere to respond".

10:16 5 Q Pause there. If there were no control questions,
6 I think you said 'the old way', was it 'the old
7 way'?

8 A The old way.

9 Q Okay. In pre-control questions what would be the
10:16 10 risk, as a polygraph operator, in asking me the
11 question "did you steal the glass?"

12 A That I might get a false negative test that you
13 might have shown as having stolen that glass and
14 may not have.

10:16 15 Q And why is that? What would cause the false
16 positive?

17 A Because I think your attention is being called to
18 those three crime questions. The very nature of
19 the wording of those questions would cause an
10:16 20 individual more concern than whether or not you
21 are wearing brown shoes, after all, you are a
22 suspect and you are there for that reason, so
23 certainly your attention is directed towards
24 those, your emotions are directed towards those.
10:16 25 You are sitting there wondering if this polygraph



1 is going to work, is this going to make me fail
2 for the wrong reasons, something I didn't do.

3 Q And again that example there asking the question
4 about stealing the glass, if the suspect or
10:17 5 subject had stolen something else some other time
6 unrelated, would that have -- might have an impact
7 on the test?

8 A Certainly that's what I would tell the subject. I
9 would say to them, and the way I described it to
10:17 10 you was that I tell the people that I can talk
11 about 250 words a minute and they can listen and
12 understand about 600 words a minute. They can
13 understand -- they can listen and understand it
14 quicker than I can talk and so while I'm asking
10:17 15 the questions, and the question being did you
16 steal, and before I can even finish the question
17 there mind might flash to something else they may
18 have done in their life, and the example I gave
19 was stealing a dime from your dad's dresser drawer
10:17 20 when you were a little boy, and so I actually
21 introduce that type of a question to the person, I
22 say so when I review these questions with you and
23 when we're on the test and I use the word steal,
24 before I can finish the question I don't want your
10:18 25 mind flashing back to something you may have done



1 in your, you know, your formative years such as
2 stealing something else, and then I'll say to
3 them, before I came in here today I looked at this
4 whole, this whole issue of this theft and I
10:18 5 thought what are the issues involved and I would
6 say to the person I'm testing, certainly the first
7 issue is the stealing issue, that's what you are
8 here for, did you or did you not steal this glass,
9 and the second issue, as I see it, is the cheating
10:18 10 issue, because if you stole that glass you've
11 cheated the Sheraton Cavalier out of something
12 that belonged to them, and then lastly I'll say
13 there's a lying issue here because if you did
14 steal that glass and you've told me you haven't,
10:18 15 you've told your lawyer you haven't, you've told
16 the police you haven't, then you've told an
17 important lie, and so what I do to that person, I
18 say look, I'm going to ask you three questions
19 that are separate and apart from the issue you are
10:19 20 here for today, whether or not you stole that
21 glass, and the questions are going to be this:
22 Not connected to this matter do you remember ever
23 stealing anything, and I'll do the same thing with
24 the cheat, do you remember ever cheating anyone,
10:19 25 do you remember ever telling an important lie, and



1 before that person can answer them or say anything
2 about it, I then say to them what I'm going to do
3 now is I'm going to make up all the questions I'm
4 going to ask you on the exam, and in fact I do, I
10:19 5 come back and I start to review the questions, and
6 the last three questions I review are the control
7 questions, and generally what happens in a
8 polygraph exam, certainly with truthful people, is
9 as I start reviewing those last three questions of
10:19 10 control, is I'll get an admission, so when I say
11 not connected to this matter do you remember ever
12 stealing anything, generally the truthful person,
13 and sometimes the deceptive person too, will say
14 yes, and I'll feign surprise and I'll say, "Did
10:20 15 you understand the question?" and they'll say,
16 "Yes," and I'll say, "So you are telling me you've
17 stolen something?" and they'll say, "Yes," and
18 I'll say, "So you are telling me you've stolen
19 something?" and they'll say, "Yes." And I'll say,
10:20 20 "Well, what is it you remember having stolen?"
21 And they may say, "Yeah, I remember stealing a
22 dime from my dad's dresser." So I make a big
23 production of it, I turn my page over and I write
24 down all the case facts, I really probe them and
10:20 25 how old they were, how it came to be that they



1 took the money, whether they were ever caught,
2 whether they were punished, and after making a big
3 rigamarole out of it, I'll say to them, "I know
4 you learned something from this, didn't you?" and
10:20 5 they'll say, "Yes," and I'll say, "This has stuck
6 with you for how many years?" from the time he was
7 seven to whatever age he is now, and I'll say
8 obviously it had a big impact on your life, and
9 then I'll revise the question and I'll say, "Not
10:21 10 connected to this matter and besides what you've
11 told me do you remember stealing anything else?"
12 Most people are hesitant to make any more
13 admissions. If they do, I'm really flabbergasted
14 then and I go through this all again and what I'm
10:21 15 trying to do is shut that person down because I
16 don't want them to admit everything to me, I want
17 them to have some issues yet with what they've
18 stolen in their life and I'll do that with all
19 three of the questions, and it's very easy to do,
10:21 20 to prevent those people from making any further
21 admissions.

22 Q And then what impact does that have on the three
23 crime questions then, you've done all that and
24 what is the purpose of that when you get to the
10:21 25 crime?



1 A What it will do for the truthful person, it
2 directs their mindset, their psychological set
3 away from the stealing of that glass, because if
4 that person didn't steal it, he knows he didn't
10:21 5 steal that glass, but now I've introduced these
6 three other questions and I've told this person to
7 pass the polygraph you have to be truthful to all
8 the questions on this test, there's no getting a
9 70 or an 80 or a 90 and passing, you are either
10:22 10 truthful or you are not truthful, so on the 10
11 questions I ask you, you have to be truthful to
12 all 10 of them. Now, this person probably knows
13 that he's not telling the truth to those three
14 control questions and that's causing him a lot of
10:22 15 problems and I call it a psychological set, and
16 the way I explained it to you was if we're in that
17 room we were in and while we were there a door
18 opened and a mouse came running in, our attention
19 would be directed to that mouse, it's causing us
10:22 20 some concern, we would be watching it run around
21 on the floor, and while that was going on, if the
22 door reopened and a man-eating tiger came roaring
23 into the room, our psychological set would
24 certainly change from the mouse to the tiger, and
10:22 25 that's what I'm attempting to do on a polygraph



1 examination with a truthful person, I'm trying to
2 set their psychological set to those control
3 questions.

4 Q So then in that example then, on the control
10:23 5 question, if I'm a truthful person and I lie on
6 the control question but on the crime question on
7 the glass I tell the truth, you are able to, by
8 looking at that, to tell whether or not the crime
9 question I've answered truthful?

10:23 10 A Yes, I can see the changes in response, and what I
11 do, what we do is we numerically score the
12 charts --

13 Q Yes.

14 A -- and I go through -- on each chart there's three
10:23 15 crime and three control. I compare a crime to a
16 control and I do that all the way through all
17 three charts and looking for changes if there are
18 any.

19 Q And if I'm truthful on the crime question, the
10:23 20 fact I've lied on the control may not be that
21 relevant?

22 A If you -- say that again, please?

23 Q Just so that I understand it, I think on the --
24 the crime questions are the questions you want the
10:23 25 reliable results on; is that correct?



1 A Well, I need reliable results on all the
2 questions.

3 Q But in that last example, are you expecting the
4 subject to lie on one or more of the control
10:24 5 questions, is that what your purpose is?

6 A Yes, even though, not to confuse things, but even
7 though they are responsible for the theft of this
8 glass, they are still lying on the control
9 question, but their psychological set, if they
10:24 10 stole this glass, is on that and that's where I
11 expect the bigger response.

12 Q So the person who didn't steal the glass is going
13 to be more concerned about the control questions,
14 the person who stole the glass is more concerned
10:24 15 about the crime questions?

16 A Exactly.

17 Q And so the tests are designed that way to elicit
18 those responses?

19 A Yes, and they do.

10:24 20 Q And if you don't have the control questions, and
21 in that example that you gave, and I'm truthful
22 and I didn't steal the glass, what would cause me
23 then to give you a false positive?

24 A Just your concern that this is a theft case, that
10:24 25 this is why you are here, you are a suspect. It



1 could, I'm not saying it would, I'm saying there's
2 a potential of you responding to the questions
3 about the glass even though you didn't do it.

4 Q So if I had stolen something as a kid and you
10:25 5 asked me did you steal the glass and I think of
6 that when I answer, would that affect my response?

7 A Without having introduced control questions?

8 Q Yes.

9 A I don't know if your mind would go to the time you
10:25 10 stole a quarter from your dad's dresser.

11 Q Or some other -- and I thought you said the
12 purpose of the control though was to eliminate the
13 person answering and having their mind directed
14 elsewhere?

10:25 15 A Yes, the truthful person. Would the truthful
16 person, without introducing these things though,
17 think of it himself? Might.

18 Q When did this concept of control questions, when
19 was it introduced to polygraph?

10:25 20 A I'm not sure exactly, but I would say probably by
21 sometime in the late '50s I would think.

22 Q Okay. And so certainly when you became involved
23 in I think 1975, '76, that was the methodology?

24 A Yes, and still is.

10:26 25 Q And still is. And so 10 questions with three



1 crime questions, three control questions?

2 A Yes.

3 Q We've heard, and I'll refer to this a bit later, a
4 fellow by the name of Inspector Art Roberts. Have
10:26 5 you heard of Mr. Roberts?

6 A Yes, I have.

7 Q And he conducted a polygraph test in this case and
8 used, and I think his evidence before the Supreme
9 Court, he called it the SKY technique, S for
10:26 10 suspect, K for knowledge, Y for you?

11 A Yes.

12 Q And is that a methodology that you've used or is
13 used?

14 A I'm familiar with it. Generally when I look at
10:26 15 the SKY, I look at it as one question among the
16 three crime questions, so it might be two
17 questions about did you personally stab someone,
18 are you the person who caused someone's death, and
19 a third question might be do you know for sure who
10:27 20 caused such and such a person's death. That would
21 be a knowledge question.

22 Q And if you did the SKY, those questions, you still
23 have three control questions; is that right?

24 A Yes.

10:27 25 Q And then the four, I think the four other



1 questions you said are for other purposes; is
2 that --

3 A Yes, they are for other reasons.

4 Q If we could just maybe go back to 020162 and go
5 back then at the bottom, you say:

10:27

6 "During the pre-test interview it became
7 evident to me that I would have
8 difficulties in conducting this
9 examination on Mr. Fisher. Mr. Fisher
10 was extremely agitated and the basis for
11 this nervous condition was that he
12 feared that as a result of having been
13 accused of Gail Miller's murder, he
14 believes he himself will be murdered by
15 another inmate. As recently as this
16 preceding weekend CBC had coverage on
17 this incident and apparently Mr. Fisher
18 was named as a suspect. Mr. Fisher is
19 legitimately concerned that inmates are
20 now aware that he is a suspect in this
21 matter and truly believes that he may be
22 killed by another inmate. Certainly in
23 a polygraph examination, the subject's
24 focus should be on the examination
25 itself. Because of Mr. Fisher's fear

10:27

10:27

10:28

10:28



1 for his life, I seriously doubted
2 whether I could direct his complete
3 attention to this examination."

4 And then:

10:28 5 "In addition to the aforementioned
6 problems, Mr. Fisher has some medical
7 problems. He advises me that he is
8 suffering from gallstones and, in fact,
9 throughout the approximate two and a
10:28 10 half hours I spent with him, he
11 continually clutched at his chest and
12 burped. Mr. Fisher was also continually
13 scratching the palms of his hand, which
14 he advised me were itchy because of a
10:28 15 nervous condition. Indeed, Mr. Fisher's
16 hands did appear to be raw."

17 And is it that an accurate account then, Mr.
18 Robinson, of that?

19 A Yes, it is.

10:28 20 Q And can you explain how the physical condition of
21 Mr. Fisher then would cause you to be unable to
22 conduct a meaningful polygraph?

23 A You are speaking only of the physical portion,
24 that last paragraph?

10:29 25 Q Both, both.



1 A Well, referring to the first one, the emotional
2 thing, I would be very hesitant in conducting an
3 examination on someone who was telling me what Mr.
4 Fisher was telling me, that he was seriously
10:29 5 fearful that he was going to be killed. I don't
6 think he would be paying much attention to the
7 polygraph examination and what I was trying to
8 psychologically set up with him when he had these,
9 what he felt, and I believe he had legitimate
10:29 10 fears that he was going to be knifed in the
11 psychiatric centre.

12 The other one concerns physical
13 things. Certainly the movements of him burping
14 and actually clutching his chest when he was doing
10:29 15 it would alone negate a polygraph examination, the
16 same as him rubbing his hands all the time. Those
17 physical movements would just negate me doing an
18 examination.

19 Q In your pre-test interview of Mr. Fisher before
10:30 20 you actually hooked him up to the machine and
21 asked him the questions, did you form any
22 conclusion as to whether or not you would be able
23 to conduct a meaningful test?

24 A I definitely did and it was no.

10:30 25 Q And so before you started you believed you could



1 not get a --

2 A I knew I wouldn't.

3 Q And why did you proceed with the test?

4 A I felt it would probably be my only opportunity to
10:30 5 conduct the examination on him.

6 MR. HODSON: This is probably an
7 appropriate spot to break, Mr. Commissioner.

8 *(Adjourned at 10:30 a.m.)*

9 *(Reconvened at 10:49 a.m.)*

10:49 10 BY MR. HODSON:

11 Q Mr. Robinson, before the break I had asked you
12 about the science part of it and you had talked
13 about the machine-measured changes in their, I
14 think you said heart rate and was it the Galvanic
10:50 15 skin monitor?

16 A Yes.

17 Q It's my understanding that at some point in the
18 evolution of polygraph, that more indicators were
19 added to the process; is that correct?

10:50 20 A Well, the first known use of a lie detector was in
21 1896 and it was to do with a heart monitor and so
22 it's evolved from there.

23 Q Let's take in the 1960s then, would there be -- my
24 understanding, that there were three indicators
10:50 25 and there's now six. Am I wrong on that?



1 A No, it hasn't changed really since, and you are
2 measuring, they were measuring the same things in
3 upper and lower. There were some instruments that
4 didn't measure upper and lower respiration, only
10:51 5 one, but they were measuring respiration back
6 then. They were measuring heart rate and rise and
7 fall in blood pressure then and Galvanic skin
8 response, so it really -- they've added
9 electronics to it, they are now computerized, but
10:51 10 they are still measuring the same things.

11 Q And so the equipment and the measuring devices may
12 have gotten, may have improved --

13 A Or sophisticated.

14 Q -- but essentially the same body reaction is being
10:51 15 tested; is that fair?

16 A That's correct.

17 Q If we could just call up again, 020161, please,
18 and go to page 63, and I think when we left off at
19 the break you had indicated that before you
10:51 20 started the test you had concluded that, I can't
21 remember your words, but that you didn't believe
22 you would get a meaningful test; is that right?

23 A That's correct.

24 Q And so tell me, tell us what happens when you get
10:52 25 a test that's not meaningful, what happens to the



1 charts and why can't you read them?

2 A They were erratic, particularly in a case of this
3 where an individual is moving, you can't get a
4 base line. The pens are virtually jumping all
5 over the chart, you are spending all your time
6 trying to bring them down to a base line. They
7 are just an erratic reading. There's nothing to
8 read.

9 Q So here it looks like you asked him these three
10 questions and he answered no to each of those,
11 about whether he stabbed her and then two
12 variations; is that right?

13 A Yup.

14 Q And so do you have a recollection of what those
15 would have shown on the chart or --

16 A There was just -- there was nothing that was
17 readable on the chart.

18 Q So you say it's not readable. In a test -- let's
19 go back to a case where the subject is properly
20 prepared and it's a valid test.

21 A Okay.

22 Q Would you expect, on the 10 questions, and let's
23 assume someone answers no to the question did you
24 stab Gail Miller, the same way here, answers no to
25 those three questions and is being deceptive, what



1 would you expect to see on the chart?

2 A I would expect to see physiological changes
3 occurring at the time I asked those three
4 questions.

10:53 5 Q As compared to what?

6 A As compared to the control questions.

7 Q Okay. So those would be the two comparisons?

8 A Yes.

9 Q And then in an inconclusive test then, what would
10:53 10 you normally -- or what would you see?

11 A There would just be no comparison, there would
12 be -- on this one particularly, it was just a
13 jumble of writing. I mean, sometimes you'll get,
14 you'll get a test that -- I mean, the writing is
10:53 15 fairly clear, but someone may not be responsive
16 for either physiological or psychological reasons
17 that day and they are just not responding to
18 anything maybe, or in a test like this where
19 someone is moving all the time and burping and
10:54 20 scratching their hand and clutching their chest,
21 the pens are just flying all over the place.

22 Q And is it a case, Mr. Robinson, of -- is there a
23 judgment call when you sort of interpret the
24 results as being inclusive or is it sort of black
10:54 25 or white, it's either readable or not readable?



1 A It's either, yeah, you can either -- there's
2 either changes occurring between controls in
3 crimes or there's not and if there are changes you
4 can numerically score them and end up with a plus
10:54 5 or minus score, and depending where that plus or
6 minus score is, you will be able to call that
7 person truthful, inconclusive or deceptive. Now,
8 you can have, you know, reasonably readable
9 charts, but they are not responding and you may
10:55 10 get a plus 1 or a minus 1. That falls into what
11 we call inconclusive, anything between plus 3 and
12 minus 3 is inconclusive.

13 Q Can you tell us just a bit about that process of
14 taking the charts and assigning the, or doing the
10:55 15 numerical analysis?

16 A How we do it?

17 Q Yes.

18 A Well, I start at the first control question and I
19 look at the upper breathing and I go to the next
10:55 20 question which would be the crime or relevant
21 question and I look at the upper breathing and I'm
22 looking to see if first any changes have occurred
23 in that person's breathing pattern. If changes
24 have occurred, has it occurred on the control
10:55 25 question or the relevant. If it occurs on the



1 control question, I'm giving that person plus
2 scores. If it occurs on the relevant question,
3 I'm giving that person a negative score. Then I
4 go to the lower breathing, do the same thing. I
10:56 5 go to the heart rate, the rise and fall in blood
6 pressure, the Galvanic skin response, and
7 comparing side by side all the way and assigning
8 numbers to them if there's anything to assign, and
9 then when it's all over I total all those numbers
10:56 10 up. Sometimes there's some pluses, more
11 negatives, or sometimes there's more pluses and
12 fewer negatives and I arrive at a score, and I'm
13 confident then, depending on the score, whether
14 that person is truthful or not.

10:56 15 Q And this score and analysis, is that based on some
16 methodology that someone has developed then in
17 reading charts?

18 A Yes, it's a, you know, you are still -- what's the
19 word I wanted -- it's a judgment call on the
10:56 20 examiner's part of course, but if you are trained
21 properly and know what changes can occur, that's
22 what you are comparing.

23 Q And so if you scored a chart and another polygraph
24 operator scored the same chart, would you expect
10:57 25 to get the same result?



1 A Yeah, I would, definitely.

2 Q And then once you get that numerical result,
3 that's what tells you whether it's conclusive or
4 not?

10:57 5 A Yes.

6 Q And so just so I understand, there's a process you
7 go through that causes you in your professional
8 judgment to conclude that this test is not of any
9 value; is that fair?

10:57 10 A That's correct.

11 Q And then the charts themselves, what are the
12 charts, what do you mean when you say charts?

13 A It's a lined graph paper, it's in a roll and it's
14 in the instrument and it rolls out at the top of
10:57 15 the machine and there's six pens sitting on that
16 graph paper and during the course of the
17 examination those pens are recording those inner
18 movements on the things we're measuring and you
19 end up at the end of an examination with
10:57 20 approximately a 12 foot length of graph paper.

21 The graph paper would be about 10 inches in width
22 and it would end up being about 12 feet in length
23 after you've conducted an examination.

24 Q And could you, if someone else had conducted a
10:58 25 polygraph and you had the charts, would you be



1 able to interpret those charts?

2 A Yes.

3 Q Would you be able to do so without the questions?

4 A Yes. If this person followed the standard

10:58 5 procedure of numbering, I would know just by the

6 number what type of a question he was asking.

7 Q And so explain that, the 10 questions, do you put
8 the control and the crime questions in certain
9 spots?

10:58 10 A Yes. The control questions are always four, six
11 and nine.

12 Q Yes.

13 A And the crime or relevant is always five, seven

14 and 10, and then as we go through three separate

10:58 15 charts, we roll the crime question so we're

16 comparing -- comparing control number 4 on the

17 first exam to the first crime question, number 5,

18 in the second graphs we're comparing control

19 number 4 to crime number 7, and on the third chart

10:59 20 we're comparing control number 4 to crime number

21 10, so all the crime questions get control, get

22 compared to one control and same with number 2 and

23 same with number 3.

24 Q So you may not know the exact crime question --

10:59 25 A That's right, it could be a murder, it could be a



1 theft, but if he's using the standard numbering
2 system, I could look at those charts and score
3 them without knowing the actual questions.

10:59 4 Q Now, I think in the case of Mr. Fisher, the charts
5 were saved for a time period and then destroyed;
6 is that correct?

7 A That's correct.

8 Q And it talks here about being prepared to conduct
9 a re-examination, but you say not until his
10:59 10 medical and emotional problems have improved.
11 Were you ever asked to conduct another test?

12 A No.

13 Q And then as far as the value, and maybe that's a
14 subjective word, but based on your test of Mr.
11:00 15 Fisher, could there be any conclusion drawn one
16 way or the other as to whether or not he was being
17 truthful when he said he did not kill Gail Miller?

18 A No.

19 Q Would there be any value in assessing his
11:00 20 credibility then on that question based on the
21 test you conducted?

22 A No.

23 Q Would the fact that he agreed to undergo the test
24 be relevant in any way from your view in assessing
11:00 25 his credibility?



1 A No.

2 Q And why not?

3 A Because deceptive people also take polygraph
4 examinations.

11:00 5 Q If we could call up 020164 and this is a letter
6 March 7th, '92 to Mr. Beresh and I think this is
7 around the time of the Supreme Court hearings, and
8 it just says:

9 "To clarify my report of July 10, 1990
11:01 10 it was my opinion, before the actual
11 polygraph examination, that as a result
12 of Mr. Fisher's physical and emotional
13 condition on July 9, 1990 that the
14 polygraph examination could not be
11:01 15 properly conducted on this subject.

16 Before the actual polygraph
17 examination I did not advise Mr. Fisher
18 of my concerns as to his condition as
19 that may well also have affected the
11:01 20 results. Mr. Fisher was anxious to
21 proceed with his polygraph examination."

22 If we can pause there. What -- I think the first
23 paragraph is what you've already told us; is that
24 right, that --

11:01 25 A Yes, yeah.



1 Q The second one, you didn't tell Mr. Fisher about
2 your concerns because you thought it might affect
3 the results. Can you explain that?

4 A Well, if I was to say to Mr. Fisher that I knew I
11:01 5 wasn't going to get good results, certainly if the
6 individual is deceptive, there is -- that concern
7 of being caught in their lie would not be there.

8 Q Okay.

9 A That would be the prime reason. I mean, that
11:02 10 person has to be concerned enough that he would
11 react and if I'm telling someone I'm just going
12 through the motions here, but it's not going to
13 mean anything, then there wouldn't be any reason
14 for him to psychologically or physiologically
11:02 15 respond to the charts.

16 Q It goes on to say:

17 "Mr. Fisher voluntarily presented
18 himself for his polygraph examination
19 and fully cooperated throughout."

11:02 20 And that's correct is it?

21 A Yes.

22 Q And:

23 "It is my opinion that his physical and
24 emotional condition did in fact affect
11:02 25 the results, and I was therefore unable



1 to reach a conclusion."

2 And I take it that's consistent with what you
3 told us?

4 A Certainly, yes.

11:02 5 Q Were you aware, Mr. Robinson, that your polygraph
6 results or reports were filed in the Supreme Court
7 in the David Milgaard --

8 A No, I was not.

9 Q Just a couple of letters here I want to go
11:03 10 through, 156898, and this is a letter from Mr.
11 Asper to your firm, May 11th, '92, to do some
12 work. Was this what you were referring to before
13 as your firm doing some witness locate work; is
14 that --

11:03 15 A No.

16 Q No?

17 A No.

18 Q Do you know what this relates to?

19 A I do now.

11:03 20 Q And what is that?

21 A I think it has to do with the interview of a, I
22 believe a government employee in Regina.

23 Q Michael Breckenridge?

24 A That's right.

11:03 25 Q And I believe, at the time, you had an office in



1 Regina and a fella by the name of Robert Perry
2 working with you?

3 A And still do, yes.

4 Q Still do? And he did some interviews; is that
5 right?

6 A My understanding is he did, yes.

7 Q And you had no involvement in that?

8 A No.

9 Q Done with that. Just some general questions about
10 polygraph. Can you explain for us the difference
11 between -- you've described the science and
12 formulating the questions. If I were to ask you
13 if I was a Crown or police and you were a police
14 officer, and I wanted you to go in and interrogate
15 and conduct a polygraph of a suspect, versus if I
16 was defence counsel, as Mr. Pick was, and said I
17 wanted you to do a polygraph with my client; would
18 you approach them differently, and if so, how?

19 A Yes I would. Since I've gone into private
20 practice and I've been requested to conduct
21 polygraph examinations I've always made it clear
22 to counsel that the polygraph can also consist of
23 what I call a post-test interview, which is an
24 interrogation.

11:05 25 Q Okay. And let's go back to your days as a police



1 officer, then, when you conducted a polygraph.

2 Can you tell us, would you -- when you conducted
3 the polygraph as a police officer, would you also
4 conduct an interrogation of the witness?

11:05 5 A Certainly, if they are deceptive, I would.

6 Q And can you explain, explain the process there,
7 how you would undertake that?

8 A How, as in once I had analysed the charts, and if
9 he was deceptive then I would go back and tell
11:05 10 that person exactly that, that they were deceptive
11 on the polygraph, and then I would do an
12 interview.

13 Q And would you use the polygraph results, then, as
14 a tool to interrogate that witness?

11:05 15 A Somewhat at the start. Certainly I would say, if
16 a person started to make denials, then I would
17 tell them that whether they did it or didn't do it
18 is not the issue any more, I've run the polygraph
19 and I know the results and I know they are
11:06 20 deceptive, so the question of did they do it is
21 not the issue, the question is why they had to do
22 what they did.

23 Q Yeah.

24 A And that's where I would get in -- that's how I
11:06 25 would lead into my interrogation.



1 Q And in your experience then in interrogations,
2 again when you were a police officer, did the
3 polygraph and the results have an impact on the
4 people you were interrogating?

11:06 5 A I think so, yes.

6 Q In what way?

7 A Umm, I think they see it as the magic machine that
8 can determine truth or not, and if I'm saying to
9 them that that's not the issue any more, that I
11:06 10 know they did it and the question is now why, umm,
11 and I'm telling them I'm going to give them a nice
12 reason for why they did what they did, of course
13 they are looking at that, they are looking at that
14 as a nice way out of what they did.

11:06 15 Q And did you ever have any situations where the
16 polygraph result gave you a false response and a
17 witness or a suspect ended up adopting the wrong
18 story or statement?

19 A Umm, if I understand this clearly, so this person
11:07 20 was not responsible for the crime?

21 Q Yes, or was a witness?

22 A But I went after them anyways and --

23 Q Not responsible, but the polygraph showed that
24 they were being deceptive when they denied it?

11:07 25 A The polygraph -- no.



1 Q And what about, again, the use of the polygraph as
2 a tool in interrogating witnesses? Again as a
3 police officer, before you hook them up, in other
4 words did the polygraph, the fact that a polygraph
11:07 5 test was going to be conducted, --

6 A Uh-huh.

7 Q -- was that used as a tool in interrogating
8 witnesses or suspects?

9 A Umm, I guess first off I -- it's a rarity to
11:08 10 conduct polygraph examination on witnesses.

11 Q It's --

12 A It happens, but not a lot.

13 Q I'll come back to that. Let's just talk about a
14 suspect.

11:08 15 A Okay. A suspect comes in for an examination --

16 Q Yes.

17 A -- and prior, in the pretest, --

18 Q Yes.

19 A -- would I interrogate the subject?

11:08 20 Q Yes?

21 A Okay. I would not interrogate them but I would
22 use a technique called 'the heart and you'.

23 Q Yeah?

24 A And in fact it is a form of interrogation, and it,
11:08 25 on a relatively large number of cases, results in



1 admissions.

2 Q Can you explain that, please?

3 A Okay. During the pretests, there are a number of
4 things that occur in the pretest, and one of them
11:08 5 is the explanation of how the polygraph works.

6 Q Yes.

7 A And as a police officer, this is when I was a
8 police officer, as I was explaining the polygraph
9 at some point I would say to that person that,
11:09 10 "the polygraph is just a cold, non-judgemental
11 instrument, it can't tell me why someone does
12 something, it can only tell me if a person is
13 telling the truth or not telling the truth, it
14 can't tell me why someone was forced to do what
11:09 15 they did or why they were placed in a position to
16 do what they did", and I will say to that person
17 then, "if this is what's happened to you, if you
18 were forced to do whatever, I stole the thousand
19 dollars to feed my wife and children, if that's
11:09 20 why you stole the money, then I understand that, I
21 don't want that cold instrument just to show me
22 that you are a liar, I would rather have you tell
23 me why you were forced to do what you do". And
24 that is called the heart and you, and fairly often
11:10 25 a person would say, "okay, that's what happened".



1 Q But would there be, again in your experience,
2 cases where suspects would, for various reasons,
3 fear that the polygraph might show them to be a
4 liar so they would confess prior to the test?

11:10 5 A Umm, if they are encouraged with the heart and
6 you, for example?

7 Q Yes?

8 A Yes.

9 Q Again, and you talked about the pretest, my
11:10 10 understanding -- and please correct me if I'm
11 wrong -- in the pretest you would go through the
12 relevant facts with the subject and try and get
13 their version of events; is that fair?

14 A That's exactly the term we use, --

11:10 15 Q That it's --

16 A -- that "we have had a chance to read the police
17 reports, or whoever has reported, but what I want
18 is your version of what happened?"

19 Q And then you would get their version of events and
11:10 20 you would test it; is that fair?

21 A Umm, I --

22 Q Or not test their version, you would then -- for
23 example if someone said, you know, "I wasn't
24 involved in the murder, I wasn't even there, I was
11:11 25 somewhere else" --



1 A Okay, right?

2 Q -- you might test "were you there, did you commit
3 the murder", that type of thing?

4 A Yeah. It's still, it's that issue is there, but
11:11 5 I'm getting their version. Some people have
6 absolutely no knowledge of it according to them,
7 others have intimate knowledge of it but say they
8 didn't do it, so, you know, I'm getting their
9 version of events.

11:11 10 Q So if someone came in and said, "I didn't do it
11 but Bill did it, that's my version", is that what
12 you would then test, or would it depend on the
13 circumstances?

14 A Umm, if someone came in and said, "Bill did it", I
11:11 15 may go, as a policeman I would probably go back to
16 the investigators and say, "look, before we
17 conduct this examination maybe Bill should be
18 interviewed".

19 Q Okay. And in the course of the pre-interview,
11:11 20 again before you set up the test, would you ever
21 say to a subject, "lookit, I don't believe you",
22 or "that's wrong", or anything of that nature?

23 A No.

24 Q And why not?

11:12 25 A It's a non-accusatory interview, to start with, in



1 the pretest. They've come in there saying they
2 didn't do it, and that's the purpose of the
3 polygraph examination, to determine through the
4 polygraph whether they did it or not. For me to
11:12 5 make accusatory statements to someone tells them
6 that they are going to get a biased polygraph
7 examination, I'm sure they'd have some concerns,
8 and rightfully so.

9 Q Would that impact the validity of the results?

11:12 10 A It could well, yes.

11 Q And so if a subject said, "here's my version of
12 events", and you as the polygraph operator said,
13 "lookit, I, you know, I have trouble with that,
14 we'll test it, we'll try it", something like that,
11:12 15 would that have an impact on --

16 A Umm, maybe not that mildly, but if I said to a
17 person, "that's totally unbelievable, I know that
18 didn't happen, I know you are not telling me the
19 truth when you say that", that would certainly
11:13 20 have an impact I would think.

21 Q And tell us how that might have an impact, what
22 would it cause in the subject's answers when you
23 go to interpret the test, what might that do?

24 A Well you've certainly -- if someone there is
11:13 25 truthful and I'm saying to them in the pretest



1 that, "I don't believe you, I think you did this",
2 I'm sure that person is concerned about the
3 validity of me, as an examiner, having an open
4 mind as to what the results are going to be.
11:13 5 Might he think that the results are preordained,
6 and no matter what happens I'm going to fail them,
7 I would think those kind of thoughts would cross
8 through their mind. Umm, yeah, that person would
9 think, "this is a biased person and I'm not going
11:13 10 to pass this", and that would cause them some real
11 physiological and psychological concerns in the
12 exam.

13 Q And might that lead to a false positive result?

14 A Yes, I think it could.

11:14 15 Q So, again, in your practice, then, would it be
16 fair to say that you would refrain from
17 accusations in the pretest interview?

18 A Yeah. And I don't know if policy has changed in
19 police forces, but certainly when I was a
11:14 20 policeman, as a polygraph examiner we would not
21 conduct a polygraph examination on anybody who had
22 been interrogated in the past 24 hours.

23 Q And why is that?

24 A Because of the results that you might get on your
11:14 25 examination from the emotional distraught that



1 those people are feeling from going through an
2 interrogation.

3 Q Okay. Now let's talk about witnesses. Did you
4 have occasion to or have you had occasion to
11:14 5 conduct polygraph examinations on witnesses?

6 A Some. Not a lot.

7 Q And is -- do you do anything different when you
8 are dealing with witnesses rather than suspects?

9 A No, it's still are they telling the truth to
11:14 10 whatever the issue is, or not.

11 Q Again, as far as the polygraph results then, when
12 you have the ten questions and the control
13 questions I think you said earlier that in some
14 cases you are expecting to have some lies show up,
11:15 15 not to the crime questions, but either -- to the
16 control question; is that right?

17 A Yes, yup.

18 Q And so when you get the result back you could look
19 at the chart and show a subject and say, "lookit,
11:15 20 you lied to me", or, "you were deceptive"?

21 A I, yeah, I don't get into showing charts and
22 things like that.

23 Q Why not?

24 A What's the purpose. That person can't read those
11:15 25 charts anyways. I mean what is that proving to



1 the person. Nothing.

2 Q But if you looked at the chart would there be a
3 blip or on a certain question it --

4 A Well there would be changes, but those people that
11:15 5 I am dealing with aren't capable of reading
6 polygraph charts, --

7 Q Yeah?

8 A -- so it wouldn't mean anything to them.

9 Q So they would need you to tell them which question
11:16 10 they lied on or were deceptive on?

11 A Yes.

12 Q Is that the word used, 'deceptive' or 'lied', or
13 is there --

14 A 'Deceptive' is a nice term, yes.

11:16 15 Q Deceptive. So you would take the results and say
16 'lookit, sir, you've been deceptive on two of
17 these questions"?

18 A I wouldn't say that, I would just say they have
19 been deceptive to the issue here.

20 Q Okay.

21 A Whatever the issue was.

22 COMMISSIONER MacCALLUM: And then you would
23 test again?

24 A No.

25 COMMISSIONER MacCALLUM: No?



1 A Oh, are you talking about a witness? I'm sorry.

2 BY MR. HODSON:

3 Q A witness or, yeah, a witness or a suspect?

4 A Umm, okay, if I tested a witness and he was
11:16 5 deceptive, and I told him that he was, and he told
6 me, "okay, I was, and this is why I was deceptive
7 and this is the truth", would that call for
8 another polygraph examination; yes, probably.

9 Q Okay. So let's just go through the number of
11:16 10 tests. In a normal standard suspect or witness,
11 three tests, is that right?

12 A Umm, yes, three charts.

13 Q Three charts?

14 A Yes.

11:17 15 Q So you would take the same ten questions and you
16 would ask them three different times?

17 A Correct.

18 Q With a break in between, a bit of a break?

19 A A very small break, yes.

11:17 20 Q Okay.

21 A Understand an examination is around 2 1/2 hours,
22 the polygraph test itself takes, like, 20 minutes.

23 Q But the standard time to conduct a polygraph
24 session, 2 1/2 hours, about?

11:17 25 A Yup.



1 Q And then you would run the test three times, and
2 is that because you re-order the control and the
3 crime questions?

4 A That's one of the reasons, yes.

11:17 5 Q And, as well, three tests are better than one; is
6 that fair?

7 A Yup, you are getting a good look at that person
8 and you've got more questions to score, more
9 chance of developing a, you know, either a
11:17 10 positive or a negative result.

11 Q And, between the three tests, would you ever
12 interrogate the subject?

13 A Absolutely not.

14 Q Why not?

11:17 15 A I've -- we've discussed --

16 Q Okay.

17 A -- that it's going to emotionally, I mean, that
18 guy knows now what your opinion is.

19 Q Would you ever, after test one and before test two
11:18 20 or after test two but before test three, advise
21 the subject of any of the results?

22 A No, because you don't read the charts until the
23 examination is over.

24 Q Okay. So you wouldn't say, for example after you
11:18 25 run through the tests, say "lookit, I, you know, I



1 think you were deceptive on one of the questions,
2 let's do it again"?

3 A After, you are saying after the first test --

4 Q Yes?

11:18 5 A -- would I ever say, "you are deceptive to one of
6 the questions, let's do it again"?

7 Q Yes?

8 A Never.

9 Q And is that, again, for the same reason you have
11:18 10 already explained?

11 A Well, to start with, I want three sets of charts
12 to properly evaluate this person. That's one of
13 the reasons.

14 Q Okay.

11:18 15 A And you are not going to do it with one set of
16 charts.

17 Q Okay.

18 A And secondly, and more importantly, is the -- what
19 you are doing to that person emotionally as far as
11:18 20 his polygraph exam.

21 Q Okay. So let's take, again, the case of a
22 witness. You run through the three tests, you
23 read the charts, and you conclude that the witness
24 is being deceptive --

11:19 25 A Yes.



1 Q -- about suspecting or knowing that someone else
2 may have committed a crime. Okay?

3 A Okay.

4 Q So a witness has said, "lookit, I don't know
11:19 5 anything about the crime, I have no information, I
6 don't suspect anybody, and I don't know anybody
7 who has committed the crime".

8 A Okay.

9 Q You run the test and you find that that's been
11:19 10 deceptive, okay?

11 A Okay.

12 Q And you are a police interrogator; what would you
13 do next?

14 A I would interrogate him.

11:19 15 Q In what way? What would you do?

16 A I would tell him that he is deceptive to the issue
17 and what is the deception, "what is it you saw,
18 what is it you did that is causing you to respond
19 negatively on this polygraph", and I would try to
11:19 20 get the answers from him.

21 Q And then if the witness at some point then said
22 "okay" and gives information incriminating
23 someone, --

24 A Okay.

11:19 25 Q -- so in other words changes their story and gives



1 some information that says "yes, I would
2 incriminate X", --

3 A Okay.

4 Q -- would you then conduct a polygraph of the new
11:20 5 version of events?

6 A I think it would be proper to, yes, given -- I
7 mean you wouldn't do it right then.

8 Q Okay. Why --

9 A You wouldn't conduct another examination that day.

11:20 10 Q And why is that?

11 A Well that person is emotionally -- they have got
12 nothing left in them, emotionally, to respond
13 hardly any more. I mean they have been through a
14 polygraph, which is very emotional, --

11:20 15 Q Yes?

16 A -- you've interrogated them, you've forced that
17 person to make admissions under interrogation,
18 they are certainly not -- it's not conducive to
19 now conduct another polygraph examination that
11:20 20 day.

21 Q In the, again let's talk about the case of a
22 witness, and again the example I gave you. And I
23 think, in this case, let's take it where the
24 questions are, "do you suspect anybody of
11:20 25 committing a crime, do you have any knowledge of



1 committing a crime"?

2 A Yup.

3 Q And if this witness had been interrogated by the
4 police for some time and the witness was well
11:21 5 aware that one of his acquaintances was a suspect,
6 okay, so going into the test with you the witness
7 is well aware that the police believe the witness'
8 acquaintance is a suspect --

9 A Okay.

11:21 10 Q -- and may be responsible for a crime, and the
11 witness was with the acquaintance --

12 A Yes.

13 Q -- when the crime allegedly occurred, in that
14 scenario as a polygraph operator if you asked the
11:21 15 question of that witness, "do you suspect anybody
16 of the crime", and again -- and the witness would
17 answer "no", would you be concerned about the
18 validity of that based upon the previous
19 interrogation of that witness about the suspect?
11:21 20 I'm not sure if I've asked that quite well, but --

21 A Well I think, to start with, I wouldn't run the
22 SKY test you are talking about. If what you are
23 saying is what happened in this matter, where --

24 Q Yes.

11:22 25 A -- a witness had been interrogated by the police



1 and the police basically told him, "this is who
2 did it and we want you to tell us the truth and
3 confirm it", why wouldn't you run a polygraph test
4 asking those questions, "did you see this
11:22 5 individual do this", "did this individual do
6 that"? I wouldn't run a knowledge polygraph
7 saying, "do you know for sure who did it?"

8 Q And why not?

9 A Well because we're trying to establish that issue,
11:22 10 did this person do it, and if the police feel it
11 was that person then I think you should either
12 confirm or eliminate that person through a
13 polygraph test of that witness. If that witness
14 has actual knowledge why would you beat around the
11:22 15 bush and use this knowledge test.

16 Q And what would -- would there be any risks in
17 asking the question, "do you suspect anybody or do
18 you have any knowledge of who may have committed
19 the crime"?

11:22 20 A Well there's not any danger in it, but again, you
21 are not getting to the crux of the issue if you do
22 it that way --

23 Q Would there --

24 A -- if you have a suspect. It would be different
11:23 25 if you don't have a suspect.



1 Q Okay. Would there be a concern that information
2 that the witness had received previously in police
3 interviews --

4 A Uh-huh.

11:23 5 Q -- might influence his physiological reaction to
6 the question, "do you have any knowledge", or, "do
7 you suspect anyone"?

8 A It's possible, yes, it's possible.

9 Q Maybe what I will -- Mr. Robinson, if I can maybe
11:23 10 just call up, and we'll call up document 043300.
11 And this is the transcript of the evidence of Art
12 Roberts before the Supreme Court of Canada in a
13 reference case relating to David Milgaard. Mr.
14 Roberts is now deceased, but in 1992, under oath,
11:23 15 he testified as to the procedure that he
16 conducted. If you could go to page 325, and maybe
17 I'll just walk you through parts of this and get
18 your comment on this.

19 And I think at this time, just
11:24 20 as a bit of background, I think it's established
21 on the record prior to this, prior to Mr. Roberts
22 conducting the polygraph on Ron Wilson, Ron Wilson
23 had been interviewed by the police on a number of
24 occasions, and I think in the two or three days
11:24 25 prior to the polygraph had been interviewed fairly



1 extensively and had provided some information to
2 the police that some might consider to be
3 incriminating, would -- that would be the starting
4 point.

11:24 5 And I think it's also fair to
6 say on the record that at this time Ron Wilson's
7 companion, David Milgaard, was a suspect of the
8 police, and Ron Wilson knew that Mr. Milgaard was
9 a suspect and knew that that's why he was being
11:24 10 questioned, okay?

11 A Yeah.

12 Q And if we just, so -- now, and this is Mr.
13 Roberts:

14 "Now, as far as I can recall -- and I
15 would normally do this, because you are
16 trying to find the person who did do the
17 murder -- I ran what was known as a SKY
18 test. S-K-Y. The reason for it being
19 called that is, one of the questions you
20 would ask is: Do you suspect anyone of
21 committing this murder, or murdering
22 Gail Miller, whichever question I used
23 at that time. The next one would be:
24 Do you know for sure who killed Gail
25 Miller, or who committed this crime?



1 The last one, with the Y in it: Did you
2 commit this crime, or did you kill Gail
3 Miller?

4 He agreed to all those
5 questions, and he perfectly understood
6 them."

7 And then if we can go and scroll down:

8 "I had a form ...",

9 go back up, I'm sorry:

10 "... the SKY -- interspersed between,
11 for instance, "Is your name Ron Wilson?
12 Do you live in Saskatoon?", and so on,
13 in between these questions."

14 Now it's not clear from this evidence, Mr.
15 Robinson, whether there's any control questions
16 in there. Are you able to tell, from that
17 answer, whether that's the case?

18 A Umm, those are two irrelevant questions that are
19 placed in the examination, still are. They are
11:26 20 called irrelevants and they -- the first one, the
21 very first question is called an icebreaker, that
22 would be the, "is your name Ron Wilson", would be
23 the first question that would be asked on an exam.

24 Q Yeah.

11:26 25 A And it's called an icebreaker. Just the asking of



1 the question has a bit of an impact on the person,
2 and there might be a bit of a response, and so
3 it's thrown in there to take that response away.

4 Q Yeah. There was also reference, and I won't bring
11:26 5 it up, but a reference to the question asked,
6 "have you ever lied before"; would that be a type
7 of control question?

8 A Yes. I don't think it would be quite that way,
9 but it would be about a lie, one of the controls
11:26 10 would be a lying control, yes.

11 Q And so that would be, "have you ever told a lie
12 before", and that would, again for the reasons
13 you've stated earlier, get a reaction out of the
14 witness?

11:26 15 A It's, no, it's a control. Yeah, it's there in
16 case that person didn't commit the crime, they are
17 giving them that place to respond.

18 Q Okay.

19 A Okay. That's one of the control. The other
11:27 20 controls would be, you know, "have you ever
21 intentionally hurt someone", on a murder case,
22 say.

23 Q Yeah.

24 A Things like that would be the controls.

11:27 25 Q Okay. And then it's written down, and then:



1 "Q Mr. Wilson went through these questions
2 ahead of time ..."

3 "A Yes, sir, and he was allowed to read
4 them."

11:27 5 Would that have been the standard practice?

6 A Yes. Well they would be read to him, if he
7 allowed him to read them himself, that would be
8 fine too.

9 Q And then:

10 "Q Take us through the procedure, then,
11 please. What's the next step? Do I
12 understand you correctly? You had your
13 interview, you then prepared the
14 questions, based on this SKY acronym, is
15 that right.

16 A Yes.

17 Q Okay, and then what happens next?"

18 And actually if we could call up 043327, I think
19 might be a better version of that -- or sorry,
11:27 20 208767. I think we have a better version of that
21 page, I think that's part of 208733A.

22 MR. ELSON: I've got 121874, and that's
23 really good.

24 MR. HODSON: Sorry, that's?

11:28 25 MR. ELSON: 121874.



1 BY MR. HODSON:

2 Q 121874 might be clearer.

3 "A Yes.

4 Q Okay, and then what happens next?

5 A I would put the instruments on. I
6 would ask him to sit down, put the
7 pneumograph on him, the GSR
8 electrodes, and the blood-pressure
9 cuff."

11:28 10 And if I can pause there, it looks as though
11 there would be three indicators, Mr. Robinson,
12 was that standard?

13 A Well the pneumograph should be an upper and lower,
14 I don't know, he says:

11:28 15 "... put the pneumograph on him ...",
16 so it may have been a single-pneumograph
17 instrument.

18 Q Okay. And then it says:

19 "Then I would tell him, "I'm going to
20 begin the test now", and start the
21 instrument. Then you would see the pen
22 lines on the graph, and then you would
23 start questioning."

24 A Yup.

11:29 25 Q And then:



1 "Q Did you put those kinds of questions to
2 him that you have indicated
3 previously?

4 A Yes, sir, and they are marked so on
5 the graph as you ask the question.
6 The exact moment that you ask the last
7 syllable of the question you mark it."

8 Is that correct, that's the procedure?

9 A That's right, that's where -- the looking for the
10 response right there.

11:29

11 Q Do you recall the results of the testing
12 process at that point?

13 A Yes, I recall that I was not satisfied
14 that he was telling the truth. In
15 other words, that he was being
16 deceptive, because I did get a
17 response on, "Do you suspect?", and
18 "Do you know?"

19 Q What response did you get?

20 A Well, I got a response in the
21 breathing, a response in the GSR and a
22 response in the cardio.

23 Q I guess my question to you is: Do you
24 recall how he answered those questions?
25 What was his answer?



1 A "No."

2 Q And from the responses in the machine,
3 what did you conclude?

4 A That he was being deceptive.

5 Q All right. Was he being deceptive when
6 he was asked if he was the one who did
7 it?

8 A Oh, no. No. I'm sorry, on just the
9 two, suspect and --

10 Q The S and the K, but not the Y?

11 A That's right.

12 Q All right. What did you do then, sir?
13 Do you recall? If you don't, fine, but
14 do you recall how long that actual
15 physical testing process took?

16 A I would probably have run two tests,
17 sir. You usually run two tests. Now,
18 I would release the blood-pressure
19 cuff so that it was comfortable after
20 the first test and tell him to stay
21 relaxed, take things easy, and that I
22 was going to run another test. And I
23 probably did run another test.

24 Q That was your practice?

25 A Yes, that's the ordinary way of doing



1 it.

2 Q What would be the purpose? Is this an
3 identical test? The same questions and
4 --

5 A Exactly the same test, sir."

6 And, again, is that -- it appears here Mr.
7 Roberts only did it twice; do you know if that
8 was a practice of the day at some time?

9 A I don't know. I don't know what the practice --
10 this is '69?

11 Q 1969.

12 A I don't know.

13 Q Go to the next page, please. And then:

14 "Q Did you vary anything between the two
15 tests?

16 A Not to my knowledge, no, sir.

17 Q Was that your practice, to make any
18 variations?

19 A No."

11:31 20 And I think you told us your practice was to move
21 the --

22 A Yup.

23 Q And was that important?

24 A You rotate, you rotate the questions.

11:31 25 Q And why was that important?



1 A So you can compare each relevant question to each
2 control question.

3 Q And scroll down:

4 "Q In the course of your testing, I think
5 you have told us that the questions are
6 shown to the witness and made clear
7 what's going to be asked to him.

8 A Yes.

9 Q Does the witness know the order that
10 these questions are going to be put to
11 him?

12 A Yes, ..."

13 And, again, is that consistent with your
14 practice?

11:31 15 A No.

16 Q And why is that?

17 A Well you go through them, and you don't go through
18 them in the order you are asking them to start
19 with, you don't run through them from 1 to 10, you
11:31 20 run through them in a certain way so you deal with
21 the four questions that we haven't even discussed
22 yet, --

23 Q Yeah?

24 A -- and then you deal with the control question --
11:32 25 or crime question, and then you deal with the



1 control questions, and then there's one last
2 question you ask at the end. So that doesn't
3 signify the order I'm going to put them to him,
4 though, he just knows what the questions are going
11:32 5 to be, and as we start the second test I tell them
6 that, "you are going to hear the same questions
7 but in a different order."

8 Q Okay.

9 A And I do the same thing in the third set.

11:32 10 Q Okay. If we go to the next page.

11 A But I don't think it's crucial that they know how
12 they are coming, or the fact that he didn't rotate
13 the questions, I mean it's -- I don't think it's
14 life or death but it's kind of not the way it's
11:32 15 normally done.

16 Q And then the, it goes on to talk, Mr. Roberts
17 says:

18 "... you would release the blood
19 pressure cuff ...",

11:33 20 and I think this was after the second test:

21 "Q What was the purpose of running a second
22 test?

23 A Just to make sure and verify the
24 results.

25 Q What happened then, that you can



1 remember?

2 A As I recall, I then tore the graphs
3 off, released all the instruments from
4 him, and I made him comfortable in the
5 chair. Then, normally, if I got a
6 response showing he was deceptive, I
7 would say, "You've had trouble
8 answering these questions. Can you
9 explain it to me?" "

11:33 10 Again, is that consistent with what your practice
11 may have been, or is?

12 A Yeah. I would be more accusatory, but --

13 Q Okay.

14 A Yeah.

11:33 15 Q And we'll go to the next page and I think we may
16 find that.

17 "Q Do you recall saying that?

18 A Yes.

19 Q You recall that?

20 A Yes, I recall saying to him, "I think
21 you're lying to me, Ron." "

22 A Yeah.

23 Q And, again, that -- do you see anything wrong with
24 that?

11:33 25 A Nope.



1 Q And that would be based on the fact that you had
2 deceptive results?

3 A Yup.

4 Q And then he said:

5 "He said, "Where?", or "When?", and so
6 on and so forth. So, I showed him the
7 chart. I said, "Now, you pick out where
8 you think there's a variance in this
9 chart." He looked at it and he pointed
10 directly to the response.

11 Q All right, go on.

12 A The three indicators. I said, "You're
13 right, that's where you lied." Now,
14 he indicated that he thought there was
15 something wrong with -- he called it
16 the machine and we refer to it ...",
17 etcetera. And then scroll down to the bottom:

18 "A I said to him, "No, that is where I
19 asked you, 'Do you suspect anyone? Do
20 you know for sure?'" And I said, "Can
21 you explain that?" He finally said that
22 Milgaard had made a remark to him, and
23 he said that he kind of thought that he
24 wasn't sure, and he couldn't really say
25 for sure that he was the one. I asked



1 him then, I said, "Well, what did he say
2 to you?" He said that he had hit the
3 girl. He had hit a girl. Now, I took
4 it to mean Gail Miller.",

11:34 5 etcetera. And then he goes on to talk about some
6 further comments. And, again, you had expressed,
7 earlier, some reservations about the question,
8 "do you know", and, "do you suspect", those
9 questions. And, again, we've gone through Mr.
11:34 10 Roberts, what he conducted here

11 A Yeah.

12 Q What would your concerns be with a witness where
13 there is a known suspect and the effort is to try
14 and get the witness to give truthful information
11:34 15 about that suspect?

16 A Well, the knowledge question, for example, I don't
17 know what Mr. Roberts said to him in the pre-test,
18 but what you say to them is as far as his
19 knowledge, I'm going to ask you if you know for
11:35 20 sure who did it, and the only way you would know
21 for sure is if you did it, if you saw someone do
22 it or someone told you they did it, that's the
23 only way you could know for sure, and I don't know
24 if Roberts said that to him or not. Again, what
11:35 25 you told him before, though, is that Mr. Milgaard



1 was the suspect at this time, that Wilson -- it's
2 Wilson is it?

3 Q Yes.

4 A -- had been interviewed extensively, I think you
11:35 5 call it interrogated even, I don't know how --

6 Q Interviewed. I don't mean to put any -- he was
7 interviewed by the police.

8 A Okay, he was interviewed on a number of
9 occasions --

11:35 10 Q Yes.

11 A -- you told me. And I think you said to me that
12 the police were telling Wilson that they were
13 confident or satisfied that --

14 Q Yeah, and I think, and again it may be difficult
11:36 15 for me to say that, but I think there has been
16 some evidence that Mr. Wilson was aware from the
17 police that David Milgaard was a suspect?

18 A Was a suspect.

19 Q That the police believed David Milgaard committed
11:36 20 the crime and the crime was committed when Mr.
21 Milgaard was in the company of Mr. Wilson and
22 Nichol John?

23 A Yes.

24 Q And so I think, and again I don't mean to misstate
11:36 25 what's on the record, but certainly there were



1 interviews of Mr. Wilson and I think Mr. Wilson's
2 evidence before the Commission is he believed that
3 Milgaard was a suspect at the time.

4 A Okay.

11:36 5 Q And again, my question is would you see any
6 concerns -- let me ask it this way. The question
7 of do you suspect anyone of this crime, any risk
8 in getting a false result from Mr. Wilson in that
9 scenario?

11:37 10 A Possible. I mean, if he's been led to believe
11 that a certain person might be a prime suspect and
12 he's been told that, could it influence him? It
13 could. I'm not saying it did.

14 Q I appreciate that.

11:37 15 A But could it? Yes, it could.

16 Q So in that case when Ron Wilson says do you
17 suspect anyone, if he thinks, well, it might be
18 Milgaard because everybody thinks it is, and he
19 says no, is it possible that that might give a
11:37 20 false response?

21 A Possible.

22 Q How would you design a question to get around
23 that, how would you -- what questions would you
24 ask?

11:37 25 A Well, I think I would have had a different -- I



1 think I would have asked questions regarding Mr.
2 Milgaard. Rather than run a SKY, the questions
3 would have been did you see Mr. Milgaard stab or
4 whatever the case would be, and that's the type of
11:37 5 questions I would ask.

6 COMMISSIONER MacCALLUM: Excuse me, Mr.
7 Hodson, I'm not sure how Milgaard's name came up
8 in this question. Could you just go back a page?

9 MR. HODSON: Oh, sorry, if you can go back
11:38 10 on this, please, scroll down to the bottom, and
11 it says:

12 "A I said to him, "No, that is where I
13 asked you 'Do you suspect anyone? Do
14 you know for sure?'" And I said, "Can
11:38 15 you explain that?" He --"

16 Being Wilson,

17 "-- finally said that Milgaard had made
18 a remark to him ..."

19 COMMISSIONER MacCALLUM: Okay. So it
11:38 20 wasn't -- you are not doing this in the context
21 of the police interviews prior to Roberts seeing
22 the man, the police interviews indicating
23 Milgaard was a suspect, you are concerned only
24 with what Roberts asked him?

11:38 25 MR. HODSON: Yeah. I think the question



1 that I asked Mr. Robinson is that, and I believe
2 Mr. Wilson testified before the Commission that
3 he, when he was being interviewed by Mr. Roberts,
4 knew that the police viewed David Milgaard as a
11:38 5 suspect.

6 COMMISSIONER MacCALLUM: Yes, but Roberts
7 didn't suggest that to him?

8 MR. HODSON: No, I don't believe so.

9 COMMISSIONER MacCALLUM: Okay. Are we on
11:38 10 the same page, Mr. Robinson?

11 A I think so.

12 COMMISSIONER MacCALLUM: Okay. So
13 Roberts -- I'm only interested in the technique
14 conducted by Roberts. He didn't put Milgaard up
11:39 15 as a suspect?

16 A No, and I'm not saying it's wrong to do it the way
17 he did it. I would have done it differently.

18 COMMISSIONER MacCALLUM: How differently
19 though? It was the witness who suggested
11:39 20 Milgaard's name, not Roberts.

21 A It was the witness who --

22 COMMISSIONER MacCALLUM: -- suggested
23 Milgaard.

24 A Well, it had been suggested to the witness as I
11:39 25 understood that Mr. Milgaard was, may have been



1 responsible.

2 MR. HODSON: Yeah, prior to the polygraph.

3 A Prior to the polygraph, yes.

4 COMMISSIONER MacCALLUM: No, how -- how did
11:39 5 that affect Roberts' technique then, what could
6 Roberts have done about that, assuming he even
7 knew?

8 A There may not be a way around it. I mean,
9 polygraph is no magic instrument. If someone
11:39 10 believes something to be true, that's what they
11 believe, and sometimes not every issue can be
12 resolved by polygraph. That's why, I mean, you
13 don't do a lot of witness polygraph examinations.
14 The best type of polygraph examination is whether
11:40 15 someone did or didn't do something, steal, cheat,
16 murder, those are the best type of issues on a
17 polygraph examination. When you are getting into
18 witnesses, did they or didn't they see something,
19 you are getting a little more iffy, you know, is
11:40 20 the impact going to be there to cause him to
21 respond on the polygraph, is the issue significant
22 enough that it's going to cause the fight or
23 flight syndrome to come into effect and cause
24 results on the polygraph, so I'm saying, I mean,
11:40 25 not everything is ideal for a polygraph



1 examination and --

2 BY MR. HODSON:

3 Q Have you used the SKY methodology before?

4 A Years and years ago I have, yes.

11:41 5 Q And would that --

6 A It's an accepted, it was an accepted test, yes.

7 MR. HODSON: I think those are my
8 questions, Mr. Robinson. I believe there will be
9 others. I'm not sure whether we want to maybe
11:41 10 break now and I can check. Maybe I'll just
11 canvass.

12 COMMISSIONER MacCALLUM: Check right now.

13 MR. HODSON: Mr. Elson does, and you'll be
14 a bit?

11:41 15 MR. ELSON: I think.

16 MR. HODSON: Might be a bit. Mr. Boychuk?
17 Mr. Gibson is a maybe, and Ms. McLean, maybe. So
18 we have about three, and I'm quite fine starting
19 now if someone wishes to begin until noon.

11:41 20 COMMISSIONER MacCALLUM: Perhaps we should
21 just in case.

22 MR. HODSON: Anybody care to volunteer to
23 go first? Mr. Elson will start.

24 BY MR. ELSON:

11:42 25 Q Mr. Robinson, for the record, my name is Richard



1 Elson, I'm representing the chief of police and
2 the Saskatoon Police Service. You and I have
3 known each other for a number of years, I've even
4 had occasion to retain your services to polygraph
11:42 5 certain of my clients.

6 With respect to the training
7 that you have received in polygraph work, it's my
8 understanding that that training first commenced
9 in 1975; is that correct?

11:42 10 A No, in January of '76.

11 Q I'm sorry, January of 1976. Prior -- and you
12 first joined the RCMP in what year?

13 A 1960.

14 Q In 1960. What knowledge did you have about the
11:42 15 availability of polygraphers to various police
16 services, municipal, RCMP detachments, etcetera,
17 during the 1960s, how available were they?

18 A I would say that my first recollection of
19 polygraph was when Saskatchewan got their first
11:43 20 examiner in 1972.

21 Q And who was the first examiner in 1972?

22 A Gene Smith.

23 Q And where did Gene Smith work?

24 A Out of Regina.

11:43 25 Q And was that with the RCMP?



1 A Yes, it was.

2 Q Prior to 1972 are you familiar with the
3 availability of polygraphy for police services in
4 Western Canada generally?

11:43 5 A Not then. Now I know kind of who was where when,
6 but prior to '72 I knew nothing about polygraph.

7 Q All right. What's your knowledge now as to the
8 availability of polygraphy prior to 1972 in
9 Western Canada?

11:43 10 A Probably pretty few. Our first examiner in the
11 RCMP was trained in 1967 and he was a lab member
12 and he was never really active as an examiner.
13 Our first actual examiner was trained in 1969 and
14 he was stationed in British Columbia. I knew
11:44 15 that -- my understanding is probably the first
16 polygraphist in Western Canada was Art Roberts.

17 Q All right.

18 A And I don't know if there was any other examiners
19 in Western Canada at that time.

11:44 20 Q Right. In the 1960s would you agree, if I could
21 use the phrase fish out of water, that police
22 departments were, to some extent, like a fish out
23 of water in terms of understanding and dealing
24 with polygraphy at that time, it was an unknown
11:44 25 commodity?



1 A It probably was.

2 Q And did you agree that there might have been some
3 degree of uncertainty among police departments as
4 the extent to which one could rely on polygraphy
11:44 5 at that time?

6 A I don't know. I don't know where -- well, I don't
7 know where Mr. Roberts was trained, but I knew, I
8 know where all our people were trained prior to
9 establishing our own school and I think they were
11:45 10 all very well trained. I think the force
11 certainly by the time I came on had a good
12 understanding of polygraph and how it should be
13 used and what restrictions there were to the use
14 of it, but I don't know what those things were
11:45 15 like prior to my being an examiner.

16 Q Right.

17 A I just know kind of who was around then, but I
18 have no idea what the ground rules were.

19 Q I appreciate that. When you were working as an
11:45 20 officer within the RCMP and you first learned of
21 polygraphy, would you agree with me that there was
22 a certain amount of deference among police
23 officers to polygraphy and to the results that
24 polygraphers were able to get?

11:46 25 A When you say deference?



1 Q Deference in the sense that well, gee, if this
2 polygraphy -- in other words, there's information
3 from a polygrapher to the effect that either
4 someone is telling the truth or that someone is
11:46 5 being deceptive, that a police officer who did not
6 have any training in polygraphy might defer to the
7 judgment of that polygrapher and say, gee, he says
8 the person is either telling the truth or not
9 telling the truth, we've got to accept what that
11:46 10 person says?

11 A I'll tell you what was more common, is that if you
12 ran a test for an officer and you came out and
13 told him that that individual was deceptive and
14 you also say he's confessed to it, he was quite
11:46 15 happy. If you came out, particularly if there was
16 allegedly eye witness evidence involved as to this
17 person being a suspect, you came out and said it's
18 not him, I don't think you had a lot of
19 credibility with those police officers. I think
11:47 20 it depends whether a particular officer had ever
21 seen a polygraph exam before and how it's
22 conducted as to whether he would defer to that
23 person's opinion or not.

24 Q Why do you think that would make a difference?

11:47 25 A I think if an officer saw how professionally



1 conducted they are, I think he would feel the
2 examiner is more credible when he sees what
3 happens in there.

4 Q All right. Now, on that particular point, and we
11:47 5 could probably, I'm not sure what page it's on,
6 but I believe that when Inspector Roberts was
7 testifying before the Supreme Court of Canada in
8 1992, he indicated that it was his then practice
9 not to have anyone in the room whenever he tested
11:47 10 an individual and for that reason there were no
11 Saskatoon police officers in the room of this
12 hotel --

13 A Yes.

14 Q -- at the time that that polygraph test was done.
11:48 15 What is your opinion about that practice, not
16 having another police officer present?

17 A I absolutely agree with that.

18 Q Why?

19 A Because it's a one-on-one situation, you are
11:48 20 asking that person through, even through the
21 pre-test to reveal things that might be hurtful,
22 might be incriminating, so it's a one on one, that
23 person has to place some trust in you. There's
24 other ways that people could watch that though,
11:48 25 they could monitor it through audio or video



1 though.

2 **Q** All right.

3 **A** I don't know if they -- well, probably not back in
4 '69, they would have had to set something up for
11:48 5 it.

6 **Q** There is some evidence before this Commission,
7 notably from Rusty Chartier, that there was an
8 audiotape, but unfortunately that taping has gone
9 missing. Has it been -- to your knowledge, are
11:48 10 you aware of the practice of videotaping polygraph
11 tests?

12 **A** Yeah. When I first started myself personally as
13 an examiner, I didn't have a suite yet and I
14 conducted all of my examinations out of hotel
11:49 15 rooms normally and I always audiotaped everything
16 I did, and it wasn't until the suite was developed
17 here that then there was video in that too, but
18 again, I'm talking more recent times. It's even
19 common practice now for the examiner to travel and
11:49 20 do them in rooms to set up a video camera right in
21 the room where the examination is being conducted
22 and tell the people I'm going to videotape this.
23 Back then probably -- I think they were
24 audiotaped, but not videotaped.

11:49 25 **Q** All right. And why is that important, to have



1 some type of either audiotape or videotape
2 recording, and if we look at it in today's
3 standards, 2005, why is that a significant
4 feature?

11:49 5 A I think it was proper to have a record of what was
6 being said in that room, both for the protection
7 of the examiner and for the protection of the
8 subject, and certainly if there was an
9 interrogation following the polygraph exam, then
11:50 10 it's there recorded.

11 Q Now, Mr. Robinson, it's my understanding that in
12 the course of your training you became familiar
13 with certain materials that have been published,
14 notably by a Professor Fred Inbau, that's spelled
11:50 15 I-N-B-A-U, and a Mr. John Reid, specifically in
16 the field of criminal interrogation and
17 confession. Are you familiar with any
18 publications written by those two authors?

19 A Yes, I am.

11:50 20 Q And it's my understanding, and for the record,
21 Mr. Commissioner, I understand, and the witness
22 can perhaps confirm it, that Fred Inbau was, and
23 may still be, a professor of law at Northwestern
24 University in Chicago and the former director of
11:51 25 the Chicago Police Scientific Crime Detention



1 Laboratory. Were you personally familiar with
2 Fred Inbau?

3 A I've certainly met the man, yes.

4 Q And that -- and you've also indicated that you've
5 met John Reid, presently the director of John E.
6 Reid & Associates and a former staff member of the
7 Chicago Police Scientific Crime Detection
8 Laboratory, and you are familiar with Mr. Reid as
9 well?

10 A I am. Mr. Reid, as far as I understand, is a
11 former lawyer or former policeman and recognized
12 as the father of modern-day polygraph, and Mr.
13 Reid has been deceased since 1982.

14 Q Now, my understanding -- I have before me, that
15 I've been able to pull out of the law school
16 library here in Saskatoon, a textbook entitled
17 "Criminal Interrogation and Confessions," second
18 edition, which would have been available in 1969,
19 and the date of this publication is 1967. It's my
20 understanding, Mr. Robinson, as a result of
21 conversations you and I have had privately, that
22 you have a copy of the third edition of that
23 textbook; is that correct?

24 A Correct, yes.

25 Q And I understand that yours is even autographed by



1 one or more of the authors?

2 A Yes.

3 Q Did you take any course or instruction from either
4 Professor Inbau and Mr. Reid?

11:52 5 A Yes. In April of 1978 I attended an interrogation
6 seminar in Chicago, Illinois put on by John Reid &
7 Associates.

8 Q It's my understanding, although Mr. Wolch is not
9 here, it's my understanding that Hersh Wolch in
11:52 10 his days as a prosecutor also attended that
11 course?

12 A So I understand, yes.

13 Q Was that course available or generally available
14 for police officers and prosecutors within North
11:53 15 America to deal with the subject of criminal
16 interrogation?

17 A Yes.

18 Q And the publications by Professor Inbau and Mr.
19 Reid, would you agree with me that they were
11:53 20 generally regarded as authorities in the field of
21 criminal interrogation and confession?

22 A Without a doubt, and I would say their seminars
23 are at the top of the seminars to do with
24 interrogation.

11:53 25 Q And would you also agree with me that generally



1 among police officers and individuals engaged in
2 interrogation and investigation, the material
3 published by those two gentlemen would be regarded
4 as authorities?

11:53 5 A I would say so, yes.

6 Q And they would also reflect the standards of the
7 day in the various editions that those materials
8 appear, or that those comments or those
9 instructions appear?

11:53 10 A Standards? I don't know quite what you mean by
11 the standards.

12 Q In other words, the standards of conducting
13 investigation and interrogation, that what was
14 generally published in those materials would be
11:54 15 reflected as reasonable standards of the day?

16 A The methodology that you would use?

17 Q Yes.

18 A Yes.

19 Q Just before we break, you would agree with me that
11:54 20 the interrogation or the interview, and perhaps
21 there's a subtle difference between the words that
22 one uses in that context, that the interrogation
23 of individuals who are suspects is different from
24 the interrogation of individuals who are believed
11:54 25 to be witnesses but not believed to be suspects in



1 terms of methodology and in terms of approach?

2 A Oh, definitely, yeah. There's a big difference
3 between interviewing and interrogation, yes.

4 Q And would you agree with me that most of the
5 literature that deals with the subject of
6 interrogation primarily is directed to the
7 interrogation of suspects?

8 A Yes.

9 Q And that there is precious little literature that
10 deals with the interrogation and the interview of
11 witnesses not believed to be suspects?

12 A And who are uncooperative also.

13 Q And perhaps who are uncooperative as well.

14 A Very little.

15 Q Now, I understand that in Professor Inbau's and
16 Mr. Reid's book there is a section that deals with
17 the interrogation of witnesses and other
18 prospective informants. Are you familiar with
19 that portion of the book in your edition; namely,
20 the third edition?

21 A I know I read the book before and I didn't
22 remember anything to do with that. I read it last
23 night and I'm now familiar with it.

24 Q Would you agree that there are instances where,
25 for the most part, witnesses don't have any axe to



1 grind and they don't have a particular interest in
2 the outcome of an investigation, you would agree
3 with that?

4 A Yes.

11:56 5 Q From time to time, however, there will be
6 difficult witnesses for whatever reason?

7 A Yes.

8 Q And these will be witnesses who are perceived as
9 not being as forthcoming as the officer would
11:56 10 expect they would be?

11 A Right.

12 Q And you would agree with me that there are then
13 different approaches to be taken with respect to
14 those so-called difficult witnesses?

11:56 15 A Yes.

16 Q Now, one of the suggestions, one of the concerns
17 is that the witness may be fearful and may fear
18 some type of retribution from the person who is
19 perceived as a suspect; is that correct?

11:56 20 A That's correct. That could be one of the reasons.

21 Q And would you agree with me that it is necessary
22 then for the police officer or the interrogator to
23 deal with that witness and to try to allay that
24 witness' fear or at least give that witness
11:57 25 another objective to be cooperative with the



1 police officer or the interrogator?

2 A Yup.

3 Q And in page 121 of the second edition of Professor
4 Inbau's book he talks about various attempts to do
11:57 5 this, but also suggests, and I quote, that:

6 "... it is advisable to point out to
7 him --"

8 The witness,

9 "-- the fact that the interrogator is
11:57 10 asking no more of him than he himself
11 would expect of another person in the
12 event that the subject or some member of
13 his family were the one against whom the
14 offence had been committed."

11:57 15 I read from that that it might not -- it would
16 not be wrong, necessarily, for the interrogator
17 to make some suggestion of I'm only asking you to
18 assist because what if this had been a close
19 friend or a relative of yours who had been
11:58 20 subject to this offence. Is that, in your
21 opinion, an appropriate technique that an
22 interrogator can use to try to allay the fear
23 that a witness might have?

24 A Yeah, it's certainly something -- probably
11:58 25 primarily that's what I would use to try to turn



1 that person around.

2 Q So -- actually, Mr. Commissioner, I was going to
3 refer to a part of Mr. Roberts' transcript.
4 Perhaps this would be -- I notice that it's noon.
11:58 5 Perhaps this would be an appropriate time to break
6 and I can do that at 1:30.

7 COMMISSIONER MacCALLUM: Sure.

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

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

01:31 10 BY MR. ELSON:

11 Q Thank you, Mr. Commissioner.

12 Mr. Robinson, before we broke I
13 had put to you a certain passage from Professor
14 Inbau and Mr. Reid's book.

01:31 15 There's another book that I just
16 wanted to refer to in somewhat a similar vein, and
17 I'm not certain whether or not you are familiar
18 with it, but it is the Seventh Edition of a book
19 called The Police Manual of Arrest, Seizure &
01:31 20 Interrogation by Salhany printed in 1997. Are you
21 familiar at all with that manual with respect to
22 police interrogation?

23 A No, I don't think so.

24 Q All right. And, nonetheless, there is a comment
01:31 25 there that I did want to put to you, and the



1 comment specifically is at page 264 of the Seventh
2 Edition, which talks about the interview, and
3 generally it's within the chapter that talks about
4 the interview and the interrogation of witnesses
01:32 5 as opposed to suspects, and it talks about studies
6 on the nature of memory. And, specifically, if I
7 can put this quote to you and ask you whether or
8 not you agree with it:

9 "Studies on the nature of memory recall
01:32 10 tell us that triggers can help us
11 remember and reconstruct a picture of an
12 event. A trigger may be a diary, a
13 photograph, a song, or a perfume.
14 However, triggers will not always work;
01:32 15 and sometimes, a trigger which is common
16 to several memories may only trigger one
17 memory."

18 And then it goes on, in the next paragraph, to
19 say:

01:32 20 "Studies also show that sometimes
21 triggers can lead to what a person will
22 describe as a flooding experience,
23 causing memories to come back. Triggers
24 are not necessarily essential to recall.
01:32 25 Sometimes a person can recall a memory



1 without triggers, but usually triggers
2 will make recall easier and more
3 complete."

4 A Well --

01:33 5 Q In the context of interrogation, and I make the
6 reference specifically to triggers and things that
7 are used in order to generate memory recall,
8 generally speaking would you agree with the
9 comment that I have just put to you from Professor
01:33 10 Salhany's text?

11 A Okay. I have no personal experience with
12 triggers, then, I've never used one, but I could
13 appreciate that some triggers may assist a witness
14 in recalling something.

01:33 15 Q What if one is dealing with a witness who is
16 difficult, perhaps because that witness is fearful
17 of the suspect or also perhaps that witness has
18 suppressed memory as a consequence of the memory
19 being traumatic, as an interrogator is there
01:33 20 anything you feel can be used or should be used or
21 would be appropriate to use in assisting that
22 witness to recall that memory that may be
23 suppressed?

24 A Umm, personally what I have done is used a
01:34 25 technique called the wheel of life, and you



1 basically draw a wheel partially completed and you
2 try to take that person to the last thing that
3 they remember prior to the incident, and the first
4 thing after, and then you try to close the gap by
01:34 5 speaking with them, "can you remember one more
6 thing prior or after". I've used that with some
7 success.

8 Q I wonder if I could have the Supreme Court of
9 Canada transcript that Mr. Hodson had referred to
01:34 10 earlier, and specifically the number that I have
11 been using is 121840, which is volume 8 of the
12 Supreme Court transcript, the testimony of
13 Inspector Roberts. And if we could narrow it down
14 to page 121886.

01:35 15 Now I'm going to preface what I
16 am about to put to you, Mr. Robinson, by reminding
17 you that I asked you about whether or not it would
18 be appropriate for the interrogator to personalize
19 the interrogation of a witness somewhat by saying,
01:35 20 "what if this was a relative or a friend of
21 yours", and then also deal with the issue of
22 triggers or the wheel of life, as you referred to
23 it. In this transcript, and this is the
24 transcript of Inspector Roberts' testimony before
01:35 25 the Supreme Court answering Mr. Neufeld 's



1 questions, this was not put to you by Commission
2 Counsel and it deals with the interview of Nichol
3 John.

4 I take it, Mr. Robinson, you
01:35 5 understand that Nichol John was the other person
6 in the car when Mr. Milgaard arrived in Saskatoon
7 on the morning of January 31, 1969?

8 A Yes.

9 Q And following there it says:

01:35 10 "A The next thing is I spoke to Nichol
11 John."

12 This is Inspector Roberts answering:

13 "She was brought to the room. I
14 introduced myself again, told her who I
15 was and that I understood she may have
16 some information with respect to the
17 murder of Gail Miller.

18 Now, she was a little nervous.
19 I talked to her at length and I asked
20 her how she came to be in Saskatoon, how
21 she had arrived there, and she told me
22 essentially the same story as Wilson,
23 that they had arrived in the early
24 morning and they were driving along and,
25 I guess, it was snowy. They stopped



1 somebody for directions, and then the
2 car got stuck close to this alley. She
3 could see down the alley. The car was
4 stuck and Wilson left the car to try and
5 get somebody to help them out and --
6 what's his name? -- Milgaard left the
7 car. I said to her, "And what happened
8 then?", and she hesitated and hummed and
9 hawed and I said, "Well, something must
10 have happened." She said, "Well, I
11 can't remember." That was what she
12 said. I can remember her saying that.
13 "I can't remember."

14 Q Go on.

15 A I spoke to her for some time and went
16 through it again. You must realize,
17 in these things, you go over certain
18 things repetitiously to see whether
19 there's any variance in the story. I
20 suppose I spoke to her for half to
21 three-quarters of an hour. I finally
22 had the clothing, apparently, that was
23 worn by Gail Miller in the room in a
24 plastic bag.

25 Q How did you come to have that in the



1 room?

2 A They were given to me, I imagine, by
3 Superintendent John Wood, or one of
4 the detectives that had picked up the
5 articles. But I know I had the white
6 uniform -- and, I take it, it was a
7 nurse's uniform -- in a plastic bag in
8 the room. I think I had a cape; a
9 nurse's cape. I don't, honestly,
10 recall anything else of clothing.

11 Now, during this she kept
12 saying, "No, I don't remember. I
13 don't remember." I said, "Well, I
14 think you do remember, but for some
15 reason or other you don't want to tell
16 me." I took the white -- I can recall
17 a white uniform being there, and it
18 was in a plastic bag, and I gave it to
19 her. I said, "What if this had been
20 your sister?", and she burst out, she
21 said, "My God, I do remember. I do
22 remember. I saw him fighting with her
23 down the lane. I saw him stab her."
24 I said, "Well, now you remember", and
25 she said, "Yes." I said, "Was there



1 some reason that you didn't want to
2 tell me before?" She said, "I
3 couldn't tell you before. I didn't
4 remember until I saw the dress."

01:38 5 Now, stopping there, what is your opinion with
6 respect to an interrogation conducted in the
7 manner that I have just put to you as described
8 by Inspector Roberts in his testimony before the
9 Supreme Court of Canada?

01:38 10 A I would say that Inspector Roberts' job was to try
11 to get to the truth, to use whatever methods he
12 thought were appropriate to try to get him there.
13 Umm, I have some difficulty in believing that
14 producing that uniform triggered her to remember
01:38 15 instantly what had happened, so I would have some
16 disbelief in her replying the way she did.

17 Q Now another question that I put to you, I would
18 ask that you assume, in the context of what I have
19 just put to you, that what doctor or Mr. --
01:39 20 Inspector Roberts, I should say, was doing was
21 that this was part of a pre-polygraph test
22 interview. In your opinion, how appropriate was
23 Inspector Roberts' conduct in asking those
24 questions, assuming he has correctly described
01:39 25 them in his testimony before the Supreme Court of



1 Canada, in dealing with Nichol John in the context
2 of a pre-polygraph test interview?

3 A So I am to imagine that this is part of the
4 pretest leading up to the polygraph examination he
01:39 5 is conducting?

6 Q In fact I should be absolutely fair to you, no
7 polygraph was done, --

8 A Uh-huh.

9 Q -- and it was Inspector Roberts' testimony that,
01:40 10 as a result of the answer given --

11 A Yeah.

12 Q -- in the pre-test interview, he elected not to
13 give her a polygraph.

14 A And I think correctly so, based on what --
01:40 15 obviously, the emotions she is saying she is
16 having and this memory, she wouldn't be suitable
17 for a polygraph exam.

18 But what do I think of it as
19 part of a pretest?

01:40 20 Q Yes?

21 A Umm, I think it's a little bit confrontational.

22 Q And what would the significance be of a
23 confrontational interchange between the
24 polygrapher and the witness prior to a test?

01:40 25 A I would have serious doubts about the reliability



1 or validity of a polygraph examination if there
2 was some type of interrogation done on the witness
3 prior to the examination.

4 Q Now, and perhaps you've already answered this but
01:41 5 I want to restate the question again, ignoring the
6 polygraph for a moment, --

7 A Yes.

8 Q -- and if we were do assume that -- and it would
9 be, the evidence is that there was no polygraph
01:41 10 taken of Nichol John on that occasion, what is
11 your, considering the standards of the day in
12 1969, considering that was when it was done, was
13 it appropriate to be as confrontational as
14 Inspector Roberts was in dealing with this
01:41 15 witness?

16 A Yeah, I don't think he was terribly
17 confrontational, I don't think he was pushing her
18 that hard from what I have read there, umm, and
19 again his job is to try to establish the truth,
01:41 20 and if this person did see something his job is to
21 try to find out what it was. Umm, I don't think I
22 would have gone there, but you know, I can't fault
23 him for trying to consider what he thought was
24 establishing the truth by what he did.

01:42 25 Q Is there any difference between the standard of



1 conducting that kind of interrogation in 1969 as
2 compared to, say, 1980 when you retired from the
3 RCMP?

4 A Umm, I've never been involved in being a --
01:42 5 personally I've never done one where some evidence
6 was produced to try to use that, I've never done
7 that, but I'm sure it was done reasonably often.
8 If you had some, you know, you -- often you hear
9 about people showing pictures or other things,
01:42 10 umm, I think it was probably something that
11 probably was done back then, and may still be for
12 all I know, I don't know.

13 Q And in fairness, Mr. Wolch isn't here, but I
14 believe he has put the question to other witnesses
01:43 15 before -- and perhaps, I'm not going to carry a
16 brief necessarily for Mr. Wolch -- but he has made
17 the suggestion, in putting it to other witnesses,
18 that there was a certain shock purpose in showing
19 somebody the bloody dress or showing the nurse's
01:43 20 uniform, and that that was somehow inappropriate.
21 If that suggestion were made to you, that that
22 shock purpose was inappropriate, what's your --
23 what would your response to that be?

24 A I don't know. I don't know what I would think,
01:43 25 I -- I really don't know.



1 Q Now, again, it's not a practice you would have
2 personally employed in the course of an
3 investigation; is that fair?

4 A No, I wouldn't have, no.

01:43 5 Q And you would not have conducted that type of
6 confrontational an interchange in a pretest
7 interview; is that correct?

8 A Never. Never.

9 Q I wonder if we could go -- and I'm sorry, it's the
01:44 10 page of the transcript that is 1420 at the top of
11 the page, I'm not sure what page that would
12 necessarily be, I think it may be -- there you
13 have it -- 121868. Mr. Hodson, Commission
14 Counsel, was asking you some questions with
01:44 15 respect to a pretest interview, and you gave your
16 evidence with respect to the propriety of a
17 pretest interview, and I believe your testimony
18 was that if you were aware a witness had been
19 interrogated within 24 hours prior to the test you
01:44 20 wouldn't conduct the test at that time?

21 A That was our policy.

22 Q That was your policy?

23 A That was the RCMP policy.

24 Q The RCMP policy. Do you know when that policy was
01:45 25 first developed?



1 A Umm, it was in effect when I became an examiner in
2 1976.

3 Q So you would not know whether or not that was
4 standard practice or standard policy of
01:45 5 polygraphers in 1969?

6 A Probably wasn't because I would say in '69 is when
7 we trained our first actual, you know, examiner
8 that was active in the field, so I don't know how
9 much policy would have been put together by then.

01:46 10 COMMISSIONER MacCALLUM: Mr. Elson, are you
11 talking about examination of a suspect or a
12 witness?

13 BY MR. ELSON:

14 Q That's a good point, Mr. Commissioner. I didn't
01:46 15 make that distinction. And, Mr. Robinson, that's
16 an excellent question. Does it make any
17 difference whether or not the person who is the
18 subject of the test is a suspect or is a witness
19 not believed to be a suspect?

01:46 20 A As to whether they were interrogated 24 hours
21 earlier?

22 Q Yes.

23 A No, it shouldn't. I can't imagine -- I have
24 difficulty with discriminating here between
01:46 25 suspect and witness. To me a witness is a witness



1 and you do interviews. You keep talking about
2 interrogation. I look at interrogation as a
3 suspect and so I don't see any reason why this
4 woman would have been interrogated 24 hours
01:46 5 earlier.

6 COMMISSIONER MacCALLUM: You are talking
7 about your policy, sir?

8 A Yes.

9 COMMISSIONER MacCALLUM: You said it was
01:46 10 the policy that no polygraph would be taken of a
11 suspect who has been interrogated within 24
12 hours?

13 A Yes.

14 COMMISSIONER MacCALLUM: Would the same
01:47 15 considerations apply to a mere witness?

16 A Well, if a witness was interrogated 24 hours
17 earlier, yeah, I wouldn't be examining them
18 either.

19 COMMISSIONER MacCALLUM: But was it a
01:47 20 policy?

21 A I think the policy was that a polygraph subject
22 would not be polygraphed if they were interrogated
23 24 hours earlier.

24 BY MR. ELSON:

01:47 25 Q In the circumstances of this case if -- assume you



1 were in the position of being a polygrapher and
2 two witnesses were brought to you and you were
3 advised that these witnesses were not suspects but
4 that you had learned that the previous day in
01:47 5 another city, in this instance Regina, that these
6 witnesses had been interviewed by police and that
7 indeed one of the witnesses had been questioned in
8 the drive up from Regina to Saskatoon and had also
9 been questioned in the car driving around the
01:48 10 city, if you had been informed of that and that
11 that had occurred immediately the day before the
12 time scheduled for the test, would you proceed
13 with the test or would you wait a day?

14 A Probably I would -- I take it she was in the
01:48 15 company of police officers. I would want to talk
16 to those police officers to see what went on, what
17 the interchange was between them, was it casual
18 conversation about what she remembered or was it
19 confrontational.

01:48 20 Q Now, the next pages from the transcript I don't
21 believe were put to you by Commission Counsel and
22 it pertains, Mr. Commissioner, to the matter that
23 you were questioning; namely, the issue as to
24 whether or not Inspector Roberts had put David
01:48 25 Milgaard's name to Mr. Wilson. Beginning at page



1 121868 in the first answer, Inspector Roberts
2 says:

3 "A After I was set up Mr. Wilson was
4 brought to me by a detective. I think
5 it was Detective Karst, but I cannot be
6 sure of that.

7 Q All right, go on.

8 A I introduced myself to him. I told
9 him I was from the Calgary City police
10 force. I told him I was the polygraph
11 examiner. I told him that I had read
12 some reports and that I had been told
13 that, perhaps, he knew something about
14 the murder of this nurse in a back
15 alley and that the Saskatoon City
16 police wished me to question him about
17 it.

18 Q Do you recall the name of the victim of
19 this crime?

20 A Gail Miller.

21 Q All right. Go on, please.

22 A I asked him if he could recall what
23 happened on that particular morning
24 and he relayed to me that he and
25 Nichol John and David Milgaard were in



1 a car. Now, I think they had come
2 into town from somewhere, but it was
3 early morning, as I recall it, and
4 that they were driving around and they
5 stopped somebody to ask directions
6 somewhere. I don't know whether they
7 got directions or they didn't get
8 directions, but apparently the car got
9 stuck and he got out to try and get
10 help. He went away and came back
11 later -- I don't know how much later
12 -- and found that -- the first thing
13 that ticked me off was that he said
14 the girl, Nichol John, was highly
15 agitated. Now, that was not the exact
16 words he used, but I gathered from his
17 words that the girl in the car, Nichol
18 John, was quite upset, quite agitated,
19 and I don't know whether he said she
20 was crying or not. I don't know.

21 Q In this process do you recall him
22 verbalizing these things to you, or are
23 you suggesting them to him?

24
25 A Oh, no, I didn't know anything about



1 the girl being agitated or anything
2 else. I never knew anything about
3 that. No, this came from him.

4 Q So, what you are telling us --

5 A That was all, and he didn't know
6 anything else about it. They drove
7 away from there, or they got pushed,
8 or pulled or something. They got out
9 of there, anyhow, and they went to
10 visit somebody, as I understand it, at
11 that time. Now, that was what he told
12 before the test.

13 After I ran the test -- and I
14 must --

15 Q I want to be very careful that we try to
16 deal with your recollections in some
17 sort of semblance of order. Okay?

18 A Yes.

19 Q If you can remember -- and if you can't
20 remember, it's fine -- but if you can
21 remember, please take us through the
22 next steps of whatever parts you do, in
23 fact, remember.

24 A As I say, I took him through and asked
25 him to relay to me what he remembered



1 of this particular night.

2 Q You have told us that.

3 A And that's exactly what he told me.

4 Now, of course, I would
5 probably say to him, "Now, are you
6 quite sure? Did Milgaard say anything
7 to you? Did Nichol?" I'm not saying
8 that I remember saying this, I'm
9 saying that I would probably ask
10 him.

11 Q That would be your practice?

12 A That would be my practice, yes, to do
13 so.

14 Q Go on.

15 A Of course, he did not admit to
16 anything, or of seeing anything. Now,
17 that was when I asked him then, again,
18 "Would you volunteer for a polygraph
19 test?", and he agreed to it. I said,
20 "Fine, then, we will make up some
21 questions."

22 That, if one were to assume that Inspector
23 Roberts is accurately describing in his testimony
24 before the Supreme Court of Canada what occurred
01:52 25 in May of 1969 prior to the test of Ron Wilson,



1 what is your opinion today of the pre-test
2 exchange between Inspector Roberts and Ron Wilson
3 as described in his testimony?

4 A It was fine.

01:52 5 Q Is there any danger in that pre-test exchange that
6 would yield, any danger that the nature of the
7 questioning, the references to David Milgaard,
8 that type of interaction, is there any danger that
9 that might lead to any possible false positives,
01:53 10 specifically to the S question in the SKY acronym?

11 A Based on what you've read here today?

12 Q Yes.

13 A His -- I'm sorry, I've forgotten the examiner's
14 name.

01:53 15 Q Roberts.

16 A Roberts. If that's what happened before, I see
17 absolutely nothing wrong with it. He's asking him
18 for his version and he gave it to him.

19 Q Now, I guess the question then is if it is
01:53 20 inappropriate to conduct an interview or an
21 interrogation, and we have been dealing with those
22 respective definitions, before a test is done, why
23 would not this pre-test interview be
24 inappropriate?

01:53 25 A Why would it not what?



1 Q Why would this pre-test interview not be
2 inappropriate?

3 A Well, he hasn't challenged him. I think earlier I
4 was told or I was made to understand that he was
01:54 5 told that Milgaard supposedly did certain things
6 and I think he said yes, he did, he came and made
7 some admissions to me, etcetera. If you went
8 after him -- if he wasn't volunteering these
9 things and he went after him, then it sounds like
01:54 10 it was a form of interrogation. If it was, then I
11 don't think it would have been suitable to conduct
12 an examination on him. If it occurred the way he
13 said, that Wilson volunteered these things and
14 based on that he said let's set up some questions,
01:54 15 that seems fine to me.

16 Q Now, going back, there has been testimony before
17 this Commission of Inquiry from Ron Wilson to the
18 effect that he believed, he hasn't particularly
19 articulated in my opinion the reasons he believed
01:55 20 it, but nonetheless, he did testify that he
21 believed that in the interview with Inspector
22 Roberts if he did not ultimately give evidence or
23 give a statement against David Milgaard, that he
24 himself would be looked upon as a suspect, and I
01:55 25 take -- I go back to Professor Inbau and Mr.



1 Reid's book, and are you familiar with the passage
2 that deals with the difficult witness who may have
3 a bond of loyalty with a person who is believed to
4 be a suspect and for perceived reasons of that
01:55 5 bond of loyalty, that witness is not necessarily
6 as forthcoming as that witness would be expected
7 to be?

8 A I read it yesterday.

9 Q And specifically it deals with the situation of
01:56 10 whenever a witness or another perspective
11 informant refuses to cooperate because he is
12 deliberately protecting the offender's interests
13 or because he is anti-social or anti-police in his
14 attitude, and are you familiar with one of the
01:56 15 suggestions that was made in the book, and I'm
16 speaking specifically from the second edition that
17 was printed in 1967 and would have been available
18 at the time this investigation took place, and it
19 says, and I quote:

01:56 20 "There was one consideration which a
21 subject of this type is likely to place
22 above all others, and that is the
23 protection of his own interests and
24 welfare. When all other methods have
01:56 25 failed, therefore, the interrogator



1 should accuse the subject himself of
2 committing the crime (or of being
3 implicated in it in some way) and
4 proceed to interrogate him as though he
01:56 5 were, in fact, considered to be the
6 guilty individual. A witness or
7 perspective informant, thus faced with
8 the possibility of a trial or conviction
9 for a crime he did not commit, will
01:57 10 sooner or later be impelled to abandon
11 his efforts in the offender's behalf or
12 in support of his anti-social or
13 anti-police attitudes."

14 Would you agree with me that that was at least
01:57 15 part of the, and I've referred to them as
16 standards of the day, that that was a recognized
17 police technique which was available and
18 recognized not only in the literature, but also
19 in practice by police officers in 1969?

01:57 20 A I was not aware of that.

21 Q Now, you are aware that that particular passage
22 does appear in the book that you have?

23 A Yes.

24 Q Authored by the individuals who wrote, or who
01:57 25 prepared the course that you had attended back in



1 the 1970s?

2 A Yes, it was prepared by those same -- it was not
3 part of the lecture.

4 Q It was not part of the lecture?

01:58 5 A No.

6 Q Now, you viewed from today's perspective, from the
7 perspective of 2005, taking us away from the
8 practices that were available in 1969 or that were
9 used in 1969, for the sake of interest what is
01:58 10 your opinion of that tactic being used in
11 interviewing a witness, particularly where there
12 is good evidence available to the interrogator
13 that that witness couldn't possibly be a suspect?

14 A Yeah. Can I just ask, I don't quite understand,
01:58 15 did this exchange occur in the pre-test or
16 post-test?

17 Q It's unclear, Mr. Robinson. We have the testimony
18 of Mr. Wilson to the effect that he believed --

19 A Okay.

01:58 20 Q -- as to what it was that caused him to believe
21 it, he's given his own explanation and I can't
22 speak for him, but he did say that he believed if
23 he did not, and I'm roughly using his words, give
24 up Mr. Milgaard, they would be looking to him as
01:58 25 the potential perpetrator of this offence.



1 A Okay. So my feeling is if it happened in the
2 pre-test, it was very inappropriate, and I've said
3 why. If it happened in the post-test and his
4 charts were accurate, that he believed that Wilson
01:59 5 was lying, then it was Roberts' job to try to get
6 a confession I take it from him as to what he
7 really knew. I think there may have been other
8 methods he may have used, but I understand the
9 polygrapher's position in trying to obtain a
01:59 10 confession here. It's not something I don't think
11 I would have thought of using or used. My fear
12 would be again of false confession. If you are
13 threatening someone with them being charged and he
14 thinks the only way he can escape this is tell him
01:59 15 what he wants to hear, then I think there's
16 certainly a danger of a false confession.

17 Q Now, I'm done a lot quicker than I thought I was
18 going to be, Mr. Commissioner, one last question.
19 You did indicate in answering Mr. Hodson's
02:00 20 questions that you believed that your firm had
21 done some work at the request of, I believe, the
22 Centurion Ministry or the Centurion Agency?

23 A Well, that's who I think was sent out to interview
24 these people. I believe it came from either the
02:00 25 Milgaard family or their lawyer.



1 Q Now, did I understand your evidence to be that
2 your company or your firm was asked to find a
3 witness; is that correct?

4 A Yeah, I think there was a few, as I recall there
02:00 5 was two or three witnesses they were trying to
6 track down.

7 Q Do you have any recollection as to the identity of
8 the witnesses that you were being asked to find?

9 A Absolutely none.

02:00 10 MR. ELSON: Thank you, Mr. Robinson. I
11 have no further questions.

12 A Thank you.

13 **BY MS. McLEAN:**

14 Q Good afternoon, sir, my name is Joanne McLean, I
02:00 15 represent Joyce Milgaard.

16 Could I work from the 043300
17 version, please. I just want to show you the next
18 passages after some that Mr. Elson took you to and
19 it starts at page 043362. This is Mr. Roberts'
02:01 20 evidence in regards to Mr. Wilson. When Mr. Elson
21 was asking you questions -- sorry, I gave you the
22 wrong page number. 043325. Mr. Elson was
23 questioning -- if we can go back the one before
24 this, 24, this is Mr. Roberts' evidence as to what
02:01 25 conversations he had with Mr. Wilson prior to the



1 test and he says here that, it ends with, would
2 you volunteer for a polygraph test and he agreed
3 to it and then we make up some questions. That's
4 the part that Mr. Elson just took you through;
02:02 5 remember?

6 A That's the point what?

7 Q That's the part that Mr. Elson just took you
8 through.

9 A Okay.

02:02 10 Q The very next page of that transcript, 25, Mr.
11 Roberts asked a little bit more, he's advising
12 that he was, Mr. Roberts was aware that Mr. Wilson
13 was a witness, not a suspect, and he says:

14 "A I told him so. I said, "I think you
02:02 15 know more than you're telling me." I
16 remember saying that to him. He said
17 no, that's all he knew. Then I asked
18 him if he would take a polygraph test
19 and he said yes."

02:02 20 Now, is that becoming more confrontational with
21 him, sir?

22 A It's starting to. If that's all he said, you
23 know, Wilson might think what does he mean by
24 that, but it's not that bad.

02:03 25 Q Okay. Going to 043362, and this also seems to be



1 something that he did with Mr. Wilson in the
2 pre-test phase, at the top of the page, questions
3 asked to Mr. Roberts:

4 "Q He was shown photographs, was he not, of
5 the victim?"

02:03

6 And this will be the autopsy photographs.

7 A I believe that there were photographs
8 there. I think I had one or two
9 photographs. I'm not too sure. I
10 believe there was, sir.

11 Q What would be the purpose in showing him
12 something like that?

13 A To see whether or not he could recall
14 having seen that girl in the alley.

15 Q You would think he'd forget something
16 like that?

17 A Some of them conveniently forget,
18 sir.

19 Q And this photograph might just refresh
20 his memory?

21 A Might jog his memory.

22 Q Jog his memory. What about clothing?
23 He was shown clothing, as well?

24 A Yes, I believe he was. Yes. I don't
25 know that he made any specific remark



1 about them.

2 Q And that would include the dress?

3 A Yes.

4 Q And the dress was blood-stained?

5 A Yes, I believe it was. Yes.

6 Q Did you just hold it in front of him, or
7 put it to him --

8 A I think it was still contained in a
9 sort of cellophane bag that you can
10 see through. I don't think I took it
11 out.

12 Q What's the point of showing him
13 something you can't really see?

14 A Oh, he could see that it was a dress
15 and he could see that there was blood
16 stains on it."

17 Now, if that exchange had also taken place pre
18 the polygraph test, it was becoming even more
19 confrontational there?

02:05 20 A Yeah, and I must agree with Mr. Wolch, my first
21 question would be what was the purpose of showing
22 him the items he did. The polygrapher is there to
23 conduct a polygraph examination to try to
24 determine the truth or deception. I don't see how
02:05 25 that adds to what he's trying to accomplish other



1 than potentially disturbing the person.

2 Q And quite possibly making him say that he
3 witnessed something he hadn't?

4 A Potentially.

02:05 5 Q If we can go to 043339, please, this is Nichol
6 John who was a 16-year-old girl who had been held
7 in police custody in the cells the night before
8 she was taken to see Mr. Roberts, and he says --
9 he starts off by telling her that she may have
02:06 10 some information with respect to the murder of
11 Gail Miller, that's at the top here, that she was
12 nervous, and without reading out all the details
13 of what she had told him, it's essentially a story
14 of being in the car, and then he says:

15 "I said to her, "And what happened
16 then?", and she hesitated and hummed and
17 hawed and I said, "Well, something must
18 have happened." She said, "Well, I
19 can't remember." That was what she
20 said. I can remember her saying that.
21 "I can't remember."

22 Q Go on.

23 A I spoke to her for some time and went
24 through it again. You must realize,
25 in these things, you go over certain



1 things repetitiously to see whether
2 there's any variance in the story. I
3 suppose I spoke to her for half to
4 three-quarters of an hour. I finally
5 had the clothing, apparently, that was
6 worn by Gail Miller in the room in a
7 plastic bag."

8 And then:

9 Q How did you come to have that in the
10 room?

11 A They were given to me, I imagine, by
12 Superintendent John Wood, or one of
13 the detectives that had picked up the
14 articles. But I know I had the white
15 uniform -- and, I take it, it was a
16 nurse's uniform -- in a plastic bag in
17 the room. I think I had a cape; a
18 nurse's cape. I don't, honestly,
19 recall anything else of the clothing.

20 Now, during this she kept
21 saying, "No, I don't remember. I
22 don't remember." I said, "Well, I
23 think you do remember, but for some
24 reason or other you don't want to tell
25 me." I took the white -- I can recall



1 a white uniform being there, and it
2 was in a plastic bag, and I gave it to
3 her."

02:07 4 And then went on with the exchange that Mr. Elson
5 had told you about, what if this had been your
6 sister. Is that confrontational?

7 A I think we should differentiate between a
8 policeman conducting an interview on somebody
9 trying to gain what they believe to be the
02:08 10 truthful interpretation of something as opposed to
11 somebody who is going to conduct a polygraph
12 examination. I'm just saying in the polygraph
13 portion you have to be very careful that you are
14 not confrontational, that you aren't suggesting
02:08 15 they are not telling the truth before you run an
16 examination, that's my problem with this kind of
17 stuff here. For one of the investigators to do
18 all these things may well have been appropriate,
19 but in a polygraph examination, if this was a
02:08 20 pre-test and he actually intended, it was his
21 intention to conduct an examination, as far as he
22 should have gone was, as I described earlier, the
23 heart knew, where you just very casually say,
24 look, the truth is this, don't let this instrument
02:08 25 show me that, I would rather you tell me what you



1 remember, and if there's some reason that you are
2 afraid to tell the truth because of possible harm
3 to you, I can understand, those are the kind of
4 things you would say. You wouldn't whip out
02:09 5 bloody dresses and autopsy photos I don't think.
6 So would it be detrimental to having a good
7 polygraph examination? I would say yes.

8 COMMISSIONER MacCALLUM: Just on that
9 point, sir, counsel put the, described the
02:09 10 photographs as autopsy photos. They did not
11 include photographs of the body opened. There
12 was some photographs of the body where it was
13 found in the alley and others of the body laying
14 on a gurney in the autopsy suite, but not opened,
02:09 15 so I just wanted to be sure that he had the
16 correct picture in his mind.

17 BY MS. McLEAN:

18 Q Sorry. These kinds of exchanges with potential
19 witnesses are certainly designed to elicit some
02:09 20 kind of response from the witness; would you
21 agree?

22 A Certainly.

23 Q It doesn't mean you are getting the truth from
24 them, it means you are getting a response?

02:10 25 A Well, I'm sure the position of whoever is asking



1 those questions is to get to the truth. That
2 would be their --

3 **Q** Maybe their goal, but that doesn't mean that's
4 what they were getting; correct?

02:10 5 **A** Well, I don't know.

6 **Q** They may simply be startling them or scaring them
7 into saying something that they believed the
8 police wanted to hear?

9 **A** Potentially.

02:10 10 **Q** With respect to Miss Nichol John, at 043349, with
11 respect to his dealings with her, Mr. Roberts said
12 that he was actually suggesting to her events that
13 may have happened. The question asked of him:

14 "Q Did you suggest answers to these
02:10 15 people?"

16 Actually, it's with both of them.

17 "A No. I could possibly have said, during
18 the interview: Could this have
19 happened? Could that have happened?
02:11 20 This is a technique of interviewing.
21 Could it have happened? You were either
22 trying to refresh their memory or hope
23 that they will come up with the
24 admission."

02:11 25 There's certainly a risk there that the witness



1 will simply adopt one of those suggestions;
2 right?

3 A Well, if they are supplying information that the
4 witness isn't aware of, that's a possibility. It
02:11 5 depends how broad the questions are or whether
6 they are specific.

7 Q Uh-huh. And when you get some kind of response
8 from a witness, you would -- and if you were going
9 to test the truth of it with a polygraph, you
02:11 10 would want to do it on a separate -- on another
11 day; right?

12 A Certainly based on this here, it wouldn't have
13 been a good day to run a polygraph then I wouldn't
14 think, no.

02:11 15 Q Yeah. So you've got answers of some sort from a
16 witness, they may have been inspired by the
17 pre-test interview and the only way to get a
18 polygraph take on the veracity of those statements
19 is to do a polygraph later; would you agree with
02:12 20 that?

21 A Yeah, and to have done some of these things, are
22 they even the person who should conduct the
23 polygraph is another question. I mean, does that
24 person sitting there saying this guy doesn't
02:12 25 believe me, he thinks I'm more involved or thinks



1 I know something I don't, is there some doubts in
2 their mind that the test is going to be accurate
3 from their position? Maybe not.

02:12 4 Q And with respect to somebody that had already been
5 polygraphed, and this I'm talking about
6 Mr. Wilson, who had told, had given Inspector
7 Roberts an account, had been challenged by him,
8 we've seen that, then had been polygraphed and had
9 been confronted at the end of the polygraph and
02:13 10 told that he had been deceptive, at which point,
11 according to Mr. Roberts, Mr. Wilson comes out
12 with a new version of events -- are you with me?
13 You understand that that happened?

14 A Yeah.

02:13 15 Q You would want to test that new version of events
16 wouldn't you?

17 A By conducting another polygraph again you mean?

18 Q Yeah.

19 A Yeah, it would probably be appropriate.

02:13 20 Q And probably on a different day, but you would
21 want to test whether or not that was true?

22 A Yeah.

23 Q And that would be particularly so if you found out
24 that the witness kept adding more and more
02:13 25 information to his account? Would that make you



1 even more inclined to want to test the new
2 account?

3 A Well, again, you are limited to the amount of
4 questions you are going to ask him to three, but
02:14 5 you are dealing with a witness here who apparently
6 knew nothing and following the polygraph
7 examination he's now providing information that
8 seems to indict Mr. Milgaard as to what happened,
9 then yeah, it would probably be appropriate to
02:14 10 conduct another polygraph examination. I think
11 some of them, one of them, that Mr. Milgaard told
12 him he had done something I think.

13 Q Yes.

14 A Well, that would probably be an appropriate
02:14 15 question, did Mr. Milgaard really tell you
16 whatever.

17 Q And would that be influenced at all by the
18 polygrapher putting both witnesses together and
19 having them discuss those matters?

02:14 20 A Could you ask me that again? I don't quite
21 understand it.

22 Q Would you be -- let me put it more clearly. Would
23 you be hampered or prevented from doing another
24 test later if you knew that the original
02:15 25 polygrapher had put the two witnesses together and



1 had them have coffee together, discuss their
2 stories?

3 A This is following the admissions that Wilson made
4 and following the pre-test portion of the woman's?

02:15 5 Q Yes.

6 A Putting that together after?

7 Q Yes.

8 A Yes. That shouldn't affect the polygraph.

9 Q And if there were later statements from Wilson
02:15 10 that had not previously been made arising on a
11 later date -- are you with me --

12 A That a later day he comes up with more
13 information?

14 Q -- that matches what had been said by the other
02:15 15 witness; would that cause you concerns?

16 A Umm, it could have been one -- it could have been
17 that she has jogged his memory and now he does
18 recall it, or that he is adopting what someone
19 else is saying, I wouldn't know which.

02:15 20 Q And you've touched on this briefly with the SKY
21 questions, it goes without saying that the SKY
22 test cannot test -- and I think you alluded to
23 this just now -- the SKY test can't tell you
24 anything about the truthfulness of other parts of
02:16 25 the statements apart from "do you know", "do you



1 suspect", "did you"?

2 A Yeah. And again, if somebody has been coached or
3 been told that this is a person that is
4 responsible, is it possible that would influence
02:16 5 an examination; certainly, it could be. I'm not
6 saying it would, but it could.

7 Q Thank you, sir. Those are all my questions.

8 A Thank you.

9 **BY MR. KENNEDY:**

02:16 10 Q Mr. Robinson, for the record I'm Robert Kennedy,
11 I'm representing Mr. Caldwell, the prosecutor.

12 I just have a couple of
13 questions, and it's a follow-up to something that
14 Mr. Elson touched on right at the end of his
02:16 15 questions of you, and that's with respect to your
16 offices' assignment that came out of the Centurion
17 Ministries looking for some witnesses.

18 A Yes.

19 Q Can you tell the Commission approximately when
02:17 20 that happened; do you recall?

21 A It's -- I'm sure it was before the polygraph exam
22 in 1990.

23 Q Right.

24 A I didn't open my office in Regina until 1980, and
02:17 25 I can't remember if that was opened then, at that



1 time or not, so I couldn't give you a very good
2 guesstimate from when it was.

3 Q But it's likely to be in the '80s?

4 A Yeah, I believe it was in the '80s.

02:17 5 Q But you can't recall whether it was the early,
6 mid, or late '80s?

7 A Well I opened -- pardon me, I opened my firm in
8 1980 in Regina -- in Saskatoon, I didn't open
9 Regina until 1990, sorry, so it had to be between
02:17 10 1980, and I believe it was prior to this polygraph
11 exam that I conducted, which was in 1990. I don't
12 know if I can do any better than that.

13 Q Was this an assignment to your Saskatoon office or
14 your Regina office?

02:18 15 A Yes, it was Saskatoon office.

16 Q Okay, which was opened in 1980?

17 A Yes.

18 Q And there were, as far as you can recollect, a
19 number of witnesses that you were trying to
02:18 20 locate?

21 A Yeah. I believe there was at least two or three.

22 Q If I suggested to you that one of them was Linda
23 Fisher, would that ring a bell?

24 A I have no idea.

02:18 25 Q Okay. Thank you.



1 A You're welcome.

2 MR. HODSON: I think those are all the
3 questions. Thank you very much, Mr. Robinson.

4 A Thank you.

02:18 5 COMMISSIONER MacCALLUM: Mr. Robinson,
6 thanks very much.

7 And just by way of explanation,
8 don't go away thinking that you were being
9 accused of having had a handicap.

02:18 10 MR. HODSON: It's a golf handicap.

11 COMMISSIONER MacCALLUM: Our agent was
12 speaking of golf. Thanks for coming.

13 A Thanks very much.

14 COMMISSIONER MacCALLUM: Thank you.

02:19 15 MR. HODSON: That is all for today, Mr.
16 Commissioner.

17 COMMISSIONER MacCALLUM: Thank you.

18 So we're adjourned, then, to
19 the Radisson, I guess, at 1:00 on the 19th.

02:19 20 MR. HODSON: Yes.

21 *(Adjourned at 2:19 p.m.)*

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