

- Where a witness is patently impressionable or highly suggestible, counsel may be well advised not to put conflicting evidence to the witness, in the exercise of discretion.
- Facts which are obviously uncontested or incontestable may be approached in another way. This accords with common sense.

These guidelines enhance the reliability of the interviewing process and ensure that not only the ultimate evidence of the witness is disclosed, but also the basis for the changed recollection. This is an approach that is presently employed by many counsel, without any formalized process, as a matter of practice. I am certain that Crown counsel, not infrequently, advise the defence that a witness is now saying one thing, but originally told the Crown something else and that the change came about in a certain way.

In conclusion, I again note that a number of the items found at the crime scene may not have been connected in any way to the identity of the killer. But that is not the point: they were gathered at the scene, they were bagged and tagged. Surely, both the Crown and the defence were entitled to be told with certainty exactly where these items were found, who found them, and at what time. No such certainty was ever established, and I can understand John Scott's exasperation when told that a potential exhibit was lost. I can equally understand Jack Pinkofsky's frustration (and scepticism) at getting different answers from different people about the same thing.

The body site evidence was therefore disturbing for two reasons. First, it reflected upon the quality of the search at the scene. Second, and more importantly here, it reflected upon the quality of the testimony given by officers in the case generally. My later recommendations address both issues.

C. The General Investigation

(i) Jurisdiction

Traditional protocol in Ontario dictates that in situations where an

abduction occurs in one jurisdiction and the body is found in another, the police force governing the area in which the remains are discovered has jurisdiction over the homicide investigation. By December 31, 1984, when Christine Jessop's remains were discovered, the York Regional Police force had investigated the child's disappearance for approximately three months. Once the body was found in Durham Region, the Durham Regional Police Service automatically assumed jurisdiction for the investigation.

Should consideration be given to enable the original investigating police force to continue with the investigation when an abduction takes place in one jurisdiction and the murder victim is found in an adjacent jurisdiction? Inspector Robert Brown of Durham was of the view that since the York Regional Police had investigated this disappearance for three months and had maintained all files, it should have continued the homicide investigation:

To me it makes no sense to bring an entirely different group of people and have to go through and redo an entire three months of work by another service, and which we had to do. We couldn't rely on, nor would we expect anyone else to rely on what we would have done over a three month period.

On the other hand, in certain circumstances, there may be some benefit to a fresh perspective and a review of an investigation that has stalled or where the trail has grown cold. But these occasions would seem to be the exception. I stress, however, that Inspector Brown's opinion, which I share, is based on the assumption that the two jurisdictions are *adjacent* or, at least, not too far apart.

(ii) The Transfer of Files

Upon assuming carriage of the homicide investigation, Durham made a request for all supplementary reports concerning the missing persons investigation from York Region. As described in Chapter IV, York Regional Police used an alpha-numeric indexing system, while Durham used both an index system and a companion computerized system of indexing which facilitated the retrieval of reports that contained a certain word, licence number, or name. One could access vehicle models and colours through the computer, which would then refer the investigator to the supplementary report relating to that request.

Detective Bernie Fitzpatrick testified that York's index of its supplementary reports was of no assistance to him and his colleagues. Accordingly, Durham chose to re-index and incorporate all of York's supplementary reports into its file. This took from two to three weeks.

Inspector John Shephard was directed by Inspector Brown to read the two binders of York Regional reports the first day he was assigned to the case. Inspector Shephard testified at the pre-trial motion before Mr. Morin's second trial that he probably spent 'a couple of hours' reviewing the York supplementary reports, but did not find them helpful:

There was no system to them, no flow of the information. That material was of very little assistance because I didn't find a lot of reports complete or thorough. I just didn't put much faith in the reports at all ... very seldom did I resort to the York reports in the course of the investigation ... prior to the preliminary inquiry, I may have gone into the York files to review a report, but I had not sat down and reviewed all their reports.

Inspector Shephard told the Inquiry that the chronological organization of the reports created difficulties in terms of continuity with respect to various aspects of the investigation. He said that the York file was never adequately reviewed, nor was the complete file ever received from the York Regional Police force. Nevertheless, he would not characterize the relationship between the forces as poor. Similarly, Detective Fitzpatrick testified that he did not review the York notes and accessed the York supplementary reports 'very little.' While in hindsight he agreed it probably would have been a good idea to have spent more time reviewing these reports, he did not see it as his responsibility, even as one of the lead investigators, to make himself familiar with them. While he recalled reading the original occurrence report, Detective Fitzpatrick assumed that Inspector Brown would have reviewed all of the reports and, if there was anything of interest or import, would have alerted the investigating officers. He could not specifically recall, however, any occasion when such information was passed on.

In contrast to the testimony of Shephard and Fitzpatrick, Inspector Brown had a different recollection:

Q. To what extent were York's reports read by the Officers under you who were investigating this

homicide?

A. I understand that they were all read.

Inspector Brown said that he was “quite sure that [he] would have read the reports himself,” but he was unable to provide the Commission with any idea as to how many reports he had actually examined. He said that the officer who was responsible for indexing the York supplementary reports would have read every report and indexed it. But Constable Patrick Holtorf, who was given this task, testified that he did not do so by actually reviewing the York reports, but rather by utilizing York’s index book. When asked specifically whether the chief investigating officers ought to have read all of the York reports, Inspector Brown would only say “possibly.”

Both Inspector Brown of Durham and Inspector Robert Wilson of York commented that the liaison between the York and Durham forces was characterized by full and total cooperation. But a telephone log kept by Durham Police summarizing a taped conversation that Janet Jessop had on March 6, 1985 with her husband, contained the following information:

Talk about Durham being there and how she couldn’t tell Durham anything about what York’s doing. Durham’s not telling York what’s done, and are doubting what York has done. They were up questioning times and so on.

While this note seems to imply that there was some friction between the two forces, Inspector Brown insisted that this was not so.

Findings

By and large, the transfer of this investigation from York Region to Durham was unproblematic. Durham was apparently satisfied that York Regional Police turned their entire file over to Durham and assisted in the transition. Inspector Brown described the liaison between the two forces as excellent, “It was absolute, full, total cooperation.” In my view, one problem which was identified here was that the supplementary reports by York Regional officers could have been improved at times. Having said that, the Durham investigators were too easily dismissive of them — they contained important information.

(iii) The Initial Homicide Investigation

Following the discovery of the remains, two teams of detectives were assigned to this investigation, working independently of each other: Detective Fitzpatrick and Inspector Shephard, and Detectives Joseph Loughlin and Reg Webster. There was some element of competition inherent in the structure of the investigation; the team which developed the ‘best’ suspect would take ultimate control of the investigation. Inspector Brown delegated various tasks to individual officers and received the reports from all officers involved in the investigation. He told the Inquiry that every morning there was an informal meeting of all officers who were present to discuss the investigation in general and the events of that day in particular. As the investigation continued, meetings became less frequent and were scheduled for Friday afternoons. It was Inspector Brown’s opinion that while there may have been some minor issues of which some teams were unaware, he was confident that all major facts were disseminated to all of the investigators.

Other officers who testified did not recollect the morning meetings, but recalled the informal Friday afternoon sessions. Detective Fitzpatrick said that there was no rule requiring attendance at these meetings. If he was busy elsewhere, he would not go. According to his recollection, discussion in these meetings involved the status of the outstanding work assigned. He did not recall ever discussing the nature of the investigation with everyone. While there were occasions when Inspector Shephard and he met alone with Inspector Brown, he did not recall that the general Friday meetings involved discussions regarding the nature of work performed. Inspector Shephard agreed that Inspector Brown was emphatic about knowing the progress of the investigation.

Detective Fitzpatrick said that he did the work assigned and never read other officers’ reports; nor was he kept apprised of what others were doing in the course of the investigation. In hindsight, he agreed that “the left hand might not know what the right hand was doing in this investigation.” Inspector Brown disagreed with that comment. Inspector Shephard stated that he did not try to keep on top of what other investigators were doing as he assumed Inspector Brown was reviewing the incoming reports and assigning any follow-up necessary. In fact, he said, even “Fitzpatrick and I did not always genuinely know what each other was doing.” And yet they were partners. However, Inspector Shephard said generally the two partners would report back to each other on investigative work conducted independently, and

that they would generally review supplementary reports prepared by the other involving work performed as a team.

By mid-February 1985, each team had developed a number of suspects. Detectives Loughlin and Webster investigated three primary suspects. Shortly after Detective Fitzpatrick and Inspector Shephard interviewed Mr. Morin on February 22, 1985, they became the lead investigators in the case. According to Detective Fitzpatrick, he and Inspector Shephard were so designated because they had developed Mr. Morin as a suspect “to a certain degree of viability.” Had members of another investigative team developed a suspect to the same degree of viability, they may well have become the principal investigators. But, according to Fitzpatrick, there was no competition amongst teams. After his and Shephard’s designation as lead investigators, Loughlin and Webster left the case without, however, turning over the fruits of their investigation into other suspects. In hindsight, Inspector Shephard agreed that this should have been done.

(iv) The Use of Polygraphs

Both Detective Fitzpatrick and Inspector Shephard said that they relied, to some degree, on polygraph testing as an investigative tool; for example, where a suspect could not establish an alibi. However, according to Fitzpatrick, suspects were not cleared solely on the basis that they had passed a polygraph test. He agreed that to do so would be improper. Fitzpatrick’s opinion was that the primary value of the polygraph lay in the pre-test interview during which evidence could be elicited.

Examples were provided during this Inquiry of suspects who, at first blush, appeared to be cleared prematurely. In the case of Mr. W., a suspect interviewed in January 1985, Detective Fitzpatrick wrote a supplementary report which stated “Further investigation ... to be conducted if he fails the polygraph test.”

In reference to this supplementary report, Fitzpatrick was asked:

Q. [You] were prepared to let [him] go if he passed the polygraph test?

A. No, ... there would have been further investigation

done.

Q. All right. It says that if he failed the test, you'd do further investigation. The other side of that coin would be if he passed the test, [there would] be no further investigation, or do I read it incorrectly?

A. No, you're right the way you're reading it, that's what it says there.

Both Fitzpatrick and Shephard testified that Mr. W, who did not take the polygraph test on advice from his lawyer, was cleared on the basis of further investigation.

On January 14, 1985, Detective Fitzpatrick filed a supplementary report reflecting that another suspect, Mr. M,

attended at 18 Division where he took a polygraph test. He denied any involvement in the incident and the polygraph test showed he was telling the truth.

This person can be ruled out as a suspect at this time.

During the Inquiry, Fitzpatrick contended that prior to the polygraph test, other investigative steps had been taken in relation to Mr. M. which led to his elimination as a suspect.

One final example concerned a suspect referred to as Mr. A. Durham officers had obtained a warrant to search the premises of Mr. A. They obtained this search warrant by demonstrating their belief, on reasonable grounds, that Mr. A was guilty of the murder and that evidence of the crime would be found at his premises. This search warrant was not executed once Mr. A passed a polygraph test. Detective Van Dyke said that he told the investigating officers to go ahead and obtain the search warrant (which he did not realize had already been obtained) and was surprised to learn that the search was not effected. During the Inquiry, he was asked why:

A: ... I sure felt he was a very strong suspect, and told them that: Don't base your full decision on this. There are other factors, and he could very well be one of those people that could sneak through polygraph tests, and you should still go ahead and do the search warrant, if that's what you decide to do.

Q: And I take it that reflects your view, and I appreciate your candour that even as a polygraph examiner, that they are to be used as an investigative tool only, but not as a replacement for a full and complete investigation of potential suspects?

A: That's correct.

Mr. Gover expressed his view at the Inquiry: "I think clearly the investigators came to the view that the other suspects were cleared simply on the basis of their growing feeling that Mr. Morin was the perpetrator of these acts."

Findings

On the totality of the evidence, I am satisfied that the investigators placed undue reliance, at times, upon the polygraph as a quick and ready means of clearing suspects. The polygraph is but another investigative tool which is no substitute for a proper investigation. My later recommendations address this issue.

(v) Record-Keeping: Note taking and Supplementary Reports

It is crucial in a homicide case to manage paperwork effectively. This includes the proper documentation of observations, interviews and other matters pertaining to the investigation in notebooks and/or supplementary reports. A notebook is a daily journal in which relevant occurrences in a police officer's investigation are recorded. Maintaining proper note taking is essential. It is an *aide-mémoire* for the officer who may later testify as to his or her observations. To serve in this capacity, notes should be made contemporaneous to the event. It is imperative that the officer's notebooks be retained, in the very least, until the criminal cases to which the notebooks refer are ultimately determined. My later recommendations address this issue.

Unfortunately, in this case notebooks were not always available; for example, in 1987, when Inspector Brown was transferred to a uniformed command, he packed up his belongings from his office, put his notebooks in a cardboard box and took everything home. During one spring cleaning, he put all of his old notebooks in a green garbage bag and took them out with the trash. At this time, Mr. Morin's charges were, of course, still outstanding before the courts. Some officers, during the Inquiry, who did not have their

notebooks to assist them in their recollection, said that the regulations of their force required that notebooks be tendered to the property unit three years for disposal. Again, my later recommendations address this issue.

Officers recorded in writing the details of their daily investigation in four different ways:

- □ rough notes on a separate foolscap pad;
- □ the police- issued notebook;
- for major occurrences, some officers would keep a separate notebook related only to that particular investigation;
- an occurrence report (when incident was first reported) or supplementary report (filed in the course of the ensuing investigation).

Inspector Shephard and Detective Fitzpatrick sometimes took notes on foolscap and the same day transferred them to their notebooks or supplementary reports. The foolscap was often discarded. Inspector Brown said that any officers engaged in this practice should have kept the original notations for trial purposes. Both the dentist, Dr. Paul Taylor, and his assistant, Lorraine Lowson, recalled that Fitzpatrick and Shephard on many occasions interviewed them and appeared to write complete notes of their conversation while they were speaking. But no detailed notes could be found in their notebooks, nor were foolscap pages kept reflecting the interviews with these witnesses.

Another example of an interview where only a brief notebook entry documented a lengthy interview was that of Ken and Janet Jessop on March 6, 1985. This interview, which will be discussed in detail below, related to the issue of the time of their arrival home on October 3, 1984. Detective Fitzpatrick said that he and his partner spoke to the Jessop family frequently, but for many occasions there is no record of what was discussed.

In the course of the Inquiry it was suggested to Inspector Shephard that the record of investigative work carried out in the case was less than adequate. He responded that while it was not perfect, an adequate record was,

indeed, documented in the supplementary reports.

Findings

The evidence revealed numerous instances where interviews, sometimes lengthy, were held with witnesses, whose evidence was ultimately highly contentious and respecting whom it was alleged that their evidence had been ‘developed’ through the interviewing process. A number of times, there would be a wholly inadequate written record of those interviews. Hours of untaped interviews might be reflected in a single entry in a notebook or in an incomplete *précis* or description of the interview contained in a supplementary report. When dealing with the body site evidence, I reviewed a number of instances where officers’ notes of their actions at the crime scene were inadequate.

Inadequate records not only hindered the ability of officers to recollect the substance of their interviews or activities, they seriously affected the ability of any trier of fact to assess whether the interview process was done in a way to enhance or detract from the reliability and/or accuracy of the witness’ account. Where records do not disclose potentially inculpatory aspects of a witness’ later testimony, legitimate concerns are raised as to whether the testimony represents an honest and accurate recollection or, instead, testimony coloured by later events (such as the identification of a suspect or criminal defendant) or worse. A serious commitment to proper records therefore protects the officer and assists the Crown attorneys, the defence and the triers of fact, and makes it more difficult to consciously or subconsciously provide unreliable evidence.

One answer, discussed throughout this Report, is the videotaping or audiotaping of certain events or interviews. The interviews conducted by Durham officers of Mr. May and Mr. X, the tape-recorded interview of Paddy Hester by Officer Fitzpatrick (later discussed) and the tape-recorded interview of Frank Devine by the two investigators provide examples of the value of tape-recording. A tape-recorded interview illuminates the way in which the interviewing process enhanced or detracted from the reliability and accuracy of the evidence. It helps identify the reasons that a witness changes testimony. It reveals bias, both on the part of the witness and the interviewer, where bias exists. It protects the officer against allegations which are groundless, or if substantiates such allegations. It inhibits impropriety on the part of the authorities.

The Nature of Recorded Interviews

One issue raised at this Inquiry was whether interviews by Fitzpatrick and Shephard were selectively recorded. This issue was explored by Commission counsel with Officer Shephard.

Between February 27, 1985 and April 15, 1985 Detective Fitzpatrick and Inspector Shephard tape-recorded 19 interviews with witnesses including members of the band to which Mr. Morin belonged, his neighbours, and members of his family. During the same period of time witnesses were interviewed on the issue of timing. The evidence of each of these latter witnesses⁸, none of whom had been tape-recorded, was relied upon by the prosecution at trial.⁹ Following Mr. Morin's arrest, many other witness interviews were tape-recorded. With the exception of two individuals¹⁰, witnesses who ultimately testified for the Crown at the second trial, whose evidence was alleged by the defence to be unreliable,¹¹ were not tape-recorded. Inspector Shephard's evidence on this issue is set out below.

Q. All right, now just stopping there for a moment, and all of those witnesses we've heard were witnesses relied upon by the prosecution, and whose credibility was relied upon by the prosecution. Ms. Pike, Doctor Taylor, Janet Jessop, Ken Jessop called by the defence, and then Mr. McGuigan eliciting from him evidence that was later used to support the position of the Crown at the second trial. None of them were tape recorded by you or Officer Fitzpatrick in their conversations with you prior to Guy Paul Morin's arrest; right?

A. I don't recall them being taped, but if you've gone through my notebook, were there are other tape recordings done on the days that we interviewed those

⁸ Dr. Taylor, Lorraine Lawson, Janet Jessop and Ken Jessop.

⁹ Ken Jessop was called by the defence. In cross-examination evidence was elicited in support of the case for the prosecution.

¹⁰ Douglas Greenwood and Paddy Hester.

¹¹ Leslie Chipman, Mandy Patterson, Ted Carruthers, Constables McGowan and Robertson.

people?

Q. Well, I'm about to ask you, can you explain why it was that Doctor Taylor, Ms. Pike, Janet Jessop and Ken Jessop were not tape recorded when they described certain events having to do with timing prior to Guy Paul Morin's arrest?

A. No, sir, I can't, other than possibly we didn't have the tape recorder on that day. That's the only thing that I can think of.

Q. Well, in the very least, you had a tape recorder on February the 27th, 28th, March 7th, 14th, 19th, 20th, 28th, 29th, April 1st, April 2nd, April 4th, April 5th. You're not suggesting that you couldn't have access to a tape recorder if you wanted to conduct an important interview during that period of time?

A. Well, I'm sure we could have got a tape recorder somewhere, but whether we could have actually got that particular tape recorder that we were using in the brief case, there were other people using it. So I don't know whether we had it on those dates or not. I'm sure that if we wanted a tape recorder, we could have obtained a tape recorder.

Q. Of course. I guess what I want to ask you is, can you see any rhyme or reason to why all of those witnesses prior to April 22nd of 1985 were tape recorded, but that Doctor Taylor, Ms. Pike, Janet and Ken Jessop were not tape recorded?

A. No, sir, I can't.

Another issue at trial involved the surreptitious nature of the tapings. Mr. Shephard was asked about this during the Inquiry:

Q. Well, let's move on a little bit. After Guy Paul Morin was arrested, we also see that many people had conversations with you and Officer Fitzpatrick, and their conversations with you were also tape recorded. And you recall that many other people were tape recorded; am I right?

A. Yes, sir.

Q. During the reinvestigation stage; okay?

A. Yes, sir.

Q. And by the way, did any of these people, either pre or post Guy Paul Morin's arrest, know that they were being tape recorded?

A. No, sir, I don't believe so.

Q. Why? Why the surreptitious recording of the conversations?

A. Well, a lot of people have a tendency, if they see that you're — they're being tape recorded, they're evasive, and we wanted to get a true reflection of what they had to tell us.

Q. So that is it your evidence that people like the band leaders, and the lady who helped you secure hair samples from Guy Paul Morin, and the neighbours, and Mr. Polgar might be evasive if they knew that their interviews were being tape recorded?

A. Yes, they may have been.

Q. All right. Well, you tape recorded in the period after Guy Paul Morin's arrest Richard Mortimer at the Ontario Research Centre, Stephanie Nyznyk and Mr. Pratt, Doctor Blake, RCMP officer John Bower, and many others; many others. Did they know that their conversations with you were being tape recorded?

A. A lot of those were telephone conversations I had — or some of them were, anyway — and no, they didn't know they were being taped.

Q. Well, why surreptitiously tape record Stephanie Nyznyk, RCMP officer John Bower, Doctor Blake? The list goes on and on and on. I mean, were you concerned about these people being evasive?

A. No, I wasn't concerned about them being evasive, I just didn't tell them they were being taped. And the reason I taped them was for accuracy so that when I was compiling reports, that I didn't misinterpret what they were saying, misconstrue their conversation. I

wanted an accurate reflection.

Due to the surreptitious nature of the recording, Shephard could not recall checking the equipment during any witness interview.

I mean, you had no idea whether the tape was running, you just flip the switch, or push the button, or whatever it was, and it was up to the grace of God and the mechanics and the machine and the button whether it worked or not.

On those occasions when the recorder did malfunction, Fitzpatrick said that he did not conclude one way or another whether the machine was broken and in need of repair. The same tape recorder was used throughout the investigation.

To state the obvious, it would have been preferable had interviews with Dr. Taylor, Ms. Lawson, Janet and Ken Jessop, Leslie Chipman, Mandy Patterson, Ted Carruthers, and Constables McGowan and Robertson been tape-recorded. The ability of counsel and the jury to evaluate the extent to which the interviewing process enhanced or detracted from the reliability and accuracy of this evidence was greatly diminished. There was some selectivity in the interviews which were not tape-recorded; the officers were more inclined, though not invariably so, not to tape-record witnesses who potentially would give contentious evidence favouring the Crown. Tape-recording was more frequently done of less important, uncontentious witnesses or witnesses (such as Guy Paul Morin and Frank Devine) whose evidence might later be challenged by the authorities, through the use of the tape. Paddy Hester is a notable exception — except, as later reflected, her tape-recorded interview was never disclosed to the defence or to the Crown.

It also would have been preferable had tape-recording not been done surreptitiously. Indeed, as I understand it, this no longer represents police practice, nor should it.

Finally, it would have been preferable had greater care been taken to ensure that the tape-recorder was functioning throughout the important interviews. It has been suggested that the tape-recorder never truly malfunctioned, particularly during interviews conducted with Guy Paul Morin. I do not agree. This reflected sloppiness, not malevolence.

My later recommendations address the proper taking of notes, their retention and the use of videotaping and audio-taping.

(vi) Guy Paul Morin's Status as a Suspect

In February 1985, both teams of detectives continued their separate investigations into the murder of Christine Jessop in hopes of targeting her killer. Detective Fitzpatrick described how the teams reviewed police records of both his force and those of neighbouring jurisdictions, probation and parole records and the OPP Pornography Unit records of known sexual offenders. In all, they identified between 350 to 375 potential suspects during this stage of the investigation. Unfortunately, in 1985 there was no provincial or regional central database from which investigators could draw a list of offenders involved in offences of a similar nature. CPIC checks were conducted to determine whether suspects who had been pinpointed were in custody at the relevant time. If a suspect had a known workplace, inquiries were made to determine whether he was at work at the relevant time and, therefore, could not have been the abductor. Interviews were conducted, alibis were followed up and, if warranted, potential suspects were asked to take a polygraph test.

On February 14, 1985, Detective Fitzpatrick and Inspector Shephard met with Ken and Janet Jessop. During this interview, the Jessops mentioned that their next-door neighbour, Guy Paul Morin, was a 'weird-type guy' and a clarinet player. Inspector Shephard said that this information directed some suspicion towards Mr. Morin.

Fitzpatrick and Shephard testified that prior to February 22, 1985, when Mr. Morin was first interviewed, they did not consider him a suspect, but as a potential witness they wanted to interview because of his close proximity to the Jessops. Since the police theory was that Christine had been abducted in the immediately vicinity of her home, Detective Fitzpatrick said it was logical to speak to the neighbours. He added that a decision was made to interview him, along with other members of his family, because

[t]hey hadn't gotten involved in the search for Christine, next-door neighbours. They were also described to us as being a different type of family, a weird family. I seem to recall I may have looked at some of the reports, York. They hadn't been properly

interviewed ... There was an indication that even one of our own officers has attended across there and didn't get any information.

Fitzpatrick and Shephard further testified that, in the course of their discussion, Janet Jessop told the detectives that Guy Paul Morin's parents, particularly his father, were very possessive, overbearing and domineering. Accordingly, the two officers believed that it would be more productive to conduct the interview with Guy Paul away from his family. Arrangements were, therefore, made to place Mr. Morin under surveillance to enable Shephard and Fitzpatrick to stop him when he was alone, driving his car, in order to question him. On the evening of February 19, 1985, the officers unsuccessfully attempted to execute their plan.

A second unsuccessful attempt was made on February 21st to draw Mr. Morin away from his residence. This time a ruse was to be employed whereby someone at the Department of Transportation would telephone Mr. Morin to advise him that he must attend in Oshawa for a driver's licence interview. The plan was that Shephard and Fitzpatrick would then pull him over as he drove to the interview. The plan failed because Mr. Morin was not at home.

Despite Detective Fitzpatrick's and Inspector Shephard's position that Mr. Morin was viewed only as a potential witness and not as a suspect, Fitzpatrick's notebook entry for February 20, 1985, discloses the following wording in relation to Guy Paul Morin: "Info suspect Morin in Toronto," and "Suspect's vehicle KWX 305 in driveway."

Detective Fitzpatrick attributed the use of the word 'suspect' to police jargon commonly used to describe witnesses. He acknowledged, however, that his notebook entries relating to interviews with other neighbours of the Jessops did not utilize that term. But the word was used elsewhere in his notebook in relation to known sex offenders being investigated in connection with this case.

On February 21, 1985, Inspector Shephard's notebook records a meeting with Inspector Brown from 9:50 to 11:50 a.m. "Re Morin situation." Inspector Shephard was unable to provide any assistance as to what had been discussed at this two-hour meeting; he maintained that his communication relating to the Morin situation would have taken approximately five minutes.

Findings

I find that Fitzpatrick and Shephard did regard Guy Paul Morin as a suspect prior to their interview with him on February 22, 1985. The attempts to interview him alone go well beyond what one might expect for a prospective witness (whatever they were told about the Morins.) I refer in particular to the ruse involving the Department of Transportation. I find that the use of the word ‘suspect’ in Officer Fitzpatrick’s notes did not simply reflect police jargon. This finding has importance because it bears upon the attitude with which the two officers approached Mr. Morin that day and which, quite subconsciously, had an impact on the inferences they drew from some of his remarks.

(vii) The February 22, 1985 Interview of Guy Paul Morin

On February 22, 1985, Inspector Shephard and Detective Fitzpatrick attempted to find Mr. Morin’s sister, Yvette Devine, to interview her concerning a white car she had seen on the afternoon of October 3, 1984 in the Jessop driveway. As the detectives could not find her at her home she shared with her husband, Frank Devine, they drove to the Morin residence, unannounced, for the purpose of interviewing Guy Paul Morin. As they approached the rear door of the Morin home, Guy Paul came out of the house and agreed to speak with the officers in their parked car in the driveway.

In Inspector Shephard’s will-say, first recorded after Mr. Morin’s arrest, he observed: “It appeared to me at this time, almost as though he did not want us to reach the back door.”

Inspector Shephard agreed that this statement carried a somewhat sinister connotation that, perhaps, Mr. Morin did not want the police to see something going on in the house. He conceded that at the time he prepared this will-say, his perception of an innocent event may have been coloured by the fact that Mr. Morin had been charged with first degree murder. *This provided a clear example of something which becomes a recurrent theme in this Report — an innocuous event, Morin leaving the house to greet the officers, was coloured by an officer’s perceptions about him, to become sinister. I later find that the ‘consciousness of guilt’ evidence tendered at trial must be evaluated in the light of this psychological phenomenon.*

Detective Fitzpatrick and Inspector Shephard had pre-arranged to tape-record the interview of Guy Paul Morin, the first tape-recorded interview in the investigation. A cassette recorder was obtained from Durham's intelligence office in Whitby, where the two officers were based at the time. The recorder was placed in a briefcase for surreptitious recording. A 90-minute cassette tape was provided by intelligence. The interview lasted between 90 minutes and two hours. After 45 minutes the tape had to be manually turned over in order to make use of the 90-minute tape. As neither investigator realized that the tape had to be turned over, the first 45 minutes of the interview with Mr. Morin were recorded, but the next 45 minutes were not. Even had the tape been turned over, any conversation in excess of 90 minutes would not have been captured by the tape.

Because of their belief that their conversation was being fully taped, neither Shephard nor Fitzpatrick kept a complete simultaneous record of the interview in their notes. In fact, Detective Fitzpatrick took no notes at all. Shephard started the interview taking rough notes on various issues, but at one point he began to write a history on a separate document. These two sets of notes were filed as exhibits at Mr. Morin's second trial. Inspector Shephard said that both sets were written during the interview; the rough notes were in point-form in the third person, and the history was formatted as a 'witness statement.' These notes were incomplete, did not contain the context in which things were said, and some of the statements were out of sequence. Mr. Morin was not asked to review, sign or comment on either sets of notes that were made during this meeting.

The detectives' suspicions were aroused by a number of comments made by Mr. Morin during the course of this interview. These statements eventually formed part of the grounds for the arrest of Mr. Morin. An analysis of some of the statements made by Mr. Morin, together with a summary of how they were eventually used at trial, follows. Some of these comments were captured on tape, while others are reflected in the notes of Inspector Shephard.

“I'm really good when it comes to prediction ... I bet that little Christine is gone.”

In the recorded portion of their conversation, Mr. Morin discussed his observations the evening that Christine disappeared:

Morin: Okay, so it's starting to turn dark, so it's easily 7:30 I saw the first cop car. I said, 'Hey there's a cop car up there. Something must be going on, eh?' He [Alphonse Morin] said, 'probably not, maybe another complaint'. You know we've got complaints eh, when you do construction you get a little noisy, eh. Some you get the odd bitching. Jessops are super, I know that for a fact. He [Bob Jessop] comes around and helps the odd time, eh. But, I said, 'something must be going on'. Then the next one came up ... and you know, for some reason and I ... I'm really good when it comes to prediction — I said 'I bet that little Christine is gone.' He says, 'Christine, do you think? Nah, maybe Ken, something maybe. You know, Ken's at the age, you know, just socializing. Maybe Ken's at that age when he's starting to get into trouble eh?'

Fitzpatrick: Um hum.

Morin: But he's a super guy supposedly, eh. The parents say.

Shephard: Well.

Morin: He has an ambition to be a doctor. Then another and another and another. And then it became a charade around here. *And then we found out Ken and the officer came and said "Did you see Christine? and I said "Wholly shit dad.."*

.....

Why did I predict that? I, I didn't know she ...

Fitzpatrick: That's what I was going to ask you. What, what uh,

Morin: I don't know.

Fitzpatrick: [M]ade that jump to your mind?

Morin: For some reason I'm so close to many things I predict, eh ... (Emphasis added.)

Mr. Morin explained at trial that, shortly before Christine's disappearance, he had seen a television program about missing children which

may have precipitated his prediction. (This became a contentious issue at trial.)

Mr. McGuigan put forward this statement to the jury as important evidence of consciousness of guilt.¹² The comment stood out to him ‘like a flashing red light’ because a more likely prospect for police attendance at the home was the teenager, Ken Jessop, or the father, who had experienced some difficulties with the law. The position of the defence was that the killer would hardly advise the police that he had predicted Christine Jessop’s disappearance.

“Otherwise I’m innocent.”

During the tape-recorded portion of the interview, a number of non-issues came up. For instance, Mr. Morin and Inspector Shephard engaged in a discussion of construction work. They then discussed Mr. Morin’s employment history and talked about the work he was doing at Interiors International Limited (“IIL”), and what kind of furniture they made:

Morin: Beautiful veneer work like I’ve never seen ... amazing for woodworking ... like it’s real super custom ... there’s a long table like 12 feet long, easy. Joined together in the middle, certain beautiful anchor clips. They’re far out in things today.

Fitzpatrick: Ya.

Morin: [A lengthy pause] Otherwise I’m innocent. But it’s pretty bad how they treated the Regional. You know what they did around here. They said we’re all guilty until proven otherwise.

¹² In their written submissions to the Inquiry, Mr. McGuigan and Mr. Smith took the position that Guy Paul Morin’s credibility was damaged at the second trial when he had to agree in cross-examination that, contrary to his statement to the police, he already knew his ‘prediction’ was accurate by the time Ken Jessop attended at his residence with a police officer (which, according to Guy Paul Morin’s evidence, was about 11:00 p.m.). At his second trial, Guy Paul Morin testified that he realized his prediction was accurate about an hour after the first police car arrived. At that time, a police officer came to the ‘pig fence’ and asked Alphonse Morin if he had seen Christine Jessop. When confronted with this contradiction, Guy Paul Morin testified that what he said to Fitzpatrick was ‘improper,’ obviously, and a mistake.

Fitzpatrick: Who said that?

Morin: Well it's not exactly what they said. But we're all suspects.

Fitzpatrick: Who's that, the Regional?

Morin: Ya.

Fitzpatrick: That's York?

Morin: That's York Regional, yeah. Isn't that bad eh? How they portray us all as being guilty. I mean I don't mind if I'm in Quebec eh. But around in here. And they say 'Hey we're going to be doing a door-to-door search' and you know they only did us.

Shephard: What they searched your house?

Morin: No, a door-to-door, coming to the people and questioning and questioning and questioning. All right, so they been to see us more than once. You guys have already been here three times eh?

Fitzpatrick: Who was here? We've never been here.

Morin: Joe, big boy.

Fitzpatrick: Oh. Loughlin.

.....

Morin: Well there was two of them like you, eh, but um, they were a little more brashish, eh. So they asked me for my phone number. I said, 'I don't give out my phone number, it's private eh'. And he said, 'What in the hell are you saying, you don't give out your phone number?' And I said, 'Not even to the band members'. There's only one who has it, some lady for the band if there's a cancellation due to weather or something. And um he said, 'For Christ's sakes, there's a goddam uh case, uh, dealing with Christine'. I said, 'What the hell does that have to do with my number?' and then he said, 'What they hell - you on drugs or what?' I said, 'Hey I never touch that shit'. I mean that's picky.

Detective Fitzpatrick testified that while the “otherwise I’m innocent” comment was not an incriminating statement itself, the fact that it came “out of the blue” following the conversation about woodworking aroused suspicion and struck him as odd. There appears to be nothing which precipitated this statement. While Inspector Shephard did not even record the remark in his rough notes of the interview, he too stated that it stood out to him at the time.

Mr. Morin testified at trial that one of the factors that precipitated this comment was that he had heard on television one evening that York Regional Police had said that everyone within the community or the surrounding area of Queensville was considered a suspect until proven otherwise. Inspector Wilson testified at the Inquiry that, indeed, this was the public position taken by York Region. Mr. Morin disagreed that his comment was strange; he said it to breach the silence.

This statement was tendered to the jury as evidence of consciousness of guilt. Mr. McGuigan said he found it unusual that this statement followed a 10 to 12 second pause after a discussion about woodworking. During the Inquiry, Mr. McGuigan accepted that this was an innocent remark made in the context of the York Regional approach to the case.

“All little girls are sweet and innocent but grow up to be corrupt.”

During the unrecorded portion of the conversation, Inspector Shephard wrote in his notes that Mr. Morin uttered the following: “All little girls are sweet and beautiful — grow up to be corrupt.”

Inspector Shephard was unable to recall the context in which Mr. Morin said this, nor could he remember his tone of voice at the time. In Detective Fitzpatrick’s words, it “was just an unusual comment ... which would cause an investigator to want to look further into things.” In his evidence at the second trial, Fitzpatrick described this statement as one of “the most flagrant comments which we felt were unusual that would stick in our mind.”

Inspector Shephard’s rough notes record the following conversation just prior to this utterance:

Christine a sweetheart. Two weeks before her disappearance, came over to see sister’s puppy, more

alive than Kenny. Sweet girl. Was wearing a veil and bees attacking him. Sowing clover. Christine said, 'Are you sowing honey seeds?,' very very innocent kid. Never heard him play saxophone.

Inspector Shephard testified that he never considered whether this comment, which later acquired significance, was simply a reflection of this same aspect of the conversation.

Mr. Morin was asked during the second trial in cross-examination about the meaning behind his statement:

Q. Mr. Morin on September 22nd when you were speaking with Inspector Shephard — February 22nd when you were speaking with Inspector Shephard and Staff Sergeant Fitzpatrick, did you say to them 'All little girls are sweet and beautiful but grow up to be corrupt'?

A. I did say something like that to them.

Q. What did you mean by that?

A. Well that was in relation to when they spoke to me about Christine, whether or not she was in trouble of any sort that I was aware of.

Q. Yes.

A. I thought, in my mind, there's no way, she's too young to be involved in any trouble.

Q. Well, I suggest to you, sir and we will come back to this in a moment, I just suggest to you that February 22nd, either in the recorded portion or unrecorded portion, neither Inspector Shephard nor Detective Fitzpatrick ever asked you whether Christine Jessop had been in any trouble.

A. That's not so. They did.

Mr. Morin also explained:

Well, I was telling them, like, she was only an innocent child. She was young and there was no way,

um, and I was telling them that she was sweet and innocent and you know, it's true that some people or children eventually do become corrupt, you know, in a later portion of their life, but not at that early stage.

It is notable that Detective Fitzpatrick commented to the Devines a week later, "it's unfortunate, kids grow up to be adults and that's who hurt each other." We will never know if a similar comment had been made to Mr. Morin on February 22, precipitating his comment, since the precise interplay during this part of the interview is unrecorded.

Susan MacLean believed that Mr. Morin's remark was a bizarre statement—it was not the way most people would view women or girls. At the outset of Mr. Morin's second trial, Alex Smith successfully sought a direction to the jury that this utterance showed Mr. Morin's motive; this is how the trial judge directed the jury:

It is for you to consider that although these words, 'All little girls are sweet and beautiful but grow up to be corrupt' are general, since the subject matter of this interview is the disappearance and death of Christine Jessop, did those are words relate to Christine Jessop? If so, is that connection to Christine Jessop then transported from generalized hostility against little girls into a specific hostility against Christine Jessop? Do those words demonstrate in the accused's mind a motive in the form of hostility towards Christine Jessop as a little girl? If so, you may consider whether this utterance bears on the issue of the identity of the killer.

There was no doubt in Inspector's Shephard's mind that the murder was sexually motivated. In his view, the killer lost control of his victim. He agreed that this was the common sense conclusion.

Mr. McGuigan told the Inquiry that, after explaining the law on motive to the jury in his closing address, he forgot to return to the issue. Had he done so, he would have indicated that sex was a motive. Although he had not fully decided whether to submit Mr. Morin's comment as evidence of motive, in his opinion it would have been a valid motive available to the Crown.

“[Christine] was found across the Ravenshoe Road.”

In an unrecorded portion of the interview, Guy Paul Morin mentioned one media account which, erroneously, reported that Christine’s body had been found west of Queensville. Inspector Shephard’s note recorded Mr. Morin’s comment to the investigator that her body had actually been found “across the Ravenshoe Road.”

Regional Road 32 is known as the Uxbridge/Georgina Townline, but it is also commonly referred to by residents as the Ravenshoe Road. It is the first east-west paved road north of both the Morin and Jessop homes. To travel a direct route from the Jessop home to the area where Christine’s body was found, one could drive east along the Ravenshoe Road to Durham Line, along Durham Line to Sixth Concession Brock, across Sixth Concession Brock to Regional Road 2, and then south along Regional Road 2 to the Fourth Concession. The Ravenshoe Road ends 17 kilometres west of the body site.

Mr. Morin’s statement increased the officers’ suspicions of him as one who appeared to have particular knowledge of this route to the body site. Shephard and Fitzpatrick had never before heard of Ravenshoe Road, nor did they speak to any York Region officers or locals who could have advised them that the Ravenshoe Road was a main road known to any local resident.

Mr. Morin’s comment regarding the Ravenshoe Road was tendered by the Crown attorneys as evidence of consciousness of guilt. In his closing address, Mr. McGuigan referred the jury to one more of the ‘coincidences’ in the case:

The Ravenshoe Road is not just any route to the east of Queensville, it is the most direct route from Queensville to the location where Christine Jessop’s remains were found. The accused confirmed that he told Shephard and Fitzpatrick that’s probably the best route, probably the best route would be to go across the Ravenshoe Road. The significance of all of this is, in my submission, that the accused claims to have never been across the Ravenshoe Road to its terminus at Durham Regional Road 2 and to have no familiarity with the area where Christine’s remains were found. The accused just picks out an east-west route, and it happens to be the best most direct route to the scene,

terminating at Regional Road 2 just two concessions north of where Christine's remains were found. Was that just a coincidence?

Although Ravenshoe Road ended 17 kilometres west of the body site, Mr. McGuigan said that inferences could be drawn that Mr. Morin seemed to have unique knowledge of this particular area.

At the Inquiry, Inspector Wilson testified as follows:

Q. Did you know, sir, that back in February, March, April of 1985, that Shephard and Fitzpatrick, who didn't live in York Region and weren't working in York Region, they're from Durham, were using Guy Paul's statement that would not be a surprising thing to hear from anyone in Queensville, as a reason to make him a suspect in the first place?

A. No, I was not.

Q. You didn't know that?

A. No.

Q. If you had known that, sir, would you have wised them up immediately, with, "Don't be ridiculous?"

A. Just based on that, the Ravenshoe Road, the description?

Q. Mm-hmm. That was a significant part of it, sir.

A. I would have mentioned it, perhaps, I don't know if I would have, but perhaps mentioned that Ravenshoe Road is a well-known road within the area, if that had of been any assistance to them. I don't know if it would have been, or not.

What Guy Paul Morin Said About Timing

Detective Fitzpatrick testified that Mr. Morin's statement on February 22, 1985, as to the time of his arrival home on the day Christine Jessop disappeared aroused suspicion. He could not recall why in the recorded portion of the interview, in response to questions relating to his whereabouts

that day, Mr. Morin stated:

That particular day I was starting [work] in the morning, about 7:00 and finished at I think was, ah, 3:30, then went shopping got home around 4:30. It only takes me 45 minutes to get home from where I work.

At a later point in the taped portion of the interview he said this:

So that's why I'm really pissed off at myself not being there. Shopping screwed me up that time. Usually from work I would pick up the odd thing at the mall.

In the unrecorded portion of the interview, Mr. Morin referred to the time of his arrival home as "between 4:30 and 5:00." (A full discussion of timing as it related to Mr. Morin's alibi and Janet Jessop's evidence follows later in this Report.)

Police Suspicions Arising Out of the Interview

Detective Fitzpatrick said that it was after the February 22, 1985 interview that Guy Paul Morin became a suspect in the murder of Christine Jessop. According to Inspector Shephard, although he was very suspicious of Mr. Morin following this interview, he still did not consider him to be a 'prime' suspect. Nevertheless, Mr. Morin became the focus of investigative steps in the days following the interview as the utterances described above had aroused suspicion. In addition, his demeanour during the interview was viewed with scepticism by Detective Fitzpatrick:

He seemed to be wanting to get involved with it. He ... seemed to be excited. He certainly wasn't denying — he was very talkative to us ... [and] [f]riendly.

(One can only wonder what feelings would have been generated had Mr. Morin been uncooperative or reacted with reticence.)

Detective Fitzpatrick was also cognizant of the fact that Guy Paul Morin had not wanted to provide his home telephone number and birth date to Detective Loughlin (or to the York Regional Police) in a prior routine interview. Fitzpatrick thought that this was

just a little unusual, and again, he's not obliged to give you the phone number, but, you know, you take everything that you have and you try and put it all together and I guess it starts, starts the wheel turning.

In addition, Guy Paul Morin had not become involved in the search for Christine Jessop. Detective Fitzpatrick viewed this as

a little different. I mean your, next-door neighbour, a nine-year-old child is missing, you know, most people would be out there searching wherever they could until all hours ... as a general rule, that's what most people would do.

During the Inquiry, Mr. Morin's counsel alleged that Crown counsel engaged in tortured interpretations of innocent remarks made by Mr. Morin during this interview with police. Mr. McGuigan's position was that although the conversation can now be seen to be innocent, he found it very unusual. He disagreed that Mr. Morin's remarks to the police were isolated from a lengthy and innocent conversation so as to direct the jury away from the conversation as a whole in a manner which distorted the innocent nature of the comments. He said that both Crown counsel and the defence urged the jury to listen to the entire tape. He denied that Crown counsel was allowed to go too far:

In most criminal trials, I mean, you're looking for this foolproof piece of evidence that's available to establish it, and you don't have it at trials. You have this kind of evidence at a lot of trials and you cannot be precluded from using that or you might as well forget about prosecuting half the people.

Thus, it was, according to Inspector Shephard and Detective Fitzpatrick, during this interview that Mr. Morin's status changed from witness to suspect, and Inspector Shephard listed the reasons:

- He predicted that Christine was missing on the basis of seeing police cars on the Jessop grounds when there was no apparent reason for that comment, nor any indication that anyone was looking for her;
- He made a comment, "Otherwise I'm innocent," without any basis in the context of their conversation;

- He provided evidence that he was home between 4:30 and 5:00 which, in Inspector Shephard's opinion, gave him the opportunity to have abducted Christine since he knew her and would be able to abduct her very quickly;
- He was a keen musician and played a woodwind instrument. When Christine came home on October 3rd with a recorder, they may have had something in common to speak about;
- Guy Paul Morin was aware that the Ravenshoe Road was one of the most direct routes to the murder scene;
- Guy Paul Morin uttered the statement that "All little girls are sweet and beautiful but grow up to be corrupt."

Findings

Investigators are entitled (indeed, obligated) to carefully scrutinize everything they are told in a murder investigation. Nothing I am about to say is intended to diminish that obligation. Investigators are entitled to draw upon their intuition, experience, and personal observations in conducting their work. The problem identified at this Inquiry arises where officers take a certain view of matters and 'filter' everything through that view. The statements of a person regarded to be a suspect can rarely, if ever, survive scrutiny which is unduly filtered or coloured in this way. The same statements excite no suspicion when uttered by someone else.

There can be no fixed rules that certain comments should be viewed with suspicion and others should not. What the best investigators appreciate, and what must be learned by all officers, is that they must be constantly on guard so as not to allow their assessments to be unduly coloured by their suspicions. Otherwise, an investigation becomes a self-fulfilling prophecy. I visited this theme in Chapter II. Forensic scientists guard against the same danger through the 'scientific method' which I earlier described. Scientists' work becomes potentially dangerous when their assessment of data is done in the context of an attempt to link a suspect to a crime scene.

In the face of Guy Paul Morin's proven innocence, his comments on February 22, 1985 were innocuous. Some of his comments perhaps should not have excited any suspicion at the time. (For example, it is clear to me that suspicions about Morin's Ravenshoe Road comment were based more upon the officers' ignorance of the area, than upon anything else.) It is difficult (and not terribly helpful) to assess now which items should have prompted further inquiry then. That analysis misses the point. Officers are entitled to investigate even that based upon hunches. The point, here, is that the comments were 'hard evidence' of nothing. Nothing could be said even remotely to constitute an admission, or a demonstration of knowledge exclusive to the killer. The information in the officers' possession at the time did not justify any fixed view as to Morin's guilt. However, I find that Fitzpatrick and Shephard did 'fix their sights' on Guy Paul Morin — they, themselves, may not have appreciated the extent to which they did so. Subsequent interviews of witnesses (such as Ken Jessop's dentist, his receptionist, Ken and Janet Jessop), which the officers were entitled to conduct as a follow-up to the Morin interview, were unduly coloured by their premature, overly fixed views. This, in turn, affected the quality of the interviews they conducted.

I acknowledge, as Fitzpatrick and Shephard noted here, that they investigated other suspects after February 22, 1985. With respect, these investigative efforts were unduly coloured by their view of Guy Paul Morin. I was advised that, after Guy Paul Morin was arrested, and indeed after his acquittal, Fitzpatrick and Shephard investigated other suspects and were open-minded about it. With respect, their investigative efforts at that stage were unlikely to reveal anything which pointed away from Guy Paul Morin. Their views were too fixed to permit that level of introspection (which I concede would be extremely difficult for the best investigator at that stage, given their determination that they had the right man, had arrested him and brought about his prosecution.)

Mr. McGuigan commented that "[y]ou have this kind of evidence at a lot of trials and you cannot be precluded from using that or you might as well forget about prosecuting half the people." If Mr. McGuigan's point is only that many criminal cases are circumstantial, and depend upon individual pieces of evidence which may not be significant by themselves, I agree. However, it is my view that judges must be particularly vigilant in assessing, both for admissibility and for ultimate use either by the jury or themselves, equivocal, ambiguous, ill-defined remarks, often dependent on the witness' subjective assessments, perceptions or feelings, tendered as evidence of

‘consciousness of guilt.’ This theme is a recurrent one throughout this Report.

(viii) Timing and Morin’s Place of Work

Three days after the interview, on February 25, 1985, Inspector Shephard and Detective Fitzpatrick obtained Guy Paul Morin’s IIL work records; his time card showed that on October 3, 1984, he had left work at 3:32 p.m. The detectives then conducted a timing run from his workplace to his home, a distance of 57.1 kilometres. It took 42 minutes. Assuming that Guy Paul Morin stopped nowhere, that would bring him home no earlier than 4:14 p.m.

According to the 4:10 p.m. time that Janet Jessop and her son had consistently provided to the York police for their arrival at home, Mr. Morin did not have a realistic opportunity to abduct Christine.¹³

After their timing run, Shephard and Fitzpatrick went to Dr. Taylor’s office for the first time and spoke with him and Ms. Lawson, his receptionist. At the conclusion of these interviews, Mr. Morin was seen by the detectives to have had a ‘window of opportunity’ to have abducted Christine, because both Dr. Taylor and Ms. Lawson claimed that the Jessops had left the dental office at 4:20 p.m. or even later. The time at which the Jessops and Guy Paul Morin arrived at their respective homes therefore took on importance and this is discussed below.

(ix) The Time That Janet and Ken Jessop Arrived Home: From Investigation to Trial

The Jessops’ Early Accounts

Janet and Ken Jessop were interviewed by York Regional Police on several occasions in the days immediately following the disappearance of Christine; they both maintained that they arrived home from Newmarket at 4:10 p.m. on the day Christine disappeared.

¹³ It was suggested that Christine Jessop could have been abducted other than from her home or its immediate vicinity and therefore, the 4:10 time did not preclude his involvement. It is unnecessary to resolve this issue. The officers clearly proceeded on the basis that the 4:10 time was problematic vis-à-vis Mr. Morin as a suspect.

In the original occurrence report prepared by Constable Rick McGowan on his arrival at the Jessop home that evening, he recorded the 4:10 p.m. arrival time.

In the early morning hours of October 4th, while the search for Christine was in full force, Ken Jessop was awakened by an officer and asked to provide a handwritten statement. (I briefly described this event in Chapter IV.) While this statement was subsequently lost, the supplementary report reflecting Ken's detailed statements includes a notation that he and his mother returned home at 4:10 p.m. from the dentist.

In a statement apparently taken in the early morning hours of October 4th, Janet Jessop again reported:

Then we went to the dentist on Eagle Street, Newmarket, Dr. Taylor. I left Ken there and I took my telephone back to Bell Canada on Main St. Then I walked to Household Finance. Then I picked Ken up, it was about 4:00 p.m. and we came straight home. We got home at about 4:10 p.m. ... I called the Lawyer at 4:45 p.m.

Ken Jessop was re-interviewed on October 6, 1984 at the Queensville Community Centre by Inspector Wilson and Detective Eugene Kerrigan. Again, he told the police that he arrived home at 4:10. He substantiated this time by indicating that he had 'looked at his watch.'

On January 8, 1985, the day following Christine Jessop's funeral, and on January 9 and 10, Bob and Janet Jessop attended at the Sunderland police station for an interview with Detective Reginald Webster. His partner, Detective Joseph Loughlin, may have been present at some point in time. On the latter two days, the Jessops were questioned about friends, relatives, acquaintances and neighbours. Detective Webster took notes of the interviews as it proceeded, on loose paper which he later discarded after converting the information into a lengthy (25-page) supplementary report. His report contains the following notation:

Presently Kenneth Jessop is a student at Huron Heights High School in Newmarket where he attends Grade 9. It may be noted that on the day of the disappearance he was with his mother Janet, arriving home at approximately 4:20 to 4:30 p.m.

At the stay motion, Detective Webster was asked whether that information had been provided to him by Kenneth Jessop. He responded:

It's a compilation of information. There was some information on York Regional reports. There was information obtained from Janet Jessop. I would have to say at this time that this information is probably from those two sources and not necessarily from Kenneth Jessop directly.

Detective Loughlin was asked this at the stay motion:

Q. Was there any importance to you as an investigator to determine as precisely as you could what time the Jessops had arrived home and where Mrs. Jessop had been prior to phoning the police, after her arrival home?

A. Yes. We asked those questions. I believe we also — a lot of that information was supplied to us by the York Regional Police.

Detective Loughlin could not recall whether the York Regional times were reviewed with Ms. Jessop but did not believe any reports were taken to the interview. He did not recall questioning Ken Jessop nor did he know if another investigator had done so.

The York Regional reports, as discussed above, did not refer to a time of 4:20 to 4:30.

According to Inspector Shephard's supplementary report on the interview of Ken Jessop that was conducted on February 14, 1985, Ken told the officers that he arrived at the dentist at 3:40 p.m., 10 minutes late for his appointment.¹⁴ He said that he was:

¹⁴ At the time of this interview, Detective Fitzpatrick had read the general occurrence report dated October 3, 1984, indicating that the Jessops told the York Regional Police they arrived home at 4:10 p.m. He was also aware that Detective Loughlin's supplementary report dated January 10, 1985 reflected that he had met with the Jessop family and that Ken and Janet Jessop had arrived home at 4:20 to 4:30 p.m. He indicated he was not aware that Ken and Janet Jessop had given York Regional officers independent statements at different times confirming the 4:10 p.m. time.

only in the dentist then [sic] minutes all he did was just a check-up. I had to wait for my mom.

I think likely it was around 4:10 p.m. when she picked me up. Then we drove straight home to Queensville. When we came in the home I remember Mom looking at the clock and saying it was 4:20 p.m. She said she had time to have a coffee and think about what she was going to say to the lawyer ... when she called him at 4:45 p.m.

Inspector Shephard's notebook entry reflects that Janet Jessop was present during the interview and answered most questions, either before or while Ken Jessop was talking.

Eight days after this interview — the same one in which Ms. Jessop referred to Mr. Morin as a “weird-type person” — Detective Fitzpatrick and Inspector Shephard formally interviewed Mr. Morin, as discussed above. Detective Fitzpatrick told the Inquiry that it was probably after Mr. Morin became a suspect that they began to question the 4:10 time.

Meanwhile, in a “Citizen's Alert” program taped on February 20, 1985, Ken was depicted arriving at the dentist at 3:20 p.m.; the Jessops arrived home at 4:10 p.m. Ms. Jessop played the role of herself in this docudrama depicting her daughter's disappearance and murder. The kitchen clock was shown hanging on the wall reflecting the time of 4:10 when she and Ken arrived home. This was telecast by Global Television Network on March 15, 1985. These times, and the presence of the Jessops' kitchen clock in the docudrama, became an issue in the second trial and will be discussed later in this chapter.

After ascertaining that Mr. Morin had ‘punched out’ of work at 3:32 p.m. on October 3rd, Detective Fitzpatrick and Inspector Shephard measured the distance from the Morin residence to the site where Christine Jessop's remains were found. By taking the Ravenshoe Road route it was 51.4 kilometres. Driving faster than the speed limit, it took them 32 minutes to complete the run. In a subsequent timing run conducted on May 26, 1985, at normal speeds, traveling the same route, the drive took 39 minutes to complete. A timing run from IIL to the Morin residence, as pointed out above, took 42 minutes, which meant that the earliest Guy Paul Morin could have arrived home was at 4:14 p.m.

The Dentist and his Receptionist

After establishing that Mr. Morin had left his workplace at 3:32 p.m. the afternoon Christine Jessop disappeared, and, following their timing run between Mr. Morin's workplace and his residence, Detective Fitzpatrick and Inspector Shephard spontaneously attended the office of Dr. Paul Taylor to interview him and staff members about their recollection of the arrival and departure of Ken Jessop on October 3, 1984.

Shephard could not recall whether the two were questioned individually or together. Inspector Shephard agreed that the supplementary report of the interview suggests that Dr. Taylor had no independent recollection of the times Ken Jessop's dental examination commenced and ended. In calculating the length of time that he spent with Ken, Dr. Taylor extrapolated from the usual patient examination time. Further, there were differences in Dr. Taylor's and Ms. Lowson's recollection as to when Ken Jessop left the office. While no specific witness statement was taken at this time from these witnesses, Inspector Shephard's notebook entries suggest that the interviews were completed in approximately 12 minutes. The supplementary report documenting the interview states as follows:

Dr. Taylor said that to the best of his recollection, he recalled Kenny's examination began at 3:50 p.m. and probably finished at 4:05 p.m. He could recall going out into the waiting room and seeing Kenny sitting, waiting for his mother to pick him up. *Dr. Taylor said he felt it was around 4:30 p.m. However, Dr. Taylor said he had spoken to his nurse and receptionist both girls thought it was 4:20 p.m. when Mrs. Jessop came in to pick Kenny up.* Dr. Taylor said that Mrs. Jessop dropped Kenny off at the office and because it was his first visit, *Kenny had to fill out a card which was placed in his file. This is why he was certain Kenny's examination didn't start until 3:50. Examinations last anywhere from 15 to 30 min. again this is why he feels Kenny's was finished at 4:05 p.m.* He also recalls Kenny having to wait for sometime for his mother to pick him up. Dr. Taylor said the police had never spoken to him about this matter. (Emphasis added.)

Ms. Lowson expressed more certainty about the times:

Lorraine Lawson (sic) ... said she had spoken to Mrs. Jessop several times and she was anxious to meet her. *She said Kenny came into the office by himself at 3:40, ten minutes late* for his appointment. After his examination, she could recall Kenny sitting in the waiting room waiting for his mother. *Lorraine was certain it was around 4:20 pm when Mrs. Jessop came in to pick up Kenny.* Mrs. Jessop didn't stop to pay her account she simply pick up (sic) Kenny up and left. (Emphasis added.)

(A supplementary report filed by Officer Bunce indicates that on December 7, 1984, he spoke to Ms. Lowson who at that time advised that Ken Jessop had kept his October 3, 1984 dentist appointment. She did not then provide information on the issue of times nor would it appear that she was asked.)

Dr. Taylor and Ms. Lowson testified at both Mr. Morin's second trial and during the Inquiry. Their evidence was that Ken arrived approximately 10 minutes late. Dr. Taylor said it would have taken at least five minutes, and possibly more, for Ken to have filled in a history card provided to all first-time patients. He did not begin his examination until 3:50 to 3:55 that day. He performed a new patient examination, took four X-rays, charted his cavities and existing fillings, and talked to him at some length about his oral hygiene. This took until 4:00 p.m. or later. Dr. Taylor further recalled speaking with Ken sometime around 4:20 that afternoon while he was seated in the reception area waiting to be picked up by his mother. Ms. Lowson testified that Janet entered the office at approximately 4:20 that afternoon; she was in a hurry, and told the receptionist that she would take care of the bill at a later time.

Ms. Lowson testified that a day or so after Ken Jessop was in the office she was driving with her boyfriend Richard Pike (now her husband), a constable and now Staff Sergeant with the York Regional Police force, when she heard a news broadcast indicating that Janet Jessop had returned home at 4:10 p.m. that day. She immediately told her boyfriend that this had to be wrong. At the Inquiry, Ms. Lowson said that she and Dr. Taylor discussed it, and they agreed that, according to their recollections, the timing was not possible. Ms. Lowson gave this information to Detective Fitzpatrick and Inspector Shephard during the February 25, 1985 interview.

Staff Sergeant Pike was not interviewed until September 11, 1989,

four and a half years after the event. He agreed that Ms. Lawson told him *sometime* that Janet Jessop could not have returned home by 4:10 p.m. on the afternoon of October 3rd, and that he had passed this information on to Detective Bunce. Detective Bunce, who was questioned about this at the Inquiry, could not recall such a discussion with Staff Sergeant Pike. Because no contemporaneous note or supplementary report was made by Bunce at the time, it is impossible to determine if his lack of recollection is the result of a faded memory or error on the part of Bunce or Lawson. Detective Fitzpatrick's supplementary report of his interview with Staff Sergeant Pike says this:

Pyke (sic) went on to say he cannot say for sure when she [Ms. Lawson] told him, but it was after a news broadcast either on TV or the radio. He can't remember if it was before or after Guy Paul Morin was arrested. No other information.

In 1990, Detective Fitzpatrick called Staff Sergeant Pike to ask if he remembered the date of Ms. Lawson's disclosure to him; he said he did not. However, on February 21, 1991, Pike submitted a signed will-say which pinpointed the day of Ms. Lawson's disclosure:

In October of 1984, I believe it was the day after Christine Jessop was reported missing at lunch time, I had conversation with one Lorraine Lawson. During that conversation, she told me that the news report on the public radio in regard to the Christine Jessop missing report was wrong.

Specifically, she was adamant that the time reported on the radio was wrong because Mrs. Jessop was at Lorraine's office at a time that would conflict with the time Christine was reported as missing.

Following the February 22, 1985 interview of Dr. Taylor and Ms. Lawson by the detectives, they were re-interviewed on as many as 11 to 12 separate occasions, sometimes by police officers, other times by Crown attorneys. Dr. Taylor testified that when Shephard and Fitzpatrick interviewed him, they took notes in a little black notebook; however, there were no such notes in the officers' notebooks detailing their conversations with Dr. Taylor and Ms. Lawson. Dr. Taylor described these interviews as somewhat repetitive, pre-arranged and comprised of friendly questioning. The officers

were professional and courteous, in contrast to Taylor and Lawson's opinion of Mr. Pinkofsky's private investigator, Basil Mangano, whom they had met three or four times. Dr. Taylor found Mr. Mangano more aggressive. He was not happy that the investigator had a tendency to drop in without prior arrangements. Mr. Mangano was described by both Dr. Taylor and Ms. Lawson as persistent, impolite, inconsiderate and a little unpleasant.

While timing did become a crucial issue in the prosecution and defence of Guy Paul Morin, it is curious that the dentist and his receptionist were interviewed so many times on what was relatively straight-forward information.

March 6, 1985 Interview of Ken and Janet Jessop

Based on their interview with the dentist and his receptionist, Detective Fitzpatrick and Inspector Shephard were certain that the Jessops had erred in putting forward their arrival home as 4:10 p.m. The Taylor-Lowson times seemed more reliable because they were neutral parties who offered the information without hesitation. The detectives timed the drive between Dr. Taylor's office in Newmarket and the Jessop home. Even when Detective Fitzpatrick drove as quickly as possible, and sometimes exceeded the speed limit, the fastest travel time was 14 minutes.

On March 6, 1985, at 10:45 a.m., Detective Fitzpatrick and Inspector Shephard went to the Jessop residence to interview Ken and Janet regarding the timing of their activities on October 3, 1984. Detective Fitzpatrick told the Inquiry that although he could not specifically recall doing so, he was sure he "read the [York] reports or tried to, before going up there, had checked the reports concerning times." The evidence of both Detective Fitzpatrick and Inspector Shephard was that Janet and Ken Jessop were not separated during the interview, despite Janet Jessop's interjections during their interview of Ken Jessop three weeks earlier. The interview was not tape-recorded. No formal statement was taken nor were there detailed notes in the officers' notebook of this two and one half hour meeting. Detective Fitzpatrick's rough foolscap notes were discarded or were mislaid before trial. The only record of the interview is a supplementary report prepared by Detective Fitzpatrick on March 11, 1985. It states as follows:

On March 6, 1985, at 11:00 hours Detectives
Fitzpatrick and Shephard attended Queensville and

interviewed Janet and Kenneth Jessop with regards to the times that they arrived home on October 3, 1984.

Through taking both step by step through their times and their traveling on that date, it was found that Janet and Ken arrived home some time around 16:35 hours (4:35 pm), not 4:20 pm as originally stated.

Janet maintains that it was 4:20 pm on the clock when she entered the house. When suggested that their clock could be slow, she said that could be a possibility as they are having problems with the electric clock.

Due to this fact, it appears that the suspect would have longer time than originally stated to pick-up Christine.

Investigation continues.

In relation to the disparity in time from that originally provided by Janet Jessop, Inspector Shephard said this at the Inquiry:

I just thought ... they've made a mistake ... and I put more faith in what the dentist told me and what Lorraine Bolson (sic) told me in regard to the times, because ... they're dealing with times all the time and the fact that Janet said she looked at the clock ... — I didn't [give it much] credibility.

Detective Fitzpatrick, testified during the second trial that “[w]e knew that Janet’s times were wrong”; in his opinion, it was almost impossible for her to have arrived home at 4:10. In his evidence before the Commission, he said:

[W]e certainly went there [the Jessop residence on March 6, 1985], I suppose, with the idea of telling them that they couldn't have been home at 4:10

Accordingly, Detective Fitzpatrick said that his suggestion to Janet Jessop that her clock was slow was put forward as a ‘face-saving scenario’ to permit her to gracefully change her position on the time. Neither he nor Inspector Shephard believed that the clock was, in fact, slow. In their view, feelings of guilt motivated Janet Jessop to lie about the time she arrived home in her earlier accounts to the police:

[W]e felt that in all probability that ... she did this in order, I suppose, not to be accused of being a bad mother, not being home when her child got home from school, or for whatever her reasons were. And of course, if you are going in to interview her — I mean, she'd just gone through a traumatic experience, and she is a victim, and you're certainly not going to go in and call a lady: You're a liar, et cetera, et cetera.

So we felt that the best way to do it was to take her ... step by step, through what she did that day, and hopefully show her that she couldn't have been home at the time that she said, at 4:10.

Inspector Shephard did not appreciate how Ms. Jessop's evidence could be tainted by the question "Could your clock have been slow?" In his view, "she had a perfect right to say 'No, my clock wasn't slow. I'm sorry, I got home at 4:10.'

Inspector Wilson, however, had earlier confirmed the accuracy of the Jessop kitchen clock by checking it against his own wristwatch. Fitzpatrick said that he was not cognizant of this fact at the time he made his suggestion to Ms. Jessop;¹⁵ neither was he aware that Ms. Jessop had told the York police that she had looked at the kitchen clock in determining the time of her call to her lawyer at 4:50 p.m. The Jessop telephone records which were later obtained confirmed that the time of that call was 4:49 p.m. Nonetheless, when this information was provided to Inspector Shephard at the Inquiry, it did not cause him to re-evaluate the accuracy of Ms. Jessop's original estimate of her arrival home.

Detective Fitzpatrick told the Commission that in taking the Jessops through their activities on the afternoon of Christine's disappearance they were told that their times were wrong; they may have been told the times provided by Dr. Taylor and Ms. Lowson, and that it was impossible for them to have arrived home at the time indicated. They were asked questions such as "could you have been five minutes longer at the dental office," or "could you have been five minutes longer in getting there." (Inspector Shephard's recollection was that they did not tell the Jessops they were wrong.)

¹⁵ As Inspector Wilson testified at the stay motion, he did not make a report or note of this fact.

Ken Jessop told the Inquiry that the March 6, 1985 interview occurred just as he was recovering from mononucleosis. According to him, he was interviewed alone, after his mother. He was told by Detective Fitzpatrick that his times were wrong but he maintained in the interview that they arrived home at 4:10. He said that Detective Fitzpatrick's tone of voice and body language during this interview were "very strong." He described the encounter as follows:

They said: We're going to run through the times again, ran through them, and: What time did you get home? 4:10. Well, how could you? You couldn't have. That's when I got home. I said that to York, I looked at my watch and they said: No, you were not home at 4:10. You could not possibly have been home at 4:10.

And that automatically starts throwing doubt into your own statements that you've already given, because you're fourteen years old and you're being told by police that you're mistaken, you're wrong. And when you know that you're not, though, it's — you want to believe them, because they're the police. Your faith is in them. They're the authorities. They're the ones that are supposed to know.

When he disagreed with the officers regarding the time, they reviewed the Jessops' actions with him yet again:

But this time, they were adding in: Well, could you have been five minutes longer here than you originally stated? Could you have been five minutes there a little longer? And then when they finished doing this, they added it all up, and it came out to 4:35. I don't know what else to say.

Mr. Jessop told the Inquiry that he voiced his disagreement about the times to the investigators and told them that he had looked at his watch, which he had purchased that day, upon his arrival at home. While Detective Fitzpatrick recalled Ken's comment to him about his watch, this only led him to question his reliability on the 4:10 time, given his February 14, 1985 indication that he arrived home at 4:20. The investigators felt that Ken Jessop was simply going along with his mother's account. Ken Jessop told the Inquiry that after the investigators left, he spoke briefly with his mother about the interview. His recollection was that Ms. Jessop was angry and confused

about being told the time was wrong. This anger and confusion was reflected in her telephone conversations that same afternoon.

Telephone Intercept Log

Robert and Janet Jessop consented to the interception of their telephone line by the Durham police to record incoming calls in the event they may assist in the investigation. Ms. Jessop's understanding was that only the caller's half of the conversation would be recorded. Ms. Jessop had misunderstood. The content of the full conversation was recorded and summarized in the logs kept by the police. Interceptions were conducted during the month of February and during the first week of March 1985. The tapes of the recorded conversations were taped over but a log summarizing the calls was preserved.¹⁶

According to Inspector Shephard's notebook entries, the March 6, 1985 interview began at 10:45 a.m. and ended at 1:15 p.m. at which point the investigators attended at the Morin residence.

On March 6, 1985, at 12:54 p.m., the following telephone call by Ms. Jessop is recorded in the log. In her evidence at the Inquiry, Ms. Jessop could not say whether the Durham officers were still at her home, in another room, at the time she made the call:

1254 Janet called Eastern Telecom and spoke to Heather. Wanted Bob. Talk about Durham being there and how she couldn't tell Durham anything about what York's doing. Durham's not telling York what's done, and are doubting what York has done. They were up questioning times and Janet can't remember times.

I perfer (sic) to deal with York and I'm not giving Durham anymore messages. I'll call

¹⁶ It was disclosed to the defence, pursuant to an order of Justice Donnelly on January 10, 1992. The trial had already commenced and Robert Jessop had testified (he was not recalled). The Crown had taken the position in May 1991 that it would disclose log entries relating to police contact only but otherwise took the position that the logs were not relevant and the privacy interests of the Jessops must be protected. The Jessops declined to make submissions on the disclosure application.

York from now on. Durham is doubting York's work and have no sympathy for victims. York is much better. Janet wants to wait, and see how Durham will treat her when the court date comes.

The log also recorded the following call that day at 1:02 p.m. in which Ms. Jessop indicates that the Durham officers "just left":

1302 Bob called collect and spoke to Janet. [She] [t]old Bob that she was discussed [sic] with Durham who just left.

.....

1304 Janet called [York Regional Police] 19 Division for Det. Nechay. Apologized for not calling back right away but "THEY" walked in, Durham. Talk about Jessops visiting different car dealers and Christine being along. Talk about Durham questioning her about times, and that *York followed her and had times*. Janet didn't like the fact that Durham asked about Hanson case. Janet didn't appreciate it. Wanted to know if she could do anything about their questioning. Janet doesn't like much about contradictions and the fact that the same two detectives were the ones that brought up about the adoption and she doesn't like him, he's too gruff. (Emphasis added.)

Allegations of Pressure

The above telephone calls suggest that Janet Jessop continued to harbour reservations about her timing at the end of the interview with the Durham detectives. While it was Inspector Shephard's opinion that by the end of the interview, both Janet and Ken had accepted the later time as more accurate, Janet Jessop told the Inquiry that this was not so. She did not agree with counsel for the Morins that the logs demonstrated 'bullying' by the police during the March 6th interview; she preferred to speak of 'pressure,' which she later defined to mean "reminding very strongly, almost to a badgering. Never letting go" over a long period of time.

Both Detective Fitzpatrick and Inspector Shephard denied pressuring Ken or Janet Jessop to change their times although, in hindsight, Inspector Shephard said that he could appreciate the Jessops' perception that they had been pressured. Detective Fitzpatrick preferred to speak of 'persuasion':

A. I don't think that we tried to persuade her, I don't think we placed pressure on her. As I said, what we did is took them step by step in an attempt to show the, you know, that you couldn't have been home at the time you said you were at home. If you want to classify that as persuasion to your mind, then maybe you do, I don't. I just put it that, you know, you're taken to events, what you did, so therefore your time could be off.

The police notebook entries reflect that after the March 6, 1985 interview, up to and including the date of Mr. Morin's arrest, Ms. Jessop was interviewed by Inspector Shephard and Detective Fitzpatrick on eight occasions. The times, she said, "always kept coming up, yes. It was always mentioned."

However, in contrast to her evidence at the Inquiry, when Ms. Jessop testified during the stay motion and was cross-examined by Crown attorney Brian Gover, she denied that she had been pressured by any police officer or Crown attorney to change the time of her arrival: "Absolutely not. To the contrary, they have said: Don't — You know, be as sure as you can." Mr. Gover told the Commission that, during their pre-testimony interview, Ms. Jessop categorically denied that her change in times was caused by police pressure. Ms. Jessop could not tell the Commission how these two positions could be reconciled.

During her cross-examination at the Inquiry by Mr. Shephard's counsel, Ms. Jessop was asked about the pressure she said was exerted on her by the detectives to change her arrival home time:

Q. [I]s it possible that you when you say pressure, a lot of it comes from the fact that, as you said yesterday, you wanted to be helpful?

A. Yes.

Q. Did that add to it?

A. Well, I'm not a psychologist, or psychiatrist.

Q. Okay. Is it hard for you to define the pressure?
You just felt pressure —

A. You feel — we felt it. It's like emotion. You feel emotion.

Q. Right. And you felt the pressure?

A. You felt it.

Q. And you felt that a lot of the time?

A. Mm-hmm.

Q. Before and after your daughter was found?

A. It's a different kind of — if you're going to use the word pressure, it's a different type of pressure.

Q. But pressure?

A. You call it pressure, I have other - I wouldn't call everything pressure, no.

.....

Q. And I'm going to suggest to you that the pressure you felt was that you understood you could have been wrong, that you wanted to be cooperate, that you didn't want to impede the investigation, and that you felt, therefore, that as the police said, you had to be sure, and that that was the source of any pressure. Do you agree with that?

A. No.

Q. Do you understand that the police were being very careful that the time that you returned home, that you were sure about —

A. That's right.

Q. And that you felt pressure because of that?

A. I guess you could — well, if you call — I don't

know whether I'd use pressure, but it was — yes, you had to be correct and cooperative.

Q. And you didn't want to be wrong?

A. Well, no.

Jessop Timing — Post-Arrest Conversations

After Mr. Morin's arrest on April 22, 1985, Ken and Janet Jessop appreciated the importance of time estimates to the prosecution's case. Ms. Jessop told the Inquiry that the police told her that Guy Paul Morin could not possibly have committed the offence if she arrived home at 4:10. Both the police and the Crown attorneys made it very clear to her that timing was very important to the prosecution of Guy Paul Morin.

Ken and Janet Jessop conceded that once Mr. Morin was charged with the murder of Christine, they were convinced he was guilty. They attributed this belief to the confidence which the 'authorities' had in his guilt.

Ken Jessop testified that both leading up to and following the first trial, he and his family were told by the detectives that Mr. Morin was being investigated in connection with two other murders of a sexual nature, one of which involved a victim found one or two concessions from where his sister's body had been found and the other involving an abduction from a location in Toronto in close proximity to the Morin's residence prior to their move to Queensville. According to Ken Jessop, his father also conveyed his opinion on this point but he was quite sure his father did not do so before the police provided this information. Ken Jessop said that this information made him "believe even more whole-heartedly that they had the right accused." It also heightened his resolve and hatred against Mr. Morin.

Both Detective Fitzpatrick and Inspector Shephard denied suggesting to Ken or Janet Jessop that Mr. Morin was a serial killer. In Fitzpatrick's view, to do so would be totally wrong; however, in this regard, the interviews with Paddy Hester and Frank Devine must be considered wherein the prospect that Mr. Morin would commit 'another' murder was discussed.. (This is developed in greater detail in the section dealing with the interview between Detective Fitzpatrick and Ms. Hester and the interview of Mr. Devine and Inspector Shephard).

According to Ken Jessop, he was provided by the officers with information relating to Mr. Morin's masturbation habits. He also told the Inquiry that, on numerous occasions, the two detectives described the Morins as "an incestuous-type family." Both Detective Fitzpatrick and Inspector Shephard denied making such comments. During Ken Jessop's cross-examination by counsel for Detective Fitzpatrick it was suggested that Ken learned of Mr. Morin's masturbation habits during the psychiatric evidence put forward at the first trial.

Ken Jessop also told the Inquiry that Detective Fitzpatrick referred to Mr. Morin as "Moron," but Fitzpatrick denied that this type of language was used by anyone other than Janet Jessop.¹⁷ These discussions, Ken said, poisoned his attitude towards Mr. Morin and his family. He added that, in hindsight, "it was almost as if ... they were trying to keep us convinced that it was him."

The Jessops' Testimony relating to Timing

Preliminary Inquiry and First Trial

Ken Jessop did not testify at the preliminary hearing or Mr. Morin's first trial. In Janet Jessop's evidence at both the preliminary inquiry and the first trial, she related the time of her arrival home by reference to the time of her call to the lawyer and estimating backward from that time, the time it may have taken her to complete her activities upon her arrival home.

¹⁷ In contrast, Brian Gover testified during the Inquiry that he specifically recalled Shephard, Fitzpatrick and Chapman referring to Mr. Morin as "Guy Paul Moron":

Q. Guy Paul Moron. Who referred to him that way?

A. Well, I recall that the police did that. I recall frankly, I think that all of the police officers did that, and by that, I include Inspector Shephard, Staff Sergeant Fitzpatrick and Sergeant Chapman. Now ironically, the one person I distinctly recall saying that was Sergeant Chapman, and of the three of them, he was the one for whom I developed a true respect.

Mr. Gover did not recall any of the Crown attorneys using a pejorative term to describe Mr. Morin.

During the examination-in-chief at the first trial, she was not asked what time she returned home. Rather, John Scott, the Crown Attorney, wanted to know what time *she had told the police* that she had arrived home:

Q. [On October 3, 1984] did you provide any information [to the police] relating to the time that you had thought you got home from the dentist?

A. Yes, I did.

Q. And what time was that?

A. Well, I know for a fact that *at ten to five, I had to make a call to a lawyer* in the city, which I did, and before that, as I say, we had looked around thoroughly and I had made a few phone calls, and I thought, which I could be wrong, it was around ten after, quarter after four I got home, but I could be wrong.

Q. *What information did you provide to the police that evening if you recall as to the time you got home?*

A. *I think I told them around ten after, quarter after four.* (Emphasis added.)

In cross-examination she said this:

Q. You said there was some uncertainty in your mind as to when you arrived home on the day of the disappearance. What is your best feeling about when you arrived home, leaving aside what others have said? Just what is your best recollection?

A. Well, not having a watch on that day, *I'm going by the time I called the lawyer, and that was ten to five, and knowing what I did before I called, it wouldn't take me any more than maybe ten, fifteen minutes* at the outside to look around the house, go outside, make a few phone calls to girlfriends. I couldn't have been at home much more than fifteen minutes, so maybe my timing is way out as far as what time I came home.

Q. *Why are you sure about ten to five?*

A. *Because I looked at the clock deliberately,*

thinking I had to call this person at that time.

Q. And you think it was about 15 minutes associated with looking around before you called?

.....

A. It couldn't have been more than that. Ten minutes at the most to look around the home. I went out the back and called, made a cup of coffee and sat down.

Q. So tell me if I'm being correct and fair. *You think it was 10 to 15 minutes you were there before making the phone call, making the coffee, looking around?*

A. *Yes.*

Q. Ten to 15 minutes?

A. Yes. (Emphasis added.)

The Stay Motion

As noted above, by the time the stay motion was heard, John Scott was no longer acting as the prosecutor on this case. Brian Gover, the Crown counsel who had carriage of the motion, spoke with Mr. Scott about the reliability of Ms. Jessop. According to Mr. Gover's evidence at the Inquiry, the following excerpt from Kirk Makin's book, *Redrum the Innocent*, is an accurate account of the warning he received from Mr. Scott about Ms. Jessop's evidence:

As Brian Gover put it: "I had been warned about Janet Jessop." ... Gover said there was a general feeling among prosecutors that Janet was capable of saying anything that came into her head if she thought it would further the prosecution of Morin. "I was warned, for example, that in interviewing her, she would ask *me* questions sometimes. She would say: 'Does that help you? or: Would it help if I said X?' and so on".

Mr. Scott advised him to be careful with Ms. Jessop because of her "willingness to buttress the evidence by going beyond personal experience." (This matter is discussed in further detail in the section of this Report dealing with the evidence of screams the night of Christine Jessop's funeral.)

Mr. Scott could not recall this warning, but he admitted that he had concerns about Ms. Jessop's reliability on the timing issue and on some of the information she related. It was his experience, he told the Commission, that she would often say things that came into her head, but he did not believe she would say anything to intentionally mislead the process in order to assist the prosecution. He did not find her to be a witness who could articulate her thoughts well. Like Fitzpatrick, Mr. Scott believed that she had minimized the time of her arrival home because of feelings of guilt. In arriving at this conclusion, Mr. Scott considered that neither Janet nor Ken Jessop told him that they arrived home at 4:10 p.m. In all their dealings with him, they had spoken of 4:35 p.m., or 15 minutes before contacting the lawyer. This point becomes important in considering Mr. Scott's involvement in the editing of Ken Jessop's will-say statement, which is discussed later in this report.

The Role of the Kitchen Clock

Ms. Jessop testified that she was shocked when Mr. Morin was acquitted. Once she knew there would be a second trial, she was anxious to cooperate in any way possible to assist the prosecution. Ms. Jessop was called to testify at the stay motion by the defence. She told the Court that she had thrown the kitchen clock out because it was not keeping proper time (and that she had told both the Durham and York police of doing so). During cross-examination by Crown attorney Brian Gover, Ms. Jessop testified that the kitchen clock had indicated either 4:10 or 4:15 upon her arrival home and that she discarded the clock two weeks later because it was losing time. Inspector Shephard (who was not present during this testimony) testified that he was not aware that Janet Jessop would give such evidence about the clock. *Had he heard her say so, he stated that he would have brought it to the attention of the authorities as it would have been his obligation to do had he heard a witness give false evidence.* Mr. Gover's recollection was that Ms. Jessop told him (prior to her evidence) that she had advised either Detective Fitzpatrick or Inspector Shephard that she had discarded the clock because it was slow. Ms. Jessop also testified at the stay motion that on March 6, 1984, after the police took her through her activities on October 3, 1984, she told them that she arrived home at approximately 4:35 p.m., but *she maintained that the clock in the kitchen said 4:20, regardless of the actual time.*

In February 1992, Ms. Jessop told the jury at Mr. Morin's second trial that she got home between 4:30 and 4:35 p.m. Cross-examined on the disparity of her reported times, she agreed with Jack Pinkofsky's suggestion

that she used the same kitchen clock not only to determine the time she arrived at home, but also when to call the lawyer:

Q. [A]nd when the police started questioning you, whether Inspector Shephard or Fitzpatrick in the first instance, but when they started going over with you the times that you had provided the York Police Department, you kept telling them, did you not, that you got home around that time, 4:10 to 4:15?

A. That's right, but at the time, you must remember, I'd lost my daughter, and my husband wasn't there. These are strictly estimates.

Q. I appreciate that, but it was an estimate that was based on you looking at a clock, as you told us yesterday?

A. That's right, but that clock was also out.

Q. On October 3rd, the clock was on, bang on within a minutes (sic), wasn't it?

A. Well, I don't really agree, don't know that, right?

.....

Q. Did you tell Detectives Shephard and Fitzpatrick that you had already given York the accurate times and: why are you bothering us about this again?

A. Yes, sure.

And further:

Q. And as a result of seeing that [Bell Canada] receipt you realized that, you must have realized that when the call shown on that receipt was made at — was it 11 minutes to 5 on October 3, 84, ... and when you looked at your kitchen clock, the kitchen clock at the time you made the call said 10 to 5, correct?

A. Yes, sir.

Q. So that must have meant to you, when you saw the receipt that was presented to you by Detective

Shephard or Fitzpatrick in January of '85: Gee, at least as of October 3rd, '84, my kitchen clock was working pretty good; Right?

A. No, I don't think I thought that.

Q. Well, whether you realized it then or not you certainly appreciate it now, — don't you, that the kitchen clock was within one minute of sophisticated Bell Canada equipment that timed your call. Within a minute.

A. It could have been that I saw it wrong, too.

And later:

Q. One of the things that you appeared to make clear yesterday was that insofar as the times that you gave the York officers when they took you step by step through the morning, when you left the detention centre and the shopping at Sears and so on, was the car clock along with the detention centre clock and your kitchen clock. In arriving to pick up Ken Jessop at the dental office, and you told them it was about four o'clock, it was certainly the car clock that you would have used to give you the indication of that time. Is that correct?

A. That's right, but that could have been out, too, for all we know.

Q. That's true.

A. We don't know that, right?

Q. Of course not. There might have been a considerable number of inaccurate clocks.

The "Citizen's Alert" videotape was then shown to Ms. Jessop. It indicated that her kitchen clock had not been discarded when the show was taped in February 1985. Her testimony on this point, therefore, was incorrect.

At the Inquiry, Ms. Jessop admitted that this clock, in fact, remained in her kitchen until the spring of 1985, when it was removed during renovations and was taken to the back shed. She admitted that it was not

removed because it was inaccurate, but rather was replaced by another clock as part of the remodeling. She could not recall whether she advised the Crown or the police of this fact.

Ms. Jessop testified at the Inquiry that her evidence about discarding the clock because it was losing time arose from her own initiative and was not suggested in any way by the police.

She was asked :

Q. ... [H]ow [do] you think it was that you came up with those aspects of your version, which didn't come from the police, and were not true? Where did it come from, do you think?

A. I think partly it's confusion. We had an awful lot of people around the home at the time, the police were in and out. Your time wasn't your own, you were very put out into the public eye, people were coming to you and saying this, saying that, and I think you just get so confused, because you're trying to grieve, you're trying to get over certain aspects, you push things out of your mind, you're angry. there's just so much going on that — you know, a mistake was made, obviously.

Q. And do you think in the same way as you conceded earlier that one of the reasons why we may have gone from 4:10 to 4:30 to 4:35 was a desire to see someone who you thought to be guilty get off —

A. That's right.

Q. — do you think that factor could have also played a part in the mistake that you've just described in saying that the clock had been thrown out when it wasn't, and in saying that it had been thrown out because it had lost time when that wasn't so?

A. Mm-hmm, yes.

Ms. Jessop was advised of a statement made by an individual to a police officer on the Jessop Task Force indicating that she observed Ms. Jean Patkau (a woman with whom Janet Jessop had ongoing contact with during the spring of 1986) with a clock in her possession which Ms. Patkau indicated

was “from the Jessops” and one which “the police would be interested in.” Ms. Jessop testified that the kitchen clock might have made its way from the Jessop shed to the home of Jean Patkau but she could not say for sure. She denied any discussion with Ms. Patkau as to a police interest in the clock.

According to police notes, Ms. Jessop spent 15½ hours in preparatory meetings with Crown counsel in anticipation of her evidence at the second trial. Mr. McGuigan said that there was a significant amount of material to review since Ms. Jessop already had testified on six occasions.¹⁸ He told the Inquiry that he spent ‘two minutes’ on the arrival time during this preparation. He was aware of the investigators’ view that Ms. Jessop minimized the time her daughter was alone and thought there was ‘a ring of truth’ to this. He said that he probably knew about the use of the clock as a face-saving gesture as well. He was not aware that her evidence at the stay motion about having discarded the clock was problematic until cross-examination at trial.

Ken Jessop as a Witness

Ken Jessop was not called by the Crown as a witness at either trial. Both Susan MacLean and Leo McGuigan cited his age at the time of his sister’s disappearance, his trauma as a result of the murder, and personal problems he had experienced over the years as factors considered in relation to his reliability. The influence his mother may have had on his evidence was also considered. It was Mr. McGuigan’s view that it was difficult to predict what Ken might say, and he placed his reliability as lower than that of Mr. May or Mr. X. Further, Mr. Jessop was not viewed as a necessary witness given the evidence of his mother, Dr. Taylor and Ms. Lawson.

Ken Jessop was, however, called by the defence at the stay motion. When Crown attorney Brian Gover met with him prior to his evidence, he thought Ken was “a very rattled young man.” I should point out that this meeting took place four months after Ken’s revelations to Mr. Scott about his and his friends’ sexual encounters with Christine.

In the course of cross-examination, Ken was asked by Mr. Gover

¹⁸ Ms. Jessop testified on six occasions: the preliminary inquiry, the first trial, the stay motion, the application on the admissibility of the screams the night of the funeral, the application on the admissibility of Constable Robertson’s evidence, and the second trial.

whether any police officer or Crown attorney had pressured him to change the time of his arrival. He answered “no.” Mr. Gover told the Inquiry that this accorded with his own view from his meeting with Ken.

At the second trial, Mr. Jessop testified in examination-in-chief by the defence that he told the police on October 4, 1984, that he arrived home at 4:30 p.m. and that he had looked at his watch.

In cross-examination by Mr. McGuigan, Mr. Jessop was not asked the time of his arrival home. Nor was he asked what he had previously told the police, a question which, in Mr. McGuigan’s opinion was more appropriately asked by defence counsel. The appropriateness of the following leading cross-examination by Mr. McGuigan was queried on the basis of Mr. McGuigan’s view as to Mr. Jessop’s reliability”:

Q. Now you have been asked about this 4:10 time. Would it be fair to say that in relation to the time you got home, over this entire tragedy that there has been some confusion as to when you and your mother arrived home from the dentist’s?

A. Yes

.....

Q. Do you know what time it was that your appointment was for?

A. I would have to look at the statement.

Q. If I were to suggest to you it was 3:30, does that sound reasonable?

A. It could, yes.

Q. And when you got there, were there any forms? Did you have to fill out any forms?

A. I believe I had to fill out a new patient information form.

Q. All right. And the receptionist would be there and you would fill that out and give it back to her?

A. Yes.

Q. Is that what happened?

A. I believe so.

Q. And then at some time you went in to see Dr. Taylor and do you recall what he did for you in the nature of dentistry?

A. I believe it was just a basic check up.

Q. [A]fter that was completed, can you estimate how long that would take?

A. I don't know. It has been a while since I've been to the dentist. Fifteen minutes, maybe ... Ten or fifteen minutes, maybe.

.....

Q. Now when you went to your appointment and I asked you, or suggested to you it was 3:30, do you recall if you were early, late or on time?

A. I believe I was late.

Q. And do you know, approximately again, how much?

A. Not that I can recall right now, no.

Q. Could it have been around 10 minutes?

A. It could have been.

Q. So, if we start with 3:40 that you arrived there, you had to go in and introduce yourself, I take it, to the receptionist. And then you got the form and you had to fill that out. How long do you think that took?

A. Probably about 10 or 15 minutes.

Q. And then you went into the dentist's and you were in there, I think you said, 10 or 15 minutes, and then you came back out and you waited another ten minutes.

[objection by defence to leading questions, court does

not intervene]

Q. If we started at 3:40 and 10 minutes for the card, fill out the card: is that fair?

A. Yes.

Q. And another 15 minutes for the dentist?

A. Yes.

Q. And you waited about 10 minutes for your mother?

A. Roughly, yes.

Q. Roughly. I have that as 4:15 according to my math. If that is the events that occurred, would you agree with me that you and your mother couldn't have driven from Newmarket to Queensville and been home at 4:10?

A. No.

Q. That wasn't a very tough question, I guess?

A. No.

In his evidence before the Commission, Ken Jessop asserted that the statement that his watch was inaccurate was made as a result of a suggestion made in a preparatory interview with the Crown and that, in fact, his watch was accurate. He had told the police, around the time of the first trial, that his watch, which was new, was, indeed, accurate and that the only difficulty he had using was with the calculator function. Mr. Jessop said that someone suggested to him, during this preparatory interview, that if he had trouble with the calculator component he may also have had difficulty with the time-keeping function. He agreed with this suggestion, he said, "because I had no way to account for the difference between my October 4th statement and what I was testifying to."

Mr. McGuigan denied that such a suggestion was ever made to Ken Jessop during the course of an interview. (Nor did he elicit such information

in cross-examination.)¹⁹

When Ken was questioned by defence counsel at Mr. Morin's second trial, the following exchange took place:

Q. If you looked at your watch, sir, and it was true that it was 4:10, and if you told the police as you told us you did, that it was 4:10 when you got home, and if it is true that there has been no pressure from the police and the Crown to change your times, what has caused you to change your time of arrival home before this jury today?

A. *I did not change my time of arrival. I agreed it was possible that it could have been later.*

Q. Sir, it (sic) it's true that you looked at your watch and it was 4:10, and if you told the police on October the 4th and October 6th that you came home at 4:10, why would you say anything about it possibly being later to this jury today?

A. Because it's possible. I was never good with times. That's well documented.

Q. You did tell the police, sir, on October the 6th that you looked at your watch, and it was 4:10.

A. Mm-hmm, I also remembered that day I had a lot of trouble setting the watch.

Q. I'm sorry?

A. *I had a lot of trouble setting the watch.*

¹⁹ Mr. Jessop testified that Mr. Smith, Mr. McGuigan, Sgt. Chapman and his spouse were present at this interview. He did not recall his lawyer being present for these meetings although he did recall his lawyer attending for his trial evidence. Mr. McGuigan testified that at all times his lawyer was present. A letter from Mr. Jessop's lawyer (Exhibit 301) stated that he and Ken Jessop met with Mr. McGuigan on May 15, 1992 in Brampton and on April 2, 1992 in London and that no one attempted to improperly influence Mr. Jessop. Sergeant Chapman's notebook records a meeting in London on May 19, 1992 for 3 1/4 hours between "Leo McGuigan, Joe Kappy and student, Ken and Debbie Jessop." Mr. Smith testified he was not present.

Q. You've never before this moment, sir, told anyone, the police, the Crown or anyone else, I suggested to you, that you had any trouble setting that watch.

A. I told my mother, and she knew because she was there. (Emphasis added.)

At the Inquiry, Ken Jessop admitted that he lied when he stated that it was possible his time of arrival was later, that he had trouble setting his watch, and that he told his mother he had trouble setting his watch. (It is interesting that Ms. Jessop told Commission counsel earlier that Ken *did* have trouble with his watch back in October, 1984.) He also said that his evidence during the second trial, asserting that no police officer or Crown attorney had put pressure on him to change his time, was false. He justified the discrepancy between his evidence then and that given at the Inquiry in the following way:

A. It wasn't true. We thought we were — we were told we were wrong and we were pressured to change our times, and it felt like pressure being put on us and when you're going to testify against — this wasn't, you know, a person anymore — a devil, demon, that the police had built him up to be, that he'd killed your sister.

And lack of judgment takes over and I wasn't going to go in front of the jury and say that the police forced me to change the time because then we might lose the case and this thing that the police had built up to be, this killer, multiple — possible multiple killer would have been back out on the streets.

He told Mr. Morin's counsel that he was 'playing the game':

Q. Were you telling the Crowns, Mr. Gover, Mr. McGuigan, Mr. Smith, whilst you may have been telling some ... lies in court, were you telling the Crowns the truth out of court, or were you playing the game that you knew was expected of you by the police, perhaps?

A. I believe I was playing — for the most part, playing the game. I wish I never had of.

He also said that no Crown attorney or police officer ever expressed

any concerns to him about the change in his evidence on the issue of timing.

When Mr. Jessop was asked his opinion as to whether the police and the Crown attorneys knew his evidence was false, he responded:

A. I can't say for certain, but they would had to have known because I stood by the 4:10 as long as I could.

.....

Q. What about the Crown, sir, at the second trial. From your conversations with them prior to testifying before the jury at the second trial, is it your opinion that they knew that what you were saying, or some of the things that you were saying to the jury, were not true?

A. They would have had to have known.

Findings

In Janet and Ken Jessop's earliest account of events, they indicated several times that they arrived home at 4:10 p.m. Janet Jessop drew support from the kitchen clock for this view. At the second trial, Janet Jessop testified for the prosecution and indicated that she and Ken came home at 4:30 to 4:35 or even later. Ken Jessop was called by the defence. On cross-examination, Mr. McGuigan, through extrapolation, elicited from Ken Jessop testimony that supported, though less firmly, the later time home. Then, at this Inquiry, Janet Jessop and Ken Jessop firmly maintained that they got home at 4:10. Ken Jessop stated that he lied at the second trial. Ms. Jessop's evidence as to her state of mind is less clear.

The issue at this Inquiry is not: 'When did the Jessops arrive home?' Simply put, I do not know. There is evidence that supports any one of a number of times, from 4:10 p.m. to 4:35 p.m. One can construct very impressive submissions favouring several different times. But that is not the real issue here. The real issue is: 'How did it come about that the Jessops' evidence or proposed evidence came to change in the way it did?'

The March 6, 1985 interview was flawed in a number of respects. First, the officers told the Jessops that their earlier times were wrong — they were impossible. They should not have done so, whatever their own views.

Second, they suggested to Janet Jessop that her kitchen clock could have been slow, when they did not believe this is to be so. (I was told that this was intended to provide Ms. Jessop with a ‘face-saving’ way to change her times.) They should not have made this suggestion, believing it to be untrue. Ms. Jessop not only came to adopt this suggestion as truth, but came to later add that the faulty clock was thrown out for that reason. This, too, was incorrect, as Ms. Jessop herself now admits.

Third, the whole interview process was calculated to persuade Ken and Janet Jessop that their earlier times were wrong and to modify those times. The investigators genuinely believed that to be true, and they may have been right. Nonetheless, it was inappropriate to conduct the interview in this way. The risk is that the evidence collected becomes, as I say elsewhere, a self-fulfilling prophecy.

Fourth, the officers lacked any insight into their effect upon witnesses. Shephard noted that Ms. Jessop had the perfect right to say that her clock was not slow and ‘I’m sorry, I got home at 4:10 p.m.’ That is true. However, witnesses, particularly the victim’s family, are heavily inclined to believe that the officers’ opinions are correct, their own contrary recollections are faulty and that maintenance of their own recollections may imperil the investigation. The officers did not discourage that kind of thinking in this case. Indeed, I find it likely that at least one of the investigators did later refer to Guy Paul Morin as “Moron” in dealings with the Jessops; in any event, it is clear that the officers strongly expressed their views on his guilt to the Jessops, which fed into the Jessops’ motivation to assist the prosecution.

Fifth, the officers failed to preserve any detailed notes of this lengthy meeting at which the Jessops’ evidence changed. Their notebooks contain nothing substantive. Fitzpatrick stated that foolscap interview notes were discarded. The supplementary report contains, in summary fashion, what is alleged to be the Jessops’ evidence. It is also inaccurate. The Jessops did not “originally state” 4:20 p.m. The supplementary report also reflects that Ms. Jessop said that the ‘slow clock’ “could be a possibility as they are having problems with the electric clock.” There is no reflection that this theory was discounted by the officers themselves, but merely put forward to give Ms. Jessop a way out. (In fairness, the supplementary report does reflect that it was the officers’ suggestion that the clock was slow.) Most significant, the telephone calls that Ms. Jessop made that very afternoon raise doubts as to how firmly the Jessops communicated their views that day to the officers as

to the new times. On the telephone, Ms. Jessop indicated that York Regional Police had followed her and had the correct times. It is unclear to me whether the Jessops had unequivocally adopted (by the end of this interview) the later times. If they had not (as suggested by Ms. Jessop's reservations expressed on the telephone), the supplementary report was further flawed. This, of course, highlights the problem with the record kept of the interview.

Sixth, the officers failed to properly brief themselves for this interview, in the least, by reviewing *all* of the available materials relating to the Jessops' timing. The evidence at this Inquiry made it clear that they had not adequately done so.

At the second trial, Ken and Janet Jessop testified that they were not pressured by the officers to change their times. At the Inquiry, Janet Jessop spoke of "pressure," with some qualification, but not "bullying." No doubt, Janet and Ken Jessop were not prepared to say anything at the second trial that might adversely affect the prosecution's case. Inspector Shephard denied that the officers pressured the Jessops to change their times, but could appreciate the Jessops' perception, in hindsight, that they had been pressured.

Once Guy Paul Morin was charged, Janet and Ken Jessop were fully satisfied of Guy Paul Morin's guilt. Ken Jessop is convinced that the officers 'poisoned' his attitude towards Morin and his family. Earlier, I found that the officers did communicate their strongly held views to the Jessops as to Mr. Morin's guilt. Given what we know about interviews conducted with other witnesses, one or both of the officers did say other things which contributed to the Jessops' perception of Guy Paul Morin. I also believe that the Jessops were not reticent about contributing to this kind of dialogue themselves. This was understandable, given their situation. I find that the officers' approach lacked a certain professionalism and potentially heightened the unreliability of evidence emanating from the Jessops. In this instance, unlike the officers' dealings with other witnesses, this is explained, in part, by the bonding between the investigators and the victim's family. For example, Detective Fitzpatrick demonstrated compassion in dealing with the Jessops, which extended beyond the trial's completion.

At the stay motion, Janet Jessop testified that the clock had been thrown out because it was not keeping proper time. She repeated this evidence before the jury. When confronted with the facts which undermined her position, she volunteered that she may have read the clock wrong or the

car clock may have been wrong as well. As I have said, Ms. Jessop's testimony that the clock had been thrown out was incorrect. I find (as she concedes) that this aspect of her testimony was not suggested to her by the police but was, instead, initiated by her. Though she attributed this inaccuracy to "confusion," she also conceded that her strong desire to see that Morin not 'get off' may have factored into this inaccurate evidence.

Mr. McGuigan called Janet Jessop at a witness before the jury at the second trial. She had already given this explanation about the slow clock being discarded during the stay motion. Before he called Janet Jessop, Mr. McGuigan may have known that the officers saw the clock as a 'face-saving' gesture only and that her story about the slow clock being discarded was untrue. He certainly knew after Mr. Pinkofsky had cross-examined her. As well, Mr. Gover indicated that there was a general feeling among prosecutors that Ms. Jessop was capable of saying anything, if she thought it would further the prosecution. Objectively viewed, it is difficult to see how Mr. McGuigan could decide that Ken Jessop was an unreliable witness and Ms. Jessop was not.

Mr. McGuigan testified that the reason why he chose not to call Ken Jessop was that he was an unreliable witness, and was a more vulnerable witness. Ken Jessop had been traumatized by the murder. As well, his age was a consideration. His evidence was also not needed, given the evidence of Ms. Jessop, Dr. Taylor and Ms. Lawson. However, in this context, Ken Jessop was regarded as 'unreliable' because he was less likely to unequivocally support the 4:30 to 4:35 arrival time home (which Mr. McGuigan genuinely accepted), and not because Mr. McGuigan was exercising any discretion, out of fairness to the accused, not to call unreliable evidence.

I find that Mr. McGuigan did believe wholeheartedly that the core evidence that Janet Jessop was giving was true — namely, that she and Ken arrived home at 4:30 to 4:35 or thereafter. He believed, and reasonably so, that the evidence of Dr. Taylor and Ms. Lawson supported that position. He also believed, and reasonably so, that Mr. Pinkofsky had exposed the falsity of Ms. Jessop's evidence that the clock had been thrown out because it was slow. He thought this would have been obvious to anybody — and in that respect he may have been right. However, given the fact that he knew that her evidence, in this respect, was false, he was obligated to do two things: first, advise the jury that her evidence was, in that respect, false and that the Crown placed no reliance upon it. His failure to do this probably did not contribute

to the wrongful conviction since the falsity of this aspect was obvious; second, he should have re-evaluated, with some true introspection, the extent to which, if at all, the Crown should seek to place any reliance upon her evidence in light of what was known about Ms. Jessop's reliability generally, what Mr. McGuigan knew about the clock, and, as I will later outline, what she had said about the funeral screams. His judgment was clouded by his firm view that her core evidence was true and by his view that it was the jury's function to assess credibility. Those facts did not change his responsibility.

Janet Jessop spent a considerable period of time with the prosecutors in preparation for her testimony. I am unable to find that anything improper occurred in those preparatory meetings. It is true that Janet Jessop's funeral scream evidence 'developed' through time. I do not attribute this development to any prosecutor. I also do not attribute this development to any officer, though, again, the officers may have failed to ensure that the interviewing process resulted in her best and most accurate recollection. I will return to the funeral scream evidence later in this chapter.

Ken Jessop obviously feels manipulated by the process and troubled by his involvement in Guy Paul Morin's trial. He feels that his evidence was shaped by the authorities and that they led him to contribute to Guy Paul Morin's conviction. These perceptions are truly felt by him. I believe that he gave his testimony before the Inquiry in a genuine attempt to assist me. I have found that officers did conduct a flawed interview with Janet and Ken Jessop on March 6, 1984. I have found that they contributed to the Jessops' continuing belief in Guy Paul Morin's guilt through their discussions with the Jessops. Inspector Shephard now appreciates how the officers' approach could make the Jessops feel pressured. Having made those findings, I find nothing untoward in the prosecutors' personal dealings with him. I find that the prosecutors did not suggest to him that he could say that his watch was inaccurate. There is no evidence that investigators did this at any other time.

Finally, I accept that Janet and Ken Jessop believed when they initially spoke to the police that they had arrived home at 4:10 (and that Janet Jessop was not lying about that time out of guilt over the late return home.) I also accept that Janet and Ken Jessop genuinely now believe that they did return home at 4:10. As I have said, I also accept that Inspector Shephard and Detective Fitzpatrick believed, when they came to speak to the Jessops on March 6, 1985, that the Jessops could not have returned home by 4:10 and must have returned sometime later. They continued to believe that through to

the conclusion of the second trial and to the present day. I also accept that John Scott, Leo McGuigan, Alex Smith and Susan MacLean all genuinely believed from their earliest exposure to the case that the Jessops could not have returned home by 4:10 p.m. and must have returned home sometime later.

(x) Profiling

The Request for a Profile

Criminal profiling involves the analysis of the details of a crime and the interpretation of clues left at a crime scene, in conjunction with an understanding of cases of a similar nature, for the purpose of preparing a psychological profile of the killer. It is an investigative tool which is used as a guide to assist police in directing their investigation. In January 1985, profiling was relatively new in Canada.

The Durham Regional Police Service considered utilizing a psychological profile to provide them with an indication of the type of person who would commit the murder of Christine Jessop. As Detective Fitzpatrick had not previously used the services of a profiler, he asked the Metropolitan Toronto Police Force what was needed to obtain a psychological profile from the F.B.I. in the United States. He was given material used in an unrelated case to assist him in formatting his request.

On February 15, 1985, and over the course of the next month, Detective Fitzpatrick and Inspector Shephard made several notebook entries about 'profiling.' Fitzpatrick explained that he and his partner spent over 20 hours putting together the documentation required by the F.B.I.'s Behavioral Science Unit for its preparation of a profile. Inspector Shephard characterized this material as relating to background on the Jessop family, the circumstances surrounding Christine Jessop's disappearance, the pathology report and selected photographs taken at the body site. It is unclear whether a copy of this substantial package was kept by Durham.

On March 22, 1985, Detective Fitzpatrick delivered this material to Oliver Zink, an F.B.I. agent in Buffalo, in upstate New York. Mr. Zink was to determine the feasibility of profiling this case based on the material provided. A few days later, however, before hearing back from Mr. Zink, the

investigators learned that F.B.I. profiler John Douglas was in Toronto on an unrelated matter. Mr. Douglas was an agent from the National Centre of the Analysis of Violent Crimes located at the F.B.I. Academy's Behavioral Science Unit in Quantico, Virginia.²⁰ The investigators contacted Mr. Douglas and arranged a meeting with him to discuss a possible profile.

The Integrity of the Profile

Guy Paul Morin was a suspect at the time the investigators discussed this matter with the F.B.I.. An issue arises as to whether the profiling process was corrupted or contaminated during the exchange of information between the detectives and the profiler.

Both Fitzpatrick and Shephard understood that the F.B.I. would not prepare a profile if a suspect had been identified. While Inspector Shephard testified that he did not know the underlying reason for this policy, he assumed it was simply considered a waste of time to prepare a profile when the police already had a viable suspect. He added that while Guy Paul Morin was a suspect, a profile was nevertheless requested "in case it led us somewhere else." At this Inquiry, Shephard was asked this:

Q. You know that the F.B.I. has a policy ... not to do a profile where there's a suspect in mind. You have a suspect in mind, but you're causing the F.B.I. to do a profile. I mean surely it dawned on you that the reason for the policy was that the officers, either consciously or unconsciously, could communicate information to John Douglas that would cause him to be pointed in the direction of your suspect, rather than enable him to do an untainted independent analysis ...

A. That thought never entered my mind sir.

²⁰ Commission counsel, and several parties to the Inquiry, wanted Mr. Douglas to be called as a witness. Commission counsel and staff spoke with Mr. Douglas' representative several times. By letter dated June 18, 1997, Mr. Sandler renewed the Commission's request that Mr. Douglas attend as a witness. (See *Letter dated June 18, 1997, Appendix P*) As reflected in that letter, the summons issued by the Commission to Mr. Douglas could not be enforced in the United States. Though Mr. Douglas never specifically declined to testify here, there was no response to the requests for attendance made orally and in writing.

Inspector Brown said that he instructed Detective Fitzpatrick and Inspector Shephard to reveal nothing to Mr. Douglas about Guy Paul Morin's status as a suspect, to ensure the independence of the report. He said:

We were scrupulous in not even hinting that Mr. Morin was a suspect in this case to Mr. Douglas [because] obviously Mr. Douglas can't be objective about a profile if he already knows who the suspect is.

On the afternoon of March 26, 1985, Fitzpatrick and Shephard introduced Douglas to the Jessops at their home. The investigators maintain that the Jessops were unaware that the police had a suspect. Following this interview, the three men (Fitzpatrick, Shephard and Douglas) travelled to the body site via Ravenshoe Road. Later that evening, the officers presented Douglas with photographs, police reports, medical examiner's reports, and autopsy information for his review. The officers and Mr. Douglas parted company shortly after 10:00 p.m. A supplementary report prepared by Inspector Shephard states:

March 26th, 1985 ... Douglas ... was spoken to and questioned by us with regards to possible person(s) who would commit this type of crime.

Douglas also viewed exhibits and photos and advised that he would try and give us a brief summary of suspect(s).

Douglas also advised that when he returns to Quantico he would be able to supply us with a more detailed profile.

Note: Douglas to put brief profile on tape.

The next afternoon, Detective Fitzpatrick and Inspector Shephard again met with Douglas. Shephard's notebook entry for this date reads as follows:

Met with John Douglas re Profile, viewed Citizen's Alert tape on Guy Paul interview. discuss Proactive techniques. 20:00 off duty.

Inspector Shephard said that Mr. Douglas was told on that day that the police had a suspect; *he did not react to this information with surprise.*

The tape of the February 22, 1985 interview with Morin was played for Douglas. Both detectives denied that any discussion or information relating to Mr. Morin was exchanged *before* Mr. Douglas provided them with his taped cassette containing the profile that he had dictated earlier. Brian Gover recalled as follows:

Q. [F]rom your contact with the police officers on the case, and your knowledge of what Douglas expected, was there a suspect that Fitzpatrick and Shephard had in mind at the time they retained Douglas to do the profile?

A. Yes. They had Mr. Morin in mind at the time. And as I recall Staff Sergeant Fitzpatrick telling me, and I don't believe it was a private conversation, I think other police officers and/or Crown counsel were present. In the course of his dealings with the Durham police, Mr. Douglas confronted them and said to them, "Well, you have a suspect in mind don't you?" That, Mr. Douglas had determined on his own, given the information that he was being provided by the investigators, that in fact they were breaching the protocol used by profiling experts.

Q. So Fitzpatrick told you that Mr. Douglas had confronted him with what Mr. Douglas deduced from the way Durham Regional police were dealing with him?

A. Yes.

Q. In effect that they did have a suspect and that would be in breach (sic) of the protocol?

A. That's right.

Q. And the result is, in your opinion, the profile that was constructed of the potential killer by Mr. Douglas was contaminated in that way?

A. That's right. Essentially, in my view, it was rendered valueless.

Portions of the Douglas profile are set out below:

On October 3rd, 1984 when the victim left school she was very anxious to come home and show her parents and family a new musical instrument, a flute, that she obtained that day and like many children of her age she would probably want to show someone her new toy, perhaps even play the instrument to someone. Upon arriving home she came to her residence and noted that her mother had taken her older brother to a dentist and would not be home until perhaps 45 minutes to an hour from the time she arrived home. It is the opinion of this profiler that the victim, Christine Jessop, in all probability left her residence and went with someone who she knew or *went to the residence of an immediate neighbour's to show them her new toy*. The Durham investigation indicates that the victim after arriving home from school got on her bicycle, traveled to a variety store where she purchased some candy, then returned to her residence, parked her bicycle indoors at the rear of the residence, at some point took her flute with her and left her residence. In summary, the victim Christine Jessop was targeted by a subject whom she recognized and knew and she became a victim of this violent crime because the subject responsible knew that this young child could be easily dominated, manipulated, and physically controlled by him quite easily. (Emphasis added.)

Counsel for the Morins alleged that the investigators shared their theory with Mr. Douglas that Christine Jessop sought out Mr. Morin to show him her new recorder; that is why the profile echoed this theory which had been developed weeks earlier by Shephard and Fitzpatrick. Inspector Brown responded that sometimes a profile is so “startlingly accurate,” one would almost have to come to a conclusion that, perhaps, it was not prepared independently even though, in fact, it was. Inspector Shephard testified that their theory was not communicated to Mr. Douglas:

We never led him to believe anything. We just explained to him the circumstances. He read some reports ...

Inspector Shephard said that after Mr. Douglas listened to the taped interview of Mr. Morin, he agreed that he sounded like a good suspect and discussed with them pro-active interviewing techniques (discussed later).

In an article appearing in *The Globe and Mail* on November 6, 1985, Mr. Douglas was reported as saying that he had no idea that the profile, which described the killer as a loner who lived in the neighbourhood, would prompt the police to head out and arrest Mr. Morin. He was quoted as follows:

Inexperienced investigators may get the preconceived idea, then get the profile, and lock on to somebody. The analysis is experiential, it's not scientific.

Inspector Shephard's notebook reflects that on March 28, 1985, at 7:45 a.m., he left the taped cassette containing the profile at his office for transcription. Detective Fitzpatrick's understanding was that the transcribed document was subsequently forwarded to Mr. Douglas, together with the material that was originally sent to Mr. Zink for his review, but no additional profile was provided to the officers.

The preface of the profile written by Mr. Douglas contains the following passage:

This profile is based upon the viewing of the initial crime scene, photographs and police reports, viewing the Medical Examiner's reports, reviewing the background history of the victim, doing a neighbourhood analysis and profile as to where the victim resided as well as an analysis of the disposal area where the victim was subsequently deposited by the unknown suspect as well as autopsy protocol and reading the autopsy itself. *There was no information provided to the Profiler as to whether or not there had been any suspects developed by the investigators in this case.* (Emphasis added.)

The Profile as an Investigative Tool

The F.B.I. profile listed a number of personal characteristics, propensities and interpersonal difficulties which were associated with the person responsible for the murder of Christine Jessop. The following are some of the characteristics which, in the opinion of Mr. Douglas, were associated with the murderer:

- The victim sought out someone she knew and trusted to show him the recorder she had received that day;

- The offender was youthful — late teens, early twenties;
- He was having personal problems at home, school or work and was experiencing many life stresses and may have had difficulties with a girlfriend at the time of the offence;
- Not antisocial, but somewhat of a loner who prefers his own company;
- May present a façade as a macho individual, superior to others, but has poor self-esteem and lacks self-confidence;
- Tends to play with children who might be impressed by his antics;
- Drives older model vehicle, not well-maintained and cruises area in vehicle — spends time cruising in his car as a vehicle for convenience to escape;
- Has a poor self-image and may have a physical ailment, disability or disfigurement or facial scars and does not maintain good personal hygiene, is not well-groomed, needs a haircut or shave, wears sloppy, soiled clothing in need of repair;
- □ Occasionally drinks alcohol;
- Will have a criminal history of nuisance, arson, cruelty to animals, voyeurism, or break and entering;
- Lazy, not a high-achiever, of average intelligence, a mediocre student; offenders of this type generally do not graduate from high school, but if he did he would have gotten by with barely passing grades;

The following post-offence behaviour was indicated:

- May have cleaned the car's interior after the offence;
- Rigid, stiff, pre-occupied or nervous with the police;
- Overly cooperative, participated in searches which show how concerned he is;
- Has difficulty sleeping.

A number of these points could not relate to Guy Paul Morin in any way. By way of example only, he had no history of criminality, he was not lazy, did not have a poor self-image, physical ailment, disability or disfigurement. There was no evidence that he was a 'cruiser.' There was no evidence that his vehicle was cleaned after the offence was committed; to the contrary. He was not rigid, stiff, pre-occupied or nervous with the police; to the contrary. He did not demonstrate an overly cooperative attitude by participating in the search (ironically, despite this aspect of the profile, his failure to search was later used to demonstrate consciousness of guilt). There was no evidence he had experienced a number of 'failings' in his life, that his parents were after him to find a job, that he was experiencing difficulties with a girlfriend at the time of the offence or that his parents were experiencing marital difficulties. There was no evidence that he dated girls younger than himself whom he could easily dominate. In summary, it could not reasonably be said that the profile matched or even closely resembled Guy Paul Morin.

Inspector Shephard admitted that he and Fitzpatrick probably focused on the features of the profile which fit Mr. Morin and ignored those which did not: "Obviously, if they didn't fit him, then it was of no value to us, but it was ... only a guide that we used anyway."

When asked what it would have taken for the profile to have pointed away from Mr. Morin, Inspector Shephard responded: "*If they said a female was responsible ... probably we would have looked in the other direction.*"

The Dissemination of a Modified Profile

Mr. Douglas recommended that the profile be used to create pressure on the perpetrator of the crime by telling the media in a series of interviews that investigative techniques (e.g. personality profiling and advances in forensic sciences) were providing new leads which would ultimately identify

the killer. He suggested that certain portions of the profile be released to the media:

This would be to the effect that the subject knew the victim, the subjects age grouping, the subjects vehicle he drives, the type of vehicle, the post-offence behaviour exhibited by the subject that should be recognized by people in the community who may have recognized the subject, his behaviour immediately following the homicide and you are looking for them to come forth and provide information to you.

Mr. Douglas also recommended that the suspect should be interviewed only when it appeared he had been affected by the press releases and the pressure brought to bear by the investigation. He also made other suggestions on how to interview a suspect. He recommended, for instance, that a blow-up of a fingerprint, supposedly taken from the victim or her possessions, be displayed prominently in the interview room, and that the suspect be told that the print matched him. He further suggested that filing cabinets, with the suspect's name clearly written on the outside, be placed in the room. In this manner, pressure would be brought to bear upon him, hopefully inducing a confession. These suggestions were used during the interrogation of Mr. Morin following his arrest and will be discussed more fully below.

Mr. Douglas' recommendations were set in motion through a press release dated April 9, 1985, announcing that the police had retained the F.B.I. for the purpose of preparing a profile of the murderer of Christine Jessop. The communiqué said that the officers had been advised by the F.B.I. that "the Jessop case is one that can easily be profiled ... everything points towards someone in Queensville." The profile, police said, would be available the following week.

A second press release dated April 17, 1985, contained a *modified* profile from the one provided by Douglas. Characteristics which corresponded to Mr. Morin (or which the police thought corresponded) were released to the press; those which did not were excluded or amended to conform. For example, the age group of the perpetrator was extended from "late teens to early 20's" to "nineteen to twenty-six years" [Guy Paul was 25 at the time of the offence]. The offender was described as an intelligent individual with a high school education, features Inspector Shephard agreed were reflections of what he knew about Mr. Morin rather than what was contained in the

profile. The press release²¹ said this:

Police released some details of an F.B.I. report that gives a psychological portrait of Jessop's killer. According to the findings of F.B.I. agent John Douglas, the killer is white, between 19 and 26 years old, has a high school education and is intelligent, he's a night person, dresses sloppily and feels superior to others. The F.B.I. believes the man is a labourer, lives in Queensville, and knew and had the trust of Christine. *It's believed he was sane and did not intend to commit murder, but lost control after sexually assaulting the girl.* Police say they have less than 5 suspects in the case and are watching all closely. (Emphasis added.)

The reference to 'he did not intend to commit murder' was a 'face-saving scenario,' advocated by Douglas to increase the likelihood of a later confession.

When arrested on April 22, 1985, Guy Paul Morin told the police that, on hearing the profile on television, his father told him that it sounded like him. Morin, of course, denied his involvement. Mr. McGuigan commented during the Inquiry that he found it strange that Mr. Morin's own father, having expressed this thought, would later come forward with an alibi for his son. His interpretation of the conversation between the father and son was that they were discussing whether Guy Paul Morin had killed Christine Jessop:

I took it as a — if I can use the phrase, a bit of a domestic between Guy Paul Morin and his father, in which the father's saying: That fits you. And he's saying something along the lines: you know me, I wouldn't do that. I mean why would you ever have that

²¹ The modified information reported in the press release corresponded in a large measure to information contained in a supplementary report typed on April 26, 1985 and addressed to the Chief of Police. In that report, Inspector Shephard stated that the profile "has supported our suspicions," *i.e.* that Mr. Morin had murdered Christine Jessop. Shephard was asked why the supplementary report did not indicate that the information provided represented an aspect of the pro-active technique and not the actual profile. He assumed that this was done for security purposes as the police did not have control of all copies of their reports. One copy, for instance, went to central records, where civilians worked.

type of discussion with someone that was there, and knows that you were home all that time, and that you couldn't possibly have murdered Christine Jessop? I mean, it may be it's a family quirk that they talk that way, and maybe — I obviously saw that before when I was reading the statement, and it didn't click in as it did when I read it this time.

Mr. McGuigan was unaware that the profile broadcast for public consumption was designed by the police (in the way discussed above) to match Mr. Morin to unnerve him prior to his interview upon arrest. Mr. Morin's perspective on this discussion with his father was that it was a good-natured jovial remark. He told the police on the day of his arrest:

Like they said on the news last week, [the Morins] said, "Christ, you're the grubby sucker around here. You've always been grubby." I said, "yeah, well that's my way." and age, what nineteen to twenty-five that sounds like me. I said, "there's no reason to think about it dad." Nothing to even think about, me, Christ, I swear this is so crazy.

Inspector Shephard said that no consideration was given to the impact on the fairness of any future trial against Mr. Morin which could arise from the release to the public of an altered profile designed only to match the suspect.

Mr. Morin was arrested on April 22, 1985. Inspector Shephard met with Superintendent Douglas Bullock of the Durham Regional Police Service just prior to the press release announcing the arrest, but he testified that he was not made aware of any strategy on how the profile would be featured in a press conference which was to follow the arrest. In fact, as Mr. Justice Osler noted later in the change of venue application, Superintendent Bullock told the press that Mr. Morin came well within the profile which had been extensively publicized. This was inaccurate, misleading and unfortunate because this statement later became one of the major considerations which formed the basis for the change of venue application before Mr. Justice Osler. It was Mr. Scott's view that any press conference by the police is not helpful to the Crown because of its potential for prejudice, leading, as it did in this case, to a change of venue application.

In preparing for the first trial, Mr. Scott thought that defence lawyers

might attempt to put forward evidence that Guy Paul Morin was not the kind of person who could psychologically commit such a crime. Accordingly, he intended to call Douglas as a witness to rebut that assertion. As it turned out, this was not necessary when the ‘insanity evidence’ was offered by the defence, a topic which is discussed later in the Report.

On December 23, 1985, Mr. Scott wrote to Assistant Director James McKenzie of the F.B.I.. This is what the letter said, in part:

Dear Sir:

One of your special agents, John Douglas provided a psychological profile of the killer of a 9 year old girl. His profile turned out to be remarkably accurate.

Mr. Scott believed that when he wrote that letter he had read the actual profile — not just the supplementary report tailored to elicit a particular response. He now believes the “remarkable accura[cy]” portion of his letter was a slight overstatement in order to get McKenzie’s help in procuring the attendance of Mr. Douglas in the Canadian courts. I should add that in Mr. Douglas’ will-say for the first trial, there is a specific statement that he had no information referable to any particular person in preparing the report.

The Decision Not to Wait

Attached to the profile was a five-page document entitled *Investigative Technique*. This document detailed pro-active techniques relating to the arrest and interview of a subject with a view to obtaining a confession. This is what it suggested, in part:

[I]f a suspect is developed by your Department the next step would be to assess the subject giving him the benefit of the doubt that he did not perpetrate this crime, however, if the assessment concludes that he more than likely is the subject the next step would be to implement the investigative techniques over a two to three week period followed by the interrogation techniques.

Inspector Shephard could not recall why the investigating officers did not follow Mr. Douglas’ advice to observe Mr. Morin’s behaviour for signs of disturbance following the press release. The fact that Mr. Morin did not

appear affected by the pressure the technique was intended to create did not change their decision to arrest him. Rather, Inspector Shephard explained that efforts to target Mr. Morin in the public domain were conducted to facilitate a future interview with him when he would believe that the police had considerable evidence against him.

Findings

The F.B.I. document entitled *Investigative Technique*, which was provided to the investigators along with Douglas' profile, suggests that "if a profile is developed by your department, the next step would be to assess the subject, giving him the benefit of the doubt that he did not perpetrate the crime." Unfortunately, Morin not only did not get the benefit of the doubt, the investigators looked to the profile for confirmation of their own strongly held views.

I have concerns about the extent to which the profile was contaminated by the investigators' pre-conceived views. This may explain aspects of the profile that do parallel Guy Paul Morin. We do not know precisely what the investigators or the Jessops told John Douglas. However, the wisdom of not conducting a profile once a suspect has been identified is obvious.

Having said that, though features of the profile did parallel Guy Paul Morin, it could not reasonably be said that the profile matched or even closely resembled Guy Paul Morin. This did not cause any introspection on the part of the officers. Indeed, Inspector Shephard was asked what it would have taken for the profile to have pointed away from Guy Paul Morin. His candid, and very significant answer at this Inquiry was that: "if they said a female was responsible ... probably we would have looked in the other direction."

Once the modified profile was publicly disseminated, the officers did not follow Douglas' advice to observe Morin's behaviour for signs of disturbance. The fact that there was no evidence that he was affected (in any incriminating way) by the press release did not affect their decision to arrest him. Put succinctly, the investigators never did use the profile to help them direct the investigation to the perpetrator, only to help them secure the conviction of Mr. Morin, the man they already thought was the perpetrator.

The use of a modified profile was problematic. Its dissemination was

not intended to bring forth new investigative leads from the public; it was intended to 'spook' Guy Paul Morin. The problem with that approach was that, by tailoring the profile to fit Guy Paul Morin, and then publicly disseminating it, the police helped ensure that Morin could never get a fair trial in that region and that people in that community who knew Morin would draw the same parallels. Indeed, it was only at this Inquiry that the nature of the publicly-disseminated profile was revealed. Crown counsel were unaware that the profile had been modified for public release. The supplementary record, for internal use, did not reflect this as well. I am unclear as to the extent to which Crown counsel had the actual profile, rather than the supplementary report or press release.

My recommendations address the proper and improper use of a profile.

(xi) The Arrest — April 22, 1985

On April 22, 1985, at 7:20 p.m., Detective Fitzpatrick and Inspector Shephard parked their police cruiser on the south side of Aurora Sideroad, just west of Highway 48. They knew that Guy Paul Morin would drive by them on his way to his band practice in Stouffville. At 7:45 p.m., as his Honda passed them, they followed and pulled his vehicle over. Mr. Morin got out of his car and walked back to the cruiser. He initially thought that local police were stopping him because he did not have his seatbelt on, and he was surprised to see Inspector Shephard and Detective Fitzpatrick. He asked "What's up guys?," to which one of them replied "Well, I think you know." When Inspector Shephard advised him that he was under arrest for the first degree murder of Christine Jessop, he exclaimed "What! You're kidding, John." He was advised of his right to counsel and he said he understood the meaning of that right. He reiterated that the detectives were 'kidding.' They assured him they were not.

While Mr. Morin was searched by Detective Fitzpatrick, he saw Inspector Shephard look inside his car. He saw a tow-truck at the scene, but did not know until later that it was there to take his car to the Centre of Forensic Sciences.

Mr. Morin was questioned in the cruiser during the drive to the police station in Whitby. He was again questioned at 18 Division from 8:26 p.m. to 2:05 a.m. As the detectives drove to the station, they attempted, once again,

to record the conversation. But on arrival, they discovered that the briefcase recorder had malfunctioned.

Inspector Shephard said that when he learned of the malfunction, he made detailed notes of the conversation in the car consisting of 65 questions and answers. Some of these notes are reproduced here:

Morin: You really surprise me. You really do. You've made a mistake. You really have. I don't want you to make any mistakes, but you have. I never touched Christine, never.

Shephard: Guy, are you certain that you never touched her? That's a pretty broad statement.

Morin: I know, John. Never. I never touched her. I mean that, I really do.

.....

Morin: Never, I never touched her.

Shephard: Never gave her a hug or a piggy-back ride, just playing with her?

Morin: Never. I never hugged her — never gave her a piggy back ride. I never placed a hand on that girl.

Shephard: Guy I don't mean in a sexual way, I mean just playing with her or just in fun, maybe you picked her up and swung her around.

Morin: John, I never touched her, never placed a hand on her.

.....

Shephard: We got your hair on Christine, her hair in your car, plus fibres in your car and on her clothing. We also have fingerprints, Guy, and finger prints don't lie.

Morin: Finger prints on what?

Shephard: Guy the OPP Tech support services in Toronto have the latest laser equipment for detecting

fingerprints on clothing, skin, leather — and fingerprints don't lie.

As Detective Fitzpatrick acknowledged during his evidence, there were no fingerprints connecting Mr. Morin to the murder of Christine Jessop.

Inspector Shephard's ability to record verbatim the entire conversation with Morin in the vehicle was questioned:

Q. Well, you know the tape recorder's not working, so you know that if there's some issue as to what's said in that police cruiser, you're going to rely upon your independent recollection of the events. You're writing them on your evidence, you're writing these pages and pages and pages and pages of entries that take place in the cruiser by way of question and answer, without the benefit of any recording device.

Did you suggest to Officer Fitzpatrick that he should write out his recollection of the questions and answers to assist ultimately if there's some issue as to what was said in the cruiser?

A. Detective Fitzpatrick read my book over and initialed it, sir.

.....

Q. So, that represented his verification of each and every word that was contained in your notebook; is that how you understood those initials?

A. Well, I'm sure that he knew that I didn't have every word that was spoken in the cruiser on the way back to Whitby. I'm certain he realized that. He was just -- he read them over and agreed that that was the conversation that took place. I don't know whether he said, yes, that's every word that he said, or that's the general conception of what was said, but he read it over and initialed my notebook.

Q. Well, did you take any rough notes on the way to the station?

A. No, sir, I didn't. I was relying on the tape recorder.

Q. I mean, if I were to ask you, and I'm not going to engage in the exercise to write down now the last sixty-five questions and answers that I've directed to you and your responses; do you think you could do it?

A. I sure couldn't. Not on the pressure I'm under up here, and that's twelve or thirteen years ago. Big difference in age.

Q. Do you think you could have ---?

A. And I have a hard time remembering what happened yesterday, now, without trying to get into an exercise like that.

Q. Okay.

A. Or even suggest that I could do it.

In the course of the interview at 18 Division, Guy Paul Morin produced his penknife, which had not been discovered in the course of the search of his person upon arrest. The penknife was ultimately tendered into evidence at trial as the potential murder weapon. He provided hair, saliva and blood samples to the police upon their request; however, he refused their request for a polygraph examination.

During the course of the questioning, Mr. Morin was told that the case against him was "overwhelming." He also was told that the police believed he needed psychiatric help, and that his parents would be informed of his arrest and their house would be searched.

The interview room to which Mr. Morin was taken contained filing cabinets bearing Christine Jessop's name, a map of Queensville, a photograph of Christine Jessop, and indications that a fingerprint connected with the crime scene had been positively identified as that of Guy Paul Morin:

The interview should be conducted in a more of a business-like environment in a room which has low lighting, a room that upon entering the room it appears that this is the headquarters of a task force that has been formed solely for this investigation and as he looks around the room he sees investigative flow charts, file cabinets with his name on a file cabinet along side of a file cabinet with the victim's name. He

sees the underwear, clothing belonging to the victim, the flute that belonged to the victim wrapped in clear plastic, evidence envelopes which indicates on these envelopes positive ID, blatant fingerprints developed and these items should be placed off in a corner of a room where the subject will observe these during the interview, these items will not be placed right in front of him at the beginning of the interview, but later on when it appears he is becoming agitated and nervous by them they can be brought closer to him.

.....

The subject would have already been set up for that and he will be more willing to provide a confession at this point when you would expect him to break down and expect him to show remorse and cry although this will not be truly genuine. His tears are not tears for the victim but tears for himself because his life is now ruined. Deep down he has no remorse for this victim. His only remorse is that he is going to have to go to jail.

By the time Guy Paul Morin was put in a cell at the Whitby jail, it was 3:00 a.m., April 23rd. Both Detective Fitzpatrick and Inspector Shephard acknowledged during the Inquiry that short of a rock solid alibi (such as proof that Morin had been incarcerated at the relevant time), there was nothing Mr. Morin could have said to convince them they had arrested the wrong person.

Findings

It is not uncommon in criminal trials for the defence to allege that the officer's purported verbatim account of a lengthy conversation with the accused is inaccurate or misleading. It is difficult to have confidence in a purportedly verbatim account of a conversation of the length reflected in Inspector Shephard's notes, particularly since he did not anticipate, during the drive to the station, that verbatim notes would be required. However, Shephard did not allege that Mr. Morin incriminated himself during this trip to the station and I am reflecting more upon the systemic issue here than upon any substantive problems with the content of his notes. In other words, the notes may or may not be as accurate as Shephard thinks they are, but they are not intended to be misleading.

(xii) “Shout From the Rooftops”

Throughout the ensuing six-hour interrogation, Mr. Morin proclaimed his innocence and his belief that the police had made a mistake in arresting him. Inspector Shephard expressed his opinion that Mr. Morin’s statement was a self-serving proclamation of innocence. He recalled discussions with Crown counsel either prior to the first or second trial in which the same sentiment was expressed. It was his understanding that if the statement was introduced, Mr. Morin might not have given evidence.

The admissibility of Mr. Morin’s statement upon his arrest, at the instance of the defence, was the subject of a pre-trial motion before Mr. Justice Donnelly. The defence maintained that the statement supported Guy Paul Morin’s alibi: that is, the time he arrived back in Queensville. The Crown’s view was that the statement was self-serving and inadmissible, given the Crown’s assertion of prior, *not recent*, fabrication in circumstances where there had been an opportunity to fabricate. During the course of this motion, Mr. Pinkofsky conceded that, pursuant to the Ontario Court of Appeal judgment in *R. v. Campbell*²², the general evidentiary rule against the admission of previous consistent statements “precludes an accused from eliciting from witnesses self-serving statements which he has previously made.”

After hearing the submissions of counsel on the issue, Mr. Justice Donnelly ruled that Mr. Morin’s April 22, 1985 statements could not be introduced by the defence.

Had the April 22nd statement been allowed in evidence, the jury would have learned how Mr. Morin had reacted when he was first confronted with the allegation that he sexually assaulted and killed Christine Jessop. Morin had maintained his position that Christine had never been in his Honda in spite of being told by the officers that the evidence proved the opposite. Its relevance to Mr. Morin’s alibi is discussed later in this Report.

In cross-examination of Mr. Morin during his second trial, Mr. McGuigan asked him why he had asked Mr. May not to repeat what he was saying to anyone. Mr. Morin replied that his lawyers had told him to avoid

²² (1977), 38 CCC (2d) 6 (Ont. C.A.).

speaking about the case:

A. And since Mr. May was questioning me about my case on and on, I told him, okay, just to you, never mind speaking about it to others and he said he'd do that ...

Q. It was your alibi. I mean, if you have a good alibi you'd want the world to know it, wouldn't you?

A. That was strictly for court matters.

In closing to the jury, McGuigan said this:

It will be up to you to determine what the accused said at that point, but it is interesting to note that whatever the accused said at that point [to Mr. May in the cell] he said it in a low, subdued voice. Both the Max Allen and RCMP transcripts indicate that he is whispering, and they found at least portions of that conversation inaudible.

Does it make any sense that after Robert May asked him whether he had sex with Christine Jessop, the accused would proclaim his innocence in a low subdued tone? Surely an innocent man in those circumstances would want to shout his innocence from the highest rooftop.

The accused testified before you that he was perturbed by May's blunt and crude manner in posing that question. I submit that if the accused were telling you the truth on that issue, he sure has a strange way of expressing his emotions, and I would ask you to consider how often do you express indignation in a quiet subdued voice?

One might also expect rather enlargement on that answer. "What are you talking about? Why do you ask me that question? I told you I'm innocent? Why, why do you ask me did I bury her? Why do you ask me did I have sex with her?" You would say: "What are you talking about?" That's not (sic) just say "no."

Mr. McGuigan said that the Crown's objection to the admissibility of

the April 22, 1985 statement was not made to preclude Guy Paul Morin from demonstrating that he did, indeed, ‘shout from the rooftops’ at the time of his arrest. He saw no connection between the statements to Mr. May and the statement to the police. He said that many criminals deny their activity to police and this should not be an impediment to their prosecution. Mr. McGuigan’s opinion was that even if one had witnessed the forceful and repeated denials of Guy Paul Morin at his arrest, it would have had no impact on the argument relating to the interpretation of Morin’s demeanour when he was speaking about his innocence with May:

He denied his involvement in this and that. So I mean, because someone denies it to authorities, doesn’t mean it’s gospel.

Mr. McGuigan’s position was that he relied on the ruling of the Court disallowing the statement as self-serving. Mr. Morin’s denial to the police, in Mr. McGuigan’s opinion, was not probative in assessing his failure to exclaim his innocence to Mr. May.

Mr. Justice Donnelly, in his charge to the jury said this:

In this regard you may look for support for what May and [Mr. X] said, in the taped discussions of :

.....

d) the low or whispered response to the inquiry about sexual conduct

... The Crown submits the accused is not a credible witness. Some demonstrations of which are:

...

v) his whispered protestation of innocence, when May inquired about sex during the body tape, is unusual for an innocent man.

The trial Judge also reminded the jury in his charge that Mr. Morin “was cross-examined about why he wouldn’t want the whole world to know of his alibi.”

Findings

Mr. McGuigan submitted to the jury that an innocent person, questioned about an allegation of ‘having sex with Christine Jessop’ would want to shout his innocence from the highest rooftop. This, he alleged, undermined Mr. Morin’s position that he had asserted his innocence to Mr. May, but done so in a low, subdued voice. In my view, this argument was framed in such a way so as to invite the jury to infer that an innocent person would not only deny guilt, but shout it out, and further elaborate upon it in the most indignant terms. In my view, it became significantly relevant (if not already so) that Morin, when first confronted with the allegation, had arguably ‘shouted his innocence from the highest rooftop’ and repeatedly elaborated upon it with indignation. Further, the fact that he had done all this ‘shouting’ and expressed all this indignation to the authorities to no avail, might also explain his more subdued later expressions of innocence. (As I later note, this drawing of inferences, particularly inferences of consciousness of guilt, from emotional demeanour is fraught with danger.)

After Mr. McGuigan’s closing address, the defence did not seek to revisit the admissibility of Guy Paul Morin’s statement. Even accepting that Mr. McGuigan’s closing address may have ‘opened the door’ to the admissibility of Guy Paul Morin’s statement, I see no misconduct here. The systemic issues arising out of the use, if any, to be made of an accused’s exculpatory statement upon arrest are later addressed.

My recommendations address this issue.

(xiii) The Search of the Morin Residence

Two and a half hours after Guy Paul Morin’s arrest, police, armed with a search warrant, attended the Morin residence and, for 12 hours, searched both inside and outside the house. Officers had been provided with a list of articles for which they were to search: a knife, buttons missing from Christine’s blouse, a blue woollen sweater that belonged to Christine, shirts or jackets with blood stains, a gold-coloured seat cover, a coat or collar with animal hair, anything related to sex, and anything else that may appear to be related to the case. Twelve officers worked in three teams.

Sergeant Michalowsky, one of the three identification officers at the

scene, searched the rear yard of the Morin residence and seized a number of blankets and clothing that he thought may be related to the fibres found on Christine's body. Constable Harry Shephard and his team searched rooms on the first floor. Constable Robinet and his team searched the upstairs bedroom. The house was later described as very disorganized. In all, 81 items were seized from the upstairs bedrooms, including clothing, buttons, scissors, newspaper clippings and footwear. Robinet took tapings from a red flannel sleeping bag found in the north bedroom and from various blankets and carpets found in the Morin home. He also gathered hair samples from one of the Morin dogs. At 2:20 a.m. that morning, he attended the Jessop property in order to obtain a hair sample from the Jessop dog. At 6:40 a.m., he taped samples from yet another part of the Morin home.

It did not occur to Robinet at the time that it was an unwise practice to interrupt the search at the Morin residence to do something at the Jessop home and then to return to the Morins. At the Inquiry, he acknowledged that he saw the potential for contamination.

Guy Paul Morin later testified that, at the time of his arrest, the house was in a state of disarray because of the ongoing renovations. Ida Morin testified that, while her house was clean, it was not always as tidy as she would have liked it to be, in part, again, because of renovations.

According to Alphonse Morin, the house "was in one mess" after the police searched it on April 22, 1985. Items were strewn on the bed, including some of Mr. Morin's time cards. Grocery receipts were not in the bag in which Mr. Morin traditionally kept them, but were all over the floor. He said during the trial that he was given no explanation as to why such items were strewn around the premises. Ida Morin noticed papers, photographs and receipts scattered all over the floor in Guy Paul's room. Constable Robinet testified that the house was left by the police in a better condition than when they arrived. While the Morins agreed, as set out above, that the house was something of a mess, they disagreed with Robinet's contention.

(xiv) The Mileage Sheets

Mr. Morin testified that at the time of his arrest, slips of paper recording gas purchases would have been in the car. The records consisted of handwritten notations of gas purchases including the date and kilometre reading at the time of purchase. The records were dated from March 23, 1981

to November 1, 1984.

In his tape-recorded conversation with Mr. May on July 1, 1985, Mr Morin considered whether he bought gas after stopping at Mr. Grocer's on October 3, 1984. He told May that all the gas receipts and gas mileage notations were in the car from the time it was new and that if he did make a gas purchase on October 3, 1984, it would be documented in those records.

On July 22, 1985 Detective Fitzpatrick and an identification officer, Constable Harry Shephard, searched the Morin Honda for the gas and mileage documentation and a stick pin worn by Christine Jessop. Under Detective Fitzpatrick's direction, Constable Shephard seized gas and mileage records from the middle console of the car. In recording the seizure, he specifically identified those records relating *to the months of September and October, 1984*. Constable Harry Shephard turned the documents over to Detective Fitzpatrick and, according to Shephard's evidence at the second trial, he did not see them again.

On the same day, Fitzpatrick reviewed them and, according to his evidence before the Commission, he returned them to the identification unit upon finding no record of a gas purchase on October 3, 1984. He testified that he would have either given them back to Constable Shephard or obtained access through the identification unit to the storage room and placed the records with property seized under the search warrant of the Morin residence.

The records consisted of handwritten notations of gas purchases including the date and the kilometre reading at the time of purchase. Fitzpatrick recalled that the records for the months of September and October, 1984 were among those that he reviewed. He could not recall making a notebook entry concerning his examination.

Following Mr. Morin's acquittal at the first trial, an application was made for the return of property belonging to the Morins. Fitzpatrick testified that upon receiving instructions to return the Morin property, he did so. The gas and mileage records and other property were turned over to Alphonse Morin and his son-in-law. Fitzpatrick testified that he did not consider retaining the original documents as evidence capable of refuting an alibi. Neither did he think that gas and mileage records of a purchase just prior to or just after October 3, 1984 could be relevant to issues at trial. No photocopies were retained. Fitzpatrick could not recall if at that time a notice of appeal against Mr. Morin's acquittal had been filed. He could not recall

consulting with a Crown attorney before returning the property but he was sure he would have done so.

It was the position of counsel for Mr. Morin at his second trial that the records between June 1, 1984 and October 19, 1984 were not among those returned. Fitzpatrick testified that he was sure all of the records were returned including those for the months of September and October, 1984 and that it was not possible that the records had been lost.

Detective Fitzpatrick testified before Constable Harry Shephard. Ms. MacLean sought a direction from the trial judge that there was a failure to cross-examine Detective Fitzpatrick with respect to the gas receipts. The trial judge instructed the jury that:

Sergeant Fitzpatrick was not cross-examined about this gas receipts, thereby he had no opportunity to respond to any inference that any of the gas receipts were seized, and not produced in court or were lost.

In her evidence before the Commission, Ms. MacLean defended Crown counsel's position on this issue for the reason that Harry Shephard's notebook, which had been disclosed, indicated that he was in the company of Fitzpatrick when he seized the records. Further, it was unlikely that Constable Shephard, an identification officer, would have kept a paper exhibit. Therefore, in her view, the defence ought to have raised the issue with Fitzpatrick. She was asked:

Q. Do you now appreciate that what you did was grossly unfair ... to Guy Paul Morin who's on trial for first degree murder?

A. [If there was no reference in the notebook to [Harry Shephard] turning these things over to Fitzpatrick, I think you've got a point. But I thought that the disclosure that had been provided made the defence aware of that potential issue.

Certainly the notes did refer to those months of exhibits being seized in the presence of Fitzpatrick, and I would have thought at the very least, Fitzpatrick would have been asked about whether it was turned over to him or not.

Ms. MacLean denied that a decision was made not to recall Fitzpatrick because Crown counsel knew he could not account for the mileage records. While she did not lead Fitzpatrick's evidence and could not recall discussing the issue with him, she understood his position to be that there were no receipts for the months of September and October, 1984. She could not recall the source of this information. It was pointed out to her by counsel that had he conveyed this position to the Crown attorneys, the defence ought not to have been criticized for a failure to cross-examine Detective Fitzpatrick in that his evidence contradicted that of another officer and, further, had not been disclosed.

Findings

There is evidence that the police did receive gas and mileage records for the month of October, 1984. Officer Fitzpatrick says that he returned them to the Morins after the first trial. At the second trial, the defence alleged that these records were not returned. The evidence before me does not permit me to resolve what happened to the records. I would have expected the police to document, in some way, what the records did show and precisely what records there were. I would also have expected that at least a photocopy of the records would be retained by the police, since an appeal was launched within 30 days and a re-trial was a possibility. This, more likely, represents carelessness, than malevolence.

(xv) Robert Atkinson

Mr. Atkinson's Evidence

On October 3, 1984, Robert Atkinson and his friend Doug Thompson were commuting to their work at a manufacturing plant in Holland Landing, a village approximately six miles away from Queensville. Their shift was to commence at 4:30 p.m. They were proceeded east on the Queensville Sideroad. They stopped at the stop sign at the corner of Leslie Street and Queensville Sideroad for approximately two to three minutes to allow the heavy traffic on Leslie Street to pass. The general store where Christine Jessop had purchased candy after school is located at that corner. Mr. Atkinson testified that while stopped at the sign, he looked at his wrist watch and noted the time was approximately 4:00 p.m.

While stopped, he noticed a little girl wearing a blue top standing across from the store, holding a bag of candy in one hand and a recorder in the other. She appeared to be waiting for someone or something. He testified at Mr. Morin's second trial that, after noticing the recorder in the child's hand, he remarked to Mr. Thompson "How about we can get this little girl to play us a tune while we're waiting." They then proceeded on to Holland Landing for their shift.

After learning of Christine Jessop's disappearance from the media, Mr. Atkinson recognized her picture in the newspaper as the girl he saw standing on the corner. He contacted the York Regional Police on October 10, 1984 as he thought his information might be important to the police in terms of timing. A constable interviewed him at his residence that day, and he recorded Mr. Atkinson as saying that Christine was standing with two small boys approximately her age; also with them was a boy approximately 11 or 12 years of age who seemed to be explaining something to Christine and the two other boys. Mr. Atkinson described this youth in detail: blond hair, white sneakers, a grey fall jacket with a zipper in front, and blue jeans. He did not see a bicycle. There was no doubt in his mind that the girl he saw was Christine Jessop.

Mr. Atkinson said during the second trial that after his October 10, 1984 statement, no police officer contacted him until June 25, 1990. This was during the stay motion. On that date, Mr. Atkinson's father had just died; he was approached at the funeral home and interviewed by Detective Fitzpatrick and Inspector Shephard; he was not provided, at this time, with his earlier statement.

Mr. Atkinson had been contacted a week earlier by Mr. Pinkofsky's private investigator. While the police supplementary report of June 25th indicates that Mr. Atkinson was under the impression that he was speaking with a member of the Crown attorney's office a week earlier, it would appear that any confusion was caused by an honest error on Mr. Atkinson's part, not by any malfeasance on the part of the investigator or counsel.

Mr. Atkinson testified during Mr. Morin's second trial and also before this Inquiry, that he was told, in no uncertain terms by the police, that the boy he recalled seeing on the corner explaining something to Christine Jessop, was actually a girl. Sometime prior to December 1992, he was interviewed by *The Fifth Estate* and gave them the same information.

During Mr. Atkinson's various court appearances, he demonstrated some confusion as to when and what police force had told him that he had made an error as to the sex of the person speaking with Christine. From the notes of the interview Mr. Atkinson had with the defence on June 21, 1990 (several days before Fitzpatrick and Shephard interviewed him) it is clear that he had already been told by someone that the 'boy' he saw was a girl. With the passage of time it is difficult to sort out this confusion, but it appears likely that he was given this information by the York Regional Police.

In any event, he said that "he believed in the police" and that he, therefore, accepted their version; "who would know better." At the Inquiry, he stated that despite the fact that a police officer had made this suggestion to him, his impression was still that it was a boy.

Findings

I accept Mr. Atkinson's evidence that the police told him that the boy he saw was a girl. I cannot say who communicated this to him. I have already discussed the dangers of suggesting facts to witnesses in conflict with their own recollection. Surely, the witness was in a better position than the police to determine the sex of the person he saw. Police officers must be vigilant in ensuring that they do not temper, however well-meaning, a witness' recollection with their own interpretation of the facts they have gathered. There may be circumstances where a witness' attention has to be drawn to conflicting evidence in order to evaluate the response; however, as we saw at this Inquiry, there are repeated instances where officers appear to 'tell' the witnesses what the facts were. As Mr. Atkinson noted, a definitive assertion by police is often accepted by a witness as being necessarily more accurate than his or her own recollection, and evidence is thereby permanently tainted.

Mr. Atkinson's evidence was heard during Phase IV of the Inquiry (The Investigation by Durham). It is, therefore, addressed in this part of the Report. However, as I have noted above, it may well be that the failing identified in his interviewing process was attributable to York Regional officers.

(xvi) Body Site Screams

Witnesses' Evidence

In the days following the discovery of Christine Jessop's remains, the Durham police conducted door-to-door interviews of residents in the area near the body site to ascertain if anyone saw or heard anything that may be of assistance in the investigation.

Lydia Robertson, who lived close to the scene with her adult son, was interviewed in January 1985. She told a detective that one night, when she was home alone sometime in the fall, around October, she went to bed at about 9:00 p.m. and was awakened by the sound of someone screaming "Help, help." She got out of bed and walked to the front door, but was unable to determine where the noise was coming from. She heard her neighbour's dog barking and what sounded like a female calling for help. Ms. Robertson thought that, perhaps, her neighbours were having a domestic dispute, but she also thought that she heard a child crying and car doors closing. The noise stopped.

When Ms. Robertson's son, Alex, arrived home in the early morning hours, she told him what she had heard. He suggested that the screams were probably from one of the neighbours fighting, she should not worry about it and should go back to bed. While the Robertsons were unable initially to specify the date, Alex remembered that he had been out drinking with his friends that evening and had called in sick at work the next day. After checking his employment records, he determined that the incident had occurred on October 4, 1984, as he was absent from work on the 5th.

Ms. Robertson said that she did not call the police at the time because she did not want to interfere with what she accepted to have been a domestic dispute. She also said that she had called the police on another occasion relating to a stolen vehicle and had gotten 'such a run-around' that she hesitated to call again.

The day after she was awakened, Ms. Robertson told a friend, Robert Koss, what she had heard the previous evening. Detectives spoke with Mr. Koss in January 1986, and he confirmed that Ms. Robertson had, indeed, told him about this incident.

In the supplementary report documenting Ms. Robertson's statement, she is recorded as saying that she "is positive that her neighbours to the west will know about the screams as their lights in the house came on and their car was in the driveway."

These neighbours, Doug and Sharon Barnes, were interviewed on January 24, 1985. The Barnes' driveway is approximately 200 feet west of the lane way on the south side of the road where Christine's body was found. A supplementary report reflects the interview which Constable Sam Fox had with the Barnes':

I asked Doug and Sharon if there had been anything come to light which might assist the police in their investigation. Sharon didn't know whether she should mention it or not, but recalls being startled and awoken during the night and believed she heard a yell or scream for help. She woke up her husband Doug and asked if he had heard it, but Doug had been sleeping very deeply and said he had heard nothing. Doug fell back to sleep and Sharon can't recall hearing anything further.

I asked Sharon if she could associate it with any date and she knew that it was after September 7, 1984, because she is a teacher and went back to work that week. ... Sharon thought that it was the baby awake at first, but then realized it wasn't and this is why she knows it was after September 7, 1984.

Then I asked them what time it might have been. They both agreed it was after 10:30 PM because that is when they usually went to bed and Doug knew it was before 3 to 3:30 AM because he starts to sleep very lightly at this time.

The report then concludes:

After talking with Doug and Sharon for a while, *it was plain to see that they were good hardworking citizens in their 30's, truthful and honest.* Their house was clean and nicely finished. I asked them if they may have had a domestic during the summer or fall that they may have previously been embarrassed to mention that would have accounted for the noise that Mrs.

ROBERTSON had heard and they said no. They were not offended in the slightest by this suggestion and said that due to the circumstances that they would say if they had had a dispute, but they both said they get along very well and don't even have as much as a shouting match.

I asked them if they had any parties where one of the guests may have been shouting and they both said they don't have too many visitors and they have had no parties. *Doug and Sharon were very sincere in all of their answers and I believed that what they said was the truth.* (Emphasis added.)

On January 23, 1985, Constable Fox attended another neighbour's home, the Benning residence, which is on the east side of Regional Road 2, immediately north of the Fourth Concession and right across the road from Lydia Robertson's residence. Mr. Benning's evidence was recorded in a supplementary report. It states, in part:

Mr. BENNING realized that he had also heard the screams that Mrs. Robertson was talking about.

Mr. Benning hadn't called the police back [sic] as he wasn't sure if what he heard was significant. He had worried about it for a week feeling guilty, perhaps that he hadn't called the police when he heard the screams.

He can't remember the exact date of the screams, but earlier in warmer weather and was trying to relate it to other noteworthy dates in the fall.

He recalls he was awoken from his sleep, it was dark, his dogs were making a fuss and the voice was that of a female, but he didn't think it was a child's (sic) voice. He did remember that they [sic] were yells for help and seems to remember the word "help" several times. He thought the youth across the road (Robertson) was having a party and a teenager was yelling so he didn't pursue it any further.

Constable Fox concluded:

Having talked with the BENNINGS, Lydia ROBERTSON, Doug and Sharon [Barnes], *I believe*

that what was heard by Lydia ROBERTSON may be of some significance. This may well be the same thing that Gary BENNING and Sharon [Barnes] heard.

Lydia went into further detail in regards to the noise, more so that what I have put on paper, as she spoke for sometime and I got the impression she was feeling quite upset for not having called the police originally. I do recall her mentioning a banging noise almost like a stick or piece of wood hitting against some sort of tiny metal object.

She seems to have a good recall of the noises as she was quite disturbed by them that night. She wishes that the policeman that she had talked to sometime before hadn't given her the run-around or she wouldn't have hesitated to call. Lydia had dealings with the police about a year earlier when her pick-up truck was stolen from her driveway and later recovered. (Emphasis added.)

The Jessops' Screaming Test

As earlier noted, incoming telephone calls to the Jessop residence were recorded by Durham police. The log for March 6, 1985, summarizing that day's calls, contains a reference to a conversation between Ms. Jessop and a friend about "[a] woman who heard screaming. Durham said she's an asshole and don't hold any faith in what she says." Ms. Jessop later said that while this remark reflected the sentiment communicated to her by Durham, the language may have been her own.

It is unclear precisely when, but sometime after this conversation, Ken and Janet Jessop went to the body site with a friend of Ms. Jessop. Ken Jessop said that despite the fact that Inspector Shephard and Detective Fitzpatrick had told them that Ms. Robertson was not to be believed and that it was impossible for her to have heard the screams, Ms. Jessop had repeatedly expressed her desire to go to the area herself to conduct a test. Detective Fitzpatrick could not recall — nor, however, did he deny — telling Ken Jessop that it was impossible for Ms. Robertson to have heard the screams; nor did he recall telling Ken Jessop that Ms. Robertson was 'a loon, a drunk' and that the matter would not be more fully explored by the police.

Upon arriving at the site, Ms. Jessop remained in the area in which her

daughter's body had been found while Ken and his mother's friend went close to Ms. Robertson's house. Ms. Jessop then screamed. Ken said that he could hear his mother; however, he did not tell this to his mother as he did not want to upset her further and thought it was best to 'let it lie':

To tell my mother shortly after she's buried her daughter, I guess someone did — it was possible for her to hear the screams and yet they did nothing, would have been very hard on her.

Ken Jessop advised the police of the fact that a test had been performed. At the second trial, he testified (in the context of describing the first time he had attended the body site) that he had not heard his mother's screams. At the Inquiry, however, he admitted that this evidence was false.

The Police Officers' Screaming Test

On November 25, 1985, at approximately 5:00 p.m., the Durham police conducted its own 'screaming test.' Detective Fitzpatrick and Inspector Shephard went to the home of Lydia Robertson, while Detective Doug King, accompanied by his two daughters aged 8 and 11, stayed at the body site approximately 0.2 kilometres away. The girls took turns screaming for help while Fitzpatrick and Shephard listened.

The police notes documenting this test did not record the wind conditions, although Detective Fitzpatrick recalled it was a fairly calm day. From his position outside the back door of the Robertson residence, Inspector Shephard could barely hear the screams of the younger child and he could not make out her words. Detective King's supplementary report indicated that this child had a cold at the time and was not screaming at her full capacity. Inspector Shephard could clearly hear the screams of the second child. When the detectives listened from inside Ms. Robertson's bedroom through an open window, they could hear the sound of one of the children faintly and could make out the words "don't, help, help, don't."

Nonetheless, they concluded that it was unlikely that Ms. Robertson would have been awakened by the screams. Inspector Shephard said that he communicated the results of this test to John Scott, but he could not recall the actual discussions between them. He conceded that the sound conditions under which the test was performed might be significantly different from the

conditions that existed in the early morning hours when Ms. Robertson claimed to have heard the screams. While he did not give the wind conditions any thought, Detective Fitzpatrick expressed his opinion that the sounds of traffic would not have been significantly different at 5:00 p.m. from those in the early morning hours.

The Crown's Handling of this Information

Prior to the first trial, John Scott was aware, through Clayton Ruby's change of venue materials, that Ms. Robertson had heard screams on the night of Christine's disappearance. Mr. Scott said that either Inspector Shephard or Detective Fitzpatrick dismissed this information as relating to "a lady who had some difficulties and domestic problems of their neighbours." Mr. Scott was not aware of Constable Fox's assessment of the Barnes — the neighbours in question — nor was he aware of their evidence that they did not have an argument at that time. Mr. Scott said that he did not read the original supplementary reports and relied on the opinion of the officers as to the veracity of the information.

Mr. Scott was not aware of the scream test conducted by the Jessop family prior to the first trial. He also claimed that he was unaware of the scream test performed by detectives on November 25, 1985. The officers' notebooks reflect that they were with Mr. Scott in the morning before the test.

Mr. Scott was called as a witness during the stay motion. He said that he understood Ms. Robertson to be unreliable because she had initially thought that the screams occurred around Thanksgiving (October 8, 1984). As stated above, the Robertsons subsequently discovered that, according to Alex Robertson's work records, they had overestimated the date by one week. Mr. Scott also believed that Ms. Robertson was unreliable because it was assumed that the murder had occurred the evening that Christine Jessop was abducted, while the screams were heard 24 hours later. Here are some excerpts from his evidence before the Commission:

Q. Did you believe at any time that there was a possibility that Ms. Jessop had been killed after the date of her abduction?

A. Certainly that's a possibility, but I didn't think it was a valid one.

Q. Why?

A. Just as I — I think I've indicated in the transcript, didn't see this nine year-old being kept alive past that date.

.....

Q. I'm just asking, if there's any objective facts of which we're not aware that would have led you to the conclusion that she had been killed the date that she was abducted, as opposed to a day later or a week later?

A. The only one is that I just can't imagine how one would control a nine-year-old for that time period. But it may — it's a possibility. Do you see what I mean?

Q. Well I hear what you're saying, but controlling a nine year-old, by that, you mean would they have a place to put her or ... ?

A. All those things. I mean, where do you hide a nine- year-old that's not yours, for overnight? I mean, there's - in the trunk? I mean, I just don't think so. It's an awkward thing to try and conceal for some time period. That's my view, but you appear not to share that.

While Mr. Scott's view may be honestly held, it is a narrow and somewhat naive view of the evidence; a number of crimes have been perpetrated where a victim has been abducted and kept for a lengthy period of time.

Mr. Scott said that he learned of Ms. Robertson's screams from Mr. Ruby's material for the change of venue application; a newspaper article was included reporting about the Robertsons. He did not remember if he was informed verbally or in writing about the scream test conducted by the police, but said that the defence was not provided with any information about this incident prior to the first trial.

Mr. Justice Donnelly held that this non-disclosure was a technical breach, but ranked very low on a scale of transgressions. The screams lacked a direct nexus, His Honour said, and were of questionable reliability.

While it was suggested by counsel for the Morins that the prosecution was selective about what it considered to be credible evidence, both Leo McGuigan and Susan MacLean testified that Ms. Robertson's evidence was not viewed by Crown counsel as reliable. Ms. MacLean described Ms. Robertson as 'a real character,' and said that alcohol may have been involved that evening. Neither the defence nor the prosecution called Ms. Robertson or any of the other scream evidence at either trial. An analysis of the police notebooks demonstrate that Mr. McGuigan met with Ms. Robertson on February 7, 1991. Ms. MacLean said that Ms. Robertson told them that she was "stashed" on the night in question. Ms. MacLean's notes reflect the following:

Lydia Robertson — Screaming.

1. Do we want to call expert re: effects of longterm alcohol abuse
2. Let Jack call the evidence and cross-examine on it

Findings

I cannot say whether the screams described by Lydia Robertson and her neighbours were those of Christine Jessop. That is an assessment that must be made by those who may re-investigate this homicide. Constable Fox deserves praise: his interviews with Ms. Robertson and her neighbours were professionally done and properly documented. His conclusion that what Lydia Robertson heard "may be of some significance," was an astute assessment of the incident, whether or not the screams were those of Christine Jessop. This information deserved better treatment from his colleagues. It is highly regrettable that Lydia Robertson's evidence and the neighbours' additional evidence were dismissed so lightly.

The screaming test conducted by the police was defective. The time of day was different, and even if the conditions were the same, the fact remains that the screams of at least one of the children could be heard. It was entirely likely that the lead investigators' approach was obscured by their firm belief that Mr. Morin was guilty. This has been a recurrent theme in this Report.

(xvii) Ken Doran

Ken Doran was a cell mate of Mr. X at the Whitby jail who was in custody during the same time period as Mr. May and Mr. X. In November 1985, he was interviewed by Inspector Shephard in connection with this investigation. He was questioned about the nature of this interview during the Inquiry:

Q. Okay. And this occurred back in November the 22nd of 1985, and do you recall alluding to the fact that he [Mr. Doran] could be charge [sic] with attempt to obstruct justice if he wasn't prepared to speak to you?

A. Yes, sir.

Q. All right.

A. I don't think that's exactly what I said. I think I said something to the effect that he was verging on attempt to obstruct justice, or obstructing the police, or something to that effect.

Q. By not speaking to you?

A. By not speaking to me, yes, sir.

Q. Was he verging, in your mind, on attempt to obstruct police or obstruct justice by not speaking to you?

A. No, sir. It was his privilege and if he didn't want to speak to me, but I was trying to urge him to speak to me.

Q. Do you think that that's an appropriate thing for an investigator to do, to use the ---

A. Obviously, I did, or ---

Q. --- threat of criminal charges?

A. Obviously I did at that time, or I wouldn't have done it.

Q. What about now?

A. Well, I'm not involved in police work anymore, but it's pretty tough when you're trying to find out, or speak to somebody about something, and they won't talk to you. So you try to use as many things as you can, and in this case, it may have been beneficial to Mr. Morin had he spoke to me. I didn't know, because what I was trying to find out was — well, I'm sure you know was I was trying to find out, was whether Doran actually could hear May or — yeah, May and Mr. Morin speaking. So it may have been beneficial to him.

Q. Of course, the defence, as you'll recall, by November of 1985 was not only aware of Mr. Doran, but apparently were preparing an affidavit for him. So Mr. Morin was certainly in a position through his counsel to address the beneficial aspects of Mr. Doran's ---

A. Yes, sir, that's correct.

Q. Did you ever obtain photographs of the body of Christine Jessop to display to witnesses when you were about to interview them?

A. I don't think I'd ever so that.

Q. All right. If I could have Volume 277, please? This is evidence at the second trial, Volume 277, p. 45. I'll start at page 44, line 19:

Q. Now as one of the investigative — sorry, interview techniques that you view as proper, if it's necessary to sort of threaten someone or suggest to someone that they might be criminally charged, that they're risking criminal charges, is that sort of the technique you use to get them to talk to you, or a technique you use to get them to talk to you?

A. Yes, ma'am.

Q. You used that in this investigation on occasion, didn't you?

A. Yes, ma'am.

Q. And you've probably used it in other

investigations, or have you used it in other investigations?

A. Probably.

Q. And depending on the person, I guess it might work, it might not work; correct?

A. Correct.

Q. Sometimes you can get people to talk to you and go along with your questioning without having to resort to that kind of threat or suggestion; right?

A. Yes, ma'am.

Q. Is one of the tactics that you've used in this case to obtain the photographs of the body of Christine Jessop to display when you're about to interview somebody?

A. Yes, ma'am.

Q. Those photos, you agree with me, are gruesome and horrible?

A. Yes, ma'am.

Q. That's the kind of technique that you use as a police officer, in your assessment, could be useful when you're trying to interview somebody?

A. Yes, ma'am.

Q. It sort of has a shock value, doesn't it?

A. Yes, ma'am.

Findings

I do not accept that Inspector Shephard was motivated, even partially, to obtain Ken Doran's account because it might have been beneficial to the defence for Shephard to do so. Shephard anticipated that Doran might well be a defence witness and he wanted to know what Doran would say and, if it

was exculpatory, pointedly question him. There would be nothing improper in any of that. However, Shephard, in effect, tried to intimidate Doran through a heavy-handed suggestion that Doran could be charged with a crime (which, of course, was incorrect) for failing to speak to Shephard. This was an abuse of his powers as a police officer and is a completely inappropriate tactic.

D. Contentious Witnesses of the Crown

(i) Introduction

A number of contentious witnesses were tendered by the prosecution against Guy Paul Morin. Some of these witnesses have been addressed in other parts of this Report. This portion of the Report focuses on several witnesses whose evidence raises recurrent themes. These are Constables Robertson and McGowan, Paddy Hester, Doug Greenwood, John Carruthers, Leslie Chipman, Mandy Patterson, Janet Jessop and other witnesses as to the ‘funeral night screams’.

Some of the common issues which arise through these various witnesses are: the manner in which their evidence was obtained; when their evidence came forward; how ‘late-breaking’ or ‘untimely’ allegations by witnesses were handled, how their reliability was assessed, and how their evidence was presented to the jury.

Another recurrent theme is the use of much of this evidence to demonstrate that Guy Paul Morin exhibited, through his words and conduct, a *consciousness of guilt*.

During closing argument by the prosecution, Mr. McGuigan addressed evidence of ‘consciousness of guilt’ and ‘very unusual and strange behaviour’ at some length.²³ These passages are particularly significant:

²³ The evidence put forward at the first trial varied from the evidence tendered at Mr. Morin’s second trial. At the first trial, as described elsewhere in this Report, witnesses such as Robertson, McGowan, Greenwood, Carruthers, Hester and Chipman, were not called. In fact, there was very little evidence led by the prosecution from witnesses regarding Mr. Morin’s ‘unusual conduct and demeanor’; the evidence of Mandy Patterson being one exception. The term ‘consciousness of guilt’ was not employed by Mr. Scott in his closing address, nor by Mr. Justice Craig in his charge to the jury.