Chapter 18
DNA Testing

Jan-31-1969
Gail Miller's stained clothing is gathered at the autopsy and preserved.

Sep-13-1988
Dr. Ferris reports on his unsuccessful attempts at DNA testing on Gail Miller's clothing.

Jan-17-1992
Exhibits from the trial of David Milgaard are sent to the Supreme Court of Canada.

Feb-17-1992
RCMP forensic analyst Patricia Alain examines Gail Miller's clothing and concludes that only a small semen stain exists on the panties.

Apr-6-1992
Legal counsel for the federal Department of Justice advises the Supreme Court of Canada that attempts at DNA testing in the United States were unsuccessful.

Feb-21-1995
David Milgaard provides his authorization for further DNA testing and discussion ensues amongst legal counsel regarding an acceptable protocol.

Mar-21-1997
An agreed upon protocol for DNA testing is forwarded to the Forensic Science Services lab in England.

Jul-18-1997
DNA test results indicate that the semen found on Gail Miller's clothing matches Larry Fisher's DNA profile and could not have originated from David Milgaard.

In 1997, the successful DNA typing of semen stains on Gail Miller's clothing resulted in Milgaard's exoneration and in Fisher being charged with Gail Miller's murder. I have found that, up to 1992, neither the police nor Saskatchewan Justice received information which should have caused them to reopen the murder investigation, with the exception of the Linda Fisher report to the police in 1980, a subject which has been dealt with elsewhere.

Following the Supreme Court of Canada Reference in 1992, federal investigator Eugene Williams asked RCMP scientist Patricia Alain to retain the court exhibits until further notice. Ronald Fainstein, who acted for Justice Canada at the Reference, assumed responsibility for monitoring DNA testing options on the exhibits. It was assumed at this time that only a small stain of semen on the panties was available for analysis and advances in technology were therefore required before effective DNA testing could be accomplished. The larger semen stains, eventually found on the clothing in 1997, were unknown. Had they been known, as we shall see, they held the potential for excluding Milgaard as donor of the semen on the clothing much sooner in time. This could then have led to his exoneration some years earlier than was the case.

It was necessary for this Commission to inquire into DNA related events between 1992 and 1997 to see if information came to the attention of the police or Saskatchewan Justice during that period that should have caused them to reopen the investigation into the death of Gail Miller.

1. DNA Testing – 1992 Considerations

Following Ferris' unsuccessful attempts at DNA typing in 1988, Williams remained interested in testing the victim's clothing for this purpose.[1] A formal request for testing in the United Kingdom was made by Williams on January 6, 1992.[2] The latest technology involved polymerase chain reaction (PCR). Williams consulted with Vivian Emerson of the British Home Office and Ron Fourney and Barry Gaudette of the RCMP lab,[3] about advanced and, as yet, unproven testing methods for old, small and perhaps contaminated samples. The United Kingdom lab was willing to do the testing, but not by DNA sequencing or short tandem repeats which had not been validated for casework analysis.[4] At the time they were using only the DQ Alpha system. This system could exclude someone as a donor, but had low powers of discrimination, and was therefore not effective at identifying a donor.

Williams set out to gather the exhibits.[5] He was told that the lab work for DQ Alpha testing would take a few weeks once the exhibits arrived in the United Kingdom.[6] A court order from Saskatchewan Queen's Bench was obtained for transfer of the exhibits to the Supreme Court of Canada.[7] Williams wanted them examined at the RCMP lab to select the best items for the United Kingdom lab. He spoke to Gaudette and Fourney, and they referred him to Alain, the lead serologist at the RCMP lab. Her report is dated February 17, 1992.[8] She received the items from the Supreme Court on February 3, 1992. Williams left the choice of items for examination to her, making a general request that she examine material which might yield DNA. Alain took blood and saliva samples from David Milgaard on January 22, 1992.

Under the "purpose" section of her report she notes:

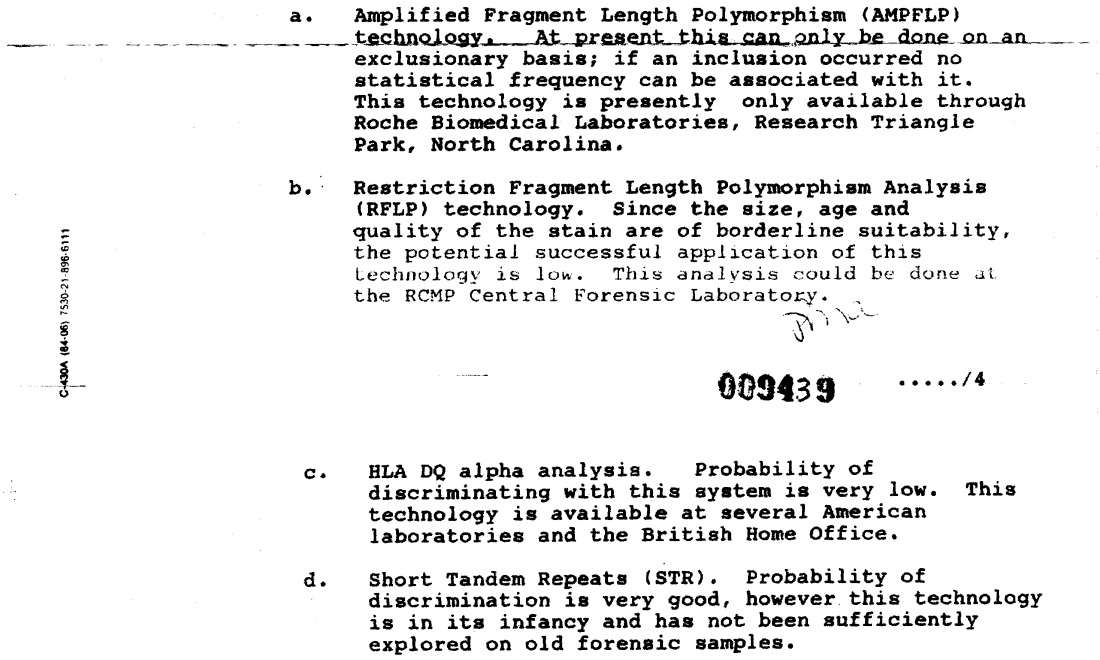
> 1. To examine exhibits 6, 7, 13 and 35 for stains or residue suitable for DNA typing analysis.

By reference to the "general" section we see that Alain had identified the panties, panty girdle, two plastic vials and a blue toque (not Miller's) for examination. Therefore, it seems that she understood her task to be to examine only the panties and the panty girdle for potential DNA samples, but not the slip, brassiere or uniform dress (items 8, 9 and 10). How did she come to that understanding? Williams says she looked at the dress and other items in the Supreme Court building, using various instruments, but he did not know if she was looking for blood or semen stains. Alain testified at the Inquiry that she did in fact check these other items for semen staining, but that is not apparent from her report.

Alain found semen on the panties, a single stain of 4-5 mm in diameter, of sufficient quantity that "a PCR based DNA typing technology could be attempted". It is common ground that she missed larger semen stains on other garments, notably the dress.

1	Docid 002479 and 334337.
2	Docid 334382.
3	Docid 334371.
4	Docid 334413 and 334429.
5	Docid 334449.
6	Docid 334504.
7	Docid 267287, 056743.
8	Docid 009437.

Under the "Remarks" section of her report, she identified the available testing options:



a. Amplified Fragment Length Polymorphism (AMPFLP) technology. At present this can only be done on an exclusionary basis; if an inclusion occurred no statistical frequency can be associated with it. This technology is presently only available through Roche Biomedical Laboratories, Research Triangle Park, North Carolina.

b. Restriction Fragment Length Polymorphism Analysis (RFLP) technology. Since the size, age and quality of the stain are of borderline suitability, the potential successful application of this technology is low. This analysis could be done at the RCMP Central Forensic Laboratory.

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c. HLA DQ alpha analysis. Probability of discriminating with this system is very low. This technology is available at several American laboratories and the British Home Office.

d. Short Tandem Repeats (STR). Probability of discrimination is very good, however this technology is in its infancy and has not been sufficiently explored on old forensic samples.

She recommended AMPFLP by Roche Technologies in North Carolina. As noted, this method could provide only exclusionary results.

Justice Canada accepted her recommendation.[9] Williams said the decision was to try this first, then DQ Alpha, instead of using the United Kingdom lab. The latter would not do short tandem repeat testing as a back-up to DQ Alpha as Williams had asked.[10] The decision was also made, apparently, because AMPFLP offered the prospect of immediate analysis.[11] But there was a complication. Roche would do the analysis only if all parties agreed not to attack either the technology or Roche's application of it. In his letter of February 25, 1992, Gaudette noted that unanimous agreement could not be reached, so he went through the other available options listed above and found them all wanting, ultimately recommending that none of them be undertaken at that time.

I accept his reasons. Briefly stated, RFLP analysis was not recommended because of a low probability of success, and it would consume the rest of the only remaining sample. Gaudette did not, of course, know at the time that there was additional sample material which had been missed. Other options had serious drawbacks, which he explained, so his view was that analysis should be delayed until such time as one or more of the recommended PCR technology options was ready for casework application – perhaps in a year.

9	Docid 231497.
10	Docid 334423.
11	Docid 010283.

The Supreme Court was told that testing could not be done at that time.[12] All counsel agreed that the exhibits should be held until tests were developed for use in court, and that the court should not wait to dispose of the case until that testing could be done. Exhibits were retained by Justice Canada, and not returned to Saskatchewan as had been the understanding.

In fact, as we now know, RFLP analysis or DQ Alpha testing could have been done because more staining was present on the clothing and need not all have been consumed in the testing. Although it had a low probability of success, given the age of the samples, RFLP might have yielded a result five years before the decisive tests in 1997. DQ Alpha would have had an even better chance of yielding useful results. Patricia Alain did not discover semen on the dress which was identified later in the United Kingdom lab. Whether she should have discovered it is a question we must answer.

On March 19, 1992, Eugene Williams asked Rick Pearson to take the exhibits to the Roche lab in North Carolina.[13] The subjects were David Milgaard, Larry Fisher and Gail Miller. Fisher had given samples and agreed that DQ Alpha testing could proceed on Roche's terms.[14] Roche, however, was unsuccessful in its attempts. Something in the sample was inhibiting the testing method.[15] Williams' direct involvement was at an end.

Roche reported on April 6, 1992.[16] Dr. Marcia Eisenberg obtained DQ alpha types from a known blood stain of Gail Miller and known blood types of Fisher and David Milgaard. The material from the plastic vial, and from the panties did not yield quantifiable amounts of DNA.

On April 7, 1992, Ronald Fainstein wrote to Gaudette, Alain and Fourney saying that although no results were achieved, new technology yet to be validated for court purposes might be pursued in due course.[17] He urged further testing when possible, and spoke with Fourney from time to time checking for progress on the short tandem repeat method.

In his testimony at the Inquiry, Williams recalled his understanding that although abundant DNA had been extracted in the Ferris lab, most of it disappeared. Most of the crotch of the panties had been cut away in successive attempts to extract DNA.[18] Something was destroying the DNA extracted, and sampling should have stopped earlier to preserve what was left. Fourney was critical of the manner in which materials were prepared for testing and the general disarray of leftover materials. But for that, sufficient semen staining would likely have been available on the panties for testing in 1992.

As we have seen, samples were missed in the RCMP lab which eventually yielded DNA that matched Fisher with near certainty, and which excluded David Milgaard. But even if found in 1992, the technology was not yet perfected to the degree needed to achieve the 1997 result. That said, even DQ alpha in 1992 would probably have excluded David Milgaard as the donor of the semen on the dress, which is not the same thing as saying that it would have excluded him as the perpetrator of the murder. It would, however, have been more than enough to raise a reasonable doubt.

12 Docid 230977 at 981.
13 Docid 062862.
14 Docid 268698.
15 Docid 334760.
16 Docid 174222.
17 Docid 230984.
18 Docid 068967.

2. Patricia Alain's Evidence

The evidence of Alain[19] was videotaped and played at the Inquiry. Her curriculum vitae[20] shows that she retired from the RCMP forensic service in 2001, having become chief scientist in serology. She did not have DNA testing expertise, but both Gaudette and Fourney did.

Her first involvement in the Milgaard matter came from Eugene Williams, who sought her advice on the James Ferris report, and other forensic matters relating to serology.[21] At that time, she told Williams that to assume that the donor (Milgaard) of the saliva tested by Bruce Paynter was a non-secretor was questionable. She also told him[22] that an experienced examiner would have no trouble distinguishing between human and canine spermatozoa.

I find that on this basis, Williams was justified in dismissing Dr. Peter Markesteyn's speculation about dog urine, and in questioning the 20 year old finding that David Milgaard was a non-secretor.

Gaudette reviewed the material that had been sent over to Alain, and was asked whether it could be tested for DNA. The answer was no, but perhaps in two years.[23] On September 8, 1989, Gaudette wrote to Williams[24] saying that it would be better to wait for technological advances expected in two years time rather than risk the remaining sample in trying conventional DNA analysis methodologies (RFLP).

On December 30, 1991, Williams contacted Emerson of the Central Research Laboratory in England to ask about DNA techniques then available.[25] He wrote again on January 6, 1992, hoping that PCR technologies could be used to get results for the Supreme Court Reference. They could not.[26] A control sample from the victim could be provided[27] but the Forensic Science Service could use only DQ Alpha testing for casework.

Alain was assigned to determine secretor status, and to examine exhibits for "the presence of biological material suitable for analysis by a DNA typing methodology".[28] She had been instructed by Williams to look for semen or blood stains on Gail Miller's clothing.

She found what appeared to be a semen stain on the panties, and a blood stain on the dress suitable for use as a control sample for Gail Miller. The report is silent on whether she tested the dress for stains suitable for DNA typing.

Alain said that her testing began with a visual exam. Blood appears reddish/brown. Anything which might be semen is subjected to presumptive, preliminary testing. Visually, it can be whitish or yellowish, and make a fabric stiffer. UV testing had fallen into disuse because some non-biological substances can fluoresce in the same way.

Using acid phosphatase, she found a very, very small semen stain on the panties suitable for DNA testing. She found no semen on the girdle upon visual and tactile observation and after random sampling with

19	T40453-T40541.
20	Docid 287591.
21	Docid 002477, 002475, 002473.
22	Docid 002511.
23	Docid 002479.
24	Docid 002480.
25	Docid 334337.
26	Docid 334413.
27	Docid 334423.
28	Docid 334474.

acid phosphatase. Nobody was present when she did her testing. The dress, as it later (1997) turned out, had semen stains. At the Larry Fisher preliminary inquiry, Alain said that she had examined the dress for semen and she adopted that testimony at the Inquiry. She described visual, tactile and acid fast blue paper testing. She looked over the front, back and inside of the dress for suspected areas of semen, but did not cover the entire area using acid fast blue. I accept her evidence that she looked for semen on the dress but found none. Others did, as we know, in 1997.

Alain followed the protocol for acid fast blue testing by using a random blotting method,[29] lacking the facilities to conduct a full mapping approach which was a common method in other forensic facilities. She explained that the spray format required for full mapping presented a health risk. In hindsight, that would have been the way to go, she said, and as a result of this case, full mapping tools have been made available to every RCMP lab. That would have been a recommendation of my report because the missed opportunity to discover semen stains on the dress was preventable. But events have overtaken such a recommendation.

Alain recommended the Roche Diagnostics lab for AMPFLP DNA analysis. The conditions that lab required could not be met so Gaudette recommended waiting until PCR technologies were ready for casework.

However, as discussed earlier, the decision was made a short time later to have the exhibits tested in North Carolina. Alain sent the exhibits to Eisenberg of Roche Laboratories on March 27, 1992. When they were returned, Williams asked her to keep the exhibits until further notice which she did, in locked cold storage.

She turned over exhibits to the RCMP on July 7, 1997, and Kathryn Bowen took them to the Forensic Science Services lab in England, from where they were returned complete with cut out portions. It was a practice dating from the mid-1980s, said Alain, to retain stain material and return it to the sender. Had this been done by the Ferris lab, I conclude, the excised material from the panties could have been tested for DNA.

3. Successful DNA Results and the Missed Opportunity for Earlier Results

In 1997, the whole dress, as well as the panties, were tested by Michael Barber of the Forensic Science Services in the United Kingdom. He found semen on both which lead to successful DNA testing results.[30]

Barber provided responses to questions posed by the Commission in his letter dated September 26, 2006.[31] Commenting on what testing might have been done in 1988 and 1992, and upon the likely results, he said that in 1988 the only available technique was an RFLP based method known as multilocus profiling (MLP). It discriminated well but required much more sample than the later PCR based technology. There was adequate sample available in 1988, but given that some 20 years had passed since the sample deposition, it might have been too degraded to yield a result. It was noted in 1997 that there was significant degradation which STR technology, then in use, was able to overcome.

In 1992, casework methods available were an RFLP method known as single locus profiling (SLP) and a PCR based method, DQ Alpha. Again, SLP might have been precluded by degradation. DQ Alpha

29 Docid 335730 at 846.
30 Docid 231438, 231077.
31 Docid 340172.

however, is much more sensitive and targets much shorter sections of the DNA molecule. It is likely that DQ Alpha would have been successful in 1992 on both the panties and the dress.

The acid phosphatase screening method (mapping) over the whole surface of the items being tested was used to discover the semen, and was standard practice in the Forensic Science Services for many years – well prior to 1988.

Barber was asked to describe the earliest points in time that successful DNA testing on the exhibits could have been conducted by various methods. His response, which I accept, is quoted in full.

> Question d)
>
> *Given your examination of the exhibits in 1997, what is your opinion as to the earliest point in time when effective DNA testing could have been conducted on the exhibits, and by what methods and procedures?"*
>
> **My Response**
>
> The earliest DNA method available to us within the FSS that had a good chance of success, given our actual results in 1997, is DQ-alpha and this was introduced in early 1992. DQ-alpha is considerably less discriminating than either the MLP, SLP or STR methods but it is quite likely that it would have produced results suitable to show that the semen I found on the dress and panties was not David Milgaard's. Whilst it is quite likely that the DQ-alpha test would have unequivocally eliminated David Milgaard as a source of the semen, its power to provide positive evidence of association with Larry Fisher was limited. The chance that DQ-alpha would produce a coincidental match between unrelated samples is between 1 in 5 and 1 in 50.
>
> I am unable with any confidence to assess the likelihood that either of the RFLP methods (MLP or SLP) would have produced either part of a profile or a complete profile. SLP was a little more sensitive than MLP and would have stood a slightly better chance. MLP was first used in our organization in 1985 but was not introduced as a routine technique until 1987. SLP was introduced in 1990.
>
> Within the FSS the earliest example of a highly discriminating PCR based method was an STR method known as Quad that became available for use in casework in August of 1994. Had the Quad test been conducted in 1994 it is very likely that results would have been obtained from both the semen on the panties, and on the dress. Typically, with Quad, the chance of a coincidental match is around 1 in 10,000, hence, it was powerful enough to produce very strong evidence of association.
>
> The next development within the FSS happened in 1996 and it was the introduction of the method that was used in this case.

From that, I conclude that had the Forensic Science Services lab tested the then available, but unknown semen on the panties and dress in 1992, Milgaard could have been excluded and Fisher implicated within limits of one in fifty by DQ Alpha testing. No finding is possible for other methods in 1992 because of possible degradation.

In 1994, the STR method, Quad, was available in August. It could have very likely produced a result on samples from both the panties and the dress which would have shown strong evidence of association with Fisher. 1996 saw the introduction of the methods which succeeded in 1997.

Anne-Elizabeth Charland of the RCMP lab did additional DNA work in 1997.[32] I find that her letter dated September 14, 2006[33] discloses no disagreement with Barber's findings.

Because of Alain's failure to find the full extent of the semen staining on the victim's clothing, information did not, although it should have, come to the attention of the police or authorities which should have caused them to reopen the investigation into the death of Gail Miller. The further staining was missed because the Ottawa RCMP lab was not equipped to the standard needed to employ the full mapping technique.

4. Further Delay Arising from Negotiations Between 1995 and 1997

A further area of interest to the Inquiry concerned the time occupied by the parties in deciding where and how the DNA testing should be performed.

There was consensus between Saskatchewan Justice and Justice Canada by 1992 on the desirability of DNA testing.[34] But it could not be done with the only known sample, which was microscopic, without completely using it. Thus, all concerned decided to wait for the development of more effective DNA analysis techniques.

Ronald Fainstein of Justice Canada was instrumental in obtaining the original exhibits from the trial as well as bodily fluid samples from Milgaard and Fisher, and keeping them in federal hands. As mentioned, Saskatchewan was thus precluded from conducting its own testing. Brown testified that had the matter been left in their hands, they would have pursued a DNA result as early as possible.[35] However, the matter was left with Justice Canada who believed that the Attorney General of Canada had continuing jurisdiction to deal with this issue under s. 749 of the *Criminal Code* (nothing should compromise the royal prerogative of mercy).

As Fainstein put it:[36]

> My view was that the result of the reference was that Milgaard was released from prison but he was not exonerated, there was a great cloud over the situation, and if it were possible for science to give us the answer as to who, in fact, was Gail Miller's assailant, then it was certainly something that should be pursued in the public interest, and consistent with my understanding of the ambit of the royal prerogative of mercy, and without even necessarily the need for a further 690 application or something to that effect, it was just something that had to be done.

I find that it was reasonable of Saskatchewan to leave the carriage of the DNA investigation in the hands of Fainstein.

32 Docid 339762.
33 Docid 339765.
34 Docid 002663, 334337 and 334382.
35 See Brown's evidence at T37662.
36 T39784.

After contact with Milgaard counsel in January of 1995,[37] Fainstein took advice from Fourney and learned that STR methods had progressed, and that effective testing might be possible using the small remaining stain.

Fainstein told the Inquiry that even if Milgaard counsel had not called, he would have spoken with Fourney (from time to time) and learned of the now effective STR testing. There is no question, however, that the inquiry from Milgaard counsel set in motion a two year course of negotiation with Justice Canada which culminated in the successful 1997 DNA typing in the United Kingdom.

The long discussion between the parties as to the appropriate method of testing (the Milgaard group favored DQ Alpha and Justice wanted STR) was colored by the misperception that only a minute stain of material existed.

The parties realized at the time that DQ Alpha testing could lead to an exclusion of Fisher or Milgaard, or both, as the donor of the semen but could not provide for a positive identification. In practical terms, if Milgaard was still identifiable as a potential donor following DQ Alpha testing, he could still argue that he was only one of thousands who might have donated the semen. If, however, he was excluded as the donor, the result would be much more favourable. According to Fainstein, this limitation accounted for the Milgaard group's preference for DQ Alpha testing. It would allow them "wiggle room" in dealing with the results.

The DNA typing effort which had begun in earnest in 1995 continued for two years until its successful conclusion in the summer of 1997. There was a dispute between the Milgaard counsel on the one hand and Fainstein and Brown on the other, as to what type of tests should be used and who should conduct them.

Fainstein explained to the Inquiry that following his initial proposal in March, 1995, as detailed below, nine months passed before the Milgaard scientific adviser, Blake, sent a letter. Blake, and Milgaard counsel, favoured DQ Alpha testing while Fainstein and Fourney wanted PCR based STR's, the method finally used successfully in the United Kingdom to get the Fisher match. The RCMP laboratory could have done the testing, but that force had done Flicker, and some members had strong views on the identity of the perpetrator, so for the sake of appearances, the United Kingdom laboratory was chosen. But failure to reach agreement on the test to be done meant that it could not occur in 1995.

A Long Island laboratory (Dr. Ballantyne) was put forward as an alternative to the United Kingdom. Fainstein says that they never intended to preclude a Milgaard expert as an observer and would have paid his expenses and professional fees. But Milgaard counsel, he says, was adamant that Blake participate hands-on in the testing. The laboratory would have declined to test on this basis.

Fainstein says he tried to make the point, how would it look if a Fisher match was obtained with the help of an expert for a party adverse in interest? There was further disagreement about the material to be tested.

A measure of the disagreement between the parties was the fact that Milgaard counsel and Blake feared that if David Milgaard's known sample was tested first, the result might be slanted in favour of a Milgaard match.

Fainstein was a credible, expert and reliable witness. I accept his evidence.

37 T39853.

Saskatchewan Justice, although not taking the lead in the DNA testing negotiations, was kept informed and consulted. Brown had urged Williams to DNA test all human tissue samples found at the scene or on the victim's clothing.

Fourney wrote to Fainstein on March 16, 1995,[38] with suggestions for further DNA testing. A small fraction of the DNA extracted from the panties by the Roche Medical lab had been saved, and one half of the remaining unextracted semen stain on the panties was available. It was critical that the best available test be used because the remaining sample would likely be consumed. This test was PCR based short tandem repeats (STRs), favored by both the RCMP laboratory and the United Kingdom Forensic Science Service.

It had great power of discriminating, allowed for better interpretation of mixed biological samples and worked extremely well on old or badly degraded biological exhibits. Fainstein circulated this advice to counsel urging testing in the United Kingdom.[39]

In a letter to Fainstein dated April 7, 1995,[40] Brown stated his choice of DNA testing (PCR based STR analysis) for what I find were cogent reasons.

By October 1995, Fainstein was still waiting for Blake's report.[41] Finally, Blake reported, for the first time, his concerns to Fainstein on December 4, 1995.[42] Blake's recommendations included a thorough examination of all exhibits for sample material.

Fourney gave a detailed response dated April 18, 1996[43] having solicited expert views, three of them from scientists who worked on the Morin case. The conclusion was to use STR, not DQ Alpha.

Brown and Fainstein talked by phone a number of times. Fainstein wrote on April 22, 1996 to Brown, as well as counsel for Milgaard and Fisher, enclosing Fourney's advice about STR testing and saying that he would proceed with it, with the consent of all.

Brown did not trust the Milgaard group about anything, and relied on Fourney's advice to use the most discriminating test available. Brown favored STR testing at the RCMP lab and only reluctantly agreed to use the British Home Office lab. Brown agreed that a re-examination of Gail Miller's clothing should take place.[44]

The discussions continued until an agreement was finally reached in April, 1997[45] on the testing method and protocol to be used.

Of interest is Brown's briefing note[46] on the issue of why it had taken so long to get DNA testing underway. The reasons he gave were the minute quantity of known sample available, unsuitable for testing in 1992, and the time consuming negotiations with the Milgaard lawyers about testing methods.

38	Docid 032751.
39	Docid 032749.
40	Docid 289651.
41	Docid 106901.
42	Docid 268709.
43	Docid 230508.
44	Docid 032676.
45	Docid 289554.
46	Docid 032431.

5. Conclusions

I find that no DNA based information came to the attention of Saskatchewan Justice or the police between 1992 and 1997 which should have caused them to reopen the investigation into the death of Gail Miller. The Province was right to rely upon Fainstein and RCMP experts, whose view of the correct testing methods eventually prevailed and yielded the result in favour of Milgaard.

A corollary question is whether information should have come to the attention of Saskatchewan Justice or the police which should have caused them to reopen. The answer to that is a qualified yes. Semen stained material on the victim's panties was wasted in the Ferris lab, and further semen staining on the victim's clothing was missed by the RCMP analyst Alain. These materials, if tested by methods available in 1992, might have caused authorities to reopen the case earlier.

The information could also have come sooner had the parties been able to agree promptly on the testing method to be used. The ultimately successful method used was STR testing which Fainstein had favoured all along. Fainstein was not responsible for the delay, nor was Saskatchewan Justice.