*Commission of Inquiry*

*Into the Wrongful*

*Conviction of David Milgaard*

*before*

*THE HONOURABLE MR. JUSTICE*

*EDWARD P. MacCALLUM*

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

<u>Transcript of Proceedings</u>

and

Testimony before the Commission

sitting at the

Sheraton Cavalier Hotel at

Saskatoon, Saskatchewan

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

On Tuesday, February 22nd, 2005

Volume 20

<u>Inquiry Proceedings</u>

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## *Appearances*:

*Mr. Hersh Wolch, Q.C.,*        **for** Mr. David Milgaard

Mr. James Lockyer,        **for** Ms. Joyce Milgaard

*Ms. Lana Krogan*,        **for** Government of Saskatchewan

*Ms. Catherine Knox*,        **for** Mr. T.D.R. (Bobs) Caldwell

*Mr. Jay Watson, Esq.,*        **for** Mr. Serge Kujawa

*Mr. Rick Elson, Esq.,*        **for** the Saskatoon Police Service

*Mr. Aaron Fox, Q.C.,*        **for** Mr. Eddie Karst

*Mr. Bruce Gibson*,        **for** the RCMP

   and *Ms. Rochelle Wempe,*

*Mr. Brian A. Beresh, Esq.,* **for** Mr. Larry Fisher

*Mr. David A. MacLeod, Esq.,* **for** Ute Maria Frank

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1          ***Transcript of Proceedings***

2              *(Reconvened at 10:00 a.m.)*

3          COMMISSIONER MacCALLUM:  Good morning.

4          ALL COUNSEL:  Morning, My Lord.

10:04   5          COMMISSIONER MacCALLUM:  Mr. Wolch?

6     **UTE MARIA FRANK**, continued:

7     **BY MR. WOLCH:**

8     **Q**      Ms. Frank, I'm Hersh Wolch, I'm counsel for David

9            Milgaard and I have a few questions for you.

10:05  10                        I would like to start by

11           referring to a particular document, 277626, I

12           think you saw this yesterday.  Now I appreciate

13           that you didn't author this document but,

14           obviously, you instructed Katherine Broekhuizen to

10:05  15           contact the department of the attorney general?

16    *A*      No, I would not say that's correct, she took this

17           upon herself.

18    **Q**      Well, are you saying that it was not your idea

19           that she contact them at all?

10:05  20    *A*      What I will say is we had a conversation about it,

21           and she knew I was very upset, and she -- she

22           wanted to do this.

23    **Q**      Okay.  And why were you upset at that time?

24    *A*      Because I did not want to be -- I didn't want to

10:06  25           be subpoenaed, I didn't want to go.

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|   |   |   |
|---|---|---|
| 1 | Q | Okay.  Had you been subpoenaed? |
| 2 | A | Yes. |
| 3 | Q | And subpoenaed to do what? |
| 4 | A | To testify at the Larry Fisher trial. |
| 10:06 5 | Q | Had the subpoena come to you as a surprise or had |
| 6 | | you had some forewarning that it was coming? |
| 7 | A | I had had some forewarning in the measure that I |
| 8 | | had become aware that my family had been receiving |
| 9 | | some phone calls and I had a private investigator |
| 10:06 10 | | show up at my door. |
| 11 | Q | And who did you understand him to be acting for? |
| 12 | A | I understood him to be acting for -- he was |
| 13 | | employed by Brian Beresh. |
| 14 | Q | And who was representing Larry Fisher? |
| 10:06 15 | A | Correct. |
| 16 | Q | And you were interviewed by him; or were you? |
| 17 | A | By? |
| 18 | Q | The private investigator? |
| 19 | A | I had a conversation with him, yes. |
| 10:07 20 | Q | Okay.  And did you take it from the conversation |
| 21 | | that you would likely be a witness at a trial? |
| 22 | A | Yes.  And I informed him that I did not wish to |
| 23 | | be. |
| 24 | Q | And did you leave it at that or did you elaborate |
| 10:07 25 | | on that? |

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|       |    |   |                                                        |
|-------|----|---|--------------------------------------------------------|
|       | 1  | A | I think that the -- are you talking about Brian         |
|       | 2  |   | Beresh or the private investigator?                    |
|       | 3  | Q | The private investigator; did you simply say "I         |
|       | 4  |   | don't want to be a witness" or did you say more         |
| 10:07 | 5  |   | than that?                                             |
|       | 6  | A | I don't remember my entire conversation with him,       |
|       | 7  |   | but he was well aware that I did not want to            |
|       | 8  |   | participate.                                           |
|       | 9  | Q | And did you have any conversations with                 |
| 10:07 | 10 |   | Mr. Beresh, --                                          |
|       | 11 | A | Oh --                                                  |
|       | 12 | Q | -- in and around that time, before the phone call       |
|       | 13 |   | to the attorney general?                               |
|       | 14 | A | I don't recall, but I know I had them after, yes.       |
| 10:07 | 15 | Q | Okay.  And you would have let the paralegal know        |
|       | 16 |   | that it was Larry Fisher's lawyer that was calling      |
|       | 17 |   | to have you testify?                                   |
|       | 18 | A | I -- all I -- she was aware that it was Brian           |
|       | 19 |   | Beresh, yes.                                           |
| 10:08 | 20 | Q | Now that -- try to just listen to my question.         |
|       | 21 |   | You let her know that it was Mr. Beresh who was         |
|       | 22 |   | asking you to come to court?                            |
|       | 23 | A | Correct.                                               |
|       | 24 | Q | And I'm a little bewildered as to why a telephone       |
| 10:08 | 25 |   | call would go to the attorney general's department      |

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1          to say you didn't want to go to court?

2    A     I don't remember the circumstances.  It was a long

3          time ago.  For some reason, Katherine called

4          there.

10:08  5    Q     Now you were in the room when she was talking?

6    A     Correct.

7    Q     And what she was saying would be important to you?

8    A     I suppose so.

9    Q     And, according to this note, she was saying that

10:09  10         you will be a hostile witness for the defence?

11   A     Because I did not want -- I was upset that I was

12         being used as a defence witness in the trial of a

13         rapist whom I did not know, had nothing to do

14         with, had never heard of before.

10:09  15   Q     But what did you want the prosecutor to do about

16         that?

17   A     I just wanted -- I was -- at the time I was just

18         trying to find a way out of the subpoena, I did

19         not want to go, period.

10:09  20   Q     And you said that -- or you had her say that you

21         wanted to switch sides; what was meant by that?

22   A     I have no idea.  I don't remember.

23   Q     Well the note says that you will say that Milgaard

24         told her that he killed Miller; how would that

10:09  25         deter Beresh from calling you?

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1   A    I have no idea.  I don't know what the person who

2        wrote this note was hearing, I -- sorry, I don't

3        remember.

4   Q    Okay.  But it was, it was done on your behest?

10:10  5   A    Yes.

6   Q    And you were upset because you were going to be

7        testifying for Larry Fisher?

8   A    Well, I was upset that I was being brought into

9        this again and -- and that -- that they were

10:10  10       trying to use me to benefit him.  I didn't know

11       this man.

12   Q    Well do you have to know somebody to come to court

13       and tell the truth?

14   A    No.

10:10  15   Q    What difference would it make if you knew the man,

16       or not, if your obligation is simply to come and

17       tell the truth?

18   A    Well, you know, when you put it that way it sounds

19       a little different, but in my case, I did not want

10:10  20       to relive any of this again.

21   Q    Did you tell Mr. Beresh that?

22   A    Yes, oh yes, many times.  He was well aware of

23       that.

24   Q    Did you also tell him you were going to talk about

10:11  25       David having a syringe in his hand and David

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|  |  |  |
|---|---|---|
| 1 |  | threatening to kill you? |
| 2 | A | That did come up, yes. |
| 3 | Q | So you told him that? |
| 4 | A | At some point. |
| 10:11 5 | Q | And -- |
| 6 | A | I believe that was after I arrived in Yorkton. |
| 7 | Q | Okay.  So you told him you were going to be even |
| 8 |  | more damning towards David than you ever had been; |
| 9 |  | correct? |
| 10:11 10 | A | That's not the way I would put it. |
| 11 | Q | Well you had never talked about the syringe in the |
| 12 |  | hand before, you had never talked about being |
| 13 |  | threatened, the threats to kill, and you say you |
| 14 |  | didn't want to come to court; how would that |
| 10:11 15 |  | discourage Mr. Beresh? |
| 16 | A | Well, nothing would have discouraged Mr. Beresh, |
| 17 |  | but I was in the position where I was trying |
| 18 |  | anything.  I just didn't want to go and I was |
| 19 |  | putting -- I would have done anything to have not |
| 10:12 20 |  | gone, just like I would have done anything to have |
| 21 |  | not come here, also. |
| 22 | Q | Or back in 1970? |
| 23 | A | Correct. |
| 24 | Q | So, at all times, you didn't want to go to court? |
| 10:12 25 | A | Correct.  You are right on that point. |

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1    Q    But I'm just trying to understand, if you are

2         trying to discourage Mr. Beresh from calling you

3         to help his client, why would you add more damning

4         evidence against David?

10:12  5  A    That didn't come out until Yorkton.  There was no

6         more trying to get out of it.  I had received the

7         subpoena and there was no way that I could say no

8         any more; correct?

9    Q    Okay.  Just on the words "wants to switch sides";

10:13  10        do you consider, as a witness, you're on

11        somebody's side?

12   A    I'm either, I have been either for the prosecution

13        or the defence, so I guess in that respect there

14        are sides.  But, no, all I know is I have been

10:13  15        subpoenaed every time.

16   Q    Okay.  Now let's go back to the motel incident

17        and, before I proceed on some questions, just can

18        you clarify one feature for me; is it your

19        position that Debbie Hall was or was not there at

10:13  20        the important times?

21   A    What are "the important times?"

22   Q    Obviously when, supposedly, David Milgaard spoke

23        about, well, the thing on TV, and what followed

24        that.

10:13  25   A    You mean about when he was talking about killing

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1    Gail Miller?

2  **Q**    Yes, when he was joking about Gail Miller, was

3    Debbie Hall there or not?

4  *A*    I did not see her there.

10:14  5  **Q**    Are you saying she wasn't there?

6  *A*    I did not see her there.

7  **Q**    Well, what is that, is there a difference between

8    not seeing her there and her not being there?

9  *A*    The difference being that, at the time, I was very

10:14  10    -- my total attention, as what was given, was on

11    David Milgaard and what was happening.  That's

12    what that means.  I wasn't scanning the room at

13    the time, my eyes were fixated on him.

14  **Q**    So her evidence that she may have been there could

10:14  15    be true; is that correct?

16  *A*    Umm, there is a small, very small chance that she

17    might have seen part of it, but if it was such a

18    big joke to her, why did she leave?  That's --

19    because I guarantee you, when it was over, she was

10:14  20    not there.

21  **Q**    Well we'll come back to that.  In any event, you

22    say that after the incident a week or so -- and

23    you can correct me -- you and Debbie and Melnyk

24    and Lapchuk went to Alberta?

10:15  25  *A*    Correct.  Now I'm not sure if it was a week, two

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1    weeks, I'm not sure of the time frame but it was

2    shortly after.

3  Q  And if -- and Debbie Hall, you are aware, says she

4    didn't go?

10:15  5  A  I'm am aware of that.

6  Q  And you say, adamantly, she went?

7  A  She definitely was there.

8  Q  And your purpose in going there was to do what?

9  A  The reason that I wanted to go to Edmonton was to

10:15  10    visit Sharon Williams, who had moved to St.

11    Albert, because I wanted to inform her of that

12    event because he regularly visited with her.

13  Q  Okay.  So did you say "inform her" or "warn her"

14    or what was --

10:16  15  A  Warn her, inform her, I wanted her to be aware of

16    what had transpired.

17  Q  That was important that she know that as soon as

18    possible?

19  A  Yes.  I thought so.

10:16  20  Q  But it took you several weeks to get there?

21  A  It took me a while to get there, yes.

22  Q  Why didn't you just phone her?

23  A  Well, because I was living at home at the time,

24    and long distance calls would have been

10:16  25    questioned.

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| | | | |
|---|---|---|---|
| | 1 | Q | Your parents would have questioned long distance |
| | 2 | | calls? |
| | 3 | A | Oh, absolutely. |
| | 4 | Q | And that's your reason for not phoning her? |
| 10:16 | 5 | A | And I had no privacy in those phone calls.  The |
| | 6 | | phone was in the living room. |
| | 7 | Q | And there are no pay phones you could go to? |
| | 8 | A | I didn't have access to money. |
| | 9 | Q | Well you had enough money to go on a trip? |
| 10:17 | 10 | A | I -- that didn't involve any money. |
| | 11 | Q | You had, you say you had absolutely zero money? |
| | 12 | A | I maybe had a dollar or so in my pocket. |
| | 13 | Q | So, if I understand it, it would -- you didn't |
| | 14 | | phone her because you couldn't afford the cost of |
| 10:17 | 15 | | a long distance call to warn her of something this |
| | 16 | | important? |
| | 17 | A | No, I was -- did not want my parents to overhear |
| | 18 | | or get any wind of what was going on, because then |
| | 19 | | I would have received a beating. |
| 10:17 | 20 | Q | But you were willing to stay up all night and do |
| | 21 | | drugs? |
| | 22 | A | Uh-huh. |
| | 23 | Q | Surely, that's more serious than making a phone |
| | 24 | | call to a girlfriend, in terms of what your |
| 10:17 | 25 | | parents might react? |

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|       |    |   |                                                     |
|-------|----|---|-----------------------------------------------------|
|       | 1  | A | Not in my eyes in those days.                       |
|       | 2  | Q | And a phone call to a friend would cause more       |
|       | 3  |   | grief with your parents than running around doing   |
|       | 4  |   | drugs and all sorts of quite wild behaviour?        |
| 10:18 | 5  | A | Well, they didn't know that, did they.              |
|       | 6  | Q | Well you were coming home at 7:00 in the morning?   |
|       | 7  | A | Well, they didn't know that either.                 |
|       | 8  | Q | They weren't watching you that closely?             |
|       | 9  | A | No.                                                 |
| 10:17 | 10 | Q | You never considered writing her a letter?          |
|       | 11 | A | No.                                                 |
|       | 12 | Q | Now, if I understand your evidence correctly, the   |
|       | 13 |   | four of you were in the vehicle, you've just        |
|       | 14 |   | experienced the second most traumatic event in      |
| 10:18 | 15 |   | your life and nobody talked about it?               |
|       | 16 | A | That's correct.                                     |
|       | 17 | Q | Not a word?                                         |
|       | 18 | A | Not that I can remember.  That was quite normal.    |
|       | 19 | Q | It was a long drive?                                |
| 10:18 | 20 | A | It was several hours, yes.                          |
|       | 21 | Q | Well, from one province to another.                 |
|       | 22 | A | It was a long drive, yes.                           |
|       | 23 | Q | And plenty of time to have all kinds of             |
|       | 24 |   | conversation?                                       |
| 10:18 | 25 | A | Uh-huh.                                             |

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 1   Q      And here you've just been through a terribly

 2          traumatic event, three and maybe four of you, and

 3          nobody is talking about it?

 4   A      That's correct.

 5   Q      Now, having arrived in Alberta -- and you got

 6          together with Sharon Williams?

 7   A      Yes.

 8   Q      And I take it what you are telling her about what

 9          occurred in the motel would definitely stand out

10          in your mind?

11   A      I remember telling her, I remember meeting with

12          her, telling her, but I do not remember much of

13          that conversation, sorry.

14   Q      Well, you had gone all that way with this purpose

15          in mind?

16   A      Uh-huh.

17   Q      And it was certainly something very unusual?

18   A      Uh-huh, and then I spent a lot of time trying to

19          forget about it all.

20   Q      You went all that way to tell her and to forget

21          it?  I don't quite follow.

22   A      I spent years afterwards trying to forget it.

23   Q      But telling Sharon is not the incident, that's an

24          important event in your life, this is your

25          girlfriend.
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10:18  5
10:19 10
10:19 15
10:19 20
10:19 25

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1    *A*    I just wanted to warn her and then I moved on.

2    **Q**    But did you warn her?

3    *A*    Yes.  We talked about it.

4    **Q**    Well, did you specifically warn her?

10:19  5    *A*    I told her about what happened.  That's all I

6          remember.  I told her what happened.

7    **Q**    You told her about the motel incident?

8    *A*    Yes.

9    **Q**    And did she know about David being investigated by

10:20  10          the police or did this come as a surprise to her?

11    *A*    I honestly can't remember.

12    **Q**    Well, surely you would remember if it was a

13          complete shock, like, "what are you talking

14          about," or whether she said, "oh, I'm sorry, I

10:20  15          know all about the police in this thing"?

16    *A*    I'm sorry, I can't remember.

17    **Q**    You can't remember if she was shocked,

18          surprised --

19    *A*    No.

10:20  20    **Q**    -- what reaction she had?

21    *A*    No.  Sorry.  It was a long time ago.

22    **Q**    So let's be clear.  Nothing in your mind about any

23          reaction on her part?

24    *A*    Nothing that jumps out at me, no.

10:20  25    **Q**    And this would have been probably in May or June?

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1    *A*    I suppose so, yes.

2    **Q**    Do you recall if Sharon told you she had been

3          spoken to by the police back in March?

4    *A*    No, I don't recall.

10:21  5    **Q**    So you don't recall Sharon saying "look, the

6          police talked to me several months ago, I gave

7          them a statement"?

8    *A*    No, I can't recall any --

9    **Q**    No memory of that at all?

10:21  10   *A*    No.  Sorry.

11   **Q**    Now, as I understand it, you went out to British

12         Columbia after that?

13   *A*    Correct.

14   **Q**    And I think you said you were selling the Georgia

10:21  15         Strait newspaper for a while?

16   *A*    Correct.

17   **Q**    And then you decided to come home?

18   *A*    Correct.

19   **Q**    And I didn't quite follow, when you got home the

10:21  20         police were on your door step or very quickly

21         there?  I didn't follow you.  Help me with that.

22   *A*    When I returned home it was a short period of

23         time, I don't -- I don't know whether it was a

24         day, two days, three days, a week, but it was

10:21  25         shortly after I returned home that the police --

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|       |    |   |                                              |
|-------|----|---|----------------------------------------------|
|       | 1  |   | they weren't standing on my door step when I got |
|       | 2  |   | home, they walked -- I was in my house at that |
|       | 3  |   | time and they came, walked up the walk, walked up |
|       | 4  |   | the steps and rang the door bell. |
| 10:22 | 5  | Q | Okay.  But it was within a short time? |
|       | 6  | A | Yes, it was a short period of time. |
|       | 7  | Q | You hadn't gone to the police? |
|       | 8  | A | Uh-uh. |
|       | 9  | Q | Had you shared your story with anybody? |
| 10:22 | 10 | A | Only the people initially involved in the |
|       | 11 |   | beginning. |
|       | 12 | Q | Who is that? |
|       | 13 | A | Well, everyone that was there, Craig, George, |
|       | 14 |   | Sharon.  If you mean did I share it with my |
| 10:22 | 15 |   | family -- |
|       | 16 | Q | Well, I thought you hadn't talked to George or |
|       | 17 |   | Craig on that whole trip about the incident. |
|       | 18 | A | No, but they were there when it happened. |
|       | 19 | Q | I'm talking about you are back in town let's say, |
| 10:22 | 20 |   | who did you talk to, if anybody, prior to the |
|       | 21 |   | police about the motel? |
|       | 22 | A | From the time I arrived home until they showed up |
|       | 23 |   | at the door? |
|       | 24 | Q | Yes. |
| 10:22 | 25 | A | I don't recall talking to anybody about it, no |

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1           one.

2    Q      But you say you were home for -- well, when did

3           you come home, what season?

4    A      It was fall.

10:23  5    Q      You are sure of that?

6    A      Yes.  I'm relatively certain of that.

7    Q      Do you know if it was September, October?

8    A      No, I don't.  It was fall.

9    Q      Well, the police came to see you in late January.

10:23  10          Were you aware of that?

11   A      Well, in January the trial began I believe; am I

12          not correct?

13   Q      Yeah, but your statement, I can find it, is dated

14          January 19th or 20th, something like that.

10:23  15   A      Well, that statement I believe was taken at the

16          court house or somewhere in Saskatoon here.

17   Q      Well, they came to see you at Regina?

18   A      Correct.

19   Q      And was that some weeks or months before you

10:23  20          actually gave the statement, written statement?

21   A      Well, when the police came that day, that was

22          sometime before the trial started, yes.

23   Q      But your actual signing of the statement --

24   A      Well, I don't remember where I actually signed the

10:24  25          statement.  I have no idea.  I know -- all I know

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1      is I talked to the police officers in the motel

2      room and I talked to people in the court house in

3      Saskatoon and I'm quite sure that the whole time

4      when I was talking to any, at any time on any of

10:24   5      those occasions people were writing things down.

6      I don't recall, I'm sorry, it was a long time ago

7      and I was extremely distressed at that point in

8      time.

9   Q   Well, what I'm getting at is your statement I

10:24  10      believe is dated January 19th of '70.

11   A   Okay.  That would have been at the court house in

12      Saskatoon.

13   Q   And was that a dictated statement by you or was

14      that a compilation of notes made earlier of a

10:24  15      previous interview?

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

17   Q   Okay.  Do you remember ever giving the police a

18      statement?

19   A   I have no idea.  I don't remember how they

10:25  20      acquired the statement, whether they were just

21      writing notes, whether they were -- I don't

22      remember, I'm sorry.  It was a long time ago.

23   Q   So they got a statement from you, but you are not

24      sure how they managed to record it, whether it was

10:25  25      questions and answers or how it came about?

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|       |     |    |                                                    |
|-------|-----|----|----------------------------------------------------|
|       | 1   | A  | No, I'm sorry, I don't remember.                   |
|       | 2   | Q  | But you know there was a statement, you've seen    |
|       | 3   |    | it?                                                |
|       | 4   | A  | Obviously, yes.                                    |
| 10:25 | 5   | Q  | And the interview in the motel by the police was a |
|       | 6   |    | very unhappy occasion for you?                     |
|       | 7   | A  | It was not an enjoyable experience, no.            |
|       | 8   | Q  | And that's because of their behaviour?             |
|       | 9   | A  | Partially, and partially it was because I was -- I |
| 10:25 | 10  |    | was terrified and trying to find how -- in my head |
|       | 11  |    | I can remember I was racing, like, "oh my God, how |
|       | 12  |    | do I get out of this, I don't want to talk about   |
|       | 13  |    | this, I don't want anything to do with this, I'm   |
|       | 14  |    | scared, leave me alone."                           |
| 10:26 | 15  | Q  | Okay, you were terrified.  They weren't accusing   |
|       | 16  |    | you of murder were they?                           |
|       | 17  | A  | No.                                                |
|       | 18  | Q  | Were they accusing you of anything?                |
|       | 19  | A  | They weren't accusing me of any crime, no.         |
| 10:26 | 20  | Q  | You weren't in the position as a 17 year old       |
|       | 21  |    | having police say you committed a murder or        |
|       | 22  |    | anything like that?                                |
|       | 23  | A  | No.                                                |
|       | 24  | Q  | You were just there?                               |
| 10:26 | 25  | A  | Correct.                                           |

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1    Q    And I would like to refer to the interview you had

2         in 1993 with officers Homeniuk and Gagne and the

3         particular page reference is 036357.  I think the

4         document starts at 354 if I have it right.  Now,

10:27   5    you recall in April of 1993 -- your attention was

6         taken to this document yesterday -- you were

7         interviewed by two members of the RCMP; correct?

8    A    Yeah, I -- yes.

9    Q    This would have been after the Supreme Court.

10:27   10   A    I don't recall whether it was before, after.

11   Q    Okay.  But when you were talking to the RCMP, it

12        was your intention to tell the truth was it?

13   A    Of course.

14   Q    Okay.  And at page 4 you are talking about the

10:27   15        police and the interview that you and I have been

16        talking about and you start off by saying:

17             "U. FRANK:  They were horrible.  They were

18             yelling.  One was yelling and screaming at

19             me a lot, calling me... telling me I was a

10:27   20             liar and a slut."

21        Is that true?

22   A    That's true.

23   Q    Now, you say they were calling you a liar?

24   A    Uh-huh.

10:28   25   Q    What did they accuse you of lying about?

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1    A    Because initially I said I didn't know anything

2         about this, I didn't know David Milgaard and they

3         began pulling out the -- I saw pieces, what looked

4         like the same document that I had signed,

10:28    5         statements from Craig and George and my name was

6         all over it, it was all over them.

7    Q    So they, before you made your statement, allowed

8         you to read the statements of Melnyk and Lapchuk?

9    A    No, they did not allow me to read it.

10:28    10   Q    What exactly did they do with it?

11   A    They just kind of pointed certain things out to

12        me.

13   Q    And based on what they were saying, you must be

14        lying?

10:28    15   A    Well, it obviously -- there was enough -- and I

16        remember they were throwing in all kinds of names,

17        so obviously there was enough people that were

18        saying I was there, and I was 17 years old at the

19        time and had no clue what my rights were and I was

10:29    20        not enjoying the experience.

21   Q    And then you go on to say you just turned 17.

22             "...they were saying some pretty grotesque

23             things.  And um.. they other guy, of course,

24             ... I mean I... I realize now that they were

10:29    25             playing a game, you know like the other guy

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1     was a nice guy and saying... but it was

2     pretty... and I remember, like when they

3     finally... you know, by the time they got

4     around to throwing statements at me, the one

10:29  5     guy... the nasty one said, you know, it's up

6     to you to decide how long you're going to

7     sit in this chair, but you're going to sit

8     here until you talk."

9         Is that what happened?

10:30  10     A   Yes.

11     Q   Just scroll down a bit more.

12     A   He told me it was up to me whether it was an hour

13         or longer.

14     Q   So what they were saying to you is until they get

10:30  15         what they want from you, you are going to sit

16         there?

17     A   Well, I would rephrase that, I would say until

18         I -- they felt that until I acknowledged my being

19         there, because they knew I was there.

10:30  20     Q   Can I just get this part down here, highlight it

21         to the bottom:

22             "R. GAGNE:  This gentleman that took a

23             statement from, his name is Eddie Karst

24         U. FRANK:  Yes, that rings a bell.

10:31  25         R. GAGNE:  Now, would that have the guy who

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1               was the good guy, or the bad guy who took

2               the statement?

3               U. FRANK:  I don't know, but he was one of

4               the officers in the room.  He was there."

10:31   5       Is that correct?

6       A       I guess so, but at this point in time, it was so

7               long ago you can't expect -- there's no way that I

8               can remember.  I don't even remember what they

9               look like.

10:31   10      Q       But you don't know if he's the one who was calling

11              you a slut and a liar or if he was the one being a

12              good guy or --

13      A       I have no idea.

14      Q       -- which?

10:31   15      A       I don't know.

16              COMMISSIONER MacCALLUM:  You have to make

17              sure that you wait until the question is finished

18              before you begin your answer.

19      A       Sorry.

10:31   20         BY MR. WOLCH:

21      Q       Thank you, sir.  You don't know whether he was the

22              good cop or the bad cop?

23      A       I don't remember which role he played, no.

24      Q       So I take it that once it was determined, in your

10:32   25              mind at least, that the unpleasantness and the

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1    sitting there was going to go on unless you gave a

2    statement, you gave a statement?

3  A    I just -- that's correct, I just wanted to get out

4    of there.  I just wanted it to be over.

10:32  5  Q    And you understood that they wanted information

6    that would help them solve a crime?

7  A    I suppose so.

8  Q    It was pretty obvious to you they wanted to know

9    if you could say something damaging to David?

10:32  10  A    I suppose so.

11  Q    You were aware that -- or were you aware from what

12    they told you that Lapchuk and Melnyk had done

13    that?

14  A    At that point in time I didn't know what Craig or

10:32  15    George had said because I didn't read their -- I

16    wasn't allowed to read their full statements.

17  Q    But it was clear to you that whatever happened in

18    the motel room was important enough for the police

19    to be there and having taken two statements from

10:33  20    other people?

21  A    I suppose that's a reasonable assumption.

22  Q    I mean, obviously there was something of

23    importance?

24  A    Correct.

10:33  25  Q    And you had known for a long time that David had

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1        been interviewed by the police?

2    A    Correct.

3    Q    And they were there in connection with David, you

4        knew that?

10:33    5    A    Yes, because what was one of the first questions

6        they asked me, if I knew him.

7    Q    And what happened in the motel room was obviously

8        what they wanted to know?

9    A    Correct.

10:33    10    Q    And they wanted to know if anything happened in

11        there that would incriminate David?

12    A    I suppose so, yes.

13    Q    So you knew that obviously?

14    A    Yes.

10:33    15    Q    That's what they wanted?

16    A    I suppose so, uh-huh.

17    Q    And you were scared?

18    A    Correct.

19    Q    And you made a statement -- if I can have 054371.

10:34    20        I'm going to refer to this copy.  There's another

21        one, the next number, but it's harder to read.

22    A    It's illegible.

23    Q    You saw it yesterday?

24    A    I've seen it before, yes.

10:34    25    Q    Okay.  Now, you say:

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1          "I had sexual relations with Hoppy and

2          several, about four capsules of T.H.C."

3     Okay.  Now, was that true?

4  *A*   I had sex with him and we did drugs, but at this

10:34  5      point -- I no longer remember -- I'm sorry, I no

6      longer remember how much I took.  To me that's not

7      an important little tidbit to hang onto, but I do

8      know that I tried to paint, create a picture that

9      I didn't know, that I was incapable of knowing

10:35  10     what was going on in that room, that is the

11     picture that I was trying to portray, which was

12     not true.

13  **Q**  Okay.  So four capsules of T.H.C. simply wasn't

14     true?

10:35  15  *A*   And the other thing, I did not know what the drugs

16     were.  That information came to me from those two

17     police officers in the motel room.  They were the

18     ones that -- I had no idea what it was.  I didn't

19     care what it was.  As long as I was numbed, I

10:35  20     didn't care.

21  **Q**  I'm sorry, the police told you what drugs you had

22     taken?

23  *A*   Yes.

24  **Q**  Did they tell you how much drugs you had taken?

10:35  25  *A*   No.  They just -- they put -- and I -- because at

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1    that time I just assumed that -- I didn't know how

2    they had known, but I just took their word for it.

3  Q  Did they appear to take it from Melnyk and

4    Lapchuk?

10:36  5  A  I don't know.  I don't know.

6  Q  I'm having a hard time understanding how they

7    could tell you what drugs you had.

8  A  You would have to ask them that.  I don't know.

9  Q  I wonder if we can see document 047416.  I think

10:36  10    it comes from 047353 I think.  You see at the

11    bottom of the page -- this is your evidence at the

12    Supreme Court.

13  A  Okay.

14  Q    "Q   Now, in your statement you say, your

10:36  15      first statement you say you took about

16      four capsules of THC."

17    And just turn the page, the next page, I asked

18    you if it was truthful.  You said no.

19    "Q   Why would you lie about that?

10:36  20    A   Because I didn't want to have anything

21      to do with this.  Because I was scared

22      and there were drugs there and they

23      told me those were the kinds of drugs

24      and so I just --"

25    Just keep going down.

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1          "Q   Who told you that?

2           A   The police.

3           Q   The police told you what kind of drugs

4               you had taken?

10:37  5           A   Yes.  I had no idea what kind of drugs

6               I had taken, until -- until the police

7               informed me."

8       Just go down.

9           "Q   They told you what kind of drugs and you

10:37  10              just accepted it?

11          A   Yes.

12          Q   And now you say it was different?"

13      Turn the page.

14          "A   Well, all I know is I don't know how

10:37  15              many tablets I had taken.  I could have

16              taken one, fifty, I don't know, but I

17              injected them.  They were injected into

18              my arm.  This arm.

19          Q   Had you previously in your life taken

10:37  20              drugs by that method, by needle?

21          A   Yes."

22      Now, when you gave those answers, were those

23      truthful?

24   A   Yes, although obviously it wasn't 50.  I would not

10:37  25      be sitting here probably if it was.

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1     Q     I understand that, but you were under oath and you

2           were endeavouring to tell the truth?

3     A     Yes.

4     Q     And has anything occurred to change your mind that

10:38  5           this was truthful?

6     A     No.

7     Q     So in actual fact, according to you, the truth is

8           you took a whole bunch of drugs and you don't even

9           know how much you took?

10:38  10    A     Well, at the time I wasn't counting them out, but

11          I do know that I wasn't -- I wasn't unconscious.

12          I could see things going on around me, I could

13          hear things, I could talk and I didn't imagine the

14          same thing that other people also saw.

10:38  15    Q     Well, we'll get to whether they saw what you saw,

16          but having said that, I'm just trying to

17          establish, according to your evidence, that this

18          was not your first time taking a needle to your

19          arm.

10:38  20    A     Correct.

21    Q     And the amount you took could have been any

22          amount, you have no idea how much you got and what

23          it was?

24    A     That's correct.

10:38  25    Q     But it was the police who told you how much to say

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|   |   |   |
|---|---|---|
| 1 |   | you took? |
| 2 | A | No.  I'm sure that I created that because it |
| 3 |   | sounded like -- that would be a lot. |
| 4 | Q | Okay.  I thought your evidence was the police put |
| 10:39  5 |   | it in your mind. |
| 6 | A | No, they told me what type of drug it was. |
| 7 | Q | And you invented the amount; is that right? |
| 8 | A | Correct. |
| 9 | Q | So the police said the drug you were taking was |
| 10:39  10 |   | this and you said I took this amount? |
| 11 | A | Correct. |
| 12 | Q | Okay.  The truth of the matter is you don't know |
| 13 |   | what drug you took and you don't know what |
| 14 |   | quantity of it you took? |
| 10:39  15 | A | I suppose that's correct, yes. |
| 16 | Q | Okay.  If I can go back to the statement, 054371, |
| 17 |   | you say in the statement, if you highlight this |
| 18 |   | portion here: |
| 19 |   | "I was quite stoned and sometimes wasn't |
| 10:40  20 |   | aware of what was going on around me." |
| 21 |   | That would be a true statement wouldn't it? |
| 22 | A | That was the picture that I was trying to paint at |
| 23 |   | that time because I didn't want to know what |
| 24 |   | was -- I didn't want them to know what I had seen, |
| 10:40  25 |   | I just wanted them to leave me alone.  I didn't |

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1           want to have to talk.

2      Q    Okay.  But you are aware that virtually everybody

3           else in the room says you were stoned that night?

4      A    Well, we all were.

10:40   5   Q    That's Lapchuk and Melnyk too?

6      A    I did not -- I was not paying attention, I was not

7           watching to see who took what, but we all did it,

8           so it's -- it was just a natural assumption.

9           That's what our whole -- we tried to get stoned as

10:40  10           often as possible, that's what every one of those

11           people did, so it was a natural assumption that

12           they also did.  Why else -- it was there, they

13           were there and I find it hard to believe that they

14           wouldn't have participated.

10:41  15   Q    So you wouldn't accept Lapchuk and Melnyk if they

16           said they weren't doing drugs that night?

17      A    Well, it's not whether I accept, I'm telling you

18           it would be hard to believe that they did not

19           participate.  Maybe they have some ulterior

10:41  20           motives for saying they didn't, I don't know, I

21           can't speak for them, but in -- I had known them

22           for several years and been with them many times

23           and I had seen it repeatedly, so I would find it

24           hard to believe that they did not participate.

10:41  25   Q    Okay.  And you say:

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1          "I was also hallucinating quite a bit."

2    A     Correct.  Well, that kind of invalidates my, oh,

3          that I was imagining things, that I didn't see

4          anything.  Would that not paint that kind of a

10:42  5          picture to you?

6    Q     We'll move on.

7              "I recall asking Hoppy if he killed that

8               nurse they were talking about and he just

9               looked at me and smiled oddly."

10:42  10         Now, is that true?

11   A     Yes.

12   Q     So you said to him "did you kill that nurse" and

13         he just looked at you and gave an odd smile?

14   A     Because earlier in the evening just before all of

10:42  15         this happened there had been -- there had been

16         some discussion about it, which I was -- I did not

17         participate in and so when it came -- I remember

18         saying something to him about it again, but to me

19         it was like a moot -- because he was there, he was

10:42  20         not under arrest, they had let him go and then the

21         news came on and everything changed.

22   Q     So it's your evidence that before the news came on

23         he was being bugged about Gail Miller?

24   A     I don't recall.  I wouldn't -- I wouldn't say

10:43  25         bugged, but I do recall that the conversation had

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1        come up, yes.

2    Q    So before the news the issue of Gail Miller had

3        arisen in that room?

4    A    Yes.

10:43  5    Q    And --

6    A    It came up quite regularly.  I mean, he had been

7        arrested for it.  It was on the news all the time.

8    Q    So was he getting bugged all the time?

9    A    I don't know.

10:43  10    Q    No, from your observation, not -- I'm only

11        interested in what you saw.  In your presence was

12        he getting bugged on a regular basis?

13    A    I remember it being brought up a few times, but I

14        can't tell you how -- if it was -- but I wasn't

10:43  15        with him on every single day.

16    Q    Okay.  But in the motel room it was brought

17        up before --

18    A    Yes.

19    Q    Wait for my question.

10:44  20    A    Yes.

21    Q    It was brought up before the news came on?

22    A    Yes.

23    Q    And is that when he gave you this odd look?

24    A    Yes.  He just kind of smiled, like, that smug --

10:44  25        you know, like when somebody does when they are

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1    maybe annoyed or they don't want to -- like, I

2    don't know.  I don't know what was going on inside

3    his head.  I can't speak for him.

4  Q  But what I'm getting at is that by the time the

10:44  5    news came on, it may very well be that he was

6    totally fed up with being bugged?

7  A  I don't know.  I can't speak for him.

8  Q  But you can say that the TV thing was not the

9    initiator, it was done earlier?

10:44  10  A  That, I'm sorry, I cannot form an opinion on that.

11  Q  Well, you had asked him earlier, you just told us

12    that, it's right in your statement.

13  A  I know, but I wasn't bugging him about it, I

14    wasn't harassing him about it.

10:45  15  Q  Well, but asking somebody if he killed somebody is

16    somewhat of an annoying question would you not

17    think?

18  A  I suppose that some people might, but he seemed to

19    treat it like it was humorous.

10:45  20  Q  He took it as a joke until finally he got

21    exasperated?

22  A  I don't know.

23  Q  Isn't that what happened?

24  A  I don't know.  I can't crawl into his skin, sorry.

10:42  25  Q  In any event, this is what you told the police,

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1        and they were interested in anything regarding the

2        nurse; right?

3     A  Regarding the what?

4     Q  The nurse and the murder, that's what they --

10:46  5     A  Yeah, okay, you mean Gail Miller?

6     Q  Yes.

7     A  Yes, of course.

8     Q  Why, if you didn't want to say anything, why

9        wouldn't you just stop and say "I was stoned and I

10:46  10        don't know"?

11     A  I don't know.  I don't remember.  I don't remember

12        the whole entire conversation, sorry, it was so

13        long ago.  Oh my.

14     Q  In any event, very shortly after this statement,

10:46  15        you went to Saskatoon to the -- to David -- I'm

16        sorry -- after the statement, I mean, you went to

17        Saskatoon to testify at the trial?

18     A  Yes.

19     Q  And you met with the prosecutor?  I'm sorry, I

10:47  20        need a verbal answer.

21     A  Yes, I -- yes.  Yes.  I don't --

22     Q  And it's unclear to me whether you met with police

23        or didn't meet with police at the courthouse?

24     A  I met, I remember there was people that came in

10:47  25        and out of that room, but for the life of me at

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1    this, at this point in time I don't know who they

2    were, I couldn't tell you if they were police

3    officers, I don't remember.  It was a long time

4    ago.

10:47  5    Q    Do you know whether you talked to David's lawyer

6         or not, somebody --

7    A    I --

8    Q    Let me finish the question, please -- somebody who

9         would have come up to you and introduced himself

10:48 10         as David's counsel and wanted to speak to you

11         about your testimony?  Is there anything in your

12         mind -- and I don't want you to speculate --

13         anything in your mind about such a meeting?

14    A    No, I don't, I don't recall.

10:48 15    Q    But you do remember speaking to the prosecutor?

16    A    Yes.

17    Q    And if we can go to 310515, I'm not sure what the

18         first number is, this would be -- that was very

19         quick -- this would be your testimony at Larry

10:48 20         Fisher's trial.  Now, as I understand it, at Larry

21         Fisher's trial Mr. Beresh called you as a witness,

22         and you testified in what is a trial within a

23         trial, but you never did testify in front of the

24         jury?

10:49 25    A    Correct.

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1    Q    Okay.  So this is the trial within the trial to

2         see if you could be a witness in front of the

3         jury?

4    A    Correct.

10:49    5    Q    You understood that?

6    A    Yes.  I came to understand that.

7    Q    Okay.  And Mr. Johnston, the prosecutor, asked you

8         a few questions on this page, and you were under

9         oath at the time; correct?

10:49    10    A    Yes.  Yes.

11    Q    And you were telling the truth as you knew it?

12    A    As you knew it, yes, as I conceived it at the

13         time, yes.

14    Q    Okay.  And if we can just highlight this part for

10:49    15         a starter, this is referring to Mr. Caldwell:

16              "Q   Are you suggesting to us you told him

17                   more than what was in this statement?

18               A   All I told him was I did not want to

19                   testify, I was afraid, he said he

10:49    20                   would kill me.

21               Q   That's not the question I asked you, Ms.

22                   Frank.

23               A   Well, I'm --

24               Q   Listen to my question, please.  Are you

10:50    25                   testifying here under oath that you told

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|         |    |                                               |
| ------- | -- | --------------------------------------------- |
|         | 1  | the prosecutor in the original Milgaard        |
|         | 2  | trial what you have told us today?             |
|         | 3  | A    Could you repeat that question again,      |
|         | 4  | please.                                         |
| 10:50   | 5  | Q    Are you testifying here under oath that     |
|         | 6  | you told the prosecutor in the original         |
|         | 7  | Milgaard trial what you told us today?          |
|         | 8  | A    Not in entirety, no.  Just the last         |
|         | 9  | comment."                                       |
| 10:50   | 10 | If we could just go down, please, carry on:     |
|         | 11 | "Q   Well, Ms. Frank, this statement --          |
|         | 12 | A    Absolutely not.                             |
|         | 13 | Q    ... was made on January 19, 1970, and       |
|         | 14 | you have the original copy in front of          |
| 10:50   | 15 | you.  What, in addition to that                 |
|         | 16 | statement, did you tell Mr. Caldwell?           |
|         | 17 | A    I told him I didn't -- did not want to      |
|         | 18 | testify, that I would not talk because          |
|         | 19 | I was afraid.  He said if I talked he           |
| 10:50   | 20 | would kill he.  That is what I told             |
|         | 21 | him."                                           |
|         | 22 | Do you see that:                                |
|         | 23 | "That is what I told him."?                     |
|         | 24 | A    Yes.                                        |
| 10:51   | 25 | Q    "Q   Ms. Frank, I just asked you if you had  |

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1          told anyone in authority the details

2          you've given us today, and your response

3          was the first person you told was that

4          prosecutor?

10:51   5      A    Only --

6      Q    What, about what you have told us today,

7          did you tell him?"

8   Next page:

9      "A    About the part about being threatened to

10:51  10          be killed.  That's all I told him."

11   That's your answer:

12          "About the part about being threatened

13          to be killed.  That's all I told him.

14      Q    Did you tell him about David beating his

10:51  15          face against the wall in the bathroom?

16      A    No.

17      Q    Did you tell him about David Milgaard

18          throwing himself against the wall?

19      A    No."

10:51  20   And then the bit about the syringe.  But, now, at

21   the time you were under oath and telling the

22   truth, you say you told Mr. Caldwell specifically

23   that David had threatened to kill you; now do you

24   accept that that's what it says?

10:51  25      A    I accept that that's what that says, yes.

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| | | |
|---|---|---|
| 1 | Q | Okay.  And anybody reading this or listening to |
| 2 | | you could quite fairly understand you to be saying |
| 3 | | that you told Mr. Caldwell, at that time, that |
| 4 | | David had threatened to kill you; correct?  And |
| 10:52  5 | | I'll ask you the next question. |
| 6 | A | I can answer now? |
| 7 | Q | I -- that requires a "yes" or a "no". |
| 8 | A | As the way this document reads, that's what it |
| 9 | | appears to be. |
| 10:52  10 | Q | Yes, I'll give you a chance to elaborate, -- |
| 11 | A | Okay. |
| 12 | Q | -- I just want to establish that.  Now has |
| 13 | | anything occurred, since you gave this evidence |
| 14 | | under oath, to cause you to believe this is not |
| 10:52  15 | | true? |
| 16 | A | Umm, I'm not sure I under -- |
| 17 | Q | Well in 1999 -- or whenever this was, I think it |
| 18 | | was '99 -- you put your hand on a Bible like you |
| 19 | | did today, -- |
| 10:52  20 | A | Uh-huh. |
| 21 | Q | -- went in front of a judge, and you swore to tell |
| 22 | | the truth? |
| 23 | A | Correct. |
| 24 | Q | And you tell us that you did tell the truth to the |
| 10:53  25 | | best of your ability? |

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1    *A*    Correct.

2    **Q**    And your memory then was better than it is today,

3          or it should be, it was five years closer to the

4          event?

10:53    5    *A*    It was still a long time.

6    **Q**    Okay, but it was closer than today, that's

7          obvious?

8    *A*    Yes, it was closer than today.

9    **Q**    So do you accept this as being truthful and, if

10:53    10          you don't, what has occurred to cause you to

11          change your mind?

12    *A*    I haven't changed my mind.

13    **Q**    Okay.  So now your evidence is that you told

14          Mr. Caldwell that David had threatened your life

10:53    15          if you testified?

16    *A*    No, I do not recall telling him that.  That is me

17          talking afterwards, it -- this is, these -- this

18          is a little out of -- out of context.  I do not

19          recall telling the prosecutor that.  All I kept --

10:53    20          because I knew that, if I said that, that that

21          would impli -- that that statement would inflame

22          things, and I just wanted -- I did not want to

23          testify.  I was not going to say those words.

24    **Q**    I understand that, but what I am getting at is

10:54    25          this; there's little doubt, I would expect, that

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| | | |
|---|---|---|
| 1 | | Mr. Caldwell would say that, had he heard those |
| 2 | | words, that would have been very important to his |
| 3 | | case? |
| 4 | A | Correct. Absolutely. |
| 5 | Q | So I'm not saying you said it but you, under oath, |
| 6 | | said you said it, and that's what concerns me? |
| 7 | A | Well, because that's what I was feeling inside. |
| 8 | | That's what was going on inside of me, inside my |
| 9 | | head. |
| 10 | Q | Does that apply to all your evidence, that you |
| 11 | | have talked about your feelings as opposed to |
| 12 | | what's happening? |
| 13 | A | Well what's -- the feelings that are happening |
| 14 | | inside of me is part of what's happening. |
| 15 | Q | No, but you specifically say "I told him," you |
| 16 | | don't say "I felt it"? |
| 17 | A | Well, it's just a misuse of words then. |
| 18 | Q | That's your explanation? |
| 19 | A | It's -- uh-huh. |
| 20 | Q | Did you understand or feel that, based on your |
| 21 | | statement that you gave to the police, that that |
| 22 | | would have been of assistance to David? |
| 23 | A | Yes. You mean my original statement? |
| 24 | Q | Oh yes. |
| 25 | A | Yeah, oh, absolutely. |

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1    Q    And had you testified, I think you told us

2         yesterday, you would have stuck to your original

3         statement?

4    A    Yes.

10:56  5    Q    Firstly, that was far fresher in your mind then as

6         to what occurred than anything now, obviously?  It

7         was fresh in your mind, to some degree, in 1970?

8    A    Yes.

9    Q    And, by then, your memory had not been influenced

10:56 10         very much by what you had read in the papers or

11         heard because it was fairly close to the event?

12    A    It, it entailed part of the traumatic event, yes.

13    Q    Yeah.  Now you mentioned about the prosecutor and

14         talking to him; did you give him any reason to

10:56 15         believe that your statement was not true?

16    A    I don't recall.

17    Q    Well, obviously, you wouldn't want to tell him

18         it's not true?

19    A    No, well -- no, I would think so.  I don't recall.

10:57 20         All I kept saying was I didn't want to testify, I

21         wouldn't talk, that's what I remember.

22    Q    But did the prosecutor, the defence lawyer, or

23         anybody there, based on anything you did other

24         than being nervous and upset and hysterical, have

10:57 25         any reason to believe your statement wasn't true?

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|       |    |   |                                                        |
|-------|----|---|--------------------------------------------------------|
|       | 1  | *A* | I don't know.                                        |
|       | 2  | **Q** | No, but did you convey to anybody any hint of      |
|       | 3  |   | unreliability --                                        |
|       | 4  | *A* | No.                                                   |
| 10:57 | 5  | **Q** | That you "no, I don't mean to say that", and "no,  |
|       | 6  |   | it's not true"?                                         |
|       | 7  | *A* | Obviously, why would I do that, I wanted them to      |
|       | 8  |   | believe it.                                             |
|       | 9  | **Q** | To believe that your statement was true, --        |
| 10:57 | 10 | *A* | Correct.                                              |
|       | 11 | **Q** | -- the statement, and that statement helped David? |
|       | 12 | *A* | Yes, it did.  I -- well it -- I figured, at the       |
|       | 13 |   | time, it was neither here nor there since I wasn't      |
|       | 14 |   | testifying.                                             |
| 10:58 | 15 | **Q** | Now that statement that you say would have helped   |
|       | 16 |   | David, and your appearance in the court, was a          |
|       | 17 |   | time when this was fresh and important, and I take      |
|       | 18 |   | it the next time you were dealing with people in        |
|       | 19 |   | authority or -- that is police, lawyers, or             |
| 10:58 | 20 |   | whatever -- would be more than 20 years?                |
|       | 21 | *A* | Yeah, it was a long time later.                       |
|       | 22 | **Q** | Yeah.  So it was like 20 years went by --           |
|       | 23 | *A* | Uh-huh.                                                |
|       | 24 | **Q** | -- before you ever had reason to say anything?      |
| 10:58 | 25 | *A* | That's right.                                         |

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1     **Q**     And it wasn't because anybody found you, you went

2           forward?

3     *A*     Umm, no, no.  I might have made a phone call but I

4           didn't, I was not forthcoming on who -- I don't

10:59  5           believe I was forthcoming on who I was, and no,

6           they found me.

7     **Q**     Well --

8     *A*     They came to me.

9                COMMISSIONER MacCALLUM:  I wish we could

10:59  10           get down to some dates here, please, the record

11           is not going to reveal anything that we're

12           talking about.

13                MR. WOLCH:  We're talking about 1991, and

14           you are -- and the document number is 168588.

10:59  15                COMMISSIONER MacCALLUM:  858?

16                MR. WOLCH:  588, sorry.

17                COMMISSIONER MacCALLUM:  Oh, sorry.

18        BY MR. WOLCH:

19     **Q**     Now you say you called the authorities and they

10:59  20           called you back, or how did this come about?

21     *A*     Well, I don't remember who I called.  I don't.  I

22           just made some inquiries because I had heard that

23           they were re-opening it, and that there was some

24           changes in some -- in testimony, and I -- I -- I

11:00  25           hadn't seen anything about it and I was

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1          dumbstruck.

2     **Q**     Well if I understand it, when the police first

3          came to you, you didn't want to be there?

4     *A*     That's correct.

11:00   5     **Q**     When you went to court you did everything humanly

6          possible not to testify?

7     *A*     That's correct.

8     **Q**     And now you are seeking out people to talk to?

9     *A*     No, I was not seeking out people, I just wanted

11:00   10         information.

11                    COMMISSIONER MacCALLUM:   Who was this

12         statement given to, please?

13       BY MR. WOLCH:

14    **Q**     This would be to the RCMP, I believe -- Eugene

11:00   15         Williams and the officer with him.

16    *A*     That's correct.

17    **Q**     I think, is it a Constable Einarson (ph)?  I think

18         it's a Constable Einarson would have been taking

19         it down with Mr. Williams.

11:00   20                         Now do you say you wanted

21         information?

22    *A*     Uh-huh.

23    **Q**     Why?

24    *A*     Umm, hmm, because I was -- I just wanted -- I was

11:01   25         just flabbergasted that -- I didn't understand

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|   |   |   |
|---|---|---|
| 1 |   | what was going on and, I don't know, I don't |
| 2 |   | remember my exact state of mind at that time. |
| 3 | Q | Well, you didn't understand what was going on, the |
| 4 |   | only thing that you had ever told the police was |
| 11:01 5 |   | your original statement; correct? |
| 6 | A | That's correct. |
| 7 | Q | More than 20 years have gone by? |
| 8 | A | Uh-huh. |
| 9 | Q | And you don't know what the case depends on or |
| 11:01 10 |   | doesn't depend on; did you? |
| 11 | A | I was not privy to any of the testimony, I had no |
| 12 |   | idea, whatever.  And they wouldn't allow me to see |
| 13 |   | any of that, all I knew was what was in the |
| 14 |   | newspapers and on TV, that was it. |
| 11:02 15 | Q | Okay.  You talk in your statement, this portion |
| 16 |   | here, about going to the motel: |
| 17 |   | "The rest of us stayed in the car which |
| 18 |   | was parked away from the office." |
| 19 | A | Uh-huh. |
| 11:02 20 | Q | Is that correct? |
| 21 | A | Well we pulled up the car and, obviously, we |
| 22 |   | couldn't all go into the office because they |
| 23 |   | wouldn't have given David a room -- |
| 24 | Q | Who was in the car? |
| 11:02 25 | A | -- and -- |

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1   **Q**   I'm sorry, I thought you were finished, I didn't

2       mean to interrupt you.

3   *A*   Umm --

4   **Q**   Who was in the car?

11:02  5   *A*   Umm, all, all I can recall is David and Debbie and

6       myself.  That's all I can recall.  Sorry.  If

7       there were others, I can't remember.

8   **Q**   Okay.  You go here and you say:

9           "Hoppy injected me with the drugs."

11:03  10   *A*   Uh-huh.

11   **Q**   Is that correct?

12   *A*   Uh-huh.

13   **Q**   I thought Debbie Hall or her friend did?

14   *A*   No.

11:03  15   **Q**   Hoppy did it?

16   *A*   Correct.

17   **Q**   Okay.  Then turn the page.  I'm sorry, it starts

18       off about telling the police there was four

19       capsules of THC:

11:03  20           "At that time I was a little intimidated and

21           did not want my parents to know that I was

22           shooting up drugs.  In fact the four

23           capsules were put into a form that could be

24           injected."

11:03  25       Do you see that?

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|       |    |   |                                                       |
|-------|----|---|-------------------------------------------------------|
|       | 1  | A | Uh-huh.                                                |
|       | 2  | Q | What would be preventing you, at this time, from      |
|       | 3  |   | saying that David had a syringe in his hand when      |
|       | 4  |   | he hit the pillow?                                     |
| 11:03 | 5  | A | I don't know.                                         |
|       | 6  | Q | It --                                                 |
|       | 7  | A | I don't know.                                         |
|       | 8  | Q | Well the answer I thought you said was something      |
|       | 9  |   | to the effect it -- you were concerned about          |
| 11:03 | 10 |   | letting it be known that there were syringes          |
|       | 11 |   | around?                                               |
|       | 12 | A | Oh, I'm sure that -- that that was part of it.        |
|       | 13 | Q | But if you are prepared to tell the police that       |
|       | 14 |   | you took it by needle, why would you care if          |
| 11:04 | 15 |   | somebody found out that David had a syringe in his    |
|       | 16 |   | hand?                                                 |
|       | 17 | A | I don't know.  I don't remember my exact state of     |
|       | 18 |   | mind at every moment in time during this whole        |
|       | 19 |   | event.  I don't know.                                 |
| 11:04 | 20 | Q | By the way, the syringes that were used, you stole    |
|       | 21 |   | them; didn't you?                                     |
|       | 22 | A | That's correct.  That's how I knew they were          |
|       | 23 |   | there, I brought 'em there.                           |
|       | 24 | Q | And you say:                                          |
| 11:04 | 25 |   | "I saw Hoppy throwing himself against the             |

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1        wall.  His face was covered with blood."

2  *A*    Umm, his -- there was blood coming out of -- I

3        have said that on many times, I have corrected

4        people, I don't know who put that there -- there

11:05  5        was blood coming out of his nose.

6  **Q**    Well Mr. Williams and Officer Einarson took this

7        down and it appears you signed it; I take it you

8        read it over?

9  *A*    I suppose so.  Maybe it didn't jump out at me, I

11:05  10        don't know.

11  **Q**    Okay.  You say:

12             "His face was covered with blood."

13  *A*    It wasn't, it was coming out of his nose, which is

14        a little different sight than seeing someone's

11:05  15        entire face covered in blood, might I add.

16  **Q**    Sorry, I'm going by your words.  In any event, now

17        I thought I heard you say that you came forward

18        because you felt that people were changing their

19        statements?

11:05  20  *A*    I had heard that that was happening, and I didn't

21        understand.  When you are -- when you have been

22        involved in something and you were there and you,

23        and you saw what you saw, and when you hear that

24        someone is saying that that's not what you saw, it

11:06  25        tends to create some feelings.

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1     Q     Well who, specifically, was changing their

2           statements, since there's so few people that could

3           be in your circumstance?

4     A     Well I assumed in the beginning that it must have

11:06  5          been Craig and George but, as it turned out, I

6           think I found out later that that was wrong, it

7           was -- it wasn't them at all.

8     Q     So, because you thought that Craig and George were

9           changing their statements, you were coming in to

11:06  10         change yours?

11    A     No.

12    Q     Well, surely you were changing your statement?

13    A     All I wanted to do was, at that point in time, was

14          find out what was going on.  That's all.

11:06  15    Q     No, but you weren't finding out, you were telling

16          what was going on, you were changing your

17          statement?

18    A     No, that wasn't until after they tracked me down

19          and started hounding me.

11:06  20    Q     But, if I understand it, you made the initial

21          contact?

22    A     Anonymously, just like many people do.  I just was

23          looking for information, period.

24    Q     But you were concerned that people were changing

11:07  25         their statements, and I'm trying to understand why

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|       |   |                                                              |
|-------|---|--------------------------------------------------------------|
|     1 |   | you would be concerned about people changing their           |
|     2 |   | statements?                                                  |
|     3 | A | I suppose it -- now this -- no, I'm not going to,            |
|     4 |   | because that would be -- I don't remember the               |
| 11:07 5 |   | frame of mind I was in at the time.                         |
|     6 | Q | Okay.  But -- and you say you assumed that Lapchuk           |
|     7 |   | and Melnyk were changing their statements?                   |
|     8 | A | Yes.                                                         |
|     9 | Q | And why did you care if they were changing their            |
| 11:07 10 |   | statements?                                                 |
|    11 | A | Well I guess, for me, it's because it was a very            |
|    12 |   | traumatic experience and it's one that I had had a          |
|    13 |   | lot of time -- it took me, it took me a while to            |
|    14 |   | deal with it, and for someone to come along and             |
| 11:07 15 |   | say that that didn't happen just didn't sit right          |
|    16 |   | with me.                                                    |
|    17 | Q | The person who said it didn't happen was you?               |
|    18 | A | Yes, for -- for you guys, --                                |
|    19 | Q | You --                                                       |
| 11:08 20 | A | -- but not for me.                                          |
|    21 | Q | For 20 years you were on, or 21 years you were on           |
|    22 |   | the record, your position was nothing really               |
|    23 |   | happened?                                                   |
|    24 | A | Uh-huh.                                                      |
| 11:08 25 | Q | So now, because people are changing their                  |

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|       |    |   |                                                     |
|-------|----|---|-----------------------------------------------------|
|       | 1  |   | position, that gets you upset and you are going to  |
|       | 2  |   | come in and tell a different story?                 |
|       | 3  | A | I, yes, I was going to tell -- no, I was just       |
|       | 4  |   | looking for information.                            |
| 11:08 | 5  | Q | Well --                                             |
|       | 6  | A | And I did not seek this out, trust me, that was     |
|       | 7  |   | not the intent at all.  Oh, God, that was not the   |
|       | 8  |   | intent.                                             |
|       | 9  | Q | Well --                                             |
| 11:08 | 10 | A | And for -- and at the time, Mr. -- oh, I can't      |
|       | 11 |   | remember how to pronounce your name, sorry --       |
|       | 12 | Q | Wolch.                                              |
|       | 13 | A | Wolch.  At the time there had been a brutal         |
|       | 14 |   | murder, and Gail Miller had been savagely stabbed,  |
| 11:09 | 15 |   | and I would have done anything not to face -- not   |
|       | 16 |   | to face him again, that -- I was terrified of       |
|       | 17 |   | facing him again.                                   |
|       | 18 | Q | And yet, even at this occasion, you didn't tell     |
|       | 19 |   | Mr. Williams a thing about being threatened;        |
| 11:09 | 20 |   | correct?                                            |
|       | 21 | A | Umm --                                              |
|       | 22 | Q | Or did you tell him that and he didn't record it?   |
|       | 23 |   | I'm not sure what your position is.                 |
|       | 24 | A | I remember the day that I met with him, I met with  |
| 11:09 | 25 |   | him in the morning and I was with him until about   |

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1    7:00 that night, it was a long day.  I do not

2    remember every word that was spoken between us.

3    If you would like to find out, get him to find the

4    tape, because it's all recorded.  He has it, I

11:10  5    don't know what he did with it, it's not my job to

6    keep all -- to manage that kind of thing, sorry.

7  Q  Well, now, you were concerned about Melnyk and

8    Lapchuk perhaps changing their statements; is that

9    what it is?

11:10  10  A  What I thought was that -- is they were saying

11    that it didn't happen.

12  Q  Okay.  And you don't know what you based that on?

13  A  Well, it had been 20 years, and obviously the

14    threat had never been -- I no longer felt -- I was

11:10  15    no longer that scared 17-year-old girl who thought

16    that, when I walked around the next corner, I

17    would be confronted by him.  Things had changed.

18  Q  Well what I am getting at is what caused you to

19    believe that Melnyk and Lapchuk were changing

11:11  20    their statements?

21  A  Because they were the only other two people in the

22    room.

23  Q  Yeah, but surely --

24  A  So --

11:11  25  Q  Surely you must have read something or somebody

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|     |   |                                                      |
|-----|---|------------------------------------------------------|
| 1   |   | told you --                                          |
| 2   | A | Some --                                              |
| 3   | Q | -- that they were changing their statements?         |
| 4   | A | Someone read a newspaper article to me over the      |
| 5   |   | phone.                                               |
| 6   | Q | And that couldn't have said Lapchuk and Melnyk        |
| 7   |   | were changing their statements?                      |
| 8   | A | No, it just said witnesses, --                       |
| 9   | Q | And --                                               |
| 10  | A | -- but since I thought they were the only other      |
| 11  |   | ones it was logical to assume that they were         |
| 12  |   | talking about them.  Because in the beginning, no    |
| 13  |   | one spoke to Debbie Hall, not that I was aware of.   |
| 14  | Q | But that wouldn't have surprised you because you     |
| 15  |   | didn't even think she was there?                     |
| 16  | A | That's correct, she was not there for parts of it,  |
| 17  |   | for the last part of it.                             |
| 18  | Q | And what gave you reason to believe that the story   |
| 19  |   | you didn't tell the police, but which you began to  |
| 20  |   | tell later, would be consistent with Melnyk and      |
| 21  |   | Lapchuk?                                             |
| 22  | A | Well, I didn't really know that, I just had always  |
| 23  |   | -- I know that after I spoke with Eugene I -- I      |
| 24  |   | had never known ever, until that time, really what  |
| 25  |   | Craig and George had ever testified to, had ever    |

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1       written in their statements, I was never privy to

2       any of it, and I had never spoken to them again,

3       so after my meeting with Eugene Williams I had

4       been -- all I knew was I had been told that our

11:12   5       statements were virtually -- were very similar.

6       That's all I had been sold.

7   **Q**   Okay.  Well I'm going to suggest to you that I

8       have gone through virtually everything that those

9       two men have said and neither one, or anybody,

11:13  10       ever recalls any blood on David whatsoever.

11   *A*   Well --

12   **Q**   Do you think it's possible they could be there and

13       not have seen a man throwing himself into a wall

14       and bleeding?

11:13  15   *A*   Umm, no, I don't think they didn't see that.  For

16       one thing, George was trying to stop him from

17       doing that, so he obviously noticed.

18   **Q**   Okay.  And your story is that David threatened all

19       of you?

11:13  20   *A*   Umm, yes, I would go so far as to say that.

21   **Q**   Okay.  And once again, I have checked all of their

22       evidence everywhere, they have never hinted that

23       David threatened them at all.

24   *A*   Uh-huh.  Well, you know, it's really hard, it's

11:14  25       really hard to comprehend that someone that you

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1    consid -- that you know that, well, and you

2    consider a friend, like it's just really hard to

3    wrap your head around, let me tell ya.  It's like

4    when they interview people who lived next door to,

11:14  5    they always say that they just can't believe it,

6    you hear it all the time.

7  Q  Okay.  My question is that neither one of these

8    men ever indicated that David had threatened them

9    in any way, shape, or form?

11:14  10  A  I can't speak for them, I don't know what they --

11  Q  You --

12  A  I --

13  Q  You --

14  A  All I know is at some point after the humour,

11:15  15    after the laughter, after the trying to -- and he

16    realized that we weren't laughing any more and our

17    mouths were hanging down to the floor and we were

18    all stunned, he approached us and looked dead

19    square at our -- and told us.  I know that I had

11:15  20    said before that he didn't want us to talk about

21    it, but believe me, the tone of voice --

22  Q  This was said to Melnyk and Lapchuk you have told

23    us?

24  A  They were standing right beside me.

11:15  25  Q  By the way, you say you were going to go tell

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1           Sharon Williams; correct?

2      A    I, yes, I thought we had talked about that

3           earlier.

4      Q    Well, we did, but would not your concern be that

11:16  5           she would tell David that you had told her?

6      A    No.  That, actually, that thought never entered my

7           mind.

8      Q    Or that she would go to the police?

9      A    Umm, no, that thought never entered my mind

11:16  10          either, that I can recall.

11     Q    Well you had been threatened with your life if you

12          told anybody, and yet you went and told Sharon,

13          who could easily tell David?

14     A    Which I'm -- I don't think I -- I don't think she

11:16  15          would have done that.

16     Q    Did you warn her "please don't tell David because

17          I'm threatened"?

18     A    I don't think I would have said that because I

19          don't think she would have done that.

11:16  20     Q    So you were confident she wouldn't say "David,

21          look, I'm not going to go near you because of what

22          happened back in Regina" or anything like that?

23     A    I do know that at the time she was not -- she was

24          not thrilled when he would show up, so I took it

11:16  25          that why would she -- no, that never entered my

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1          mind.

2      Q   Never entered your mind not to tell her because of

3          your threat, okay, but getting back to Melnyk and

4          Lapchuk, so in spite of the fact they didn't see

11:16  5          any blood, never talked about throwing against the

6          wall, they didn't say they were threatened and

7          they also gave no evidence ever of having you hide

8          behind him or protecting you -- are you aware that

9          your stories don't match?

11:17 10     A   I'm aware that they -- that they saw the same

11          thing I did which was him on the bed with the

12          pillow saying he had killed her, I'm aware of

13          that.  What stuck out to them at different points

14          of the evening and what stuck out to me, but all I

11:17 15          know is George opened that bathroom door, George

16          grabbed him and when David broke free he ran full

17          bore across that room and splattered himself

18          against the wall.

19     Q   And you are saying that --

11:18 20     A   And that was causing a lot of noise.  At that time

21          the door to the motel opened and people began

22          leaving rapidly.

23     Q   Who left?

24     A   I don't know.  I wasn't paying attention.

11:18 25                  COMMISSIONER MacCALLUM:  Mr. Wolch, it's

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1    past the break time.  Are you going to be a

2    little while?

3              MR. WOLCH:  I will.

4              COMMISSIONER MacCALLUM:  Yes.  15 minutes,

11:18  5    please.

6                   *(Adjourned at 11:18 a.m.)*

7                   *(Reconvened at 11:42 a.m.)*

8         BY MR. WOLCH:

9    **Q**    Ms. Frank, I take it during the break you didn't

11:42  10        discuss the evidence with anybody?

11    *A*    No, I just kind of discussed how upset I was.

12    **Q**    That wasn't my question, ma'am.  Did you discuss

13        your evidence with anybody during the break?

14              COMMISSIONER MacCALLUM:  She said no.

11:42  15    *A*    No.

16              MR. WOLCH:  I'm sorry?

17              COMMISSIONER MacCALLUM:  "I discussed how

18        upset I was," that was her answer.

19         BY MR. WOLCH:

11:42  20    **Q**    Going back to the last document we were on,

21        168588, and go to 90, please.  One more page,

22        please.  Now, as I understood you earlier, while

23        you may have made an anonymous call, it was really

24        the Department of Justice or the RCMP who tracked

11:43  25        you down?

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|       |    |   |                                                          |
|-------|----|---|----------------------------------------------------------|
|       | 1  | *A* | I suppose so.                                          |
|       | 2  | **Q** | Here you say:                                        |
|       | 3  |    |     "I have come forward because of the media          |
|       | 4  |    |     accounts."                                         |
| 11:43 | 5  |    | Do you see that?                                      |
|       | 6  | *A* | Uh-huh.                                                |
|       | 7  | **Q** | It gives the impression there from your statement    |
|       | 8  |    | that it was you that came forward, not that you        |
|       | 9  |    | were tracked down.  Is that accurate?                  |
| 11:43 | 10 | *A* | I might give that impression, but I don't know who    |
|       | 11 |    | wrote that.                                            |
|       | 12 | **Q** | Well, Gene Williams took it down, you signed it.     |
|       | 13 | *A* | But no, I did not phone the justice department and    |
|       | 14 |    | say, "hey, come and take a statement from me," no,     |
| 11:44 | 15 |    | I did not do any of that.                              |
|       | 16 | **Q** | Okay.  So the statement "I've come forward" you      |
|       | 17 |    | would then say creates a wrong impression?             |
|       | 18 | *A* | Correct.                                               |
|       | 19 | **Q** | "And the two people that witnessed the reenactment   |
| 11:44 | 20 |    | had lied and did not sit right with me"?               |
|       | 21 | *A* | Well, I guess that was at the time when I still        |
|       | 22 |    | thought -- all I knew is that I was -- I had been      |
|       | 23 |    | led to believe that witnesses had changed the          |
|       | 24 |    | reenactment testimony.                                 |
| 11:44 | 25 | **Q** | Okay.  And you didn't know what their testimony      |

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1           was?

2      A    Umm, no, I did not, but I assumed that because the

3           three of us were present for this, that it was all

4           basically relatively the same, and that doesn't

11:45   5      mean in -- with my first statement because we know

6           that that was not a true account of that.

7      Q    That's your position anyway.  And if you could

8           highlight this portion here regarding David:

9                "I was not too thrilled with his behaviour

11:45   10               that night but I don't bear any ill will

11               towards him."

12          Is that accurate, or was that accurate at the

13          time rather?

14     A    I wouldn't wish that on anyone so to speak, but I

11:45   15     was -- at the time in 1969 and in 1970 I was very

16          frightened of him.

17     Q    What I'm getting at is, if I understand your

18          evidence correctly, you had been through the

19          second or first most traumatic event in your life,

11:46   20     the man had threatened your life, caused you all

21          kinds of difficulty and you didn't bear any ill

22          will towards him?

23     A    Well, I wasn't happy with the situation, but at

24          that time he was in prison and, I mean, no one --

11:46   25     you wouldn't -- he was in prison and I don't think

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1           prison would be a fun place to be.

2      Q    Okay.  Now, after this particular statement, the

3           next event of consequence would have been your

4           testifying in the Supreme Court?

11:46  5    A    Yes, that would have been the next.

6      Q    And I believe that the transcript is 047377, I

7           can't be sure but I think that's right, and if we

8           can go to 378.  Now, would I be correct in saying

9           that at the Supreme Court you appreciated that you

11:47  10          were under oath and obliged to tell the truth?

11     A    Yes.

12     Q    And is it your evidence that you did tell the

13          truth at the Supreme Court to the best of your

14          ability?

11:47  15   A    Yes, I believe I did.

16     Q    Right at the beginning of my cross-examination of

17          you, you talk that you were intimately involved

18          with David before the evening.  Do you see that?

19     A    Yes.

11:48  20   Q    And then if we can turn the page, please, and you

21          say on several occasions?

22     A    Yes.

23     Q    Then you say:

24               "Regarding the other individuals, Lapchuk,

11:48  25               had you been intimate with him before?"

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1          Your answer was yes?

2     A     Yes.

3               "Q   And was that before this evening?

4               A    Yes.

11:48   5               Q    And was it after this evening as well?

6               A    Yes.

7               Q    And you were intimate with him how often

8                    since, like what years or what period of

9                    time, up until when?

11:48   10              A    Are you talking about George?"

11         Scroll down.

12              "Q   Yes.

13              A    I haven't seen George Lapchuk since

14                   the trial.

11:48   15              Q    I thought you had been intimate with

16                   him, with George?

17              A    Yeah, I had been."

18         If you can turn the page, please.

19              "Q   But that's before the incident.  And

11:48   20                   after?

21              A    No.  Just a minute.  Just a minute,

22                   let me think about this for a second.

23                   I had been intimate with George

24                   Lapchuk.  I don't know if I had been

11:49   25                   after -- no, I couldn't have been, no,

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1          because I had gone away for a while.

2          Then, when I came back, shortly after

3          that I met my -- shortly after I

4          returned I met my ex-husband and we

11:49  5          were married in March of '70, so the

6          answer would be no to that."

7      If you can just scroll down.

8          "Q   Have you, in any event, met with Lapchuk

9          or talked to him --

11:49  10         A   No.

11         Q   Regarding Melnyk, have you been intimate

12         with him as well?

13         A   Yes.

14         Q   And that would have been before the

11:49  15         incident?

16         A   Yes."

17     If we can just turn the page.

18         "Q   Have you seen or talked to him since?

19         A   No."

11:49  20     And I'll leave it at that.  And those would have

21     been truthful answers?

22  A   Yes, except I was not intimate with George after

23      the incident.

24  Q   But you were before?

11:49  25  A   Yes.

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|      |    |   |                                                      |
|------|----|---|------------------------------------------------------|
|      | 1  | Q | Now I'm going to go fairly quickly through this,     |
|      | 2  |   | and I take it you had a chance to read this last     |
|      | 3  |   | night?                                               |
|      | 4  | A | Yes.                                                 |
| 11:50 | 5  | Q | If you can go to 386, please, and I'll start with   |
|      | 6  |   | your answer, you can see the question:               |
|      | 7  |   | "Q  My best memory -- this was 23 years ago.         |
|      | 8  |   | I wasn't really paying attention to who              |
|      | 9  |   | was coming and going.  I never thought I             |
| 11:50 | 10 |   | would have to remember it.  I was just              |
|      | 11 |   | there to get stoned.  After we first got             |
|      | 12 |   | into the room, we did drugs.  I was                  |
|      | 13 |   | stoned.  I don't remember really."                   |
|      | 14 |   | Etcetera.  You say there you were stoned?            |
| 11:50 | 15 | A | That was a figure of speech.  At the time that's    |
|      | 16 |   | what you called it.                                  |
|      | 17 | Q | You called it that?                                  |
|      | 18 | A | Uh-huh.                                              |
|      | 19 | Q | Correct?  So when you told the Supreme Court that    |
| 11:50 | 20 |   | you were stoned that night, that would have been    |
|      | 21 |   | true?                                                |
|      | 22 | A | Well, we were doing drugs.                           |
|      | 23 | Q | But you don't say you were doing drugs, you say      |
|      | 24 |   | you were stoned.                                     |
| 11:51 | 25 | A | Well, that's --                                     |

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1          COMMISSIONER MacCALLUM:  She's trying to

2      explain I think what she meant by it, Mr. Wolch,

3      surely.

4  A      Yes, yes.  When you do drugs, back in the '60s

11:51  5      that's what you would say, you were stoned.

6      That's just an expression.

7      BY MR. WOLCH:

8  Q      Okay.  If we can go to 387, you say here, you were

9      asked:

11:51  10          "Q   Now, the incident you described

11              regarding the bathroom, did that occur

12              after you had sex with David?

13          A   Yes.

14          Q   And you had had sex with him in front of

11:51  15              the others?

16          A   Yes."

17      And if you can just scroll down:

18          "Q   And you were stoned?

19          A   Yes.  We had the blankets pulled up

11:51  20              over us.

21          Q   Was anybody ever walking around naked?

22          A   You mean the other people?

23          Q   No.  Just you two, you or David."

24      Across the page, scroll down a bit:

11:52  25          "Q   How many times that night on separate

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1          occasions would you have had sex with

2          David?

3      A    As far as I --"

4          COMMISSIONER MacCALLUM:  Mr. Wolch, before

11:52  5   you go any further, I really don't know what the

6      objective of this questioning is, I really don't

7      know what the objective of it might have been

8      before the Supreme Court.  If you have some

9      objective which goes beyond simply embarrassing

11:52  10  the witness, I would like to hear it, please.

11         MR. WOLCH:  It's embarrassing to David as

12     well, sir.

13         COMMISSIONER MacCALLUM:  Yes, of course.

14         MR. WOLCH:  And I'm concerned about that,

15     but no --

16         COMMISSIONER MacCALLUM:  There's no double

17     standard operating here obviously and that's

18     good, but --

19         MR. WOLCH:  I'm very conscious of that.

11:52  20         COMMISSIONER MacCALLUM:  What is the

21     objective then?

22         MR. WOLCH:  Well, if I ask the next

23     question you'll see.

24         COMMISSIONER MacCALLUM:  Okay.

11:52  25   BY MR. WOLCH:

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1 **Q** Okay.  You say:

2    "A As far as I can remember, only once."

3  You see that?

4 *A* Yes, I do.

11:53 5 **Q** And that would have been before the joke about the

6  pillow; right?

7 *A* It would have been before the pillow incident,

8  yes.

9 **Q** And your memory was it was only once?

11:53 10 *A* At that time, yes, but I've come to realize that

11  that is not so.

12 **Q** Okay.  Well, that's my point for the Commissioner,

13  you have testified here that you had sex with

14  David when you were feeling terror in you and

11:53 15  that's why you consented.  Mr. Commissioner, do

16  you see the --

17    COMMISSIONER MacCALLUM:  Thank you very

18  much, Mr. Wolch.

19  BY MR. WOLCH:

11:53 20 **Q** You testified here that you were terrorized, you

21  were fearful.  That's not the kind of event that

22  would fall out of somebody's mind.  You have

23  testified here that you were traumatized by a man

24  who said he had taken the life perhaps of a person

11:54 25  and raped her and that's why you would have done

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1          anything to, I think your word was, placate him.

2      A   Correct.

3      Q   Causing the Commissioner and everybody here to

4          have an image of you giving in under severe trauma

11:54  5   and stress; correct?

6      A   Like I said yesterday, I was not going to say no

7          or upset him in any way.

8      Q   I appreciate that, but according to your evidence

9          in the Supreme Court which you say was true, you

11:54  10  never had sex after the pillow?

11     A   Because I buried it, I didn't -- I did not want to

12         remember that, it was traumatic and I buried it,

13         and I recall after that I got another glimpse and

14         I realized that I had had, but I couldn't -- to

11:54  15  this day I cannot tell you the details of it.  I

16         buried it.

17     Q   When did this resurface in your mind?  I mean,

18         you've got to appreciate, this is a serious thing

19         to say that you had sex with a man because you

11:55  20  were traumatized by his behaviour, it's a fairly

21         serious accusation.

22     A   It was after the afternoon in the Supreme Court of

23         Canada.  I do not know if it was an hour later,

24         two hours later, the next morning, I don't know,

11:55  25  next week, I don't know.

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1    Q    Then you remembered that there was a second sexual

2         incident?

3    A    Yes.  I just -- I have -- I get these little

4         flashes and I saw it, but I cannot give you the

11:55    5         details of it.  I don't remember.  I buried it.

6    Q    Okay.  And did you tell anybody about it until you

7         came here, about having to placate him with sex?

8    A    No.  Why would I tell anyone that?

9    Q    Well, you told us.

11:56    10   A    Because you are asking about it.  No one asks me

11        about it.  I don't like to talk about it.

12   Q    If we go to 403, please, the question was asked of

13        you:

14             "Q   So far as you knew they were gone.  I

11:56    15                  want you to name me a person who left

16                  because of the incident in close

17                  proximity to the incident?

18             A    Debbie Hall."

19        Would that not suggest that Debbie Hall was

11:57    20        there?

21   A    Oh, she was for part of the evening.  I never

22        denied that she wasn't (sic) there.

23   Q    No, but you say she left because of the incident,

24        implying that she seen it.

11:57    25   A    She -- 90 percent of the people in the room left

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1      when David was running around throwing himself

2      against the walls and creating the ruckus.

3   Q  That's 90 percent of the 16 to 20 people that you

4      say were there?

11:57  5   A  Yes.  The door opened and people began leaving.  I

6      was not particularly paying attention to --

7   Q  But you were asked as to who left because of it

8      and your answer was Debbie Hall, which clearly

9      suggests that Debbie Hall was there in your mind.

11:57  10  A  Well, she was until -- and I'm not sure if she

11     left when he was throwing himself against the

12     wall, when he jumped onto the bed, I did not see

13     her leave, but I know when the incident was over,

14     and I'm not sure if it was a second or a minute

11:58  15     before I looked around, but it was shortly after

16     that she was not in the room.  That's all I can

17     tell you, she was not in the room.

18  Q  Okay.  And if I can get 412, please, you gave this

19     evidence, and I want to know if it's truthful:

11:58  20         "A   This particular occasion, to the best of

21              my recollection, the person that

22              provided the drugs was a friend of

23              Debbie Hall's."

24     Is that accurate or --

11:59  25  A  All I can remember about that was someone, and I

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| | | | |
|---|---|---|---|
| | 1 | | can't remember who, I don't know, and I don't know |
| | 2 | | in what time context, I don't remember, someone |
| | 3 | | told me that, and I can't tell you who it was, I |
| | 4 | | have no idea, and like I said, I don't know the |
| 11:59 | 5 | | time context either, sorry. |
| | 6 | Q | So you would have no reason to attribute the |
| | 7 | | providing of the drugs to David? |
| | 8 | A | All I know is in previous and on many occasions |
| | 9 | | prior to that whoever could get drugs would supply |
| 11:59 | 10 | | them and he was one of those people. |
| | 11 | Q | I'm only interested in one particular night. |
| | 12 | A | And for all I know maybe he did provide them.  I |
| | 13 | | don't know.  Like I said, this is what I was told. |
| | 14 | | Whether it was true or not I don't know.  I just |
| 12:00 | 15 | | accepted it as -- |
| | 16 | Q | Okay.  So we've gone through your Supreme Court |
| | 17 | | testimony, you've read it, I've only highlighted a |
| | 18 | | few portions of it, and I would now like to turn |
| | 19 | | to your interview and only a small portion of it |
| 12:00 | 20 | | on April 28th, 1993 with Homeniuk and -- I guess |
| | 21 | | Homeniuk is the one I'm concerned about, and if |
| | 22 | | you can turn to 036371.  Now, you were talking |
| | 23 | | about the Supreme Court and what transpired there |
| | 24 | | and you start off at the bottom of the page: |
| 12:01 | 25 | | "This was so funny... David's attorney --" |

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1        And there I am.  You see that?

2    *A*    Yeah.

3    **Q**    And if you can turn the page, just highlight that

4        portion, your words I guess:

12:01  5            "Yeah, Mr. Scumbag himself, God he's a

6            horrid human being, if he has a wife I feel

7            really sorry for her.  Anyway, he tried to

8            imply... there was one moment where I got

9            quite a laugh in the courtroom because I

12:01  10           started getting this drift as if he was

11           implying that there was something going on

12           between me and George and what... when he

13           started putting this to me ... I was blown

14           away and I said "excuse me, but if you were

12:01  15           trying to imply that there was something

16           going on between me and George Lapchuk, are

17           you ever barking up the wrong tree."

18       Now, leaving aside myself, I can live with that,

19       but what are you talking about?

12:02  20   *A*    I'm talking about when you were cross-examining me

21       in the Supreme Court of Canada and you were

22       implying that there was something going on between

23       me and George and that somehow we were create --

24       you can read over the testimony too, you get the

12:02  25       drift of it, and when I got the -- I remember

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1    sitting there and when I got the drift of this,

2    because if you only knew the truth, like, I'm

3    sorry, but this was so far out in left field.

4    George Lapchuk was not one of my favourite people.

12:02   5    Q    Well, I asked you, I went over it, and I won't go

6         over it again, I asked you simply if you were

7         intimate with him and your answer was yes.

8    A    That's correct.

9    Q    We went over that.  And as I go through the entire

12:03   10        transcript, there's nothing of you saying anything

11        like barking up the wrong tree, there's nothing

12        about people laughing, it just didn't happen.

13   A    I can remember a chuckle, yes.

14   Q    A chuckle?

12:03   15   A    Uh-huh.

16   Q    Okay.  But you surely don't remember talking about

17        barking up a wrong tree do you?

18   A    I don't know whether I said that, that's what I

19        said later, so whether I said that -- that's what

12:03   20        I was saying later.

21   Q    Okay.  If we can go down there a bit.

22   A    This was another conversation.

23   Q    Oh, I appreciate that.

24        "And there was no way that I was going to go

12:03   25        further on that because George used to force

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1    himself on me all the time and I wasn't

2    about to say that cause I'm thinking he

3    would have made this guy would have made

4    mincemeat... that's one of the reasons why I

12:03  5    hated him so much."

6    Now, are you hating George or are you hating me?

7    I'm not sure.

8  A   No, I think I was referring to George at that

9    time.

12:04 10  Q   Okay.

11    "I heard him saying, well I'm sorry you're

12    really... and everyone got quite a laugh out

13    of it because it was so utterly absurd that

14    he tried to imply that."

12:04 15  A   Like I said, I heard a chuckle.

16  Q   Well, everyone got quite a laugh?

17  A   Well --

18  Q   Are you just making this up?

19  A   No.  I found it quite entertaining that you were

12:04 20    going this route.

21  Q   Well, as I understand it, you were asked "have you

22    had sex with George" and you said yes.

23  A   That's correct.

24  Q   And out of that you made all this?

12:04 25  A   No, out of your continually going over this, over

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1          the questions about the sexual aspect.  I seem to

2          recall you asked many -- read the transcript.

3     Q    The transcript speaks for itself.  You read it?

4     A    Yes, I did.

12:04  5     Q    And I went over the parts about George?

6     A    Yes, and David and Craig.

7     Q    Uh-huh.  And if you go down the page, you say:

8               "R. GAGNE:  And Debbie Hall was...

9               U. FRANK:  She wasn't even there.  God damn

12:05  10              her.  She's just... she likes being on W5 a

11              lot.  And she likes being a friend of Joyce

12              Milgaard."

13    A    That's true, she was on W5.

14    Q    What's the problem with that?

12:05  15    A    Well, she wasn't there for the last -- as far as

16         I'm concerned she wasn't there for the last part.

17         Why was she on W5 talking about, like, that she

18         was when she wasn't.

19    Q    We just went over the part, and I don't want to

12:05  20         belabour it, but you just finished testifying that

21         the only person who left because of it was Deborah

22         Hall.

23    A    Every other person left.  She was just one of the

24         people that left, but everyone left.

12:06  25    Q    I thought George and Craig stayed.

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 1    A    See, you are doing it again.  No.  Me, Craig and

 2         George were the only three people that were left.

 3         All the other people left.

 4    Q    So George for sure didn't leave?

 5    A    No, he did not.  He was there.

 6    Q    So in conclusion, ma'am, you made a statement in

 7         1970 to the police; correct?

 8    A    Yes.

 9    Q    And you never, to anyone in authority, spoke again

10         for more than 20 years?

11    A    That's right.

12    Q    And when you spoke after 20 years, it was to

13         correct other people and obviously yourself?

14    A    No, it was because they insisted upon speaking to

15         me.

16    Q    When you came forward; correct?

17    A    No, when they came to me.  I did not come forward.

18         You can try and put that spin on it, but that's

19         not what happened.

20    Q    Okay.  And at that time you appreciated that you

21         had to provide some explanation for why you were

22         now giving a different story?

23    A    I suppose so.

24    Q    And the explanation you came up with was that

25         David threatened you?
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1    *A*    The explanation was that I was terrified and that

2          was why I was terrified.

3    **Q**    That David threatened you?

4    *A*    I would call it that, yes.

12:08    5    **Q**    Your explanation for why your original statement

6          wasn't true some 21 years previously was that

7          David had threatened you?

8    *A*    Correct.

9    **Q**    And if David didn't threaten you, that statement

12:08    10          would be true?

11    *A*    No, it still wouldn't be true.

12    **Q**    Then why would you have lied?

13    *A*    Because he -- I had no reason not to believe him

14          when he said he had done it and he had been

12:08    15          arrested once before and released.  I had no way

16          of knowing that he wouldn't be released again and

17          if I had talked -- this is in the mind of a 17

18          year old girl -- that if he had been released and

19          one day I'm walking around a corner and there he

12:08    20          is, I would be confronted with him again and that

21          is what I did not want.

22    **Q**    So it's possible he didn't threaten you and it was

23          all in your head?

24    *A*    No.

12:09    25    **Q**    Well, if Melnyk never heard it, Lapchuk never

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1    heard it, Hall never heard it, Harris never heard

2    it, nobody heard it, that maybe, ma'am, it's in

3    your head.

4    A    Well, for starters off, Debbie Hall and Harris

12:09    5    were not in the room at that time, so it would

6    have been impossible for them to hear it, and what

7    -- how Craig and George interpreted that, I'm

8    sorry, I cannot speak for them.

9         MR. WOLCH:  Those are all my questions,

12:09    10    sir.

11         COMMISSIONER MacCALLUM:  Thank you.

12         MR. HODSON:  Mr. Commissioner, I believe

13    there are -- I've been advised by one counsel, or

14    maybe two, that they wish to seek leave to

12:09    15    re-exam and I believe Mr. MacLeod may wish to ask

16    some questions and Mr. Hardy may have some

17    redirect, and I'm not sure which order you wish

18    to proceed in or who you wish to hear from for

19    their request.

12:10    20         COMMISSIONER MacCALLUM:  Well, thank you

21    very much for letting me know that.  Just let me

22    preference these requests, counsel, by saying

23    this:  Yesterday I would not permit Mr. Wolch the

24    privilege of re-cross when I perceived that his

12:10    25    effort just amounted to an effort to rehabilitate

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1    a witness after a rather effective

2    cross-examination.  This morning he has treated

3    us to a very long cross-examination and I may say

4    it was probably effective, so if your only

12:10  5    objective in asking for re-cross is to try to

6    rehabilitate this witness, don't bother.  If you

7    have something which is truly new which arose out

8    of Mr. Wolch's cross-examination, then please

9    tell me what it is and I'll decide.

12:10 10                 I'll turn now to Mr. MacLeod

11   and ask him what the nature of his request is.

12   You are aware of course, Mr. MacLeod, that our

13   rules don't provide a right of cross-examination

14   for counsel representing a witness as such?

12:11 15        MR. MacLEOD:  Yes, My Lord, but happily

16   they don't preclude it either.

17        COMMISSIONER MacCALLUM:  And what is the

18   nature of your questions?

19        MR. MacLEOD:  I wish to have a brief

12:11 20   discussion with my client before I commit myself

21   to applying to question.  I as well wish to

22   review some news articles from 1991 which go, I

23   believe, some distance to rebutting one of the

24   suggestions made by Mr. Wolch.

12:11 25        MR. WOLCH:  Well, My Lord, if I may --

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1       COMMISSIONER MacCALLUM:  Uh-huh.

2       MR. WOLCH:  -- I think if there's going to

3  be that kind of comments, the witness shouldn't

4  be here to hear that.

12:11  5       COMMISSIONER MacCALLUM:  Oh, we're not

6  going to hold a --

7       MR. WOLCH:  No, what I'm saying is that if

8  my friend is saying I want to ask this question,

9  I really object to the suggestion that the

12:12  10  witness can be interviewed at this time in the

11  middle of examination.

12       COMMISSIONER MacCALLUM:  Yes.

13       MR. WOLCH:  That's my prime objection, sir.

14       COMMISSIONER MacCALLUM:  I take your point.

12:12  15  Why don't you just be seated, sir, and I'll ask

16  Mr. Hardy to put his questions.  He, by the way,

17  does have a right of re-examination.  Maybe that

18  will clear up some things that other people were

19  inclined to ask.

20  **BY MR. HARDY:**

21  Q    I just have one question, Mr. Commissioner, it's

22       just to clarify a question that had been put to

23       the witness by Mr. Wolch, and it was with

24       reference to the Supreme Court testimony, and

12:12  25       perhaps we can refer to that document, please, and

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1       if we could turn to page 047388.  And I believe,

2       Ms. Frank, that Mr. Wolch had put just this

3       question and answer to you, if we could focus in

4       on that, I'm going to read those again and I'll

12:13  5       read on from there:

6               "Q   How many times that night on separate

7                    occasions would you have had sex with

8                    David?

9               A    As far as I can remember, only once.

12:13  10              Q    Only once?

11              A    Yep.

12              Q    You can't recall how many -- are you

13                   confident in that answer or might it

14                   have been that three hours later you had

12:13  15                   sex again?

16              A    I don't remember.  All I remember is I

17                   had sex with him.

18              Q    If witnesses were to say it was on

19                   several occasions, would you be able to

12:13  20                   disagree?

21              A    Since I can't remember, all I know is

22                   I had sex with him.

23              Q    For example, if Melnyk was to say you

24                   had sex with David on several separate

12:13  25                   occasions, would you be prepared to

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1                    accept that?

2          A    Well, I have on other occasions, but I

3               don't know if that would have -- I

4               just had sex with him.  I wasn't

12:14  5               keeping a score tab on how many times

6               that evening."

7     And would that be accurate information then,

8     Ms. Frank, that you were providing on that

9     occasion to Mr. Wolch?

12:14  10   A    Yes, as I had no memory at that time, I had no

11        memory of additional, but I also -- yeah.

12             MR. HARDY:  Okay, thank you.

13     Mr. Commissioner, I also have the -- I don't know

14     that now is an appropriate time to read it, I

12:14  15     don't know that Ms. Frank needs to be on the

16     stand for this portion, it's the disposition of

17     the application to have her called as a witness

18     at the Larry Fisher trial and I thought that that

19     might clarify matters, but again, I don't know

12:14  20     that I need to read that with Ms. Frank on the

21     witness stand at this point.

22             COMMISSIONER MacCALLUM:  Have other counsel

23     seen it?

24             MR. HARDY:  Yes, I believe so.

12:15  25             COMMISSIONER MacCALLUM:  What would be the

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1    matter with simply -- has it been marked with a

2    document ID?

3           MR. HARDY:  It is, it's a document we have

4    referred to, it's the transcript from Ms. Frank's

12:15    5    testimony at the Larry Fisher trial.

6           COMMISSIONER MacCALLUM:  Yes.  So it's the

7    end, it's the ruling on the voir dire?

8           MR. HARDY:  Yes, it is.

9           COMMISSIONER MacCALLUM:  Well I can

12:15    10    certainly read that for myself, it speaks for

11    itself.

12           MR. HARDY:  I'll leave that to your

13    discretion, Mr. Commissioner.  I wasn't certain

14    whether you might want me to read it.

12:15    15           COMMISSIONER MacCALLUM:  Do other counsel

16    wish it to be read in particular?  I have no -- I

17    haven't read it myself, so I don't know what's in

18    it, is there any purpose in reading it aloud?  It

19    will be available, it is, as a matter of fact,

12:16    20    available as a matter -- as an item of public

21    information?

22           MR. HARDY:  It is.

23           COMMISSIONER MacCALLUM:  I see no one

24    saying that they want it read so just refer me,

12:16    25    again, to the page number of that document

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1       please?

2               MR. HARDY:  Oh, yes, I will.

3               MR. LOCKYER:  What page is it?

4               MR. HARDY:  I'm just going to the page of

12:16  5    that, I closed my book, if you will -- 310524 of

6       that document, which is 310492, again page

7       310524.

8               COMMISSIONER MacCALLUM:  Thank you.

9               MR. HARDY:  Thank you, Mr. Commissioner.

12:16  10              COMMISSIONER MacCALLUM:  Thank you.  All

11      right, counsel, has that answered anybody -- has

12      that last evidence satisfied any questions which

13      would otherwise be put?

14                       First, I'll deal with Mr. Mr.

12:17  15   MacLeod.

16              MR. MacLEOD:  What I do wish, My Lord, is

17      to put before the witness certain documents which

18      are contained in the materials relating to news

19      reporting at around the time she made her

12:17  20   anonymous call.

21              COMMISSIONER MacCALLUM:  Yes.

22              MR. MacLEOD:  And I wish her to have the

23      opportunity, which she has not yet had, to review

24      those documents and confirm or deny that they

12:17  25   were the sort of materials to which she was

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1    referring.

2         COMMISSIONER MacCALLUM:  Which prompted her

3    to go to the Department of Justice?

4         MR. MacLEOD:  The Department of Justice.

12:17   5         COMMISSIONER MacCALLUM:  That was a new

6    factor in cross-examination.  I don't see, if the

7    materials are already in --

8         MR. LOCKYER:  May I address you, sir?

9         COMMISSIONER MacCALLUM:  Yes.

12:18  10         MR. LOCKYER:  I have some concerns about

11   this.  I was -- I heard the witness discussing

12   this with counsel during the break, I heard the

13   witness discussing it with one of the other

14   lawyers in here during the break, when Mr. Wolch

12:18  15   asked the witness about this immediately after

16   the break the witness denied discussing the case

17   with anyone during the break and then you,

18   Mr. Commissioner, to put it bluntly, cut

19   Mr. Wolch off --

12:18  20         COMMISSIONER MacCALLUM:  I did not cut him

21   off.

22         MR. LOCKYER:  -- when he asked the question

23   the second time.

24         COMMISSIONER MacCALLUM:  Mr. Lockyer,

12:18  25   that's an impudent remark.  You heard perfectly

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1          well what I said.

2                    MR. LOCKYER:  I did.

3                    COMMISSIONER MacCALLUM:  I reminded Mr.

4          Lockyer (sic) that the answer he got was "no."

5                    MR. LOCKYER:  Uh-huh.

6                    COMMISSIONER MacCALLUM:  And then she went

7          on to say "I was talking about how upset I was."

8                    MR. LOCKYER:  Uh-huh.

9                    COMMISSIONER MacCALLUM:  What is the --

12:18  10          MR. LOCKYER:  I think you can now

11          appreciate that the question was well-founded

12          that Mr. Wolch was asking.

13                    COMMISSIONER MacCALLUM:  Is that all you

14          have to say?

12:19  15          MR. LOCKYER:  It is.

16                    COMMISSIONER MacCALLUM:  I'm not doubting

17          you.

18                    MR. LOCKYER:  Because I heard with my own

19          ears what was going on during the recess.

12:19  20          COMMISSIONER MacCALLUM:  I'm not doubting

21          you.  Hand up that document, please.

22                    MR. MacLEOD:  I have received them, My

23          Lord, from other counsel who has hightlighted the

24          appropriate passages.

12:19  25          MR. LOCKYER:  Is that to be ignored,

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1          Mr. Commissionner?

2                    COMMISSIONER MacCALLUM:  Mr. Lockyer, would

3          you please let me read this paper, and then I'll

4          ask you if I have any more questions.  Of course

12:19  5   I'm not ignoring it, I'm looking at it.

6                    MR. LOCKYER:  It's a submission that I am

7          making as to what happened during the break.

8                    COMMISSIONER MacCALLUM:  Of course I'm not,

9          I agree with you.

12:19  10                  MR. LOCKYER:  Okay.  I'm sorry.

11                   COMMISSIONER MacCALLUM:  I have told you

12         that I accepted your word.

13                             May I now read this without

14         further interruption?

12:21  15                            Did you propose to put this

16         full package before the witness?

17                   MR. MacLEOD:  The highlighted portions.

18                   COMMISSIONER MacCALLUM:  The ones with the

19         pink tabs?

12:21  20                  MR. MacLEOD:  Yes.  Rather than calling up

21         the entire document I'm quite happy to simply

22         read, verbatim, the highlighted portions of the

23         first couple of them.

24                   COMMISSIONER MacCALLUM:  Ms. Frank, we're

12:21  25  going to break for lunch now and I'm going to

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1          give you this package of material and ask you to

2          look at the newspaper articles which are tabbed

3          here during the break, and when you come back I'm

4          going to ask you if you had ever seen them before

12:21  5          and whether they have played any part in your

6          going to the Department of Justice in 1991, and I

7          don't want you to talk to anybody else during the

8          break about your evidence in court.

9     A    Okay.

12:21  10                   COMMISSIONER MacCALLUM:  Thank you.

11                   MR. MacLEOD:  Thank you, My Lord.

12                   COMMISSIONER MacCALLUM:  Could you give

13         those to your client, please.  We'll break.

14         2:00, please.

12:22  15                   *(Adjourned at 12:22 p.m.)*

16                   *(Reconvened at 2:00 p.m.)*

17                   COMMISSIONER MacCALLUM:  Mr. MacLeod?  I

18         was going to ask your client, now, has she had a

19         look at those reports?

02:03  20     A    Yes, I --

21                   COMMISSIONER MacCALLUM:  You saw the tabbed

22         portions there, ma'am?

23     A    Yes, I did.

24                   COMMISSIONER MacCALLUM:  And I wonder if

02:03  25         you could just open to the first tab, and just go

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1    through them one by one, and tell me if you read

2    those at the time in question, which I think was

3    a 1991 statement.  I think, Mr. Wolch, that was

4    what gave rise to the --

02:03  5         MR. WOLCH:  Yes.

6         COMMISSIONER MacCALLUM:  This business,

7    whether she went of her own accord to the

8    Department of Justice or whether she went, as she

9    said in one of her statements, as a result of

02:03  10   something she saw in the paper.

11        MR. WOLCH:  You are correct,

12   Mr. Commissioner.

13             The only concern I have is --

14   and I could be wrong -- I thought the witness

02:03  15   said somebody read it over the phone to her.

16        COMMISSIONER MacCALLUM:  Yes, she did say

17   something about that.

18   A   Yes, the very first article was my ex-husband

19       called me, because shortly after all of this we

02:04  20      were married and he, he saw the first, he saw -- I

21       did not, I was living in British Columbia and I

22       didn't know anything, so he called, he called to

23       talk to one of -- to the children, and I answered

24       the phone, and he brought it up, and he had the

02:04  25      article right there, and he read it to me.

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1      COMMISSIONER MacCALLUM:  And do you have

2      that article that he was mentioning to you in

3      front of you?

4    *A*    I'm not sure if it's in here, I don't know.

02:04  5      COMMISSIONER MacCALLUM:  Can you identify

6      any one of those tabbed items as one that you

7      saw?

8    *A*    I saw several of these articles, yes.

9      COMMISSIONER MacCALLUM:  Did you?

02:04  10   *A*    But I can't remember exactly which one it was or

11      --

12      COMMISSIONER MacCALLUM:  And is it your

13      evidence that that, that reading those prompted

14      your decision to go to the Department of Justice?

02:04  15   *A*    Looking for information, yes, because I didn't

16      understand what was going on.

17      COMMISSIONER MacCALLUM:  Okay.  Do you want

18      to call my attention to anything in particular in

19      any one of those there?

02:05  20   *A*    Well there was one that I saw here.  Well, see,

21      there's one article here that's dated March the

22      13th, 1991 --

23      COMMISSIONER MacCALLUM:  Yes.

24   *A*    -- that states that -- oh, 323246.

02:05  25      MR. MacLEOD:  323246.

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1    *A*      Yes.

2         COMMISSIONER MacCALLUM:  That's the document ID?

3    *A*      Yes, yeah, that one.  And it's, it somewhat gives

4             the impression that somehow me and Debbie were

02:05  5       contradicting the evidence of the two men which,

6             at the -- that was not true, I was not

7             contradicting the evidence of Craig and George.

8                  COMMISSIONER MacCALLUM:  All right.  And is

9             -- was it as a result of this article in

02:05  10      particular that you contacted the Department of

11            Justice?

12   *A*      Well I'm not sure if which exact -- but this was

13            one of the articles that I remember reading and it

14            upset me.

02:06  15                 COMMISSIONER MacCALLUM:  Okay.

16   *A*      Because I thought that they were taking -- this

17            was totally out of context.

18                             And then the other one here was

19            there was something, I read something in here

02:06  20      about her stating that she was -- this one would

21            be 323248, and it states in this article that,

22            also that, that Debbie Hall --

23                 MR. HODSON:  Just identify, put your finger

24            on the screen and they can identify what --

02:07  25                 COMMISSIONER MacCALLUM:  Touch the screen

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1          there.

2     A    Okay, I'll hold it here, or where is it.  This

3          part starting right here, from here to here, this

4          portion right there.

02:07  5              COMMISSIONER MacCALLUM:  Okay.

6     A    And it states that:

7                   "Ute Frank and Debbie Hall were in the

8                   Regina motel room with Melnyk and

9                   Lapchuk when Milgaard allegedly made the

02:07  10                  stabbing motions on the pillow, were not

11                  called to testify.  Hall says in a sworn

12                  statement that Milgaard was fluffing a

13                  pillow ...,"

14         I remember that article, that upset me a great

02:07  15         deal.

16              COMMISSIONER MacCALLUM:  Okay.  All right.

17                        What I have gathered from this

18         witness, then, is that, in response to

19         questioning by Mr. Wolch which raised the

02:08  20         question of her reason for going to the

21         Department of Justice, was it her own initiative

22         or was it for some other reason, and she had made

23         a statement that she had read articles or heard

24         articles from the media which upset her, and so

02:08  25         we have invited her to examine articles at the

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02:08

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02:09

1    request of her counsel, Mr. MacLeod.  She has

2    identified two of them amongst the package given

3    to her, identified by document IDs 323246 and

4    323248, the first being dated March the 13th,

5    1991, and she said that these two articles,

6    amongst others which she saw, caused her to go to

7    the Department of Justice because the events

8    described in those articles upset her a great

9    deal.

10                   Mr. MacLeod, do you have

11   anything further that concerns you?

12        MR. MacLEOD:  No, thank you, My Lord.

13        COMMISSIONER MacCALLUM:  All right.  Now

14   there is no need to mark those documents as an

15   exhibit, they are already in the record of

16   proceedings by their document ID numbers.

17                   Now, as amongst counsel who

18   indicated before that they might wish to

19   re-cross, is anybody still of that mind?

20                   I understand as well from our

21   Commission Counsel that somebody has come forward

22   with an explanation addressing Mr. Lockyer's

23   concern about this witness speaking to somebody

24   outside of the courtroom on the subject of the

25   evidence she was giving and, Mr. Beresh, did you

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1          have any comment to make about that?

2                    MR. BERESH:  I do, My Lord, if you will

3          bear with me.

4                              I believe there was a

02:10     5          suggestion, albeit very vague in nature this

6          morning, that someone had spoken to the witness

7          about the evidence.  I'm not sure who the

8          reference was to, but I want to clarify for the

9          record that at the morning break, near the end of

02:10     10         the break after I returned from my room while I

11         was getting a cup of coffee in the public area,

12         the witness approached me and wished to speak to

13         me.  I told her I could not speak to her about

14         her evidence, and then she asked about a

02:10     15         procedural issue which arose as a result of

16         Global News reporting on Justice Albright's

17         finding.  I told her that that was in the

18         transcript of material that she had received and

19         that there was no finding that she was found to

02:10     20         be untrustworthy.

21                             The manner in which she

22         described it to me suggested to me by her body

23         action that she was quite upset by the news

24         report.  I did not discuss it further with her, I

02:11     25         immediately asked to see Commission Counsel and

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1    Mr. MacLeod and we met privately to discuss; a)

2    the effect of the news article upon her potential

3    evidence; and secondly, whether or not

4    broadcasting a witness' evidence before they have

02:11  5    concluded might affect future witnesses'

6    evidence.

7                        So there was no discussion

8    whatsoever about any evidence which was before

9    this court, and I wanted to explain that.

02:11  10                        And I want to add this,

11    Mr. Commissioner, that it troubles me.  This

12    Inquiry has proceeded very efficiently, very

13    effectively, the people in this province can be

14    extremely proud of the way in which it's

02:11  15    proceeded due basically to your guiding of this

16    ship, but due also to the cooperative nature of

17    counsel who appear before it.  Without that

18    cooperation amongst counsel, it would be

19    difficult to proceed as effectively.

02:12  20                        And I only raise that because

21    there is a tradition in this province, as I hope

22    there is a tradition in every province, that if

23    someone feels that there is some improper conduct

24    that's occurred, that they ought to check it out

02:12  25    first, not pass into a conversation and out of a

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1      conversation like a ship in the middle of the

2      night.  And I think that that, hopefully, that

3      cooperation of counsel will continue in the

4      future.  Thank you.

02:12    5           COMMISSIONER MacCALLUM:  Thanks,

6      Mr. Beresh.

7                     I asked a minute ago if other

8      counsel had any intention of asking me to

9      re-cross this witness?  It appears not.

02:12   10                     Mr. Hodson, is there any

11     further need for this witness?

12           MR. HODSON:  No.

13           COMMISSIONER MacCALLUM:  Thank you very

14     much, Ms. Frank, for coming, and you, Mr.

02:12   15     MacLeod, for assisting her.

16           MR. MacLEOD:  Thank you.

17           COMMISSIONER MacCALLUM:  You are excused

18     now.  Thank you.

19           MR. HODSON:  The next witness is Sharon

02:12   20     Daniels, if you could come up to the witness

21     table, please.

22     ***SHARON ANN DANIELS***, sworn:

23     **BY MR. HODSON:**

24   Q   Good afternoon, Mrs. Daniels.  Thank you for

02:13   25     agreeing to testify before this Commission.

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1                                      I understand that you currently

2     reside in Alberta; is that correct?

3    *A*    That's correct.

4    **Q**    And that you are presently 53 years of age?

02:14  5    *A*    And that's correct.

6    **Q**    And that your maiden name is Williams?

7    *A*    That's correct.

8    **Q**    And that you were known by the last name, or the

9    name Sharon Williams in 1968 and 1969, is that

02:14  10    correct?

11    *A*    That's correct.

12    **Q**    And I understand, in 1968, you resided in Regina?

13    *A*    That's correct.

14    **Q**    And that you moved to St. Albert, Alberta, is that

02:14  15    right?

16    *A*    That's right.

17    **Q**    Do you recall when that was?

18    *A*    When I moved?

19    **Q**    Yes.

02:14  20    *A*    That was in, I think in October of 1998 -- or

21    sorry, '68, sorry.

22    **Q**    '68?

23    *A*    Sorry, yes.

24    **Q**    1968.  And I understand that in 1968 and 1969 you

02:14  25    were a friend or girlfriend of David Milgaard's;

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1        is that correct?

2    *A*    That is correct.

3    **Q**    Can you tell us how you met Mr. Milgaard and what

4        you saw of him in 1968 and 1969?

02:14  5    *A*    Well I believe the first time that I met him was

6        at a little restaurant in Regina, and it was just

7        kind of a hang-out for --

8    **Q**    Let me guess; Smitty's?

9    *A*    I have no idea what the restaurant's name was,

02:15  10        yes, I can't remember.

11    **Q**    Okay.  And you were acquainted with him in those

12        years; were you?

13    *A*    Umm, from, from that point on, yes.

14    **Q**    And was that a group of friends that chummed

02:15  15        around together at that time?

16    *A*    Umm, yes, there was, yup.

17    **Q**    And who will be in that group?

18    *A*    I remember George Lapchuk and, umm, I guess it

19        would have been Craig, Craig Melnyk, and I don't

02:15  20        really remember it, like there was, --

21    **Q**    That's fine.

22    *A*    -- as far as specific names, but there was a

23        group, there was always a group, but I can't --

24        sorry.

02:15  25    **Q**    Let's just talk about 1968, before you moved to

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|     |   |                                                          |
| --- | - | -------------------------------------------------------- |
| 1   |   | Alberta, did you spend much time with Mr.                |
| 2   |   | Milgaard?                                                |
| 3   | A | Umm, yes.                                                |
| 4   | Q | Can you just give a general description of how           |
| 5   |   | long you were friends with him and the extent of         |
| 6   |   | your friendship?                                         |
| 7   | A | Well whenever it was that I met him, I think it          |
| 8   |   | was in the early spring, maybe, in this                  |
| 9   |   | restaurant, and then it just seemed to -- I don't        |
| 10  |   | really know how it proceeded, the relationship,          |
| 11  |   | but it -- and all of a sudden he is wanting to go        |
| 12  |   | to I believe it was Vancouver, and so I just up          |
| 13  |   | and went with him, left, ran away from home and          |
| 14  |   | went there for a while, got brought back, and            |
| 15  |   | then -- to Regina, and then he came again, I think       |
| 16  |   | it was just kind of an on/off thing because he was       |
| 17  |   | either here or there, and then whenever he was in        |
| 18  |   | town then he would kind of find me, or probably          |
| 19  |   | knew where I -- knew where to find me and I knew         |
| 20  |   | where he would end up.  And then went off to out         |
| 21  |   | east, again ran away from home, Winnipeg, and then       |
| 22  |   | got brought back again, and then went again out          |
| 23  |   | east, and just all within a matter of those --           |
| 24  |   | that many months.                                        |
| 25  | Q | And was it -- and maybe this isn't the right term        |

02:16
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 1              -- was it a boyfriend-girlfriend relationship or

 2              acquaintances?

 3      A       Probably boyfriend-girlfriend, yeah.

 4      Q       And then I think you said in October of 1968 you

02:17 5         moved to Alberta; is that correct?

 6      A       I believe it was around that time, yes.

 7      Q       And did you still have contact with Mr. Milgaard

 8              after that?

 9      A       Not that I can -- not that I can remember.

02:17 10    Q   Now do you recall, let's move ahead to February of

 11             1969, do you recall David Milgaard coming to St.

 12             Albert to see you?

 13     A       Yes.

 14     Q       And can you tell us about that, please?

02:18 15    A   Well there was a, we had a hang-out that was in

 16             St. Albert, and I was still pretty wild at that

 17             time and doing drugs and things like that, and so

 18             I was hanging out there, and then he just, as far

 19             as I can remember he just showed up one night, I'm

02:18 20        not sure if there was contact before that or

 21             anything, I don't remember anything.  But I do

 22             remember him showing up that one night, spending

 23             the night with him at a motel, and that was all I

 24             can remember.

02:18 25    Q   Okay.
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1    *A*    He left.

2    **Q**    I'm sorry, do you recall whether or not you knew

3          he was coming, or did it surprise you?

4    *A*    I can't remember whether I knew he was coming or

02:18    5          not.

6    **Q**    Do you remember who was with Mr. Milgaard?

7    *A*    Umm, Ron Wilson, and there was another fella and a

8          girl.

9    **Q**    Do you recall their names?

02:19    10    *A*    No.

11    **Q**    I don't mean to -- does the name Albert Cadrain or

12          Shorty Cadrain sound --

13    *A*    Shorty sounds --

14    **Q**    Yes.

15    *A*    Uh-huh.

16    **Q**    And what about Nichol John; does that name sound

17          familiar?

18    *A*    Sounds familiar, yes.

19    **Q**    And do you recall whether any of them, or in

02:19    20          particular Mr. Milgaard, had explained where they

21          had been or why they were there?

22    *A*    I don't recall.

23    **Q**    These three people with Mr. Milgaard, had you met

24          them before?

02:19    25    *A*    I knew Ron, but I don't believe I had met the

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1           other two.

2     Q     And so I think you said you spent a day and a

3           night with this group; is that correct?

4     A     Umm, they -- it was in the evening when I think

02:19  5           they showed up, the evening, and then I spent the

6           night, and I'm not sure how much of the rest of

7           the next day that I had spent with them, I don't

8           remember that.

9     Q     And then did they leave?

02:20  10    A     As far as I know they did, yes.

11    Q     And do you know where they were going?

12    A     Umm, I think maybe it was Vancouver.

13    Q     Okay.  Have you seen or talked to David Milgaard

14          since then?

02:20  15    A     Hmm, no.

16    Q     For that -- and I think you said February 1, '69,

17          did -- do you recall noticing anything unusual

18          about David Milgaard on that visit?

19    A     No, I don't.

02:20  20    Q     What about the other three companions?

21    A     No, I don't.

22    Q     When you were with David Milgaard for that day or

23          two, did David Milgaard say anything to you about

24          anything that happened in Saskatoon in connection

02:20  25          with a girl, or words to that effect?

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1    A    No, I don't remember.

2    Q    Did you have an opportunity to observe David

3         Milgaard's clothing?

4    A    Umm, possibly.  I didn't pay attention to them.

02:21  5    Q    Do you recall looking into his suitcase?

6    A    No, I don't.

7    Q    Do you recall observing anything, any blood or

8         anything unusual, on David Milgaard's clothing?

9    A    No, I didn't.

02:21  10         MR. LOCKYER:  What was the answer, "no, I

11         didn't" or "no, I don't"?

12    BY MR. HODSON:

13    Q    I think she said --

14    A    I said "no, I didn't".

02:21  15         MR. LOCKYER:  Okay, thanks.

16    BY MR. HODSON:

17    Q    Now just a couple questions, Ms. Daniels, and I

18         don't want to make you uncomfortable, but when --

19         we're going to get into a police statement later

02:21  20         that talks about this.  Did you have sexual

21         relations with David Milgaard when you were his

22         acquaintance back then?

23    A    Yes, I did.

24    Q    Did he ever act inappropriately or without your

02:21  25         consent?

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|   |   |   |
|---|---|---|
| 1 | *A* | I guess, yeah. |
| 2 | **Q** | Pardon me? |
| 3 | *A* | Yes. |
| 4 | **Q** | And explain? |
| 02:21 5 | *A* | Well I guess he was just, just the way he was, he |
| 6 |  | just always would seem to at the time, you know, |
| 7 |  | like forcing himself, but then, you know, I was -- |
| 8 |  | in the beginning forcing himself, but then I |
| 9 |  | became a willing partner, so if that's the answer. |
| 02:22 10 | **Q** | Okay.  My question was whether -- let's talk about |
| 11 |  | anything inappropriate; was there anything |
| 12 |  | inappropriate in his relationship with you at that |
| 13 |  | time, that you viewed as inappropriate? |
| 14 | *A* | No, no I -- no, I guess not, no. |
| 02:22 15 | **Q** | Now, after this group left, do you recall being |
| 16 |  | contacted by the police in connection with David |
| 17 |  | Milgaard?  Do you recall the police coming to your |
| 18 |  | house? |
| 19 | *A* | No, I don't. |
| 02:23 20 | **Q** | Do you recall meeting with the police in 1969? |
| 21 | *A* | No, I don't. |
| 22 | **Q** | No recollection? |
| 23 | *A* | No. |
| 24 | **Q** | Do you recall providing a statement to the police |
| 02:23 25 |  | in March of 1969? |

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1    *A*      No, I don't.

2    **Q**      Okay.  Perhaps if we could call up document 006500

3          and just ask you to look at that signature in the

4          bottom right-hand corner, if you can zoom in, is

02:23   5          that your signature?

6    *A*      Yes, I believe it is.

7    **Q**      Okay.  And there's some witness statements on

8          here, or the witnesses, I think there is a John

9          Malanowich of the Saskatoon City Police, Vern

02:23   10          MacIntosh, and Shirley Mitchell of the Edmonton

11          police; do any of those names ring a bell with

12          you?

13    *A*      No, they don't.

14    **Q**      And do you recall learning that David Milgaard had

02:24   15          been either a suspect or had been arrested in

16          connection with a murder?

17    *A*      I, I don't recall that.

18    **Q**      Do you recall finding out at some point that David

19          Milgaard had been convicted of a crime?

02:24   20    *A*      Maybe at some point, but I don't recall exactly

21          when.

22    **Q**      We'll go through parts of these, the statements,

23          and maybe this will assist you in refreshing your

24          memory.  Maybe just go through the first

02:24   25          paragraph, if you can call that out, please.  It

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1              says:

2                   "I, Sharon Ann Williams, was born ...",

3              I think that says:

4                   "... November 29 ...,"

02:24  5       or March:

6                   "... November 29, '51",

7              Is that correct?

8        A     Yes, it is.

9        Q          "I live with my parents Rose and Hugh

02:25  10                 Williams at 54 Gillian Crescent, St. Albert,

11                 Alberta."

12             Was that true at the time?

13       A     Yes, it was.

14       Q          "I have one brother and one sister.  I attend

02:25  15                 Paul Kane High School in St. Albert."

16             Was that correct?

17       A     Yes.

18       Q     It goes on to say, just scroll down here, please:

19                  "I met David Milgaard in Regina last Easter,

02:25  20                 in Regina, downtown Regina, we were watching

21                 ...",

22             or:

23                  "... walking downtown ...",

24             etcetera, is that -- is that correct?

02:25  25       A     I -- like, is that saying when I met him?

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|   |   |   |
|---|---|---|
| 1 | **Q** | It says here, according to this statement: |
| 2 |  | "I met David Milgaard in Regina last |
| 3 |  | Easter", |
| 4 |  | which I'm assuming is Easter of 1968? |
| 02:25 5 | *A* | Okay, uh-huh. |
| 6 | **Q** | Does that sound right? |
| 7 | *A* | Yeah, that would have been, this -- yeah, about |
| 8 |  | the time. |
| 9 | **Q** | And if you go to the next page, please, 006501, |
| 02:25 10 |  | just looking at a note here, and maybe this will |
| 11 |  | assist your memory, Ms. Daniels, I understand that |
| 12 |  | this interview was done at a hotel room in |
| 13 |  | Edmonton; does that ring a bell with you at all? |
| 14 | *A* | Umm, well it wouldn't -- it would make more sense. |
| 02:26 15 | **Q** | Okay.  And why is that? |
| 16 | *A* | Because my mom and dad don't remember having them |
| 17 |  | come to the house. |
| 18 | **Q** | Okay.  How about you, though, do you remember them |
| 19 |  | coming to the house? |
| 02:26 20 | *A* | No, no. |
| 21 | **Q** | And do you have any memory of meeting the police, |
| 22 |  | or anybody else, in a hotel room at or about this |
| 23 |  | time? |
| 24 | *A* | No, I don't. |
| 02:26 25 | **Q** | Okay.  And just on page 2 here, just call out that |

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1    portion, it says here:

2         "Then he ...,"

3    and I believe that is referring to Mr. Milgaard:

4         "... asked me to go to Vancouver with him

02:26    5         and I did and that night Monday we left

6         Regina in that stolen car."

7    Do you recall; is that consistent with what you

8    told me earlier about a trip to Vancouver?

9    A    Uh-huh, yes.

02:27    10    Q    Go to the next page, 006502 -- or pardon me, 5 --

11        006507, and just call out that bottom part.  And

12        this is on the eighth page of the statement, it

13        says:

14            "The next time I saw David Milgaard was on

02:27    15            Saturday, February 1st, '69 at 6:30 p.m., he

16            told me that he arrived in Edmonton early

17            Friday, January 31, 1969.  No, that was

18            Saturday morning.  I suspected that he broke

19            into the Sanctum that night (Saturday)

02:28    20            morning.  The Sanctum had been broken into

21            and the other guys, Ron Wilson, Shorty and

22            Nicky told me that they weren't actually

23            watching --"

24        etcetera.  Do you recall those events, Ms.

02:28    25        Daniels?

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1    *A*    Umm, not really, no.

2    **Q**    Okay.  If we go to page 006510, this is page 11 of

3           the statement, if you will just look at the bottom

4           half and the top half of the next page, please,

02:28  5           and it says here:

6                "David had brought his suitcase into the

7                hotel room from the car from the back seat,

8                it was an old looking thing.  I looked into

9                it the next morning, I saw some nylons in

02:29  10               it, they were used ones just thrown in.  I

11               asked him about them, he said they were

12               Nicky's.  There was a writing pad, two pairs

13               of pants, a white shirt, some 2 or 3 cans of

14               deodorant."

02:29  15          Just scroll down.  It says:

16               "These pants were dirty and used, the shirt

17               was clean and not ironed very good.  One

18               pair of pants I think were torn, I think

19               someone mentioned something about a tear.

02:29  20               Shorty said one pair was his.  Ron said he

21               was going to cash some cheque."

22          Etcetera.  Do you recall; does that assist you in

23          refreshing your memory at all?

24    *A*    No.

02:30  25    **Q**    Page 006512, down at the bottom, and the statement

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1      says:

2           "In Langenburg, in his dresser, were

3           pictures of two girls and I think that he

4           said one was named Gail.  They were the type

02:30  5           you would take at the Bay or one of the

6           stores.  He said the picture of Gail was

7           taken in Winnipeg."

8      Does that assist you in refreshing your memory at

9      all?

02:30  10  A   No, I don't remember that.

11  Q   Do you have any recollection of any photographs in

12      David Milgaard's -- or any pictures that he may

13      have had?

14  A   Well, no.

02:30  15  Q   Top of the next page, it says here:

16           "When David was in St. Albert on February

17           1st and 2nd I didn't see any blood stains on

18           his clothing or on any of his possessions."

19      Do you recall being asked about whether you

02:31  20      observed blood on any of his clothing?

21  A   I'm not sure if it's at that particular time or

22      some time after.

23  Q   Okay.  And what do you recall?

24  A   I don't recall any blood on his clothing.

02:31  25  Q   Okay.  Do you recall being asked that question by

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1          somebody?

2     A    Somebody.

3     Q    And do you know when that was?

4     A    No, I don't.

02:31  5     Q    Okay.  Just go to the bottom page of that, and

6          that is your statement there, is it?

7     A    Yes, I guess.

8     Q    And it says here:

9               "Completed and re-read by Sharon Williams at

02:31 10               3:20 p.m.",

11          and an officer's signature.  Do you recall having

12          an officer provide you with a statement and read

13          it?

14     A    No, I don't.

02:32 15     Q    Next if I could call up document 009245.  Now the

16          date of that, that statement -- and I appreciate,

17          Ms. Daniels, that you said you don't recall it,

18          but the date of that is March 20, 1969.

19     A    Uh-huh.

02:32 20     Q    And I just want to read to you certain portions of

21          a police report that's dated March 22, 1969, which

22          would be two days after, and it says -- if you

23          will just call out that portion, please -- it

24          says:

02:32 25               "In speaking with ...,"

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1    And I'm sorry, I could just tell you, this is

2    John Malanowich, Sergeant John Malanowich which

3    is one of the names that's on the statement and

4    purports to be someone who was there.  In fact if

02:33    5    you just go to the top of this report, please,

6    and scroll down a bit it says:

7         "On March 20th, 1969, I was picked up at the

8         Edmonton International Airport by Detective

9         Vern McIntosh of the Edmonton Police

02:33    10         Department.  We then called at the RCMP

11         detachment in Edmonton and interviewed

12         Sergeant Wilson who was the RCMP officer who

13         had contacted Mrs. Williams with Constable

14         Willis.

02:33    15                    Sergeant Wilson then phoned St.

16         Albert ...",

17    etcetera, and then here:

18         "In company of Detective Vern McIntosh and

19         policewoman Shirley Mitchell of ...  we

02:33    20         called at 54 Gillian Crescent ...",

21    etcetera.

22         "... and first spoke with the parents Mr.

23         and Mrs. Hugh Williams."

24    And Hugh was your father's name; is that correct?

25    A    Yes, it is.

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1    Q        "They could not tell us anything of

2             any value which would aid in this

3             investigation.  Mr. Williams then left for

4             work and Mrs. Williams then left the living

02:34   5             room to another section of their house after

6             she gave us permission to talk to Sharon."

7         And then it goes on to talk about a statement.

8         Does that assist your memory at all?

9    A    No.

02:34   10   Q    No?

11   A    No, sorry.

12   Q    No, that's fine.  If you could scroll down,

13        please, and this is John Malanowich's report and

14        he says:

02:34   15            "In speaking with Sharon Williams she is a

16             clean, average girl, who seems to be quite

17             sincere in her conversation with us.  She

18             was explained the seriousness of the offence

19             here in Saskatoon and stated that she had no

02:34   20             knowledge of any murder and thought it was

21             rape.  When questioned where she heard

22             anything about rape she stated that her

23             mother advised her after Sergeant Wilson and

24             Willis of the RCMP had spoken with her in

02:34   25             regards to David Milgaard that her mother

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1           told her that David was suspected of rape."

2           Do you recall anything of that nature,

3           discussions with your mother?

4    *A*    I don't necessarily recall the discussions, but it

02:34  5        sounds, it sounds like it could be, yes.

6    **Q**   Okay.  If you could scroll down, please, to that

7           full paragraph, and this is the officer's notes,

8           not your statement.

9    *A*    Right.

02:35  10   **Q**   This is what the officer wrote.

11   *A*    Okay.

12   **Q**       "Now dealing with the statement received

13               from Sharon Williams - it is quite obvious

14               from talking to her that she thinks that

02:35  15           David Milgaard is capable of murder."

16           And let me stop there.  Did you ever tell anybody

17           that you thought David Milgaard was capable of

18           murder?

19   *A*    No, no, I didn't, no.

02:35  20   **Q**   Did you ever think that David Milgaard was capable

21           of murder?

22   *A*    No, I didn't.

23   **Q**   Do you have any explanation as to why an officer

24           would have written in this report that you, or

02:35  25           attributing to you your thoughts that David

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1        Milgaard is capable of murder?

2    A   Probably just on how he perceived what I was

3        saying, I gather.

4    Q   And this report goes on to say:

02:36   5           "She was queried twice on this point and she

6               definitely without hesitation stated this."

7        Now I have reviewed your statement and there's, I

8        don't believe that's in the written statement,

9        otherwise I would have put it to you, --

02:36  10    A   Uh-huh, uh-huh.

11    Q   -- and if I'm wrong on that I'm assuming someone

12        will.  You (sic) say:

13               "She stated quite honestly that she got

14               suckered in by this boy and when she

02:36  15               realized that he was taking advantage of her

16               she broke relations with him, then he would

17               come back to her and talk her into having

18               relations with her again.  She gave the

19               impression that she liked her sex relations

02:36  20               at times with this boy and went along with

21               him in this regard ...,"

22        etcetera.  Do you recall any discussion with --

23        does that assist in your recollection of any

24        discussion with the police officers?

02:36  25    A   Well, I think it kind of states how, how I felt,

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1          yeah.

2      Q   Okay.  Let's go on here, and it says:

3              "She gave the impression that she liked her

4              sex relations at times with this boy and

02:36  5       went along with him in this regard ...",

6      A   Uhum.

7      Q       "... but then when she refused him he got

8              violent and forced her and she admits that it

9              is at these times that she thought he was

02:37  10      abnormal and a violent type of person."

11         Do you recall saying words to that effect to the

12         police at the time?

13     A   I don't recall saying -- not that, no.

14     Q   Did you have those thoughts, at the time, of

02:37  15      David, of Mr. Milgaard?

16     A   Yeah, that would be kind of a fair -- umm, umm, I

17         can't think of a word -- a statement, a statement,

18         yes, I think a statement

19     Q   In particular, did you think he was abnormal and a

02:37  20      violent type of person?

21     A   Umm, I think that that might, might be a fair,

22         fair statement, yeah.

23     Q   And why do you say that?

24     A   Well just from, you know, reading some of the

02:37  25      things that I said in that statement, that that

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1      could be perceived as how it was.

2   Q   Okay.  I want to know what you thought at the

3      time --

4   A   Okay.

02:38  5   Q   -- and if you are able to tell us in 1969, in

6      March, whether you thought David Milgaard was

7      abnormal and a violent type of person.  I'm not

8      interested in what others perceived.

9   A   Oh, okay.

02:38  10   Q   I want to know what you thought.

11   A   I really can't, can't recall, you know, like

12      whatever I really thought back then.  I'm kind of

13      looking at it as now, because I did go along with

14      it.

02:38  15   Q   Okay.  When you say you did go along with what,

16      are you talking the statement, or the --

17   A   The relation, the relationship.

18   Q   Okay.

19   A   Yeah.

02:39  20   Q   Now the police report also says that:

21          "She was questioned in regards to whether

22          she saw any blood on his clothing or any

23          clothing in his possession and she admits

24          she looked into his suitcase at the motel in

02:39  25          St. Albert and noticed these beige nylons in

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1          it which were the only items belonging to a

2          woman and that she questioned him about

3          them.  He gave her the answer that they were

4          Nichol John's."

02:39  5     Does that assist you in recalling your discussion

6          with the police or what happened at all?

7     A    Yeah, no, I don't remember that.

8     Q    And down at the bottom, please, if you scroll down

9          to the bottom, and these are again Sergeant

02:39 10     Malanowich's words.  It says:

11          "It is quite obvious that David Milgaard was

12          definitely different on this occasion when

13          he saw her in Edmonton, she made it quite

14          clear that he seemed to be running away from

02:39 15          something, she sensed this."

16     Do you recall concluding that Mr. Milgaard was

17     running away from something, or sensing that back

18     at the time?

19    A    No, I don't.

02:40 20   Q    Do you recall telling the police that?

21    A    No, I don't.

22    Q    Top of the next page, please.  And there was a

23          matter in your statement, I didn't put it directly

24          to you, but about -- I think your statement said

02:40 25          that David Milgaard told you that he took money

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1          from a girl in a marijuana transaction, or words

2          to that effect; do you recall that discussion?

3     *A*     No, I don't, no.

4     **Q**     And this says:

02:40    5              "The matter also came up that David Milgaard

6               mentioned several times to her that he was

7               concerned about the girl that he took money

8               from and didn't give her any marijuana for

9               it, that he just took off with her money.

02:40   10               When questioned Sharon Williams stated that

11               she thought the girl was from Regina, just

12               took it for granted, that she never thought

13               that this girl could have been from

14               Saskatoon."

02:41   15          And let me pause there.  Do you recall any

16          discussion; do you recall that at all?

17     *A*     No.

18     **Q**     The report says:

19               "I think that in a way David Milgaard

02:41   20               possibly did in this way admit a guilt

21               complex and instead of saying that he killed

22               a girl, he shared his guilt by talking about

23               it substituting marijuana for sex and the

24               money he received as the money he took from

02:41   25               the murdered girl's purse."

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1          Now I believe that is Mr. Malanowich's language.

2          Do you recall any discussion with the police

3          about that?

4     A    No, I don't.

02:41  5     Q    Now I think you told me earlier that you don't

6          have a specific recollection of when you found out

7          that Mr. Milgaard had been charged, arrested, or

8          convicted of an offence?

9     A    No, I don't, no.

02:41 10    Q    Do you recall a police officer attending in

11         Edmonton in June of 1969 to conduct a polygraph

12         test on you?

13    A    No, I don't.

14    Q    If I could call up document 009302, and this is a

02:42 15         letter, you may not have seen this other than we

16         may have sent it to you recently, June 19th, 1969.

17         If you could just call out that portion.  And it's

18         a report from the Calgary Police to the Saskatoon

19         Police, and it talks about:

02:42 20              "Sharon Williams was interviewed by

21              Inspector A.R. Roberts on the evening of

22              June 11, 1969 regarding her knowledge of

23              David Milgaard and the Gail Miller murder.

24                        Miss Williams was interrogated

02:42 25              with the use of the Polygraph for

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| | | |
|---|---|---|
| 1 | | approximately 3 1/2 hours.  It is the |
| 2 | | opinion of Inspector A. Roberts that Miss |
| 3 | | Williams does not have any information that |
| 4 | | would assist you in the prosecution of David |
| 02:42 5 | | Milgaard.  She did state, however, that she |
| 6 | | remembers Milgaard saying, "I tried to make |
| 7 | | a girl in Saskatoon." |
| 8 | | Does that assist you at all in recalling a |
| 9 | | meeting with the police and a polygraph? |
| 02:43 10 | A | No, it doesn't. |
| 11 | Q | Do you know what a polygraph is, a lie detector |
| 12 | | test? |
| 13 | A | Uh-huh. |
| 14 | Q | Do you recall being hooked up? |
| 02:43 15 | A | No, I don't recall that, no. |
| 16 | Q | I understand that you were not a witness at the |
| 17 | | trial of David Milgaard; is that correct? |
| 18 | A | That's correct. |
| 19 | Q | Do you recall being contacted by the prosecutor in |
| 02:43 20 | | that case at any time? |
| 21 | A | No. |
| 22 | Q | Do you recall being contacted by anybody on behalf |
| 23 | | of David Milgaard, either his lawyer or somebody |
| 24 | | on his behalf? |
| 02:43 25 | A | No, I don't. |

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1    **Q**    Now my documents show, Ms. Daniels, that you would

2          have been contacted in 1991 by the RCMP, do you

3          remember that, a Sergeant Pearson?

4    *A*    Yes.

02:44    5    **Q**    Okay.  And do you recall him contacting you to get

6          information in relation to David Milgaard?

7    *A*    Uh-huh, yes, I do.

8    **Q**    Okay.  And did you meet with him?

9    *A*    Yes.

02:44    10    **Q**    Do you recall where you met?

11    *A*    He came to my home.

12    **Q**    And that would be in Alberta?

13    *A*    Yes.

14    **Q**    And do you recall what this was in connection

02:44    15          with?

16    *A*    Umm, not, not in -- particularly, no.

17    **Q**    If we could maybe call up document 008731, and

18          this says January 22, '91; does that sound about

19          the right time that you would have met with

02:44    20          Sergeant Pearson?

21    *A*    Yes.

22    **Q**    If we could go to the last page, 008737, and this

23          is a typed version, we can't locate one that has a

24          signature, but it looks as though this was a typed

02:45    25          version -- oh, actually hang on a minute here, let

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|   |   |   |
|---|---|---|
| 1 |   | me call up 056922.  I think this is the |
| 2 |   | handwritten version.  If you could go to the last |
| 3 |   | page, 056929, and is that your signature there? |
| 4 | A | Umm, yes. |
02:45 | 5 | Q | Okay.  And do you recall Sergeant Pearson asking |
| 6 |   | you questions and you providing answers? |
| 7 | A | Yes, I do. |
| 8 | Q | And was he -- was -- is this his handwriting or is |
| 9 |   | that your handwriting? |
02:45 | 10 | A | Umm, it's his. |
| 11 | Q | And can you -- do you recall just the procedure, |
| 12 |   | did he ask you questions, write down the answers, |
| 13 |   | or was it tape-recorded; do you remember? |
| 14 | A | No, I don't remember. |
02:45 | 15 | Q | Okay.  If we could go back to the typed version, |
| 16 |   | 008731, and the first question here, Sergeant |
| 17 |   | Pearson says: |
| 18 |   | "SERGEANT PEARSON:  Sharon, I have been |
| 19 |   | requested by the Federal Justice |
02:46 | 20 |   | Department to contact you to determine |
| 21 |   | if you have any information which will |
| 22 |   | assist the court in their task of |
| 23 |   | determining if a miscarriage of justice |
| 24 |   | took place with the conviction of David |
02:46 | 25 |   | Milgaard for the murder of Gail Miller |

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1          in 1969.  First, do you remember David

2          Milgaard?"

3     Do you recall that being discussed with Sergeant

4     Pearson or did you have that understanding of why

02:46  5     he was interviewing you?

6  A  Yes, yes, that was it.

7  Q  Okay.  And then if you could just scroll down,

8     please, to the next few questions and answers, it

9     says:

02:46 10          "SERGEANT PEARSON:  Do you recall providing

11               a statement to police in 1969 on this

12               case.

13          SHARON DANIELS:  No I don't."

14     Let me pause there and ask you; generally, would

02:46 15     you have provided Sergeant Pearson with truthful

16     and accurate information to the best of your

17     recollection at the time?

18  A  Yes, I would have.

19  Q  And you say here:

02:47 20          "SHARON DANIELS:  No I don't.  I remember

21               them taking a lie detector test.

22          SERGEANT PEARSON:  That was on yourself?

23          SHARON DANIELS:  Yes.

24          SERGEANT PEARSON:  Where was that given?

02:47 25          SHARON DANIELS:  I think it was in a hotel

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1          room, I think it was in Edmonton.

2                SERGEANT PEARSON:  Where was the police

3                officer from?

4                SHARON DANIELS:  Saskatoon."

02:47  5     Does that assist you at all or refresh your

6     memory in connection with the lie detector test?

7   A    No.

8   Q    I presume that at the time in 1991, if you would

9     have told Sergeant Pearson that, that that would

02:47  10    have been an accurate recollection at the time?

11  A    Yes.

12  Q    Go to page 008732, and just down at the bottom

13    there I'll read you a few questions and answers,

14    and Sergeant Pearson asked:

02:47  15        "SERGEANT PEARSON:  Did David ever tell you

16            about any criminal activity he may have

17            been involved in during his trip to St.

18            Albert?

19        SHARON DANIELS:  No, nothing.

02:48  20      SERGEANT PEARSON:  Did David ever confess

21            to you, or confide in you, that he had

22            committed a serious crime in Saskatoon?

23        SHARON DANIELS:  No.

24        SERGEANT PEARSON:  Did anyone else in the

02:48  25          group with David mention anything about

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1                David possibly being involved in an

2                attack on a girl in Saskatoon?

3                     SHARON DANIELS:  Not that I can recall."

4           And does that assist you in refreshing your

02:48  5           memory at all?

6      *A*     About?

7      **Q**    About those questions and answers?

8      *A*     Yeah.

9      **Q**    You would have provided this evidence in --

02:48  10     *A*     Yeah, I probably would have, yeah.

11     **Q**    And you have no reason to believe that it's not

12          truthful?

13     *A*     No, no.

14     **Q**    Next page, 008733, Sergeant Pearson asks you:

02:48  15               "SERGEANT PEARSON:  Do you ever recall

16                being physically assaulted by David?

17               SHARON DANIELS:  No.

18               SERGEANT PEARSON:  Did David ever punch you

19                over stupid things?

02:48  20               SHARON DANIELS:  I can't recall."

21          And that would have been answers you provided to

22          Sergeant Pearson at the time?

23     *A*     Yes.

24     **Q**    And they are truthful answers?

02:49  25     *A*     Yes.

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1    Q     Page 008734, again Sergeant Pearson asked you:

2           "SERGEANT PEARSON:  Are you afraid of David

3              Milgaard?

4           SHARON DANIELS:  I don't think so.

02:49  5           SERGEANT PEARSON:  Do you recall if David

6              ever carried a knife?

7           SHARON DANIELS:  I can't recall."

8        Again, does that assist you in recalling those

9        questions and answers at all, do you remember

02:49  10      giving that information to Sergeant Pearson?

11    A     Oh yes, yes I do, actually, uh-huh.

12    Q     And is that truthful evidence?

13    A     Yes, it is, uh-huh.

14    Q     Now down at the bottom of that page:

02:49  15          "SERGEANT PEARSON:  Were you ever

16              threatened or sexually assaultd by David

17              Milgaard?

18           SHARON DANIELS:  Not that I can remember,

19              no."

02:49  20      And would that be a truthful answer at the time?

21    A     Yes.

22    Q     And it is today?

23    A     Yes.

24    Q     And then on page 008736 Sergeant Pearson asks you,

02:50  25      much as I have tried today, if you recall the 1969

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1        statement:

2             "SERGEANT PEARSON:  Sharon you have now

3                  read over your 1969 statement, do you

4                  have any comments?

02:50  5             SHARON DANIELS:  No, I guess not, I can't

6                  remember any of it,".

7        And so I take it, in 1991, you were shown your

8        1969 statement by Sergeant Pearson and you

9        couldn't recall it at that time; is that correct?

02:50  10   A     Yes, that was correct.

11   Q     Page 008737, Sergeant Pearson asked you, he says:

12             "SERGEANT PEARSON:  Did you see any blood

13                  on David's clothing while he was at your

14                  place in St. Albert or while the group

02:50  15                  of you were at the motel?

16             SHARON DANIELS:  No.

17             SERGEANT PEARSON:  When did you first hear

18                  that David was a suspect in a murder?

19             SHARON DANIELS:  I think it was from the

02:51  20                  police in March when they came.  I don't

21                  think I heard about it before that.

22             SERGEANT PEARSON:  Did David ever call you

23                  or write you letters after he was

24                  visiting you in St. Albert?

02:51  25             SHARON DANIELS:  I can't recall."

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1    So would that have been truthful information you

2    provided Sergeant Pearson at the time?

3    A    Yes.

4    Q    And it appears, at that time, that you had a

02:51    5    recollection of the police visiting you in March

6    of 1969?

7    A    Appears so.

8    Q    Okay.  But you don't today?

9    A    No.

02:51    10    Q    Okay.  Just scroll down to the bottom, right here,

11    Sergeant Pearson asked:

12         "SERGEANT PEARSON:  Sharon, do you possess

13              any information or evidence that would

14              assist in proving that David Milgaard

02:51    15              did not commit the murder of Gail

16              Miller?

17         SHARON DANIELS:  No.

18         SERGEANT PEARSON:  Do you possess any

19              information which would assist in

02:51    20              proving that David Milgaard did commit

21              the murder of Gail Miller?

22         SHARON DANIELS:  No."

23    And would that have been truthful information you

24    provided to Sergeant Pearson at the time?

02:51    25    A    Yes.

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| | | |
|---|---|---|
| 1 | Q | Just go back to 1969; did you know Ute Frank? |
| 2 | A | Yes, I did. |
| 3 | Q | Do you recall her travelling to your home in |
| 4 | | Alberta in the spring or summer of 1969? |
| 02:52  5 | A | No, I don't. |
| 6 | Q | Do you recall George Lapchuk or Craig Melnyk or |
| 7 | | Deborah Hall travelling to your home in Alberta in |
| 8 | | the spring or summer of 1969? |
| 9 | A | No, I don't. |
| 02:52 10 | Q | Umm, next do you recall, I think it would probably |
| 11 | | be a year or two later, the RCMP contacting you |
| 12 | | again to take another statement, a Corporal |
| 13 | | Templeton and Constable Dyck? |
| 14 | A | No, I don't. |
| 02:52 15 | Q | If we could call up document 037204, and this |
| 16 | | purports to be a transcript of a taped interview |
| 17 | | of you on April 16th, 1993 in Edmonton, it doesn't |
| 18 | | say here where it's taking place.  Do you recall |
| 19 | | meeting with two RCMP officers and them asking you |
| 02:53 20 | | questions? |
| 21 | A | Yes, I do. |
| 22 | Q | Okay.  So that there would be -- do you recall two |
| 23 | | meetings with two different RCMP officers? |
| 24 | A | One at my home and -- |
| 02:53 25 | Q | Okay. |

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1    *A*    -- then this one, it was, I believe, at a hotel.

2    **Q**    Okay.  And you recall them asking you questions?

3    *A*    Umm, yes.

4    **Q**    And do you recall it being tape-recorded?

02:53    5    *A*    Umm, possibly.

6    **Q**    And on the second occasion, which I -- appears to

7          be April of '93, would you have provided Corporal

8          Templeton and Constable Dyck truthful answers to

9          the questions they asked you at the time?

02:54    10    *A*    Umm, I believe so, yup.

11    **Q**    Page 037211, please, and Officer Templeton is

12          reported to ask you:

13                "CORPORAL TEMPLETON:  Do you recall during

14                    either of your interviews with the

02:54    15                    police feeling any pressure from the

16                    police or being uncomfortable with their

17                    questioning?"

18          and you answer:

19                "SHARON DANIELS:  No, I don't recall.

02:54    20                CORPORAL TEMPLETON:  The statement that you

21                    had, the handwritten statement that you

22                    had supplied the police which you appear

23                    to have signed in 1969.  Would that

24                    statement have been truthful at that

02:54    25                    time?"

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1          You say:

2               "SHARON DANIELS:  After reading it, it was,

3                    yes.  Yes, there was no ...

4               CORPORAL TEMPLETON:  It appears to be in

02:55    5                    your own words and this would have been

6                    what your thought were or what your

7                    story would have been at that time.  Is

8                    that correct?

9               SHARON DANIELS:  Yes.

02:55   10      CORPORAL TEMPLETON:  Okay.  When

11                    you attended at a hotel for the purposes

12                    of a polygraph test, were your parents

13                    present then?

14              SHARON DANIELS:  I believe they brought

02:55   15                    there.

16              CORPORAL TEMPLETON:  And how were you

17                    treated during that interview with the

18                    police?

19              SHARON DANIELS:  Fine.

02:55   20      CORPORAL TEMPLETON:  And any pressure to

21                    say things that weren't true?  Would

22                    that be fair to say?

23              SHARON DANIELS:  No I didn't.  No.

24              CORPORAL TEMPLETON:  And the statement that

02:55   25                    you would have made to the police at the

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1          time, would it also have been the truth

2          to the best of your recollection.

3          SHARON DANIELS:  Yes."

4     Would you have provided those answers to the

02:55    5     questions asked by the RCMP?

6     A     Yes.

7     Q     Okay.  And were they truthful answers?

8     A     Yes

9     Q     Just 037212, the RCMP ask you about blood on the

02:56    10    clothing, it says:

11         "CORPORAL TEMPLETON:  Sharon, just to get

12              back to the time in February, 1969 when

13              Mr. Milgaard, Mr. Wilson and two others

14              came to see you now in Edmonton, do you

02:56    15              recall anything in particular about Mr.

16              Milgaard's clothing.  Does anything

17              stick out in your mind?

18         SHARON DANIELS:  No.  Nothing sticks out in

19              my mind.

02:56    20         CORPORAL TEMPLETON:  If there had have been

21              something out of the ordinary and uh...

22              the issue, I think here is perhaps blood

23              on Mr. Milgaard's clothing, would you

24              have remembered that?

02:56    25         SHARON DANIELS:  I believe I would have

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1          remembered it.  If there would have been

2          that."

3     And is that an answer you would have provided the

4     RCMP at the time?

02:56   5   A    Yes, uh-huh.

6   Q    And that's truthful then and now?

7   A    Yes.

8   Q    Page 037215, and question there, Officer

9        Templeton:

02:57   10        "CORPORAL TEMPLETON:  In St. Albert.  O.K.

11             Having read the statement and certain

12             things have come back to you, do you

13             believe again that this statement at the

14             time given to the police is truthful?

02:57   15        SHARON DANIELS:  Yes I do.

16        CORPORAL TEMPLETON:  O.K.  Had the police

17             coerced you or threatened you during the

18             taking of this statement, would have

19             told the truth or how would you have

02:57   20             reacted to that?"

21     And then he says, Templeton again:

22        "CORPORAL TEMPLETON:  Maybe I can rephrase

23             the question.  If, during the interview

24             with the city police, had the policemen

02:57   25             been questioning you aggressively...

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1        would you have been intimidated by that

2        or would you have told the truth?

3        SHARON DANIELS:  I would have been

4        intimidated, I believe.

02:57  5        CORPORAL TEMPLETON:  Yes.  Would you have

6        still told the truth, do you believe?

7        SHARON DANIELS:  Yes."

8   And then:

9        "CORPORAL TEMPLETON:  Do you recall if the

02:57  10       policemen questioned you in that fashion

11       or ...

12       SHARON DANIELS:  No I don't.  I don't

13       recall but I don't believe that he did."

14   And was that truthful information that you

02:58  15   provided to the officer at the time?

16  A   Yes.

17  Q   Mr. Commissioner, those are all my questions of

18      this witness, I'm wondering if it might be

19      appropriate to break now and I can then canvass

02:58  20      with counsel the order of cross-examination, which

21      I have not done.

22          COMMISSIONER MacCALLUM:  Very well.  15

23      minutes please.

24              *(Adjourned at 2:58 p.m.)*

03:24  25              *(Reconvened at 3:24 p.m.)*

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1              COMMISSIONER MacCALLUM:  Has the order been

2       settled, Mr. Hodson?

3              MR. HODSON:  I think we have some people

4       are prepared to go, and some weren't, I'm not

03:24  5       sure if it's finally settled but I think that

6       either Mr. Fox or Mr. Elson is prepared to go

7       first?

8              MR. ELSON:  We've agreed that Mr. Fox will

9       go first and I will go second.

03:25  10              COMMISSIONER MacCALLUM:  All right.

11       **BY MR. FOX:**

12   Q    Thank you, Mr. Commissioner.  Ms. Williams -- or

13        Ms. Daniels, sorry, I'm Aaron Fox, I'm the lawyer

14        that Represents Eddie Karst, and that name

03:25  15        probably won't mean anything to you, he is a

16        former member of the Saskatoon Police Service, and

17        I don't think, from what I can see, you ever had

18        any dealings with him either, but that's who I

19        represent.

03:25  20   A    Uh-huh.

21   Q    Okay?  Now I wanted to ask you some questions, and

22        I'm primarily going to be focusing on the

23        statement that you gave, the written statement

24        that was reviewed, and the statement that was

03:25  25        given to the Saskatoon -- to the member of the

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1   Saskatoon Police Service in 1969.  That's what I

2   am going to mostly be asking you questions about.

3   And I think what you have told us is that you have

4   no recollection of giving that statement?

03:25 5  A  Uh-huh.

6  Q  You had told the RCMP in 1993 -- and Mr. Hodson

7   went through that with you -- at that time, having

8   reviewed the statement then, you were satisfied

9   that the statement was truthful, and I think you

03:26 10  mentioned that to him on two occasions in 1993?

11  A  Yes.

12  Q  Yes.  And, having said that, there certainly are

13   some things in that statement that you would

14   recall?  You may not recall giving the statement

03:26 15  but there are some facts that you do recall?

16  A  Yes.

17  Q  I think, in answering Mr. Hodson's questions about

18   your general recollection of dealing with David,

19   you mentioned that you met him, and I think that

03:26 20  was, you said, in 1968?

21  A  Yes.

22  Q  And mentioned, at that time, you were living in

23   Regina?

24  A  Yes.

03:26 25  Q  And, after having met him you more or less ran

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1    away from home with him, and travelled to

2    Vancouver?

3    *A*    Uh-huh.

4    **Q**    Came back to Regina, or brought back to Regina.

03:26    5    And, just on that, when you said "brought back to

6    Regina" what do you mean -- what did you mean by

7    that?

8    *A*    Umm, I believe that it was I was flown back, like

9    it must have been something like the police or --

03:27    10    **Q**    Social Services --

11    *A*    Yes.

12    **Q**    -- or somebody like that?

13    *A*    Yes, something like that.

14    **Q**    Okay.  You were pretty young at that time?

03:27    15    *A*    Uh-huh, yeah.

16    **Q**    Okay.  And then you mentioned, and then you sort

17    of got hooked up with him again, travelled to

18    Winnipeg, and were brought back home again to

19    Regina?

03:27    20    *A*    Yes.

21    **Q**    And then you mentioned that you went out east with

22    him again, and I think; do you remember where all

23    you went to on that occasion?

24    *A*    Toronto and Ottawa.

03:27    25    **Q**    Okay.  And do you know how you got back that time?

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1    A    I believe that we hitchhiked back, but --

2    Q    Okay.  And you would end up back in Regina?

3    A    Yes.

4    Q    And at that time, would it be fair to say, made

03:27  5         some decision to sort of go separate ways as far

6         as at least Mr. Milgaard was concerned?

7    A    Somehow, yeah.

8    Q    Okay.  And you eventually, you and your family

9         then moved in the fall of 1968 to St. Albert,

03:27  10         Alberta?

11   A    No, they went first.

12   Q    Oh, okay.

13   A    Yeah, my family went first, and then -- then I

14        came later.

03:27  15   Q    Okay.  So when you returned back from Toronto and

16        Ottawa, your family already was in St. Albert?

17   A    I can't remember that.

18   Q    Okay.

19   A    But they were there before me, yes.

03:28  20   Q    Okay.  And then you, did you make the decision to

21        join them in St. Albert?

22   A    I must have.

23   Q    Okay.

24   A    Uh-huh.

03:28  25   Q    And would have been there until the last time you

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1    would have seen Mr. Milgaard when he came to your

2    residence sometime in early February of 1969?

3    A    Yes, if he came to the residence, --

4    Q    Oh --

03:28  5    A    -- but into St. Albert.

6    Q    St. Albert, yeah, I'm sorry about that.

7    A    Yes, uh-huh.

8    Q    Okay.  Now when I reviewed your statement, and

9         that's the statement you gave, and I think it's

03:28 10         document 006500, that sort of -- those basic

11         travel experiences with Mr. Milgaard, that's

12         reviewed in the statement?

13    A    Yes.

14    Q    And, although you don't have a recollection of

03:28 15         specifically giving the statement, a lot of the

16         facts that are disclosed in that statement you

17         would have some recollection of?

18    A    Yes, yeah, yeah.

19    Q    Okay.  I'm going to ask you some questions now

03:29 20         about the statement, and I'm going to go through

21         it a bit, and I really am interested mostly just

22         on factual recollections first of all, if I point

23         something out to you if you recall it or not, and

24         if you are able to say it's accurate and would

03:29 25         have been provided as such to those -- to the

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1       police at that time.  In terms of what conclusions

2       one might draw from some of that, I'll leave that

3       for someone else, but that's what I want to do.

4       Okay?

03:29   5    A   Uh-huh.

6    Q   And I know some of this is a bit of a personal

7        nature and, unfortunately, I don't know there's

8        any way I can avoid having to discuss some of

9        that, and so I apologize for that now, but we'll

03:29   10       try and work our way through it as quickly as we

11       can.  Okay?

12   A   Okay.

13   Q   And I do appreciate that that was, we are talking

14       about 1969, a long time ago and a very different

03:29   15       stage in your life --

16   A   Uh-huh.

17   Q   -- than where we're at now?

18   A   Very much so.

19   Q   Just starting with the statement, and I'm on page

03:29   20       1, you indicate -- or sorry, on page 1 you

21       indicate -- and I'm about a third of the way, or

22       two-thirds of the way down.  This is when you are

23       talking about having met with David, and you

24       indicated that the meeting was someplace, your

03:30   25       first meeting with him was at some restaurant,

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|       |    |   |                                                    |
|-------|----|---|----------------------------------------------------|
|       | 1  |   | small restaurant in Regina?                        |
|       | 2  | A | That's what I thought, yes.                        |
|       | 3  | Q | Okay.                                              |
|       | 4  | A | Uh-huh.                                            |
| 03:30 | 5  | Q | And then you talk about associating with him, and  |
|       | 6  |   | in here, I'm highlighting this portion:            |
|       | 7  |   | "The next day Friday I went out with him and       |
|       | 8  |   | we drove around with John somebody.  He            |
|       | 9  |   | works for a superintendent at a hospital.          |
| 03:30 | 10 |   | He checks out the drug supplies that the           |
|       | 11 |   | hospital has -- have."                             |
|       | 12 |   | Do you have any recollection of that individual?   |
|       | 13 | A | Umm, somewhat.                                     |
|       | 14 | Q | Okay.  Can you tell me what that recollection is?  |
| 03:30 | 15 | A | Just that he was an older, an older man, and that  |
|       | 16 |   | he must have had, I think he must have had a lot   |
|       | 17 |   | of money because of the car that he was driving    |
|       | 18 |   | and his -- he was obviously dressed to -- you      |
|       | 19 |   | know.                                              |
| 03:31 | 20 | Q | Was this the older man that's referred to later    |
|       | 21 |   | who you thought might have been homosexual?        |
|       | 22 | A | Possibly.                                          |
|       | 23 | Q | There was a fella, I think --                      |
|       | 24 | A | It is, possibly, yes.                              |
| 03:31 | 25 | Q | Okay.  And did this person supply drugs?           |

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1    *A*    I don't really, I don't really remember.

2    **Q**    Okay.  And the reason why I say that, it looks

3        like he was, you indicate that he was working with

4        drug supplies at a hospital?

03:31   5    *A*    Uh-huh.  Uh-huh.

6    **Q**    And certainly, at that time, David was -- or had

7        drugs, or -- and had drugs that was made, were

8        made available to you?

9    *A*    Yes.

03:31   10    **Q**    So it's possible, just no specific recollection?

11    *A*    That's right, yes.

12    **Q**    Okay.  Thanks.  It talks about, further down, if I

13        can go just about to about the third-last line in

14        that statement, some trips to the outskirts of

03:31   15        town, it talks about a, I think a couple of trips

16        to the outskirts of town right there.  Do you have

17        any recollection of that at all at this time,

18        Mrs. Daniels?

19    *A*    No, I don't.

03:32   20    **Q**    Okay.  And then, if I can go to the next page,

21        right at the top he -- if you can highlight kind

22        of that area right there:

23           "He ...,"

24        and I think that's referring to David:

03:32   25           "... came to my school and he picked me up

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1           at lunch, I missed the afternoon and he had

2           a stolen car from Manitoba.  He told me he

3           stole a Pontiac 64 dark red with Manitoba

4           plates.  We used that car to drive around."

03:32  5       Any recollection of that?

6    A     Umm, no.

7    Q     I'm assuming you would accept that that would have

8          been accurate information, at least at that time,

9          as best you were able to advise the police?

03:32  10   A     Umm, yes, I guess.

11   Q     And then it goes on, further on, if I can scroll

12         down that page, please, to about half-way down,

13         talks about making a trip.  And this trip to

14         Vancouver, it looks like, would I be correct Ron

03:33  15        Wilson accompanied you on that trip to Vancouver?

16   A     Umm --

17   Q     Do you have a recollection of that?

18   A     No, I don't.

19   Q     Okay.  The statement seems to indicate that Ron

03:33  20        Wilson was with you?

21   A     So it does.

22   Q     Would you accept that that would be the case?

23   A     According to the statement.

24   Q     There would be no reason why you would lie --

03:33  25   A     No.

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| | | |
|---|---|---|
| 1 | Q | -- to the police about that? |
| 2 | A | No, no. |
| 3 | Q | And, again, I'm assuming what you were relating to |
| 4 | | the police was your best recollection of what you |
| 03:33  5 | | knew? |
| 6 | A | I am assuming, yes. |
| 7 | Q | Okay.  And then it indicates that there -- it |
| 8 | | looks like Ron Wilson came with you, and then |
| 9 | | perhaps two other girls, Bonnie and a short |
| 03:33  10 | | dark-haired girl? |
| 11 | A | I don't recall. |
| 12 | Q | Okay.  And then it indicates that: |

13         "We stopped at Salmon Arm and David picked

14         up some drugs that they had hidden in a

03:34  15         brown cabin underneath the dresser."

16         COMMISSIONER MacCALLUM:  Excuse me, go

17    ahead, that's --

18         MR. FOX:  Should I carry on,

19    Mr. Commissioner?

20         COMMISSIONER MacCALLUM:  No, please, not.

21         MR. WOLCH:  I didn't mean to interrupt.

22         COMMISSIONER MacCALLUM:  You have no

23    objection?

24         MR. WOLCH:  Not yet.

25         MR. LOCKYER:  Actually, I think I do, but I

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1        was going to wait to see what you had to say,

2        Mr. Commissioner?

3             COMMISSIONER MacCALLUM:  Well I have

4        nothing to say unless somebody objects.  You can

5        go ahead and discuss it.

6             MR. LOCKYER:  Well I think I'm going to

7        object.

8             COMMISSIONER MacCALLUM:  Mr. Fox can go

9        ahead and discuss it.

10            MR. LOCKYER:  Mr. Commissioner, I have been

11       thinking of making this objection for some time

12       now, and I have listened to this

13       cross-examination.

14                      So far counsel has made three

15       points.  One is that at some point this witness

16       and Mr. Milgaard knew a superintendent of a

17       hospital, and that that's then related to drugs;

18       she is asked about trips to the outskirts of

19       town, of which she has no recollection, but one

20       can well imagine why that question was asked --

21            COMMISSIONER MacCALLUM:  I can't.  Perhaps

22       I'm naive.

23            MR. LOCKYER:  Oh, I suspect stopping the

24       car and doing things in the car on the outskirts

25       of town, that's what came to my mind, put it that

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1    way; stealing a car, the fact that there was a

2    stolen car; and now we're about to get into a

3    break and enter, now -- if you look at the

4    passage that's up now you will see that's in that

5    passage that's up on the screen now, and I think

6    the witness was about -- counsel was about to get

7    into that too.

8                      In my submission,

9    Mr. Commissioner, what's been going on here from

10   time to time, and is certainly going on in the

11   midst of this cross-examination, is an attempt to

12   really defame and blacken Mr. Milgaard's

13   character from when he was 16, 17 years of age,

14   and in a sense -- or in essence, not in a

15   sense -- in essence blame the victim for why we

16   are now here some 36 years later.

17                      For 23, and then another five

18   years after that, years, Mr. Milgaard was the

19   victim.  He was the victim of the criminal

20   justice system as a whole.  And the question is,

21   and that's what we are all here to try and deal

22   with, is how did that happen, or one of the main

23   questions.  It's not the only question, but

24   perhaps the most -- one of the more important

25   questions is how did that all come about, how did

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1    those 28 years that Mr. Milgaard and his mother

2    and other relatives had to experience, how did it

3    come about.  Whose fault, if anyone, was it in

4    terms of the authorities who were responsible for

5    that having come about, was it -- did they act

6    improperly or did it -- was it just something

7    that happened after they had been acting quite

8    properly.  That's the kind of thing you have to

9    determine.

10                   But what you don't have to

11   determine, and what you shouldn't be hearing any

12   more, is a continuing victimization of the

13   victim.  And that is not an unusual thing in

14   these types of cases.

15                   Take the *Donald Marshall case*

16   and, indeed, one of the main subjects of the

17   Donald Marshall Inquiry.  One of the main

18   subjects that was faced by the Commissioners at

19   the Donald Marshall Inquiry was the comment by

20   the Nova Scotia Court of Appeal, when they

21   allowed Donald Marshall's appeal and entered an

22   acquittal after the prosecution had consented to

23   that action, said almost in passing that "the

24   idea that there had been a miscarriage of justice

25   in Donald Marshall's case was more apparent than

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1    real because, if anyone was to blame for it, it

2    was Donald Marshall himself."  And the

3    Commissioners, the three commissioners who sat on

4    that Inquiry, were particularly condemning of

5    that statement, that position, that attitude of

6    the Nova Scotia Court of Appeal in their report,

7    and rightly so

8         COMMISSIONER MacCALLUM:  Oh yes, but I

9    think the context of that was that Marshall had

10   been guilty of other offences quite apart from

11   the murder that he was alleged to have done,

12   isn't that right?

13        MR. LOCKYER:  No, it was the claim that

14   Marshall hadn't told the truth --

15        COMMISSIONER MacCALLUM:  Yes.

16        MR. LOCKYER:  -- at trial.

17        COMMISSIONER MacCALLUM:  But now, before

18   you go any farther, let me say that I quite agree

19   with you that there should be no gratuitous

20   razing of character in this case.

21        MR. LOCKYER:  Good.

22        COMMISSIONER MacCALLUM:  Whether it be in

23   respect of Mr. Milgaard or anybody else, it has

24   -- there has to be a point to it, it has to be

25   relevant --

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1          MR. LOCKYER:  Uh-huh.

2          COMMISSIONER MacCALLUM:  -- in some way to

3     the terms of reference.  And if that's all you

4     were seeking to convince me of, let me say that I

5     am wholeheartedly in agreement.  I'll have

6     something more to say in conclusion, but when you

7     are finished I'm going to ask Mr. Fox, of course,

8     to respond to your objection.

9          MR. LOCKYER:  Okay.  I won't be a lot

10    longer.

11                         The, much the same as what's

12    been happening here happened at the outset of the

13    Guy Paul Morin Inquiry.  Counsel representing the

14    various parties who had received the Section 5

15    notices at the Guy Paul Morin Inquiry -- I'm

16    sorry, I don't know the equivalent section here,

17    as pointed out by Mr. Beresh I'm not from this

18    province, earlier -- at the Guy Paul Morin

19    Inquiry sought to challenge Guy Paul Morin's

20    sanity in light of his defence at the first

21    trial, sought to hear from the psychiatrists who

22    had examined him, and the Commissioner refused to

23    allow them to go into that area at all, either by

24    way of questioning or by the way of calling of

25    witnesses, because he saw it -- and in my

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1     submission quite rightly -- as an attempt to

2     essentially victimize the victim which the -- who

3     was the subject of the Inquiry.  And, in my

4     submission, that's what's starting to happen

5     here, indeed it's been happening more than it

6     should have, and probably --

7          COMMISSIONER MacCALLUM:  When?

8          MR. LOCKYER:  -- I should have objected

9     earlier.

10          COMMISSIONER MacCALLUM:  When?  Before

11     today you mean?

12          MR. LOCKYER:  Well, yes, in the sense that,

13     and it's been building up, in my submission, that

14     we keep hearing of crimes that David Milgaard is

15     supposed to have committed here and there, of

16     misconduct on his behalf/part that he has

17     committed here and there, which in my submission

18     really has related to -- hasn't related to the

19     issues before this Inquiry at all.  And the

20     questioning that's going on now, in my

21     submission, is reflective of some of the things

22     that have happened in the past.  I haven't

23     objected so -- but I am doing it now.

24                    And, in my submission, it's not

25     good enough for counsel to accompany these kinds

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1       of questions with statements, I forget how

2       Mr. Fox just put it, but statements suggesting

3       that, really, this was an awfully long time ago

4       and we're not trying to make much of it, and so

5       on and so forth.  But the fact is that is what's

6       happening here.

7                       And Mr. Milgaard has elected

8       not to be here for this Inquiry, likely,

9       precisely because he anticipated the kinds of

10      things that might happen.

11          COMMISSIONER MacCALLUM:  Well of course you

12      speak for Mrs. Milgaard though, don't you, not

13      for him?

14          MR. LOCKYER:  Well I think, with respect,

15      that there is a pretty close relationship between

16      Mrs. Milgaard and her son and --

17          COMMISSIONER MacCALLUM:  Mrs. -- well, I'm

18      sure there is, obviously.

19          MR. LOCKYER:  And I talk with Mr. Wolch as

20      well, Mr. Commissioner, so I don't think I should

21      be confined quite so much to only put -- and,

22      certainly, it's an equal concern of

23      Mrs. Milgaard.  Mrs. Milgaard certainly expresses

24      to me her concerns for her son's interests, of

25      course she does, and so it falls very much within

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1    my bailiwick as her counsel.

2                    And certainly, where she is

3    concerned, she is finding it extremely difficult

4    to sit here day after day listening to this kind

5    of questioning that's been going on, insofar as

6    it has, where her son's reputation is concerned.

7                    My God, she spent so many years

8    fighting to get that reputation restored, and

9    ultimately did so through DNA testing in 1997,

10   both her and her son together, and in my

11   submission it's simply not fair and this

12   Commission of Inquiry shouldn't permit this kind

13   of character staining, character assassination,

14   whatever you want to call it, to go on, and I

15   would ask you, Mr. Commissioner, to put a stop to

16   it now.  Those are my submissions.

17        COMMISSIONER MacCALLUM:  Thank you.

18   Mr. Fox, would you respond just first of all to

19   the objection, if you would, please?

20        MR. FOX:  Thank you, Mr. Commissioner.

21                    Mr. Commissioner, early on in

22   these proceedings, certainly at the very opening,

23   and I think it was again last week, you pointed

24   out quite correctly that the guilt or innocence

25   of David Milgaard, or any other party, isn't the

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1    issue here.  And I fully recognize that, there's

2    no question about that, and the purpose of the

3    questions are not to retry Mr. Milgaard or anyone

4    else.

5                        But what is relevant, and I

6    speak on behalf of my clients' interests, is what

7    is relevant, is what did the police know, what

8    were they told, what was the source of that

9    information, did it have any credibility.

10                       And there can be no question

11   when my, when Mr. Karst is on the stand, and many

12   others when they are on the stand, are going to

13   be vigorously cross-examined over why they

14   pursued David Milgaard as a suspect in these

15   proceedings.  There is no question about that.

16                       So are the questions that are

17   being asked of this witness, or any of the other

18   witnesses up until now, relevant to that issue?

19   They certainly are.

20        COMMISSIONER MacCALLUM:  That's the

21   reliability of the source -- of the information

22   that they were getting?

23        MR. FOX:  And, also, both the reliability

24   of the information and what was that information.

25                       I think back, and we've made

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1    the comment in jest amongst all of us counsel,

2    that I hope an Inquiry is never held where I --

3    my name comes up and I am deceased and not able

4    to speak up and say what I knew or thought.  But

5    Albert Cadrain was almost mocked and laughed at

6    in absentia over things like the possibility that

7    a transport truck stopped on a highway and there

8    was maybe some drug exchange.  Well, evidence

9    that suggests that maybe something like that

10   could have happened, because of that's what was

11   going on in David Milgaard's life at that point

12   in time, is relevant.  He was almost mocked and

13   laughed at over the suggestion that there was a

14   gun.  Well, evidence that maybe David Milgaard

15   did have possession of a gun is relevant to that.

16   His disposition and attitude towards females at

17   that time is relevant, not for the purpose of

18   establishing guilt or innocence, but those are

19   all factors that were there, that were presented

20   to the police in statements, that led them to

21   move in directions in an investigation, that

22   ultimately led the Crown to proceed in a certain

23   fashion, and obviously led a jury to come to some

24   conclusions.  That's the relevance of it, simply

25   for that.

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1                    It's not for the purpose of

2      defaming anyone.  And, frankly, defaming means

3      that you are making a statement, an untrue

4      statement, about someone.  That has nothing to do

5      with defamation, it has to do solely with what

6      information did the police have, and in this case

7      was there any substance to it.  That's all,

8      nothing more.

9                    And this Inquiry, and I don't

10     think it makes any difference who sought the

11     Inquiry, but that's the door that's been opened

12     with this Inquiry, and I don't think we can sort

13     of sit back and say "well, sorry, David Milgaard

14     is off limits, his --"

15          COMMISSIONER MacCALLUM:  Well I agree with

16     that, he is not off limits, within the bounds of

17     relevancy.

18          MR. FOX:  Within the bounds of relevancy, I

19     fully agree with that.  Those are my comments,

20     Mr. Commissioner.

21          COMMISSIONER MacCALLUM:  But you will note,

22     of course, that -- I think, Mr. Fox, if I can

23     detect what the essence of the objection is, is

24     that Mr. Lockyer sees no point in going through

25     the entire statement, which the witness says she

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1    can't remember making and in respect of which she

2    has made a few admissions in response to the

3    questions put to her by Mr. Hodson, that is to

4    say that she told the truth when she made the

5    statement, generally speaking, and she remembers

6    a few things dealing with their

7    boyfriend-girlfriend relations.  But that's about

8    as far as she went.

9                    And so I suppose one could say

10   "well what is the point?"  The document is in the

11   evidence, it's there for me to read, and we won't

12   be getting very much more out of the witness in

13   terms of personal recollection, unless your

14   objective in questioning her like this is to

15   demonstrate, or to revive her memory further than

16   Mr. Hodson was able to; is that what you are

17   after?

18        MR. FOX:   No.  I think a couple things.

19   One, this isn't the first witness, and not

20   surprisingly bearing in mind we're talking about

21   events from 1968 and '69, the first witness who

22   simply didn't recollect something they said in

23   their statement.

24        COMMISSIONER MacCALLUM:  Right.

25        MR. FOX:   Nevertheless, the statement was

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1    still read in as part of the record and put in,

2    so I thought that we've cut this one pretty

3    short, so that's why I wanted to refer to certain

4    things.

5         COMMISSIONER MacCALLUM:  Well Mr. Hodson --

6    no, I think Mr. Hodson, I believe, called the

7    witness' attention to critical points.  What he

8    did not do, apparently, is simply go through the

9    entire statement, bringing up point after point

10   after point which really dealt with Mr.

11   Milgaard's behaviour, and in that sense I believe

12   Your Friends believe that it is gratuitous to do

13   so, it has no point in this Inquiry.

14        MR. FOX:   Well except, for example, the

15   question that was put to the witness about, you

16   know, "did you feel that Mr. Milgaard displayed

17   abnormal or violent behaviour", and the answer --

18        COMMISSIONER MacCALLUM:  She answered that.

19        MR. FOX:   And she answered "yes".

20        COMMISSIONER MacCALLUM:  And, of course,

21   they will have a chance --

22        MR. FOX:   Then it was put to her again.

23        COMMISSIONER MacCALLUM:  They will have a

24   chance to cross-examine her on it.

25        MR. FOX:   And I guess that's where I'm at

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1        now, is that I think it's important to establish

2        why she believed that was the case.

3                COMMISSIONER MacCALLUM:  But why should we

4        be asking that question?

5                MR. FOX:   Because the question about

6        whether she believed that he displayed abnormal

7        or violent behaviour, that's a conclusion, and

8        what is the facts, is do you recall any facts

9        about it.  And I think, in going through this, --

10               COMMISSIONER MacCALLUM:  Well I suppose, if

11       you had asked that question, we might not be

12       facing this exact enquiry at this time.

13               MR. FOX:   You see --

14               COMMISSIONER MacCALLUM:  But you didn't,

15       you are going into other matters altogether.

16               MR. FOX:   Well, for example, the drug

17       transaction in Salmon Arm, B.C., and the witness

18       can only state what she can state, which may be

19       nothing, that "I have no recollection of it".

20       But you could again, My Lord, or you can be

21       certain that the argument is going to be made

22       that Albert Cadrain is again off the beam, so to

23       speak, when he suggested that they stopped, and

24       all he said was that "I suspect something was

25       going on by way of a drug transaction."

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1          COMMISSIONER MacCALLUM:  Uh-huh.

2          MR. FOX:   Well, evidence that David

3     Milgaard was actively involved in the drug trade

4     in a number of different locations is relevant to

5     that issue, nothing more.  It doesn't -- it's not

6     there to defame a character or anything like

7     that, but that's what the facts are.

8          COMMISSIONER MacCALLUM:  No, but Mr.

9     Milgaard's character, of course, is really of no

10    concern to us now, unless it somehow affected the

11    investigation conducted by the police, or the

12    lack thereof, or the re-opening of the

13    investigation.  If you can link his character or

14    his behaviour to those issues, that is to say

15    with reference to the terms of reference

16    themselves, then it would be admissible.  But

17    simply to call evidence which demonstrates

18    character in a general sense, I don't think, is a

19    legitimate line of inquiry.

20         MR. FOX:   I agree.  But as an example, and

21    this is maybe one of the, I think one of the

22    better examples, Mr. Commissioner.  The offence

23    that was being investigated was what was then

24    called a rape with an accompanying murder, what

25    we would now call a sexual assault.  Evidence

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1      that he had -- that he used his persuasive

2      powers, including physical force, to spread the

3      legs of his partner apart so that she would

4      eventually consent to having sexual intercourse,

5      somehow that would seem to be relevant, or at

6      least in the sense that --

7              COMMISSIONER MacCALLUM:  Where are you

8      getting this?

9              MR. FOX:   Well I'm reading from page 3 of

10     the statement:

11             "He usually just made me.  He was rough to

12             me and if I said no he would force me by

13             using his legs and push me with his legs and

14             force himself upon myself."

15             COMMISSIONER MacCALLUM:  Well, you know,

16     you might have an argument on the basis of

17     similar-fact evidence were this a trial, but I --

18     you know, we're in quite a different setting here

19     now and --

20             MR. FOX:   Oh, absolutely, and as a defence

21     counsel I would sure hope that I would be able to

22     keep that out.

23             COMMISSIONER MacCALLUM:  Yes.

24             MR. FOX:   But what's relevant though, My

25     Lord, is that that's the information that was

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1    conveyed to the police in 1969, and that's why

2    it's important.

3              COMMISSIONER MacCALLUM:  Yes, but we

4    already know that the police focused their

5    attention upon Mr. Milgaard after Cadrain put

6    them onto him, what more do you hope to show?

7              MR. FOX:   Well, you know, if --

8              COMMISSIONER MacCALLUM:  I mean if it was a

9    question of whether they had tunnel vision and

10   they were focusing their attention on him only to

11   the exclusion of other legitimate suspects, and

12   then you brought up evidence relative, character

13   evidence relative to one of those issues, that

14   might be all right.  But, in this case, I fail to

15   see, Mr. Fox, as to --

16             MR. FOX:   Because I have no doubt, when

17   Mr. Karst is on the stand, it's going to be

18   suggested to him that he should have very quickly

19   excluded Mr. Milgaard as a suspect, and I'm sure

20   he is going to be grilled at great length on

21   that, and I'm sure a number of other officers

22   are.

23             COMMISSIONER MacCALLUM:  Oh yes, yeah, but

24   I mean there is the statement.

25             MR. FOX:   Oh, I agree.  And so all I'm --

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1          COMMISSIONER MacCALLUM:  So I -- the point

2     it seems to me, sir, is why, why go to the bother

3     of publicizing the thing in this way, because we

4     all know it's on television and radio and

5     everything else, and if it's in the statement,

6     and if it has any evidentiary value, any purpose

7     which concerns me, of course I'll see it anyway.

8          MR. FOX:   And you have raised a very good

9     point, Mr. Commissioner, and -- but,

10    unfortunately, that's the public nature of this

11    Inquiry.

12         COMMISSIONER MacCALLUM:  Well, umm, yes.

13                   Let me say one more thing, and

14    it relates to Mr. Lockyer's objection in the more

15    general sense.

16                   He wasn't here at all times

17    when the so-called motel reenactment witnesses

18    testified, but in the course of that testimony,

19    of course, we heard a great deal of things about

20    the behaviour of Mr. Milgaard as well as the

21    participants in the motel party.

22                   I am here to decide, to try and

23    find out, if I can, whether (sic) Mr. Milgaard

24    was wrongfully convicted.  And we heard evidence,

25    to the extent that it might be found to be

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1  credible, that Mr. Milgaard put on a performance,

2  if I can call it that, in front of his friends in

3  the motel which might have given -- in fact,

4  which appears to have been taken seriously by

5  some of them, at least that is the evidence.

6  As a result of that, of course

7  the evidence came to the attention of Mr. Wilson,

8  and then the police, and the police told the,

9  prosecutor, and the prosecutor put the matter

03:54  10  before the court. And one can never know the

11  degree to, of importance to which the jury put to

12  it, but it nevertheless was obviously taken as

13  relevant evidence in the murder trial and a

14  conviction resulted.

03:54  15  Now to the extent that that

16  evidence might have found its provenance in Mr.

17  Milgaard's own behaviour is a relevant line of

18  inquiry for me.

19  Mr. Lockyer, of course,

03:55  20  cautions me against victimizing the victim and

21  blaming everything on him, and he cited the

22  *Marshall case* as an example of that. But I take

23  this behaviour at -- in the motel to be relevant

24  to our Inquiry because, to the extent that I

03:55  25  might believe it -- and I have made no findings

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1     on this at this point -- I might say, well, the

2     police, the authorities, were led to the

3     prosecution of Mr. Milgaard in part, at least,

4     because of something he himself did.  That would

03:55   5     be a legitimate finding in my view.

6                 And I regret, of course, that

7     people are discomfited by the embarrassing nature

8     of what they heard in the course of the

9     witnesses' testimony, but I take it to be

03:55   10     unavoidable.  In the case of the reenactment

11     witnesses it was, the sexual part of the party

12     was inseparable, it seems to me, from the

13     circumstances of the alleged stabbing of the

14     pillow, and so that is the reason that we

03:56   15     listened to that evidence.  That's why it was

16     relevant.

17                 I could no more keep that out

18     than I could if the prosecutors, for example, or

19     the police were alleged to have committed some --

03:56   20     or did something wrong or improper in the course

21     of their investigations or prosecutions.  True

22     enough, it would be embarrassing for them to sit

23     here and listen to that as well, but that's part

24     of the unavoidable consequences of a public

03:56   25     Inquiry.

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1                    So that's why we listened to

2         that sort of material during the motel

3         reenactment witnesses, and that does not mean

4         that we're going to be listening to it in the

03:56    5         case of every witness, unless its purpose can be

6         clearly explained to me.

7                    I do not accept Mr. Lockyer's

8         argument that there has been a tendency to

9         victimize the reputation or to defame the

03:57   10         reputation of David Milgaard to this point in the

11         Inquiry.  When I decide that the questioning has

12         that as its purpose only, and not some legitimate

13         relevance, relevant purpose, you may be sure I'll

14         say so.

03:57   15                    Crown -- or counsel acting on

16         behalf of the Inquiry, in my view, have been more

17         than fair about this sort of thing, and you must

18         remember, all of you, that it cuts both ways.

19         There's going to be many embarrassing things

03:57   20         brought up in the course of this public Inquiry.

21         The police will stand to be embarrassed, the

22         prosecution stands to be embarrassed, and of

23         course -- I think, I don't know that -- but if

24         they are, that's just too bad.  We're searching

03:58   25         after the truth and we must know where the

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1      evidence leads us.

2                         So in short, Mr. Fox, I would

3      ask you to avoid questioning the witness along

4      the lines of anything except what she has -- says

03:58  5      she remembers --

6           MR. FOX:    All right.

7           COMMISSIONER MacCALLUM:   -- as of this

8      moment.  What she told the police before, and of

9      course what she says is true, is a matter of

03:58  10     record.  Okay?

11          MR. FOX:    And I see Ms. Knox is there, I

12     --

13          COMMISSIONER MacCALLUM:  Ms. Knox, yes?

14          MS. KNOX:  Mr. Commissioner, I'm not sure

03:58  15     if Mr. Elson intends to rise to speak to this

16     issue as well, but you can appreciate Mr. Fox

17     represents Detective Karst of the day; Mr. Elson

18     in a more global fashion represents the Saskatoon

19     Police Service; and I, of course, represent

03:58  20     Mr. Caldwell, who was the prosecutor of the day;

21     Mr. Watson represents Mr. Kujawa, who later came

22     into the picture and made some decisions.

23                         I think what I understood

24     Mr. Fox to be attempting to do, and what I know

03:59  25     that he was attempting to do, was to establish

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1      for the record, and for the public record, the

2      factual basis upon which police -- or whether

3      these were true facts or not, as it turns out in

4      retrospect -- but the basis upon which decisions

03:59    5      were made during the investigation process as

6      well as decisions were made during the

7      preliminary inquiry and trial process, and

8      ultimately made through various appeals to the

9      level of Supreme Court of Canada, and there on.

03:59   10                          And it seems to me,

11      Mr. Commissioner, when we look at the terms of

12      reference that have been provided to you, which

13      say you have the responsibility to inquire into

14      and report on any and all aspects of the conduct

03:59   15      of the investigation into the death of Gail

16      Miller and the subsequent criminal proceedings,

17      that any information that was in the possession

18      of the investigating authorities and the Crown

19      authorities which may have influenced the

04:00   20      decisions that they made is necessary information

21      that be available to you, but also keeping in

22      mind that this is a public inquiry, that it be

23      available to the public.  And the public don't

24      generally have access to our document database or

04:00   25      the Internet of any -- or anything of that

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1    nature.

2              The decisions that were made --

3    and I'll speak now in a more restrictive sense

4    with respect to the actions of the prosecution --

04:00   5    the decisions that were made by the prosecution

6    were made on the basis of all of the information

7    that had been collected by the investigating

8    policing authorities, or I believe that the

9    record will show that to be the case.  What will

04:00   10   be shown to be the case I believe, and I stand to

11   be corrected, is that among the materials that

12   were in the possession of my client when he was

13   making determinations with respect to the conduct

14   of the preliminary inquiry and the trial were the

04:00   15   statements, or the statement that was obtained

16   from Ms. Williams in March of 1969.

17             Now frankly, from his point of

18   view today, he is not standing here or not asking

19   me to stand here and ask you to find that David

04:01   20   Milgaard was a bad guy in 1969, that he stopped

21   in Salmon Arm and he found drugs, that he had a

22   gun at one point in time, that he had a knife at

23   one point in time, or that he smacked somebody

24   around.  What was relevant to him and important

04:01   25   to him in 1969, in assessing whether this charge

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1    should go forward, was what kind of person they

2    were dealing with.

3                          And I would submit to you that

4    much of the information, parts of the

04:01    5    information, significant parts of it contained in

6    Ms. Williams' statement, went directly to some of

7    the decisions that he had to make.  She wasn't

8    called to give evidence, and somebody may stand

9    up and say that, but in the global world of being

04:01    10    a prosecutor and looking at a very serious

11    charge, one of the questions that one directs

12    themselves to is is it possible that this is --

13    you know, is it, is this possible?  Having that

14    statement was critical, or we will argue was

04:02    15    critical.

16                          And for that reason I would ask

17    that you reconsider your ruling, that it's proper

18    that the questions be put to Ms. Williams, and

19    she be asked questions like whether her memory at

04:02    20    the time, in March 1969, was fresher than it is

21    today, whether or not she did say --

22                COMMISSIONER MacCALLUM:  I don't think

23    that's necessary, is it?  She said that she told

24    the truth to the police, she just can't remember

04:02    25    what was in the statement, she has no

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1    recollection.

2         MS. KNOX:  It is possible, Mr.

3    Commissioner, that if parts of it are put to her,

4    it may refresh her memory, and unless we put

04:02    5    those parts specifically to her we can't know

6    whether it will refresh her memory.

7         COMMISSIONER MacCALLUM:  I know, but your

8    friend has just told me that that was not his

9    objective, he is not trying to revive her memory

04:02    10    by what he is putting to her right now.

11         MS. KNOX:  Well, Mr. Commissioner, if

12    that's not his objective, and that's not what he

13    is -- will be looking to do, I will be asking

14    that I be allowed to do it in a similar fashion.

04:03    15         COMMISSIONER MacCALLUM:  We'll I'd rather

16    not rule on things in a vacuum, of course, we'll

17    wait until the occasion arises.  But let me ask

18    you this.

19              Don't you think it would be

04:03    20    better to address the concerns that you have just

21    expressed through the evidence of the policemen

22    as opposed to a witness who says she hasn't any

23    idea, she can't remember?

24         MS. KNOX:  But we don't have to --

04:03    25         COMMISSIONER MacCALLUM:  What's the point

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1          of -- the only effect of doing that, of course,

2          is to put the contents of the statement, about

3          which she has no real present knowledge, in the

4          public view.  I'm not saying it should never go

04:03    5          into the public view, but it should go in when it

6          is a matter of concern before a real, live

7          witness.

8                              Mr. Caldwell, for example, I

9          presume will be called during the course of this

04:03    10          Inquiry.  Surely he can be led through the

11          statements that he had at his disposal which

12          justified, in his mind, the carrying on of

13          prosecution.  The same would apply to all the

14          policemen.

04:03    15                              I don't -- I believe it is

16          inefficient, for one thing, to present witnesses

17          with a string of questions when their only

18          possible answer, as we know, will be "I don't

19          remember".

04:04    20               MS. KNOX:  We can't be sure that that's the

21          only possible answer until the question is asked.

22               COMMISSIONER MacCALLUM:  That's right, and

23          you can, you can try it on when your turn comes,

24          ma'am.  But, as far as this witness is concerned,

04:04    25          Mr. Fox has told me that it was not his objective

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1        to revive her memory by the line of questioning

2        he was engaging in when Mr. Lockyer raised his

3        objection.

4               MS. KNOX:  Thank you.

04:04   5               COMMISSIONER MacCALLUM:  Thank you.

6               MR. ELSON:  Mr. Commissioner, if I might

7        address you for just a moment?

8               COMMISSIONER MacCALLUM:  Go ahead.

9               MR. ELSON:  Mr. Fox and I briefly discussed

04:04   10       the manner in which we would be approaching this

11       witness in cross-examination and we were in

12       general agreement, and quite frankly I support

13       the position that he has argued, and I also

14       support Ms. Knox's position.  And I don't mean to

04:04   15       repeat the things that have been said by My

16       Friends in this respect, but only to again

17       emphasize that, because the conduct of the

18       investigation in this case is a matter

19       specifically to be reviewed according to the

04:05   20       terms of reference, --

21               COMMISSIONER MacCALLUM:  Yes.

22               MR. ELSON:  -- so much of the conduct of an

23       investigation by a police officer is dependent

24       upon the impressions that that police officer

04:05   25       gets from the information received.

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1        COMMISSIONER MacCALLUM:  Oh, I have no

2    quarrel with that at all.

3        MR. ELSON:  And --

4        COMMISSIONER MacCALLUM:  But let me just

04:05  5    bring you back, Mr. Elson -- I'm sorry, I don't

6    mean to distract you from your line of thought

7    but I might forget to say this.

8                    I'm just saying, as a matter of

9    efficiency, isn't it far better to have the

04:05  10   police referred to this statement, which is

11   already in evidence, and asked "what effect", if

12   you think it necessary, "what effect it had upon

13   you, did this, did this weigh in the decision

14   which you took to present this person to the

04:05  15   prosecutor as a legitimate witness".

16       MR. ELSON:  The difficulty I have in this

17   respect -- and I appreciate Your Lordship's

18   comment -- the difficulty that I have in this

19   respect, in representing the Saskatoon Police

04:06  20   Service -- and I am mindful of the comment I made

21   to you at the beginning in our opening

22   statement -- the difficulty that I have is that I

23   am representing a police service that no longer

24   has in its employ the officers who conducted the

04:06  25   investigation and I do not have, advising me,

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1     individuals who can specifically give me

2     information as to what was done.

3              For example, Sergeant

4     Malanowich who took this particular statement and

04:06   5     who prepared an investigation report based on the

6     information provided by Ms. Williams as she then

7     was, that is presently before you and, indeed, in

8     that statement, if you will recall the question

9     that Mr. Hodson asked, in that investigation

04:06   10    report Sergeant Malanowich said, or formed the

11    impression that he thought Ms. Williams, as she

12    then was, believed that Mr. Milgaard was capable

13    of murder.  Well Mr. Hodson quite properly asked

14    this witness whether or not she had said that,

04:06   15    she did not recall saying that, and in fairness

16    to her that is not in her statement.  But it was

17    obviously an impression that Sergeant Malanowich

18    derived from the information he received, and

19    with all due respect to Mr. Hodson, this was one

04:07   20    of the few statements that we did not go through

21    in the kind of detail in order to establish

22    whether or not Sergeant Malanowich's impression

23    was a justified or a reasonable impression.  Many

24    of those impressions might never see the light of

04:07   25    day in the testimony at trial, they might not be

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1       regarded as relevant, and probably would not be,

2       but those impressions will guide the conduct of

3       the investigation to the point in time that the

4       information is then received by the prosecutor

04:07   5       for the prosecutor to determine what evidence

6       will be presented at trial.

7                    And my concern is that I could,

8       I understand Sergeant Malanowich is available to

9       us, he is no longer a member of the service, I

04:08   10      don't know exactly what he is going to say or

11      whether or not he is going to recall anything

12      from this witness with respect to how it was that

13      he formed the impression in the investigation

14      report.  We have already talked about the fact

04:08   15      that witnesses don't recall --

16              COMMISSIONER MacCALLUM:  Sorry, --

17              MR. ELSON:  -- and, invariably, the officer

18      might not as well.

19              COMMISSIONER MacCALLUM:  -- Mr. Malanowich

04:08   20      is still around, he is still alive?

21              MR. ELSON:  He is still alive, yes, yes, I

22      believe he is still alive.

23              COMMISSIONER MacCALLUM:  Oh.

24              MR. ELSON:  Now what he can recall, I

04:08   25      honestly do not know, with regard to what was

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1    said to him.

2         COMMISSIONER MacCALLUM:  Well, I mean, it

3    is a matter of record.

4         MR. ELSON:  It is a matter of record, and

04:08  5    the question then is going to be whether or

6    not --

7         COMMISSIONER MacCALLUM:  But looking at

8    that record, Mr. Elson, me looking at the record

9    would be entitled to conclude that certainly the

04:08 10   police had evidence before them that justified

11   them, for example, in suspecting A as opposed to

12   B?

13        MR. ELSON:  Quite true.  And by the same

14   token, if Ms. Williams' statement suggested that

04:09 15   Mr. Milgaard had been acting totally above board,

16   and in fact had been acting like an angel

17   throughout the entire period of time that she

18   knew him, I would suspect that the shoe would be

19   on the other foot and that, indeed, Mr. Lockyer

04:09 20   would be submitting or arguing that that evidence

21   is properly before the Commission of Inquiry

22   because it would suggest that the police ought

23   not to have gained the impression that they did,

24   namely that Mr. Milgaard was responsible for this

04:09 25   crime.

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1          COMMISSIONER MacCALLUM:  Uh-huh.

2          MR. ELSON:  Thank you, Mr. Commissioner.

3          COMMISSIONER MacCALLUM:  Thanks.

4          MR. WOLCH:  Mr. Commissioner, I just want

04:09  5   to raise something that arises from what Ms. Knox

6    had to tell you.

7                    And I think she will agree with

8    me that her client, as I understand it, has never

9    spoken to this lady and was relying on a

04:09 10   statement that came in the ordinary course of

11   police reports.  So whether or not Ms. Daniels

12   adopts or doesn't adopt the statement is actually

13   totally irrelevant to Mr. Caldwell.  If she was

14   to say everything in there was a lie, how would

04:10 15   that affect Mr. Caldwell, who had no way of

16   assessing the witness' position other than the

17   statement he was given.  Mr. Caldwell, when he

18   testifies, can say "I read this statement, I

19   accepted it, and here are the conclusions I

04:10 20   formed".  That is how we will understand what he

21   is saying.

22                    And the questions will be

23   basically how you reach certain conclusions from

24   the statement, not whether the witness adopted

04:10 25   it, it doesn't really matter.  And that's the

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1    point.

2                        And what is relevant from the

3    witness in particular, I would suggest, is her

4    recollection, if any, of how she was questioned,

04:10    5    that is does the statement reflect what you meant

6    to convey or not.  Now that wouldn't go to

7    Mr. Caldwell at all, because it doesn't affect

8    him, but it does affect the police and how they

9    took statements.

04:11    10                        So when the witnesses such as

11    the police or Mr. Caldwell take the stand, they

12    can answer those questions directly, and if they

13    want to say that, for example, being told that

14    David had not delivered drugs to somebody in

04:11    15    Regina meant to them that he was subliminally

16    talking about murdering somebody in Saskatoon,

17    let 'em try and say that.  They will have to

18    answer for that.  They may have other things to

19    say.  If they want to talk about reading a

04:11    20    statement of a relationship between this young

21    lady and David, and that caused them to think of

22    a murder in 40 below with a knife, that's fine,

23    they can do it.  But that's the way to do it,

24    they can get up here and say that.  But whether

04:12    25    or not this witness corroborates or not does not

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1        affect Mr. Caldwell.

2                  COMMISSIONER MacCALLUM:  Oh, perhaps not

3        Mr. Caldwell, but to put the case more to the

4        point, how about the Saskatoon Police Service?

04:12   5                  MR. WOLCH:  Only in the manner of taking

6        the statement.

7                  COMMISSIONER MacCALLUM:  Uh-huh.  Okay.

8                  MR. LOCKYER:  May I reply,

9        Mr. Commissioner, very briefly --

04:12   10                  COMMISSIONER MacCALLUM:  Uh-huh?

11                  MR. LOCKYER:  -- to a few points.

12                              There is a certain irony to

13        this, it's almost like we're back to Nichol John

14        all over again, who gives a statement, and then

04:13   15        it's brought out what she said, but she can't

16        remember anything that she said.

17                              But in terms of the submissions

18        made by other counsel, the first -- and, indeed,

19        also some things said by you, Mr. Commissioner --

04:13   20        first of all, I did not and do not take objection

21        to what happened in the motel.  I fully

22        appreciate that that's relevant to the issues

23        that have to be resolved at this Inquiry and

24        that's why no objection was taken to that

04:13   25        evidence.

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1                   With respect to the point by My

2       Friend, Mr. Fox, that Mr. Karst no doubt will be

3       strenuously cross-examined, yes he will be

4       strenuously cross-examined, but not on his past

04:13   5       so-called misdeeds or his past so-called sexual

6       misconduct.  He will be cross-examined on the

7       facts of this case, and what happened, and how he

8       was involved in this case.

9                   I was troubled in my

04:14   10      submission, rightly so, by having counsel take

11      the opportunity, in their submissions, to throw

12      even more mud at Mr. Milgaard during the course

13      of their submissions.  We've now moved into guns,

14      we've moved into knives, we've moved into sexual

04:14   15      misconduct, all in the course of submissions,

16      which, in my submission, is not an appropriate

17      way to respond to an objection to that kind of

18      evidence being brought out through this witness

19      in the way it was being brought out by Mr. Fox.

04:14   20      I do not expect, when I argue that evidence A

21      should not be admitted, to then hear more

22      evidence A, B, C, D, and E being elicited in the

23      course of submissions by counsel, but that's what

24      we heard.

04:14   25                  Finally, Mr. Commissioner, I

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1    only say this because this is, as you have

2    pointed out, a public forum where we're being

3    recorded, and I only say this with respect, but,

4    Mr. Commissioner, you did misspeak, misspoke

04:15  5    yourself a few minutes ago, when you said -- and

6    I do quote you -- you said "I'm here to find out

7    whether David Milgaard was wrongly convicted".

8    And I know you misspoke yourself, but you did say

9    that, and that, of course, is not -- I know you

04:15  10    know it's not --

11            COMMISSIONER MacCALLUM:  No, I said "why",

12    I meant "why", didn't I say "why"?

13            MR. LOCKYER:  No, you didn't, you said

14    "whether", unfortunately.

04:15  15            COMMISSIONER MacCALLUM:  Oh, thanks for

16    pointing that out.

17            MR. LOCKYER:  So I just thought I would

18    just bring that to your attention in case it was

19    picked up wrongly by media, that's all.

04:15  20            COMMISSIONER MacCALLUM:  Okay, thank you.

21                    Mr. Fox, I think what I better

22    do is adjourn for the day.  I'm not at all sure

23    that I can, that I can make a ruling which will

24    be very useful in terms of giving guidelines to

04:16  25    counsel, because I can foresee that such problems

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1          are -- will arise on a continuing basis, and it

2          could be that they will have to be dealt with on

3          an ad hoc basis, I -- yes, sir?

4                    MR. GIBSON:  If I may, just for a moment?

04:16   5                              I apologize for rising at this

6          late moment but I think I have to, at this point,

7          reflect some of the concerns that have been

8          railsed by counsel, because clearly we're going

9          to be getting into later stages of the

04:16   10         investigation dealing with the RCMP involvement

11         in '89 through '91, and then again in '93, --

12                   COMMISSIONER MacCALLUM:  Yes?

13                   MR. GIBSON:  -- and then perhaps even later

14         in '97.

04:16   15                             There, of course, will be

16         similar concerns in the sense that the

17         impressions drawn by the RCMP, when they go and

18         re-interview witnesses, and what they are told as

19         to steps taken by the RCMP, and information then

04:16   20         passed along in both the 690 process and also in

21         the 1993 investigation, about the concerns raised

22         by the Milgaard family.

23                             So I want to echo some of

24         Mr. Fox's concerns, Mr. Elson's concerns, about

04:17   25         how that does impact on steps taken by police

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1    agencies, and I trust that you will take that

2    into consideration when you deliberate on those

3    points.  Thank you.

4         MR. LOCKYER:  Mr. Commissioner, may I just

04:17  5    apologize, I -- I can't be here tomorrow,

6    unfortunately I'm moving house, and it was

7    arranged six months ago before any dates were set

8    by the Commission, and I'm very regretful I can't

9    be here tomorrow in light of the fact that I have

04:17  10   started this so-called hornet's nest, and now I

11   have to leave in the middle of it.  So if you

12   will accept my apology for that.

13        COMMISSIONER MacCALLUM:  Oh, that's just

14   fine, thank you.

04:17  15        MR. FOX:  Maybe, I -- before you adjourn,

16   Mr. Commissioner, I might just indicate where I

17   thought I would go in light of the comments that

18   you made --

19        COMMISSIONER MacCALLUM:  Yes.

04:17  20        MR. FOX:  -- and then I'll await your

21   ruling tomorrow.

22             I was not planning on

23   continuing with sort of a page-by-page review of

24   this statement, but there are four or five

04:18  25   general areas that I would put to the witness to

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1    see if the witness had any recollection of them,

2    and a number of those areas have been referred

3    to, and I would review -- and I would be glad to

4    argue, at that time, why I think they are

04:18    5    relevant, but I do think they are relevant.

6                          Mr. Wolch is correct by

7    pointing out that how the police conducted the

8    investigation, in the sense of put pressure on

9    witnesses or whatever, is a relevant issue.  But

04:18    10    much has been made, all you have to do is read

11    the media reports, about whether they should have

12    relied on Albert Cadrain.  So, certainly,

13    evidence which suggests that they should have, or

14    corroborated what he had to say in 1969, is also

04:18    15    of significance and importance as well.  But I

16    would propose to go at that in a more general

17    way, in other words identify the subject area and

18    then ask the witness if she has any recollection

19    of that, as opposed to going through the

04:19    20    statement specifically.  And I thought I would

21    perhaps just advise Mr. Commissioner of that

22    before we adjourn.

23                COMMISSIONER MacCALLUM:  Okay.  Thanks.

24                          Well I think I was in the

04:19    25    middle, mid-sentence before the penultimate

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1        interruption, and what I was trying to say was it

2        might not be possible for me to give a useful

3        ruling which lays down predictable guidelines,

4        but I should at least make a stab at it.  If I

04:19  5        can, in any way, avoid a daily repetition of

6        objections of this kind, I would like to do it.

7                        So we'll adjourn, tentatively

8        at least, until 10:00 tomorrow morning, and

9        perhaps after a sleepless night something will

04:19 10        inspire me.  Thank you.

11                *(Adjourned at 4:20 p.m.)*

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5    contain a true and correct transcription of our shorthand

6    notes taken herein to the best of our knowledge, skill,

7    and ability.

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