

Commission of Inquiry
Into the Wrongful
Conviction of David Milgaard
before
THE HONOURABLE MR. JUSTICE
EDWARD P. MacCALLUM

Transcript of Proceedings

and

Testimony before the Commission
sitting at the
Sheraton Cavalier Hotel at
Saskatoon, Saskatchewan

On Wednesday, December 7th, 2005

Volume 105

Inquiry Proceedings



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Transcript of Proceedings

(Reconvened at 9:00 a.m.)

COMMISSIONER MacCALLUM: Good morning.

MR. HARDY: Good morning, Mr. Commissioner,
we're ready to proceed with our first witness
today, Chris O'Brien.

CHRISTOPHER RAYMOND O'BRIEN, sworn:

BY MR. HARDY:

Q Good morning, Mr. O'Brien.

A Good morning.

Q Thank you for attending today to give testimony.

I understand you currently reside in Edmonton?

A That's true.

Q And how old are you?

A I'll be 51 in January.

Q And can you tell us what you presently do in
Edmonton?

A I work for the Edmonton Chamber of Commerce,
communications.

Q Communications, does that involve journalistic
work?

A Media relations.

Q Media relations?

A Yes.

Q And I understand that you've worked throughout



1 your career as a journalist for the most part?

2 A That's true.

3 Q And am I correct that that has mainly been in
4 television and radio?

5 A Mostly television, but yes, some radio.

6 Q And perhaps very generally, can you outline your
7 work history for us?

8 A Well, I started in 1976 at CKCK Television in
9 Regina, worked there for two years. In the
10 subsequent year I worked at CHAT Medicine Hat,
11 CKBI Prince Albert, CJWW Saskatoon and CHAB Radio
12 in Regina/Moose Jaw and two years at AB, wound up
13 in Winnipeg at CKY which was an affiliate station.
14 I spent two years in Radio Winnipeg, seven years
15 in television at CKY TV, moved to Edmonton to CFRN
16 Television and spent 10 years at CFRN before
17 leaving in 2000 and I'm now employed with the
18 Chamber of Commerce.

19 Q Okay. Do I understand correctly, Mr. O'Brien,
20 that at some point in time you came to have some
21 form of involvement in the David Milgaard matter?

22 A Yes.

23 Q And can you tell us about that, please, from the
24 initial point of your involvement as best you can
25 recall?



1 A In late 1979 while working at CHAB Radio I had
2 occasion to meet socially a young woman named
3 Melody Killian. Melody and I became romantically
4 involved and wound up living together in Regina
5 and it was in, through the course of that
6 relationship I had occasion to meet a friend of
7 hers named Susan who I came to understand was the
8 sister of David Milgaard and it was through
9 Susan's contact and then subsequent conversations
10 with Susan's mother Joyce that I developed an
11 interest in the David Milgaard case.

12 Q And was that Susan Martineau that you are
13 referring to?

14 A I believe it was, yes.

15 Q And take us through that, in terms of you
16 developing an interest in the case, who did you
17 speak with and what was the content of those
18 conversations?

19 A Well, originally it was with Susan who told me
20 that her brother had been incarcerated and that
21 her mother and she were working to have the case
22 reopened and that there was belief by the family
23 that David had been wrongfully incarcerated. I
24 became interested, I think on two fronts; one, I
25 was interested in the family's position, it was



1 certainly an interesting and fascinating case.
2 Secondly, and perhaps more so for me personally, I
3 was interested from a journalistic perspective in
4 that obviously there was an opportunity here for
5 news reporting of an independent nature, and by
6 independent I mean a story that I had come across
7 myself personally and was willing to devote some
8 time and effort to investigating on my own, on my
9 own time, and in doing so hopefully to break a
10 story as every young journalist wants to do.

11 Q Okay. And you were working at this time at CHAB
12 which was a Moose Jaw radio station?

13 A Based in Moose Jaw, yes.

14 Q And I take it, though, that you were working out
15 of Regina; is that correct?

16 A That's correct.

17 Q And were you the city hall and legislature
18 reporter at the time?

19 A That's correct.

20 Q And so am I hearing you correctly that in terms of
21 learning about the case initially, it would have
22 been from Susan Martineau and from Joyce Milgaard?

23 A That's correct.

24 Q And can you tell us the briefing or what sort of
25 information you received from those two sources in



1 terms of the details of the case?

2 A Not specifically. I think my recollections are
3 based mostly on impressions that I recall as
4 opposed to specific detail or conversations.

5 Q And maybe you can tell us about that. What do you
6 recall your impressions were after speaking with
7 Susan and Joyce?

8 A My impressions were that the Milgaard family was
9 very emotionally involved in this, factually
10 involved in this, had reason to be so, were
11 determined to have the case reopened and I
12 remember having this sense that they were on the
13 right track.

14 Q So you felt compelled to the cause; would that be
15 fair to state?

16 A Yes, indeed.

17 Q And again, if you can reflect on your own thought
18 process at that time, what was -- what were you
19 motivated by in that thought process?

20 A Well, as I've said, on two fronts, one was the
21 family involvement and my, I think my compassion
22 for a mother who was emotionally determined and,
23 you know, very ready to undertake this arduous
24 task, I was impressed by that. I was impressed by
25 Joyce personally, the conversations over the



1 telephone, and certainly I was motivated by the
2 opportunity to sort of progress in my journalistic
3 career with something that had been not uncovered
4 by me, but was certainly new to the CHAB news
5 line-up as efforted by me, so there was that
6 journalistic input from my own personal
7 perspective, yes.

8 Q And in terms of your own personal view, do you
9 recall having a feeling that Mr. Milgaard had been
10 wrongfully convicted?

11 A I believe so, yes, uh-huh.

12 Q And again, I'm pursuing this a little bit with
13 you. Was that based solely upon the sentiments
14 being expressed by family or did you have an
15 opportunity initially to gather perhaps harder
16 information about the case itself?

17 A Initial contact, I think it was probably a
18 reflection of Joyce's conviction.

19 Q And did you have any sense initially that the
20 Milgaards were perhaps interested in your
21 involvement for the reason that you were a
22 journalist?

23 A I believe so, yes.

24 Q And were there communications of that nature?

25 A I believe initially with Susan, yes.



1 Q Okay. And I think you've covered this, but I'll
2 ask you again. How did you view your role in this
3 matter from the outset?

4 A Primarily as having had some ability to perhaps
5 further the Milgaard family position through my
6 occupation as a journalist, to bring to public
7 attention perhaps some detail or at least some of
8 the emotion that was being expressed by the
9 family, the conviction of the family
10 journalistically.

11 Q Okay. And do you recall reporting on any of this
12 information initially after you received it?

13 A Yes. I recall having had taped interviews with
14 Joyce, to which I believe she must have agreed, so
15 that I could harvest sound bytes and use them in
16 my radio broadcast reports.

17 Q And give us a sense of the content of those
18 reports initially?

19 A I don't recall the exact content, but I do have
20 the impression of bringing to those reports
21 primarily the emotional appeal of a mother working
22 to free her son that she believed was wrongfully
23 convicted of a heinous crime and as a journalist,
24 and as most journalists or media people will admit
25 to, the emotion of a family member relates well to



1 an audience in that it gives people something that
2 they can relate to personally. Often I think
3 you'll find that the facts of a news report are
4 secondary in the journalist's mind to the
5 emotional, human element that can be derived from
6 the report itself because that becomes something
7 of a catch for the audience, something that the
8 audience can relate to and something that gives
9 the report some life.

10 Q And so if I'm hearing you correctly then, at least
11 initially the reports were in fact based on that
12 emotional element as opposed to other
13 corroborating information or evidence, so to
14 speak?

15 A I wouldn't say they were based on that, they would
16 have been based on fact, and I know that through
17 my career, even as a young journalist you are
18 careful with the facts because they are always,
19 they are presented publicly and they can be
20 questioned, so you go with what you know to be, or
21 believe to be factual, and the emotion becomes the
22 draw for the audience, a bed, if you will, on
23 which to present a body of factual evidence.

24 Q And would your sources of information though at
25 that point in time again be Joyce and Susan



1 Martineau?

2 A Yes.

3 Q Okay. And I understand at some point in time you
4 actually took a trip to Saskatoon with Susan
5 Martineau to further investigate the case?

6 A Yes. In fact, Susan and my girlfriend at the
7 time, whom I was living with, Melody, and I took a
8 day trip to Saskatoon to further our own sort of
9 personal interests and certainly my own personal
10 interest in the case, yes.

11 Q And do you recall when that was?

12 A Not specifically. I've come to believe now
13 through what I've seen and read that it was early
14 in January of 1981.

15 Q Okay. And tell us about that trip then, what did
16 that involve?

17 A I believe the first thing we did was visit the
18 murder scene initially. I recall having some
19 difficulty in locating it, but we eventually did,
20 and standing in the alley way near the church, the
21 T intersection alley way and locating probably
22 either the exact spot or very near to the exact
23 spot where the victim's body had been located and
24 having a conversation between the three of us at
25 that location and subsequently visiting the



1 courthouse and retrieving from the courthouse a
2 copy of the full transcript of the initial trial.

3 Q Okay. And you mentioned having a conversation at
4 the scene. Do you recall that conversation?

5 A Not in any specific detail, no.

6 Q I refer you briefly to a document we have in our
7 database, 255121, this is a document from the
8 Court file and it would appear to be a file search
9 that was conducted on January 2nd, 1981, and I see
10 the Martineau name mentioned, and I think you've
11 already indicated to us that that would fit the
12 time period in terms of when you were attending in
13 Saskatoon?

14 A I believe so, yes.

15 Q Okay. And do you recall dealings around this same
16 time period with Gary Young, a lawyer who was
17 acting on behalf of the Milgaards?

18 A Not specifically, no.

19 Q I'm going to show you just a few documents and see
20 if I can refresh your memory at all, the first one
21 being 331975. This is a note, Mr. O'Brien, taken
22 from Mr. Young's file that he provided to us in
23 the course of this Inquiry, you'll see the date is
24 December 30th of 1980, the Susan Martineau name is
25 mentioned, she indicates that she wants Mr. Young



1 to arrange for the transcript of the prelim and
2 the exhibits to be made available. Do you recall
3 Gary Young assisting in terms of making
4 preparations for your visit to Saskatoon at all?

5 A No, I don't.

6 Q Okay. I'll turn you as well to 331966, this is
7 another note from Mr. Young's file, at the top
8 you'll see the date is noted as January 2nd, 1980,
9 I think that's meant to be 1981, and I'll show you
10 another document in a moment in that respect, and
11 he mentions:

12 "3/4 hr. office, Chris O'Bryan & Susan."
13 Does that refresh your memory at all in terms of
14 a meeting with Mr. Young or a lawyer who was
15 acting on behalf of the Milgaards?

16 A No, it doesn't, I'm sorry.

17 Q Okay. And just as I said, I believe this is meant
18 to be January, 1981 and if we can turn briefly to
19 331927, these are some notes again from Mr.
20 Young's file, just in the middle of the page I
21 believe the same meeting is referenced with
22 yourself and Ms. Martineau and the date on this
23 document seems to clearly be January of 1981.

24 If we could turn as well,
25 please, to 331887, you'll see this is an account



1 from Mr. Young's office in relation to his work on
2 the David Milgaard matter, just a brief entry I'm
3 going to bring to your attention, Mr. O'Brien,
4 you'll see it states:

5 "Office attendance on Mrs. Milgaard,
6 Susan Martineau, Chris O'Bryan and Peter
7 Carlyle Gorge."

8 And in terms of that last name, do you recall
9 Peter Carlyle-Gordge?

10 A When I first saw it here on the screen there was a
11 flash of some recollection, but nothing of any
12 substance, I'm sorry.

13 Q You don't recall a meeting with Mr. Carlyle-Gordge
14 or at which Mr. Carlyle-Gordge attended?

15 A No I do not.

16 Q If we could turn to 331973, please. This is also
17 from Mr. Young's file, Mr. O'Brien, and it looks
18 to be a note of a telephone call from yourself.
19 It states, 're: Joyce Milgaard file on line now -
20 10 minute call, wants to meet with police, may
21 need me to request same or name', and I think
22 that's likely Gary Young who has recorded that
23 message. And do you recall, in and around this
24 same time period, making attempts to speak with
25 the police?



1 A I don't recall specifically, no I don't, although
2 it wouldn't surprise me at all that I would have
3 done so.

4 Q Okay, so no recollection of communications in that
5 respect, though?

6 A No.

7 Q I'll turn your attention to another document,
8 219408. Mr. O'Brien, this is an internal memo of
9 the Saskatoon Police Service, you will see it's
10 directed to Chief of Police John Gibbon. If we
11 could turn to the next page for a moment, please,
12 it is from Deputy Chief Corey -- back to the first
13 page -- dated December 31st, 1980, and the re line
14 notes:

15 "Telephone call from Mr. Chris O'Brien
16 News Reporter - CHAB - Moose Jaw".

17 If we could perhaps focus on the first paragraph,
18 I'm going to read this to you Mr. O'Brien:

19 "At approximately 4:15 p.m. December 30,
20 1980 I received a long distance
21 telephone call from a person who
22 identified himself as Chris O'Brien, an
23 employee of CHAB who was calling from
24 Regina. He advised me that he was
25 involved in the investigation recently



1 instituted by Mrs. Joyce Milgaard,
2 relating to the murder conviction of her
3 son, David, in 1970.

4 O'Brien claimed to be related
5 through marriage to Mrs. Milgaard who
6 had sought his assistance in obtaining
7 information relating to events that
8 resulted in David's conviction. He
9 stated that he had obtained some
10 transcripts and other information and as
11 a result, believed that Police files
12 contained much more information than had
13 been presented in Court. As a result,
14 he requested permission to interview the
15 Police Officers involved in the
16 investigation and access to the complete
17 Police file relating to this
18 investigation.

19 I advised O'Brien that I would
20 not grant this permission, as it was an
21 unusual request that would have to be
22 taken under advisement by the Office Of
23 the Chief of Police and as I was only
24 acting for a very limited time, I
25 suggested that he contact your Office



1 early in January, 1981 if he wished to
2 pursue the matter.

3 O'Brien asked what your
4 position would be and I assured him that
5 I could not speak on your behalf,
6 however, was confident that you would
7 render a professional decision."

8 Next page, please.

9 "Mrs. Milgaard has retained Mr. Gary
10 Young, a local lawyer, associated with
11 the firm ...",

12 states the firm and the address:

13 "... and Mr. O'Brien suggested that he
14 may have Mr. Young contact your Office
15 on his behalf.

16 I have since learned that Mr.
17 O'Brien attempted to contact Staff
18 Sergeant Parker during the 30th of
19 December, 1980 and had been in
20 conversation with Superintendent Penkala
21 prior to the call being transferred to
22 my Office.

23 Superintendent Penkala and
24 Staff Sergeant Parker have been advised
25 that Mr. O'Brien has been informed that



1 any further enquiries are to be made
2 through the Office of the Chief of
3 Police."

4 Does any of that letter refresh your memory, Mr.
5 O'Brien, as to contact with the Saskatoon Police
6 Service?

7 A No, again it does not, but I'm not surprised.

8 Q You don't dispute that --

9 A No.

10 Q -- this contact took place?

11 A No, no I don't.

12 Q And there's mention on the first page that you had
13 claimed to be related through marriage to
14 Mrs. Milgaard; do you recall providing information
15 of that nature?

16 A No, I don't, but again I'm not surprised that I
17 might have suggested some personal contact, hoping
18 that perhaps family would be more welcome than
19 media, and so playing both of those opportunities.
20 Again, I don't recall specifically, but again I'm
21 not surprised.

22 Q Okay, and just to confirm, you are not related to
23 Mrs. Milgaard through marriage?

24 A No. The closest I ever got was living with a
25 woman who was a good friend of Joyce's daughter.



1 Q Okay. And I think you've just, then, explained to
2 us that the intent there, or you had a plan or
3 intent there in terms of hoping to have, perhaps,
4 better access to information from the Saskatoon
5 City Police?

6 A It would appear to me that, if this letter is
7 indeed factual, that that was probably my intent,
8 yes.

9 Q Okay. And does anything in terms of the
10 discussion about your contact with Staff Sergeant
11 Parker; is that a name that you recall or --

12 A No, sir.

13 Q No memory of speaking with Staff Sergeant Parker
14 or Lieutenant Penkala?

15 A None whatsoever.

16 Q Okay. And I realize that you have no specific
17 memory of this matter, I think you've confirmed,
18 though, that you don't dispute that the contact
19 took place. If you can speculate for a moment,
20 what would you have been interested in gathering
21 from the police, as best you can recall?

22 A Well I think that primarily what I wanted was an
23 interview with someone who would have been able to
24 present to me the other side of the story, if you
25 will. As a journalist, when you are doing any



1 kind of media reporting, whether it be radio,
2 television or what have you, it is sort of
3 beholden upon you to at least make an effort to
4 ascertain what others in a position of knowledge
5 of the case or story at hand might be in order to
6 present both sides of the fence, if you will. A
7 good, balanced report has both one side and the
8 other, and in this case I had opportunities to
9 interview Mrs. Milgaard over the telephone but
10 wasn't able to obtain quotes or comments from
11 anyone who would have held potentially an opposing
12 view, and in that regard I believed my news
13 reports lacked balance. Doesn't mean that they
14 weren't broadcast and they didn't hold some sway
15 with, or some import to interested members of the
16 radio audience, but it didn't, for me, provide
17 balance, and that was, I think, what I was
18 seeking.

19 Q Okay. And fair to say as well that, perhaps at
20 least by the contents of this letter, you were
21 looking for further information, further review
22 material, for review purposes as well?

23 A Absolutely, because that would have allowed me to
24 further the number of reports that I could justify
25 in preparing an airing over the television --



1 radio station that I was employed by.

2 Q Okay. I'll turn you to one further letter in that
3 respect, 047947, please. Mr. O'Brien, this is a
4 letter directed to the attention of Mr. Young from
5 John Gibbon, Chief of Police, dated January 6th,
6 1981. I'll just read the first paragraph to you.
7 It notes:

8 "With reference to our telephone
9 conversation in the p.m. of January 5,
10 1981, and to enquiries from Mr. Chris
11 O'Brien of Moose Jaw, Saskatchewan, this
12 is to confirm that I have given
13 consideration to the request of Mr.
14 O'Brien and yourself to be given
15 permission to interview the police
16 officers involved in the investigation
17 of the murder charge against David
18 Milgaard in 1970 and to have access to
19 the complete police file. I am sorry to
20 say that I cannot agree to such a
21 request."

22 And the letter goes on to talk about a
23 willingness to provide access, perhaps, but only
24 through the Attorney General's Department. Does
25 that refresh your memory at all in terms of



1 receiving a denial of sorts from the police
2 service in terms of accessing information?

3 A Not specifically. I have the impression, in terms
4 of recollection, that this was probably what I had
5 expected to receive, but had made the effort
6 nonetheless. But in terms of refreshing my
7 memory, not really, no.

8 Q Okay. I turn you next to 106845. You will see
9 this is a letter from the Office of the Chief of
10 Police dated February 11th, 1981, it's directed
11 towards a Mr. Leslie, who we've learned through
12 evidence was counsel for Nichol Demyen at the
13 time, previously Nichol John, and the letter is
14 written by John Gibbon to Mr. Leslie. Just one
15 paragraph I'll bring to your attention.
16 Mr. Leslie confirms that he is acting for
17 Ms. Demyen and states:

18 "A short ...",
19 or Mr. -- I'm sorry, Chief Gibbon is replying to
20 Mr. Leslie, who is acting for Ms. Demyen:

21 "A short while ago we received a call
22 from Mr. Chris O'Brien from Moose Jaw,
23 Saskatchewan, and a Mr. Gary Young of
24 the law firm ...",

25 and states the law firm:



1 "... here in Saskatoon. They advised us
2 they might have cause to re-open the
3 investigation into the Milgaard murder
4 case and wanted to know the whereabouts
5 of three of the witnesses, including
6 Nichol John. I personally dealt with
7 Mr. Gary Young."

8 Do you recall having any contact with the police
9 with respect to the location of witnesses who
10 were involved in the original trial?

11 A I do recall trying to locate, and in my mind, it
12 was primarily Nichol John that I was interested in
13 speaking with. Umm, I don't specifically recall
14 asking the Saskatoon City Police to provide that
15 information but, again, I'm not surprised that I
16 would have at least broached the subject with
17 them.

18 Q And tell me about your recollection of attempts to
19 locate Nichol John?

20 A It seems to me that I had an opportunity to speak
21 with her briefly on the telephone, and that I was
22 summarily dismissed, and whether she hung up on me
23 or not I don't recall, but that was the impression
24 that I have, that she was wholly uncooperative and
25 it was apparent to me almost immediately that I



1 was going to get nowhere with this particular
2 witness.

3 Q Do you recall why you were interested in
4 contacting Ms. John?

5 A It -- it -- I think that she was predominantly
6 mentioned through the transcripts of the Court, at
7 least to a certain extent. It may also have been
8 through my discussions with Joyce that this was
9 certainly a person of interest, as were the other
10 two gentlemen, I believe Melnyk and Lapchuk. But
11 yes, that's probably where it came from, number 1
12 the transcripts -- and probably number 1, Joyce;
13 and number 2, the transcripts.

14 Q And we should confirm that we were talking about
15 sources of information previously and by this time
16 I take it, in addition to information from
17 Mrs. Milgaard and Susan, you had obtained the
18 transcripts of the trial proceedings?

19 A That's right, yes.

20 Q And did you read those transcripts then?

21 A I think I read quite a good deal of the
22 transcript, I wouldn't say beginning to end, but
23 certainly a large quantity of information. I
24 was -- I remember being very interested and
25 finding it fascinating.



1 Q And you felt you had a comprehensive understanding
2 of the case, at least as it had been tried, then?

3 A I had a comprehensive understanding from my
4 particular perspective I believed, I think, yes.

5 Q Okay. And you've mentioned perhaps a recollection
6 of a telephone conversation with Ms. Demyen; any
7 other contact that you recall?

8 A Yes.

9 Q Can you tell us about that?

10 A I think that I do have the recollection of a dark,
11 cold night, I believe it was after work, locating
12 an address that I believed was the home or the
13 residence at that time of Nichol, and leaving a
14 letter or a message of some kind for her in
15 regards to contact either with myself or perhaps
16 with Joyce.

17 Q Okay. And do you recall, was this -- and we're
18 going to be talking about your interaction with
19 Deborah Hall shortly -- but do you recall whether
20 these efforts with respect to Ms. John were before
21 or after your contact with Ms. Hall?

22 A I believe they were prior to.

23 Q Okay. I'm going to take you to a couple
24 documents, firstly 302418, if we could turn to
25 page 302424. You will note at the top, Mr.



1 O'Brien, it states:

2 "Edited conversation between Nichol
3 John, Larry Leslie, Anthony Merchant and
4 Mrs. Milgaard",

5 and through other evidence we've dated this
6 interview at May 9th, 1981. If I could turn,
7 please, to page 302435. There's some mention of
8 you throughout this transcript, I'm going to
9 bring your attention to those portions, the first
10 just being a short mention here. Mr. Leslie,
11 again acting for Ms. Demyen, states:

12 "However, she came to see me, primarily
13 because your contact and that of the
14 chap from C H A B ah was, was causing
15 her to rethink the the issues of the
16 day."

17 If we could turn next, please, to page 302454.

18 Mr. Leslie states:

19 "Chris O'Brian's actions in my mind are
20 actionable.

21 MRS. MILGAARD: He was a radio announcer
22 that had ah had tried to help ...

23 L.LESLIE: Unfortunately, Tony, he, he, he
24 did it.

25 MRS. MILGAARD: Unfortunately he did it in



1 the wrong way.

2 L.LESLIE: Did it in the wrong way.

3 MRS. MILGAARD: And I'm very sorry ...

4 L.LESLIE: He tried to intercede for
5 Mrs. Milgaard but he, the very tone, and
6 unfortunately he's done it writing and
7 we have it, the very tone of his
8 intercession was threatening. If you
9 don't do this, if you don't phone
10 Mrs. Milgaard, I'm going public, I'm
11 going to do this. This is going to
12 happen to you. We'll expose you.

13 A. MERCHANT: "...",
14 who was acting on behalf of the Milgaards at the
15 time:

16 "He does some kind of an action line
17 program there.

18 L.LESLIE: I don't know ah but it was
19 unfortunate that he did that because
20 that was the very ah thing that
21 triggered ...

22 MRS. MILGAARD: Mm Hmm.

23 L.LESLIE: Perhaps ah as far as --

24 MRS. MILGAARD: The reaction on your part
25 too."



1 And do you recall dealing with Ms. Demyen in the
2 manner that's described particularly by
3 Mr. Leslie in the one paragraph that I read to
4 you?

5 A No, I don't.

6 Q Do you recall -- and we do, I think, have a
7 copy -- not a copy of, but the words from the
8 letter that apparently was left for Ms. John, and
9 we'll look at that in a moment -- but do you
10 recall being threatening in any respect, and
11 particularly perhaps with the threat that, if she
12 didn't speak, that she would be publicly exposed?

13 A No, I don't recall specifically, but again I'm not
14 surprised that perhaps I would have taken some
15 course of action that I felt at the time may have
16 produced a result, and a result that I believe was
17 never forthcoming. However, the tone that it was
18 threatening, I think, is somewhat overstated. It
19 may have been mildly suggestive but I don't think
20 there was ever any intent to threaten. Perhaps to
21 have Nichol reconsider her position, but I think
22 threatening was probably a, somewhat of an
23 overstatement.

24 Q And I want to refer to a further interview in a
25 moment, but it's a few years later. In terms of



1 this 1981 time period do you recall receiving any
2 information that Ms. Demyen or Mr. Leslie had
3 concerns about the approach that you had taken?

4 A Yes. It seems to me that I did receive a letter,
5 and I think it was at work, that suggested that I
6 should cease and desist any efforts to further
7 communicate with Nichol John.

8 Q And I don't think we've seen that letter; do you
9 recall who that letter was from?

10 A It seems to me that it came from counsel for
11 Nichol.

12 Q Okay. And did you cease your efforts to contact
13 Mr. Nichol -- or Mr. Nichol -- Ms. John -- excuse
14 me --

15 A Yes.

16 Q -- after receiving that letter?

17 A I believe I did, yes.

18 Q I'm going to refer you to another transcript from
19 a 1993 discussion between the RCMP and Mr. Leslie,
20 it's 022756. This is a statement of Larry Leslie
21 dated I believe March 8th, 1993, and it's taken by
22 RCMP officers, and I'll refer you to a couple of
23 portions again. 022757 Mr. Leslie states:

24 "Yes, it was 1981 ... I'd forgotten the
25 date ... she came to see me on the time,



1 January 23, 1981 and she did inform me
2 that she was being pressured on the
3 Milgaard matter."

4 And he's speaking of Nichol John. The officer
5 states:

6 "And who did she was pressuring her?

7 L. LESLIE: Mrs. Milgaard and a person by
8 the name of O'Brien. Now I didn't make
9 enough notes to tell you who O'Brien is.
10 I, I believe he was working form
11 Mrs. Milgaard."

12 If we could move to page 022763. Mr. Leslie
13 continues, and I'm just picking up mid-way
14 through that paragraph, there has been a
15 discussion about one of the detectives, Eddie
16 Karst, and Mr. Leslie states midway through the
17 paragraph:

18 "Now, yes, you see the next thing that
19 happened in terms of this, the Milgaard,
20 was on February the 11th she called me
21 and said she had come home from work and
22 there were two letters under the door
23 and one was from Mrs. Milgaard and one
24 from Chris O'Brien ...",

25 the officer asks:



1 "What year was that?

2 MR. LESLIE: Oh, here's she, Chris O'Brien,
3 1981, February 11th. Chris O'Brien was
4 with CAB and here's O'Brien kind of
5 threatened her to talk to Mrs. Milgaard
6 or to him. So this is like, I mean this
7 pressure once the media got this, into
8 thins thing, which it's that's
9 interesting I had forgotten how their
10 involvement in 1981. I remember
11 Merchant's, but I'd forgotten about
12 their involvement. But once they got
13 into this thing, they really thought
14 they had a cause celeb here and I guess
15 they did because it sure was a big
16 deal."

17 And there's further portions I'm going to read to
18 you, Mr. O'Brien, but pausing there for a moment,
19 was that your viewpoint at the time, that this
20 was, as Mr. Leslie puts it, a cause celeb?

21 A I don't think that I would characterize it that
22 way, but certainly from a media perspective there
23 was some interest in this, and I believe that's
24 probably what, you know, brought my media
25 participation into it in the first place, in that



1 here we have a mother who is dedicated to
2 re-opening an investigation of a terrible crime to
3 which she believes her son has been wrongly
4 convicted, and this makes good media, yes.

5 Q Okay. If we could move to the bottom of that
6 page, please, just a short sentence here.

7 Mr. Leslie again states:

8 "Now she didn't raise anything about
9 them coming. She was concerned mostly
10 about this O'Brien, Chris O'Brien of CAB
11 in Moose Jaw."

12 If we could move to page 022766, Mr. Leslie
13 states in that first paragraph mid-way through
14 the paragraph:

15 "... now this is a photocopy of a letter
16 left to her. She must have the
17 original. It's only a photocopy by
18 Chris O'Brien."

19 And if we move down to the last paragraph
20 Mr. Leslie states, or reads out the letter:

21 "Nichol, my name is Chris O'Brien from
22 CAB radio. I have prepared a feature
23 program concerning the *David Milgaard*
24 case and his mother's subsequent efforts
25 to obtain his release from prison,



1 however, Mrs. Milgaard has expressed a
2 desire to proceed with a personal
3 investigation, free from further
4 publicity. CAB has agreed to
5 Mrs. Milgaard's wishes, if she is able
6 to complete a series of interviews with
7 this story's key figures. Mrs. Milgaard
8 can be reached in Regina ...",
9 and then some details, and lastly:

10 "Chris."

11 And do you recall a letter of this nature?

12 A I don't recall writing that specifically, but
13 certainly they have spelt my name right, they have
14 got the name of the radio station wrong, it's not
15 CAB.

16 Q It was CHAB?

17 A CHAB, that's correct. However, having said that,
18 I wouldn't, again, be surprised at this effort,
19 but this would appear to me to be something that I
20 might have done in regards to assisting the
21 Milgaard family because it certainly didn't, it
22 certainly didn't work in regards to my profession
23 as a news reporter. I don't believe I would have
24 prepared a feature program on the *Milgaard* case
25 having had no intentions of airing it. My



1 employers wouldn't have allowed me to prepare a
2 feature radio program on speculation, so this is
3 either a fabrication on my behalf, or it's a
4 letter that I never wrote.

5 But it's very likely I did write
6 this, and I think my motivation would have been
7 wholly on behalf of the Milgaard family, and it
8 may have contained some fabrication in the detail
9 of preparing a feature program that I was prepared
10 to put on the shelf. I doubt that was the case.

11 Q Was this perhaps the letter that you left under
12 Ms. John's door that you have a recollection of,
13 or a vague recollection of?

14 A I have a vague recollection of leaving something
15 for Nichol John, and this may have been it.

16 Q And I guess perhaps we still need to confirm this;
17 do you accept that this is your letter, Mr.
18 O'Brien, that was left with Ms. John as described?

19 A I would be okay with that, yes.

20 Q Okay. And I think you've explained to us that
21 perhaps this wasn't necessarily a completely
22 truthful representation that you were setting out
23 in this correspondence?

24 A That's probably a pretty fair assumption, yes.

25 Q And what was your intent, so to speak, in terms of



1 what you have set out here?

2 A I don't know exactly, but reading this I -- it
3 would seem to me that my intent was to further the
4 opportunity and perhaps convince Nichol John to
5 spend some time with the Milgaard family in terms
6 of, you know, conducting an interview -- not a
7 radio interview but between Joyce and Nichol -- an
8 opportunity for Joyce to open the door to Nichol
9 John if you will. This was probably written by
10 me, if it in fact is accurate, with all of the
11 best intentions of the Milgaard family in mind,
12 certainly not of the best intentions of my radio
13 involvement or journalistic involvement.

14 Q And do you recall whether you did this on your own
15 or was there any discussion ahead of time, with
16 respect to this correspondence, with anybody?

17 A I don't recall.

18 Q Okay. And just covering some portions again, I
19 think you've already mentioned this, but where you
20 state:

21 "I have prepared a feature program
22 concerning the *David Milgaard* case and
23 his mother's subsequent efforts to
24 obtain his release from prison ...",
25 and am I hearing you correctly that that would



1 not have been actually the case at that time?

2 A I can't see where it would have been. I couldn't
3 have justified all the time and effort in
4 preparing a feature radio broadcast with no
5 intentions of actually airing it.

6 Q Okay. And then, secondly, it states:

7 "... Mrs. Milgaard has expressed a
8 desire to proceed with a personal
9 investigation, free from further
10 publicity."

11 Do you remember whether that was an accurate
12 comment at the time?

13 A I don't recall, no.

14 Q And so I think you are accepting, Mr. O'Brien, the
15 idea here was to put some pressure on Ms. John for
16 purposes of a meeting with Mrs. Milgaard?

17 A That's correct.

18 Q I want to turn now to your dealings with Deborah
19 Hall, and I understand you have some recollection
20 of that interaction, Mr. O'Brien?

21 A Yes, I do.

22 Q And can you tell us about that sort of from the
23 beginning?

24 A Umm, well I have two sorts of recollections; one,
25 it was my initial recollection of the events; and



1 secondly I have some recollection that has been
2 clarified by virtue of opportunities to read
3 certain materials in regards to that issue, so I
4 can give you one, either, or both.

5 **Q** What is your recollection of that interaction?

6 **A** My recollection was that at about the time that I
7 was involved with the Milgaard family I had
8 occasion to visit a hair salon, and during the
9 course of having my hair cut I became aware of the
10 fact that the person who was cutting my hair had a
11 name very similar to a person who had been
12 mentioned in the transcripts of the trial that I
13 had recently been reading, and through
14 conversations with that person determined that she
15 was in fact the person who was mentioned in the
16 transcripts, and that I was excited to have made
17 this serendipitous discovery, and subsequently had
18 an interview with her at my place on audio
19 cassette and used one or two sound bytes from that
20 interview in further radio reports in regards to
21 the *Milgaard* case.

22 **Q** And what do you recall was the essence of what
23 Deborah Hall had to say to you initially?

24 **A** Deborah Hall and I had discussed the events of a
25 particular evening in a motel room in which the



1 accused, David Milgaard, had been involved, along
2 with a number of other young people, and I
3 believed at the time that there was some
4 discrepancy between what I had read in the
5 transcripts of the trial and in the recollections
6 of Deborah Hall, who had apparently been in
7 attendance at the motel room.

8 Q And in terms of your meeting with Deborah at this
9 time, I think you mentioned that you sat down, you
10 had transcripts with you; would that be correct?

11 A At the time of the interview on cassette with
12 Deborah Hall, yes.

13 Q Okay. And take yourself back in terms of your own
14 view on Mr. Melnyk's testimony and Mr. Lapchuk's
15 testimony, what was your perspective on their
16 testimony prior to discussing this matter with
17 Ms. Hall?

18 A It seems to me that I believed at the time that
19 the testimony of those two gentlemen had been
20 somewhat either exaggerated or wholly fabricated.

21 Q And do you remember on what basis you had that
22 belief?

23 A No, I do not.

24 Q And what would have been the possible sources of
25 that belief?



1 A Very likely because of discussions that I would
2 have had with others associated with the case
3 prior to having the opportunity to speak with
4 Deborah Hall.

5 Q And do you recall, generally speaking, and we'll
6 get into a bit more detail, but what, in effect,
7 did Deborah Hall have to say about Mr. Melnyk's
8 and Mr. Lapchuk's testimony?

9 A It seems to me that initially, almost immediately
10 upon discussing this matter, that she believed
11 that there had been some discrepancy in their
12 testimony in regards to the events as they had
13 actually occurred to her recollection. She didn't
14 think that they had been telling either the entire
15 truth or that they had exaggerated some elements
16 of the behaviours in the motel room that night
17 that differed from her recollection.

18 Q And do you recall any particulars in that respect?

19 A Well, it was primarily in regards to the so-called
20 reenactment that David Milgaard had allegedly
21 performed in the motel room that night, the
22 reenactment of the murder.

23 Q And can you recall anything further than that?

24 A Initially Deborah Hall suggested to me that no
25 such reenactment had taken place and I was excited



1 by that because that wholly refuted the testimony
2 as given at the trial.

3 Q And you say initially. How did that progress?

4 A Well, we had had a conversation prior to actually
5 meeting to tape record an interview and that
6 initial conversation with Deborah led me to
7 believe that there was some great discrepancy
8 between what she recalled and what the other
9 gentlemen had testified to at trial.

10 Q And did that same level of discrepancy become
11 apparent when you interviewed her on tape?

12 A Not the exact level of discrepancy. As we -- I
13 remember being somewhat disappointed in her
14 recollections on tape as opposed to my initial
15 impressions from my very first conversation with
16 her because she seemed to me to, once the tape was
17 turned on, to be somewhat more guarded in how she
18 expressed her recollections of that event, and
19 keep in mind that I'm a radio reporter and I'm
20 looking for the definitive sound byte and it never
21 came.

22 Q And I want to pursue that a little bit further.
23 You've indicated perhaps a bit of a difference
24 between what she had initially advised you of and
25 what she advised you of in the course of the



1 interview. Did that include in relation to the
2 details of the motel room incident?

3 A Yes, I believe it did.

4 Q And I realize I'm pressing you on this, but can
5 you recall any particulars in that respect?

6 A Well, it seems to me that she initially had had no
7 recollection of a reenactment and then during the
8 subsequent interview on tape she suggested that
9 possibly it may have happened, but not in the way
10 or with the intent that was conveyed or related by
11 the other gentlemen during their testimony at the
12 trial.

13 Q And following the taped interview, what was your
14 general impression of the information you were
15 gathering, do you recall what your thoughts were
16 after you had completed that interview?

17 A Yes. I remember thinking I'm going to have to
18 work to turn this into a radio report of some
19 meaningful consequence.

20 Q And when you say you recall that you were going to
21 have to work, what do you mean when you say that?

22 A I didn't have the definitive sound byte and I
23 couldn't make reference to it particularly myself,
24 so the trick was in providing the wording that
25 might suggest that this was an important element



1 in the Milgaard case without having the exact
2 phrasing that I wanted on the audio cassette and
3 it would have taken a good deal more thought in
4 terms of the way I would have had to have written
5 it or prepared it and presented it.

6 Q And you've had a chance to review that transcript
7 again I understand in preparation for your
8 testimony?

9 A Yes, I have.

10 Q And I think you'll recall that Ms. Hall throughout
11 makes some allegations that Mr. Lapchuk and
12 Mr. Melnyk are lying in some portions of their
13 testimony. Do you recall that?

14 A Yes, I do.

15 Q And would that not have perhaps sufficed for
16 purposes of a sound byte or otherwise in terms of
17 what you were looking for?

18 A Only in terms of what she was directly referencing
19 as to be a lie and it seems to me, and I'm looking
20 back at this now with the benefit of some
21 hindsight with written documentation, it seems to
22 me that she was adamant in terms of how she got
23 home, who drove her home, who was in the hotel
24 room later in the evening and less adamant in
25 regards to the exact behaviour of David Milgaard



1 in the so-called reenactment.

2 Q And you've mentioned that this was a taped
3 interview, correct, and we've seen the tape. What
4 did you do with the tape after your interview?

5 A I don't recall specifically, but I believe I sent
6 it to Joyce. I think that's where it wound up.

7 Q And do you recall whether you were able to use
8 anything from that tape for your own purposes in
9 terms of a radio broadcast?

10 A Yes, I'm almost positive that I did, and I would
11 have captured a sound byte that was indicative of
12 the report that I had broadcast, or at least the
13 information, the -- what would have made it new,
14 what would have sort of furthered the reason for
15 continuing with the story and there was obviously
16 some indication that this witness had now been
17 interviewed and that there was something new
18 there, so to the exact content of that report, I'm
19 not sure, but I am almost certain that I did
20 prepare a radio broadcast report using that
21 information and a sound byte from Deborah Hall.

22 Q And I think you've mentioned for us that perhaps
23 Deborah was more vague when it came to recalling
24 the actions of Mr. Milgaard in terms of the
25 alleged reenactment. Do you recall what Deborah



1 had to say in that respect to you in terms of that
2 alleged reenactment?

3 A Not specifically, only by virtue of having read
4 the transcript.

5 Q Okay. And there's been some discussion about
6 these issues and Ms. Hall has previously testified
7 and I just had a couple of questions before we
8 look at the transcript itself, but would it be
9 fair to say in that initial interview with
10 Ms. Hall that she indicated to you that she heard,
11 or she didn't hear any words to the effect of Mr.
12 Milgaard stating that he had killed or stabbed a
13 girl?

14 A I believe that's true, yes.

15 Q And that would have included off tape, so to
16 speak, did she ever indicate that she had heard
17 such words that evening?

18 A Not that I recollect, no.

19 Q And would it be fair to say as well that she
20 confirmed that she observed no stabbing motions by
21 Mr. Milgaard into a pillow?

22 A Yes.

23 Q That fits with your recollection?

24 A Yes.

25 Q And I think you've mentioned she perhaps took some



1 issue with the information relating to who was
2 coming and going and perhaps particularly the
3 suggestion that Mr. Lapchuk had driven her home at
4 the end of the night?

5 A That seemed to be a point of contention with her,
6 yes.

7 Q And do you recall her taking some issue with
8 whether anyone in the room could hear the TV if a
9 news item had come on?

10 A Yes.

11 Q And what about the suggestion by Mr. Lapchuk and
12 Mr. Melnyk that perhaps they had been bugging or
13 chiding Mr. Milgaard just prior to the alleged
14 reenactment, do you recall that she took some
15 issue with that information?

16 A Yes, by virtue of having read the transcript of my
17 interview with her.

18 Q Okay. And when you were done interviewing
19 Ms. Hall, did you have a sense of whether or not
20 the incident had occurred, and we'll leave the
21 interpretation of the incident out for a moment,
22 but did you have a sense of whether, in her
23 recollection, the incident that Mr. Melnyk,
24 Mr. Lapchuk and perhaps Ms. Hall was describing
25 had occurred?



1 A It seemed to me that my impression at the time was
2 that the incident as depicted by the other two
3 gentlemen had not occurred.

4 Q Okay.

5 A By virtue of my conversations with Deborah Hall.

6 Q But you do recall her making some mention of Mr.
7 Milgaard having a pillow, or fluffing a pillow or
8 something to that effect?

9 A Yes, I believe so.

10 Q I want to review just a couple of portions, and
11 I'm not going to go into the details of the
12 transcript from your initial interview, but a
13 couple of portions of that transcript I will bring
14 to your attention. If we could go, please, to
15 178010 firstly, I think you've seen this document,
16 Mr. O'Brien, and it's a typed transcript it would
17 appear of the taped conversation that took place
18 between yourself and Ms. Hall on the occasion that
19 you've been telling us about, and have you had a
20 chance to read through this transcript?

21 A Yes, I have.

22 Q And we've located a more legible version. If we
23 turn to 047724, I think we determined in the
24 course of Ms. Hall's testimony that it wasn't an
25 exact copy of the initial transcript, but I'm



1 going to use this for my present purposes. You'll
2 see the Paul Henderson name is mentioned and I
3 think we've confirmed as well through Ms. Hall's
4 testimony that that was intended to be your name,
5 and would that fit as well, after you've had a
6 chance to read through this transcript, does that
7 sound like your conversation with Ms. Hall?

8 A Yes, it does.

9 Q Okay. If we could turn, please, to page 04 -- I
10 guess we'll start on this page, just at the very
11 bottom, and I think there's some mention perhaps
12 of you tape recording the conversation, you
13 indicate:

14 "... if that bothers you, I can turn it
15 off."

16 If we turn to the next page, Deb Hall says it's
17 okay, and you say:

18 "See, like I could take shorthand, but I
19 can't. Like I could take down notes,
20 but I can't take shorthand, so that's
21 the only way I can do it. But like I
22 say, that tape will never be used ..."

23 And was that a truthful representation at that
24 time, Mr. O'Brien, was your intent not to use the
25 tape?



1 A I don't know why I would have said that, I really
2 don't, because it seems to me that I was primarily
3 interested in a sound byte with this potential
4 witness or person involved in the case and I don't
5 know -- I don't believe I ever intended to mislead
6 her and certainly I was very pleased to have had
7 the opportunity to record her. I don't recall
8 specifically, but I was surprised to see that in
9 the transcript.

10 Q Okay. I'll turn you as well to page 047727,
11 starting at the bottom of the page, and I'm going
12 to pick up mid paragraph, this is Ms. Hall
13 speaking at the time, and I think she's giving
14 some description of the motel room, she states:

15 "Like, the door swung clear of the T.V.,
16 but it was right there. I remember that
17 room. I remember it all now, like... I
18 remember... the colour of walls. It was
19 Room No. 18, too."

20 You state:

21 "You remember that?"

22 Ms. Hall:

23 "Sure."

24 Mr. O'Brien:

25 "Very good."



1 Ms. Hall:

2 "Yeah."

3 And then at the top of the page you state:

4 "Excellent. Excellent, even these guys
5 don't remember, you know the items. See
6 this is the thing, I'm questioning, if
7 uh..."

8 And I can stop there. And it might be an obvious
9 question, but were you pleased to receive this
10 information from Ms. Hall?

11 A I remember being very pleased. Somewhat
12 disappointed as the interview progressed as I've
13 indicated, but I remember being very pleased to
14 have had this opportunity, yes.

15 Q So would it be fair to say there's no doubt that
16 you were an advocate, so to speak, on behalf of
17 the Milgaards in terms of going into this
18 interview with Ms. Hall?

19 A I believe that's a very fair characterization,
20 yes.

21 Q And did you have any concern how that might impact
22 Ms. Hall in terms of her ability to give you a
23 complete story?

24 A I don't recall having concerns of that nature, no.

25 Q And this is a general question, I'm not sure how



1 to put it exactly, but what about the
2 difficulties, and maybe it's naive of me to ask
3 this, but how do you reconcile that sort of an
4 approach with objectivity which I think would be
5 fairly associated with journalistic practice as
6 well?

7 A I think that, and it's -- it is common whenever
8 you are interviewing someone to express a
9 sympathetic point of view. If you are doing an
10 interview in regards to any issue as a media
11 reporter and you -- unless you are dealing with a
12 politician, which happens frequently -- otherwise,
13 you adopt a sympathetic point of view to the
14 person being interviewed in order to maintain the
15 flow of the conversation in hopes of achieving,
16 retrieving the definitive sound byte, so yes,
17 absolutely, you do, I think, present, if you will,
18 a point of view that is acceptable to the person
19 being interviewed in order to solicit comment.

20 Q And you say present a point of view, but would it
21 be fair to say that that was in fact your point of
22 view?

23 A In this case it very much was my point of view. I
24 had many conversations with Joyce Milgaard and I
25 believed in her cause.



1 Q Okay. Did you have any further dealings with
2 Deborah Hall following this interview?

3 A I don't think I did.

4 Q And what about more generally, did you continue
5 with your efforts on behalf of the Milgaards?

6 A Not that I recall specifically. It seems to me as
7 I look back that this was sort of the highlight of
8 my involvement with the Milgaard family and that I
9 believed it had, I had been able to make something
10 of a contribution. Beyond this, I don't have any
11 recollection of any real meaningful contribution
12 to the Joyce Milgaard effort.

13 Q And do you recall how your involvement concluded
14 then with your efforts on behalf of the Milgaards?

15 A Not specifically, although I suspect this was it.

16 Q Okay. And I understand in or around this time you
17 moved to Winnipeg; would that be correct?

18 A In July of 1981, that's correct.

19 Q Okay. And in the years that followed, did you
20 have any further contact with anything in relation
21 to this case?

22 A Yes. I was working for CKY Television at that
23 time and I was the court reporter covering various
24 murder cases in the courthouse in Winnipeg and had
25 occasion to learn that one of the young lawyers



1 who I had seen in the hallway at the courthouse on
2 occasion was directly involved with the Milgaard
3 case and I believe I had a number of conversations
4 with that lawyer.

5 Q And who was that?

6 A His name was David Asper.

7 Q And what was the content of those conversations,
8 generally speaking, as best you can recall?

9 A I don't have any specific recollections of the
10 conversations with David, although I'm sure that
11 they would have revolved around specifically what
12 I always considered to be my highlight of the
13 involvement with the Milgaard case and that was
14 the discussions I had had with Deborah Hall.

15 Q Okay. Did you have any sort of formal involvement
16 with Mr. Asper's efforts?

17 A No. David and I had many pleasant chats and that
18 was the extent of it.

19 Q Okay. And am I correct as well, Mr. O'Brien, that
20 in terms of preparing for your testimony today,
21 you had the opportunity to review various
22 subsequent accounts of the so-called motel room
23 incident that Ms. Hall has provided through the
24 years?

25 A Yes, that's true.



1 Q And that would have included an affidavit provided
2 by Ms. Hall to Mr. Asper in November of 1986?

3 A That's true.

4 Q And a transcript of an interview with Eugene
5 Williams who is a lawyer for the federal
6 Department of Justice dated November 6, 1989?

7 A Yes.

8 Q And Ms. Hall's testimony at the Supreme Court of
9 Canada reference case in 1992?

10 A Yes.

11 Q And a transcribed interview with the RCMP in 1993?

12 A I believe so.

13 Q And when you read through those subsequent
14 accounts by Ms. Hall, what was your reaction?

15 A There was information in those subsequent accounts
16 that had not been provided me in my initial
17 interview.

18 Q And do you recall, generally speaking, what that
19 information was?

20 A Deborah Hall seemed to recollect a great deal more
21 detail of the events that took place in the motel
22 room than she had provided me.

23 Q And so there were some apparent inconsistencies.
24 Do you recall consistencies in the accounts or
25 having a reaction with respect to consistencies?



1 A Yes, I believe there was a good deal of
2 consistency.

3 Q And can you share any of that observation with us?

4 A Again, I believe that she was adamant in terms of
5 how she got home that night, I believe she was
6 consistent in regards to who was in the motel room
7 late in the evening, she was consistent in regards
8 to the fact that they had been using drugs, that
9 there were a number of people in the hotel room,
10 that the television set had been turned on, I
11 believe she was consistent in the fact that David
12 had had some romantic contact, if you will, with a
13 woman named Uta or Ute Frank, a friend of hers in
14 the motel room, and various other details of that
15 nature.

16 Q What about her interpretation of the event
17 generally?

18 A I think generally there was a great deal of
19 consistency. There were highlights that were
20 inconsistent.

21 Q Okay. I'm going to take you to some of Ms. Hall's
22 testimony that was provided at this Inquiry and
23 get you to comment on some of the portions. If we
24 could go to page 3214, please, and if you'll bear
25 with me, Mr. O'Brien, this is quite a long portion



1 I'm going to read to you. It will be interspersed
2 with some questions I have related to answers that
3 Ms. Hall gave. These are answers she gave to
4 questions by Commission Counsel in the course of
5 this Inquiry. If we could start midway through
6 the page, please, and again I'll read this to you:

7 "Q Now, did a story come on the television
8 news that evening ..."

9 And Ms. Hall has begun to describe the events as
10 she recalls them.

11 "Q Now, did a story come on the television
12 news that evening?

13 A The TV was on, yes, and yeah, there
14 was something on there about Gail
15 Miller's murder.

16 Q And what do you recall about what was on
17 television and what happened after.

18 A I don't recall hearing what was
19 actually said about the news cast
20 because I believe I was in
21 conversation with Bob or watching the
22 shenanigans on the bed or whatever,
23 but Craig and George were closer to
24 the TV, they were on that side of the
25 room where the TV was -- like, the TV



1 was at the foot of the bed. Craig was
2 on the floor by the TV and George was
3 kind of at the foot of the bed but on
4 the other side of the bed from where
5 we were, and --

6 Q And where were you.

7 A I was against -- I was sitting in a
8 chair beside Bob against a window on
9 the opposite side of the bed from
10 where George was.

11 Q And David and Ute were in bed?

12 A Yes, they were on the bed.

13 Q And you mentioned shenanigans?

14 A Well, yeah, Dave had been clowning
15 around and goofing off all night. He
16 was practically bouncing off the
17 ceiling.

18 Q Now tell me what happened then when
19 this -- a news story came on you think
20 about the Gail Miller murder?

21 A Yes, because I thought Craig said
22 something to the effect like, "oh, you
23 did that, didn't you," and then George
24 just picked it right up."

25 I'll pause there for a moment, Mr. O'Brien. Do



1 you recall Ms. Hall giving that information that
2 I just read to you at the time of your interview
3 in 1981?

4 A I don't recall specifically, but -- no, I don't
5 believe that that depth of recollection ever
6 surfaced during my interview with her.

7 Q Okay. I'll just read forward from there.

8 "Q And who was that said to?

9 A To David.

10 Q And then what did you observe Mr.
11 Milgaard say and do?

12 A Well, he was in the process at the
13 time of -- he had a pillow and he was
14 on his knees bouncing up and down on
15 the bed on his knees and, you know, he
16 was punching this pillow up when they
17 started bugging him about this and he
18 kind of was punching into it and
19 going, "oh, yeah, right," and I don't
20 know, to my recollection I thought he
21 was kind of crude with something he
22 said about fucking her or something or
23 whatever. It all kind of happened so
24 fast and it was sort of Bob talking
25 here, the guys giving him the gears



1 and him jumping around. My
2 recollection of exactly what he said,
3 "I stabbed her," whatever, but --

4 Q I would like you to -- I'm sorry, I
5 would like you to give me your best
6 recollection of either the exact words
7 or the general nature of the words that
8 you heard from Mr. Milgaard.

9 A Something to the effect of "yeah,
10 right," you know, "I stabbed her and I
11 fucked her brains out, that's a good
12 time" or something, and he just threw
13 this pillow back behind him and laid
14 back or bounced back on the bed --"

15 And I'll pause there again. Would I be correct,
16 Mr. O'Brien, that Ms. Hall did not advise you of
17 some of this information when you met with her in
18 1981?

19 A Yes.

20 Q And I think we've covered that, but I think you've
21 confirmed she indicated to you that she heard no
22 words to the effect that are mentioned here from
23 Mr. Milgaard on the evening in question?

24 A During my discussions and interview with Deborah,
25 there was no mention that I recall of this degree



1 of detail and recollection of exact phrasing,
2 etcetera, that's correct.

3 Q I'll read forward from there.

4 "Q Did you observe him --

5 A -- crossing his arms.

6 Q Oh, I'm sorry.

7 A Sorry. He sort of crossed his arms
8 and he was laughing, you know. He was
9 very sarcastic.

10 Q And did you observe him, I think you
11 said punching the pillow; is that right?

12 A Yeah, he was doing that prior to
13 actually being asked and during, you
14 know, I guess this so-called
15 reenactment, he was beating on this
16 pillow.

17 Q And I think you described it as punching
18 the pillow; is that right?

19 A Yeah. He had closed fists, uh-huh.

20 Q I'm not sure if there's a distinction
21 between punching and stabbing a pillow,
22 but reference has been made elsewhere
23 that people observed him stabbing a
24 pillow. Did you observe that?

25 A I suppose you could construe it as



1 stabbing when he was saying, "yeah, I
2 stabbed her." I construed it as him
3 still punching up the pillow, being
4 sarcastic to being bugged by these
5 guys."

6 Again I'll pause there. Do you recall Ms. Hall
7 allowed that Mr. Milgaard was punching or
8 stabbing a pillow?

9 A I believe she referenced a pillow in a general
10 way. I don't recall exactly how she described the
11 pillow incident.

12 Q Does it fit with your recollection that she
13 described it as Mr. Milgaard punching or stabbing
14 the pillow?

15 A No.

16 Q Move forward from there:

17 "Q And then I think you said he then put
18 the pillow under his head and leaned
19 back and laughed?

20 A Yes.

21 Q And do you recall the reaction of the
22 others in the room to Mr. Milgaard's
23 statements and actions?

24 A Well, it was kind of like a
25 collective -- a pause, it was like a



1 pause, and then everything picked up
2 again just --

3 Q Do you recall anybody saying anything?

4 A No.

5 Q Let me talk first about your, what sense
6 you made of this, and I think you said
7 the word sarcastic. Tell me, what did
8 you take from Mr. Milgaard's actions and
9 words?

10 A Well, his tone for one thing, it
11 wasn't -- he sounded sarcastic about
12 it, he was -- I immediately thought he
13 was just joking around. I thought he
14 was kind of a jerk for it, but -- just
15 showboating, you know. He had been
16 doing that all night."

17 And in terms of Mr. Milgaard's general actions
18 that evening, would that description that
19 Ms. Hall just provided fit with the description
20 that she had provided with you in 1981, and just
21 in terms of his mood, joking around and mention
22 of matters such as that?

23 A Mentioning matters such as that?

24 Q Her description of his activity?

25 A I believe that I had the impression of a group of



1 young people on drugs in a party atmosphere from
2 the conversations I had with Deborah Hall. I
3 don't recall any specific detail, but it would
4 seem to fit that yes, David may have been joking
5 around, goofing around, hyperactive, and I don't
6 think that I had any distinct impression of her
7 describing him in any other way.

8 Q Okay. If we could move to page 3283 of the
9 transcript, just near the top, Commission Counsel
10 is still examining Ms. Hall again at this Inquiry,
11 and he's reading from some of the transcript of
12 your interview with Ms. Hall, and we'll cover that
13 portion, he states:

14 "Q Okay. And then Mr. O'Brien says:

15 "Did he say anything?"

16 and you answered:

17 "He propped himself up against the wall
18 with that pillow, as a matter of fact.

19 O.K. Now there was a lot of people
20 talking at once, cause you know, there's
21 conversation with this, that and the
22 other. Now, I might have been in a
23 conversation with Bob at the time
24 because I was talking to him a lot so I
25 did not hear anybody say anything to



1 him, but I don't remember him saying
2 anything like killed or stabbed, or
3 anything. He was just pounding this
4 pillow and he redeposited himself on the
5 bed. You know what I mean. Like, he
6 was sitting... he was lying down before
7 and then he just got up and was fluffing
8 his pillow and up and went like this and
9 then just sat back. And then he was...
10 he was laughing, I remember him laughing
11 about something, but I did not... like I
12 had heard him say kill or stab or
13 anything like I would have heard it."
14 Now I think that's different than what
15 you have told us yesterday and today?"

16 Ms. Hall responds:

17 "A Yeah, and I don't recall this
18 conversation part at all, I really
19 don't. So I don't know whether, like I
20 say, at the time I was just numb about
21 it, maybe, I don't know. Like I say, I
22 had to start really thinking about what
23 happened that night after that."

24 And do you recall whether Ms. Hall seemed, as she
25 describes here, numb at the time that you were



1 meeting with her?

2 A I don't think 'numb' is a word I would have used.
3 I know that I was excited to talk with her, and to
4 be able to record the conversation with her, and I
5 believed that it was well-engaged on both of our
6 behalves. I don't think 'numb' would have been a
7 description I would have used to characterize our
8 conversation or her demeanour during.

9 Q Did her recollection seem to come easily; as best
10 you recall?

11 A Yes, I believe it did. I think that there was
12 some opportunity, or there was some occasion when
13 I had the sense that she was choosing her words
14 more carefully once the tape recorder had been
15 turned on, but I don't think that she was
16 struggling to recall.

17 Q I was going to read this next portion, but Mr.
18 Hodson continues on, and I think we can move to
19 page 3291. Again, Mr. Hodson points out some
20 discrepancy in Ms. Hall's accounts, or a potential
21 discrepancy, and she ultimately answers again, and
22 at the top of the page:

23 "If he ...",

24 being yourself, Mr. O'Brien:

25 "... had given me a couple of days to



1 sort of read it over and think about it
2 and maybe, you know, put it all
3 together, I think I would have been a
4 little bit more coherent about it."

5 And did you have any concerns that you were
6 putting this material to Ms. Hall too quickly or
7 that she hadn't had a chance to absorb the
8 information?

9 A I don't recall having any particular concerns of
10 that nature, although I can appreciate what she
11 says here in this transcript, that a couple of
12 days to really think it over might have produced a
13 different result, but I certainly didn't come to
14 that conclusion at that time, not that I remember.

15 Q And just moving up, perhaps, to the top of the
16 page, and maybe if we could go to the page prior,
17 a similar comment made by Ms. Hall to the one that
18 we had previously mentioned. If we could go to
19 the previous page, just at the bottom of the page
20 she states:

21 "Like I said, I think I was kind of
22 shell-shocked by the whole thing, and
23 rather excited, and just babbling a lot
24 of the time I think."

25 And again, does that fit with your recollection



1 at all, Mr. O'Brien?

2 A It seems to me that I have the impression that a
3 good deal of what she was telling me wasn't of any
4 real value, there were some elements of it that
5 were, and a good portion of it was not. But then
6 again, I think I would have been looking at it
7 both from the perspective of the Milgaard family,
8 and that of a journalist looking for, like I've
9 described before, the definitive sound byte.

10 Q Okay. Mr. Commissioner, I have some further
11 portions to read, but I might be able to cut a
12 couple of those back. Perhaps this is a good time
13 to break?

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

15 (Reconvened at 10:38 a.m.)

16 BY MR. HARDY:

17 Q Mr. O'Brien, I'm going to continue reading some
18 portions from Ms. Hall's transcript of her
19 testimony as she provided it at this Inquiry and,
20 again, I'll have some questions relating to that.
21 If we could turn, please, to page 3488, and this
22 is Ms. Knox examining, who is counsel here at the
23 Inquiry for the prosecutor, Mr. Caldwell, and
24 she's examining Ms. Hall. If we could start here
25 I'm going to read the questions and answers to



1 you:

2 "Q Okay. I wonder if we could bring up
3 document 047724. What I'm bringing up
4 is the transcript of your interview with
5 Mr. O'Brien.

6 A Okay.

7 Q I want to go to page 2 of that
8 transcript first, please. Now, do you
9 remember saying, and I just drew a
10 little line down here on a part, I don't
11 work this machine very well, but do you
12 remember saying to Mr. O'Brien that it
13 was becoming clearer to you as you
14 thought about it?

15 A Yes.

16 Q Do you remember also -- and I won't go
17 through every place in the statement, we
18 all have it, we've been through it many
19 times, do you remember telling him that
20 because you had taken drugs that night,
21 rather than fog your mind they actually
22 made your mind clearer?

23 A In some ways, yes.

24 Q Okay. Now, there were a number of
25 occasions when he asked you about what



1 had been said in the room and do you
2 remember that it was your first memory
3 that you couldn't hear anything on the
4 TV?

5 A How would I put that. Not that that
6 was my first memory. Going back to
7 this transcript with Chris, I have to
8 admit I think I was -- he was so
9 excited about everything, I think I
10 was kind of going along with a lot,
11 you know."

12 And I'll pause there. Did you have the
13 impression, Mr. O'Brien, that Ms. Hall was 'going
14 along with a lot' as she states here?

15 A I don't recall having that distinct impression,
16 no.

17 Q And she mentions that you were so excited; would
18 that have been a fair observation on the part of
19 Ms. Hall at the time of your interview, as you
20 recall it?

21 A I think it probably was, yes.

22 Q Did you have any sense, at the time of that
23 interview, that Ms. Hall was giving you what you
24 wanted so to speak?

25 A I think there was a sense of some cooperation, but



1 was she tailoring her remarks to facilitate my
2 predetermined response or desire for a response, I
3 didn't -- I don't recall having that impression.

4 Q Okay. I'll read forward from there:

5 "Q But the basic bottom line of what you
6 went along with is you repeatedly
7 assured him --

8 A Uh-huh.

9 Q -- that nobody in the room that night
10 had said anything about a nurse being
11 murdered, about a saliva test, and words
12 liked "killed", "stabbed", or anything
13 of that nature, were not said in that
14 room that night; would that be a fair
15 summary?

16 A Well, it would seem to be with this,
17 yeah.

18 Q Well it would seem to be, that's what
19 the transcript says, and that's what
20 your voice said when we listened to you
21 last week?

22 A Uh-huh.

23 Q There was no way, no how, those words
24 got used in that room that night,
25 because if you had heard those words you



1 would remember it, you used the term "it
2 would have been a real shocker", didn't
3 you?

4 A Yeah.

5 Q That was in 1981?

6 A Uh-huh.

7 Q So no way, no how, anything happened in
8 that room that night that you saw or
9 heard except Mr. Milgaard fluffed up a
10 pillow?

11 A But, like I said, I said that to make
12 Chris happy."

13 And, again, did you have any sense in that
14 respect, Mr. O'Brien, at the time of the
15 interview?

16 A I don't believe I did, no.

17 Q Okay. Reading on from there:

18 "Q Okay, but I -- reasons aside, that's
19 what you said in 1981?

20 A Yup.

21 Q Okay. Now when, then, did you first
22 realize that what you had told Chris was
23 a lie?

24 A It wasn't a lie.

25 Q Okay. You have got very clear



1 statements --

2 A When I had to stop and really start
3 thinking about what I had said to
4 him --

5 Q Okay?

6 A -- the recollection of that room, you
7 know, came to me more after that.

8 Q Okay. So how long --

9 A I mean initially when I talked to
10 Chris it was just like being
11 blindsided, I couldn't believe all of
12 this, it was like all of a sudden I
13 had stepped into a movie."

14 And, again, did you have any sense at all that
15 Ms. Hall was reacting in this fashion to your
16 interview?

17 A I believe that my impression at the time was that
18 she was being somewhat more guarded, in terms of
19 her responses to me on tape, than she had been in
20 casual conversation. Beyond that, I don't believe
21 I have any particular recollection of the
22 impressions I had of her conversation with me.

23 Q Sure. And can you give us a sense of the time
24 interval between, as you say, the casual
25 conversation and then the taped interview?



1 A It seems to me it was the same day because we had
2 had, initially, that point of discovery in the
3 barber's chair, I think. Now I've read in the
4 testimony that Deborah recalls that I phoned her a
5 couple of days later, that could well be the case,
6 but I don't recall that. Then she recalls that we
7 actually had lunch together, and upon hearing that
8 and reading it, that came back to me as well. It
9 seems to me that we went from having lunch over to
10 my place, which was in the same part of town, in
11 the south of Regina, and conducted the interview
12 on tape. I believe it was the same, the same day,
13 I could be wrong but that's my sense of the
14 recollection.

15 Q And sorry if I missed that; do you also mean the
16 same day as the haircut?

17 A No, the haircut, I believe, took place sometime
18 earlier, but only because of the transcriptions
19 that I've read. My recollection of that was -- is
20 very much more compact and based more on
21 impression than recollection of detail.

22 Q And I guess what I'm attempting to get at is in
23 terms of you first raising this matter with Ms.
24 Hall and recognizing her name, and perhaps having
25 some initial discussion with her about her



1 potential involvement in this case, how much time
2 passed between that initial point and, ultimately,
3 the taped interview that we've been reviewing?

4 A In my mind it could have happened all at once.

5 Q Okay.

6 A In reality, and from what I've read, I believe
7 there was a couple of days.

8 Q Okay. And I guess in summary, Mr. O'Brien, at the
9 time of your interview with Ms. Hall did you have,
10 when you think back on it, any concerns that you
11 were receiving something less than a complete
12 story from her?

13 A Only that I felt that she was being somewhat more
14 careful, as I've pointed out, in regards to the
15 words and the manner in which she expressed
16 herself. Other than that, I have no recollection
17 of any impression of any of her demeanour or her
18 motivation.

19 Q Okay. And I had meant to ask you this earlier; do
20 you recall, in terms of reviewing Mr. Melnyk's
21 testimony with her and Mr. Lapchuk's testimony
22 with her, having those transcripts with you, do
23 you recall whether Ms. Hall had an opportunity to
24 review those complete transcripts?

25 A I don't recall specifically, no, but I suspect



1 that that would have made all the sense in the
2 world, and that we would have had either an
3 opportunity for her to read them specifically, or
4 for us to have shared some occasion to review them
5 together.

6 **Q** Okay. Those are all the questions I have for you,
7 Mr. O'Brien.

8 I've canvassed the room, and I
9 believe at least one counsel for one of the other
10 parties has some questions for you, Ms. Knox.
11 Anybody else? Okay.

12 **BY MS. KNOX:**

13 **Q** Mr. O'Brien, as Mr. Hardy indicated, my name is
14 Catherine Knox, I act as counsel for Mr. T.D.R.
15 Caldwell, who was the trial prosecutor in the
16 original Milgaard trial in 1969.

17 And I understand, from the
18 questions he has asked of you, that you have
19 reviewed some transcript of evidence, including at
20 least portions of Deborah Hall's evidence at this
21 Inquiry?

22 **A** That's correct.

23 **Q** Okay. Now you made a statement early this morning
24 when you started your evidence that as a
25 journalist, when you were acting in this matter,



1 in part you were probably acting as a reflection
2 of Joyce Milgaard's conviction that her son was
3 wrongfully convicted, that he was innocent of this
4 crime; did I understand that to be correct?

5 A I believe that's correct, yes.

6 Q And I want to preface and make sure that you
7 understand my position in this regard at this
8 time, is that my client, and I believe generally
9 the public at large, understand now that
10 tragically in 1969, they were wrong, and that
11 David Milgaard was wrongfully convicted. So I'm
12 not here to debate the merits of whether or not
13 her conviction in 1981, when you met with her, was
14 right, we all accept that she was correct in that
15 regard, so if we could use that as the point of
16 reference.

17 You also indicated that you were
18 absorbing -- and 'absorbing' is my word -- some of
19 the emotion that came from the family in the sense
20 of Susan and Mrs. Milgaard and their belief in the
21 innocence of David?

22 A Yes.

23 Q Do you remember saying that? And you indicated as
24 well that as a journalist, however, you knew that
25 you always had to be careful with facts and to



1 make sure, I guess, what you put out there in
2 terms of your public presentations via your media
3 job were factually accurate?

4 A I'll agree with that comment, yes.

5 Q And you would be aware, as a journalist and in
6 your job as a communications person in your --
7 in -- throughout your career, that the press
8 carries great power in terms of forming public
9 opinion?

10 A I believe that is true, and I have many thoughts
11 on that issue, but I don't believe this is the
12 place for them.

13 Q Okay. But would you agree with me, as a premise
14 without arguing both left and right, that in many
15 instances the press can make or break a person's
16 reputation and destroy or enhance their -- the
17 perception of their integrity?

18 A I doubt that you would find many people who would
19 disagree with that.

20 Q Okay. Now although you disassociated yourself in
21 some respects with this re-investigation in 1981,
22 I take it you continued to a degree to be aware
23 that Mrs. Milgaard -- and I mean no disrespect,
24 she was right in every respect as it turns out --
25 was carrying on the public campaign to exonerate



1 her son from his wrongful conviction?

2 A I was aware of Joyce's name appearing in the media
3 on occasion subsequent to 1981, yes.

4 Q And did you become aware, at some point in time,
5 that part of the public representations being made
6 by her or on her behalf was that Craig Melnyk and
7 George Lapchuk had given false testimony in a
8 trial courtroom in Saskatoon in January of 1970?

9 A I don't recall that specifically.

10 Q Okay. If I were to tell you that in fact these
11 young men, one of them now deceased, remained
12 under attack for a number of years, in part
13 initiated by your interview with Deborah Hall,
14 accused of being liars in a public forum, would
15 that surprise you?

16 A I believe you've worded it very strongly,
17 counsellor, yes.

18 Q All right. Well we could pull up the headlines
19 and show you, and I -- trust me, if I was being
20 incorrect about this, someone would be on their
21 feet to correct me. But the public
22 representations of them, including newspaper
23 headlines based on information starting with your
24 interview with Deborah Hall, was that they were
25 liars; did you become aware of that?



1 A No, I did not.

2 Q Would you be surprised to know that the public
3 representations went so far as to accuse officials
4 of the Department of Justice, and my client among
5 them, of paying them to give false testimony, both
6 in coin and in reward, with lesser penalties in
7 the judicial system for their cooperation?

8 A I'm sorry; what's your question?

9 Q Did you become aware that there were allegations
10 that they were paid to give false testimony?

11 A No I did not.

12 Q Sir, would you agree with me that those kinds of
13 representations being made about them, even if
14 they were untrue, would be quite harmful to them
15 as individuals?

16 A Absolutely.

17 Q And would you agree with me that they would be
18 quite harmful to a public servant such as my
19 client, who had dedicated his career service to
20 doing a job as an Agent of the Attorney General,
21 and he was being accused, directly and indirectly,
22 of having bought witness testimony to convict an
23 innocent man?

24 A I believe that a person in the position of a
25 public prosecutor is probably expectant to undergo



1 some controversy in media, in media reports,
2 regarding his actions, regardless of what the case
3 may be. It's not the media's job to dictate
4 fairness, and it's certainly -- in a high-profile
5 public position like the prosecutor's office, you
6 would expect to have some issue with things that
7 are reported in the media, because they are not
8 always reflective of exactly what you want to see.

9 Q Okay. But you did say earlier that the facts are
10 important and if the record shows, the evidence
11 shows, and the facts are that that public official
12 did none of those things that he is accused of,
13 would you consider the damage done to his
14 integrity and his reputation falsely might be of
15 significant consequence?

16 A I believe -- of significant consequence to whom --

17 Q To --

18 A -- or on behalf of whom?

19 Q Certainly to him as an individual, personally and
20 professionally?

21 A In the public's mind's eye or his employer's
22 mind's eye?

23 Q Everywhere, everyone who had access to the media
24 reports that accused him wrongly of wrongdoing?

25 A I believe that intelligent consumers of media



1 often question the things they see in the
2 headlines and don't always believe everything they
3 read to be exact and truthful all the time.

4 Q Does that lessen the duty on you, as a member of
5 the public media, to be sure that what you put out
6 there directly, or what you are party to going out
7 there, should be accurate?

8 A I believe, as a journalist, that it is beholden
9 upon you to express the facts, to the best of your
10 ability, to the truth as it is known to you at the
11 time of their conveyance.

12 Q And do you think that there is a risk of getting
13 your truth from somebody who is as emotionally
14 engaged in a matter as Mrs. Milgaard was?

15 A I'm sorry?

16 Q I said do you have concerns that getting your
17 truth from somebody as emotionally engaged in an
18 issue as Mrs. Milgaard was might have some risks
19 associated with it?

20 A I think that, as a journalist, you are often
21 dealing with people who are emotionally connected
22 to the issues that are being discussed, and it is
23 your job to filter them in a way and present them
24 in a way that is as factual as possible. The
25 emotion is contained primarily in the sound bytes



1 or the quotes that you choose to relay in your
2 reports or your stories or articles, as the case
3 may be.

4 Q Sir, if we could just sort of go into a brief
5 review of some of the answers that, or one of the
6 answers you gave to Mr. Hardy. You indicated that
7 when you review the information you got from
8 Deborah Hall in 1981, and you review what you now
9 know she says she actually heard in that motel
10 room, that there was a reenactment, in effect, of
11 the stabbing motions by David Milgaard when a news
12 story came on about the nurse being murdered, and
13 not only did he reenact the actions but he went so
14 far as to say "yes, I killed her, I stabbed the
15 bitch 14 times, then I fucked her in the
16 snowbank", Deborah Hall in fact gave worse repeat
17 of what he said than any, anything said by Melnyk
18 and Lapchuk; when you look at that and you respond
19 to a question about the differences between what
20 you got from her in 1981 and what she has given in
21 subsequent accounts, is that you are satisfied she
22 remained adamant on some points, can you honestly
23 say to us that you saw anything in her subsequent
24 accounts that confirmed the key parts of what she
25 gave you in 1981?



1 A Yes, I can.

2 Q And you think that the fact that she repeated how
3 she got home, who was in the room, that they were
4 using drugs, that the TV was on, that Ute and
5 David were getting it on in the bed, were key
6 parts of the information that you took from that
7 interview, and conveyed, which subsequently became
8 part of a public record?

9 A No.

10 Q Would you agree with me the key part, the key part
11 of what she said, was that she called Craig Melnyk
12 and George Lapchuk liars, and in fact what we are
13 left with after all these years and all the
14 attacks on them and everybody associated with this
15 trial, is that she agrees that David Milgaard said
16 what they said, in fact a little bit worse than
17 what they said; the only difference is she says
18 she thought he was joking and they say that they
19 believed he was serious?

20 A And I believe that's the key.

21 Q Not who was in the room or who drove her home or
22 anything of that, the very essence of what you
23 took from that, that those guys were liars, that
24 got you so excited, was in fact wrong?

25 A What I believe, counsellor, is that this young



1 girl in the motel room had an impression, by
2 virtue of the activities and the behaviours in
3 that motel room, of the seriousness of the
4 comments made by the individual. The exact
5 wording and the phrasing I believe are not
6 inconsequential, but are of less import than what
7 she believed to be the nature and the tone, and
8 she repeats over and over again that this was a
9 sarcastic response by a young man to the teasing
10 of his friends.

11 Q But, Mr. O'Brien, she repeated that much later.
12 What you conveyed is that she said that they were
13 big fat liars, that these conversations never took
14 place, that nobody could even hear the TV is what
15 you got from her in 1981; isn't it?

16 A That I conveyed that?

17 Q Well you sent the transcript to Joyce Milgaard;
18 didn't you?

19 A I conveyed the entire transcript.

20 Q Yeah.

21 A The entire tape, rather. I believe it was
22 transcribed at some point subsequent.

23 Q That David -- and the transcript that you conveyed
24 was that David Milgaard was fluffing up a pillow,
25 nobody was listening to the TV, nothing got said



1 about a nurse, because if it had been it would
2 have been a real shocker and she would have
3 remembered it; that's what you conveyed, wasn't
4 it?

5 A I was only able to convey the contents of the
6 audio tape.

7 Q And you are aware -- are you aware that that's
8 what remained to be the knowledge and working base
9 for advocates on behalf of the Milgaards until
10 1989?

11 A I don't believe I'm able to speak on behalf of
12 advocates of anyone other than myself in this
13 regard.

14 Q Sir, you indicated that the interview with Deborah
15 Hall was what you considered to be the highlight
16 of your involvement in this investigation?

17 A True.

18 Q Knowing what you know now, and knowing the harm
19 that have been done to some people because of all
20 those years of misinformation about what Deborah
21 Hall knew, do you take any or have any regret that
22 that was the highlight of your involvement, and
23 that became part of the record that ruined the
24 reputations, in part, of individuals like Lapchuk
25 and Melnyk, to some extent my client, for many



1 years?

2 A I believe that the indication as to the tone and
3 the quality of David Milgaard's behaviour was
4 accurately assessed in that motel room and later
5 conveyed to me by Deborah Hall, and I have no
6 regrets whatsoever about conveying that audio
7 cassette to Joyce Milgaard or its contents
8 therein, none whatsoever.

9 Q Is that your personal opinion or is that the
10 opinion of a member of the media looking
11 objectively at what happened, because I have to
12 say if it's objective, then I have some issues
13 with it?

14 A I believe that that is my personal opinion and
15 that my reporting would have probably reflected my
16 opinions and my understanding of the facts.

17 Q I see. And you don't accept any responsibility
18 for the misinformation that was in the public
19 forum for so long and the harm that was done to
20 the persons who she told you were big fat liars?

21 A I don't believe it was misinformation, counsellor.

22 Q Oh. Thank you very much.

23 A You're welcome.

24 MR. HARDY: I have no questions on
25 re-examination, Mr. Commissioner.



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COMMISSIONER MacCALLUM: Thank you. You
are excused, sir, thank you for coming.

A Thank you.

MR. HARDY: And, Mr. Commissioner, that is
our last witness for the day and I -- we are now
adjourning until January.

(Adjourned at 11:00 a.m.)



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