

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

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Transcript of Proceedings  
and  
Testimony before the Commission  
sitting at the  
Radisson Hotel at  
Saskatoon, Saskatchewan

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On Wednesday, June 7th, 2006

Volume 159

Inquiry Proceedings



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Ms. Catherine Knox,              **for** Mr. T.D.R. (Bobs) Caldwell  
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Mr. Pat Loran, Esq.,             **for** the Saskatoon Police Service  
Mr. Chris Boychuk, Esq.,       **for** Mr. Eddie Karst  
Mr. Bruce Gibson, Esq.,       **for** the RCMP  
Mr. Brian Hurley, Esq.,         **for** Mr. Larry Fisher  
Mr. David Frayer, Q.C.,         **for** Minister of Justice  
  (Canada), The Hon. Vic Toews  
Mr. Marshall Hopkins, Esq., **for** Justice Calvin Tallis  
  (Retired)



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**EUGENE WILLIAMS, SWORN**

- BY MR. HODSON

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Transcript of Proceedings

(Reconvened at 9:00 a.m.)

COMMISSIONER MacCALLUM: Good morning.

ALL COUNSEL: Good morning.

EUGENE WILLIAMS, sworn:

BY MR. HODSON:

Q Good morning, Mr. Williams. Yesterday we, when we broke, we were talking about your meeting with Mr. Tallis I think in early November '89; do you recall that discussion?

A Yes.

Q And I think you told us that the primary focus of your discussion would have been the two grounds that had been raised in the application, namely the motel room incident and Deborah Hall, number one, and number two, the secretor issue, is that correct, as well as, I think you also said as well, the circumstances as to why David Milgaard didn't testify; is that right?

A That's correct.

Q And if we can just recap that, I think, based on your discussion -- how long did you meet with Mr. Tallis; do you remember?

A The initial meeting, I believe, was about -- no longer than an hour.



1 Q And I think you indicated that Mr. Tallis,  
2 although he cooperated, was wanting to spend a bit  
3 more time looking at the file and responding to  
4 specific questions; is that right?

09:02 5 A That's correct.

6 Q Did you sense some unease, on his part, in  
7 relating matters that were covered by  
8 solicitor/client privilege?

9 A Yes.

09:03 10 Q And I think Mr. Tallis expressed similar concerns  
11 when he testified before the Inquiry, that the  
12 matter of solicitor/client privilege, even when  
13 waived, is a matter that ought to be dealt with I  
14 think quite carefully, or words to that effect.  
09:03 15 Would that be -- was that your sense, that he was  
16 uncomfortable in getting into full-blown  
17 discussions about what was discussed between he  
18 and David Milgaard?

19 A Yes.

09:03 20 Q And did you also sense that, because it was not a  
21 discussion with David Milgaard's lawyers but  
22 rather someone, if I can say, on the other side of  
23 the matter, that he might have had even more  
24 unease, again your sense?

09:03 25 A Yes. I would characterize the -- he was



1           circumspect in his responses.

2           **Q**       And do you recall, at that time, whether you would  
3                   have been aware of the fact that he had not yet --  
4                   that he had not -- the information that he  
09:03 5                   provided you in this meeting, I think Mr. Tallis'  
6                   evidence before the Commission is he had not been  
7                   asked yet, nor had he provided, that same  
8                   information to Mr. Wolch or Mr. Asper; were you  
9                   aware of that at the time?

09:04 10          **A**       I was not aware of that.

11          **Q**       And was that -- well, okay, that's fine, I'll  
12                   leave that. So again, in your discussion with  
13                   him, I think you told us, on the Deborah Hall  
14                   ground, that the information Mr. Tallis told you  
09:04 15                   was essentially that, based on his interview with  
16                   Ute Frank during the trial, he concluded that Ute  
17                   Frank's evidence would be of no assistance and,  
18                   arguably, worse than Melnyk and Lapchuk because  
19                   she didn't have the baggage they had; is that a  
09:04 20                   fair summary?

21          **A**       Yes.

22          **Q**       And did you understand that to mean that she would  
23                   corroborate, in some way, what Melnyk and Lapchuk  
24                   had to say?

09:04 25          **A**       Correct.



1 Q Did you ask him about Deborah Hall and about  
2 whether he contemplated calling her as a witness?

3 A I believe the discussion did focus on Deborah  
4 Hall. My recollection is that Ms. Hall was not  
09:05 5 available.

6 Q I think what Mr. Tallis told the Inquiry is that,  
7 based upon what Ute Frank told him happened in the  
8 room and her character compared to the character  
9 of Melnyk and Lapchuk, I think his words were to  
09:05 10 the effect that he did not want to find Deborah  
11 Hall for fear that her evidence would be similar  
12 to Ute Frank's and perhaps, similarly, not have  
13 the same baggage as Melnyk and Lapchuk; does that  
14 sound right?

09:05 15 A That, that's an explanation that -- that sounds  
16 right. That, if that's his evidence, I did not  
17 recall us discussing it in that context but that  
18 doesn't surprise me.

19 Q And I appreciate, at this time you had not yet  
09:05 20 interviewed Deborah Hall, I think that was -- is  
21 that right, that you --

22 A No, I had interviewed Ms. Hall that morning, and I  
23 saw Justice Tallis that afternoon.

24 Q Oh, I see, okay. So, and I'll get to the Deborah  
09:06 25 Hall tape shortly. Would it be fair to say that,





1 after talking to Deborah Hall and after talking to  
2 Mr. Tallis, can you tell us what your view --  
3 let's focus on what Mr. Tallis had to say. After  
4 talking to Mr. Tallis and getting his insight and  
09:06 5 information as to how the motel room incident  
6 played out at trial and the decision to call or  
7 not call Ute Frank and Deborah Hall, what was your  
8 assessment of this ground in the application?

9 A I can say that the information I had gathered  
09:06 10 signaled that there was no difference in the  
11 observations between Deborah Hall and Melnyk and  
12 Lapchuk. Where there was a difference was in the  
13 perception, by Deborah Hall, of what the actions  
14 of David Milgaard signaled.

09:07 15 The fact that Mr. Tallis,  
16 Justice Tallis as he then was, had the opportunity  
17 to interview Ute Frank and to get a flavour for  
18 what her recollection was and chose not to call  
19 her, signaled to me to reinforce the fact that  
09:07 20 there was no dispute, at least there was nothing  
21 to contradict the testimony of Melnyk and Lapchuk  
22 insofar as what their observations of David  
23 Milgaard was at that motel room.

24 Q All right. And let's put it this way. I think  
09:07 25 you told us Monday that, under the Section 690,



1           you are looking for something new and significant  
2           that signals that there was a miscarriage of  
3           Justice at trial?

4           A       Yes.

09:08 5           Q       The ground put forward is "here's new information  
6           about Deborah Hall supplemented by Ute Frank", I  
7           think in the newspaper article and the letter of  
8           August 29th, "this is new information that wasn't  
9           available at the time that would have affected the  
09:08 10          verdict". After talking to Mr. Tallis and getting  
11          his insight into what he knew as defence counsel  
12          about Deborah Hall and Ute Frank, and in  
13          particular his interview with Ute Frank, can you  
14          tell us what impact the information from Mr.  
09:08 15          Tallis had on your assessment as to whether or not  
16          this ground fit the criteria under Section 690?

17          A       It did not fit the criteria.

18          Q       And would it be fair to say that the information  
19          you received from Mr. Tallis, and in particular  
09:08 20          the information about his interview with Ute Frank  
21          and his trial strategy decision in that regard,  
22          would have been a significant factor in your  
23          conclusion?

24          A       Yes.

09:08 25          Q       Let's now turn to the Dr. Ferris and the secretor



1 information. And you talked about this yesterday,  
2 and I think what you said is that after meeting  
3 with Mr. Tallis, you concluded that he was  
4 familiar with the secretor issue or very familiar  
09:09 5 with the secretor issue?

6 A Yes.

7 Q And would it be correct to say that, after  
8 discussing the matter with Mr. Tallis, you  
9 concluded that everything that was put forward in  
09:09 10 Dr. Ferris' report relating to the secretor issue,  
11 and everything put forward in the application  
12 under section 690, were matters that had been  
13 considered and dealt with by Mr. Tallis at the  
14 time of trial?

09:09 15 A Yes.

16 Q And is it also fair to conclude that on the basis  
17 of your discussion with Mr. Tallis, again going  
18 back to the question of under Section 690 and the  
19 fact that the application said that Dr. Ferris'  
09:09 20 information on the secretor issue is new and  
21 significant information that would have affected  
22 the verdict or would have been a substantial  
23 miscarriage of justice, and was new because it  
24 wasn't understood or properly presented at trial,  
09:10 25 did you conclude, based on your discussion with



1 Mr. Tallis, that that ground put forward did not  
2 fit the criteria of Section 690?

3 A Yes, in combination with the reports we had  
4 received from Patricia Alain, yes.

09:10 5 Q Right. So that what Mr. Tallis told you would  
6 have supplemented or confirmed your previous  
7 thoughts about that?

8 A Yes.

9 Q And would it be fair to say that what Patricia  
09:10 10 Alain didn't tell you, though, is she didn't  
11 address what David Milgaard's counsel at the time  
12 of trial knew about this issue and the position  
13 put forward; is that fair?

14 A That's fair.

09:10 15 Q And so is it correct to say that, based on your  
16 discussion with Mr. Tallis in November of 1989, he  
17 provided you with information that caused you to  
18 conclude that (a) he was very familiar with the  
19 secretor issue, (b) he put forward that issue  
09:11 20 before the jury in the best possible light?

21 A Correct.

22 Q And the fact that now, later, someone says "this  
23 issue might have affected the verdict of the  
24 jury", are you telling us that your conclusion was  
09:11 25 "lookit, it was already put before the jury and,



1           therefore, it's not a new matter"?

2           A       That's correct. It was put before the jury in a  
3                   very full context, and what I mean by that is the  
4                   evidence before the jury included the evidence of  
09:11 5                   contamination, and it was that evidence of  
6                   contamination that removed, as a viable shall we  
7                   say evidentiary element, the forensic information  
8                   provided by Sergeant Paynter from the jury's  
9                   consideration of guilt or innocence.

09:11 10          Q       Is it correct to put it this way, and I think what  
11                   Mr. Tallis said is that absent contamination, the  
12                   evidence would have given -- would have been very  
13                   exculpatory?

14          A       Yes.

09:12 15          Q       The evidence came out, Mr. Tallis tried to -- he  
16                   didn't raise the contamination issue at trial;  
17                   correct?

18          A       Correct.

19          Q       The contamination issue came out in Staff Sergeant  
09:12 20                   Paynter's evidence because he brought it out,  
21                   saying, I think, leafy vegetables, leathers may  
22                   give a false indicator?

23          A       That's correct.

24          Q       And the judge ended up asking the question to him,  
09:12 25                   I think "are you able to tell us whether this came



1 from a secretor or a non-secretor", and I think  
2 Sergeant Paynter's evidence was "due to the  
3 contamination, no, I cannot"?

4 A Right, that's my understanding of the evidence,  
09:12 5 yes.

6 Q And I think that's what Mr. Tallis told you, that  
7 his exculpatory defence was somewhat lessened by  
8 the fact that the judge brought out the  
9 contamination issue; is that a fair summary?

09:12 10 A The minute the contamination was introduced it  
11 removed the defence of exculpatory.

12 Q Right. So then, if we contrast that with what Dr.  
13 Ferris did 20 years later, he comes back and  
14 raises initially -- I think what Mr. Tallis'  
09:13 15 position was was lead with the non-contamination,  
16 correct, in other words because it's a defence but  
17 you don't want to raise it?

18 A You don't want to.

19 Q Right. Dr. Ferris comes back in his report and he  
09:13 20 initially, he raises it?

21 A Yes.

22 Q Because he is saying "lookit, this is contaminated  
23 and it has no value", and I think what Mr. Tallis  
24 told us is that he would not have called Dr.  
09:13 25 Ferris at trial for that very reason, because Dr.



1 Ferris' opinion actually weakened or hurt his  
2 defence?

3 A It undercut the defence.

4 Q By saying it's contaminated?

09:13 5 A Yes.

6 Q And I think, in fairness, I think what -- one  
7 issue Dr. Ferris was addressing was the suggestion  
8 that the Crown was saying the semen linked David  
9 Milgaard to the crime, and I think what Mr. Tallis  
09:13 10 said at trial, no, the semen was put in, in his  
11 view, to be exculpatory, and not as a link,  
12 notwithstanding what Mr. Caldwell said at the  
13 opening address?

14 A Correct.

09:13 15 Q Secondly, what Dr. Ferris said is, after saying  
16 it's contaminated he then says, well, if it's not  
17 contaminated then it's exculpatory, which is the  
18 same position that Mr. Tallis put forward?

19 A That's correct.

09:14 20 Q So at the end of the day they were both saying the  
21 same things, maybe just in a different order,  
22 being Mr. Tallis and Mr. -- and Dr. Ferris?

23 A Yes.

24 Q If we can go to 112 -- I'd like to promise you  
09:14 25 that I am not coming back to the secretor issue,



1 but I can't, because we have your June discussions  
2 with Markesteyn, Merry and Ferris, so we'll  
3 revisit this.

4 112486, please. So I jumped  
5 ahead a bit. I think your discussion with Mr.  
6 Tallis -- and I now appreciate that it would have  
7 been November 6th, being the same day as the  
8 interview with Deborah Hall; is that right?

9 A Yes.

09:14 10 Q So at the end of the day? Okay. So this is just  
11 going back to November 1, '89, and sorry for using  
12 Fred Dehm's phone messages, but I think this tells  
13 us that you would have asked him to get the  
14 statements of Craig Melnyk and George Lapchuk, and  
09:14 15 sent to you, presumably for your interview with  
16 Deborah Hall; is that right?

17 A Yes.

18 Q And so, much like we saw with the Nichol John  
19 interview, you tried to gather statements and  
09:15 20 transcripts of the people that might assist you;  
21 is that, is that correct, with Deborah Hall?

22 A Yes, that's correct.

23 Q 333326, this is a letter to Dr. Emson, and I think  
24 this meeting ended up getting delayed, I think you  
09:15 25 were going to meet him in the November trip and





1           then saw him later. Do you remember that? What  
2           do you recall of your meeting with Dr. Emson?

3           A       I recall that we met. The precise time, whether  
4           it was on the ninth or another date, I'm not  
09:15 5           certain as I speak today.

6           Q       And what was the purpose of that meeting and what  
7           do you remember being discussed? I don't know  
8           that I have a file memorandum that I can show you  
9           to assist you, but just generally what do you  
09:16 10          recall of the meeting?

11          A       I met with Dr. Emson with a view to finding out  
12          whether there were any other materials that had  
13          been collected from the victim's body that perhaps  
14          might assist in terms of further testing and also  
09:16 15          to confirm whether the weapon that had been  
16          identified at trial as the murder weapon was, in  
17          his view, the knife that caused the fatal wound.  
18          As you may recall, there were two or three knives  
19          that had been found in the alley, a portion of a  
09:17 20          blade that was found, or a portion of a knife that  
21          was found underneath the victim and later on  
22          searches of the surrounding area turned up a  
23          couple other knives. There had been discussions,  
24          or the evidence had indicated at various times  
09:17 25          that David Milgaard may have been in possession of



1 a knife and I wanted to clarify which knife in  
2 Dr. Emson's view contributed the fatal wound.

3 Q Okay. And we've heard, and we've had an  
4 opportunity to see in the original record the  
09:17 5 discussion of a number of knives, and I think by  
6 this time, November of 1989 -- I think back in  
7 March, if I'm not mistaken, March of '89, or maybe  
8 this was a bit later, there was a suggestion by  
9 the Milgaard group that there was a second knife  
09:18 10 involved, a hunting knife that was found in the  
11 alley near the body that may have also been used  
12 by the perpetrator. Do you recall that being an  
13 issue that was brought to your attention?

14 A Yes, there was mention of another knife,  
09:18 15 specifically a hunting knife, that bone-handled  
16 one as I recall, --

17 Q Yes.

18 A -- as to whether or not that may have been the  
19 murder weapon.

09:18 20 Q So again back to Dr. Emson, you were looking for  
21 whether he could point you to any other material  
22 that might give rise to some forensic testing?

23 A Yes, and I just had some general questions about  
24 the process and procedure that had been used at  
09:18 25 the time.



1 Q And secondly, about the knife wounds, do you  
2 recall what he told you about the knife issue?

3 A He confirmed his view that the maroon-handled  
4 weapon or the maroon-handled knife was the cause,  
09:19 5 or was the knife that had been used, because his  
6 observations of the -- his observations of the  
7 entry marks were consistent only with that and  
8 inconsistent with the types of patterns that you  
9 would expect from a hunting knife in terms of the  
09:19 10 width and --

11 COMMISSIONER MacCALLUM: You are speaking  
12 of the stab wounds here as opposed to the slash  
13 wounds?

14 A Yes, sir.

09:19 15 BY MR. HODSON:

16 Q Thank you for clarifying that. Yeah, let's talk  
17 about the stab wounds, and I think there were  
18 five, and one of which was the fatal wound, that  
19 his -- what he told you in the interview was that  
09:19 20 they were consistent with the paring knife; is  
21 that right?

22 A That's correct.

23 Q Did you discuss whether it's possible they could  
24 have been inflicted by another knife?

09:19 25 A That was part of our discussion, yes.



1 Q And did he exclude that as a possibility?

2 A Yes.

3 Q He did? In his view it was the paring knife  
4 and not -- one knife, not two knives?

09:20 5 A That's correct.

6 Q And what about this issue of a double-edged knife,  
7 do you recall that being part of your discussions  
8 with him, that there was some suggestion or some  
9 question that the wounds could have been inflicted  
09:20 10 by a double-edged?

11 A I recall that as part of our discussion, but his  
12 conclusion was firm that it was a paring knife.

13 Q And would the purpose in interviewing Dr. Emson on  
14 the knife issue then be because that had been an  
09:20 15 issue that have been raised somewhere along the  
16 way about knives?

17 A It was a question that was extant and to the  
18 extent -- and since I was close by, I thought I  
19 would take the opportunity to clarify that.

09:20 20 Q And do you recall whether you had any discussion  
21 with Dr. Emson about the secretor issue or the  
22 frozen semen or anything of that nature?

23 A I don't believe I did. I may have, but I don't  
24 believe I did.

09:20 25 Q If we can go to 004822, please. This is a



1 newspaper article Saturday, November 4, 1989 and  
2 it would be two days before your interview of  
3 Deborah Hall, and it quotes Mr. Asper -- actually,  
4 if we can -- thank you. It says:

09:21 5 "Asper said justice officials  
6 have finally contacted Debbie Hall, a  
7 woman who can refute some testimony  
8 given at trial."

9 And again -- maybe we'll just go back to the full  
09:21 10 page, and then he says here -- actually, just  
11 scroll up a bit, please, it says:

12 "Hall's affidavit was part of  
13 Milgaard's application for a retrial,  
14 but justice officials hadn't sought her  
09:21 15 out until recently.

16 Asper doesn't know what has  
17 sparked the government's new-found  
18 interest.

19 "I would hope it's the merits  
09:22 20 of the case and the sense of wanting to  
21 correct an injustice," he said. But  
22 Asper added his "cynical side" makes him  
23 think it might be due to the media  
24 attention Milgaard has attracted of  
09:22 25 late."



1 The first question is when did you, in your mind,  
2 decide that you needed to interview or examine  
3 Deborah Hall?

4 A Very shortly after receiving the application.

09:22 5 Q And that would be back in?

6 A Back in January, February.

7 Q And can you tell us what -- did the media coverage  
8 or the media attention that the Milgaard case  
9 attracted play any role in the timing of your  
09:22 10 interview of Deborah Hall?

11 A No. I think before I could do a sensible  
12 interview of Deborah Hall, I needed to learn the  
13 facts of the case and simply that meant to have a  
14 full appreciation of the trial evidence and until  
09:23 15 I could complete the review of the trial evidence,  
16 until I could gather the information that had been  
17 assembled in relation to Melnyk and Lapchuk, I  
18 couldn't find out the factual underpinnings on the  
19 trial record and that knowledge was important in  
09:23 20 order to ask Ms. Hall the right questions.

21 Now, we did receive the trial  
22 transcripts in May and it took some time to review  
23 them and summer intervened and I did take some  
24 holiday time. In September and October I started  
09:23 25 developing or started to gear up for the



1 interviews and made certain requests of Mr. Dehm  
2 and others to collect information about Melnyk and  
3 Lapchuk and also to, partly for economy, to  
4 combine a number of various trips into, let's say,  
09:24 5 a number of various interviews into one excursion.

6 Q You had mentioned yesterday I think as well that  
7 one of the factors in your timing was the  
8 anticipated family presentation?

9 A That was also a factor, but in relation to Deborah  
09:24 10 Hall, I knew I had to -- I knew I had to interview  
11 her. Certainly to the extent that the family  
12 presentation could raise other issues, it would be  
13 nice to have that so that you could consolidate  
14 your trip to deal with as many things as you  
09:25 15 could.

16 Q So you are telling us the family presentation  
17 didn't affect your decision to interview Deborah  
18 Hall, you knew you had to do it, and as far as the  
19 timing, are you telling us it didn't really impact  
09:25 20 on the timing directly in any way?

21 A Not that much.

22 Q You would have presumably been given a copy of  
23 this news article were you? I take it these  
24 matters would be drawn to your attention in some  
09:25 25 form or another?



1 A Oh, yes.

2 Q Would this article require you to do a briefing  
3 note or participate in the preparation of a  
4 briefing note for either the minister or  
09:25 5 minister's office or other officials?

6 A Yes.

7 Q And so again it would take some time, I'm not  
8 going to ask you to give us an estimate of time,  
9 but would it be fair to say that every article out  
09:25 10 there that raised a matter in a significant way  
11 triggered some work on your part?

12 A Correct. The article dealt with Deborah Hall.  
13 This was a relatively new aspect of the file that  
14 had not yet attracted media attention or it hadn't  
09:26 15 attracted it recently, it revived it, and the  
16 result is that when a matter hasn't been, hasn't  
17 surfaced, the minister's office would require an  
18 update and I, as the officer responsible for the  
19 file, would be requested to provide such an update  
09:26 20 by way of a briefing note.

21 Q Okay. Did you -- is it a fair reading of this  
22 article that Mr. Asper's view, as expressed to the  
23 media, is that, and whether it's he that went to  
24 the media, but the fact that media attention was  
09:27 25 generated caused you to take steps; is that a





1 fair -- is that how you read it, that that would  
2 be his view?

3 A That is the story line of the article. The  
4 reality is that I had to interview Deborah Hall as  
09:27 5 part of the investigative process.

6 Q Did you have a concern at this time or at a later  
7 time that Mr. Asper held the view that if he  
8 caused an article to be put in the media or caused  
9 a story to be run about the process, that that  
09:27 10 somehow would cause you to do things quicker? Did  
11 you think -- did you become aware that that might  
12 be his thinking?

13 A I think that was -- that was the perception. Not  
14 that I would have to do things quicker, but that  
09:27 15 the minister's office would demand that we  
16 expedite this.

17 Q And what about -- did you have concerns -- you  
18 talked yesterday about the concerns in the media  
19 reporting, I think as you said, one side of it but  
09:28 20 not the other and the public being misinformed  
21 about the facts I think you said. Did you have a  
22 concern about the public being informed about the  
23 process and, in particular, what and how you were  
24 doing your job?

09:28 25 A Yes, I had some concerns.



1 Q And what would those be?

2 A Well, the story line is that federal officials  
3 only seem to respond to pressure being put on them  
4 by the media that the concerted effort has finally  
09:28 5 moved them to do something. The fact is we were  
6 doing things, but we weren't doing them in the  
7 public eye.

8 Q And so again is it similar to what you told us  
9 yesterday, that you were constrained from going to  
09:29 10 the media and saying lookit, here's what I've been  
11 doing for the last eight months and here's why I'm  
12 doing this in November and not earlier and  
13 etcetera, etcetera, those are the things that you  
14 said you -- similar to going to the media about  
09:29 15 the substance of the application, would it be fair  
16 to say that you were similarly constrained in  
17 going to the media to explain your process and  
18 what you were doing?

19 A Yes. I could say to my favourite reporter "I'm  
09:29 20 doing this" and then he would say, "Well, who have  
21 you been seeing, what have you been doing, who  
22 have you talked to." The minute you identify  
23 those folks, you are running the risk of violating  
24 a privacy provision.

09:29 25 Q And again, did you have concern that, and again



1 we'll see this in some later articles, but you  
2 talked about the accumulation of what was in the  
3 media about the facts of the case being different  
4 than what you viewed the facts to be; is that  
09:30 5 fair?

6 A Yes.

7 Q Did you also -- did that also happen with respect  
8 to the process or the procedure; in other words,  
9 that the public became informed about what you  
09:30 10 were doing, what you were not doing, how you were  
11 doing it, when you were doing it through the media  
12 in a way that you took issue with? Maybe not at  
13 this point, but at some point did you have a  
14 concern that --

09:30 15 A The public was informed about what we were doing  
16 and this article is a good example, it starts out  
17 with the claim Asper doesn't know what has sparked  
18 the government's new-found interest. The  
19 suggestion is that we became disinterested at some  
09:31 20 point in time when that was never the case, we  
21 were always interested, but in order to do a  
22 proper interview it would be necessary to learn  
23 the facts and that took some time to amass.

24 Q Let's go back to the first paragraph of the  
09:31 25 article, it says:



1 "After 20 years, the federal Justice  
2 Department is seriously investigating  
3 convicted killer David Milgaard's claims  
4 of innocence, his lawyer said Friday."

09:31 5 Would you have concerns with that?

6 A Yes. It signals that we have had this matter  
7 under consideration for 20 years. That's one of  
8 the readings. Had the article said words to this  
9 effect, "following the receipt of a completed  
09:31 10 application in May of '89 the government's  
11 investigators have begun another phase of the  
12 inquiries into the Section 690 application of  
13 David Milgaard," the spin is completely different  
14 when framed in that fashion.

09:32 15 Q So again, back to my earlier question, did you  
16 become concerned at some point that the public was  
17 being informed through the media of the process  
18 and procedures and steps that you and your  
19 department was taking to investigate the  
09:32 20 application in a manner that differed  
21 significantly from what you believed to be the  
22 true state of affairs?

23 A Yes, and I guess it's primarily sins of omission  
24 as opposed to sins of commission, because the  
09:32 25 reality is a 20 year period had elapsed between



1 the conviction and that article.

2 Q And I think we'll see later some articles that  
3 basically either state or imply that you've done  
4 nothing for 15 months or so many months and that  
09:33 5 you've just been sitting on this; is that --

6 A Those are some of the charges that were levied,  
7 yes.

8 Q And again, would you have had concerns that you  
9 dispute what would be reported; is that fair, that  
09:33 10 it doesn't accurately reflect what you were doing?

11 A I think the record shows that we were doing  
12 things, it's just that we weren't publicizing them  
13 in a way that others might have.

14 Q I think Mr. Asper said in his evidence words to  
09:33 15 the effect that if you would have had a good  
16 media, I can't recall how he put it, I think a  
17 very good media campaign, that you could have  
18 blown him out of the water on Ferris and Hall, or  
19 words to that effect. Do you recall reviewing  
09:33 20 that in Mr. Asper's evidence before the Commission  
21 or being made aware of that type of evidence?

22 A Yes.

23 Q And did you view it as your function to be going  
24 out to the media and countering and arguing this  
09:34 25 case in the media both as to the substance and the



1 procedure in which you were conducting your  
2 investigation of this matter for the minister?

3 A No. Counsel generally, when it's a matter of  
4 court, do not argue their cases in the media, they  
09:34 5 argue it before a court, whether it's composed of  
6 a judge alone or a judge and jury. When an  
7 application is brought to the Minister of Justice,  
8 keeping in mind the seriousness of that type of  
9 application, keeping in mind the sensitivity of  
09:34 10 some of the issues that can surround those types  
11 of applications, the appropriate place to do the  
12 work is, whether it's in the office, whether it's  
13 consulting the forensic scientists who did provide  
14 information, whether it's doing interviews, that's  
09:35 15 where we do our work. Given that the decision is  
16 made by the Minister of Justice upon the  
17 completion of all of the work, it's inappropriate,  
18 it would be premature for a departmental official  
19 to presume to replace the minister and make some  
09:35 20 kind of pronouncement on any aspect of the  
21 application, it's simply not our function, because  
22 that function is reserved by parliament to the  
23 Minister of Justice.

24 Q If we could turn now to the examination of Deborah  
09:35 25 Hall. If we could call up 001285, please, and can



1           you tell us, and we've talked about this  
2           generally, but what was your purpose or objective  
3           in examining Deborah Hall?

4           A       I needed to obtain some additional details to  
09:36 5           support the conclusion that is contained in  
6           Ms. Hall's affidavit that Melnyk and Lapchuk lied,  
7           what did they lie about, how did the lie come  
8           about, what were the circumstances, why didn't she  
9           come forward earlier, those types of -- I needed  
09:36 10          to find what she really had to say.

11          Q       When you say why did she not come forward earlier,  
12           I think in her affidavit she mentioned she talked  
13           to someone in 1980 and then again in '86. Was it  
14           your concern that if she had this information, you  
09:36 15          thought maybe she would have come forward in a  
16           different way or sooner, or maybe explain that?

17          A       Ute Frank, Craig Melnyk, George Lapchuk were  
18           contacted by the authorities in connection with  
19           this case. Deborah Hall, as I later found out,  
09:37 20          had left the jurisdiction, but she did, at some  
21           later date, find out about the conviction and that  
22           Mr. Lapchuk's and Melnyk's information played some  
23           role in it. I was rather curious to find out the  
24           circumstances giving rise to this affidavit and  
09:37 25          the timing of it. It's just part of the



1 background of the context to the assertions that  
2 are contained in it.

3 Q I think earlier you mentioned one of your tasks  
4 would be to test the accuracy and completeness of  
09:37 5 the information?

6 A Correct.

7 Q And I think you told us that if Deborah Hall's  
8 evidence -- I think you said on the preliminary  
9 screening you said that Deborah Hall's evidence,  
09:38 10 if proven, was the type of information that would  
11 give rise to a remedy; correct?

12 A Yes.

13 Q And that being, the ground being, I think you told  
14 us, that she said two witnesses who testified at  
09:38 15 trial lied about the incident happening and the  
16 words attributed to Mr. Milgaard, that was your  
17 understanding?

18 A Yes, but --

19 Q And if that had been true, that in other words  
09:38 20 Melnyk and Lapchuk made up the story about the  
21 stabbing the pillow and the words spoken, then  
22 that would be the type of information that would  
23 provide the basis for a remedy under Section 690?

24 A Correct.

09:38 25 Q And so in examining Deborah Hall, if after





1           questioning her about this and testing the  
2           accuracy and completeness, if that -- if her  
3           version of events would have, if she would have  
4           maintained her position, if I can put it that way,  
09:39 5           would that be the type of information then that  
6           would give rise to the basis of a remedy under  
7           Section 690?

8           A       It could give rise.

9           Q       Or could give rise?

09:39 10          A       Yes.

11          Q       But it's the type of information that would fit  
12                   the criteria that the minister would consider; is  
13                   that fair enough?

14          A       Yes, in these circumstances, given the  
09:39 15                relationship of Melnyk and Lapchuk's evidence to  
16                the body of evidence that implicated David  
17                Milgaard, yes.

18          Q       So I think what you are telling us is that this  
19                   wasn't some fabricated evidence that really didn't  
09:39 20                impact on the verdict, this was central,  
21                significant?

22          A       It was significant, yes.

23          Q       And so that if there was evidence that said Melnyk  
24                   and Lapchuk are lying about the incident, it goes  
09:39 25                to the heart of the conviction and is the type of



1 information that would be considered by the  
2 minister, but certainly gets them in the door as a  
3 ground?

4 A Yes.

09:40 5 Q And would it be fair to say that your job then is  
6 to make sure that when the minister considers this  
7 ground and is going to make a decision as to  
8 whether or not a miscarriage of justice has been  
9 established, or the likelihood or reasonable basis  
09:40 10 to conclude that a miscarriage of justice occurred  
11 at the trial because Melnyk and Lapchuk lied, that  
12 your job would be to test this information to make  
13 sure that when she makes her decision she's got  
14 full and complete information?

09:40 15 A Correct.

16 Q And that as far as the credibility of Deborah  
17 Hall, that would be something the minister would  
18 assess based on the information you gathered?

19 A Yes.

09:40 20 Q And is it fair to say, I think you used the words  
21 testing, and that would be your job, to go and  
22 test Deborah Hall?

23 A Yes.

24 Q And if the information she gave and that the  
09:40 25 application was based on was in fact wrong, would



1           you view it as your duty for the minister to find  
2           out that it was wrong?

3           A       Yes.

4           Q       And that would be one of the objectives to test?

09:41 5           A       Yes.

6           Q       Now, did you view this as an examination, a  
7           cross-examination or somewhere in between? Can  
8           you describe that?

9           A       It's primarily an examination. There are times  
09:41 10          when you would lead the witness, but you would  
11          only do so reluctantly. I needed to find out what  
12          the witness had to say unprompted by any words  
13          that I would use in a question to signal a  
14          direction, so by and large I tried to -- I tried  
09:41 15          to ask open-ended questions in terms of what did  
16          you see, what happened next, those types of  
17          questions, as opposed to suggesting an answer in  
18          the question in the expectation that the witness  
19          would give you a yes or no. There were times when  
09:42 20          I did that, but by and large I needed to get the  
21          witness' words, not mine.

22          Q       And would it be fair to say, Mr. Williams, that  
23          you were at that time an experienced lawyer who  
24          had interviewed and examined witnesses in  
09:42 25          proceedings before?



1 A Yes.

2 Q That one of the tasks would be to go through the  
3 witness and sort of test the memory, test the  
4 circumstances, test her recollection of events  
09:42 5 against known facts to try and get a picture of  
6 what it was that really happened; is that fair?

7 A Yes.

8 Q And in some respects would you view your role the  
9 same as Mr. Asper's role was back in 1986 when he  
09:42 10 interviewed Ms. Hall and put together the  
11 information in an affidavit?

12 A I'm not certain how Mr. Asper viewed his role. My  
13 role was simply to find out additional information  
14 or clarify what this witness had to say. There  
09:43 15 were certain conclusionary statements or certain  
16 conclusions which didn't seem to be fully  
17 supported by the underlying facts and I just  
18 wanted to probe into those areas. I mean, keep in  
19 mind, if you look at the combined testimony of  
09:43 20 Messrs. Melnyk and Lapchuk, I think it was over 40  
21 or 50 pages of transcript when you take into  
22 consideration the chief and the cross-examination,  
23 and when someone says that another witness lied,  
24 sometimes I like to see the particularity, what it  
09:43 25 is that he said he lied about and the context in



1           which that arose, and I wasn't satisfied on  
2           reading the affidavit that that was present to the  
3           extent that it met my comfort level.

4           Q       Did the manner in which the evidence was portrayed  
09:44 5           in the affidavit, then, raise some questions in  
6           your mind about completeness and accuracy?

7           A       Yes.

8           Q       And can you elaborate any further, or maybe we can  
9           go back to that once we go through the  
09:44 10          examination.

11          A       Please.

12          Q       Would the examination reflect the concerns you had  
13          by the questions you asked; is that a fair way to  
14          put it?

09:44 15          A       Yes.

16          Q       So, going into this, did you have any sense,  
17          before you talked to Deborah Hall and examined  
18          her, whether you doubted the correct -- doubted  
19          the accuracy and completeness of her story?

09:44 20          A       No. I didn't know Deborah Hall, she presented as  
21          a witness who had some additional evidence to  
22          provide in support of the application, I went in  
23          with an open mind.

24          Q       And is it fair to say, if an affidavit had touched  
09:44 25          on every aspect of fact and so that you could look



1 at the sworn evidence, would you still have gone  
2 through the same type of examination to test -- or  
3 I'm trying to understand whether part of your  
4 examination was driven on the fact that you  
09:45 5 thought the affidavit left some questions  
6 unanswered?

7 A The affidavit didn't have some of the detail that  
8 I would have been comfortable with, or that I  
9 would have included had I been putting it  
09:45 10 together, and I wanted to explore some of those  
11 details, because when you say someone lies, and  
12 lies under oath, that's a fairly strong  
13 accusation, and I wanted to get some  
14 clarification.

09:45 15 Q Now this examination was under oath?

16 A It was.

17 Q And I think you told us yesterday, you said  
18 because she didn't testify at trial and because  
19 her affidavit was under oath, that caused you to  
09:46 20 say you felt that it should be under the oath?

21 A Yes. I felt that under oath would be the  
22 strongest -- when someone takes an oath it signals  
23 a degree of commitment to the truth that you don't  
24 get otherwise.

09:46 25 Q Did you consider inviting Mr. Asper, Mr. Wolch, to



1 attend this examination?

2 A No. The material had been prepared by Mr. Asper,  
3 who was part of Mr. Wolch's office, so they  
4 obviously had been in contact with Ms. Hall and  
09:46 5 interviewed her, now it was my turn.

6 Q If we can maybe just call up the affidavit, it's  
7 at 000038, this is the version that's part of the  
8 initial application. If there's another version  
9 of the application, that's fine, and if we can  
09:47 10 just go through parts of this, please. If we  
11 could go to the next page. Did you have any  
12 concerns that the affidavit had been sworn in  
13 November of '86, yet not filed with you until a  
14 couple years later, December of '88; did that, the  
09:47 15 two-year time lag, did that cause you any concern?

16 A It didn't. It didn't bother me. I also observed  
17 that Dr. Ferris' report, I think, didn't come  
18 until September of '88, so that might have  
19 explained why.

09:47 20 Q If we can go -- full page, please -- go to the  
21 next page. And again, just go through a couple of  
22 these, this statement:

23 "That I have material information  
24 relating to the case of David Milgaard  
09:48 25 that was not known to the various courts



1 which adjudicated this case." ;

2 did that statement in the affidavit cause you to  
3 raise some questions that you felt you needed to  
4 probe with her?

09:48 5 A No, it didn't. That statement, by itself, doesn't  
6 -- what the statement seems to do is to bring it  
7 into the category of new or fresh evidence, and  
8 that's the signal that what's to come is fresh  
9 evidence because the language that's used, you  
09:48 10 know, 'material information not known to the  
11 courts when the case was adjudicated', fits into  
12 the traditional fresh evidence pattern.

13 Q Okay. Then if we can go down. I think in  
14 paragraph 7, if we can go back and call that out,  
09:48 15 please, she basically recounts how she became  
16 aware of David Milgaard's conviction from Chris  
17 O'Brien, a radio reporter, had told her that two  
18 witnesses:

19 "... George Lapchuk and Craig Melnyk had  
09:49 20 given certain evidence at the trial.",  
21 and that until informed by Chris O'Brian she had  
22 no knowledge of David Milgaard being convicted,  
23 Ute Frank told her that David had been arrested  
24 back in May of '69 but she didn't believe them,  
09:49 25 and then here:





1 "That until Chris O'Brien  
2 showed me the transcript of the evidence  
3 of George Lapchuk and Craig Melnyk I had  
4 no idea that they had testified."

09:49 5 "That as soon as I read the  
6 evidence of George Lapchuk and Craig  
7 Melnyk I immediately remembered the  
8 evening in question and was shocked at  
9 how it was described by them."

09:49 10 Can you just give me some just general comments,  
11 and I will take you to your examination of her,  
12 but are there things in this affidavit that  
13 raised concerns in your mind, or questions that  
14 you felt needed to be probed with her further?

09:49 15 A Certainly, I was curious about the circumstances  
16 of the reading of the affidavit, what did she  
17 read, under what circumstances.

18 Q I'm sorry, you said "affidavit", are you talking  
19 about the transcript?

09:50 20 A I'm sorry, the transcript.

21 Q Did you have questions about who Chris O'Brien was  
22 and what he may have told her?

23 A That's part of it, and what was his connection,  
24 and if Chris O'Brien knew in 1981 and was familiar  
09:50 25 with the *Milgaard* case, by then I knew that



1 Mrs. Milgaard had been making a number of attempts  
2 to garner, to collect information, how it was that  
3 there was no contact.

4 Q Okay. So let me understand this. I think in 1989  
09:50 5 you would have been aware, based on other matters,  
6 that Mrs. Milgaard had started her quest back in  
7 '81; is that fair?

8 A Yes.

9 Q And your question was, if Chris O'Brien was  
09:50 10 somehow connected to the Milgaard group and he --  
11 if he was connected to the group and he learned of  
12 this information in 1981, why was it not brought  
13 forward until 1988; is that --

14 A Or '86.

09:51 15 Q Or '86?

16 A That, that was part of it, but that was a minor  
17 part. I -- if somebody says "look, I've reviewed  
18 the testimony of these two witnesses and I'm  
19 shocked at it, shocked about what they've said",  
09:51 20 I'd like to see what it is they saw.

21 Q Did you have concerns that it was a radio reporter  
22 who had first interviewed and given the  
23 information to her; did that --

24 A That didn't raise any particular red flags as far  
09:51 25 as I was concerned.



1 Q And then what about "shown the transcript of the  
2 evidence"; did you have concerns about what may  
3 have been shown?

4 A I would like -- I was interested to know what,  
09:51 5 precisely, she saw.

6 Q Okay. The next page. She mentions her drug use,  
7 and I think she says that she remembers the night  
8 because it was the first time she took a strong  
9 drug, that it did not affect her memory but in  
09:52 10 fact made:

11 "... in fact it seemed to make the  
12 events much clearer in my mind.";  
13 did that raise flags with you that you felt you  
14 needed to pursue?

09:52 15 A Yes.

16 Q And can you elaborate a bit on that?

17 A Having spent a number of years as a drug  
18 prosecutor, having had a number of witnesses  
19 certainly cross-examined successfully because they  
09:52 20 had ingested drugs at or about the time, knowing  
21 some of the pharmacological effects of certain  
22 drugs in terms of its impact on memory, certainly  
23 wanted to explore that.

24 Q And is it fair to say probe to see whether, in  
09:52 25 fact, the drugs had a better or worse effect on



1 her memory; would that be something you would be  
2 trying to understand?

3 A To try and determine what impact, if any, it had  
4 on her memory. Someone saying that it's the first  
09:53 5 time they have taken a strong drug believed to be  
6 THC, which is an ingredient of marijuana or one of  
7 the essential ingredients of marijuana, and that  
8 it didn't affect memory, in fact it seemed to make  
9 events much clearer in her mind, I'm not a -- I'm  
09:53 10 not a physician, but the experience I've gleaned  
11 from being in Court and dealing with drug-related  
12 issues signals that this is something that ought  
13 to be explored.

14 Q And so again, if the Minister is gonna consider a  
09:53 15 remedy and consider it on the basis of this  
16 evidence, you felt that you should at least probe  
17 this statement that "drug use made my memory  
18 better"?

19 A Yes.

09:53 20 Q Go to the next -- scroll down to 14. She goes  
21 through the recollection of the events that  
22 happened. And if we can go to page 43, please,  
23 and we'll go through this on the transcript, we  
24 have been through this a number of times before,  
09:54 25 but here is where she describes, in the affidavit,



1 her observation of what David Milgaard said, the  
2 words he spoke, and what actions he took with  
3 respect to the pillow in the motel room. And down  
4 at the bottom:

09:54 5 "Craig Melnyk and George Lapchuk both  
6 lied when they stated in their evidence  
7 at trial that David Milgaard re-enacted  
8 the murder by going through a series of  
9 stabbing motions ...",

09:54 10 and as well up here, the words attributed are:

11 "... 'oh yeah right' in a sarcastic or  
12 joking manner."

13 and that it being a:

14 "... crudely comical comment."

09:54 15 So, again, can you tell us what concerns, if any,  
16 you had in the affidavit and what areas you felt  
17 you needed to probe with her in your examination?

18 A Her description did not reflect the trial  
19 testimony of Craig Melnyk and George Lapchuk and I  
09:55 20 wanted to discuss, with her, her recollections to  
21 see whether or not --

22 Q And is it fair to summarize it this way; with  
23 respect to the words spoken by David Milgaard, she  
24 said the words were:

09:55 25 "... ' oh yeah right' ...",



1 which were different than Melnyk and Lapchuk  
2 which attributed an admission to David Milgaard;  
3 is that correct?

4 A Yes, and just what it was about the circumstances  
09:55 5 that prompted her to think that it was sarcastic  
6 or joking. By comparison, as I recall, the  
7 testimony of Melnyk and Lapchuk was that everyone  
8 was afraid at that time.

9 Q Okay. And so again, the difference in the words  
09:55 10 spoken, so that's one area?

11 A Yes.

12 Q Melnyk and Lapchuk said the words spoken were an  
13 admission, "I stabbed her, I killed her",  
14 something to that effect?

09:56 15 A Yes.

16 Q Where she says his words spoken were something  
17 like:

18 "... 'oh yeah right' ...",

19 and so that's one area?

09:56 20 A Yeah.

21 Q The second area would be the actions, I think  
22 Melnyk and Lapchuk said he stabbed a pillow, and  
23 she said he fluffed it?

24 A Much different recollection in terms of position,  
09:56 25 in terms of actions.



1 Q And, thirdly, would it be fair to say another area  
2 that you wished to probe with her was the mood in  
3 the room, if I can call it that, or how the  
4 actions were perceived, not only by her, but what  
09:56 5 she observed of other people in the room?

6 A Yes.

7 Q If we can go back to the transcript, 001285, go to  
8 the next page. And present there were you,  
9 Deborah Hall, and the court reporter; is that  
10 right?

11 A That's correct.

12 Q Did you have any discussion with Deborah Hall, off  
13 the record, either before or after the  
14 examination?

09:57 15 A Just briefly before. I introduced myself and gave  
16 a -- I believe I thanked her for coming.

17 I remember the day because it  
18 was the day I resumed smoking after a two-year  
19 absence, and that was partly because I had been  
09:57 20 out of the courts for a period of time and I had a  
21 certain routine when I was in the courts, and  
22 because I was examining a witness I fell back into  
23 that routine, and part of that routine included  
24 having a cigarette.

09:57 25 Q Now that's not a systemic issue we need to



1 address, is it Mr. Williams?

2 A We had a brief chat, and I apologize for the  
3 digression, Your Honour.

4 Q So, as far as the examination, would it be fair to  
09:58 5 characterize your discussion with her, previous to  
6 starting the examination, to have been a friendly  
7 introduction or introductory comments?

8 A They were cordial. I explained that I had a few  
9 questions, that they would be taken under oath,  
09:58 10 and that in that regard Ms. Jan Scott-Kirk would  
11 be recording it, and she had no difficulties with  
12 that, and shortly after that we began the  
13 interview.

14 Q Did she express any concern to you, saying  
09:58 15 "lookit, I don't want to do this, I don't want to  
16 be examined under oath, I'm uncomfortable in this  
17 setting", anything of that nature?

18 A Not at all.

19 Q Did you have any -- again, before you started the  
09:58 20 exam -- did you have any observations about, or  
21 what were your observations about her demeanour,  
22 and whether you noticed any reluctance or fear or  
23 concern on her part?

24 A No, I didn't. She appeared a little nervous but,  
09:59 25 apart from that, I don't know if she knew exactly





1           what to expect, and by taking a minute or two to  
2           explain what the process was I hoped to at least  
3           put her on the right track in terms of why I was  
4           there, the purpose of the discussion, and the need  
09:59 5           to have a record.

6           Q       And what, what would you have said to her as far  
7           as your reason for questioning her?

8           A       Typically in addressing witnesses I would explain  
9           that X -- and I use the word X -- in this case I  
09:59 10          said "David Milgaard has applied to the Minister  
11          for special remedy under Section 690 of the Code.  
12          Your affidavit has been advanced as one of the  
13          grounds in that. In it you stated that two trial  
14          witnesses lied when they testified that David  
10:00 15          Milgaard re-enacted the killing of Gail Miller.  
16          My job is to assist the Minister in assessing the  
17          material that's been presented and, in that  
18          regard, I have some questions about the affidavit  
19          and about what you recall that evening. In that  
10:00 20          regard, I've asked Ms. Scott-Kirk to report our  
21          conversation, because it's important that what I  
22          say and what you say is accurately recorded and  
23          presented to the Minister."

24          Q       And if we can just go to the next page, and I'll  
10:00 25          just go through parts of this, the first question



1           you refer to the affidavit. And would it be fair  
2           to say that, essentially, this was an examination  
3           on the affidavit, certainly the contents of the  
4           affidavit?

10:01 5           A           Yes.

6           Q           So you showed it to her and asked if there's  
7           any -- or identified that for her, and then down  
8           at the bottom you ask her to read it, and I think  
9           her evidence was that after giving it in '86 she  
10:01 10          hadn't read it before your examination, and so you  
11          had asked her to go through and read it; is that  
12          right?

13          A           That's correct. I wanted to confirm that the  
14          person that I was examining was, in fact, the  
10:01 15          author, that she had an opportunity to read it and  
16          to refresh her memory, and to invite her to make  
17          any changes if --

18          Q           So here:  
19                        "Are there any additions or deletions to  
10:01 20                        it, that you would wish to make?"

21           In other words, "having read it, is this still  
22           your recollection of events", and I think she  
23           said that -- she made one change?

24          A           On page 5.

10:02 25          Q           Yeah, the men were sitting by the television,



1           actually one was on the other side of the bed, so  
2           corrected where she thought Melnyk and Lapchuk  
3           were in the room?

4           A       Yes.

10:02 5           Q       And did you view that as having any significance?

6           A       No, it's, sometimes memory -- you know, that was  
7           her recollection at the time and that was fine.  
8           It was insignificant in terms of the real thrust  
9           of it, it was the detail in the affidavit that she  
10:02 10          wished to correct, perhaps whether her memory was  
11          refreshed by more consideration of the event or  
12          not.

13          Q       If we can go to page 5, please, page -- I guess  
14          001289. And at the top we saw in the affidavit  
10:02 15          she said she didn't know about David Milgaard's  
16          conviction, she had been told in May '89 by Ute  
17          Frank that he had been arrested but she didn't  
18          believe her, and then you go on to ask about that.  
19          What would be the purpose of that?

10:03 20          A       I needed to get Ms. Hall comfortable, just to talk  
21          about things that formed the backdrop to the  
22          affidavit, call it a fill letter if you will, but  
23          it also formed part of the query as to what I  
24          would call the narrative of the background, why  
10:03 25          did it take you X number of years, and she said



1 she'd heard about it and wanted to find out. Just  
2 a couple of questions in relation to her  
3 relationship with Ute Frank and the circumstances  
4 of how this affidavit came to be produced.

10:04 5 Q So would it be fair to say just testing, a little  
6 bit, the assertion that even though she was an  
7 acquaintance of Mr. Milgaard, knew about him being  
8 arrested, it took X number of years later before  
9 she did anything about it, so just to probe a bit  
10:04 10 of that; is that fair?

11 A That's fair.

12 Q If we can go to page 92, ending in 292. Here you  
13 say:

14 "Q Now, after you heard that Milgaard had  
10:04 15 been arrested, even though you didn't  
16 believe Ute Frank, weren't you curious  
17 about the result?

18 A No. After she told me that, like I  
19 say, I passed it off as gossip and I  
10:04 20 never so much as thought about it  
21 again. Nothing was ever mentioned  
22 about him. Of course, you see, I ran  
23 away from home after that and Ute and  
24 I lost touch."

10:04 25 So would that be a question to try and determine



1           how it was that she would not have inquired about  
2           her friend?

3           A       Yes.

4           Q       And then to the next page, just go through it  
10:05 5           quickly, a series of questions:

6                   "Q   How frequently did you take marijuana?"  
7           Then the next page, and scroll down, no, just  
8           leave it the full page, please. The next page  
9           you talk, a couple questions about how  
10:05 10          frequently, when she started:

11                   "Q   Did you take any other hard drugs?"  
12          And then the next page, here:

13                   "Q   What effect did the THC have on you?"  
14          She said:

10:05 15                   "A   It seemed to clarify things, like you  
16                   know, visually.",  
17          etcetera. And then down at the bottom:

18                   "Q   Did you hallucinate?"  
19          Would it be correct to say that you would have  
10:06 20          questioned her about all the relevant details of  
21          her drug use to try and assess whether her  
22          recollection of the events of that night were  
23          credible, is that a fair way to -- or 'accurate',  
24          maybe, is a better word?

10:06 25          A       Yeah. I asked some open-ended questions at that



1 time just to find out, in her own words, what her  
2 assessment of the impact of drug use on her  
3 recollection was.

4 Q If we can go to the next page. And, again, would  
10:06 5 it -- here you are asking about the party:

6 "When did it begin, what time?"

7 Would you be sort of testing her recollection to  
8 sort of compare it to what was said back in 1970;  
9 is that a fair assumption?

10:06 10 A Yes, I -- I think I adopted the approach that I  
11 would like to get her take on the narrative from  
12 the beginning to the end, so I started again,  
13 "what do you recall about the party, when did it  
14 start, what time", and she could tell me.

10:07 15 Q If we could go to the page ending in 97, here she  
16 talks about Bob Harris being there. Do you  
17 remember Bob, Bob Harris, being introduced as  
18 someone who may have observed this incident?

19 A Bob Harris was presented as an individual who was  
10:07 20 in the room at the time, but who was either passed  
21 out or so affected by a substance, whether it was  
22 alcohol or drugs or a combination of the two, that  
23 he really had no recall of the events.

24 Q Okay.

10:07 25 A Or he may have been in the room or may have left,



1 but at the significant -- at the time that the  
2 incident allegedly took place, he was not in a  
3 position to make any observations.

4 Q And that was based upon what I think Deborah Hall,  
10:07 5 and perhaps later on others, told you; is that  
6 correct?

7 A Yes.

8 Q If we can go to page 300. You then get into the  
9 Chris O'Brien approach and what transpired then,  
10:08 10 and again, can you just comment on why would you  
11 be asking about her dealings with Chris O'Brien;  
12 what effect would that have on your review of her  
13 information?

14 A Again, it was part of the narrative, so that I  
10:08 15 could get a full picture in her own words. What  
16 we had in the affidavit was one or two short-size  
17 paragraphs and I had hoped that this, this  
18 question what took place:

19 "Q What transpired then?"

10:08 20 would give her an opportunity to tell it in her  
21 own words.

22 Q Okay. If we can then go to page 302, ending in  
23 302. And then at the top I think you had asked  
24 her about -- sorry, if we could just go to the  
10:09 25 previous page, I think this is where she learns



1 from Mr. O'Brien that David Milgaard had been  
2 convicted and was in jail, and she was quite  
3 shocked. And then the next page?

4 COMMISSIONER MacCALLUM: I seem to have got  
10:09 5 a sequence wrong here.

6 MR. HODSON: I'm -- okay?

7 COMMISSIONER MacCALLUM: The question of  
8 Chris O'Brien I thought came up at 360, but that  
9 can't be, so you are now on 301, 302?

10:09 10 MR. HODSON: No, that was 001300. If we  
11 can go back to that, sorry, I think the numbering  
12 is not --

13 COMMISSIONER MacCALLUM: Perhaps just the  
14 numbering is hard to read.

10:09 15 MR. HODSON: Go back to 001300, and I think  
16 that was the page where you might have written  
17 as -- could you call that out, please? I think  
18 that's 300.

19 COMMISSIONER MacCALLUM: Yes.

10:09 20 MR. HODSON: And is that the one you  
21 thought was 360?

22 COMMISSIONER MacCALLUM: That's it, yes.

23 BY MR. HODSON:

24 Q If we can go back to page 302. So this is where  
10:10 25 she says "I was informed by O'Brien about the





1 murder":

2 "Q Did you learn anything else?

3 A He took me by his place, because he  
4 wanted me to read over the Court

10:10 5 transcripts of the night that we were  
6 all together at the party. And when I  
7 read what Melnyk and Lapchuk said, it  
8 just sort of like shocked me, because  
9 it just - it was like a slap in the  
10:10 10 face. I couldn't believe that they'd  
11 said what they did."

12 And then you ask:

13 "Q How long did it take you to read the  
14 transcript?"

10:10 15 And what was the purpose of that question?

16 A I wanted to find out, that was just another detail  
17 to get the context of the meeting that she had  
18 with O'Brien in terms of the length of the  
19 meeting, the extent of her own involvement, and I  
10:10 20 also wanted to find out, at this phase, what type  
21 of information that she had obtained from whatever  
22 source that informed her perceptions or her  
23 judgement.

24 Q In other words, if she is saying Melnyk and

10:11 25 Lapchuk lied at trial, what did she believe Melnyk



1 and Lapchuk had said at trial?

2 A Yes.

3 Q You wanted to find out what it was she was  
4 comparing her recollection with?

10:11 5 A To.

6 Q To?

7 A Yes.

8 Q And so here she says:

9 "... he only flipped it to the area  
10 where I was pertaining - you know, I  
11 didn't read - it was quite large, and  
12 the only part that I read was Lapchuk's  
13 and Melnyk's testimony. So, it took me  
14 a matter of five, ten minutes, or  
10:11 15 whatever to read through it."

16 And scroll down, please. You say:

17 "Q You say you read Melnyk and Lapchuk's  
18 testimony?

19 A Right.

10:11 20 Q Did you read all of Melnyk's and  
21 Lapchuk's testimony?

22 A Yes.

23 Q You're certain of that?

24 A Unless there was something further  
10:11 25 along in the trial where they had



1 brought him back again, or something,  
2 I don't know. But he opened it to one  
3 particular area and I read through  
4 that area of the transcripts."

10:11 5 And then I think you go on to show her the  
6 transcript:

7 "Q ... Is this what you read?

8 A I didn't read any of the - no, none of  
9 this about Melnyk's name or anything  
10:11 10 like that.

11 Q So, you didn't read the entire  
12 transcript?

13 A I guess I didn't, no."

14 And, again, would that be important information  
10:12 15 for your testing of the completeness and accuracy  
16 of Deborah Hall's evidence?

17 A Yes.

18 Q And in what respect?

19 A Well, I needed to know precisely what it was that  
10:12 20 she had examined. It's possible that, you know,  
21 you could take someone to a portion of a  
22 transcript, taken out of context it might not give  
23 the entire picture, so I needed to know what it is  
24 that she saw that prompted her to conclude that  
10:12 25 Melnyk and Lapchuk lied.



1                   If someone tells me that they  
2                   have read the transcript then I had to know just  
3                   what was in the transcript and how long it would  
4                   take to read it. If you've got 50 or 60 pages of  
10:12 5                  transcript, unless you are a speed-reader, it will  
6                   take you a little longer than five or six minutes.  
7                   It's one thing to say that you've read the  
8                   transcripts and so that you understand the  
9                   witness' evidence in its context, it's another  
10:13 10                 thing to be taken to snippets of the transcript  
11                   which has a certain phrase or expression and be  
12                   asked whether or not that's the truth, your  
13                   perception of someone's truthfulness will depend  
14                   on your understanding of their entire evidence.

10:13 15           Q           And would, as well, you be concerned that, in  
16                   addition to what she might have read in the  
17                   transcript, how that might have been characterized  
18                   to her by Chris O'Brien; was that something, as  
19                   well, that you were concerned about?

10:13 20           A           That's one of the things I was also curious to  
21                   learn.

22           Q           And then if we can scroll down, please, to the  
23                   bottom. Question 114 you draw her to the  
24                   attention -- to the quote:

10:13 25                         "'Also, I am advised that George Lapchuk



1                   said at the trial that he had driven me  
2                   home that night but, the truth is that I  
3                   lived approximately four blocks from the  
4                   motel and walked home.'" "

10:13 5           And I think, if we can summarize this, I think  
6           that was an area that caused her concern because  
7           she said "lookit, I didn't like George Lapchuk  
8           and he didn't drive me home"?

9           A       She was adamant.

10:14 10          Q       And I think you then went on to show her in the  
11           transcript where Lapchuk had said he wasn't sure  
12           if he had driven her home; is that right?

13          A       That's correct.

14          Q       And was that something that seemed to be quite  
10:14 15           important to Deborah Hall at the time you  
16           questioned her, that how could Lapchuk say he  
17           drove me home, I didn't like him, there is no way  
18           I'd get in the car with him, therefore I didn't,  
19           and I don't recall him doing it?

10:14 20          A       That was a pivotal, factual point of departure  
21           between her and Lapchuk, and it's a small thing,  
22           but it seemed to, it was the engine that drove her  
23           view of Lapchuk's testimony. The animosity she  
24           felt towards him was so strong that the prospect  
10:15 25           of him taking her home was just, was just out of



1 it, so that if he said that he took her home, that  
2 was definitely a lie.

3 Q And so here I think, and in fairness I think you  
4 are saying in your affidavit you said that at  
10:15 5 trial Lapchuk said he drove me home and he didn't  
6 and you then go on to probe that, and let's go  
7 through that, you say:

8 "Q Now, you say you were advised that  
9 Lapchuk said certain things. By whom  
10:15 10 were you advised?"

11 And again this would be probing the source of her  
12 information; in other words, when she says  
13 Lapchuk lied at trial, you are trying to  
14 identify, okay, well, what do you think he said  
10:15 15 at trial and where do you get that from?

16 A Yes.

17 Q If it's not from the transcript, who told you what  
18 was in the transcript; is that fair?

19 A That's fair.

10:15 20 Q And she says:

21 "A Actually, when I looked at that - Mr.  
22 Asper kind of did this all over the  
23 phone and I told him that I read in the  
24 transcript that George Lapchuk said he  
10:16 25 had driven me home that night.



1 Q Yes?

2 A So, actually I am advised, is not  
3 really true. Well, other than I read  
4 the transcript saying that he had said  
10:16 5 that."

6 And then you go on to say did you read this page  
7 and you quote from this, from Mr. Lapchuk's  
8 transcript:

9 "What happened to the other girl? And  
10:16 10 his answer was "I really can't remember.  
11 I believe I drove her home, but I can't  
12 really recall what time that was." Do  
13 you recall seeing that?

14 A Yes. That's the part that I was  
10:16 15 referring to in there."

16 So she's saying that's the transcript evidence  
17 that I am saying Lapchuk lied; is that correct?

18 A Yes.

19 Q And then you go down to say:

10:16 20 "Q Did you also read at page 1052 when he's  
21 being cross-examined by Mr. Tails, about  
22 a third of the way down, and he says:

23 Q Now, you went out on other  
24 occasions with other people, did you?

10:16 25 A No, not that I can recall.



1                   See, I may have driven Debbie Hull home.  
2                   That is the only part that I can't  
3                   really recall when I drove her home.

4                   Q   I see.  You don't recall  
10:16 5                  whether you drove her home or not that  
6                  evening?

7                   A   No.

8                   Did you read that?"

9                   And she says:

10:17 10                  "A   Mhmm."

11                  And then:

12                  "Q   Would you agree with me that from his  
13                  response, he really - he does not know  
14                  whether or not he drove you home?"

10:17 15                  And she says:

16                  "A   Yes, I would agree with that.

17                  Q   All right.  So, that it's not fair to  
18                  say that --

19                  A   But.

10:17 20                  Q   ... he lied when he said that --

21                  A   Well, yeah, that's true.  But you'd  
22                  have to understand George Lapchuk too,  
23                  because George Lapchuk had been sort  
24                  of after me."

10:17 25                  And am I correct here, Mr. Williams, that you had





1 pointed out to her a part of the transcript that  
2 she had not read or not been informed of, namely,  
3 where Mr. Tallis asked Mr. Lapchuk are you sure  
4 you drove Deborah Hall home, do you recall, and  
10:17 5 he said no, I don't. You pointed that out to her  
6 and said lookit, in the totality of his evidence  
7 he really didn't say for certain that he drove  
8 you home, he said he might have or words to that  
9 effect, that he couldn't recall. Now, do you  
10:17 10 reconsider whether you say he lied at trial about  
11 driving you home, and she says, okay, well, but  
12 he was after me. And was that the animosity that  
13 you identified?

14 A Yes. She did not like his attention.

10:18 15 Q Can you tell us, though, the significance of --  
16 and I appreciate the driving home doesn't have  
17 anything to do with the motel room innocent, but  
18 as far as her statement that George Lapchuk lied  
19 at trial when he said he drove me home and now it  
10:18 20 appears you are going through saying look at the  
21 totality of the transcript and maybe that was too  
22 strong a statement; is that fair?

23 A That's fair.

24 Q Did that impact anything with respect to -- we  
10:18 25 haven't got there yet, but to the motel room



1 incident, how did that play into that?

2 A It was a side bar, but it was one of those areas  
3 in which the witness was so strong and it seemed  
4 to colour her perception of the rest of Lapchuk's  
10:18 5 testimony, he lied about driving me home and she  
6 was certain. When she said she read the  
7 transcript, a few questions revealed that maybe  
8 she didn't read it and she was merely directed to  
9 sections of it and then it raises the question,  
10:19 10 well, what were the nature of those directions,  
11 were they complete in terms of a topic of  
12 conversation or were they snippets, and so the  
13 objective was simply to get her comfortable, to  
14 get her focused on what it is she saw that  
10:19 15 prompted her to write or to sign an affidavit  
16 accusing someone of lying under oath.

17 Q Okay. And did it become apparent in the course of  
18 the examination that what Mr. O'Brien or what Mr.  
19 Asper may have said to her about what was said at  
10:19 20 trial might have had an impact on what she was  
21 saying?

22 A Yes.

23 Q If we can go to 308, please, again just another  
24 subject area, I think you then identify her a bit  
10:20 25 about this issue of whether Melnyk or Lapchuk



1 asked the question, I mean, the newscast came on  
2 and I think the evidence was either that Melnyk  
3 did and she said Lapchuk did or vice versa.  
4 Again, would this be sort of questioning on a  
10:20 5 detail to see, to compare her recall with their  
6 recall?

7 A That's correct. Nothing really turned on it. I  
8 just wanted her to focus in on the event.

9 Q And I think, if we can just go to the full page,  
10:20 10 please, I think in her affidavit she said Melnyk  
11 accused Milgaard and the evidence of Lapchuk and  
12 Melnyk, I think Lapchuk said he did and you ask  
13 her here:

14 "Could you have been mistaken when you  
10:21 15 noted in your Affidavit that Melnyk  
16 asked that question?"

17 She says:

18 "A Yeah, could have. There was - like  
19 everything was going on at once. People  
10:21 20 were talking all over the place. I mean  
21 like everybody was talking."

22 And I think in her affidavit she had maybe  
23 disagreed with Melnyk and Lapchuk as to who spoke  
24 first or who raised the issue; is that right?

10:21 25 A Yes.



1 Q So again, testing a detail that --

2 A Whether Melnyk said it or Lapchuk said it, the  
3 important thing was the words were said and that  
4 was just part of the narrative.

10:21 5 Q And then go to 309, here you ask:

6 "You were stoned. Given those  
7 conditions, is it possible that your  
8 recollection is not accurate?

9 A Not from the drugs, maybe the years.  
10:21 10 It has been a long time.

11 Q Now, I take it that evening didn't have  
12 any particular significance to you at  
13 the time?

14 A Well, it was traumatic in a few ways,  
10:21 15 yes.

16 Q How was that?"

17 And then goes on to talk about the first time she  
18 ingested certain drugs. Again, would this be --  
19 some might view this as a cross-examination of  
10:22 20 saying lookit, you really can't remember any of  
21 this, why should we believe what you had to say,  
22 you were stoned and that type of thing?

23 A If you go back to page 24 --

24 Q Yes. 24, please. No, next page. 24 at the top,  
10:22 25 309.



1 A At the bottom of the page she indicates that, I  
2 said:

3 "Q You were stoned. Given those  
4 conditions, is it possible that your  
10:22 5 recollection is not accurate?"

6 Her response was:

7 "A Not from the drugs, maybe the years. It  
8 has been a long time."

9 I questioned her about the years, and then I ask  
10:23 10 in 154:

11 "Q Now, I take it that that evening didn't  
12 have any particular significance to you  
13 at the time?"

14 Her answer was:

10:23 15 "A Well, it was traumatic in a few ways,  
16 yes."

17 Then I ask:

18 "Q How was that?"

19 Q Next page.

10:23 20 A Then she links a traumatic incident to the first  
21 time she ingested anything in a chemical form:

22 "... so I remember that. I remember the  
23 evening because of that."

24 Well, something must have happened about the  
10:23 25 ingestion to characterize it as traumatic, I



1 wanted to explore that, and then the phrasing of  
2 the question takes on more cross-examination,  
3 using her words:

4 "Q It had a traumatic effect, I would  
5 suggest?"

6 And we explored that to find out the extent to  
7 which the drug may have impacted on her recall.

8 Q And would again, just taking a step back, I think  
9 we -- is it fair to say that in questioning  
10 witnesses' memories about events that happened  
11 some time ago, if it is a non-event, in other  
12 words, no reason for that event to stand out in  
13 their mind, and then here you are 20 years later  
14 saying, well, how can you remember something 20  
15 years ago when it was no different than any other  
16 night?

17 A That's correct.

18 Q And so would that be the line of questioning, what  
19 was it that caused you in 1981, being 12 years  
20 after the event --

21 A -- to remember something in 1969?

22 Q That was a non-event.

23 A Yeah.

24 Q So she's now saying, no, it wasn't a non-event, it  
25 was a significant event because it was the first



1 time I ingested a certain type of drug and I  
2 remember the event well, is that --

3 A Yes, but I think it was the term traumatic. I  
4 didn't understand, based on her answers, what the  
10:25 5 trauma was about.

6 Q Oh, I see. So she said it was traumatic, you then  
7 probed and said, okay, what was traumatic about  
8 the evening?

9 A Yeah.

10:25 10 Q And she said the drugs. Okay. If we can go to  
11 310 -- sorry, 311. So here question 164, you say:

12 "Q All right. Now, what happened in 19 --"  
13 Sorry:

14 "Now, what happened in 1969 and you made  
10:25 15 an Affidavit in 1986. How did that  
16 Affidavit come to be made?"

17 And what was the purpose of that question?

18 A Again, to get the narrative in her own words as to  
19 the making of the affidavit.

10:25 20 Q Were you trying to identify what information she  
21 may have received about what was said at trial?

22 A I wanted to get -- yes, and to get her sources of  
23 information that contributed to the making of the  
24 affidavit.

10:26 25 Q And it talks about:



1 "A David Asper phoned me and asked me if I  
2 would be willing to sign an Affidavit.  
3 He explained that they were trying to  
4 get the case reopened, because they felt  
10:26 5 there were just too many conflicting  
6 things in evidence, etcetera."

7 "A And that he had talked to Chris O'Brien  
8 about me and what I'd talked to him  
9 about at the time, and would I be  
10:26 10 willing to sign the Affidavit, and I  
11 said sure. So, like I say, we talked  
12 over the phone; I told him what I could  
13 remember over the phone, and then he  
14 flew out and had me --

10:26 15 Q Sign the Affidavit.

16 A ... read it over and sign it all,  
17 yeah.

18 Q I take it you didn't refer to any  
19 testimony, other than - did you refer to  
10:26 20 any transcripts of evidence in preparing  
21 for that Affidavit?

22 A Did I mention to him that I read the  
23 transcripts, do you mean?

24 Q Well, did you read any transcripts  
10:26 25 before you signed the Affidavit?





1           A     No, that - only that time with Chris  
2                   O'Brien."

3           And so was that -- sorry, go back to the previous  
4           page, full page. Was that information  
10:27 5           significant?

6           A     Yes.

7           Q     And in what way?

8           A     The affidavit was prepared following a telephone  
9           conversation that relied on a conversation with  
10:27 10          another party five years previously without the  
11          opportunity to review what had been read or to  
12          review the trial transcripts of George Lapchuk and  
13          Craig Melnyk. Unless her memory was exceptionally  
14          good, I would have thought that a bit more  
10:27 15          consideration would have, and more time would have  
16          gone into a re-review of that testimony before the  
17          accusation that Melnyk and Lapchuk were liars  
18          would be made.

19          Q     So if we can go back, I think she has already told  
10:27 20          you that when she met with Chris O'Brien she's now  
21          acknowledged that I saw only some of the  
22          transcript?

23          A     Correct.

24          Q     And what he showed me, not all of the transcript,  
10:28 25          I didn't read it all. Then in '86 when she swore



1 the affidavit she said Mr. Asper talked to me on  
2 the phone and on the basis of what we talked about  
3 on the phone he prepared an affidavit, he came out  
4 and I signed it, but I didn't read the transcript  
10:28 5 again?

6 A Correct, and by then I knew that what had been  
7 brought to her attention by Chris O'Brien were  
8 snippets or portions of the testimony and not the  
9 entire testimony.

10:28 10 Q And again, would you have, and I think you -- I  
11 don't think you probe what her discussion was with  
12 Mr. Asper in any detail. Did you have concerns  
13 that maybe her affidavit was based on incomplete  
14 information about what happened at trial?

10:28 15 A Yes.

16 Q And in your view did that affect the accuracy and  
17 completeness of her affidavit, or could affect the  
18 accuracy?

19 A It could, it would have an impact. I mean, for  
10:28 20 example, she was adamant that Lapchuk lied when he  
21 said he drove her home. Well, that was based  
22 merely on a portion of the testimony that had been  
23 brought to her attention. When I drew to her  
24 attention another portion of the testimony in  
10:29 25 which she was less certain, she corrected her



1 views on Mr. Lapchuk's testimony on that point.

2 It occurred to me that had she seen the entire

3 testimony, perhaps her views might change.

4 Q Okay. And then if we can just carry on to the

10:29 5 next page here, and about the transcript, and you

6 say:

7 "Q And that was five years before?

8 A Right."

9 That being in '81 with O'Brien; right?

10:29 10 A Yes.

11 Q "Q And that, as you've told me, was a five

12 minute glance at a portion of the

13 transcript?

14 A About ten minutes maybe, yeah.

10:29 15 Q Ten minutes. Obviously, that portion of

16 the transcript either didn't include

17 pages 1050 to 1502?"

18 And that's the part where Tallis, Mr. Tallis

19 cross-examines Lapchuk and Lapchuk says I don't

10:30 20 remember if I drove Deborah Hall home. It says:

21 "Q Right. Okay. Because had they done so,

22 you would not have made certain

23 statements in there?

24 A Yes."

10:30 25 Now, did you get a sense -- and I'm going to ask



1           you for your observation of Ms. Hall's demeanour  
2           during the course of this examination. Did you  
3           get a sense either at, and this may be difficult  
4           to do, but at this point or at some point in the  
10:30 5           examination that she, that her demeanour changed  
6           a bit in light of the fact that you had pointed  
7           out to her that she made this affidavit, didn't  
8           have the complete transcript and didn't read it  
9           in 1986, did you detect any defensiveness on her  
10:30 10          part during the course of the examination?

11        A       I think there was a certain more caution in some  
12           of her responses, but, I mean, the tone of voice  
13           that I used was similar to the tone of voice that  
14           I'm using now. There wasn't a significant change  
10:31 15          in her demeanour. I think by then she realized  
16           that this was an important matter and that the  
17           attention to detail, or I was paying attention to  
18           the details, I think she became impressed with  
19           that.

10:31 20               MR. HODSON: This is probably an  
21           appropriate spot to break for the morning.

22                    *(Adjourned at 10:31 a.m.)*

23                    *(Reconvened at 10:48 a.m.)*

24        BY MR. HODSON:

10:48 25        Q       If we can go back to the transcript of the



1 examination of Deborah Hall, 001312, just carrying  
2 on here. So you've asked her about what  
3 information she had to prepare the affidavit, you  
4 say:

10:48 5 "Q Between your talk with O'Brien in 1981  
6 and Mr. Asper calling you, I take it  
7 shortly before the Affidavit was  
8 prepared and completed in 1986, did you  
9 read or review or refresh, or think  
10:49 10 about it at all, during that time?

11 A No."

12 And again, would that relate to the same line of  
13 questioning you had before, is to what extent  
14 was, what was in the transcript that was shown to  
10:49 15 her in '81 fresh in her mind in '86 when she  
16 swore the affidavit?

17 A Yes.

18 Q Next page, you then, down at the bottom, get into  
19 the recollection of the events referred to as the  
10:49 20 fluffing of the pillow, and I take it the  
21 reenactment or the admission or confession,  
22 whatever you want to call it, at trial, the Melnyk  
23 and Lapchuk evidence, would it be fair to say that  
24 there were two important components, one would be  
10:49 25 what they observed David Milgaard doing to the



1 pillow, namely, stabbing the pillow, and that that  
2 may have been viewed by some as a reenactment;  
3 correct?

4 A Correct.

10:50 5 Q And so his conduct was important in that evidence;  
6 is that fair?

7 A Yes.

8 Q And secondly, the words he spoke at the time  
9 about, relating to committing the offence, and I  
10:50 10 think you said before, may have come as close to  
11 an admission as anything else, or words to that  
12 effect?

13 A Yes. The combination of the conduct and the words  
14 contemporaneous with the conduct certainly was  
10:50 15 important.

16 Q And as well, thirdly might be the perception of  
17 those in the room as to whether or not this was a  
18 serious matter or a joking matter; is that fair?

19 A Yes.

10:50 20 Q And so here you would start with the conduct about  
21 the fluffing of the pillow. Next page. And we  
22 then get into the laughter. Would that be to try  
23 and determine whether or not this was done  
24 jokingly or serious; is that --

10:51 25 A Yes.



1 Q -- the thinking? Then to the next page, you then  
2 question her and she says he was on his knees  
3 fluffing up the pillow, he was bouncing a little  
4 bit, and then you go on here, and I think by the  
10:51 5 end of this questioning she goes from saying he  
6 was fluffing the pillow to bouncing on the bed to  
7 punching the pillow vertical, in a vertical  
8 fashion; is that fair?

9 A Yes.

10:51 10 Q And the significance of the horizontal versus  
11 vertical, the horizontal would be the fluffing,  
12 the vertical would be presumably similar to a  
13 stabbing motion; is that fair?

14 A Yes.

10:51 15 Q And is it correct to say that by the time you were  
16 done your questioning with her, what she was  
17 saying is that Mr. Milgaard's conduct with the  
18 pillow was similar to what Melnyk and Lapchuk said  
19 they observed; in other words, a stabbing motion,  
10:52 20 a vertical motion with the hands striking a  
21 pillow?

22 A Correct.

23 Q And that would be different than what she said in  
24 her affidavit?

10:52 25 A Yes. Usually the motion of fluffing a pillow is



1 more horizontal than it is vertical.

2 Q And so here by your motion you are describing --  
3 and presumably she was, while you were examining  
4 her, showing you; is that right?

10:52 5 A Yes. She was making a gesture.

6 Q And a stabbing, a punching? I suppose the  
7 difference between a punching and a stabbing, is  
8 there a difference in your view?

9 A At the time it was a vertical motion up and  
10:52 10 down and --

11 Q With a closed fist?

12 A With a closed fist, and as a result I asked the  
13 question so that the transcript could reflect with  
14 words what I was seeing the witness do.

10:53 15 Q And were you satisfied, based on this questioning,  
16 that her description of what David Milgaard did  
17 with the pillow was similar, if not identical, to  
18 what Melnyk and Lapchuk had said at trial?

19 A Yes.

10:53 20 Q And would that be different evidence than what was  
21 contained in her 1986 affidavit?

22 A Yes. It was different in the sense that it added  
23 some flavour, if I could use that term, she said  
24 that they lied when they reenacted. What she now  
10:53 25 tells me is that instead of -- or if she still





1 maintained that he was fluffing the pillow, what  
2 now emerges is that he is fluffing the pillow  
3 while on his knees hitting it with a vertical  
4 motion which, if that is her definition of  
10:54 5 fluffing, so be it, but the motion that she  
6 described was consistent or similar to the motion  
7 that Melnyk and Lapchuk described at trial.

8 Q Okay. And if we can go to the next page, I think  
9 she, at least her words, went from fluffing to  
10:54 10 punching, he was punching the pillow. Yeah,  
11 punching it. Closed fist, vertical and sideways.  
12 So that would be the description. Then if we can  
13 go to the next page, the top:

14 "Q So, you're saying both vertical and  
10:54 15 horizontal?

16 A Exactly."

17 So there you've touched on the completeness and  
18 accuracy of her description of what she observed  
19 with the pillow; is that fair?

10:54 20 A Yes.

21 Q You now move on to the words spoken:

22 "Q And do you recall him saying anything at  
23 the time that he was making this  
24 sideways and vertical motion?

10:55 25 A Something like oh, yeah sure, or oh,



1                   yeah, right, in a sarcastic tone. You  
2                   know, I mean it was something to that  
3                   effect."

4                   And that would have been similar to what was in  
10:55 5                   her affidavit; is that correct?

6           A        Correct.

7           Q        And then here you question:

8                   "Q All right. When all this happened,  
9                   isn't it a fact that this demonstration  
10:55 10                  had a chilling effect on the rest of the  
11                  people there?"

12                  And I'm wondering what would have prompted you to  
13                  put the question that way. You would agree that  
14                  that is more of a cross-examination question  
10:55 15                  than --

16           A        That's cross-examination, and essentially what I  
17                   was doing there was putting to Ms. Hall what I  
18                   understood Mr. Lapchuk and Mr. Melnyk's evidence  
19                   at trial to be about the effect on those, watching  
10:55 20                  this incident. I understood their evidence was  
21                  that it had a chilling effect on those present, so  
22                  I put that to her.

23           Q        And so put it to her saying isn't it true that  
24                   this is what happened?

10:56 25           A        Yes.



1 Q Now, I suppose you could have gone the other way  
2 and said isn't it true that this was all done as a  
3 joke?

4 A I could have.

10:56 5 Q And again, any significance in the choice of  
6 that -- anything that prompted you to ask the  
7 question this way as opposed to more open-ended or  
8 perhaps more consistent with what she had in her  
9 affidavit?

10:56 10 A Well, she had already said in her affidavit that  
11 this was a joke. I had gleaned from what I had  
12 read, whether it was the trial transcripts or the  
13 statements of Melnyk and Lapchuk, that the  
14 incident had a chilling effect on the party and  
10:56 15 those in the room, so I suggested to her isn't it  
16 a fact that instead of a joke, as you said, that  
17 this had a chilling effect on the rest of the  
18 people there, and she came up with her response,  
19 it didn't affect her that way.

10:56 20 Q Okay. So she didn't accept that and said it was:  
21 "... I was just too much of an innocent  
22 just getting into all that scene."  
23 So it didn't have one on me. So it didn't have a  
24 chilling effect on her?

10:57 25 A That's right.



1 Q And just scroll down again:

2 "Q Didn't George Lapchuk, in fact, try and  
3 change the subject immediately after  
4 that demonstration?"

10:57 5 And I think that was Mr. Lapchuk's evidence?

6 A That's what I understood it to be.

7 Q So you were putting to her, trying to test with  
8 her what Mr. Lapchuk had said at trial in this  
9 instance?

10:57 10 A Yes.

11 Q She said:

12 "A A lot of things that you asked me about  
13 George Lapchuk - like I always tried to  
14 ignore that man because he creeped me  
10:57 15 right out.

16 Q All right.

17 A So, I would not have honed in on  
18 anything that George Lapchuk had to  
19 say in the evening at all."

10:57 20 And again I think this, she had concerns about  
21 George Lapchuk; is that fair?

22 A Yes.

23 Q And then you say:

24 "Q What about Craig Melnyk, did he give you  
10:57 25 that same reaction?"



1 And she says:

2 "A I think - actually, I think the whole  
3 room just started doing its thing or  
4 whatever. I think I - I don't know."

10:57 5 And then:

6 "A Well, just after the whole - he did the  
7 thing with the pillow and then he put it  
8 back behind his head and crossed his  
9 arms, and I seem to remember him looking  
10:58 10 over at me and giving me a silly smile  
11 and I said to him - phew - and he just  
12 started giggling again."

13 And then you went on to talk about the laughter  
14 in the room, and I take it those questions would  
10:58 15 be to get her observations of the mood of the  
16 people in the room to try and get a sense whether  
17 others in addition to Deborah Hall viewed it as a  
18 joke as well?

19 A Yes.

10:58 20 Q And here at the bottom, you say:

21 "Q There was a very serious topic on  
22 the --"

23 I think that should be television,

24 "-- a woman, a young woman was brutally  
10:58 25 murdered."



1 And then the next page:

2 "Q Your response to that wasn't a giggle

3 ..."

4 Etcetera, and the same with Melnyk, Frank and

10:58 5 Lapchuk. What was the purpose of those

6 questions?

7 A Again, this is more or less cross-examination  
8 style, she was saying look, this happened and, you  
9 know, David had a giggle, so I wanted to find out,  
10:58 10 and I was making the assertion based on what I had  
11 understood their testimony to be, to see whether  
12 or not she agreed with the substance of what I had  
13 understood it to be, so I said -- I went by each  
14 one of them, as I understood it, to say Melnyk  
10:59 15 didn't think it was a giggle:

16 "Q The response of Melnyk wasn't a giggle,  
17 was it?"

18 Her answer was no.

19 "Q Ute Frank wasn't a giggle, was it?"

10:59 20 And she said no. So by framing it in that  
21 fashion, I was able to find out that the only  
22 person giggling at the time was David Milgaard  
23 and perhaps she thought it was crudely comical as  
24 well at that moment, but certainly Melnyk,  
10:59 25 Lapchuk and Frank didn't think it was a giggle.



1 Q And then down at the bottom, she says that:

2 "A But everybody was laughing at his  
3 response, after.

4 Q They were?

10:59 5 A Yeah. Smiling, laughing, sort of  
6 snickering under their breath,  
7 whatever.

8 Q You heard that?

9 A Yeah. That's what I did."

11:00 10 And the next page:

11 "Q All right. You didn't --"

12 COMMISSIONER MacCALLUM: What page was  
13 that?

14 MR. HODSON: I'm sorry. That is 001319.

11:00 15 COMMISSIONER MacCALLUM: 319?

16 MR. HODSON: 319, yes.

17 BY MR. HODSON:

18 Q And now we're going to 001320, and then:

19 "Q All right. You didn't believe it?

11:00 20 A No."

21 And I think that was David Milgaard's response,  
22 oh, yeah, sure; is that right?

23 A That's correct.

24 Q And then here you say:

11:00 25 "Q You, at that time --"



1 And then I think she interprets your question,  
2 she says:

3 "A I thought he was a bit sick for his  
4 remark, you know, because he said  
11:00 5 something about - excuse my language but  
6 I remember it as such - "fucking her  
7 brains, oh, yeah, right. I stabbed her  
8 I don't know how many times and then I  
9 fucked her brains out. Right." You  
11:00 10 know, something like in that respect.  
11 It was crude; it was crude and it was,  
12 you know, sarcastic."

13 And you say:

14 "Q That is your recollection of what  
11:00 15 Milgaard said?

16 A Yeah."

17 And then scroll down:

18 "Q Notwithstanding what you heard, you  
19 viewed that as just an innocent example  
11:01 20 of a young man's crudity?

21 A Yeah, and being silly and stoned."

22 And you say:

23 "Q Now, you're certain today of your recall  
24 of those words from Milgaard "I fucked  
11:01 25 her and stabbed her"? Can you be --





1 A It was something quite crude like

2 that. It was. It was --"

3 And then you go back and have the court reporter

4 read it back. Can you describe, I take it this

11:01 5 would be the first time you learned of this

6 information from her?

7 A Yes.

8 Q Can you describe what effect that had on your

9 assessment of her evidence?

11:01 10 A Well it certainly informed my assessment of her

11 words that it was, you know, "it was a joke", "it

12 was crudely comical". The topic that they were

13 talking about, the brutal slaying of a young

14 woman, I have never found to be comical, and it

11:02 15 struck me, I was flabbergasted. I was

16 flabbergasted from a couple of vantage points. As

17 you see from the transcript, the words came from

18 this witness without any prompting from me, I was

19 surprised that -- I guess later I was surprised

11:02 20 that it didn't find its way into the affidavit,

21 but I could understand why it wouldn't, because to

22 any outside observer those types of words

23 describing that action can hardly be considered

24 comical. I didn't find it that way, and it

11:03 25 certainly informed my assessment of her conclusion



1           that this was a joke, this was a comical event.

2                           And to the extent that it was  
3           that perception of the actions of David Milgaard  
4           which prompted her to conclude that Lapchuk and  
11:03 5           Melnik lied, then my assessment was that she was  
6           entitled to her opinion, but the accusation of a  
7           lie could not be supported by her own words which  
8           described, in a similar way, the actions that  
9           Melnik and Lapchuk testified to at trial.

11:03 10        Q       And I think the words of Melnik and Lapchuk at  
11           trial were similar, I think that their  
12           recollection of what was said is "yeah, I stabbed  
13           her 14 times, yeah I killed her", words to that  
14           effect, and I think what Deborah Hall added was  
11:04 15           the words attributed to Mr. Milgaard that he  
16           "stabbed her I don't know how many times and then  
17           I fucked her brains out". The latter part was not  
18           something that Melnik and Lapchuk had said at  
19           trial --

11:04 20        A       That's correct.

21        Q       -- which Deborah Hall now said were words  
22           attributed to David Milgaard.

23                           If we go back to the original  
24           application and the ground, I think you told us  
11:04 25           the ground was that based on Deborah Hall's



1 evidence, which was not known at the time, Melnyk  
2 and Lapchuk lied at trial by describing an  
3 incident in the motel room where David re -- David  
4 Milgaard re-enacted stabbing a pillow and saying  
11:04 5 words that he killed Gail Miller was a fabrication  
6 and didn't happen; that was the ground, correct?

7 A Yes.

8 Q And now, with this examination of Deborah Hall  
9 where she says -- I think what you are telling us,  
11:05 10 your understanding of her evidence was that yes,  
11 she corroborated both the conduct of David  
12 Milgaard and the words of David Milgaard, and  
13 perhaps added some on the words to what Mr. Melnyk  
14 and Lapchuk said at trial?

11:05 15 A Correct.

16 Q And the distinction that she may have drawn is  
17 that she viewed it as a joke where Melnyk and  
18 Lapchuk may have viewed it differently?

19 A Correct.

11:05 20 Q And --

21 COMMISSIONER MacCALLUM: I'm sorry to  
22 interrupt, I really couldn't understand your  
23 answer a couple of minutes ago, sir.

24 I thought I heard you saying  
11:05 25 that the words were so gross coming out of her



1 mouth that if, in fact, she heard what she said  
2 she heard she couldn't have believed, as she said  
3 in her affidavit, that they were lying, that they  
4 were not lying at trial; would you just explain  
11:06 5 that to me again?

6 A I understood her to say, in her affidavit, that  
7 Melnyk and Lapchuk lied when they said that David  
8 Milgaard re-enacted.

9 COMMISSIONER MacCALLUM: That the event  
11:06 10 didn't happen?

11 A That the event didn't happen.

12 COMMISSIONER MacCALLUM: Yes?

13 A Now she's not only describing an event and  
14 attributing it to David Milgaard, --

11:06 15 COMMISSIONER MacCALLUM: Yes?

16 A -- actions similar to what Melnyk and Lapchuk  
17 testified, but she's going further with the phrase  
18 "fucking her brains out, oh yeah right, I stabbed  
19 her".

11:06 20 COMMISSIONER MacCALLUM: Okay.

21 A I didn't understand Melnyk and Lapchuk's evidence  
22 to be, or to include the words "fucking her brains  
23 out".

24 COMMISSIONER MacCALLUM: Right.

11:06 25 A That's what caught me maybe off guard, because



1 here's a witness who said it never happened --

2 COMMISSIONER MacCALLUM: Right.

3 A -- in one affidavit, and who is telling me now not  
4 only did the actions take place but David Milgaard  
11:07 5 said something else.

6 COMMISSIONER MacCALLUM: Right. So it  
7 really caused you to question the veracity of her  
8 affidavit?

9 A Yes.

11:07 10 COMMISSIONER MacCALLUM: Which was used to  
11 support the application?

12 A Yes.

13 COMMISSIONER MacCALLUM: Okay.

14 BY MR. HODSON:

11:07 15 Q And would it be correct to say that the  
16 information provided by Deborah Hall in this  
17 examination effectively, I don't know what the  
18 right word is, but effectively eliminated this  
19 ground as an application to be considered by the  
11:07 20 Minister?

21 A Yes. It certainly didn't support the contention  
22 that two witnesses who had testified at trial  
23 about an important factual element had lied.

24 Q If this examination that you conducted had been  
11:07 25 provided in the application, in other words the



1 same information in an affidavit filed back in  
2 1988, again, would that ground have passed your  
3 preliminary assessment?

4 A No.

11:08 5 Q Can you tell us what -- I think you said you were  
6 flabbergasted, is that right, when you heard this  
7 from her; is that fair?

8 A Yes, yes, I was.

9 Q Did you consider or take steps to figure out how  
11:08 10 it could be that this information was not in the  
11 affidavit?

12 A No, I didn't.

13 Q Did you have concerns about why it was not in the  
14 affidavit?

11:08 15 A By then I knew how the affidavit was prepared, I  
16 knew that it was based on a, whether it was a  
17 ten-minute conversation or a 15-minute  
18 conversation in 1981 in which a witness had been  
19 directed to specific portions of a transcript and  
11:09 20 was asked to comment on it, that that information  
21 had then been conveyed to counsel, an affidavit,  
22 there was a further telephone conversation of some  
23 length which resulted in a five or a six-page  
24 affidavit, in the interim the witness did not have  
11:09 25 an opportunity to re-examine the transcript and



1 think about it but yet was prepared to sign it,  
2 and I think it just, it spoke volumes about the  
3 care and attention that went into the material,  
4 and it wasn't my job to go behind what an  
11:09 5 applicant does, but simply to report what I found.

6 Q Now let's talk a bit about this, the issue about  
7 whether she perceived it as a joke or not, and I  
8 think what the trial record reflects, and I think  
9 what Mr. Tallis told us, is that at the trial he  
11:10 10 did not ask Melnyk and Lapchuk the question about  
11 "did you think it was a joke" because he was  
12 afraid of the answer. And I think, although Mr.  
13 Lapchuk is deceased, I think later Mr. Tallis'  
14 concerns were borne out, because I think later  
11:10 15 both Mr. Melnyk and Lapchuk -- although Mr. Melnyk  
16 did at one point I think say "it could have  
17 been" -- but at the time of trial I think there  
18 was a likelihood, at least from Mr. Tallis'  
19 perspective, that, based on what Ute Frank told  
11:10 20 him back in 1970 about the mood in the room, that  
21 they would have said "no, we did not take it as a  
22 joke".

23 The fact that Deborah Hall now,  
24 after you've examined her -- let's put aside the  
11:10 25 fact that she now confirms the conduct and the



1 words, although a bit different words -- but now  
2 says "okay, but David Milgaard was joking"; can  
3 you tell us whether that, just the joking, her  
4 perception that it was a joke, would that be the  
11:11 5 type of information that might be considered as a  
6 ground to establish that a reasonable -- that a  
7 miscarriage of justice likely occurred at trial,  
8 the fact that she viewed these words and conduct  
9 as a joke compared to the evidence at trial?

11:11 10 A It would not be a ground, and particularly in  
11 circumstances in which those perceptions occurred,  
12 after she had ingested THC for the first time.  
13 The fact that she thought it was a joke, it was a  
14 giggle, in the circumstances influenced by a  
11:11 15 substance, which is now a controlled substance,  
16 would inform that perception.

17 Q Is that something, though, that you might want to  
18 let the jury make the decision on as opposed to  
19 you?

11:11 20 A That's something I would certainly bring to the  
21 attention of the Minister when it's brought up  
22 now. But, I mean, whether or not -- but that,  
23 that's a factual element that the jury were  
24 entitled to consider, or it could have been  
11:12 25 argued.





1 Q Let's just go back, again, and just focus on the  
2 joke aspect for a moment.

3 A Yes.

4 Q Just on -- and let's assume that after this  
11:12 5 examination of Deborah Hall what's left of this  
6 ground is that, "okay, the incident happened,  
7 words were spoken, but David was joking, I viewed  
8 it as a joke, and therefore I disagree with Melnyk  
9 and Lapchuk", although I think it was asserted  
11:12 10 that Melnyk and Lapchuk never, at trial, said it  
11 wasn't a joke, that that was silent on that --  
12 that may have been the impression of the jury but  
13 they were never asked the question -- and go back  
14 and say for that ground under Section 690, as to  
11:12 15 whether it's new and significant, would the  
16 information that Mr. Tallis provided you about his  
17 interview with Ute Frank, the information that Ute  
18 Frank provided him and his decision that he did  
19 not wish to call Ute Frank because her evidence  
11:13 20 would be prejudicial, and whether he told you or  
21 not he certainly told this Commission that he did  
22 not want to find Deborah Hall because he was  
23 fearful that her evidence would have mirrored  
24 Deborah Hall (ph), and when put to him at this  
11:13 25 Inquiry, this examination of Deborah Hall, he said



1 "I would never have called her"; again, would that  
2 be information that would go into the, into the  
3 decision matrix, if I can put it that way, as to  
4 whether or not the joke ground fits within Section  
11:13 5 690?

6 A It -- it would go to the decision-maker.

7 Q But is it the type of thing -- for example, what I  
8 am trying to get at --

9 A It wouldn't be the basis for a successful  
11:13 10 application.

11 Q Because of how Mr. -- because of how this issue  
12 was dealt with at trial, this would be one --

13 A Yes. This isn't what I would call fresh evidence  
14 in the sense, a witness' perception of an event,  
11:14 15 this is something that could have been explored at  
16 trial but there was a conscious decision not to do  
17 so.

18 Q Okay.

19 A There was a tactical decision. The facts were  
11:14 20 known in the sense that the facts about the  
21 alleged re-enactment were known. How various  
22 individuals who were present perceived it, that,  
23 that was a decision that counsel made, and it was  
24 an informed decision.

11:14 25 Q And again, just to finish up on the record, if we



1 could go to 1322, here's where you ask :

2 "Q ... Now, given that response by Milgaard  
3 to George Lapchuk's question, do you  
4 still maintain that Lapchuk and Melnyk  
11:14 5 lied when they said that his actions  
6 constituted a re-enactment?"

7 She says:

8 "A Yes.

9 Q And you still maintain it because you  
11:14 10 believe that those actions were just a  
11 crude gesture?

12 A Yes.

13 Q I understand you to say though, that you  
14 don't dispute the fact that there was a  
11:15 15 pumping motion on the pillow. There was  
16 a hitting, striking of the pillow.  
17 There was a jumping up on the bed, and  
18 that there were words said about the  
19 stabbing and the fucking of her brains,  
11:15 20 by Milgaard at that time?

21 A Right, but it wasn't a one-handed  
22 motion. It was two hands on the  
23 pillow.

24 Q All right. But those events occurred?

11:15 25 A Yes.



1 Q Okay. And where you take issue with  
2 Lapchuk and Melnyk is in what those  
3 motions signified?

4 A Yes."

11:15 5 And did you view that as a bit of a changed  
6 position on her part, from saying "okay, the  
7 incident didn't happen" to now "okay, it did  
8 happen, but it was a joke"?

9 A Yes.

11:15 10 Q Can you tell us, when -- I think you said you were  
11 flabbergasted when she spoke the words or when she  
12 described what she heard David Milgaard say. What  
13 was her, what was Deborah Hall's reaction, did she  
14 -- I'm trying to get a sense of whether she  
11:15 15 realized she had told you something that you  
16 hadn't known before, and that might be detrimental  
17 to David Milgaard's interest?

18 A Well, she may have. Deborah Hall presented  
19 herself, I knew nothing about Deborah Hall nor her  
11:16 20 background, at least in any detail, when I spoke  
21 to her. She presented herself as a well-groomed  
22 young lady, and at that time maybe I was a bit  
23 naive, I -- I didn't -- I was a little surprised  
24 by the directness of her language, if I could  
11:16 25 say -- use that term, when she used "fucked the



1 brains out", etcetera, etcetera.

2 Q Yeah.

3 A Because everything about her just signaled, you  
4 know, someone from a reasonable middle-class  
11:16 5 upbringing who wouldn't use profanity, what I  
6 would call, liberally. So, given the nature of  
7 the conversation we'd been having, when it came  
8 like that it caught me off guard, and perhaps,  
9 perhaps my own demeanour may have shifted and she  
11:17 10 picked up on that. I don't know.

11 Q And I'm trying to understand whether you noticed  
12 any, anything from her perspective, any change in  
13 her demeanour towards the end of the interview?

14 A There wasn't a significant change, no, that -- she  
11:17 15 may have realized that perhaps what she had said  
16 now differed significantly from what she had put  
17 in her affidavit, and perhaps was a bit defensive,  
18 but apart from that --

19 Q Okay.

11:17 20 A -- no.

21 Q Okay. Then if we can go to the page 001325. 325.  
22 This is the end of the examination at 11:45 a.m.,  
23 and I think it started at 10:40 a.m., so about an  
24 hour, does that sound right, examination?

11:18 25 A Yes.



1 Q After the examination was concluded, did you have  
2 any further discussions with Deborah Hall that  
3 were not reflected on the transcript?

4 A Not about this subject. I believe she got up,  
11:18 5 took her leave, and we just exchanged pleasantries  
6 and I showed her to the door and then I packed up.

7 Q Did she express any concern to you about the  
8 manner in which you had questioned her?

9 A Not at that time, no.

11:18 10 Q And when you -- and I think later, through Mr.  
11 Asper, concerns were expressed; is that right?

12 A Yes, there was communication with my boss about  
13 how I had conducted the interview.

14 Q Okay. But, before that, was there anything that  
11:19 15 she said to you about "I didn't like the way you  
16 questioned me, I didn't like the way you treated  
17 me", anything of that nature; do you recall  
18 anything?

19 A No. My last question, at 273 I basically, in  
11:19 20 closing I said:

21 "... I appreciate the accommodation

22 "...",

23 thanked her for taking time off work, I thanked  
24 her for her patience and trying to sort of what  
11:19 25 had happened, and then I invited her:



1 "Unless you have questions of me, those  
2 are the questions I have on the record."

3 And her answer was:

4 "No, I don't think so."

11:19 5 "Thanks.",

6 and that was it.

7 Q Did --

8 A There was precious little communication after  
9 that, she left her seat and collected her things  
11:20 10 and left.

11 Q And did you have any sense, at that time, that she  
12 may have had issues with the manner in which you  
13 questioned her?

14 A No.

11:20 15 Q If we can call up transcript page 3408. And this  
16 is Deborah Hall's testimony before the Commission  
17 of Inquiry, and if we can actually go to page --  
18 just give me a moment -- page 3411, I just want to  
19 go through part of this. And I am questioning  
11:21 20 Deborah Hall -- and actually go up a line, please  
21 -- and I am asking her about at the Supreme Court  
22 reference Deborah Hall was questioned by  
23 Mr. Neufeld, and what he put to Deborah Hall was  
24 the questions from your examination about whether  
11:21 25 it was Melnyk or Lapchuk who had spoken the words,



1 and I showed you that earlier. So this is just  
2 for background. If we can go to the next page,  
3 and this is where Mr. Neufeld says:

4 "Q And Mr. Williams asked you if in fact it  
5 could have been Mr. Lapchuk who in fact  
6 made the accusation. Do you remember  
7 those questions and answers?

8 A Yes ...",  
9 and you agreed that it could have been that:

10 "Q You agreed with Mr. Williams to that  
11 effect?

12 A Yes, I did."  
13 Scroll down. And this is at the Supreme Court,  
14 Mr. Neufeld said:

15 "Q Is there a reason why you are different  
16 on that today? Let me make sure I  
17 understand what your evidence on that  
18 issue was today. I thought I heard you  
19 testify with respect to Mr. Wolch's  
20 question that Craig Melnyk made the  
21 suggestion. You said George chimed in.

22 A Yes.

23 Q Would you agree with me that that's not  
24 what you told Mr. Williams?

25 A Yes.





1 Q Why is there a difference? Can you tell  
2 me?

3 A Because at that point in time I was  
4 really quite confused by the time we  
5 got to that part of the interview of  
6 Mr? Williams. I kind of allowed him  
7 to put words in my mouth.

8 Q Oh. How did you feel he was putting  
9 words in your mouth?

10 A By telling me, "Would you agree that  
11 it was George Lapchuk that might have  
12 confronted him about this?" He  
13 confused me.

14 Q Did he tell you that you had to agree  
15 with him?

16 A No, but --

17 By that time I thought maybe  
18 that he might have been right, but  
19 thinking upon it now it was both of  
20 them."

11:23

21 And then this is my question at the Inquiry:

22 "Q And, can you tell me, did you believe  
23 that Mr. Williams had put words in your  
24 mouth?

25 A Yes, I did.



1 Q In what sense; can you explain?

2 A It's kind of like he led me into what  
3 was said at times, you know, it was --  
4 and then he was a very intimidating  
5 man, I was not comfortable with him at  
6 all. So --

7 Q He -- I'm sorry, go ahead?

8 A So I don't know whether I, you know,  
9 just kind of was going along with it  
10 just to get it over with and get out  
11 of there.

12 Q Was there anything in your interview  
13 with Mr. Williams that you said that,  
14 later, you looked at and said "no,  
15 that's not right," other than who, who  
16 spoke first, Melnyk or Lapchuk?

17 A I remember, when Mr. Neufeld pointed  
18 that out to me, --

19 Q Yes?

20 A -- remembering that there had been  
21 omissions of things I said about  
22 George. They just weren't there.

23 Q Okay. And --

24 A And I assumed it was because it wasn't  
25 pertinent to anything, I -- I didn't



1 think to say "look, there is something  
2 missing here."

3 Q If I could just clarify, when you say  
4 "there is something missing", are you  
5 talking about the transcript of your  
6 examination by Mr. Williams?

7 A Yes.

8 Q And did you have a chance to review that  
9 before you testified at the Supreme  
10 Court, or were you given a copy of it?

11 A I must have had, I think. Mr. Asper  
12 probably would have given me a copy, I  
13 think.

14 Q So are you suggesting that, in the  
15 transcript of Mr. Williams' examination  
16 of you -- and this was before you went  
17 to the Supreme Court of Canada --

18 A Yes.

19 Q -- are you saying that there's parts of  
20 that transcript that are missing?

21 A Parts that I remember, like I say,  
22 specifically things I said about  
23 George.

24 Q Okay. What specific things did you say  
25 about Mr. Lapchuk that are not in the



1 transcript of your interview with  
2 Mr. Williams?

3 A Well I remember telling Mr. Williams,  
4 I believe -- I should have stopped you  
5 when you were there, you were pointing  
6 out some part in there when he was  
7 asking me about going out with George,  
8 and I said "you would have to  
9 understand George", and I said -- I  
10 told him that George, if he wasn't  
11 under the influence of drugs that  
12 night, there is no way George wouldn't  
13 have remembered the events a lot more  
14 clearly.

15 Q Okay. And so you told Mr. Williams  
16 that?

17 A Yes.

18 Q Did you ever get the transcript of your  
19 meeting with Mr. Williams and have a  
20 chance to go through it and read it in  
21 its entirety?

22 A I can't recall.

23 Q Okay. So, when Mr. Neufeld is examining  
24 you here at the Supreme Court of Canada,  
25 I think you are saying -- you are



1                   talking about who started to bug David  
2                   Milgaard first, Craig Melnyk or George  
3                   Lapchuk?

4                   A     Yes."

11:25 5                   And then if we can go to the next page, if we can  
6                   put that at the top, this is my question. Scroll  
7                   down, please:

8                   "Q    When Mr. Williams interviewed you in  
9                   November of 1989, when he asked you  
10                  about what you observed David Milgaard  
11                  do and say in the motel room, did he put  
12                  any words in your mouth, to use your  
13                  terminology, or were those your words?

14                  A     I'm sorry.

15                  Q     Okay. In your evidence at the Supreme  
16                  Court of Canada you said that you  
17                  allowed Eugene Williams to put words in  
18                  your mouth when you were asked about  
19                  George Lapchuk and Craig Melnyk and who  
20                  started bugging Mr. Milgaard first; do  
21                  you remember that?

22                  A     Yes.

23                  Q     And my -- and I think you then said that  
24                  you were uncomfortable at the interview  
25                  with Mr. Williams, and my question is



1                   when Mr. Williams asked you about what  
2                   you observed and heard Mr. Milgaard say  
3                   and do in the motel room that evening,  
4                   did Mr. Williams put any words in your  
5                   mouth or tell you to say something that  
6                   you didn't believe to be true?

7                   A     No.

8                   Q     Those were your answers?

9                   A     Those were my answers.

10                  Q     And were they in any way influenced by  
11                  Mr. Williams?

12                  A     No. I was trying to be a bit  
13                  argumentative with him but it wasn't  
14                  working.

15                  Q     Okay. And why were you trying to be  
16                  argumentative with him?

17                  A     Well, like I say, he was -- his whole  
18                  attitude was -- I had the impression  
19                  that he already had his mind made up  
20                  over everything before we even sat  
21                  down.

22                  Q     And did you --

23                  A     So, to me, it was just -- I felt like  
24                  it was a waste of time to even be  
25                  there with that man.



1 Q And did you take that from what he had  
2 said to you or discussions with you?

3 A It was, it was just his demeanour and  
4 tone and, I mean, I guess you could  
5 probably construe it as being  
6 professional, but I mean I have talked  
7 to a few of you lawyer guys along the  
8 way, and you are not all that anal, if  
9 I could put it that way."

11:27 10 And then scroll down, I think that's the end of  
11 it. So a couple of questions, Mr. Williams.

12 The first suggestion she made  
13 is that information she gave about George Lapchuk  
14 was not on the record; did that happen?

11:27 15 A It did not. I reviewed the transcript once I  
16 received it and, based on my notes of the  
17 questions, there didn't appear to be any material  
18 omissions.

19 Q I believe --

11:27 20 A She had an opportunity to review it at the Supreme  
21 Court, and if there were, at least at that time  
22 there was an opportunity to -- I mean the tapes,  
23 the tapes were reviewed, you have the tapes.

24 Q I think Mr. Frayer plans on having that tape  
11:27 25 played at a later date, so the Commission will



1           hear that. But, again, anything else that you  
2           wish to say in response to what Deborah Hall has  
3           told this Commission about how she perceived your  
4           treatment of her at the interview?

11:28 5           A       There is a record of what I did, and I'm happy  
6           that the record is there, so that folks  
7           independent of the event can make their own  
8           assessment.

9                       It's regrettable that Ms. Hall  
11:28 10          felt uncomfortable, I try to make those with whom  
11          I have dealings as comfortable as I can, however,  
12          I don't believe -- and I think the record will  
13          bear it out -- that on the crucial parts of the  
14          answers that she provided, those were her answers,  
11:28 15          it was important that they be her answers and not  
16          my answers put to her to get either her  
17          acquiescence or not.

18          Q       The -- her evidence about what she heard David  
19          Milgaard say in the motel room, the new  
11:29 20          information if I can call it that, I think when we  
21          went through on the transcript you indicated that  
22          that information was volunteered by her without a  
23          question being put to her, is that right? That's  
24          what the transcript --

11:29 25          A       That's correct. And, as far as I recall, there





1 was no omission in the transcript covering that  
2 event.

3 Q In fact, I think you had asked her what he had  
4 said and she answered "oh yeah right, I'm sure",  
11:29 5 and then the next page interrupted a question and  
6 said -- volunteered the words; was that your  
7 understanding of how that came about?

8 A That's my recollection, yes.

9 Q Would you have -- let's just pause here. After  
11:29 10 you got this information from Deborah Hall would  
11 you have shared this with Mr. Asper?

12 A I didn't share the details of what I had  
13 discovered. I did indicate, Mr. Asper knew that I  
14 had -- that I was to interview Ms. Hall, because  
11:30 15 part of the arrangements were made as the result  
16 of contacts with his office, the date, time, and  
17 place was known, and later on I indicated that I  
18 had met and questioned Ms. Hall.

19 Q But --

11:30 20 A But I didn't tell him about the details of the  
21 interview.

22 Q And why not?

23 A Because that was information for the Minister.

24 Q If the incident with the Ute Frank statement,  
11:30 25 which we talked about yesterday, I think you said



1 after you gave the Ute Frank statement to Mr.  
2 Asper and it ended up in the newspaper you changed  
3 your disclosure practices, or you delayed the  
4 disclosure. Is it fair to say that this interview  
11:30 5 of Deborah Hall would have been given to Mr. Wolch  
6 and Mr. Asper at the October 1, 1990 meeting?

7 A Yes.

8 Q Do you think it would have been given, or either  
9 the transcript or the contents of it or the  
11:30 10 significant contents would have been communicated  
11 to them prior to that?

12 A I don't believe so.

13 Q And would your disclosure, or your lack of  
14 disclosure, if I can put it that way, or your  
11:31 15 decision not to give this information to Mr. Wolch  
16 and Asper prior to the October 1, 1990 meeting,  
17 was that influenced in any way by what happened  
18 with the Ute Frank statement that you gave to Mr.  
19 Asper?

11:31 20 A Yes. I think it's important to keep in mind that  
21 the 690 process is not a trial, it's not a  
22 situation in which someone is accused, has a case  
23 to meet and in fairness to them you provide them  
24 with disclosure so that they can properly defend  
11:31 25 themselves against an accusation. By contrast,



1 this is a situation in which someone is now  
2 invoking an executive privilege or asking that  
3 such a privilege be bestowed on them having had  
4 the benefit of a trial and appeal. They have  
11:32 5 placed certain information before the minister in  
6 support of the request. This is not a situation  
7 in which the liberty of someone is being  
8 challenged now because of Crown action, this is a  
9 case in which one of Her Majesty's subjects is  
11:32 10 saying please exercise this prerogative on my  
11 behalf for these reasons, and my job is simply to  
12 ascertain whether the grounds advanced will  
13 support such an extraordinary remedy. To the  
14 extent that I've uncovered information, that  
11:32 15 information will go to the minister. In this  
16 case, applicant's counsel did have an opportunity  
17 to see it in advance of the decision of the  
18 minister and they were given an opportunity to  
19 make additional comments and submissions before  
11:33 20 the minister made a decision. I thought that was  
21 fair.

22 Q Did you take the view that Deborah Hall was, in  
23 effect, Mr. Asper's or Mr. Milgaard's witness in  
24 the sense that they put the information forward  
11:33 25 and that they could certainly talk to Deborah Hall



1 and find out what she said to you at the  
2 examination?

3 A Yes.

4 Q Do you recall whether, prior to the October 1,  
11:33 5 1990 meeting, whether, based on your dealings with  
6 Mr. Asper and Mr. Wolch, that they became aware of  
7 what Deborah Hall had said to you at this  
8 examination?

9 A I'm not certain how much detail Ms. Hall  
11:33 10 communicated to them, I'm not certain whether as a  
11 result of complaints that had been lodged about my  
12 questioning of Ms. Hall, whether they were  
13 provided with a copy of the transcript. I  
14 certainly didn't provide it, but I do know that  
11:34 15 there was an allegation that I was, "brow beating"  
16 the witness. Within our department there is an  
17 accountability framework and I was asked to  
18 testify to my actions and fortunately I had the  
19 transcript and the tape which not only revealed  
11:34 20 what was said, but how it was said. As a result,  
21 I was permitted to continue.

22 Q I think, is it correct to say, and I don't want to  
23 jump ahead, but that ultimately when the minister  
24 did make her decision on the first application,  
11:35 25 that the Deborah Hall information was stated to



1 not only not be a ground for a remedy under  
2 Section 690, but in fact worked the other way and  
3 corroborated to some extent the evidence of Melnyk  
4 and Lapchuk? Do you recall that being -- and  
11:35 5 maybe I'm not phrasing it quite right.

6 A Well, that may have been the view of the minister.

7 Q Yes, I think that was the position, and I may be  
8 not -- and I think in response to that, Mr. Asper  
9 took a quite strong objection, saying why would I  
11:35 10 put forward to the minister information that would  
11 support David Milgaard's conviction, and when I  
12 talked earlier, Mr. Williams, I asked you about  
13 how you would assess evidence and I think you said  
14 information would come forward, it would be  
11:35 15 information that might go to the minister to tend  
16 to be a ground that would give rise to a remedy;  
17 correct, was one option?

18 A Yes.

19 Q Two, unlike the information that would go to the  
11:36 20 minister, that might actually support the  
21 conviction; in other words, it might be new  
22 information that might support the conviction, or  
23 information that supports the conviction rather  
24 than supports a remedy. Do you recall telling us  
11:36 25 that that was a category of the evidence?



1 A Yes, those are two categories, yes.

2 Q Would, after your examination of Deborah Hall, was  
3 it your conclusion that the Deborah Hall  
4 information might go into that second category; in  
11:36 5 other words, be information that might tend to  
6 support the conviction of David Milgaard?

7 A It certainly could be viewed as supporting the  
8 testimony of Melnyk and Lapchuk, and to the extent  
9 that that testimony figured into the jury's  
11:36 10 determination, yes, you could make that argument,  
11 yes.

12 Q And again, would there be a downside in, after the  
13 interview of Deborah Hall, in providing this  
14 information to Mr. Asper and Mr. Wolch saying  
11:36 15 lookit, you should know that your witness gave  
16 evidence in addition to what was in your  
17 affidavit?

18 A The person who should see this first -- until such  
19 time as we had concluded our examination, my view  
11:37 20 is that yes, we did give them a heads up, but I  
21 was not at that time prepared to release this  
22 information to them.

23 Q Did you, and I think it was around June of 1990,  
24 and we'll get there, when the allegation surfaced  
11:37 25 from Mr. Asper that Deborah Hall claimed you



1 mistreated her in the interview, did you at that  
2 time conclude that maybe Deborah Hall had, (a),  
3 realized that she gave information to you in the  
4 examination that was less favourable to Mr.

11:37 5 Milgaard than in the affidavit and that that had  
6 been passed on to Mr. Asper, was that something  
7 that you considered might be a motivating factor  
8 in the complaint about your examination of her?

9 A It was a -- it was one of the potential options,  
11:38 10 yes. I didn't really dwell on it that much.

11 Q On the accusation?

12 A On the accusation, other than -- I mean, the  
13 accusation came in and my focus was on just  
14 providing my superiors with the materials that  
11:38 15 would enable them to assess its merit. In terms  
16 of what prompted it, I wasn't so presumptuous as  
17 to speculate as to what the motives of the  
18 applicant and their counsel and Ms. Hall were.  
19 Certainly one of the outcomes or one of the  
11:38 20 potentials was that she realized that instead of  
21 supporting the application, her information wasn't  
22 supportive of a conviction and possibly tried to  
23 explain how it was that she came to provide  
24 material supporting the conviction by blaming the  
11:39 25 investigator.



1 Q Okay. If we can now turn our attention to Nichol  
2 John. I think if we can call up 003230, this is  
3 the next day I believe in Kelowna that you  
4 interviewed Nichol John; is that right?

11:39 5 A Yes.

6 Q Now, again, we spent some time about how the  
7 Nichol John information fit into the application.  
8 Can you tell us, what was your objective in this  
9 interview with Nichol John?

11:39 10 A As you recall, there were some statements in the  
11 initial letter of application talking about the  
12 impossibility of whatever Ms. John said and the  
13 applicants were invited to expand on that I think  
14 when the minister wrote back. I was out west and  
11:40 15 I thought it would be helpful to speak with Ms.  
16 John to see what she now had to say many years  
17 after the event to see whether what she said could  
18 shed some light on some of the issues that we may  
19 have to consider.

11:40 20 Q And can you tell us -- so again, it would be to  
21 try and get her recollection of what she  
22 remembered about the events?

23 A Yeah, and --

24 Q Now -- sorry, go ahead.

11:40 25 A I mean, Nichol John was a pivotal witness in this





1 case and I thought it was prudent to speak with  
2 her.

3 Q You'll recall, I think in a newspaper article I  
4 showed you yesterday, in the weeks prior to this  
11:41 5 Mr. Asper had made a comment in the paper that her  
6 evidence had been coerced by the police I think,  
7 you remember me showing you that yesterday?

8 A Yes.

9 Q And would that have been one of the items you  
11:41 10 wished to address with her?

11 A Yes.

12 Q Can you tell us just generally about your  
13 observations of Nichol John or Nichol Demyen at  
14 this interview? I mean, I will go through parts  
11:41 15 of this with you, but just generally, what was her  
16 demeanour, state of mind? What did you observe?

17 A She arrived accompanied by her partner. She  
18 struck me as a very reserved individual. She was  
19 prepared to co-operate, but she was prepared to  
11:41 20 co-operate on her terms, there were certain -- her  
21 body language and her demeanour signaled that she  
22 "would not be pushed around". She appeared  
23 initially calm, there were some early discussions,  
24 I was happy that before I had arrived she had been  
11:42 25 in contact with Sergeant Gary Tidsbury and he had



1 explained in some general way what we were about,  
2 so it wasn't a topic -- it wasn't what I would  
3 call a cold interview in which someone knew  
4 something at all about the subject or where we  
11:42 5 were going, so that was a good start.

6 Q Did Sergeant Tidsbury, I think he was the  
7 individual that assisted you in locating her and  
8 arranging the interview; is that right?

9 A That's correct.

11:42 10 Q And did he have a rapport with Nichol John or  
11 prior dealings with her or knowledge of her?

12 A I'm not sure whether he did or not, but certainly  
13 she seemed comfortable with him.

14 Q And I take it you would have known that in the  
11:43 15 application -- or let me ask you this. Prior to  
16 talking to her, did you have any understanding or  
17 information as to whether Mr. Asper or Mr. Wolch  
18 or anybody on behalf of David Milgaard had  
19 previously interviewed her or obtained a statement  
11:43 20 from her or dealt with her?

21 A I did not.

22 Q And I think in the course of the interview she  
23 identified I think what she described as some  
24 unhappy experiences in the early '80s with Joyce  
11:43 25 Milgaard and indicated that she had been contacted



1 and may have talked to her; is that right?

2 A Yes.

3 Q Apart from that, did you have any other  
4 information from her on that?

11:43 5 A No. She mentioned that, in her words, she had  
6 been harassed in the past, or her words to that  
7 effect, that there had been contacts, and at this  
8 time she didn't want any further contact, or  
9 minimal contact, if any.

11:44 10 Q At the time you interviewed Nichol John, would you  
11 have been aware that on May 9th, 1981 she was  
12 interviewed and that a tape and transcript  
13 existed, interviewed by Joyce Milgaard and Tony  
14 Merchant with respect to events?

11:44 15 A I wasn't aware of that.

16 Q When did you become aware of that?

17 A I think just recently.

18 Q From me?

19 A Yes.

11:44 20 Q Okay.

21 A I knew that there had been contacts because  
22 Ms. John or Demyen told me so, but the nature, the  
23 extent and whether or not there were recordings I  
24 just learned from you during the course of an  
11:44 25 interview.



1 Q And again I will touch on this a bit more  
2 specifically later, would the transcript and the  
3 tape of the 1981 interview of Nichol John have  
4 been information that would have assisted you in  
11:44 5 your investigation of David Milgaard's application  
6 and, in particular, your interview of Nichol John?

7 A Yes.

8 Q And just generally -- I'll get into some specifics  
9 later, but can you tell us why?

11:45 10 A Certainly when you are interviewing someone about  
11 an event that happened, by then it was --

12 Q 20 years?

13 A Almost 20 years -- information that's taken closer  
14 to the event is generally more reliable in the  
11:45 15 sense that recollections are usually better.  
16 Secondly, it's important background information  
17 that you need to know about the context of that  
18 earlier interview so that you can properly assess  
19 what you are getting now, has there been a  
11:45 20 migration or an evolution in someone's  
21 recollection, what influences, what information  
22 was provided to that person then and what's the  
23 basis of the current recall, what types of  
24 information from external sources did this  
11:46 25 particular witness learn about that may inform or



1 influence what they are telling you now, those are  
2 all important considerations that I think we  
3 looked at and courts look at in terms of assessing  
4 what new information is provided.

11:46 5 Q And again maybe you can just tell us, then, at the  
6 time you interviewed her you were aware that there  
7 had been contact between her and Mrs. Milgaard and  
8 the lawyer, and we'll see a bit of this on the  
9 transcript, was it your -- what was your  
11:46 10 understanding of the extent to which she may have  
11 been questioned and to which she may have given  
12 evidence or information and to the extent to which  
13 there might have been a record of that?

14 A I didn't delve into it too much at the interview.  
11:46 15 I learned that Mrs. Milgaard had attempted to  
16 contact her, had in fact spoken to her either by  
17 phone or in person, and that at the time Mrs.  
18 Milgaard was "trying to get her to change her  
19 testimony", but she apparently had stuck to it and  
11:47 20 didn't want any further contact.

21 Q Okay. Can you tell us in this case, I don't  
22 believe Nichol John was questioned under oath; is  
23 that correct? I don't think --

24 A I don't believe so. I'm not certain. I don't  
11:47 25 think so.



1 Q And is it -- was there a court reporter or was  
2 this simply recorded and then typed from the tape?

3 A It was a tape.

4 Q And can you tell us any reason, if there's any  
11:47 5 reasons why you would, your interview with Nichol  
6 John being without a court reporter and not under  
7 oath compared to Deborah Hall which was under oath  
8 and with a court reporter, was there any reason  
9 for that difference?

11:47 10 A Harkening back to that, I think thinking back on  
11 it now, it would have been preferably, I think, to  
12 have gotten it under oath, but two differences  
13 come to mind. First, Deborah Hall's evidence was  
14 put in as "fresh" evidence or "fresh" information  
11:48 15 in the form of an affidavit, which was taken under  
16 oath. I felt that the responses to the questions  
17 should also be under oath. Secondly, at trial  
18 Nichol John had testified under oath and had been  
19 cross-examined under oath. As far as I was aware,  
11:48 20 apart from the arguments of counsel, her evidence  
21 was there and it formed a certain fabric.

22 In hindsight, it would have been  
23 preferable to have gotten her evidence under oath,  
24 but I was happy that she spoke with us and it may  
11:48 25 well be that during the negotiations she was



1 content to have it recorded, but not under oath,  
2 but I didn't take it under oath.

3 Q Okay.

4 A I should also note that in relation to Dr. Ferris,  
11:49 5 Dr. Markesteyn and certain other witnesses who  
6 were advanced in support of the application, I  
7 didn't take their information under oath either.

8 Q Okay. And why not in that case?

9 A It's the nature of the information. I mean, these  
11:49 10 are professional witnesses and their report is  
11 their report.

12 Q So again, if we can, the bottom, you describe your  
13 reason for the interview:

14 "My job is to determine whether he was  
11:49 15 wrongfully convicted or whether there  
16 was any merit in his application and  
17 it's for that reason that I came to see  
18 you, because from my review of the  
19 transcript you were a Crown witness and  
11:49 20 you were an important witness in the  
21 case in fact."

22 So that would have been your explanation to her  
23 why you needed to talk to her?

24 A Yes.

11:50 25 Q Go to the next page, and again I think, and we've



1           been through this before, Mr. Williams, I won't  
2           touch on all of it, but this is where she  
3           describes:

4                   "... I've gone through so much that  
11:50 5                   through the years, not from you guys,  
6                   but harassment from his mother .."

7                   ".. and this is huh, this is going to be  
8                   the end of it. Guaranteed."

9           And was that your perception, that she was  
11:50 10           reluctant to talk to anybody about this?

11           A       Yes.

12           Q       Go to page 233, I'll just touch on a couple of the  
13                   high points here, you ask her about whether she  
14                   remembers speaking to Mr. Roberts who would be the  
11:50 15                  polygraph operator, Inspector Roberts:

16                   "I don't remember that."

17                   "I don't remember half the statement."

18           And I take it that that was, and the transcript  
19           speaks for itself, but that was one of the  
11:50 20           prevailing comments she would make, her memory is  
21           she said she did not have a very good memory of  
22           some things; is that fair?

23           A       That's correct.

24           Q       And then so the next page, I think you asked her  
11:51 25           about what happened when Mrs. Milgaard contacted





1 her and she said:

2 "... she went in to this lawyer to ask  
3 me a few questions and that and at that  
4 time and I said, okay, fine, maybe this  
11:51 5 will be, you know, I won't have to put  
6 up with this any more..."

7 So would that have been the extent of your  
8 knowledge, that they had retained lawyers and she  
9 had been asked a few questions?

11:51 10 A Yes.

11 Q Would you have assumed that if that interview and  
12 that information had been relevant to the  
13 application, that that would have been information  
14 that would have been included with the application  
11:51 15 by Mr. Milgaard's counsel?

16 A Yes.

17 Q If we can go to page 003238. And was your purpose  
18 here to try and go through her, both her statement  
19 and her evidence at trial and to find out whether  
11:52 20 she could shed any light and whether she could  
21 remember any more now than she remembered at the  
22 time of trial or shed some light on how it came to  
23 be that she witnessed the murder, according to her  
24 statement, and then a few months later at trial  
11:52 25 could not remember?



1           A           Yes, that was part of it. I think the other part  
2                       was trying to get a handle on whether and the  
3                       extent to which her statement had been influenced  
4                       by her treatment by the police investigators. It  
11:52 5                       was -- it hadn't been brought out specifically as  
6                       a cause of concern, at least by the applicants,  
7                       but one of the so-called classic examples of  
8                       behaviour that might lead to a wrongful conviction  
9                       is improper police investigative techniques, and  
11:53 10                      although it hadn't been specifically raised, there  
11                      have been some hints in news areas about that and,  
12                      secondly, I was persuaded to -- I wouldn't say I  
13                      was persuaded, but I thought it was a good idea to  
14                      talk to her.

11:53 15           Q           Okay. And so here we get into some of her memory,  
16                       she remembers being stuck in an alley, remembers  
17                       stopping and talked to the girl, I don't remember  
18                       what he said to her. Next page. And then you ask  
19                       her about the statement, and you are talking about  
11:54 20                      her statement to the police, you say:

21                               "Now, what you're saying to me today is  
22                               that you have no present recollection of  
23                               some of it?"

24                      Answer:

11:54 25                               "Right."



1 "Okay. Is it fair to say that what you  
2 told him then .."

3 And you are referring to Mackie,

4 ".. as best as you recalled it then, was  
11:54 5 true?"

6 And she said:

7 "Yes."

8 "On that date?"

9 "Right."

11:54 10 "And although you didn't remember  
11 certain parts of it later .."

12 "Right."

13 ".. what you said to him then was true?"

14 "Right. And what I remember, what I,

11:54 15 how can I say it, like I, I put myself  
16 back there many, many, many, times."

17 So again you would have been asking her, even

18 though you don't remember, would you have told

19 them the truth when you gave the statement?

11:55 20 A Correct.

21 Q Did you find it odd that she would have given a  
22 statement May 24th saying I witnessed a murder and  
23 in the statement say I didn't realize until  
24 yesterday that I had witnessed a murder and then a  
11:55 25 number of months later saying I don't recall what



1 happened between point A and B; in other words,  
2 did not repeat the witnessing of a murder? I'm  
3 just wondering what your thoughts were about that  
4 and how you ought to deal with that information.

11:55 5 A It was a perplexing issue, perplexing in the sense  
6 that as I recalled her trial testimony, it was  
7 fairly detailed up until that point, and that  
8 point being the portion of the narrative of the  
9 trip in which they came across a woman in  
11:56 10 Saskatoon in the early morning hours of January  
11 31st, 1969. Then her memory of the events that  
12 happened in the ensuing 15, 20 minutes became a  
13 blank. Afterwards, her recollection was fairly  
14 detailed thereafter. Quite often you have cases  
11:56 15 in which witnesses will deny a portion of the  
16 testimony for whatever reason, but this one was a  
17 complete memory loss, and I didn't know what to  
18 make of it at the time and I wanted to probe that.

19 Q And --

11:56 20 A I had encountered the case I guess as part of the  
21 law school curriculum, how to deal with evidence,  
22 and I was a little intrigued to encounter the  
23 person who was at that -- my job was to find out  
24 what portions if any of it she was prepared to  
11:57 25 adopt and then if, then I would use that



1 information as part of the assessment process in  
2 terms of summary of the facts.

3 MR. HODSON: This is probably an  
4 appropriate spot to break for lunch.

11:57 5 (Adjourned at 11:57 a.m.)

6 (Reconvened at 1:32 p.m.)

7 BY MR. HODSON:

8 Q Mr. Williams, before lunch we were talking about  
9 the Nichol John statement, and particularly the  
01:32 10 unadopted part, and I think you said you were  
11 perplexed at how this fit into the rest of the  
12 information; is that a fair way to put it?

13 A Yes.

14 Q And not only, would it be fair to say not only did  
01:32 15 the fact that her statement -- let me back up.

16 How this statement, and how it  
17 was used at trial, would be an issue that you  
18 would have to sort out and say "well what, if any,  
19 effect, how did that affect what we're doing under  
01:33 20 690"; that would be a perplexing issue or an issue  
21 that is -- it's a bit unusual, let's put it that  
22 way?

23 A It was. I think the question I was struggling  
24 with was whether we could make any use of it in  
01:33 25 the context of a 690 application in light of the



1 fact that certain portions of it had not been  
2 adopted by the witness at trial.

3 Q And I think I said earlier that, if you had gone  
4 to Nichol John in 1989 and she said "lookit" --  
01:33 5 let's talk about, let's just focus on the  
6 unadopted part of the statement, the very  
7 incriminating evidence, if I can put it that  
8 way -- if in '89 you would have gone to her and  
9 she said "lookit, I made that up, I put it in the  
01:33 10 police statement for whatever reason, I was mad at  
11 David Milgaard, the police made me do it", or  
12 whatever, and gave you an explanation that would  
13 suggest that what was in her statement was not  
14 true, the unadopted part, and I suppose in that  
01:34 15 scenario that might be the type of information  
16 that is new in the sense that what wasn't before  
17 the trial Court was the fact that she was  
18 acknowledging the falseness of her initial -- of  
19 her statement; do you follow?

01:34 20 A Of that portion, yes.

21 Q Of that portion. And so that might fit in, that  
22 would be one scenario where one might argue or  
23 contend that if that had been known at the time,  
24 if she would have said during the course of the  
01:34 25 trial "lookit, I lied in that statement, I made it



1 up", or whatever, that that might have had an  
2 effect on the jury, so the fresh evidence would be  
3 her, or might be her later evidence that "I lied  
4 in my statement"; is that fair? And I'm not  
01:35 5 asking you to say that it would have opened it up,  
6 or would have been anything, but that would be one  
7 avenue to pursue because that might be relevant  
8 for that consideration; would you agree?

9 A Yes.

01:35 10 Q And I suppose, at the other end of the spectrum, I  
11 think what I put to you the other day was if you  
12 would have gone to her and she would have said  
13 "no, in fact everything in my statement is true  
14 and the reason I pretended not to remember at  
01:35 15 trial, because I was trying to help David" or "I  
16 was afraid of David", or gave some reason; so in  
17 other words it would be new information in that  
18 she was now adopting the unadopted part, that  
19 would be the other extreme, and that might be  
01:35 20 information that would be relevant in a 690 but  
21 detrimental to Mr. Milgaard's interests; is that  
22 fair?

23 A That's fair.

24 Q And so those would be the two extremes where you  
01:35 25 might be able to go and probe and find out



1 something of assistance?

2 A Yes.

3 Q In the middle, I think, is where you end up, is  
4 that she was no better able to explain or wasn't  
01:36 5 able to fully and satisfactorily explain the  
6 circumstances of the statement and why she wasn't  
7 able to remember it at trial, that which she told  
8 the police earlier; is that fair?

9 A That's fair.

01:36 10 Q And so then, if we take a look at what some  
11 potential options that might be explored there is,  
12 let me suggest two things; one, I think it's fair  
13 to say that at one point she had a memory, at  
14 least as reported to the police, of witnessing the  
01:36 15 murder, correct, so there's some -- when she gave  
16 the statement on May 24th she claimed to have  
17 recalled witnessing the murder?

18 A She claimed to have recalled seeing David Milgaard  
19 lashing out at someone with a --

01:36 20 Q Okay. Sorry, I should have said maybe not  
21 committing the murder, but confronting a woman and  
22 grabbing her and stabbing her?

23 A Yes.

24 Q And then I think in '89, and subsequent years, she  
01:37 25 was saying "lookit, I can't remember what happened





1 in that pivotal time period, I mean I can't, it's  
2 gone from my memory", but as we'll see she's  
3 having flashbacks of it; right?

4 A Yes.

01:37 5 Q So would there be a couple -- would the challenge  
6 there be to say "okay, well let's find out what  
7 that memory is that she can't get at"?

8 A That's one aspect of it. The other aspect is  
9 whether you could make any use of that portion of  
01:37 10 the statement that was provided to the police but  
11 was not adopted.

12 Q Okay. And maybe -- and are what you are saying  
13 there is that her current recollection of those  
14 events, and how the statement came to be, would be  
01:37 15 relevant in determining whether or not you could  
16 use any part of the unadopted statement; is that  
17 fair?

18 A Yes.

19 Q And so that would require questioning Nichol John  
01:37 20 about whatever memory she had about the  
21 circumstances of the statement and the key time  
22 frame?

23 A Yes.

24 Q And so I think you are saying the challenge is  
01:38 25 what use -- what is the memory, what is it that



1           you can get out of her mind, and would it be --  
2           the second thing would be how reliable is that; is  
3           that fair?

4           A       That, that's fair, and --

01:38 5           Q       And on the reliability factor, it might work two  
6           ways, it might be that, if you do get some memory  
7           out of there somehow, through some process, that  
8           she can go further than what she did at trial, in  
9           other words go back and explain perhaps more about  
01:38 10          that lost time frame, the question would be is  
11          that reliable; correct?

12          A       Yes.

13          Q       And I guess as part of that would be how did it  
14          get in there, if she didn't see the events but  
01:38 15          claims she did at one point, forgot and then  
16          remembered, the reliability would work both ways;  
17          wouldn't it?

18          A       It, yes, it could.

19          Q       And so one question might be "what we finally, or  
01:38 20          try to get out of there, can we rely on as being  
21          incriminating", or secondly "in the process, if we  
22          find out that what got in there isn't reliable,  
23          therefore exculpatory"; is that fair?

24          A       With reference to your last statement, "what got  
01:39 25          in there wasn't reliable and therefore



1           exculpatory", I'm not certain I would make that  
2           jump.

3           Q       And --

4           A       I would say if what -- if what -- if there had  
01:39 5           been, if I may use the term, wrongful influences  
6           or undue influences that informed the words so  
7           that those words weren't her words or those ideas  
8           came from someone else and she merely adopted them  
9           without an independent observation --

01:39 10          Q       Yes?

11          A       -- of that, then certainly, to the extent that  
12          those words implicated David Milgaard in the  
13          crime, then it would be exculpatory.

14          Q       Right. And that's what -- you've said it much  
01:39 15          better than I did, but that would be the point,  
16          that if -- that would be one thing to pursue as a  
17          possible explanation of this perplexing issue of  
18          her statement; is that fair?

19          A       Yes. Yes.

01:40 20          Q       And so that would be one result that might answer  
21          some of the concerns about how did the statement  
22          come to be, how did she forget it at trial, and,  
23          thirdly, how do we use this on a Section 690; is  
24          that fair?

01:40 25          A       Yes.



1 Q And if the conclusion had been reached that what  
2 was in her May 24th statement, the incriminating  
3 parts, the parts she didn't adopt, had been  
4 influenced in some way by someone else so that  
01:40 5 they were not her words, and that was your  
6 conclusion, would it be fair to say that that  
7 might be something that would be a ground under  
8 Section 690?

9 A It could form the basis, yes.

01:40 10 Q It could form the basis?

11 A Yes.

12 Q In other words, that even though the  
13 incriminating, unadopted portion was not evidence  
14 before the jury, if you subsequently learned that,  
01:41 15 okay, we now have an explanation as to how that  
16 statement came to be, that if that had been known  
17 at the time it might have affected the verdict?

18 A Yes.

19 Q And stated simply, if Mr. Tallis would have known  
01:41 20 that those words weren't her words and there had  
21 been some type of influence, that might have  
22 allowed him to keep the statement out under  
23 section 9 sub (1) 9 sub (2), etcetera?

24 A Yes, those were all potential areas for  
01:41 25 exploration.



1 Q If we could go back to the transcript, 003230, and  
2 go to page 242. And here, I think this is  
3 Mr. Tidsbury is assisting or asked a couple of  
4 questions here, and it appears that Nichol John  
01:41 5 has a recollection, at this time, of the woman  
6 they stopped for directions. She says:

7 "... I can see the car stopped ... I can  
8 see a woman that's bundled up with, I  
9 don't know why, but I've got her scarf  
01:42 10 in my mind ... there's buildings ...  
11 three stories",

12 etcetera, and:

13 "So you've still got a vivid picture of  
14 that in your mind?"

15 Answer:

16 "Right."

17 And, again, was it your observation that she was,  
18 or appeared to be able to remember certain events  
19 of the morning of January 31, 1969?

01:42 20 A Quite vividly, yes.

21 Q Next page. And then here, I think on a number of  
22 occasions through the interview she became upset  
23 and cried, is that right, or on a couple of  
24 occasions anyway?

01:42 25 A Yes.



1 Q And this is one where she says:

2 "There's been so many times that I've  
3 thought, okay, maybe he isn't guilty,  
4 maybe what I said I picked out of the  
01:42 5 air but, ... I don't know if you can  
6 understand, but there's time missing in  
7 my life, I don't know where it went to."

8 And, again, would that be something that you were  
9 pursuing as well, I mean every side of the  
01:43 10 equation; is that fair?

11 A Yes.

12 Q Next page. And I take it, here, she had a  
13 recollection of Ron and David leaving the car, Ron  
14 going towards the funeral home and Dave going in  
01:43 15 the other direction; would that have been  
16 significant information in your assessment of her  
17 information?

18 A Yes.

19 Q And in what respect?

01:43 20 A It confirms one aspect of her trial testimony.

21 Q In that?

22 A In that I believe she testified that when the car  
23 was stuck the two lads had left the car and went  
24 in different directions in an attempt to get help.

01:43 25 Q And that was Ron Wilson's evidence at trial;



1 correct?

2 A I believe so, yes.

3 Q And that would have been the opportunity, if I can  
4 call it that, at trial? I think that was the  
01:44 5 Crown's theory, that when Mr. Milgaard and Mr.  
6 Wilson left the car, that was the opportunity he  
7 had to commit the crime?

8 A Yes.

9 Q At least that was the Crown theory. So that --  
01:44 10 and if we can go to 246, please, she says here,  
11 talks about a recollection of:

12 "... sitting in the alley with the  
13 church at the end with the headlights on  
14 and there was two garbage cans about  
01:44 15 half way down the alley."

16 And can you tell us what significance, if any,  
17 you placed on this recollection or this  
18 information?

19 A That recall is consistent with the location of the  
01:44 20 purse that was found in one of two garbage cans  
21 and was the subject of trial testimony as well.

22 Q And the fact that 20 years later she's telling you  
23 "I recall the funeral home, being in an alley  
24 where garbage cans are, facing a church", was that  
01:45 25 information that you felt was significant, and



1 her, her purported recall at the time?

2 A Yes.

3 Q And go to the next page. This is the incident  
4 about the cosmetic case, she says:

01:45 5 "I remember that, I remember that plain  
6 as day.",

7 and goes on to talk about it in some detail. Can  
8 you tell us what significance you placed, if any,  
9 on her recollection of the cosmetic case and  
01:45 10 David Milgaard throwing it out of the car?

11 A It's consistent with the testimony of, I believe,  
12 at least Albert Cadrain and possibly Ron Wilson at  
13 trial.

14 Q If we can go to the next page.

01:45 15 A And, if I may add, it was also consistent with  
16 what I had learned from Mr. Tallis at that point.

17 Q And so, to the extent that in your interview with  
18 her you were getting recollections of her of facts  
19 that were confirmed by other witnesses, was that  
01:46 20 of some significance then?

21 A Yes.

22 Q If we can go to page 003251. Here you ask her:

23 "... there's one thing that's been  
24 bothering me a little bit and it's  
01:46 25 nothing to do with this but I, I know





1                   that some of the cases I've tried there  
2                   has been pressure brought, brought to  
3                   bear on the witnesses, or potential  
4                   witnesses and I wondered if ah, any  
01:46 5                   pressure had been brought upon you  
6                   during that course of time time to  
7                   tailor your recollections...

8                   ND    No..

9                   EFW ...one way or the other?

01:46 10                  ND    No. To, to, maybe to, what can I say,  
11                   really wasn't pressure, not at all. I  
12                   had, I remember, how can I say, saying,  
13                   take your time, take your time, we don't  
14                   wanna, we don't wanna put words in your  
01:47 15                  mouth, we don't want wanna do this, we  
16                   don't wanna do that. I remember that.  
17                   I would say no, no pressure.

18                  EFW Alright.

19                  GTT You're referring to the police when you  
01:47 20                  say that?

21                  ND    Right."

22                  And, again, was that -- let me just scroll down a  
23                  bit more, please:

24                   "Because I know ah, I read the  
01:47 25                  transcript and I remember when you went



1 up to Saskatoon for interviews on the  
2 twenty third and the twenty fourth, ah,  
3 the accommodations that you got weren't  
4 the best."

01:47 5 And there you're referring to the evidence at  
6 trial where Mr. Tallis cross-examined here about  
7 the staying in the police cell area; is that  
8 right?

9 A That's right.

01:47 10 Q So this line of questioning, was this -- can you  
11 tell us what prompted you to get into this area,  
12 and what significance did you place on her  
13 answers?

14 A I wanted to get first-hand from the witness what  
01:47 15 her recollections were of the treatment by the  
16 police. The significance on her answers was that,  
17 to the extent that she was not pressured or  
18 influenced to write what she wrote, it added a  
19 certain, call it air of believability, or at least  
01:48 20 we had a statement that, on its face, didn't  
21 appear to have been influenced by someone other  
22 than the witness.

23 Q And what do you mean by that?

24 A Well this, by her answers I -- and the  
01:48 25 clarifications provided by Sergeant Tidsbury, it



1           became clear that, insofar as Ms. John was  
2           concerned or Ms. Demyen was concerned, whatever  
3           she said, she didn't say it because of pressure  
4           applied to her by the police investigators.

01:48 5           Q           And --

6           A           For me that was significant because the -- it was  
7           always open, given the age of the witnesses, given  
8           their relevant position vis-a-vis the  
9           investigators, it was always open, it was a  
01:49 10          question as to whether or not they had been  
11          unfairly treated and, as a result of that  
12          treatment, they'd tailored their evidence.

13          Q           And so one explanation that might be given by a  
14          later witness about why they said something in a  
01:49 15          statement that they now couldn't remember is to  
16          say "well the police, the police made me do it"?

17          A           Yes.

18          Q           And so, in probing this area with Ms. John or  
19          Ms. Demyen, you took some comfort in her answer in  
01:49 20          saying "lookit, no, the police did not pressure me  
21          or cause me to make this statement or to use their  
22          words rather than my words"?

23          A           That's correct.

24          Q           And would -- and, again, you said that -- can you  
01:49 25          give us some idea of the significance of that in



1 the grand scheme of things?

2 A It just added, from my vantage point, a certain  
3 comfort level in the reliability, at least, or the  
4 accuracy of what portions of her statement she  
01:49 5 adopted.

6 Q Now yesterday I showed you the newspaper article  
7 where Mr. Asper had said in the press that the  
8 police pressured Nichol John -- I think or a  
9 witness, but I think he was referring to Nichol  
01:50 10 John -- to give an incriminating statement?

11 A Yes.

12 Q Was that one of the reasons you put that to the  
13 witness, to test that assertion that Mr. Asper had  
14 made in the media?

01:50 15 A Yes.

16 Q Now did that answer satisfy that concern or did  
17 you feel there might be further -- in other words,  
18 were you prepared to simply take her word that  
19 there was no police pressure, or did you feel that  
01:50 20 there might be some other areas or avenues you  
21 could pursue to determine that?

22 A At the moment I was prepared to take her word for  
23 it, but I would certainly keep it as an open  
24 question, because I was aware that during the  
01:50 25 two-day period in 1969 when those witnesses were



1 in Saskatoon they were apart, and I wasn't certain  
2 whether her treatment might have been different  
3 than that of the other witness, so insofar as she  
4 was concerned, she had responded, but there was a  
01:51 5 possibility that I couldn't ignore.

6 Q Okay. If we can go to 003253. And we see  
7 reference earlier in the transcript -- I didn't  
8 show it to you -- but on a couple of occasions  
9 where -- and I think Dale Miller was her partner,  
01:51 10 is that right, at the time, Nichol Demyen's  
11 partner --

12 A Yes.

13 Q -- where, on a couple of occasions, he was trying  
14 to urge her to tell you something she didn't want  
01:51 15 to tell you, and then at some point here she  
16 says -- and I think DM is Dale Miller -- she says  
17 that:

18 "... David raped me before we left

19 Regina, okay, and I still went with them

01:51 20 anyway. There you go."

21 And it seemed to be, from the transcript, she was  
22 quite troubled by that; is that fair?

23 A Yes.

24 Q And was that something that she volunteered to you  
01:52 25 in the course of the examination, that came out



1 from her as opposed to something you were pursuing  
2 with her?

3 A I wasn't aware of it before she told me.

4 Q And can you tell us; did you place any  
01:52 5 significance on that piece of information in your  
6 assessment of her information or of her evidence  
7 at trial?

8 A It was of some significance. I guess the question  
9 was "if you had been treated so badly, why did you  
01:52 10 continue on the trip", and so, you know, I wanted  
11 to hear more.

12 Q Okay. And I think she did mention that, that she  
13 felt bad or she felt stupid, I think, about  
14 continuing on the trip. Did you have some  
01:52 15 concerns about the -- were you probing the  
16 credibility of that assertion; is that --

17 A Well, I wasn't probing the credibility of it. A  
18 number of assaults on women go unreported for a  
19 variety of reasons. It might have an impact,  
01:53 20 shall we say, on the motive that she may have  
21 given or the motive she may have for an  
22 inculpatory statement against David Milgaard down  
23 the line, that's one aspect that I couldn't  
24 ignore.

01:53 25 Q And the fact that maybe she was upset at him and



1           that's why she maybe gave a false statement to the  
2           police?

3       A       This was her way of getting back.

4       Q       Yeah. And so that's something that you thought  
01:53 5           about?

6       A       Well, you couldn't ignore it.

7       Q       If we can go to 003260. And there is a discussion  
8           here about flashbacks, and I think this is, this  
9           is Sergeant Tidsbury talking about her  
01:54 10          experiencing flashbacks. She says:

11                   "... I don't, what can I say, I have  
12                   these things that pop into my head but I  
13                   don't know if they're real,"

14                   "What kind of things?"

01:54 15          Scroll down:

16                   "Just, I can, I can see some, like I  
17                   can't even say that it's him doing it, I  
18                   can see somebody stabbing a woman, do  
19                   you know what I mean, I can, I can, I  
01:54 20                  can see somebody, okay, taking the  
21                   purse, putting it in the garbage can and  
22                   I don't know if those things are, if I  
23                   really saw them or I, from hearing  
24                   people, do you know what I mean ...",

01:54 25          and you say:



1 "Now, if I can just go back. You say  
2 you have flashbacks of seeing someone  
3 stabbing someone?"

4 Can you tell us, what was your take on that at  
01:54 5 the time, this information that she had  
6 flashbacks about seeing a person stab a woman and  
7 garbage cans, a purse in the garbage cans, but  
8 she doesn't know whether it's real in the sense  
9 that she saw it or whether it's something she has  
01:55 10 been told, I think is what she's saying?

11 A It piqued my curiosity, knowing what I knew about  
12 the circumstances giving rise to the death of Gail  
13 Miller.

14 Q And would it be correct to say that on the one  
01:55 15 hand, if she's saying it's real, then maybe she  
16 did see something and the flashbacks are some  
17 memory that she's not able to get fully back, or  
18 something like -- is that one scenario?

19 A That's one scenario, that it's -- it's -- it's  
01:55 20 something that was once in her conscience, now in  
21 her subconscious.

22 Q Okay. I suppose the other scenario on the other  
23 side is when she says "I'm not sure if it's real,  
24 if I really saw that or if it's from hearing from  
01:55 25 people", in other words that maybe the flashback





1 is there because of what she was told she saw or  
2 what she thinks she might have seen but doesn't  
3 have a recollection; is that a fair -- that would  
4 be the other, another scenario?

01:56 5 A That's the second scenario, yes.

6 Q And would you have been alive to both of those  
7 then?

8 A Yes.

9 Q Go to the next page. And I think, at least from  
01:56 10 the transcript, it appears that in the course of  
11 your questioning did she tell you that she  
12 experienced a flashback while she was in the room  
13 with you?

14 A I'm sorry, I --

01:56 15 Q Yeah, no, sorry. Did she, in the course of your  
16 questioning, did she tell you that she was then  
17 experiencing a flashback, in other words while you  
18 were questioning it appears from the transcript  
19 that she did, she's crying, and she goes on and  
01:56 20 recounts a story?

21 A Well, while we were speaking Ms. Demyen became  
22 visibly upset, and when I say that I'm trying to  
23 signal that she became teary, her body shook, and  
24 because -- and her actions didn't flow from, or  
01:57 25 didn't seem to be a response to the questions I



1 was asking and to the answers she was giving. We  
2 broached onto the subject of the flashbacks that  
3 she had seen, and I was trying to test whether or  
4 not this flashback may have been stimulated by  
01:57 5 perhaps a scene in a movie, something she'd read,  
6 something somebody had told her, and she, she  
7 answered "no", and then -- she was no further away  
8 from me than five or six feet -- and she started  
9 moving uncontrollably, she became very, very  
01:57 10 teary, and as a result Gary Tidsbury intervened  
11 and asked her whether or not she had had a  
12 flashback just then, and she said "yes".

13 Q And then I think this is the questioning, she  
14 says:

01:58 15 "Could see a woman laying on the ground  
16 and a guy straddled over her and he,  
17 ...",

18 and in bracket:

19 "... (upset and crying ) ...",  
01:58 20 "... he's on his knees and he's  
21 straddling over her.",

22 and goes on to describe the event. Can you tell  
23 us what, what was your assessment of this?

24 A It was quite traumatic. I didn't know quite what  
01:58 25 to make of it.



1 Q Did you have any sense that it was being contrived  
2 or was, was anything but genuine on her part?

3 A I didn't believe it was contrived. It appeared  
4 genuine. The -- her body language, the  
01:58 5 spontaneity, perhaps, --

6 Q Did --

7 A -- was an important factor.

8 Q Did it have an effect on you and your assessment  
9 of her and her evidence?

01:59 10 A It had an effect on me. I was very, very curious  
11 as to what this was all about. I did -- I, quite  
12 frankly, didn't understand the phenomenon of what  
13 was going on, and it just highlighted an area that  
14 needed further exploration.

01:59 15 Q So if we just take a step back, we know at trial  
16 prior to that she gave a statement, she went to  
17 trial, she didn't adopt it, now, -- or parts of it  
18 anyway. Now here we are, 20 years later, and  
19 she's telling you that since then she's had  
01:59 20 flashbacks, and what she relates in the flashback  
21 is similar in nature, not identical but similar in  
22 nature to that part of the statement that she  
23 didn't adopt at trial; is that correct?

24 A Yes. One of the thoughts that occurred to me was  
01:59 25 whether or not this was a backhanded way of trying



1 to signal that what was in the statement was in  
2 fact what she saw, but she isn't prepared to admit  
3 it consciously to us, but she is saying "I have  
4 this dream or this flashback and this is what it's  
02:00 5 about, but it's, I'm not sure about it", and  
6 that's maybe a half-way position between denial  
7 that this thing was true and acceptance, or  
8 affirming that that portion of the unadopted part  
9 of her statement, she's not consciously prepared  
02:00 10 to affirm that.

11 It may seem a little convoluted,  
12 but what I thought about was the possibility was  
13 that the flashback was a way of trying to signal  
14 that maybe there was something to the unadopted  
02:01 15 part of her statement, and that today, or on that  
16 date, she wouldn't consciously come out and say  
17 "Mr. Williams, I now remember that part of the  
18 statement", what she -- as far -- she was only  
19 willing to go and say "Mr. Williams, I have a  
02:01 20 dream, and this is what it is", and it turns out  
21 that the dream is similar to the statement, but  
22 the dream is just that, or the flashback is just  
23 that, there is no acceptance of the un -- of that  
24 part of the statement that she didn't affirm.

02:00 25 Q

Did you, at this time, do you view the flashback



1 as tending to be on the more incriminating or less  
2 incriminating side of the ledger as far as David  
3 Milgaard is concerned?

4 A I looked at it not in those terms, I looked at it  
02:01 5 as a situation in which maybe she saw something,  
6 she saw an outline, but she wasn't able to  
7 distinguish features or say with specificity who  
8 it was that was straddling, but just that she saw  
9 a figure straddling.

02:01 10 Q Would it be fair to say that the likely candidate,  
11 if it was something that she was bringing back and  
12 actually did see, the likely candidate of who she  
13 saw would be David Milgaard, her travelling  
14 companion?

02:02 15 A Certainly one of the candidates. What would be  
16 interesting is whether or not her flashbacks would  
17 go back in time to the point in her statement in  
18 which she said that Mr. Milgaard confronted the  
19 girl and grabbed at her purse, that would signal,  
02:02 20 let's say, a continuity of activity that would  
21 link David Milgaard back to the figure who sat  
22 astride the woman. There's no indication in her  
23 flashback about the interval between when she left  
24 the car and when she saw this figure straddling a  
02:02 25 woman, so it may be several minutes, there could



1 be some intervening activities, someone else could  
2 have encountered the woman, that's --

3 Q Tell us, what did you make of this then as far as  
4 what you were doing for the 690 investigation,  
02:03 5 where if anywhere did this fit?

6 A It was a puzzling kind of dilemma. What struck me  
7 was that this witness had seen something that had  
8 had a traumatic impact on her. She was not able  
9 to describe it with sufficient particularity. She  
02:03 10 was obviously troubled many years after the event,  
11 but insofar as the 690 was concerned, whether or  
12 not she had a flashback really didn't advance the  
13 case that much because for the purposes of what we  
14 were doing, there had already been a statement  
02:04 15 which had not been adopted and the flashback did  
16 not adopt that statement.

17 Q Is it fair to put it this way, that this  
18 information from Nichol John in this interview and  
19 the flashback would not be, would you agree, would  
02:04 20 not be the type of information that would be a  
21 ground to consider a remedy under Section 690, is  
22 not of the type that it would, in and of itself,  
23 say okay, this is the type of new and significant  
24 information that suggests there may have been a  
02:04 25 miscarriage of justice at trial?



1 A That's correct.

2 Q And that would be because the incriminating part  
3 of the statement wasn't adopted before the jury,  
4 right, and other reasons?

02:04 5 A Well, no, I would frame it that it couldn't be  
6 considered a ground because Ms. Demyen didn't  
7 identify someone else as the person who was  
8 straddling the body in the alley.

9 Q I see. So if she had said it's someone other than  
02:05 10 David Milgaard, then it might get into the 690  
11 box, if I can call it that?

12 A If she had been able to bring that flashback into  
13 her conscience and said look, I saw this and it  
14 wasn't David Milgaard, yeah, we would certainly  
02:05 15 consider that.

16 Q Okay. Now let's go on the flip side. Is it  
17 correct to say that if, quite separate and apart  
18 from this Nichol John information there had been  
19 other grounds that would give rise to, or could  
02:05 20 give rise to a remedy under Section 690, would  
21 this Nichol John information negative or counter  
22 what would otherwise be grounds to re-open the  
23 case?

24 A No, it wouldn't.

02:05 25 Q So in other words, would it be fair to say then



1           that the Nichol John information would be neutral  
2           then as far as a ground to be considered by the  
3           minister?

4           A       Yes.

02:05 5           Q       And so that if, for example, Dr. Ferris and  
6           Deborah Hall had been true, that the fact that  
7           Nichol John gives this information, I think you  
8           are telling us that doesn't counter another good  
9           ground and wipe that out; is that --

02:06 10          A       The reality is, by the time I saw Nichol John, I  
11          had had the benefit of Pat Alain's report and I  
12          believe I had already interviewed Deborah Hall.  
13          Now, it was on the same swing in the sense that  
14          it's the next day. However, having regard to what  
02:06 15          Nichol John saw in her flashback, had the other  
16          grounds panned out, I probably wouldn't have gone  
17          further into Nichol John.

18          Q       Would that be something that you would leave to  
19          the trial or appeal court to sort out after a  
02:06 20          remedy is granted?

21          A       Yes.

22          Q       If we can then go to 003263, again just a couple  
23          of points, I think you ask her about the  
24          flashback, she says:

02:07 25                       "Yeah. It's always the same ... and the





1                   one the church all the time ... it's  
2                   always there."

3                   So you would probe that a bit further; is that  
4                   right?

02:07 5           A           Yes.

6           Q           I'm sorry, that's Mr. Tidsbury.

7           A           That's Gary Tidsbury who questioned her at that  
8                   time.

9           Q           And then the next page, here's where you ask her:

02:07 10                    "Is it possible that it --"

11                   And I think what you are saying what she  
12                   witnessed,

13                   "... shocked you into forgetting?"

14                   She says:

02:07 15                    "I'm not, yeah, I would believe that  
16                   because of the way I am."

17                   Etcetera. So you would have probed a bit to see  
18                   if you could get her to give you some insight  
19                   into an explanation; is that right?

02:07 20           A           Yes.

21           Q           Go to the next page, it looks like you and  
22                   Mr. Tidsbury leave the room for a moment and then  
23                   come back and then Sergeant Tidsbury is going to  
24                   ask questions and basically asked Nichol John to  
02:08 25                   describe the scene in Saskatoon, Tidsbury said



1           lookit, I haven't been there, describe it for me  
2           and draw me a picture; is that right?

3       A       Yes.

4       Q       And what was the purpose of that questioning; do  
02:08 5           you remember?

6       A       I think -- I think Sergeant Tidsbury wanted to get  
7           Ms. Demyen just to express herself in a way that  
8           was perhaps less threatening and so she was having  
9           some difficulty in relaying or speaking about it  
02:08 10          and it may be that drawing a picture has a

11          technique of expressing what she recalled without  
12          maybe the baggage of hearing or having to say it.  
13          It's sometimes used with interviewing young kids  
14          when something bad has happened to them and they  
02:09 15          can't talk about it, but they can draw a picture.

16       Q       And was one of the purposes to see what her  
17          recollection of the area and how that might  
18          compare to the actual scene where the body was  
19          found?

02:09 20       A       I think that was part of it. I think the other  
21          part was just a way of getting her to articulate  
22          it, not verbally, but in some other way which was  
23          perhaps less threatening what it is that she saw.

24       Q       We'll just go through parts of this, here's where  
02:09 25          he asks her to draw the picture and she says:



1 "Like I said, it's at the end of the  
2 alley."

3 Or this flashback of the church was at the end of  
4 the alley. Go to the next page. And then it  
02:10 5 appears, I'll show you the drawing in a minute,  
6 that she's drawing where they are driving:

7 "... if I can remember correctly, we  
8 came off this street here, okay, and  
9 there's, it was a, what you call it,  
02:10 10 like there's a boulevard right there."

11 Came around the corner, and then if you can  
12 scroll down -- actually, go back to the full page  
13 and just enlarge the top, please, and then:

14 "Okay, now, at the end of the alley,  
02:10 15 okay, there's a church, okay ... I  
16 remember seeing brick.."

17 You say:

18 "Put a "C" for church."

19 You'll see that in the drawing in a moment. Next  
02:10 20 page. And then she talks about looking down the  
21 alley and peripheral vision:

22 "I can see my hand over here."

23 And then she says:

24 "Something that ... I can pick, right  
02:10 25 over here..."



1 And I'll show you on the map:

2 "Garbage cans.."

3 "Sticks into my head."

4 And:

02:11 5 "Now this flashback you get of the  
6 scene, does this coincide with the  
7 flashback you've described..."

8 And so she's comparing the flashback versus this  
9 picture in her mind of the church and the alley;  
02:11 10 is that right?

11 A Yes.

12 Q And then the next page, she talks about in the  
13 flashback, she says:

14 "I feel like, around here, is where it's  
02:11 15 happening."

16 I'll show you the map in a moment and see if you  
17 can draw some of this together. And just down at  
18 the bottom, scroll down, it says:

19 "I hear screams. That's what I hear.  
02:11 20 Like, terror ... and I can, in my mind I  
21 can picture her mouth being this big,  
22 just screaming, screaming, hollering."  
23 "That's screams coming from that "X"?  
24 "Right. But I'm already, it almost  
02:11 25 feels like I'm over here."



1 So again, we know there's an "X" and a "C" for  
2 church. And then to page 270, she talks about  
3 something going on around that corner:

4 "... I don't know why, but I can feel  
02:12 5 it."

6 And then I think you talk about counselling.  
7 Then if we can go to the map which is 003274, and  
8 that's your signature, E. Williams; is that  
9 right?

02:12 10 A It is.

11 Q And this would be Nichol's drawing from that day;  
12 is that right?

13 A Yes.

14 Q And am I correct that when she said in the  
02:12 15 transcript we were driving and then we went  
16 around, that this would be -- "X" is where --  
17 actually, maybe you can explain to us, if you can,  
18 what it was she was describing with the "X" and  
19 the "C"?

02:12 20 A The art work isn't the greatest, but the "C"  
21 represents the church which was at the end of the  
22 alley, the "X" represents the location where she  
23 saw the faceless figure astride a woman and the  
24 woman was screaming.

02:13 25 Q And that's where I've circled where the "X" is?



1 A Yes. At the bottom -- just at the other end of  
2 the "C" --

3 Q Sorry, right here?

4 A Yes.

02:13 5 Q Yes.

6 A -- that is the location where the car was located,  
7 where it apparently got stuck.

8 Q And that looks like it's a six on there, is that,  
9 or -- I'm not sure what is written on there.

02:13 10 A It's a figure to represent where the car ended.

11 Q Okay. And then I've circled on the left side of  
12 that lane way I guess, do you know what that,  
13 those drawings would be?

14 A I believe those were the garbage cans.

02:13 15 Q So am I correct that she would have indicated that  
16 they were driving where we have on the far left  
17 side the squiggly lines, that they would drive  
18 around and go into the alley way and where the  
19 bottom of the car is, that's where their car would  
02:14 20 be facing the church, garbage cans on the left,  
21 and where the "X" is on the right where she heard  
22 and/or saw and/or believed the figure was  
23 straddling the woman; is that right?

24 A Yes.

02:14 25 Q Now, can you tell us what impression or what



1 significance that had on you, this drawing that  
2 she made for you about where she believed she was  
3 and what she believed she saw in that alley way?

4 A Well, with the exception of perhaps the location  
02:14 5 of the garbage cans, it was fairly close to the  
6 scene as discovered by the police. It mirrored  
7 the area where Gail Miller's body was found.

8 Q And so prior to this you would have looked at maps  
9 that have been in the Crown or police file of the  
02:15 10 area; is that right?

11 A Yes.

12 Q And is it fair to say that the map that she drew  
13 here for you was very close to the map of what was  
14 put in at trial and evidence as to the church, the  
02:15 15 garbage cans, the location of Gail Miller's body  
16 and the location of the car that Nichol John was  
17 said to have been travelling in; is that right?

18 A It bore some similarities, it bore a striking  
19 similarity. It wasn't an extra replica, but it  
02:15 20 was pretty close.

21 Q Can you tell us what significance if any you  
22 placed on the fact that 20 years later Nichol John  
23 was drawing you what appeared to be a fairly  
24 similar map to what you knew to be the scene of  
02:15 25 the crime back in 1969?



1 A It suggested to me that Nichol had seen the scene  
2 and that it had made such a lasting impression on  
3 her that she was able to reproduce it more or less  
4 a number of years later. It signaled a fairly  
02:16 5 traumatic event that had etched, had been burned  
6 into her memory.

7 Q And so again, the significance of being able to  
8 draw it 20 years later, that had significance in  
9 your mind?

02:16 10 A Yes.

11 Q If we can go back to 003270, the bottom here you  
12 asked her whether she had sought counselling to  
13 help you deal with the flashbacks, and I think you  
14 made an offer to, I think at this point or maybe  
02:16 15 at a later point, did you, to assist her with some  
16 counselling; is that right?

17 A Yes.

18 Q And why did you do that?

19 A She appeared as if she was highly disturbed and to  
02:17 20 the extent that we could assist -- I wasn't  
21 certain at that time whether we could, but I made  
22 the offer because her behaviour made a significant  
23 impression on me.

24 Q Her behaviour made a significant impression on  
02:17 25 you?





1 A Yeah.

2 Q Related to the six --

3 A Not in relation to the 690, it's just that here's  
4 someone who apparently had seen something and, as  
02:17 5 she had described it, it had such an enormous  
6 impact on her that it completely set her off track  
7 in terms of her ability to control her emotions,  
8 her ability to control her hand movements, her  
9 body, she became quite emotional, quite  
02:17 10 overwrought and it wasn't -- I've seen people cry,  
11 but this had some of the elements of  
12 uncontrollable body movements coupled with  
13 emotional activity.

14 Q And did you have any views as to whether you  
02:18 15 thought she maybe had witnessed the murder of Gail  
16 Miller?

17 A It certainly appeared as if she had. She had seen  
18 something.

19 Q Something related to the murder of Gail Miller?

02:18 20 A I think she saw a violent activity. Maybe at the  
21 time she didn't realize, immediately she didn't  
22 realize that a killing had taken place, but I  
23 think later on I suspect that she found out that  
24 the impact of the assault resulted in death and  
02:18 25 she was still trying to come to grips with that.



1 Q If we can go back to 003274, the drawing, if we  
2 can put that up on the right-hand side, and go to  
3 003275 -- put that on the left side and then 275  
4 on the right-hand side. So on the left-hand side  
02:19 5 we have -- actually, are you able to turn the  
6 right-hand document to the right, rotate it to the  
7 right? So on the left-hand side if we compare  
8 Nichol John's drawing and the similarities, I  
9 think here on the right-hand side is the map where  
02:20 10 I put the "C", "X" is where Gail Miller's body is  
11 and where I've circled is the car, and would that  
12 be the similarities that you saw? Actually, the  
13 garbage cans -- just hang on a sec, I better get  
14 it right. I'm not exactly sure, the garbage cans  
02:20 15 I think are somewhere in there, on the left-hand  
16 side and she's got them here. So would that,  
17 would those be the similarities that you observed  
18 at the time, her ability to draw a map that was  
19 very similar to the map that you had of the crime  
02:20 20 scene?

21 A Yes.

22 Q We're done with those. I had asked you earlier, I  
23 think you told us that in the course of the  
24 interview with Nichol John you became aware that  
02:21 25 she had talked to Joyce Milgaard and her lawyer



1 back in '81 and answered a few questions. You  
2 also told me that up until I informed you, I think  
3 recently, that she had actually been interviewed  
4 and a transcript prepared of an interview May 9,  
02:21 5 1981, you were not aware of that; is that right?

6 A That's correct.

7 Q And you've had a chance to review that I think  
8 briefly prior to your evidence here; is that  
9 right?

02:21 10 A Yes.

11 Q And again, just generally, and I'll take you to a  
12 couple of parts of that, having read that, is that  
13 the type of information, the 1981 interview, that  
14 would have assisted you in your 1989 interview of  
02:21 15 Nichol John?

16 A Yes. It certainly would have conditioned my  
17 response to what I observed Ms. John to do.

18 Q And why do you say that?

19 A Well, I was quite impressed by Nichol John's  
02:21 20 ability to reproduce the map, or to draw a map  
21 which had some striking similarities to the map at  
22 trial. I wasn't aware when I interviewed Ms. John  
23 in 1989 that she had had an opportunity to view a  
24 map like that some eight years previously.

02:22 25 Q Okay. If we could go to 048643, please, and go to



1 page -- this is the transcript, if we can go to  
2 048675, please, and I'll just go through this part  
3 with you, Mr. Williams, and have you confirm that  
4 this is the part you are referring to, and this is  
02:22 5 Mrs. Milgaard:

6 "I do. Let me show you something here.  
7 Here's the street. Here's the alley.  
8 Here's the incline where they say you  
9 were stuck. This is the house where  
02:22 10 Gail Miller came from. And the Crown  
11 says she walked down here and down the  
12 street. She walked down here about a  
13 third of the way down the block is when  
14 you people talked to her, asked the  
02:22 15 directions to Pleasant Hill."

16 And then Mr. Leslie, her lawyer:

17 "...back. Cause that's the fact why she  
18 came to see me. So she wouldn't have to  
19 go through..."

02:23 20 Then the next page, scroll down, start here,  
21 please:

22 "The film that we made shows this girl  
23 walking down here. Shows her walking  
24 all the way down the street, someone  
02:23 25 talking to her in a car. It shows what



1 a car would do and how the car could  
2 come down, try to make a U-turn at the  
3 intersection, get hung up, get back here  
4 and end up stuck on the incline up into  
02:23 5 the alley behind the funeral home. This  
6 person would be long gone. If you could  
7 just see it in action. You could see  
8 that by the time the car is down to here  
9 and starting to make the U-turn, the  
02:23 10 person was here, right at the corner and  
11 would be beyond the alley and that  
12 entrance when the boys left the car. So  
13 if in fact David went that way and Ron  
14 went this way, she would have been long  
02:23 15 gone by the time..."

16 And then:

17 "She could have been long gone in a bus,  
18 but if in fact, here's the Church over  
19 here and this is the ah T-shaped alley  
02:23 20 that runs down. If in fact this girl  
21 was in this car that we contend, like  
22 there was a maroon car. It was parked  
23 all night up there."

24 Now, again, we don't have the benefit of the map,  
02:24 25 but there's other evidence that suggests a map,



1 and I believe it may have been the same map that  
2 I just showed you that was attached to the  
3 interview, if not that map, a map very much like  
4 that was shown to Nichol John in 1981, and as we  
02:24 5 see, Mrs. Milgaard went through and described to  
6 her what the evidence was at trial. Is that the  
7 information that --

8 A I think it's fair to say she described the theory  
9 behind the film that they were making.

02:24 10 Q Right, as far as what the Crown had alleged  
11 happened to Gail Miller on the morning of the  
12 murder?

13 A Yes.

14 Q And again, was that information that had you known  
02:24 15 it in 1989 might have influenced your assessment  
16 of the significance of Nichol John drawing the  
17 map?

18 A Yes.

19 Q And in what way?

02:24 20 A Well, instead of believing that this was a recall  
21 from 20 years previous, the fact is this recall  
22 was informed by having had the opportunity to  
23 review in some detail a map of the scene or  
24 similar scene presented some eight years prior, so  
02:25 25 that what it tells me is that the recollection of



1 the map wasn't merely informed by what the witness  
2 remembered of the flashback unaided by any other  
3 aids or guides, she had seen the map, she had seen  
4 it only eight years before instead of 20 some odd  
02:25 5 years before and that the impact on me of having  
6 seen Ms. John draw the map would have been much  
7 less.

8 Q Okay. Now, what about, if we can go back to  
9 048666 --

02:26 10 COMMISSIONER MacCALLUM: What was the doc.  
11 ID, please?

12 MR. HODSON: I'm sorry, this transcript is  
13 048643, is the transcript.

14 COMMISSIONER MacCALLUM: Thanks.

02:26 15 BY MR. HODSON:

16 Q As well, in this transcript, and I will show you  
17 parts of it, I think Mrs. Milgaard says to Nichol  
18 that she has another suspect, and I think at that  
19 time it was maybe Lorne Mahar or maybe Lalonde,  
02:26 20 and says to Nichol John, and I'll find it for you  
21 in a moment, says to her words to the effect that  
22 you may have witnessed a murder, you may have  
23 witnessed this other person commit the crime. Do  
24 you recall seeing that in the transcript, and I'll  
02:26 25 bring it up.



1 A Briefly, yes.

2 Q Let me just find it here. If we can go to 048666.  
3 Actually, sorry, the next page, and this is Mrs.  
4 Milgaard saying:

02:27 5 "So when we came to this other fellow  
6 that was also convicted of a similar  
7 crime at this, his victim was killed by  
8 a paring knife."

9 And I think this was Lorne Mahar who had killed,  
02:27 10 I think, his wife and had actually gone to St.  
11 Mary's church in and around this time, so an  
12 unrelated case, but I think at this time Mrs.  
13 Milgaard, she believed that he was the killer,  
14 saying:

02:27 15 "He heard voices telling him to kill  
16 her, you know. The police didn't find  
17 out about him until after David was  
18 picked up and charged and all the rest  
19 of it. And we are still following  
02:28 20 through on that one. That's why it came  
21 to me in going over the scene of the  
22 crime that in fact maybe you did really  
23 see something and if you did see the  
24 real murder happen, no doubt that's  
02:28 25 what's inside and that's what's





1                   terrifying you. And naturally you would  
2                   have assumed in hearing about a  
3                   purse-snatching, you would have assumed  
4                   it was David. You know. And you  
02:28 5                   woulda, all these years, you felt it  
6                   must have been him. But if you could  
7                   even go through all the transcripts and  
8                   read all the stuff that's there,  
9                   yourself. And that, I mean, it's a  
02:28 10                  terrible experience going back into it  
11                  and I know what I'm asking you to go  
12                  back, that you would see that it was  
13                  literally impossible to have happened  
14                  the way it is there. The time is not  
02:28 15                  there."

16               And she says:

17                        "What time was she killed?"

18               And then goes on, it had to have been in the  
19               morning. Go on to the next page, and:

02:28 20                  "Now from the point of view of logic.  
21                  If you had just murdered a girl two and  
22                  a half blocks away and raped and  
23                  murdered her, would you stop and help?  
24                  I, I'm just trying not to look at it  
02:29 25                  emotionally."



1 "Would you stop and help somebody else  
2 that was stuck?"

3 And then just bear with me for one moment. There  
4 may have been another reference in there. Now, I  
02:29 5 think when I reviewed the transcript, Mr.  
6 Williams, and I stand to be corrected on this, I  
7 don't believe in the 1981 interview by Joyce  
8 Milgaard and Tony Merchant there's any reference  
9 to flashbacks, I don't think there is. I stand  
02:29 10 to be corrected, if I'm wrong on that someone  
11 will tell me. If you would have had this  
12 transcript from 1981 and read no mention of the  
13 flashbacks, which I don't think are in there, and  
14 the suggestion to her that she may have, Nichol  
02:29 15 John may have actually seen another murder,  
16 someone who had committed a murder with a paring  
17 knife in and around the area, commit the murder  
18 and that she must have been terrified, the words  
19 that I read, would that have had any impact on  
02:30 20 your assessment of the significance of the  
21 flashback and the balance of her evidence?

22 A It would certainly have prompted me to question  
23 and to seek some additional advice from a  
24 specialist as to the extent to which the  
02:31 25 descriptors and the vision that was of the scene



1 painted by Mrs. Milgaard might have contributed to  
2 the flashbacks, and certainly one of the questions  
3 I would have then asked is whether Ms. Demyen had  
4 had flashbacks before the interview with  
02:31 5 Mrs. Milgaard, and if so how they -- how did they  
6 compare with the flashbacks after.

7 Q So are you telling us this would be information  
8 that you would put into your set of information  
9 and might cause you to, or would cause you to  
02:31 10 pursue some other lines of inquiry with her, and  
11 in particular whether the 1981 interview might  
12 explain some of the things she said in 1989?

13 A Yes.

14 Q Okay. And I'm not asking you to be a psychiatrist  
02:32 15 or a psychologist, I'm just trying to understand  
16 that if you would have had this information, (a)  
17 would it have informed you more about Ms. John's  
18 evidence?

19 A Yes.

02:32 20 Q And would it have caused you to pursue some other  
21 lines of inquiry?

22 A Yes.

23 Q And (c) would it possibly have caused you to reach  
24 different conclusions than you did?

02:32 25 A There was always that possibility. To the extent



1           that you start opening up other lines of inquiry,  
2           who knows what you'll discover.

3           Q       If we can go to 016120, sorry, 016119 is the doc.  
4           ID.    So this is now November 10th, I think  
02:33 5           November 8th is when you interviewed Nichol John,  
6           this is a memorandum to Bill Corbett from Bernard  
7           Hanssens.   And we know that he is the media guy,  
8           the media --

9           A       Right.

02:33 10          Q       -- official for the Minister's office?

11          A       Yes, he's a special advisor to the Minister, yes.

12          Q       And can we conclude from this that -- actually,  
13          sorry, go to the next page.   This is November  
14          10th, '89 from Mr. Hanssens to Mr. Corbett:

02:33 15                   "Could you please advise when we may  
16                   expect to receive a report in this  
17                   matter.   Thanks."

18          Would this be as a result of a media article, a  
19          media piece would have prompted --

02:33 20          A       It could possibly be.   There had been a series of  
21          articles outlining the application, and the fact  
22          that it had taken a significant amount of time,  
23          and it seems to suggest that Mr. Hanssens had  
24          diarized this date.   Perhaps there had been an  
02:34 25          article that day, or preceding one or two days,



1 and he is following up and requesting; he wants to  
2 know when the department will complete its report  
3 to the Minister for a decision.

4 Q And I think what Mr. Corbett writes here:

02:34 5 "In view of recent publicity we decided  
6 to interview ...",  
7 I'm not sure what that is:  
8 "... additional ...",  
9 thank you:

02:34 10 "... persons involving Milgaard's  
11 counsel (Mr. Justice Tallis) & other  
12 witnesses at the trial. Mr. Williams is  
13 just back from doing this with some very  
14 good results & we'll begin to write the  
02:34 15 case up immediately."

16 Would the "very good results" mean that you had  
17 completed your work; are you able to shed any  
18 light on what --

19 A By November 10th I had just completed interviews  
02:35 20 of Justice Tallis and, more importantly, Deborah  
21 Hall and Nichol Demyen. You will recall that,  
22 previously, I had obtained the report of Pat  
23 Alain, so the interview of Deborah Hall was, at  
24 that time, viewed by us as the last piece of the  
02:35 25 puzzle in relation to the first or the original



1 application, and I was then in a position to  
2 complete the report.

3 Q And if we can go to 016135. This is a November 9,  
4 '89 letter from Pat Alain to you just following  
02:35 5 up, and I think setting out in more detail, the  
6 contaminant sources. Actually, let's just go back  
7 to the top of the letter, please. It says:

8 "In my letter dated Aug. 8/89 I stated  
9 that an "A" antigen source that could  
02:36 10 not be eliminated, or may not have been  
11 eliminated, could be contamination due  
12 to bacteria, soil or other environmental  
13 source. Without S/Sgt. Paynter's notes  
14 available to provide a relative  
02:36 15 condition, or appearance of the exhibit  
16 material, I can only speculate on the  
17 sources of what could provide  
18 "detectable A" antigen or "A"-like  
19 substance. These sources have been  
02:36 20 listed to provide you with all the  
21 information available. It is not  
22 possible to identify the actual source  
23 of the "A" antigen, i.e. whether was of  
24 seminal origin, or of another source, as  
02:36 25 these can exist.



1                   Methods utilized twenty years  
2                   ago were not as sensitive as those used  
3                   today, nor did they identify the  
4                   presence of "H" antigen, which is  
5                   normally found with true "A" antigen.  
6                   An attached reference lists alternate  
7                   sources of "A"-like antigen/substance.

8                   Included in the attachments are  
9                   a variety of references providing  
10                  information on the quantity of ABH  
11                  substances in body fluids and a recent  
12                  curriculum vitae."

13               And so it appears that she sent you some  
14               scientific material -- I won't show them to  
02:37 15               you -- but some materials that would outline the  
16               types of non-human substances that would mimic  
17               the A antigen in contamination; correct?

18           A           That's correct.

19           Q           And then, as well, her CV; would that be something  
02:37 20               for the purposes of your report up to the  
21               Minister?

22           A           Yes.

23           Q           And then if we go to 337474, please, go to the  
24               next page. This was the chronology we referred to  
02:37 25               earlier, and I think here:



1                   "(A preliminary Departmental report was  
2                   prepared in November/December, 1989. It  
3                   was not pursued due to the events  
4                   described below.)"

02:37 5           And I think what you had told us on Monday, that  
6           would have been the Larry Fisher information and  
7           other information that came to light, would that  
8           be correct?

9           A       That's correct.

02:37 10          Q       So would it be correct to say November 1989 you  
11           started to prepare your departmental report which  
12           would summarize all of the facts, your assessment  
13           of the facts, the significance of those facts with  
14           respect to the criteria in Section 690; correct?

02:38 15          A       Yes.

16          Q       And, as well, your advice to the Minister of  
17           Justice?

18          A       That's correct.

19          Q       And I don't want to get into privileged areas, but  
02:38 20           presumably somewhere along the way, when the new  
21           information came to be, the Minister had not made  
22           a decision yet; is that right?

23          A       That's correct.

24          Q       And again, I don't want to get into privileged  
02:38 25           areas, if I am please do not answer, but it





1 appears that, based on some later articles, that's  
2 -- where the Minister says she didn't get the Dr.  
3 Ferris report, are you able to confirm that the  
4 departmental report didn't get to the Minister  
02:38 5 before you started over again?

6 A That's correct.

7 COMMISSIONER MacCALLUM: Before you started  
8 what?

9 MR. HODSON: Started over again.

10 BY MR. HODSON:

11 Q Maybe that's the wrong --

12 A What I think is more accurate, before the  
13 departmental report reached the Minister  
14 additional submissions were made which caused us  
02:39 15 to embark on a new avenue of inquiry in relation  
16 to the Section 690 application of David Milgaard,  
17 in that that new area of inquiry was the  
18 identification of Larry Fisher as the killer of  
19 David -- of Gail Miller.

02:39 20 Q Okay. And the new grounds would render the  
21 previous departmental report incomplete?

22 A That's correct.

23 Q And so "starting over" may be too strong a word,  
24 it may be not?

02:39 25 A It's -- I think we didn't abandon or jettison what



1 had been collected previously, but we did have to  
2 take a look at a ground that was completely  
3 different, and it may have meant looking at file  
4 materials from a slightly different vantage point.

02:39 5 Q Okay. And again, if we can go to 016117. Again  
6 this Bernard Hanssens, another memo, has a memo  
7 from Helene Oulette who is the press secretary. I  
8 take it these would be the types of things where  
9 media reports would prompt requests for you to  
02:40 10 provide briefing notes? Are you able to tell us?

11 A No. I'm not sure what's in Helene Oulette's memo.

12 Q If we can go to the next page, I can show you.

13 A Okay.

14 Q And, actually, if we can go to 004819. December  
02:41 15 8th:

16 "That process is still  
17 continuing, Justice Department spokesmen  
18 Helen Oulette said this week.

19 'No decision has been made.'"

02:41 20 And, with those three documents, am I correct  
21 that media inquiries or media reports were  
22 prompting a chain of events that involved you  
23 providing information to some degree at various  
24 times?

02:41 25 A Yes. Armed this with information, I am able to



1 answer your first question.

2 It appears as if Helene Oulette  
3 was responding to media inquiries, and she  
4 provided a requestor she had informed Bernard  
02:41 5 Hanssens of that, Mr. Hanssens in turn wrote  
6 either to Mr. Corbett or Mr. MacFarlane -- I  
7 believe he wrote to Mr. Corbett -- wanting to know  
8 the status, but more particularly he wanted to  
9 know the results of the recommendations contained  
02:42 10 in the departmental report.

11 By way of explanation, the  
12 report is initially drafted by the investigating  
13 counsel, that's myself; it is then reviewed by my  
14 supervisor, Mr. Corbett; and further reviewed, at  
02:42 15 that time, by Mr. MacFarlane.

16 At the time of Mr. Hanssens'  
17 inquiry, Mr. MacFarlane was in the process of  
18 reviewing the report, Mr. Hanssens was seeking to  
19 find out whether the conclusions or the  
02:42 20 recommendations of the report were positive, for  
21 relief, or negative, against relief.

22 Q So, I see, so he's sending that to Mr. Corbett to  
23 find out about the report Corbett submitted to  
24 MacFarlane?

02:43 25 A Yes.



1 Q And that would be to advise the Minister?

2 A It would be to advise the Minister, or perhaps  
3 Oulette, so that they could determine what the  
4 appropriate press response could be or would be.

02:43 5 Q So this might be some preparatory work to find out  
6 what might end up happening to prepare themselves;  
7 is that correct?

8 A That's fair, yes.

9 Q I see. If we could go to 333328, please. This is  
02:43 10 your letter of December 8th -- I'm sorry, just as  
11 a follow-up, and it looks as though Sergeant  
12 Tidsbury had followed up with Nichol John about  
13 whether or not she wished an investigation into  
14 her allegations in the interview regarding being  
02:43 15 raped, and she said "no"; is that right? That  
16 would be something that would be Sergeant  
17 Tidsbury's doing as opposed to yours; is that --

18 A That's a police matter, not mine.

19 Q And so that would be something he would have  
02:44 20 followed up on and simply informed you of?

21 A Yes.

22 Q 333330, please. This is a letter December 20,  
23 1989 from you back to Superintendent Drake in  
24 Kelowna, and you're thanking him for the work of  
02:44 25 Sergeant Tidsbury, and you say:



1 "More importantly, however, his  
2 personality, intuition and interviewing  
3 techniques were instrumental in  
4 persuading a reluctant interviewee to  
02:44 5 attend, and to disclose relevant facts  
6 which had been repressed for nearly two  
7 decades. This contribution was an  
8 important element because it helped to  
9 complete the factual foundation  
02:44 10 necessary to properly address the issues  
11 raised in this matter."

12 Can you shed some light or elaborate on what you  
13 were referring to here about:

14 "...relevant facts which had been  
02:45 15 repressed for nearly two decades."?

16 A Okay. Knowing what I now know, I would have  
17 revised the text. I was referring to the  
18 flashbacks. It -- the lasting impression I came  
19 away with from the interview was that Nichol John  
02:45 20 had seen something traumatic. What she had seen  
21 seemed to mirror the events surrounding the death  
22 of Gail Miller. What she could not say, she could  
23 not identify who that faceless figure was, but  
24 some of the facts that were recited, at least at  
02:46 25 that time in the flashback, coincided with the



1 facts that the police discovered during the  
2 investigation.

3 When I wrote that I didn't know  
4 that Nichol John had been interviewed eight years  
02:46 5 previously, I also didn't know the extent to which  
6 the facts of the case had been provided to her by  
7 others, and I didn't know the extent to which her  
8 recollection in the flashback had been influenced  
9 by what she had learned from other sources.

02:46 10 Q When you say "other sources" are you referring to  
11 the 1981 interview by Joyce Milgaard and Tony  
12 Merchant?

13 A Yes, and whatever other influences, whether it's  
14 newspaper or other contacts that she may have had.  
02:47 15 When I say:

16 "... it helped complete the factual  
17 foundation ...",

18 we had to ask the question about what she  
19 recalled or didn't recall. The answers weren't  
02:47 20 entirely satisfactory, but that was the best we  
21 could do at the time.

22 Q Okay. If we can go to 333332, please. So I  
23 think, based on the Bernard Hanssens memo that I  
24 showed you, by December the 6th, 1989 are we  
02:47 25 correct that the report had -- you had completed



1           your departmental report, it had been through Mr.  
2           Corbett and was with Mr. MacFarlane?

3           A       At least -- excuse me -- at least with Mr.  
4           MacFarlane. It may have progressed, it may have  
02:48 5           gone further, but I can't tell you if -- that for  
6           a fact, at least with Mr. MacFarlane.

7           Q       And then, here, we have a letter December 22.  
8           It's got:

9                       "Since I got your letter  
02:48 10           saying we can proceed with our family  
11           presentation I've completed quite a bit  
12           of the written part of it. The video  
13           segment of it is yet to be completed.  
14           It will be in two parts. Part one is an  
02:48 15           re-enactment according to the evidence  
16           in the case and part two is my family  
17           and myself talking to you."

18           At what point, or where was, where was the family  
19           presentation fitting in at this time; are you  
02:48 20           able to tell us?

21           A       Well, it wasn't, because we hadn't yet received  
22           it.

23           Q       I will show you a letter in a moment, I think  
24           January 16, 1990 is where you write to Mr. Wolch  
02:49 25           saying "lookit, you've got two weeks, if you've



1 got any more submissions please send them in"; is  
2 that -- would that have been your --

3 A Response to the letter indicating that there was  
4 yet a family presentation to be submitted.

02:49 5 Q And then here, if we can scroll down:

6 "Have you empanelled any  
7 forensic experts to qualify James Ferris  
8 report? If you do not plan to do so, we  
9 will do so immediately."

02:49 10 And:

11 "My common sense suggests this should  
12 have been done a very long time ago to  
13 resolve the question of guilt."

14 And again, we've talked about this yesterday,  
02:49 15 about the con -- did you have concerns that,  
16 again in light of this letter, you would have got  
17 a copy of it I presume --

18 A Yes.

19 Q -- about apparently Mr. Milgaard may have a  
02:50 20 different understanding of what not only your role  
21 was, but what you were doing and had done, than  
22 what you had communicated to his counsel; is that  
23 fair?

24 A Yes.

02:50 25 Q And same answer as previously, that would be a





1 matter that you would leave to Mr. Asper to  
2 address, is that right?

3 A Yes.

4 Q Go to 226239. This is a January 10, 1990 letter  
02:50 5 from Mr. Wolch to you. Do you think by this time,  
6 December '89/January of 1990, that the report was  
7 making it up the ladder in the Department of  
8 Justice, that either Mr. Asper or Mr. Wolch would  
9 have been informed, either by you or someone in  
02:50 10 your department, that that was happening?

11 A That -- that's quite possible, yes.

12 Q Do you have any knowledge as to whether that --  
13 whether you would have said, or whether Mr.  
14 MacFarlane or Mr. Corbett would have told Mr.  
02:51 15 Wolch, for example, that "the investigation is  
16 done, it's going up the ladder"?

17 A I can only speak for myself. I -- I have no  
18 specific recall of telling Mr. Asper that, it's  
19 possible it may have happened, but as I sit here  
02:51 20 today I can't point to any individual conversation  
21 in which that may have come up.

22 Q If he would have phoned you, I think you told us  
23 you had -- would you have frequent contact with  
24 him around this time, December '89, can you give  
02:51 25 us some idea of --



1 A We -- we -- we spoke on a number of occasions,  
2 could be as short as one or two minutes or as long  
3 as 15 or 20 minutes. It wasn't unusual for him to  
4 ask me how it was going and "where are you with  
02:51 5 it" and --

6 Q If you --

7 A And --

8 Q Sorry?

9 A And if he said "where are you with it" I could  
02:52 10 safely say "lookit, David, I've completed my  
11 inquiries and I've drafted a report which is being  
12 reviewed by senior counsel in the department",  
13 and, you know, that -- he was entitled to know  
14 that if he had asked, and that's the kind of  
02:52 15 information that I could safely say to him. And  
16 so "can you give me kind of a hint", I'd say "no,  
17 it's just, you know, mine is just the first rung  
18 in the ladder and it may well be that, when other  
19 counsel look at it, I may be asked to either  
02:52 20 answer certain additional questions or do  
21 additional work", so --

22 Q So, again, you are telling us you have no recall  
23 of that, but if you had been asked the question  
24 that's what you would have answered?

02:52 25 A Yes. I would be guessing if I said "yes, I told



1 him that". It seems to me that it's likely that I  
2 did, but I can't, I can't say that under oath.

3 Q And is it likely that you did because Mr. Asper  
4 frequently called you asking for a status report  
02:52 5 and where things were at?

6 A Yes.

7 Q And so December '89/January 1990 you are saying  
8 probably wouldn't have been any different; is that  
9 a fair --

02:52 10 A That's fair.

11 Q -- summary of what you are saying?

12 COMMISSIONER MacCALLUM: How frequent was  
13 that, sir?

14 A Once every couple months I'd get a call "where are  
02:52 15 you at".

16 COMMISSIONER MacCALLUM: Okay.

17 BY MR. HODSON:

18 Q Again, just go through parts of this letter, it  
19 says:

02:52 20 "It has always been our wish  
21 to provide your Department with as full  
22 and complete information and evidence as  
23 possible under the circumstances.  
24 However, it may well be the case that  
02:52 25 our application should be augmented by



1 other materials such as the reports of  
2 other experts and a videotape  
3 re-enactment of the Crown's theory to  
4 demonstrate the implausibility of the  
02:53 5 Crown's case. Unfortunately, we simply  
6 cannot afford to embark on these  
7 potentially expensive matters.

8 If you are contemplating  
9 re-opening the case, then we might be  
02:53 10 able to apply for legal aid pursuant to  
11 Section 684 of the Criminal Code. It  
12 would seem though that this Section  
13 would not apply until the matter has  
14 been referred to a Court of Appeal. If,  
02:53 15 however, there is still some doubt as to  
16 whether your Department will take action  
17 on this matter, we would appreciate your  
18 giving consideration to providing Mr.  
19 Milgaard with some financial support so  
02:53 20 that he can provide you with further  
21 information that could be critical to  
22 your decision."

23 Can you tell me, what was your understanding of  
24 what this letter was saying and asking, and can  
02:53 25 you tell us what your response was?



1 A Well, the impression I had was this was a fishing  
2 expedition. On the one hand, if we came back and  
3 said, you know, "you're not getting any remedy",  
4 then he was asking for assistance in further  
02:54 5 developing the grounds. If, on the other hand, a  
6 remedy were forthcoming, then that would put it  
7 back into the courts, and that would qualify for a  
8 consideration for Legal Aid.

9 I think our response was  
02:54 10 "lookit, if you have further information to  
11 provide that's important to the decision of the  
12 Minister, let us know, we'll run with it", and I  
13 think that was the thrust of the response that was  
14 generated as a result of this letter.

02:54 15 Q What about this comment:

16 "However, it may well be the case that  
17 our application should be augmented by  
18 other materials such as the reports of  
19 other experts ...";

02:55 20 how did you, again given your role as the  
21 investigator for the Minister, what -- how did  
22 you approach that request?

23 A It seemed to signal that there was yet additional  
24 information that ought to be considered by the  
02:55 25 Minister and it may cause us to, shall we say,



1 hold up in terms of making a decision. Because  
2 why else, why would you, why would you raise that  
3 unless there was something out there.

4 I mean the video tape of the  
02:55 5 re-enactment is one thing, I wasn't concerned  
6 about that because that's essentially re-arguing  
7 the case at trial, but:

8 "... augmented by ... materials such as  
9 the reports of other experts ...";

02:55 10 what other experts, and --

11 Q Would you have expected that, if there was  
12 information of this nature, that it would have  
13 been provided with the application?

14 A Well, either provided with the application, or  
02:56 15 there was -- would be a clear signal to us that  
16 there is a concern in this area, or that there's  
17 this type of evidence that they say might have  
18 affected the result, and if they don't have the  
19 resources to investigate it at least they could  
02:56 20 signal to us, in a general way, what was the  
21 nature of the concern and we could consider that  
22 as one of the grounds for investigation.

23 Q Let me give you an example. If, for example, they  
24 would have said in the application that "we  
02:56 25 believe, as a ground, DNA testing can be done that



1 can exclude David Milgaard as the perpetrator, we  
2 do not have the money nor do we have access to a  
3 lab to do that but we think that would be  
4 something that would assist, would you please  
02:56 5 consider doing that"; is that the type of thing  
6 that you would think would be appropriate?

7 A Yes.

8 Q Is that what you were referring to, "if there is  
9 something there that you have" --

02:57 10 A Yes.

11 Q -- but is it fair to say that you need the seed,  
12 you need the idea, you need the direction from  
13 them before you can consider whether you are going  
14 to go do it?

02:57 15 A Yes.

16 Q Similarly, if they said for example that "witness  
17 X we think, if contacted by an investigator, might  
18 be able to give information that is favourable to  
19 our application, we can't afford an investigator,  
02:57 20 will you go out and investigate this person"; is  
21 that the type of thing that, similarly, you might  
22 be inclined to do?

23 A Certainly, I would explore that to find out what  
24 it is the anticipated witness X could provide and  
02:57 25 how that would --



1 Q Recantation, let's say?

2 A -- yeah, recantation -- witness X was a  
3 significant trial witness, yes, or if witness X  
4 was a witness who gave significant or  
02:57 5 incriminating evidence at trial that, if changed,  
6 could have affected the result today, yeah, we  
7 would look at it.

8 Q Now, again, would you -- let's contrast that with  
9 what I think is the request here, is "give us some  
02:58 10 money or funding so that we can go out and pursue  
11 these resources so that we can decide whether or  
12 not we use them to augment our application"?

13 A You would only augment the application if I  
14 signaled to you that your application was  
02:58 15 deficient and I just, in conscience, couldn't do  
16 that.

17 Q And so I think you said you viewed this as a  
18 fishing, a bit of a fishing expedition, to try to  
19 get you to signal to them --

02:58 20 A Which way the recommendation might be.

21 Q If we can go to 157037. This is your response,  
22 January of 1990, you say:

23 "The fact gathering aspects

24 of Mr. Milgaard's section 690

02:58 25 application to the Minister of Justice





1 has been completed. However, if there  
2 are additional relevant facts that you  
3 wish to bring to the Department's  
4 attention, kindly do so within the next  
02:59 5 2 weeks. You may wish to identify to us  
6 specific sources of information you  
7 believe are relevant to the application.  
8 If necessary, the appropriate action can  
9 be undertaken."

02:59 10 And would that latter part that I read be what  
11 you were referring to; "lookit, if you can't go  
12 get it tell us specifically what it is and, if  
13 necessary, appropriate action can be undertaken"?

14 A Yes.

02:59 15 Q This is probably an appropriate spot to break for  
16 the afternoon.

17 (Adjourned at 2:59 p.m.)

18 (Reconvened at 3:18 p.m.)

19 BY MR. HODSON:

03:18 20 Q 157037, back up, please. Again, would this  
21 letter, we looked at this before the break, the  
22 January 16th letter, would this be the letter that  
23 was intended to either force the family  
24 presentation to be submitted or, if they didn't,  
03:18 25 allow you to say okay, well, we asked for it, you



1 didn't send it in; is that a fair read of that?

2 A My intention was to give what I thought was a  
3 reasonable period of time, two weeks, to get  
4 whatever submissions that they may have been  
03:19 5 working on into us, or at least to signal to us  
6 that additional things were coming and, if so, to  
7 get some indication as to the time frames.

8 Q Is it correct to say that at least based on media  
9 reports, you were being pressured to get the  
03:19 10 decision sooner rather than later?

11 A Yes.

12 Q And so if you would have had a response to this  
13 letter saying lookit, we, the applicant, need more  
14 time, you would have obliged; is that fair?

03:19 15 A Yes.

16 Q 212960, this is a letter, I think this is where we  
17 first see John Harvard enter the picture, January  
18 16, 1990, he writes to the minister:

19 "Whatever you can do to expedite this  
03:20 20 case, Mr. Minister, would be welcomed by  
21 the family."

22 We talked about the impact that media stories, or  
23 where people on behalf of David Milgaard went to  
24 the media to solicit help and you talked about  
03:20 25 the impact that had on your job. Did the fact



1           that members of parliament were being involved,  
2           and I think what Mr. Asper and Mrs. Milgaard have  
3           told the Commission is that they were being, at  
4           least with Mr. Harvard, being used to assist to  
03:20 5           put pressure on the minister and to put pressure  
6           on you. I would like your perspective on that.  
7           Can you tell us what effect if any did the fact  
8           that politicians now are raising the issue with  
9           your client, the minister, have on your work?

03:20 10          A       I was asked to provide briefings to the minister  
11           in response to requests from politicians.  
12           Certainly when a sitting member writes to a  
13           minister, the protocol is for a response, so  
14           certainly a response would be drafted for the  
03:21 15           minister to consider, and secondly, when a sitting  
16           member and a member of the opposition raises such  
17           an issue by letter, you can fully expect that  
18           there will be a question in question period in the  
19           House in the short to medium term, so you would be  
03:21 20           asked to provide additional briefing materials for  
21           the minister to adequately respond in the House.  
22           It was curious that on the one hand certain  
23           members of the family were promising additional  
24           submissions to complete the application, while on  
03:21 25           the other hand other members of the family were



1           contacting the politicians for a speedy decision.

2           It was either the application was complete or it

3           was not. If it weren't complete, then hopefully

4           my letter of that date was designed to have the

03:22 5           application completed so that a decision could be

6           taken.

7           Q       And so was it a case of your client, the minister,

8           or people in that office, saying to you, lookit,

9           we're getting pressure, why haven't you done your

03:22 10          job, the applicant is pressuring us and people on

11          his behalf, and your response is, well, the

12          applicant has told us his application isn't

13          complete yet?

14          A       Correct.

03:22 15          Q       And similarly -- okay. And so again you gave us

16          evidence yesterday about the fact that when

17          matters appeared in the media, they required your

18          time and attention to brief the minister, and that

19          was time taken away from where you could have done

03:22 20          work with respect to the application; correct?

21          A       Yes.

22          Q       Would the same apply to members of parliament

23          raising the issue on behalf of David Milgaard with

24          the minister, similarly would that cause you to

03:23 25          have to respond and take time away that you



1 otherwise might spend investigating the  
2 application?

3 A Yes.

4 Q Go to 159877, this is January 22, 1990, a story by  
03:23 5 Dan Lett, and I take it you became familiar, or  
6 you were at this time, with Dan Lett?

7 A Yes.

8 Q And what was your understanding of who he was and  
9 how he was involved in this matter?

03:23 10 A Mr. Lett was then, I'm not certain if he's still  
11 there, a reporter with the *Winnipeg Free Press*.  
12 He had taken an active interest in the story and  
13 had published a number of news reports relating to  
14 various aspects of the story. He had followed --  
03:24 15 my sense was that he was a reporter who was  
16 sympathetic to the cause and who had been provided  
17 with certain information, for example, the news  
18 story about the Ute Frank statement and he had  
19 seemingly ready access, at least to Mr. Asper, for  
03:24 20 a number of quotes dealing with various aspects of  
21 the application. Most of the time the story line  
22 was why is it that you've taken so long to make a  
23 decision or come to such a decision in light of  
24 the compelling evidence that's been put forward in  
03:24 25 support of the application.



1 Q Did you -- was your perception that he was  
2 somewhat of an advocate then on behalf of either  
3 Mr. Asper or Mr. Milgaard at some point?

4 A You may call it advocate, he was very sympathetic  
03:24 5 to the cause, and some might argue that although  
6 the reports were in the guise of reporting, it was  
7 more or less an argument or an opinion in a number  
8 of respects.

9 Q The bottom refers to Mr. Asper, the bottom, it  
03:25 10 says:

11 "Asper, who has worked with the family  
12 for two years to gain Milgaard's  
13 release, said the report of forensic  
14 specialist Dr. James Ferris proves  
03:25 15 Milgaard could not have committed the  
16 murder."

17 And I think we've touched on that. You took  
18 issue with that position I take it?

19 A I think we all know now that such a statement  
03:25 20 overstates the value of Dr. Ferris' report and Dr.  
21 Ferris, when he spoke with me, admitted as much.

22 Q Can you tell us again, and we touched on this  
23 yesterday, the concern about this information  
24 being in the public, here's Mr. Milgaard's lawyer  
03:26 25 saying we have an expert report that proves his



1 innocence, your view at the time was that's not  
2 correct, but you felt constrained to go out in the  
3 public and say lookit, Dr. Ferris' report says no  
4 such thing, and again, can you comment upon what  
03:26 5 concerns you would have about this type of  
6 information being there without your view or the  
7 Federal Justice view of the other side?

8 A Federal Justice can't speak for the minister.  
9 Federal Justice can advise the minister. Federal  
03:26 10 Justice would advise the minister at the  
11 conclusion of the application. Since we had every  
12 reason to believe that the application was not  
13 concluded, it would be premature to respond  
14 publicly to that. We couldn't because the only  
03:26 15 person who could respond in our view was the  
16 Minister of Justice.

17 Q And when the minister did respond in February of  
18 1991, and we'll deal with this in more detail  
19 later, I think what we've seen in the record, that  
03:27 20 at least over the course of probably 12 or 14  
21 months many news articles that repeated this  
22 comment attributed to Dr. Ferris and to Mr., to  
23 Asper from time to time, that his report proves  
24 David Milgaard's innocence, and was that a concern  
03:27 25 when the decision came out, that the minister did



1 not grant the remedy, yet the media had been  
2 reporting for months that you had an expert report  
3 that proved his innocence?

4 A Yes. It became more or less a mantra and  
03:27 5 sometimes if you repeat it often enough it has a  
6 ring of truth, particularly where it's not  
7 publicly contradicted, but as I tried to explain,  
8 we weren't in a position to publicly contradict it  
9 at that time.

03:27 10 Q And then it says:

11 "However, all attempts to get the  
12 Justice Department to reveal its opinion  
13 on Ferris's report have been stymied.

14 "It's clear that the department  
03:28 15 is taking this very seriously," Asper  
16 said, "but either Ferris is right or  
17 he's wrong. If he's right, then David  
18 should be free."

19 "If they've got bad news, then  
03:28 20 let's have it. If they've got good  
21 news, then let's have that. The whole  
22 process has been very frustrating."

23 And I'm wondering if you have a comment on that?

24 A If Ferris were right and there was a basis to  
03:28 25 provide a remedy, it wouldn't have taken 14





1 months, it would have been done as soon as that  
2 became quite clear.

3 Q If on August 8th, 1989 Patricia Alain came back  
4 and said I concur with Dr. Ferris' opinion, it  
03:28 5 proves David Milgaard is innocent --

6 A We would be then taking steps to achieve a remedy.

7 Q Go to 226241, please. So this is now -- I think  
8 Mr. Wolch wrote to you on January 10th, you were  
9 back on January 16, this is now January 23rd, and  
03:29 10 this is Mr. Asper responding to your letter about  
11 further submissions, and he says:

12 "In our letter to you of January 10,  
13 1990, we raised the possibility of  
14 augmenting the application of Mr.  
03:29 15 Milgaard pursuant to Section 690. In  
16 general, it is virtually impossible to  
17 know what might be uncovered, had we  
18 been provided with funds that would have  
19 enabled us to broaden the scope of our  
03:29 20 investigation to date."

21 And again, I wonder if you could comment on that.  
22 How did you view that statement?

23 A I didn't quite know what to make of it. I mean,  
24 this is 1990. They had had the application for  
03:30 25 four years. It's virtually impossible to know



1           what might be uncovered. I mean, the applicants  
2           had chosen a course of action identifying the  
3           things that, following their research, they felt  
4           merited consideration by the Minister of Justice  
03:30 5           under Section 690. It just seemed as if what they  
6           were asking for were funds to conduct a fishing  
7           expedition into various aspects of the case and  
8           that's not the purpose of Section 690 of the code.

9           Q           It then goes on to say:

03:31 10                    "However, we are convinced that a  
11                    physical portrayal of the Crown's theory  
12                    of the case discloses the implausibility  
13                    of the theory at trial. While we  
14                    appreciate that this is not in the form  
03:31 15                   of "fresh evidence", this type of  
16                    information, along with the report of  
17                    Dr. Ferris and the Affidavit of Deborah  
18                    Hall would seem to strengthen the  
19                    application."

03:31 20           And I take it from what you've told us, that the,  
21           the suggestion that the Crown's theory of the  
22           case discloses the implausibility of the theory  
23           at trial was a non-starter under Section 690  
24           because the jury concluded otherwise?

03:31 25           A           That's a matter for the jury to decide and they



1           decided the 690 process is not an opportunity to  
2           argue or to put forward a position different from  
3           or differently than that argued at trial absent  
4           any new or fresh evidence that, you know, wasn't  
03:31 5           considered by the trier of fact.

6           Q       And am I correct, Mr. Asper talked about the  
7           notion that if he could get some new evidence to  
8           get in the door to at least allow you to look at  
9           the rest of the proceedings, that he used Ferris  
03:32 10          or Hall as new evidence as an opener, then go in  
11          and say okay, now that I've got your attention,  
12          look at the Crown's theory, it's not plausible,  
13          and would that be a misunderstanding of Section  
14          690, at least according to your view of how it was  
03:32 15          applied?

16          A       Yes.

17          Q       And elaborate, please.

18          A       By raising or framing the Ferris opening as new  
19          evidence and framing Deborah Hall's affidavit as  
03:32 20          fresh evidence, yes, you do get in the door, we do  
21          look at it, but we look at it in relation to  
22          determining whether in fact this fresh evidence  
23          merits further consideration by the court.  
24          Getting in the door and getting a review on those  
03:33 25          points doesn't entitle you or enable you to



1 re-argue the case --

2 Q To the minister?

3 A -- to the minister as you might have wanted to at  
4 trial had you been the trial counsel. If, on the  
03:33 5 other hand, you say, well, during my research I  
6 pinpointed these two matters, but in addition to  
7 that there are two others that we say may also  
8 provide a basis but we didn't elaborate during the  
9 course of our submissions but we want to bring it  
03:33 10 to your attention, that was certainly doable, but  
11 despite our requests, and I think my letter of the  
12 16th was designed to find out what else was being  
13 contemplated as potential ground, despite those  
14 requests we got nothing in response, or when I say  
03:34 15 nothing, I mean, this is, it's virtually  
16 impossible to know what might be uncovered.

17 That's true, but we don't have limitless resources  
18 to go fishing to find out what might be uncovered.

19 Q We've now heard evidence, Mr. Williams, from 1981  
03:34 20 to 1983, Joyce Milgaard and Peter Carlyle-Gordge  
21 interviewed a number of witnesses, including Ron  
22 Wilson, Albert Cadrain and Melnyk -- or pardon me,  
23 Mr. Lapchuk and a number of other people, and I  
24 think you are generally aware of those interviews;  
03:34 25 is that correct?



1 A I am now, yes.

2 Q And is it fair to say, and I will deal with this  
3 more specifically later, is it fair to say that  
4 you were not aware that those interviews had been  
03:34 5 conducted for the most part and transcripts  
6 obtained until I made you aware, or we made you  
7 aware as part of giving evidence here?

8 A Yes. If I can explain, when I spoke with some of  
9 the witnesses, notably Mr. Lapchuk and  
03:35 10 Mr. Cadrain, I had learned that they had spoken or  
11 had been approached by Mrs. Milgaard. What I  
12 wasn't aware of was the extent of the contacts and  
13 I wasn't aware of the types of material that Mrs.  
14 Milgaard may have acquired or developed as a  
03:35 15 result of those contacts in terms of tapes or  
16 transcripts or additional materials.

17 Q And so, for example, we have had before this  
18 Commission two interviews of Ron Wilson, January  
19 of 1981, April of 1981, and I'll deal with them in  
03:35 20 more detail later, where she questioned him about  
21 the trial and his evidence, and those interviews  
22 have been characterized differently by different  
23 people, but would that be the type of information  
24 that you might be looking for in your January  
03:36 25 16th, 1990 letter?



1 A Yes.

2 Q And if you would have got here's a response of  
3 saying lookit, you want information, here's a box  
4 of interviews we conducted of various people, this  
03:36 5 might be helpful -- or maybe even a bit more  
6 specific, here's 10 interviews of 10 key people,  
7 we think that these people may have information  
8 that might tend to show a miscarriage of justice,  
9 you should go talk to them and figure out if it  
03:36 10 does?

11 A Armed with that request, I would go back and say  
12 what aspect of their discussion are you signaling  
13 or suggesting was wrong. We know that perhaps  
14 there were six or eight key witnesses at trial and  
03:36 15 yes, if you identify Ron Wilson, what are you  
16 saying about Wilson, what aspects of his testimony  
17 is now subject to challenge, is it a recant, are  
18 you suggesting that there's something else that he  
19 held back or maybe that had been amplified. We  
03:37 20 would need to focus on the specific complaint  
21 about the testimony and relate that to a ground  
22 under 690 before we would move. Certainly it  
23 would have been helpful in this case once the June  
24 4th, 1990 statement of Wilson was received to have  
03:37 25 also received the other interviews that had been



1 conducted, but the June 4th statement was focused,  
2 it essentially said this is recant, that certain  
3 pressures were brought to bear on this witness,  
4 this is an important trial witness to testify in a  
03:38 5 certain way when his own independent recollection  
6 of the facts signaled that that was not the truth,  
7 that is a focus that we could take, but merely  
8 giving us a box of stuff and saying go out and  
9 check it out, we wouldn't do that unless we were  
03:38 10 able to refine the search.

11 Q If it had been, for example, here's an interview  
12 of Ron Wilson, or two interviews in 1981, based on  
13 the information in those interviews we think that  
14 his evidence at trial may not have been correct  
03:38 15 and he may now be in a position to recant some or  
16 all of that, and I think you've told us a  
17 recantation would be a ground; is that correct?

18 A Yes.

19 Q Here it is, will you go out and investigate,  
03:38 20 either we don't have the money to hire an  
21 investigator to talk to him or you go talk to him,  
22 is that something that you would be inclined to  
23 do?

24 A Yes.

03:39 25 Q And you would go out and interview Ron Wilson with



1           that information and test to find out whether he  
2           was now saying something different than he said at  
3           trial?

4           A       Yes, and if so, what it was.

03:39 5           Q       Similarly, with Albert Cadrain, if it had been  
6           information that said here's some information we  
7           gathered in 1983 that suggests Mr. Cadrain  
8           suffered from psychological or mental problems  
9           either around or after the time of trial that may  
03:39 10          suggest his evidence at trial may not have been  
11          reliable, this may be new information about his  
12          condition, is that something again that would be  
13          the type of information that you would pursue?

14          A       Yes.

03:39 15          Q       If we could go back to the letter here just at the  
16          bottom, it says:

17                   "Other than the aforementioned, we  
18                   cannot be more specific except to say  
19                   that if your Department requires more  
03:39 20          information in order to favourably  
21          consider the application under Section  
22          690, we would certainly want the  
23          opportunity to submit same with funding  
24          provided by your office."

03:40 25          And this is a bit similar to what's stated





1 earlier. What was your reaction to that  
2 statement and/or request?

3 A It would be a non-starter.

4 Q Is it this, is it saying lookit, if we're not  
03:40 5 going to make it, can you give us some money so we  
6 can find out something that will cause you to  
7 re-open?

8 A Yes.

9 Q Is that how you viewed it?

03:40 10 A That's how I viewed it.

11 Q And as far as your -- as far as your role under  
12 Section 690, you say it's a non-starter, that's  
13 not something that's contemplated by --

14 A It's not contemplated by Section 690. It's not a  
03:40 15 grants and contribution section of the department  
16 to develop areas for Section 690 work. Either  
17 we've discovered it, can identify it and let us  
18 run with it, but if it might be out there if you  
19 gave us some money, I'm sorry, that --

03:41 20 Q From your perspective then, when I say your, you  
21 are saying this is how Section 690 works, the  
22 responsibility to provide -- if in fact this is a  
23 concern that Mr. Asper expresses, if I haven't got  
24 enough information it's only because I don't have  
03:41 25 the resources and my client is innocent, and if I



1 don't have enough to get a remedy then I need some  
2 help, I need some resources so that I can go out  
3 and find it, and I also need from you or from  
4 somebody to tell me what I need to find because my  
03:41 5 client is innocent, and is your response to that,  
6 well, that is your responsibility as his counsel  
7 to figure it out as to where to get the funds,  
8 whether it's Legal Aid or otherwise and how you  
9 arrive at those, as opposed to going to the  
03:41 10 minister and saying help me with money and help me  
11 come up with the grounds; is that fair?

12 A I think the latter is fair, but if we break down  
13 the case, the case focuses on the testimony of  
14 Nichol John, as she then was, Ron Wilson, Albert  
03:42 15 Cadrain, the circumstantial evidence and, if you  
16 want to discuss it because it was presented by the  
17 Crown, the forensic evidence. If there are  
18 problems in the case, it's going to focus in on  
19 two or three areas and we knew that one of those  
03:42 20 areas had been addressed, that's the Melnyk and  
21 Lapchuk about the reenactment, we knew that the  
22 scientific evidence, to the extent that it was  
23 adduced, was also addressed. What was left was  
24 whether or not the testimony of Ms. John, as she  
03:42 25 then was, Ms. Demyen, Mr. Wilson, Mr. Cadrain, was



1           assailable. What was left?

2                       Now, what had been argued was  
3           the implausibility of Nichol John's statement to  
4           the police, but for me that was a non-starter  
03:43 5           primarily because the essential part of it she did  
6           not adopt at trial, so that didn't form part of  
7           the transcript.

8           Q       Were you surprised that the evidence of Albert  
9           Cadrain and Ron Wilson was not addressed in the  
03:43 10           original application?

11          A       No, I didn't -- I didn't make any assumptions as a  
12           result of their inclusion or exclusion.

13          Q       If we can go to 333547, and go to the next page,  
14           this I think is a January 22, 1990 newscast, I  
03:44 15           think it's a CBC *Newsworld* story, and if we can go  
16           to the next page. I take it this is something  
17           that would have been brought to your attention?

18          A       Yes.

19          Q       There's a question here where Mr. Asper talks to  
03:44 20           the CBC, if we can go to the next page, and this  
21           comment here:

22                       "Well, there was a very confusing issue  
23                       at trial about semen samples that had  
24                       been found at the scene of the crime,  
03:44 25                       and the attempts by the experts at that



1 time to type the blood of the donor of  
2 the semen. And it got very confusing  
3 and I assume that the technology was  
4 pretty new at the time. And the  
03:44 5 evidence that we have now is that the  
6 evidence used at the trial to convict  
7 Milgaard... you know, the Crown at the  
8 time tried to suggest that the semen  
9 belonged to Milgaard. But the evidence  
03:45 10 that we have now says that in fact what  
11 we know today excludes Milgaard."

12 A couple of questions here, that would you, did  
13 you take issue with what Mr. Asper said as far as  
14 what, both what the Crown suggested at the time  
03:45 15 of trial and the effect of Dr. Ferris' report?

16 A My reading of the entire trial transcript signaled  
17 to me that while the Crown hoped that its evidence  
18 would be able to link David Milgaard to the semen,  
19 the evidence that was adduced in fact did not do  
03:45 20 so and the Crown did not take the position that  
21 the semen belonged to Milgaard at the conclusion  
22 of that phase of the evidence, so the initial  
23 assumption that is being advanced as a fact I took  
24 issue with.

03:46 25 Q And that's something that I think, and I will show



1           you some of these later on in articles about the  
2           semen, that it was characterized by Mr. Asper and  
3           others in the media as being evidence that was  
4           linking David Milgaard to the crime and used to  
03:46 5           convict him and you are telling us that you had a  
6           different view of the transcript on that issue?

7           A           Yes.

8           Q           And were you informed in your view by what  
9           Mr. Tallis told you?

03:46 10          A           Yes.

11          Q           If we can go to the next page --

12          A           If I can respond to the second last --

13          Q           Oh, sure.

14          A                        "But the evidence that we have now says  
03:45 15                       that in fact what we know today excludes  
16                       Milgaard."

17               That evidence could only be the, at that time,  
18               the report of Dr. Ferris, and based on the  
19               material I had gathered by January 22nd, 1990, it  
03:46 20               signaled that Dr. Ferris' opinion could not be  
21               read as far as Mr. Asper would have liked it, in  
22               that Dr. Ferris' view was mistaken when he  
23               concluded that the evidence excluded David  
24               Milgaard.

03:47 25          Q           And that would be on the assumptions of no



1           contamination and that David Milgaard is a  
2           non-secretor?

3           A       Yes.

4           Q       Go to the next page, the comment here, he says:

03:47 5                       "We've submitted the application 13  
6                       months ago. We know that the Department  
7                       of Justice has conducted some  
8                       investigation to the extent that they've  
9                       been in Saskatchewan and they've  
03:47 10                      interviewed a number of people. But  
11                      beyond that we really don't know where  
12                      we stand. We don't know what they're  
13                      doing. We don't know, for example,  
14                      whether they have assessed the opinion  
03:47 15                     of Dr. Ferris, and determined whether  
16                      it's true."

17           And let me just pause there and ask for your  
18           general response to that.

19           A       Well, this statement appears -- I don't know if  
03:48 20                   the, if this was a delay transmission, but this  
21                   was January 22nd.

22           Q       I think, sorry, if we can just go back to the  
23                   previous page, the fact that he says 13 months, I  
24                   think it is January of 1990, I think the date is  
03:48 25                   January 22, 1990.



1           A           Yes. I had written to Mr. Asper or to the firm on  
2                       January 10th I believe, or thereabouts, either the  
3                       10th or the 16th, I'm not certain as I speak now,  
4                       basically indicating that we had completed our  
03:48 5                       examination, our inquiries, and what that was  
6                       signaling was that whatever work we needed to do  
7                       in relation to the two grounds that had been  
8                       advanced, or the grounds that had been advanced,  
9                       we had completed it, so we don't know where they  
03:48 10                      stand. He's quite right, I didn't signal to him  
11                      which way we were leaning in terms of a  
12                      recommendation and we don't know what they are  
13                      doing. Well, at that moment there was an  
14                      outstanding request for tell us if you have  
03:49 15                      additional materials, because as far as we're  
16                      concerned, we've completed our initial work on  
17                      this, not only our initial work, but our  
18                      investigative work and we're ready to move it on  
19                      to the minister, so it's a little disingenuous to  
03:49 20                      say, you know, we're completely in the dark.

21           Q           Now, the next page, we don't know, for example,  
22                       whether they have assessed the opinion of Dr.  
23                       Ferris and determined whether it's true. Your  
24                       comment on that as to whether or not you would  
03:49 25                      have advised Mr. Asper or Mr. Wolch in some form



1 or another that you had assessed or looked at Dr.  
2 Ferris' opinion?

3 A I don't believe I directly said lookit, we have  
4 assessed it. I may have said that we've referred  
03:50 5 it to experts for their views on it, but if I were  
6 to say, "hey, look, we've assessed it," the next  
7 question is, "well, what did you think?" I can't  
8 tell you.

9 Q At this time, I'm going to ask you this question a  
03:50 10 bit later on as we get into more of the first  
11 application, you talked yesterday about the  
12 incident with the Ute Frank statement going to the  
13 media?

14 A I did.

03:51 15 Q Did that cause you to be more guarded in what  
16 information you may have subsequently shared with  
17 Mr. Asper?

18 A Yes.

19 Q And is it fair to conclude, from that, that you  
03:51 20 would have given him less information than you  
21 otherwise would have had the Ute Frank statement  
22 not found its way into the newspaper?

23 A Yes.

24 Q Are you able to give -- to shed any light or  
03:51 25 elaborate on what more information you might have





1 provided to him had the Ute Frank incident not  
2 occurred?

3 A No, I -- I -- I can't tell you what I might have  
4 or could have. It would be speculation on my  
03:51 5 part.

6 Q But is it fair to say that you shut down  
7 communication more or less?

8 A Certainly, I wouldn't say I shut it down, but I  
9 was more cautious in terms of the timing and the  
03:51 10 circumstances of those communications.

11 Q And 157042. Sorry, just on that news article,  
12 again I take it that that would be something that  
13 would prompt a media briefing and cause you to  
14 respond to what was dealt with in that story?

03:52 15 A Yes, this is a program that would have been aired  
16 across Canada, and certainly would have generated  
17 interest in the Minister's office.

18 Q If we can then go to 157042. This is your letter  
19 back to Mr. Asper from the January 23 letter, and  
03:52 20 I note it's simply:

21 "I acknowledge and thank you for your  
22 letter ...",  
23 so that would be the extent of your response?

24 A Yes. They had been, the firm had been  
03:52 25 specifically requested in my earlier letter, "tell



1 us where you would like to go or identify some of  
2 the areas that are still troublesome", and the  
3 response was "we'd like to re-argue the facts of  
4 the case", well there wasn't much we could do.

03:53 5 Q If we can go to 054119, please. This is a, I  
6 think the date of this is February 4, 1990, and I  
7 think it is a radio telecast, CBC "Sunday  
8 Morning", A Documentary on David Milgaard.

9 COMMISSIONER MacCALLUM: When was it dated?

03:53 10 MR. HODSON: February 4, 1990.

11 BY MR. HODSON:

12 Q And you will see:

13 "Twenty years ago this week, David

14 Milgaard ... was convicted ...",

03:53 15 and I have a note here from another source that  
16 it was February 4, 1990. And, again, would this  
17 be -- would it be fair to say that this, this  
18 would find its way to you in one form or another,  
19 this type of media report?

03:53 20 A Yes.

21 Q If we can go to page 054129. And this is after  
22 talking about the motel room incident, it now --  
23 and actually on the radio report I think it's  
24 Deborah Hall's voice, she says:

03:54 25 "He was fluffing up the pillow, he



1 flipped it behind his back and he laid  
2 back on the bed. He did, he, he, he  
3 said yeah, sure and then he went through  
4 this little, thing as he was fluffing up  
03:54 5 this pillow, yeah right, I, you know,  
6 stabbed her and whatever, but, I didn't  
7 feel at all like it was a serious  
8 remark, at all."

9 And the next page, and then it goes on to say:

03:54 10 "... I just don't agree with what they  
11 said."

12 She's referring to Melnyk and Lapchuk:

13 "... that's not what I saw, that's not  
14 what I heard. You know, it, it just  
03:54 15 doesn't sit right with me, like that  
16 these guys would say that he had enacted  
17 this horrible murder and admitted to it  
18 and everything else, when it was just a  
19 joke. He was, he was stoned on drugs  
03:55 20 and thought he was being funny."

21 Now, again, is that -- it may well be that this  
22 interview with Deborah Hall was conducted in 1985  
23 or 1986, I'm not sure that it was done in 1990, I  
24 think it might have been a number of years ago.  
03:55 25 But again, when you saw something like this in



1 the media, can you tell us what comment or  
2 reaction you would have had to this type of  
3 information?

03:55 4 A It was inconsistent with the account that Ms. Hall  
5 provided to me under oath in that it seemed to  
6 more closely be aligned with the conclusions  
7 contained in her 1986 affidavit and differed  
8 significantly from what she'd told me. And what I  
9 mean by that is this; the portion that says that  
03:56 10 these:

11 "... it ... doesn't sit right with me,  
12 like that these guys would say that he  
13 had enacted this horrible murder and  
14 admitted to it and everything else, when  
03:56 15 it was just a joke.",

16 is conclusory, but I think on the earlier page  
17 there was a mention of a --

18 Q Go back a page, please?

19 A I'm referring to:

20 "He was fluffing up the pillow, he  
21 flipped it behind his back and he laid  
22 back on the bed. He did, he, he, he  
23 said yeah, sure and then he went through  
24 this little, thing as he was fluffing up  
25 this pillow, yeah right, ..."



1 Now that may well have been part of a continuum  
2 of activity that Mr. Milgaard did at that time.

3 What it doesn't say is that it  
4 doesn't specifically deny what she said, that he  
03:57 5 was sitting with his knees on the bed making a  
6 pounding, a motion both vertically and  
7 horizontally, and saying what he said. So she  
8 may well have said that but --

9 COMMISSIONER MacCALLUM: This purports to  
03:57 10 be a quote to this --

11 MR. HODSON: This is actually, this is a  
12 transcript, these are her words, Mr.  
13 Commissioner, we have -- I think we have the  
14 tape.

03:57 15 COMMISSIONER MacCALLUM: But the CBC  
16 commentator questioned her?

17 MR. HODSON: Yes.

18 A Yeah.

19 MR. HODSON: This is the same interview, I  
03:57 20 think, that Mr. Caldwell testified he heard, that  
21 he heard his voice on it, this is the one that  
22 takes --

23 COMMISSIONER MacCALLUM: Ah yes, yes.

24 MR. HODSON: -- parts of the interview from  
03:57 25 Mr. Caldwell from 1983, and I think it's



1 interviews from various sources on the tape, and  
2 that's why I said I'm not sure when the Deborah  
3 Hall interview took place, I can't say for  
4 certain, other than the Caldwell interview that's  
03:57 5 included in here is from 1983, and that's the one  
6 where Mr. Peter Carlyle-Gordge taped him. So --

7 A That's one of the marvels of today's media,  
8 because it was published or presented in 1990 and  
9 the expectation is that, at the time that it was  
03:58 10 presented, that the voices were -- or that the  
11 comments were at the same time as publication. I  
12 don't know when she said that.

13 BY MR. HODSON:

14 Q But presumably, if she said it in '85 or '89, it  
03:58 15 would be the same thing?

16 A At that point in time, and it was much different  
17 from what she told me under oath.

18 Q The question here is again, and you've answered  
19 this with respect to other pieces of information  
03:58 20 in the media, I take it you felt constrained or it  
21 would be inappropriate to go to the CBC and say  
22 "here's the transcript of my interview, here's  
23 what she really said, play that "?

24 A By the time I realized that this was there it had  
03:58 25 already been, it had already been published,



1           number one; and number two, I couldn't take the  
2           transcript to the CBC and refute it in that way.

3       Q       For the reasons you stated earlier?

4       A       Yes.

03:59 5       Q       It would be inappropriate?

6       A       Yes.

7       Q       And, again, would this type of information in the  
8           public domain through the media about Deborah  
9           Hall, can you comment on when later the Minister  
03:59 10          comes out with her decision, much like the Dr.  
11          Ferris information, and says "the Deborah Hall  
12          information does not provide a basis to grant a  
13          remedy", and in fact I think her letter -- and I  
14          stand to be corrected -- "somewhat corroborates  
03:59 15          the evidence of other incriminatory witnesses"?

16       A       Yes. The public has a hard time understanding,  
17           after they'd been presented with a certain, a  
18           certain series of -- or a certain view of the  
19           events, certain things that are portrayed as fact,  
03:59 20          and then sometime later the Minister comes in and  
21          says "this is bogus" or "I don't accept that",  
22          it's difficult.

23                           But this is but one other, shall  
24           we say, example of how Deborah Hall's evidence was  
04:00 25          portrayed in a certain light, and I'll -- I have



1 no reason to doubt that she said that. When she  
2 said it, and the circumstances of her saying it,  
3 aren't fully explored in this. It's a clip, it's  
4 there to augment a certain point of view that the  
04:00 5 documentary writers have, and it's supportive of  
6 that view, but it's not the entire picture.

7 Q Are you telling us that if the documentary writers  
8 had a different point of view they would por --  
9 they could portray Dr. Ferris' evidence and  
04:00 10 Deborah Hall's evidence in a light very  
11 unfavourable to David Milgaard's application?

12 A Indeed. If, for example, certain other forensic  
13 scientists were, shall we say, engaged, and who  
14 had a critical view of Dr. Ferris' report and who  
04:01 15 were prepared to discuss it publicly, the -- you  
16 know, the argument could be made "Dr. Ferris,  
17 you've provided us with some opinion about a set  
18 of facts that didn't exist, of what value is  
19 that", and that would be the end of that.

04:01 20 Q And again, for reasons you've stated, I think you  
21 said you, nor the Minister, were able to or  
22 prepared to engage in trying this case in the  
23 media?

24 A Correct.

04:01 25 Q The 157044. Is it fair to say -- and I don't want





1 to jump ahead too far -- but I think, when the  
2 second application is made to the Minister, is it  
3 fair to say that some of what we're now talking  
4 about and difference between what the public  
04:02 5 believes or is told through the media what the  
6 facts are versus what Federal Justice, you and  
7 others, believed to be the facts, that that was a  
8 factor in the second application; is that correct?

9 A Yes.

04:02 10 COMMISSIONER MacCALLUM: What was?

11 MR. HODSON: Pardon me?

12 COMMISSIONER MacCALLUM: What was?

13 BY MR. HODSON:

14 Q And I think maybe, Mr. Williams, you can elaborate  
04:02 15 on that?

16 A During the course of an application, when material  
17 is being provided to Justice, we feel constrained  
18 to not comment on that publicly. That does not,  
19 however, prevent those supplying the information  
04:02 20 from doing so, because they play under a different  
21 set of rules. They are not governed by the  
22 provisions of the *Privacy Act*, they are not under  
23 the obligation, as we are, to investigate it, and  
24 in the absence of any -- or at that time, in the  
04:03 25 absence of any compulsory powers, we had to be



1 very careful with how we use the material we got  
2 and when we used it.

3 And, thirdly, since the only  
4 person who could really speak is the Minister, to  
04:03 5 the extent that you endeavoured to respond  
6 publicly to assertions of fact, it could leave you  
7 open to the criticism that you have prejudged this  
8 matter on behalf of the Minister and that your  
9 public disputation signals a bias and signals that  
04:03 10 you have usurped the function of the Minister by  
11 dealing with this when, in fact, you shouldn't be.

12 Now by contrast, if you have an  
13 application that is dealt with in a different  
14 setting, for example in a judicial setting, then,  
04:04 15 to the extent that judicial proceedings are open  
16 to the public, and that may be recorded, and the  
17 information flowing from that could then be -- be  
18 shared with the public.

19 Q And so I think -- and, again, I'll deal with this  
04:04 20 more specifically in the second application which  
21 we know went to the Supreme Court for a  
22 reference -- and are you telling us that in that  
23 case, then, all sides of the issues then become  
24 part of the public domain because there's  
04:04 25 witnesses and it's before a Court on a reference,



1 as opposed to when the Minister is considering the  
2 information, she's constrained?

3 A That's correct.

4 Q And so again, when we get to the second  
04:05 5 application, I'll deal with this in more detail.  
6 But I wanted to confirm at this point that some of  
7 what we're talking about now, and the fact that  
8 you're saying "lookit, there are facts in the  
9 public domain which differ significantly from the  
04:05 10 facts as Federal Justice knows them"; correct?

11 A Yes.

12 Q That later on, when the second application came  
13 in, is it fair to say that the volume and the gap  
14 widened with respect to both the information --  
04:05 15 with respect to the information in the public  
16 domain versus the information that Federal Justice  
17 had; is that fair?

18 A I'm not certain I've grasped your question. In  
19 the second application, for example, you could  
04:05 20 have Craig Melnyk and George Lapchuk saying what  
21 they said, and you -- and, by contrast, you could  
22 have Deborah Hall.

23 Q I'm sorry, I've asked the question poorly. At the  
24 time when, on the second application, when that  
04:06 25 was made, the fact that it was sent to the Court



1 for a reference allowed the issue of the gap  
2 between what Federal Justice believed to be the  
3 facts and what the media portrayed to be the facts  
4 to be dealt with in an open courtroom?

04:06 5 A Yes.

6 Q And so --

7 A Set a potential to point to a record that is  
8 public in terms of defending various assertions of  
9 what the facts really are.

04:06 10 Q And is it fair to say that one of the factors that  
11 was in play in sending the matter to the Court was  
12 to address that very issue?

13 A Yes.

14 Q And so what we're talking about now, on the first  
04:06 15 application, may have also been a factor on the  
16 second application, in the sense that it was an  
17 accumulation of events as you've described here;  
18 is that fair?

19 A Yes.

04:07 20 Q And I will, I will come back to that when we get  
21 to the second application, I just wanted to raise  
22 it at this point to perhaps explain why I continue  
23 to ask these questions.

24 157044 is a letter of February  
04:07 25 23, 1990 from Bruce MacFarlane to The Honourable



1 Mr. Tallis, and I think what we -- what we saw  
2 with Mr. Tallis' evidence was that he was sent  
3 some written questions, and there is also this  
4 notion of an undertaking. Are you able to  
04:07 5 elaborate on how that came about?

6 A As you recall, I met with Justice Tallis on  
7 November 6th. During the course of our  
8 conversation, despite the fact that I had provided  
9 Justice Tallis with a signed waiver of  
04:08 10 solicitor/client privilege, he was somewhat  
11 reluctant to go into detail with respect to some  
12 of the questions that I posed. That reluctance  
13 was, I guess, prompted by the fact that he had not  
14 reviewed his file in quite some time, some of the  
04:08 15 questions were reasonably detailed, and he wasn't  
16 certain whether or not the waiver specifically  
17 covered some aspects of the years I wished to  
18 question.

19 We left it at that, and  
04:08 20 subsequently I spoke with him and provided a  
21 verbal undertaking that the responses to some  
22 written questions that he could then research  
23 would be kept confidential and would be used only  
24 for the Minister in making a decision with respect  
04:09 25 to the Section 690 application and it would not be



1 shared with the applicant nor the applicant's  
2 counsel, and that was conveyed to Justice Tallis  
3 by letter written by Bruce MacFarlane.

4 Q Okay. And then I think that undertaking, I think,  
04:09 5 was lifted at the time of the Supreme Court; is  
6 that right?

7 A That's correct.

8 Q And so -- and would Mr. -- why would Mr.  
9 MacFarlane be involved in this communication? Was  
04:09 10 it just because it was a Judge of the Court that  
11 perhaps someone more senior in the department  
12 would be the correspondent?

13 A Yes. At the time, Mr. MacFarlane was the  
14 Assistant Deputy Attorney General.

04:09 15 Q And so at this stage, February 23, 1990, it looks  
16 as though -- and I'll deal with the questions that  
17 get sent out. Would the first application still  
18 be, I think you had completed your report, was the  
19 information from Mr. Tallis; I'm trying to get an  
04:10 20 understanding of where that fit in with respect to  
21 the application?

22 A I had spoken with Justice Tallis, he had provided  
23 some answers, but it wasn't quite as complete as  
24 it could have been. During the course of the  
04:10 25 review it was brought to my attention that we



1           should explore these areas more fully, and when I  
2           say "during the course of the review" it would be  
3           the review of the draft departmental report that  
4           engaged Mr. MacFarlane, he asked me to make  
04:10 5           further inquiries. And as a result I contacted  
6           Justice Tallis by telephone, we had a discussion,  
7           and that discussion was more or less confirmed in  
8           writing in a letter authored -- or at least some  
9           of the highlights of that discussion in relation  
04:11 10          to our requests for further responses, and that  
11          those responses would come in in re -- in the form  
12          of replies to written questions, the answers to  
13          which would be kept confidential, and that was  
14          confirmed by the Assistant Deputy Attorney  
04:11 15          General.

16          Q           Okay. If we can go to 016133. This is your file  
17          memorandum of February 28, 1990, and deals with a  
18          conversation with Mr. Asper, we'll go through  
19          this:

04:11 20                         "David Asper telephoned me  
21                         from a location in Florida to advise  
22                         that a person who wished to remain  
23                         anonymous, (Informant) had spoken to  
24                         Hersh Wolch. The informant told Mr.  
04:12 25                         Wolch that 'Larry Fisher' from North



1 Battleford, Saskatchewan, was  
2 responsible for the murder of Gail  
3 Miller on January 31, 1969."

04:12 4 And it goes on to relate that this information  
5 came from his then wife, contact through a radio  
6 station, it says:

7 "I asked Mr. Asper to provide all the  
8 information his office possessed in  
9 writing. He agreed to do so."

04:12 10 And then you went on to provide some information  
11 about who this Larry Fisher might be, and I think  
12 there was a Larry Earl Fisher and a Larry Brian  
13 Fisher in the penitentiary system, is that right?

14 A That's correct.

04:12 15 Q Can you tell us, prior to this call with Mr.  
16 Asper, had you heard the name Larry Fisher before?  
17 Did that -- was that something that --

18 A It was a new name to me. I now realize that Larry  
19 Fisher was one of the persons contacted or  
04:12 20 interviewed by the Saskatoon police during the  
21 course of their initial investigation, but the  
22 name had not been brought to my attention in any  
23 significant way in relation to the pending  
24 application by David Milgaard.

04:13 25 Q Okay. Now I just want to talk a bit about, under





1 Section 690, the -- how an allegation or a ground  
2 might relate to a convicted person saying "lookit,  
3 I think someone else committed the crime". And I  
4 take it as a given that, if an application comes  
04:13 5 forward and says "there's been a miscarriage of  
6 justice because person X is the real killer and I  
7 can establish that person X is the real killer,  
8 the fact that X is the killer means that I am not  
9 the killer", that that would be a ground, if  
04:13 10 proven, to provide a remedy?

11 A Yes.

12 Q And up until this point -- and I think it's also  
13 fair to say that, implicit in an application by a  
14 wrongfully convicted person, is that someone else  
04:14 15 out there who committed the crime has not been  
16 caught; fair enough? Usually? I should -- let me  
17 rephrase that.

18 A Usually.

19 Q Where it's a case of saying "I have been convicted  
04:14 20 and I didn't commit the crime" as opposed to "I  
21 got convicted of the wrong crime"?

22 A Yes.

23 Q "The wrong level of offence"?

24 A Yes.

04:14 25 Q So implicit in that, in an application, is that



1 someone else is out there who has committed the  
2 crime. Is it fair to say that, prior to this  
3 phone call, that the application filed by David  
4 Milgaard had not raised this issue or addressed,  
04:14 5 as a ground, any suggestion or any information  
6 saying "lookit, someone else is -- we've  
7 identified the real killer"?

8 A That's correct.

9 Q And did you see it as your duty, when the  
04:14 10 application was made back in December 1988,  
11 obviously if the application was correct in the  
12 sense that Mr. Milgaard had not committed the  
13 crime that meant the real killer was out there;  
14 right?

04:15 15 A Yes.

16 Q Did you view it as your, any part of your duty,  
17 when you received the application, to investigate  
18 the application, to actually go out to investigate  
19 to see if someone else might have committed the  
04:15 20 crime?

21 A No. I think the first responsibility was to  
22 ascertain whether or not the grounds advanced had  
23 been -- you know, could be satisfied.

24 Q So you're, I think what you are saying is that you  
04:15 25 did not, up until this point you didn't focus



1           yourself on saying "well, if David Milgaard didn't  
2           do it I better go out and see if I can find any  
3           information as to who might have done it"; that  
4           would not have been your focus?

04:15 5           A           That would not have been my focus.

6           Q           Would it be fair to say that, if Mr. Milgaard or  
7           his counsel chose that to be a ground for the  
8           application, that's something they could have  
9           pursued if they wished; is that fair?

04:15 10          A           They could have raised it as a ground in the  
11          application, yes.

12          Q           Or if they had information that said "lookit, we  
13          have information that person X is a better suspect  
14          than David Milgaard, and here are some suspicious  
04:16 15          circumstances, and he may well be the person who  
16          committed the crime, we're not the police, here  
17          you go"?

18          A           That's what they did on February 28th, 1990 and,  
19          armed with that information, we began a series of  
04:16 20          steps to investigate that allegation.

21          Q           And, to the extent that they could have had that  
22          information on February -- or on December 28,  
23          1988, is it fair to say that they could have  
24          included -- there would be nothing that would  
04:16 25          preclude them from putting it in their



1 application, their original application; is that  
2 fair?

3 A That's --

4 Q If they would have had the information?

04:16 5 A That's correct.

6 Q And so what I am getting at is that it would be an  
7 appropriate ground to put forward in a 690  
8 application to say "the miscarriage of justice is  
9 we now think we know who the person who committed  
04:16 10 the crime is or may be"?

11 A Yes.

12 Q And, with that, I take it the applicant would not  
13 be responsible to investigate and prove someone  
14 else committed the crime before that person got a  
04:17 15 remedy; is that -- I want you to try and give us  
16 some understanding of what, what is needed by an  
17 applicant when you are saying "lookit, I didn't do  
18 it, someone else did", and "here's who I think it  
19 is or might be"?

04:17 20 A Okay. We start from the premise that the  
21 applicant is properly convicted. Where an  
22 applicant has identified another person as being  
23 the real culprit, whereas here I engaged the  
24 assistance of the RCMP to make inquiries into the  
04:17 25 allegation, we take -- I mean merely, merely



1 saying "somebody else did it" by itself may not  
2 necessarily stimulate an RCMP investigation, there  
3 had to be some type of contact/connection between  
4 Mr. Fisher and the offence. And certainly, to the  
04:18 5 extent that we learned later on that day or in the  
6 ensuing days that Mr. Fisher lived in the basement  
7 apartment of the Cadrain residence, subsequently  
8 had developed a criminal record for violent rapes,  
9 that some of those rapes were done with a knife,  
04:18 10 that the wife of Mr. Fisher we were later told had  
11 a paring knife which was, quote, "similar to the  
12 murder weapon used on Gail Miller", those are some  
13 of the connectors that prompted us to engage the  
14 assistance of the RCMP to follow up on those  
04:19 15 leads.

16 Q And would there be a bit of a, I was going to say  
17 a chicken and egg scenario here, that as long as  
18 David Milgaard is convicted I think the police  
19 authorities, whether it be the RCMP or the police,  
04:19 20 are not gonna go out, I think we've heard, and  
21 investigate Larry Fisher as the perpetrator, given  
22 that the perpetrator has already been convicted;  
23 is that --

24 A By and large, that's the case, --

04:19 25 Q Yeah.



1 A -- unless there is something of substance that  
2 causes the police in the penalty to question the  
3 correctness of the conviction.

4 Q And so if, if David Milgaard's conviction is a  
04:19 5 block or precludes or is a factor in precluding  
6 the police from going to investigate another  
7 suspect, it goes back to saying "okay, well who,  
8 who and how can David Milgaard get that suspect  
9 investigated in order to get the evidence"?

04:20 10 A Well, I think you've seen part of the answer is  
11 via a 690 application.

12 Q And so, and in this case I think what, what you  
13 did is you engaged the services of Sergeant Rick  
14 Pearson to investigate the allegation?

04:20 15 A Yes, I did.

16 Q And I think what Sergeant Pearson told us is that,  
17 although it was not an investigation as if he were  
18 investigating to convict Larry Fisher, it was  
19 similar. He was trying to gather information to  
04:20 20 determine whether or not, I think he said, there  
21 was a reasonable basis to conclude that Larry  
22 Fisher committed the crime; is that right?

23 A Yes.

24 Q So gather information, and if it had got to that  
04:20 25 point where -- and I'm not sure what the standard



1 is -- that there would be a basis to lay a charge,  
2 for example if Sergeant Pearson came back and said  
3 "I've gathered evidence, in my view as a police  
4 officer I think there are reasonable grounds to  
04:20 5 charge him for the crime", would that be something  
6 that -- can you just elaborate how that might play  
7 out in Section 690; is that something that would  
8 cause the Minister to grant a remedy or a basis to  
9 grant a remedy?

04:20 10 A Oh, it certainly would. I've had a similar  
11 application in relation to a sexual assault where  
12 someone stood convicted of it and another person  
13 was identified as the real culprit and the first  
14 step was to vacate the conviction, and that was  
04:21 15 done by way of an appeal, and charges were laid  
16 concurrently charging the real culprit who entered  
17 pleas of guilty and was then sentenced.

18 Q So in the scenario where police investigate and  
19 say yes, there's a basis to lay a charge, what  
04:21 20 about short of that where the police say we've  
21 investigated, but we cannot find evidence to lay a  
22 charge, he's still a suspect, and a pretty good  
23 suspect, but we've investigated and we can't go  
24 any further than that?

04:21 25 A That, I believe, was -- well, that was part of the



1 situation in respect of the first application and  
2 sometimes those were, what I call close calls, and  
3 that information is put to the attention of the  
4 minister for a decision.

04:22 5 Q And so it's a case of -- let's look at the  
6 extremes. Would you agree that a bare assertion  
7 by a convicted person that says lookit, I now  
8 found someone that's a better suspect than me,  
9 he's a person who is more likely to have committed  
04:22 10 this crime than me, that that just in and of  
11 itself probably isn't enough to be a ground under  
12 690; is that fair?

13 A That's fair.

14 Q And would it be fair to say that many convicted  
04:22 15 persons could point to better suspects after the  
16 fact, saying lookit, something more is required;  
17 is that fair?

18 A Something more is required than merely identifying  
19 another person as the culprit.

04:22 20 Q And I think the language we saw in some of  
21 Sergeant Pearson's report, and even in the  
22 minister's letter, is something to link Larry  
23 Fisher to Gail Miller's murder?

24 A Yes.

04:23 25 Q And can you describe -- by link, I think Sergeant





1 Pearson described it as evidence that would be  
2 beyond suspicion I guess; is that fair?

3 A Yes.

4 Q And so something more than suspicion, something  
04:23 5 that either -- whether it be physical evidence, a  
6 witness who could put him there, an admission from  
7 him, things of that nature?

8 A Yes. There was in this case, there were some  
9 circumstances that were consistent either with the  
04:23 10 linking to David Milgaard or with the link to  
11 Larry Fisher, and what I mean by that is that  
12 certain -- the contents of Gail Miller's wallet,  
13 or portions of it were found close to the Cadrain  
14 residence. To the extent that Larry Fisher  
04:24 15 resided at that address, that couldn't be ignored,  
16 but in relation to the scene itself, there was  
17 very little to link Fisher to the location of the  
18 body.

19 Q Can I get you to tell us what your understanding  
04:24 20 was, at least initially, about what the ground  
21 being -- what ground was being advanced by Mr.  
22 Wolch and Mr. Asper with respect to the Larry  
23 Fisher information, and the reason I say this is  
24 the original application set out the grounds  
04:24 25 specifically on Deborah Hall, Dr. Ferris, here's



1           why we say there's been a miscarriage of justice  
2           and here's the evidence. It appears here that  
3           this is a phone call and we will go through, we  
4           see a number of subsequent letters about Larry  
04:25 5           Fisher and it, I'm trying to get from you what was  
6           your understanding of what they were saying was  
7           the ground being advanced initially?

8           A       The initial ground was that Larry Fisher was the  
9           perpetrator and not David Milgaard, please  
04:25 10           investigate, and we did, and as the investigation  
11           progressed it shifted somewhat, took on a slightly  
12           different focus, and that was mainly, at least as  
13           I understood it from 15-year-old recall, that had  
14           the jury known that there was in the neighbourhood  
04:25 15           a convicted rapist, or a rapist, someone who had  
16           committed offences similar to that of Gail Miller,  
17           perhaps they may have reached a different result,  
18           that was the other aspect of it.

19           Q       Okay. And --

04:26 20           A       And another aspect, and I say it was a kind of a  
21           shifting one, was that one argument was that if  
22           there was a miscarriage, it stemmed from the fact  
23           that the defence should be permitted to put that  
24           information before a jury by way of fresh evidence  
04:26 25           or it might have, had they known, that type of



1 evidence might have affected the result.

2 Q And was there also, and I think we see this in  
3 some of the letters, that if Mr. Milgaard was  
4 tried today, this is what they were saying at the  
04:26 5 time, we could now raise a reasonable doubt?

6 A Yes.

7 Q And I think you told us that that ground in and of  
8 itself was not enough just to say, well, now I  
9 don't think you could convict me in the absence of  
04:26 10 some reason for that being related to a  
11 miscarriage of justice relating to the trial; is  
12 that fair?

13 A Yes.

14 Q And so is it likely two primary arguments, one  
04:27 15 being Larry Fisher committed the crime, therefore,  
16 David Milgaard didn't, and if that was  
17 established, that would give a remedy?

18 A Correct.

19 Q And the second one being, and I think you said it  
04:27 20 shifted from time, is that the miscarriage of  
21 justice was that David Milgaard did not have an  
22 opportunity to put the Larry Fisher information,  
23 whatever it was, before the jury at the time of  
24 his conviction?

04:27 25 A Correct.



1 Q And I think if we can just go a bit further on  
2 that before we finish up for the day, would there  
3 be two aspects of that, I think at the time of Mr.  
4 Fisher's trial, or pardon me, at the time of David  
04:27 5 Milgaard's trial, I think the status of  
6 information at that time were two unsolved rapes,  
7 one unsolved indecent assault, no Larry Fisher  
8 link to the crimes yet, but three unsolved crimes  
9 right around the time prior to Gail Miller's  
04:28 10 murder and as well a police theory that linked, at  
11 least for a while, those crimes to Gail Miller's  
12 death, that would be one aspect of it; is that  
13 fair?

14 A Yes.

04:28 15 Q In other words, that at the time of trial had that  
16 information been known, it might have been used  
17 and might have affected the verdict?

18 A Yes. Between October, 1968 and January, '69 there  
19 had been three of them.

04:28 20 Q Yeah. And then the second part of that would be  
21 before David Milgaard's criminal proceedings were  
22 concluded when his application for leave to the  
23 Supreme Court of Canada was dismissed, I think  
24 December 5, 1971, that by the time he was done  
04:28 25 with the court system, Mr. Fisher had confessed to



1 the three prior offences, he had confessed to a  
2 rape that occurred three weeks after David  
3 Milgaard had been convicted, and as well we have  
4 the two Winnipeg offences, and I'm not sure where  
04:29 5 they fit in, but that in any event, prior to David  
6 Milgaard being done with his criminal proceedings,  
7 he would have had further information not only  
8 about the unsolved crimes, they were now solved  
9 and that person lived in the basement of the house  
04:29 10 that he visited, so that again whether it would be  
11 information that he could have had before  
12 Mr. Tallis argued the appeal, he could have put it  
13 in as fresh evidence or even before the Supreme  
14 Court of Canada. So in other words, the lost  
04:29 15 opportunity, whether it's at trial or at the  
16 appeal level, is a little bit different, but the  
17 same theme; is that fair?

18 A That's fair.

19 MR. HODSON: This is probably an  
04:29 20 appropriate spot to break for the day.

21 (Adjourned at 4:29 p.m.)  
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23  
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**OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATE:**

We, Karen Hinz, CSR, and Donald G. Meyer, RPR, CSR,  
Official Queen's Bench Court Reporters for the Province of  
Saskatchewan, hereby certify that the foregoing pages  
contain a true and correct transcription of our shorthand  
notes taken herein to the best of my knowledge, skill, and  
ability.

\_\_\_\_\_, CSR

Karen Hinz, CSR

Official Queen's Bench Court Reporter

\_\_\_\_\_, RPR, CSR

Donald G. Meyer, RPR, CSR

Official Queen's Bench Court Reporter



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