

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

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

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Volume 187

Inquiry Proceedings



Commission Staff:

Mr. Douglas C. Hodson,	Commission Counsel
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Appearances:

Mr. Hersh Wolch, Q.C., **for** Mr. David Milgaard
Ms. Joanne McLean, **for** Ms. Joyce Milgaard
Ms. Lana Krogan-Stevely, **for** Government of Saskatchewan
Ms. Catherine Knox, **for** Mr. T.D.R. (Bobs) Caldwell
Mr. Jay Watson, Esq., **for** Mr. Serge Kujawa
Mr. Pat Loran, Esq., **for** the Saskatoon Police Service
Mr. Aaron Fox, Q.C., **for** Mr. Eddie Karst
Mr. Bruce Gibson, Esq., **for** the RCMP
Mr. David Frayer, Q.C., **for** Minister of Justice
 (Canada), The Hon. Vic Toews
Mr. Marshall Hopkins, Esq., **for** Justice Calvin Tallis
 (Retired)
Mr. Kenneth R. McLeod, Esq., **for** Mr. Eugene Williams



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- BY MR. HODSON

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Transcript of Proceedings

(Reconvened at 1:10 p.m.)

COMMISSIONER MacCALLUM: Good afternoon.

ALL COUNSEL: Good afternoon.

COMMISSIONER MacCALLUM: Mr. Hodson, just before you start, I have a word with -- for all counsel.

I don't know if you read Thursday's *StarPhoenix*, there was an article in there by the Business Editor, if you haven't read it, read it and take it to heart. Because, apparently, the conduct of some people is bringing the process of the Inquiry into disrepute.

Go ahead, Mr. Hodson.

MR. HODSON: Thank you, Mr. Commissioner.

If I could, just before we start with Mr. Williams, there was an issue raised last week about the reach of Chief Justice Laing's ruling on the constitutional limit. If we could just call up his decision, 339089, and go to page 106. And, in particular, I think I had asked Mr. Frayer, on behalf of the federal Minister, to comment on his -- on this issue. What Chief Justice Laing says, that:



1 "The constitutional limitation set out
2 in the Keable decision precludes the
3 Commission from asking federal
4 Department of Justice lawyers 'questions
01:11 5 which seek to probe the reasons behind
6 actions, including questions about
7 advice given or received.'"

8 Which on its face, I think, suggests that there
9 should be no questions about the reasons for any
01:11 10 actions, including actions taken in the
11 fact-finding or investigative phase. I think I
12 had tried to communicate on the record last week
13 that I had understood that the federal minister's
14 position -- or I had asked for clarification of
01:11 15 the federal minister's position on whether or not
16 it was their view that Chief Justice Laing's
17 decision precluded me from asking questions such
18 as "why did you have Deborah Hall testify under
19 oath", which is reasons, and what I put on the
01:11 20 record is that I will rely on Mr. Frayer to
21 indicate if I cross the line of this
22 constitutional limit, and I asked him for his
23 position. His -- he will speak to this in a
24 moment. He has now advised me that the federal
01:12 25 minister's view is that Chief Justice Laing's



1 decision covers all questions, including those
2 relating to the reasons behind investigative
3 steps taken, unless they apply directly to the
4 information given to Saskatchewan Justice, in
01:12 5 addition, of course, to the issue of advice given
6 and received. So that is their position.

7 Mr. Frayer -- and I'm fine
8 with that, I just, I raised it so that I know
9 where I'm entitled to go and where I'm not
01:12 10 entitled to go, and I suppose other counsel will
11 want to know the same direction.

12 COMMISSIONER MacCALLUM: Well, Mr. Hodson,
13 I thought the application for judicial review was
14 based upon the subject of advice. I don't -- I
01:12 15 don't recall reasons having been part of it, but
16 this is clearly what the judge said, so he took
17 into -- he expanded it.

18 MR. HODSON: Well, that's the reason I
19 raised it last week and, in fairness, simply to
01:13 20 get the Federal Minister's position, and perhaps
21 Mr. Frayer can speak to that issue. The reason I
22 raised it is so that we would know what the
23 federal minister considered to be offside Judge
24 Laing's decision.

01:13 25 COMMISSIONER MacCALLUM: Mr. Frayer?



1 MR. FRAYER: Thank you, Mr. Commissioner.
2 I think it's safe to say, Mr. Commissioner, that
3 Mr. Hodson and I have had considerable discourse
4 over this particular issue since the exchange
01:13 5 occurred in advance of Mr. Williams starting his
6 evidence last Monday, and I communicated this
7 position to Mr. Hodson just in advance of
8 arriving here today. He had asked the question
9 as to whether it was our view that the decision
01:13 10 of the Chief Justice Laing extended to the
11 reasons behind investigative steps taken, and in
12 addition to those that related to advice given
13 and received, and my instructions are, based on
14 the reasons as they are articulated in the
01:14 15 paragraph to which Mr. Hodson has just referred,
16 that they do encompass -- they do encompass
17 further reasons from --

18 COMMISSIONER MacCALLUM: Where is that
19 quote from, do you know, Mr. Frayer?

20 MR. FRAYER: The --

21 COMMISSIONER MacCALLUM: The part in
22 quotation marks?

23 MR. HODSON: It's from the notice of motion
24 of the --

01:14 25 COMMISSIONER MacCALLUM: It's from the



1 notice of motion?

2 MR. HODSON: Yes.

3 COMMISSIONER MacCALLUM: Oh, okay, thank
4 you.

01:14 5 MR. FRAYER: So that's the position that I
6 articulated to Mr. Hodson. It's my understanding
7 that he is agreeable to that, that we can proceed
8 on that basis.

9 There have been a number of
01:14 10 'why' questions that relate to reasons that have
11 been asked, and I haven't objected to them, and I
12 think Mr. Hodson has put a fair process in place
13 that, should he feel he is crossing the line,
14 much as he did last week in his examination of
01:14 15 Mr. Williams, he would allow me an opportunity to
16 respond. And he's been very fair in sort of
17 abiding by the understanding that counsel have
18 and, subject to that comment, the examination
19 proceeds today of Mr. Williams and continues.

01:15 20 MR. HODSON: Yeah, I --

21 MR. FRAYER: And hopefully, without
22 objection.

23 MR. HODSON: Yeah, I'm fine with that, Mr.
24 Commissioner, as long as I have comfort in the
01:15 25 fact that, if Mr. Frayer does not object to one



1 of my questions, that I can take it that the
2 federal minister is not taking the position, or
3 is going to take the position, that my question
4 crosses the line that is drawn by Chief Justice
01:15 5 Laing's decision. That's my concern. We all
6 know what it says but applying it is sometimes a
7 little more difficult.

8 MR. FRAYER: I appreciate that and, subject
9 to the comments that Mr. Hodson made last week, I
01:15 10 didn't see occasions where he crossed that line
11 in any event. So I think we have a pretty clear
12 understanding, at least as between counsel, of
13 the limits of the questions asked, and that's
14 been discussed with Mr. Williams and with his
01:15 15 counsel, Mr. McLeod.

16 COMMISSIONER MacCALLUM: Okay. Thanks,
17 Mr. Frayer. We're relying on you, then, to --

18 MR. FRAYER: Thank you, Mr. Commissioner.

19 **EUGENE WILLIAMS, continued:**

20 **BY MR. HODSON:**

21 **Q** If we could call up 157115. I think, Mr.
22 Williams, where we finished off last week we were
23 in early September 1990 -- I'm sorry, 157113 is
24 the doc. ID. And you'll remember, Mr. Williams, I
01:16 25 think I showed you a September 10, 1990 letter



1 from Mr. Wolch and Mr. Asper, and I believe what
2 you told us last week is that towards the end of
3 August 1990 you had more or less completed your
4 investigation subject to a few follow-ups, and I
01:16 5 think you told us you had a conversation with Mr.
6 Wolch and/or Mr. Asper asking for sort of a final
7 submission; is that a fair summary?

8 A Yes.

9 Q And so here's your letter back thanking Mr. Wolch
01:17 10 for the September 10th letter:

11 "... fully responds to my earlier
12 request for a summary of Mr. Milgaard's
13 submissions concerning his application
14 under Section 690 ...".

01:17 15 Is it fair to say, we talked about this back in
16 June, that in light of the fact that the original
17 written application was supplemented on a number
18 of occasions, is that a fair way to put it, that
19 over the course of your investigation additional
01:17 20 grounds were added?

21 A Yes.

22 Q And they would be added, I think you told us,
23 sometimes by way of letter, sometimes by way of a
24 phone call, or both, or even in a media report; is
01:17 25 that fair?



1 A Yes.

2 Q And is it correct to say, Mr. Williams, that
3 perhaps the main purpose of requesting the
4 September 10th letter was to get a, if I can call
01:17 5 it, sort of a concluding document from David
6 Milgaard's counsel outlining the grounds of the
7 application?

8 A That's correct.

9 Q If we could go to 333507. And one of the
01:18 10 follow-up items that we identified earlier in
11 Sergeant Pearson's report was the interview of
12 Albert Cadrain's mother; do you recall Mr. Pearson
13 being involved in that?

14 A Yes, I do.

01:18 15 Q And would that then be related to the suggestions
16 that Mr. Cadrain, his evidence may not have been
17 reliable at the time of trial due to psychological
18 problems?

19 A Correct.

01:18 20 Q If we can go to page 333 -- if we can go to the
21 next page. And I take it this, then, would be the
22 statement that was obtained from Mrs. Cadrain that
23 would be, again, a piece of information relating
24 to the suggestion that Albert Cadrain's evidence
01:18 25 was suspect at the time of trial?



1 A Yes.

2 Q Go to 157117. I now want to turn to the October
3 1, 1990 meeting, Mr. Williams, and I will go
4 through some of the documents. But maybe, before
01:19 5 we do that, if you can just generally give us your
6 recollection, what was the purpose of that meeting
7 and what, generally, happened at it? And I will
8 go through some documents to assist you, but just,
9 if you could give us a general recap?

01:19 10 A The purpose of the meeting was twofold, firstly to
11 provide Mr. Wolch and Mr. Asper with materials
12 that had been collected; and secondly, to allow
13 them an opportunity to make a presentation, or at
14 least present an oral submission that embraced all
01:19 15 of the points that they wished to bring to the
16 minister's attention on the first application.
17 That meeting would be with the Assistant Deputy
18 Attorney General at the time, Mr. MacFarlane, and
19 would also have involved then-Director of Criminal
01:20 20 Law, Mr. Corbett, and myself.

21 Q And would it be correct to describe the October 1,
22 1990 meeting as being a presentation, by counsel
23 for Mr. Milgaard, of their case, as opposed to
24 your presentation to them of your findings?

01:20 25 A That's correct.



1 Q And so you were listeners, not presenters, is that
2 a fair way to put it?

3 A Primarily.

4 Q You said the second purpose was to provide
01:20 5 information; can you recall what information would
6 have been provided at this meeting and in what
7 form?

8 A My recollection is that the transcripts of
9 interviews, the materials that we had gathered
01:21 10 from the police files and other investigative
11 sources, had been assembled in two to three
12 binders and, as I recall, there was a brief, a
13 brief meeting in which we exchanged pleasantries,
14 there was a discussion about the process to be
01:21 15 followed, then Mr. Wolch and Mr. Asper retired to
16 a conference room for an hour or two, or possibly
17 more, and thereafter -- we may have worked, had a
18 break for lunch, I'm not certain, and then they
19 more or less presented an argument that was
01:21 20 designed to establish why David Milgaard was
21 entitled to a remedy. And in that regard they, as
22 I recall Mr. Wolch, I believe, led the
23 presentation, provided a synopsis of the grounds,
24 the facts, and the legal considerations that he
01:22 25 wished us to bring to the minister's attention for



1 the purposes of deciding the application.

2 Q And then did you question them or was it more of a
3 listening exercise?

4 A There were some discussions during the course of
01:22 5 it. There may have been questions about the
6 strength of certain -- or the weight to be
7 attached certain statements and things of that
8 nature, but mostly we sat and we listened.

9 Q And, for example, on the motel room incident,
01:22 10 would you have then, presumably in the hour or two
11 before this presentation, they would have had an
12 opportunity to review Deborah Hall's examination
13 by you that was conducted in November of 1989?

14 A Yes.

01:23 15 Q And so would it be a case of saying okay, well,
16 you put forward this ground on Deborah Hall,
17 here's what she says, therefore, your submission
18 doesn't accord with what she has now said, or was
19 it more of a case of we'll sit and listen and
01:23 20 discuss amongst ourselves after you leave?

21 A I think on a couple of occasions we may have said,
22 well, what do you make of Deborah Hall's statement
23 to this effect, or there may have been some
24 questions like that, and how does that -- how does
01:23 25 that affect the thrust of your presentation in



1 which she basically said that Lapchuk and Melnyk
2 had lied.

3 Q Would it be a fair summary to say that where you
4 had gathered information that questioned in some
01:23 5 way the grounds that they put forward, that those
6 would have been put to Mr. Wolch and Mr. Asper for
7 their comment; in other words, how does the
8 information we gathered, being Federal Justice,
9 affect your grounds, please explain, is that
01:24 10 general statement correct?

11 A Yes.

12 Q If we can go to 333511, please, and I appreciate
13 that this is a communication between you and other
14 lawyers, and I'm not questioning you about any
01:24 15 discussions or communications you had, it's one of
16 the few documents I've been able to locate that
17 comments on the materials that were provided, and
18 I think, Mr. Williams, we've been through this, or
19 through the documents, and would you agree that we
01:24 20 have been, or you and I have been unable to find a
21 document that specifically identifies the
22 documents that were provided at the meeting; is
23 that correct?

24 A That's fair, yes.

01:25 25 Q And I do have one -- if we could call up 226165,



1 it's an index, and -- sorry, I don't know if I
2 gave you the right doc. ID.

3 MS. BOSWELL: Yeah, you did, it's coming.

4 BY MR. HODSON:

01:26 5 Q And this is an index I think from one of the black
6 binders that we have from somewhere. Do you
7 recall looking at a black binder in our office,
8 Mr. Williams, I think to try and identify what
9 might have been part of what was provided? I
01:26 10 think this is the index.

11 A Yes.

12 Q Does this look familiar?

13 A My answer is simply this, I'm not certain, I can't
14 say with 100 certainty that that index relates to
01:26 15 the letter that you showed me previously. What I
16 can say is that those are the types of materials
17 that would have been provided to Mr. Wolch at that
18 time and I observe, for example, under Tab L,
19 there's just -- there are portions of the trial
01:27 20 transcripts. Now, let me correct myself, those
21 are the types of things that would have been
22 provided, but whether or not that index relates to
23 the other letter I can't say with certainty.

24 Q I think you've told us on a couple of previous
01:27 25 occasions that any transcripts of interviews or



1 witness statements that you gathered would have
2 been provided; is that correct?

3 A Generally, yes.

4 Q And then what about your memos to file where you
01:27 5 had interviewed, for example, Dr. Ferris, we've
6 been through a number of those, were those
7 provided do you know?

8 A I don't believe they were, sir.

9 Q And so it would be sort of an independent -- or a
01:27 10 third party document, either transcript or a
11 statement, would be provided; correct?

12 A Yes.

13 Q And certainly police reports and prosecution
14 documents would be, would have been provided?

01:27 15 A Yes.

16 Q And I think you've told us that some or maybe all
17 of this information would have been provided at an
18 earlier date but for the fact that you had some
19 concerns about information that you had provided
01:28 20 earlier; namely, the Ute Frank statement. Is that
21 correct?

22 A Yes.

23 Q And so can you tell us whether the information
24 provided at the October 1, 1990 meeting, is it
01:28 25 fair to say that that would have been provided



1 much earlier or was there some information that
2 naturally would have waited until the end of the
3 process?

4 A Well, certainly the statement of Estelle Cadrain
01:28 5 only came in a few days before, but we had had
6 some concerns and I think this information was the
7 subject of some type of embargo or undertaking
8 about its further dissemination.

9 COMMISSIONER MacCALLUM: What happened with
01:28 10 the Ute Frank statement again, please?

11 A The Ute Frank statement became the subject of a
12 Winnipeg *Free Press* story which essentially said
13 that -- it made two points; one, that this was a
14 statement that the feds had held onto for 20 years
01:29 15 and it has now been released, and then secondly,
16 that the statement supported the affidavit of
17 Deborah Hall who testified -- who said in her
18 affidavit that two trial witnesses had lied, and
19 that wasn't our view of Ute Frank's statement.

01:29 20 BY MR. HODSON:

21 Q And as far as the information that was shown to
22 Mr. Wolch and Mr. Asper, were you prepared to
23 photocopy that or provide them copies?

24 A I believe arrangements were made for copies to be
01:29 25 given to them, of the things they didn't have and



1 requested, yes.

2 Q What about the Larry Fisher interview, when I went
3 through your interview of Mr. Fisher there was the
4 condition put on that by Mr. Pick about its use.
01:29 5 Do you recall whether or not your interview of
6 Larry Fisher was provided at this meeting?

7 A I believe it was, because one of the constraints
8 that I had discussed with Mr. Pick was the use, or
9 the further use of that material and I had
01:30 10 insisted that we be permitted to use it in
11 furtherance of the 690 process and certainly the
12 obtaining of counsel's views on that, is the use
13 consistent with its collection, and that is for
14 the minister to make a determination on that, on
01:30 15 the 690 application of David Milgaard.

16 Q And then what about the polygraph, do you
17 recall -- I think the only documents that we saw
18 would have been your, perhaps a letter from Mr.
19 Robinson and/or a file memorandum, I don't think
01:30 20 there was a formal set of polygraph charts. Do
21 you recall what if anything was provided on that?

22 A I don't believe we received any, quote, "formal
23 polygraph charts", simply the report that
24 indicated that the results were inconsequential,
01:31 25 or the results -- no meaningful results could be



1 obtained because of the emotional and physical
2 condition of the subject.

3 Q Do you recall if Mr. Wolch and Mr. Asper were
4 informed by you or anybody else at the meeting
01:31 5 that a polygraph had been attempted on Mr. Fisher
6 and the results?

7 A I believe that there was, that that information
8 was communicated to Mr. Wolch and Mr. Asper.

9 Q And I take it, Mr. Williams, you have a
01:31 10 recollection of what was, a general recollection
11 of what was presented at the October 1 meeting; is
12 that fair?

13 A Yes.

14 Q And maybe we can go through it this way. If maybe
01:31 15 we divide it by subject and go through on the
16 motel room re-enactment issue and the Deborah Hall
17 statement, if you can tell us your recollection of
18 what -- generally if you recall anything that
19 comes to mind about that presentation that either
01:32 20 differed from what was put forward earlier?

21 A As I sit here now, sir, I can't say I do. I think
22 a document that would be useful as a starting
23 point is Mr. Wolch's September 10th, 1990 letter
24 which contains a synopsis of the points that they
01:32 25 raise.



1 Q Okay. If we could call up 004394, perhaps we can
2 go through it in this order then. Is that an easy
3 way to do it, how he's listed here the companions,
4 or do you want to -- I think the motel room
01:32 5 witnesses were under *Unsavoury Witnesses*.

6 A I'm in your hands, sir. Either way.

7 Q We'll go to *Companions* then, the first point is
8 the Cadrain, John and Wilson evidence, and I think
9 two points, or maybe three points, if I can
01:33 10 summarize from the documents, I think one is that
11 Albert Cadrain's evidence at trial wasn't reliable
12 due to mental conditions; secondly, Ron Wilson had
13 recanted his evidence; and third, Nichol John's
14 sworn evidence that was not adopted at trial was
01:33 15 not credible or impossible. Is that a fair
16 general summary of what was put forward there?

17 A Yes, but there was -- it was a fairly detailed
18 presentation with references, as I recall, to
19 certain aspects, or to certain statements that
01:33 20 were made and also to various parts of the trial
21 transcript.

22 Q And do you recall whether matters had been raised
23 that you had not previously considered in the
24 review of the statements and your previous
01:33 25 investigation?



1 A I think there were some facts that had been
2 alluded to that I subsequently checked or
3 double-checked, yes.

4 Q And do you recall anything of significance that
01:34 5 had been raised about this issue that you had not
6 previously considered or investigated?

7 A No, sir. I think there was one aspect I think and
8 that was of the Larry Fisher information which,
9 following the explanation, caused us to
01:34 10 re-evaluate our approach to it, but most of the
11 other points had been considered.

12 Q Okay. We'll come back to the Fisher information
13 in a moment. If we go down to the *Unsavoury*
14 *Witnesses*, I think this is the motel room issue.
01:34 15 Are you able to tell us, Mr. Williams, I mean, at
16 this point you would have provided Mr. Wolch and
17 Mr. Asper with the Deborah Hall transcript;
18 correct?

19 A Yes.

01:34 20 Q Do you have a recollection as to whether this
21 would have been the first time they were made
22 aware of what she had said or whether that had
23 been communicated earlier?

24 A I don't recall providing them with a detailed
01:35 25 synopsis of what Debbie Hall had said, but it's



1 quite possible that they may have gotten a flavour
2 for it in discussions either with Mr. Corbett or
3 Mr. MacFarlane, I don't know. I do know that as a
4 result of certain accusations about my questioning
01:35 5 of Ms. Hall, Mr. MacFarlane was provided both with
6 the transcript and with the tape of the interview
7 and consequently was in a position to -- well, he
8 knew the details of the interview.

9 Q Do you recall whether the presentation at the
01:35 10 October 1, 1990 meeting was to the effect that the
11 incident didn't happen and that Melnyk and Lapchuk
12 lied about it or whether there was a different
13 position put forward in light of Deborah Hall's
14 evidence to you?

01:35 15 A I can't recall, sir.

16 Q Okay. Go to the next page, *Forensic Evidence*,
17 again, do you have a recollection of anything
18 coming out of the presentation that struck you as
19 being different than what you had heard before?

01:36 20 A No. It was simply a recasting of the submissions
21 that had been made.

22 Q And then next the Larry Fisher information, can
23 you tell us, what was your recollection of what
24 was presented with respect to the Larry Fisher
01:36 25 ground, and you had mentioned that there was a new



1 matter that came to your attention?

2 A Well, there was greater emphasis placed on the
3 impact that this information about the sexual
4 assaults and Larry Fisher's activity, what impact
01:36 5 that might have had on the result of the Milgaard
6 trial had it been presented to the jury.

7 Q Okay. And --

8 A Because the initial -- the initial thrust of the
9 information surrounding Larry Fisher was here,
01:37 10 we've identified the killer, this is the person,
11 and we looked at it in that context, but the
12 second leg of that argument I guess is had the
13 jury known about this individual residing in the
14 Cadrain residence having done all these things, it
01:37 15 might have affected or had an impact, so that was
16 one of the other aspects, and that was brought out
17 I guess with greater clarity.

18 Q And I think we identified in some earlier
19 documents that it had been contained in previous
01:37 20 communications; is that fair, as part of the
21 broader Larry Fisher issue?

22 A Yes.

23 Q And are you telling us that at the October 1, 1990
24 meeting, that it was maybe presented with a bit
01:38 25 more clarity and perhaps a bit more weight than it



1 had previously?

2 A Well, certainly it was emphasized and we were able
3 to get the full impact of the submission.

4 Q And I think you told us last week, and correct me
01:38 5 if I'm wrong, that that might well be the type of
6 information, namely, that there was a perpetrator
7 out there committing other crimes that were
8 arguably similar to the Gail Miller murder in the
9 vicinity and that information was not known to the
01:38 10 defence and not presented at trial and therefore
11 could have affected the verdict and therefore
12 there may have been a miscarriage of justice; is
13 that --

14 A It's the type of information that has the
01:38 15 potential to provide a basis to give a remedy,
16 yes.

17 Q And do you recall whether there was anything
18 specific about the Larry Fisher information that
19 was new or had not been brought to your attention
01:39 20 as far as one of the assaults or the M.O. or
21 anything like that, or was it just the fact that
22 the position was articulated a bit more clearer
23 than previously?

24 A I think the latter portion of your statement is
01:39 25 correct, that the position was articulated. It's



1 one thing to write to make a submission, it's
2 another thing to present a submission verbally and
3 sometimes you have trial counsel feel more
4 comfortable, call it making their pitch, but
01:39 5 making an oral argument or an oral submission and
6 that was done.

7 Q Do you recall any discussion about the
8 similarities between the Fisher assaults and the
9 Gail Miller murder, was that part of the
01:39 10 presentation?

11 A Certainly the facts surrounding the various
12 assaults were brought to our attention. I don't
13 recall whether or not there was a debate on it in
14 the sense of an exchange between ourselves and Mr.
01:40 15 Wolch and Mr. Asper. I do recall listening very
16 carefully to what was said.

17 Q Do you recall another ground put forward, being
18 the implausibility or the impossibility argument,
19 was that something that was canvassed at this
01:40 20 meeting?

21 A Yes.

22 Q And what do you remember about that?

23 A What I -- that submission revolves around the
24 argument that if the testimony of two or three
01:40 25 trial witnesses is correct, and I'm referring to



1 the motel clerk, I think he's at the Trav-a-leer
2 Motel, who positions David Milgaard and Mr. Wilson
3 and Ms. John arriving at a certain date or a
4 certain time, and if you compare that with the
01:41 5 testimony of the folks who saw, or who testified
6 that they saw people moving in front of headlights
7 in the alleyway shortly after seven o'clock, if
8 you did -- if you tried, and you have to recall
9 also the testimony of --

01:41 10 Q Mr. Diewold?

11 A I was thinking of the married couple whose name
12 escapes me.

13 Q Danchuk?

14 A The Danchuks.

01:41 15 Q Yeah.

16 A Well, those are some of the three key ingredients,
17 and if you do the time lines, taking the most
18 reliable time line, then it meant that David
19 Milgaard simply didn't have the time to do what
01:41 20 the Crown had alleged he had done in relation to
21 assaulting and killing Gail Miller, and, I mean,
22 15 years later, that's the nub of the submission,
23 but there was a fairly detailed discussion of the
24 various steps as I recall.

01:42 25 Q Do you have a recollection of any discussion about



1 the test that would be applied or the test that
2 had to be met for a remedy?

3 A I believe towards the end of the discussion there
4 was a conversation between Mr. MacFarlane and Mr.
01:42 5 Wolch about that and we solicited, we being -- the
6 question was asked what was the threshold, what
7 was the test, and Mr. Wolch provided a response,
8 but I don't recall what it was.

9 Q And any discussion about if the matter went to a
01:42 10 court, what court, things of that nature, do you
11 have any recollection of that?

12 A Not at that time, sir, no.

13 Q Okay. Just for the record, Mr. Commissioner, I
14 want to identify a document, it's a new document,
01:43 15 339772, and back when Mr. Frayer was questioning
16 Mr. Asper, back at the end of August there was a
17 question about notes taken at this meeting of
18 October 1, 1990, and with the co-operation of Mr.
19 MacFarlane and Mr. Frayer I was able to obtain, or
01:43 20 these were voluntarily provided to us. They are,
21 I am advised, Mr. MacFarlane's, or a copy of his
22 notes in his personal possession as opposed to
23 documents that the Federal Minister had and those
24 were provided to me on Friday that have his notes
01:43 25 and I've had a chance to review them and Mr.



1 Williams I had asked to take a look at them. I
2 don't propose to go through them, but I simply
3 want to put on the record that I obtained them,
4 and obviously if other counsel wish to use them to
01:43 5 question Mr. Williams about -- we have his
6 evidence about the meeting, but I just wanted to
7 identify these.

8 COMMISSIONER MacCALLUM: That's 339772?

9 MR. HODSON: Yes. There's actually a few
01:44 10 other dates in there as well, but the October 1,
11 1990 meeting is listed in there, Mr. MacFarlane's
12 notes.

13 COMMISSIONER MacCALLUM: Okay.

14 BY MR. HODSON:

01:44 15 Q And then if we can go to 162374, this is a letter,
16 the October 3rd, 1990 letter, this is Mr. Wolch's
17 reporting letter to his client about the meeting,
18 I just want you to comment on a couple of items
19 here, and talks about:

01:44 20 "Prior to the meeting we were provided
21 with a number of reports contained in a
22 thick black binder, most of which we had
23 seen before."

24 Etcetera, and I don't want you to comment on what
01:44 25 they had seen or not, but that would be



1 consistent with your recollection, that a volume
2 or volumes of documents were provided?

3 A Yes.

4 Q And he says:

01:45 5 "Mr. MacFarlane explained that he wished
6 to meet with us because he felt that
7 when one gets a submission on paper you
8 sometime miss the flavour and many
9 questions are not readily answered. He
01:45 10 felt that we could provide him with that
11 flavour."

12 And:

13 "Also, we wanted to be certain he was
14 being properly briefed by Mr. Williams."
01:45 15 Do you recall that being any background to this
16 October 1, 1990 meeting?

17 A Well, certainly the first part, but I don't recall
18 the "also" sentence. It may have been in their
19 mind, but it wasn't articulated at the time.

01:45 20 Q And here I think:

21 "The situation regarding Larry Fisher
22 was examined fully."

23 And I think you've told us that that would have
24 been a significant part of the presentation; is
01:45 25 that correct?



1 A Yes.

2 Q Go to the next page, Mr. Wolch says:

3 "We did have certain facts brought to
4 our attention. It is clear that Deborah
01:46 5 Hall in her examination by Mr. Williams
6 in some ways corroborated Melnyk and
7 Labchuk."

8 And then goes on to talk about her comments being
9 sarcastic, and I think you've acknowledged that
01:46 10 that would have been the subject of some
11 discussion; is that fair?

12 A Yes.

13 Q It also makes mention:

14 "We were also able to see some very
01:46 15 unfair and untrue police reports
16 regarding yourself."

17 And can you give us some indication, these would
18 be Saskatoon City Police reports; is that
19 correct? Presumably -- let me back up. You
01:46 20 would have provided -- to the extent that you
21 provided Mr. Wolch with police reports, they
22 would be the 1969 Saskatoon City Police reports?

23 A I believe those were the reports. There may have
24 been one or two reports that found their way onto
01:46 25 the police -- the Saskatoon police file from the



1 RCMP.

2 Q Okay. But it would be original investigation
3 police reports?

4 A Yes.

01:47 5 Q And can you give us any idea of the number or the
6 type of reports that you would have had and
7 provided of the police reports?

8 A I regret to say that I did not review this portion
9 of the file as closely as I needed to. I just
01:47 10 don't recall.

11 Q Would it be -- to the extent that police reports
12 related to Ron Wilson, Albert Cadrain, Nichol
13 John, David Milgaard, do you think those would be
14 likely the police reports that you would have had
01:47 15 at that time?

16 A Yes.

17 Q Do you know -- sorry, go ahead.

18 A And to the extent that there may have been reports
19 of interviews with David Milgaard before he was
01:47 20 charged, those would also, would have been
21 provided.

22 Q Now, do you recall whether you had the entire
23 Saskatoon City Police file at this time?

24 A No, I do not.

01:47 25 Q It would be selected reports that you would have



1 obtained for your investigation?

2 A That's correct.

3 Q And what about the Crown prosecutor's file, do you
4 recall if you would have had the entire file at
01:48 5 this time?

6 A I recall reviewing the file that was obtained with
7 the co-operation of Mr. Caldwell, I had that. I
8 think that later on there were other portions that
9 had found their way to Regina. I didn't have the
01:48 10 entire file. I did obtain copies of portions of
11 the file that were significant to the issues that
12 we were looking at.

13 Q If we can go to 062314. Now, we talked last day
14 about the involvement of the RCMP and I think your
01:49 15 evidence was to the effect that by September,
16 1990, as far as you were concerned, what Mr.
17 Pearson and the RCMP were doing for you in the
18 investigation was effectively at an end; is that
19 correct, other than a few, I think the Estelle
01:49 20 Cadrain interview. Is that right?

21 A Yes.

22 Q And so here -- now, this is Inspector Evans
23 writing to you saying:

24 "The aspect of Mr. Fisher consenting to
01:49 25 a further polygraph examination is still



1 being actively pursued; and should he
2 submit to further testing, it should
3 greatly assist in the eventual decision
4 respecting this file."

01:49 5 And are you able to comment on what it was --
6 would it be fair to say they were doing this on
7 their own as opposed to with direction from you,
8 being the RCMP?

9 A Well, they were pursuing it because I think
01:49 10 Sergeant Pearson was of the view that meaningful
11 results could be obtained and to the extent that
12 they could be, we left that question open.

13 Q Go to 333518. But you weren't waiting for another
14 polygraph attempt to complete your investigation?

01:50 15 A No.

16 Q 333518, and this is a letter from Chief Penkala to
17 Cecil Rosner of the CBC, November 2nd, 1990, and
18 it's enclosing copies of the 1968, '69 and '70
19 annual reports of the Saskatoon City Police. You
01:50 20 can scroll down, a copy to you and receipt
21 acknowledged, attachments have been placed in
22 pocket 5. And just go to 012698, and I think this
23 is one of the reports -- and go to the next
24 page -- and we saw this earlier with some other
01:51 25 witnesses, but this set out a number of rapes and



1 other sexual offences in '68, '67. Do you have a
2 recollection of receiving this information and
3 where, if anywhere, did it fit in? Was it
4 something you requested or how did it come about?

01:51 5 And before you answer, Mr. Williams, I can tell
6 you that I will take you later to a similar issue
7 in 1991 on the second application where you did
8 ask Sergeant Pearson to follow up and get some
9 statistical information, and this appears to be
01:51 10 about 10 months earlier. Do you remember where
11 this information fit in?

12 A I believe that we were taking a look at the Larry
13 Fisher and the sexual assault similar fact issue,
14 and one of the things we wanted to look at was
01:52 15 just the prevalence of it and whether we could
16 gather any information from statistical or other
17 sources that would shed some light on the
18 submission that Larry Fisher was Gail Miller's
19 killer, and essentially what it showed was that
01:52 20 there were a number of sexual assaults in the city
21 at that time --

22 Q And --

23 A -- but, beyond that, I don't believe we could draw
24 too many conclusions unless there was a further
01:53 25 breakdown in terms of how the assaults took place,



1 how many were by knife, the locations, etcetera,
2 etcetera.

3 Q If you can go to 217222, please.

4 COMMISSIONER MacCALLUM: Was that because
01:53 5 there were quite a number of sexual assaults?

6 A There appear to be, sir. Just having the numbers
7 doesn't give you much unless you have a kind of an
8 analysis of the assaults to see any pattern.

9 COMMISSIONER MacCALLUM: Oh, okay.

01:53 10 BY MR. HODSON:

11 Q If we could, this is an article, I think it's
12 around December 2nd or December 3rd, 1990 --
13 there's not a date on here, but I believe it to be
14 early December, 1990 -- it's an article by Dan
01:53 15 Lett and there is a comment here that says:

16 "Lawyers representing other
17 witnesses have said previously that
18 Williams bluntly told them that he was
19 personally convinced Milgaard was
01:53 20 guilty, despite overwhelming evidence to
21 the contrary."

22 Let me start off by asking; did you ever tell any
23 counsel for any witness in this matter that you
24 were personally convinced Milgaard was guilty?

01:54 25 A No, sir, I did not.



1 Q In looking at the record it appears that there
2 would have been two lawyers representing
3 witnesses, and I could be wrong on this, but
4 certainly Kenneth Watson representing Ron Wilson
01:54 5 and Reg Watson representing John Patterson. Do
6 you recall having contact with any other lawyers
7 acting for witnesses in your investigation, at
8 least on the first application -- I should say and
9 Larry Fisher, it would be Harold Pick presumably;
01:54 10 was there any other lawyers?

11 A Not that I recall, sir.

12 COMMISSIONER MacCALLUM: So this had to be,
13 at least one might include, Watson, Pick, and
14 who?

01:54 15 MR. HODSON: Reg Watson.

16 COMMISSIONER MacCALLUM: Yes?

17 A That's right.

18 MR. HODSON: I'm just trying to identify
19 who might be the lawyers referred to.

20 COMMISSIONER MacCALLUM: Yeah, that's
21 right, yeah.

22 A Yeah, there were two Watsons and Harold Pick.

23 COMMISSIONER MacCALLUM: Two Watsons.

24 BY MR. HODSON:

01:55 25 Q Oh yeah, sorry, Reg and Ken. I didn't -- yeah.



1 So Ken Watson, just let me start with Reg Watson
2 and Harold Pick, counsel for John Patterson and
3 Larry Fisher; do you have a recollection of any
4 discussion with either of those gentlemen about
01:55 5 your views on David Milgaard's guilt or innocence?

6 A Sir, my views about the process and my role in it
7 never brought me, or doesn't engage a personal
8 view as to whether or not David Milgaard is guilty
9 or innocent. I have not discussed it with any
01:55 10 lawyer, about whether -- and certainly not for the
11 witnesses -- as to whether or not I was personally
12 convinced he was guilty.

13 Mr. Milgaard comes to the
14 minister and only qualifies for a 690 application
01:56 15 on the basis that he's been convicted of a -- of
16 the offence. My views are irrelevant as to
17 whether or not, in fact, he is or is not. The
18 fact is you only qualify if you've been found
19 guilty. My job is to find out whether the grounds
01:56 20 you raise are such that it can give the minister a
21 basis to provide the applicant with a remedy.

22 I have not -- and I, you know,
23 this is the one thing; I have only one client who
24 is entitled to that view, and that's the minister,
01:56 25 and I've steadfastly adhered to that primary rule.



1 COMMISSIONER MacCALLUM: So, needless to
2 say, you didn't tell Mr. Lett either?

3 A I certainly did not.

4 MR. HODSON: I -- there is a reference in
01:56 5 one of the transcripts, or another document, that
6 either suggests or imply that this may be Ken
7 Watson, Ron Wilson's lawyer, that -- and, again,
8 I'm not, I can't say that it is or it isn't, but
9 --

01:57 10 COMMISSIONER MacCALLUM: Who did Reg --
11 Wilson -- Watson act for?

12 MR. HODSON: Reg Watson acted for
13 John Patterson, who was the fellow who was an
14 inmate with Larry Fisher, and he is the
01:57 15 individual, John Patterson, who was interviewed
16 in early August 1990. We touched on him last
17 week.

18 COMMISSIONER MacCALLUM: And Mr. Pick?

19 MR. HODSON: Acted for Larry Fisher, and
01:57 20 Steven Carter did for while as well, I believe.

21 COMMISSIONER MacCALLUM: So now we get down
22 to the other Watson is, I'm sorry?

23 MR. HODSON: Ken Watson acted for Ron
24 Wilson and Reg Watson acted for John Patterson,
01:57 25 for the record.



1 COMMISSIONER MacCALLUM: Uh-huh.

2 BY MR. HODSON:

3 Q I'm sorry, Mr. Williams, did you --

4 A I guess, just to complete the record, after the
01:58 5 conclusion of the first application -- and this --
6 and that would be after this article appeared, I
7 believe I had conversations with one other lawyer
8 who was thinking of representing a witness but
9 never did.

01:58 10 Q Okay. But it was after this article?

11 A That's after this article.

12 Q If, as I say, I think there is a document on the
13 record that suggests it may have been Ken Watson
14 who this was attributed -- or may have been the
01:58 15 source of this information. Do you recall any
16 discussion with Mr. Watson -- with Ken Watson, I
17 guess I should be clear on that, in any way
18 relating to your personal views, or David
19 Milgaard's guilt or innocence, or the merits of
01:58 20 the application?

21 A No, sir.

22 COMMISSIONER MacCALLUM: Mr. Watson was a
23 witness -- well he was acting for Mr. Wilson
24 here; wasn't he?

01:58 25 MR. HODSON: At the Inquiry, yes.



1 COMMISSIONER MacCALLUM: Yes.

2 MR. HODSON: Yes, that's the same

3 Mr. Watson.

4 BY MR. HODSON:

01:58 5 Q If we can go to 001529. This is the minister's
6 decision of February 27th, 1991. I went through
7 parts of this with Mr. Williams at the start of
8 his evidence because it set out the process. If
9 we can go to the third page, 001531.

01:59 10 And Mr. Commissioner, I can
11 say that in light of Chief Justice Laing's ruling
12 I pondered what questions, if any, I could ask
13 about this document, I raised it with both Mr.
14 Williams' counsel and with Mr. Frayer, and what I
01:59 15 intend to do -- and perhaps just to make sure that
16 they are fine with this -- is to ask Mr. Williams
17 essentially two questions with respect to these
18 grounds; and the first question is to have Mr.
19 Williams advise whether he investigated each of
01:59 20 these grounds; and secondly, what conclusions he
21 reached with respect to the question of whether
22 each ground established a reasonable basis to
23 conclude that a miscarriage of justice may have
24 occurred.

02:00 25 Now I have asked those



1 questions as we've gone along with the in -- with
2 various matters, so I intend just to pose that,
3 and perhaps if Mr. Frayer and Mr. Watson -- or
4 pardon me -- Mr. McLeod do not take objection with
02:00 5 that, I will proceed? The record reflects two
6 nods of "no"; no objection?

7 MR. FRAYER: (Not at microphone) ... your
8 observations with respect to asking these
9 questions in sort of discreet ways throughout is
02:00 10 consistent with what you have asked?

11 MR. HODSON: Yes, I don't intend to do
12 anything different than what I have asked, and
13 certainly, Mr. Frayer, if I stray from that, I'm
14 sure I'll hear from you.

02:00 15 BY MR. HODSON:

16 Q So, Mr. Williams, the first question, ground:

17 "(1) the submission that new evidence from
18 Deborah Hall and Ute Frank, who were not
19 called at trial, contradicts the trial
02:00 20 evidence of Crown witnesses Melnyk and
21 Lapchuk".

22 Let me just pause here. You are familiar with
23 these five grounds; can you tell us or confirm
24 that you investigated each of these issues or
02:01 25 grounds in your investigation of the application?



1 A I did.

2 Q So the question, then, is what conclusions did you
3 reach with respect to the question -- with respect
4 to ground number one, and whether or not it
02:01 5 established a reasonable basis to conclude that a
6 miscarriage of justice may have occurred?

7 A I think my answer, the answer I can give in
8 relation to all five grounds, is this: I did not
9 find a factual basis to support the allegations
02:01 10 contained in the various submissions presented on
11 behalf of David Milgaard.

12 Q Okay. And that would go for all five?

13 A Yes.

14 Q Now if we can go to what followed, 026541. And we
02:02 15 have seen a fair bit of media reports that
16 followed the minister's decision. Would you
17 agree, Mr. Williams, that there was a fair bit of
18 media coverage following Minister Campbell's
19 decision and, in particular, there was a fair bit
02:02 20 of criticism of not only the minister but, indeed,
21 your role in matters?

22 A The -- that's fair to say, yes.

23 Q If we can go to 004416. Now again, and on that,
24 is there anything that you can tell us that does
02:02 25 not get into advice or reasons related to, if I



1 can call it, the reaction in the media to the
2 minister's decision?

3 A Well the media reaction, I guess in some respects,
4 was predictable, because throughout the
02:03 5 application the only, the only side of the story
6 that had been presented was the one advanced on
7 behalf of the applicant, David Milgaard. I think
8 there was a hope or an expectation that, with a
9 fairly detailed letter that sought to discuss the
02:03 10 issues that the minister reviewed and a synopsis
11 of the facts that underpinned the decision, that
12 the public would have been made aware of the other
13 side, of the additional facts that had been
14 presented, so that the refusal to grant a remedy
02:04 15 would be understood. That, however, did not take
16 place.

17 Q And do you have any observations as to why?

18 A It's very difficult to discern why someone does
19 not understand what we believe is a fairly clear
02:04 20 message. I simply think that we didn't do as good
21 a job as we needed to along the way in terms of
22 refuting a lot of the misinformation that was out
23 there, it had been repeated with such frequency
24 that very few people examined the other side, and
02:05 25 it was just ignored.



1 Q We have heard some evidence that following the
2 decision, that although the minister's decision
3 was some I think 12 pages in length with some
4 detail, that the concern became the background,
02:05 5 the failure, or the fact that the background
6 information wasn't disclosed, that became an
7 issue. And I don't want you to comment on
8 communications with the minister or reasons or
9 that but, from the public's perspective, would you
02:05 10 agree that it appears that what came out of the
11 minister's decision was, in addition to her
12 12-page letter, demands for more information; is
13 that fair?

14 A That's fair.

02:05 15 COMMISSIONER MacCALLUM: Mr. Williams, you
16 told us quite some time ago, I think, that
17 insofar as factual matters reported wrongly, at
18 least in your perception, you were hamstrung by
19 the need to defer everything, at least refer
02:06 20 everything to the minister, it wasn't your job to
21 argue the case in public?

22 A That's correct.

23 COMMISSIONER MacCALLUM: And you couldn't,
24 in fact, take a position on factual matters
02:06 25 without having -- without being accused of



1 prejudging the matter, or judging it at all,
2 which was not your job?

3 A That's correct.

4 COMMISSIONER MacCALLUM: It was up to the
02:06 5 minister. So are you now telling me that, when
6 you say you didn't do a good job in communicating
7 your position to the public, do you mean to say
8 you didn't do a good job in refuting the
9 allegations which were made against the conduct
02:06 10 of your investigation?

11 A That's part of it. I think the letter, the
12 minister's letter, needed to be more persuasive
13 because we thought it was -- it should have
14 allayed some of the concerns that had been raised,
02:06 15 --

16 COMMISSIONER MacCALLUM: Yes?

17 A -- but it obviously did not. So, hindsight being
18 what it is, there was still that -- there was
19 still the suspicion, there was still questions
02:07 20 about the fairness of the process, there was still
21 questions about whether there was prejudgment of
22 it by officials, despite what the minister had
23 written in the first one or two pages, which
24 sought to describe the process.

02:07 25 COMMISSIONER MacCALLUM: Well, okay, so you



1 just find the lack of communication to have been
2 at the ministerial level and not from your
3 investigative level whereby you would have, from
4 time to time, refuted suggestions which were
02:07 5 being made?

6 A Correct.

7 COMMISSIONER MacCALLUM: So you still say
8 that that wouldn't be part of the process as you
9 see it?

02:07 10 A We --

11 COMMISSIONER MacCALLUM: You just remained
12 silent and do your job?

13 A Yes.

14 COMMISSIONER MacCALLUM: Umm, okay.

02:08 15 BY MR. HODSON:

16 Q This is an April 25, 1991 letter from Mr. Wolch to
17 the federal minister following the decision, and
18 it's Mr. Wolch's formal response; I take it you
19 would have been familiar with this document?

02:08 20 A Yes, I received a copy of it.

21 Q If we can go to the next page, and I brought this
22 up last week and it's talking about the motel room
23 incident, and in the letter Mr. Wolch writes that:

24 "According to Crown theory,

02:08 25 in 22 years David Milgaard has never



1 admitted any involvement in the murder
2 to anyone, other than to paid by the
3 Crown young criminals whom he hardly
4 new. Melnyk and Labchuk could not even
02:08 5 agree between themselves as to what was
6 said and done. More important, even to
7 this day we do not know what arrangement
8 was made for them to secure their
9 evidence. A member of your Department
02:08 10 implied to us that they were paid."

11 And just your comment on two comments here, the:

12 "... paid by the Crown young criminals
13 ..."

14 and the:

02:09 15 "A member of your Department implied to
16 us that they were paid."

17 Do you recall any discussions with Mr. Wolch, or
18 any information that you gathered to suggest that
19 Melnyk and Lapchuk were paid by the Crown
02:09 20 witnesses; and secondly, whether anybody in your
21 department may have implied that they were paid?

22 A I do recall a discussion, at or around the time of
23 the October 1st, '90 meeting, which dealt with the
24 issue of a reward, a reward that had been offered
02:09 25 for information leading to the arrest and



1 conviction of the killer of Gail Miller, and at
2 that time my recollection is that I knew that a
3 reward had been offered to Mr. Cadrain. I wasn't
4 certain whether he was the only one that
02:10 5 participated in that reward and I was subsequently
6 asked by Mr. MacFarlane to look into that, and I
7 did, and I found that only Mr. Cadrain received
8 the reward. Now it may have been in the context
9 of that discussion that Mr. Asper or Mr. Wolch, or
02:10 10 both, got the impression that there was an
11 inference that someone else might have been paid
12 but, beyond that, I had no information about
13 Melnyk and Lapchuk being paid for their evidence.

14 Q And, just for the record, 002289. And, again,
02:11 15 this is a memo between you and Mr. MacFarlane, and
16 I'm not asking any questions about advice that you
17 gave to him, but it appears to contain factual
18 information that you obtained -- this is three
19 days after the meeting -- about the reward money,
02:11 20 confirming that Albert Cadrain was the individual
21 who got the reward; correct?

22 A Yes.

23 Q And it was submitted that the claims by the
24 witnesses Cadrain and Wilson were submitted after
02:11 25 Milgaard was convicted by the jury as -- instead



1 of before; is that correct?

2 A Yes.

3 Q If we could go to 000901. This is the August
4 14th, 1991 second application to the minister, and
02:12 5 you're familiar with this document, Mr. Williams?

6 COMMISSIONER MacCALLUM: Excuse me just for
7 a second. Mr. Wilde, I wonder if you could open
8 all the doors, it's so hot in here it's getting
9 to be unbearable. I saw one of the staff trying
02:12 10 to fix the problem and she was unsuccessful.

11 BY MR. HODSON:

12 Q And you're familiar with this document, I take it
13 you spent a fair bit of time with it in 1991?

14 A Yes.

02:12 15 Q I'll ask you a couple of questions here. The
16 document states:

17 "When we first made our application the
18 suggestion that Larry Fisher was the
19 perpetrator was not the main thrust and
02:12 20 we were at that time advised by your
21 Department that there were no police
22 reports available on past offences of
23 Mr. Fisher. Whereas we suggested there
24 was a distinct pattern and although the
02:13 25 similarities were never placed before



1 you, we accepted that we were at that
2 time at a dead end."

3 Would you agree with what's put forward there?

4 A It's only partly correct. During the first
02:13 5 application, of course, the Winnipeg files, there
6 were some reports from that and there was, I
7 believe, just one -- one set of police reports
8 from the Saskatoon application. But, subject to
9 that caveat, I believe our information, and what
02:13 10 we had at the time, was that they could not be
11 located.

12 Q Okay. What about the comment that Larry Fisher
13 was the perpetrator was not the main thrust of the
14 first application?

02:14 15 A Well you've, you've seen Mr. Wolch's September
16 10th letter, that is his perception of it.

17 Q But what is yours?

18 A Well certainly after, after Larry Fisher was
19 advanced as the perpetrator, there was an
02:14 20 inordinate amount of time, effort and energy
21 expended towards establishing that. It --

22 COMMISSIONER MacCALLUM: Amount of time
23 spent by whom, sir?

24 A By the Milgaard camp advancing that. I mean
02:14 25 Deborah Hall, that was relatively straightforward,



1 it was a one witness, as is Dale Wilson -- or Ron
2 Wilson, but we expended a significant amount of
3 resources trying to track down Larry Fisher. But
4 that's Mr. Wolch's take on it, so --

02:15 5 BY MR. HODSON:

6 Q And what about the comment about the distinct
7 pattern of his offences and the similarities being
8 placed before you; did you look at the
9 similarities of the Fisher rapes and the Gail
02:15 10 Miller murder on the first application in your
11 investigation?

12 A Yes, based on the information we had, we did.

13 Q If we can scroll down. And it says here that:

14 "Once your decision was

02:15 15 brought to our attention we were
16 determined to proceed further in
17 ascertaining Larry Fisher's possible
18 guilt and we were somewhat surprised to
19 learn that there was ample material
02:15 20 available, including at least one police
21 report concerning previous victims of
22 Fisher."

23 At the October 1, 1990 meeting did you provide
24 either a copy of, or access to Mr. Wolch and Mr.
02:16 25 Asper of the Fisher rape files that you had at



1 that time, namely the two Fort Garry incidents,
2 the (V10) (V10)- matter, and the (V5)-- (V5)---
3 file, which I think you said you received in
4 mid-1990?

02:16 5 A I'm not sure we had the (V10) (V10)- file at that
6 time but, whatever we had, we gave him.

7 Q Well I think we saw a document earlier, and I'll
8 show you another one, that suggests you had the
9 (V5)-- (V5)--- file?

02:16 10 A Yes.

11 Q That's something, that's a file you had October 1,
12 1990; correct?

13 A Yes.

14 Q Did you make that available to Mr. Wolch and Mr.
02:16 15 Asper at the October 1, 1990 meeting?

16 A I believe we did, yes.

17 Q And the two Fort Garry files, then, I think you
18 said you had parts of those, or whatever you had,
19 you provided access to those?

02:17 20 A Yes.

21 Q And (V10) (V10)- had gone through a preliminary
22 hearing, or Mr. Fisher had gone through a
23 preliminary hearing, and I don't think there was
24 any issue in locating those files; is that
02:17 25 correct?



1 A I don't believe so, because that was, that -- that
2 offence was investigated by the RCMP in North
3 Battleford and I believe Sergeant Pearson didn't
4 have much difficulty tracking it down.

02:17 5 Q And if you would have had -- put it this way, to
6 the extent that you, Eugene Williams, had (V10)
7 (V10)- file information on October 1, 1990, did
8 you provide access to that information to Mr.
9 Wolch and Mr. Asper?

02:17 10 A Yes.

11 Q And would that have included providing a copy of
12 whatever you had?

13 A If a copy had been requested I believe we would
14 have provided it, certain -- subject to a certain
02:17 15 embargo upon disseminating that information.

16 Q If we can go to page 000905. This would be the
17 table of contents, and I take it that the victim
18 reports -- let's just leave (V14)- (V14)- for a
19 moment -- the remaining seven victims would have
02:18 20 been assaults that you had been aware of on the
21 first application; is that correct?

22 A Yes.

23 Q And (V14)- (V14)- is new; what is your
24 recollection of that incident and how it fit into
02:18 25 what you did and what you concluded?



1 A (V14)- (V14)-, I believe, was new in the sense
2 that it had not been the subject of any charges
3 against Mr. Fisher, and I believe Sergeant Pearson
4 at least looked into that matter.

02:19 5 Q I wonder if I could just have a moment, Mr.
6 Commissioner, just to check a document with
7 Mr. Frayer?

8 COMMISSIONER MacCALLUM: Yes.

9 BY MR. HODSON:

02:19 10 Q If we can call up 010002. And this is a
11 memorandum dated August 20th, 1991, it's from you
12 to Mr. Corbett.

13 And I've raised this, Mr.

14 Commissioner, with Mr. Frayer, and I don't believe
02:20 15 he has any objection to me questioning the witness
16 about the factual matters related in this
17 memorandum, and I think I do not intend to
18 question Mr. Williams about any advice he provided
19 to Mr. Corbett or any discussions about that.

02:20 20 But I think, Mr. Williams,
21 would this memorandum fairly summarize your
22 knowledge at the time, and I think you set out
23 what steps you had taken on the first application
24 investigation relating to the Larry Fisher matter;
02:20 25 is that correct?



1 A Yes.

2 Q And so it's for that purpose that I have some
3 questions. You say here that:

4 "The applicant submits that
02:20 5 the circumstances of Larry Fisher's
6 sexual assaults against his victims are
7 'striking similar acts that would be
8 admissible in a trial against Larry
9 Fisher and would have been admissible in
02:20 10 David Milgaard's trial if the
11 information had been known.'"

12 And then it goes on to talk about the Centurion
13 information or investigation and then, scroll
14 down, and then I think you set out:

02:21 15 "Also enclosed was the statement of
16 another assault victim, who was unable
17 to identify her attacker."

18 And goes on to recite what's in the Centurion
19 application, that:

02:21 20 "When she looked at Larry Fisher's
21 picture, she said that it could be him.
22 However, she remembered that her
23 attacker was not as clean-cut as the
24 photo of Fisher and had longer dirtier
02:21 25 hair."



1 And I think those words are taken out of the
2 Centurion documents; is that right?

3 A Yes.

4 Q And then if we can go to the next page, you say:

02:21 5 "The applicant has mistakenly assumed
6 that the similarities between the attack
7 on Gail Miller and the Fisher assaults
8 were not brought to the Minister's
9 attention or considered during the first
02:21 10 application. This assumption is based
11 on a mistaken recollection of a
12 conversation I had with Mr. Wolch.

13 I had told Mr. Wolch that the
14 occurrence reports for the 1968 assaults
02:22 15 in Saskatoon were not available, and
16 that the quality of the photocopy of the
17 1970 assault in Saskatoon was poor.

18 However, I had obtained
19 sufficient information relating to the
02:22 20 October - November 1968 charges from
21 court documents and considered this
22 information during the assessment of the
23 first application. I had also obtained
24 and considered the occurrence reports
02:22 25 from the Winnipeg assaults."



1 And would that, what I just read you, is that
2 accurate, Mr. Williams?

3 A Yes.

4 Q If we can go to 333576, and this is an August
02:22 5 20th, 1991 memo to file. Maybe just pause here,
6 and again, I don't want you to get into any areas
7 of advice, Mr. Williams, but can you tell us
8 generally what -- was your role in investigating
9 the second application similar to the first
02:23 10 application, or can you give us a general idea of
11 what you did without getting into advice?

12 A It wasn't similar in a sense that from the arrival
13 of the application in August of, August 14th or
14 shortly after, that in 1991 I was the legal
02:23 15 officer that had the most information about the
16 file and initially I was asked to review or make
17 an initial assessment of the application. It
18 became clear, however, shortly after the receipt
19 of the application, that a decision would have to
02:24 20 be made as to who within the department would
21 advance or take further steps on this case and
22 there was some discussions as to by what means the
23 second application would be investigated. Pending
24 a decision on those two questions, I was asked to
02:24 25 perform specific steps and this is one of them.



1 Q And so is it correct to say that for a time period
2 then, maybe on a bit of an ad hoc basis, you would
3 be doing some investigative follow-up of the
4 second application?

02:24 5 A Yes.

6 Q And are you able to tell us whether another
7 Federal Justice lawyer ended up performing the
8 formal role that you performed on the first
9 application?

02:25 10 A The second application wasn't handled in the way
11 that the first one was. The second application, a
12 lot of what you might call the investigative work
13 was done in an open form before the Supreme Court
14 of Canada and in relation to that certainly I did
02:25 15 do some ground work in the sense of interviewing
16 witnesses that had been identified to me to
17 interview, collecting various things and
18 participating in the development of the books or
19 the case on reference that found its way to the
02:25 20 Supreme Court, but I did not participate in the
21 reference itself as counsel.

22 Q And we've heard some evidence from Mr. Brown and
23 Mr. Asper that at some point within weeks or maybe
24 months of the second application being filed,
02:25 25 their evidence was to the effect that they became



1 aware that the matter was going to be sent to a
2 reference at some point prior to November 28, 1991
3 and that efforts were pursued in that direction,
4 and again, would that, without getting into
02:26 5 advice, does that accord with your recollection,
6 Mr. Williams, that at some point it became
7 apparent, if I can put it that way, that it was
8 going to go to the court?

9 A It became apparent, sir, that the main
02:26 10 investigator would not be me.

11 Q Okay. But you did do some investigative work
12 prior to the decision being made to send it to the
13 court on November 28th?

14 A I did.

02:26 15 Q And then after you did some -- or some work in
16 connection with the reference; is that fair?

17 A Yes.

18 Q And so here it looks as though you ask Mr. Pearson
19 to find out:

02:26 20 "...statistics to identify the number of
21 sexual assaults committed by a
22 knife-wielding assailant in Saskatoon in
23 1968, 1969, and 1970."

24 And:

02:27 25 "In addition ... the reasons why Larry



1 Fisher pleaded guilty in Regina."

2 Just on that latter point, do you recall, would
3 this have been the first time that this had been
4 brought to your attention, that there may be
02:27 5 something of concern with the manner in which
6 Larry Fisher was dealt with in Saskatchewan?

7 A There was -- there had been some published reports
8 that suggested that the plea in Regina was just
9 part of an overall cover-up to distance -- or
02:27 10 cover-ups relating to Larry Fisher, rather than do
11 it in Saskatoon it was done surreptitiously in
12 Regina, quietly, and that had received some
13 consideration in the press and we wanted to find
14 out if there was a reason that had been
02:28 15 articulated at the time.

16 Q Do you have a recollection whether that issue had
17 been something you investigated on the first
18 application, and let me put it finer, that that
19 somehow would be a miscarriage of justice or
02:28 20 contribute to a miscarriage of justice, the manner
21 in which the authorities dealt with Larry Fisher's
22 charges?

23 A I don't believe that we considered that as a
24 grounds at all. The information that I had
02:28 25 obtained didn't signal that there was any evidence



1 of that, so I don't believe I pursued it. It did
2 come up, there were some other press reports or
3 some charges brought by or on behalf of the
4 Milgaard application that suggested that this was
02:28 5 just another incident of a cover-up and we did
6 look into it, or I asked Sergeant Pearson to see
7 what he could find. Ultimately there was some
8 legitimate reasons for it which overshadowed any
9 suggestion of a cover-up. One included the
02:29 10 presence of counsel for Mr. Fisher, Mr. Greenberg,
11 to have the plea in Regina.

12 MR. HODSON: I see it's 2:30,
13 Mr. Commissioner, I think probably an appropriate
14 time to break.

02:29 15 COMMISSIONER MacCALLUM: Okay.

16 *(Adjourned at 2:29 p.m.)*

17 *(Reconvened at 2:54 p.m.)*

18 BY MR. HODSON:

19 Q Call up 057451, and this is a newspaper article of
02:54 20 August 29th, 1991 and it deals with suggestions
21 that some of the Saskatoon police files relating
22 to Larry Fisher have gone missing, and are you
23 aware of that issue being raised or coming to your
24 attention at this time?

02:55 25 A Yes, sir.



1 Q And can you tell us, what is your recollection of
2 your involvement in that and the significance, if
3 any, that had in your assessment of matters?

4 A I guess my involvement, I was implicated in two
02:55 5 ways. Firstly, in relation to the second
6 application there was a suggestion that some of
7 the files had gone missing and that the reasons
8 for that were as part of a cover-up attempt.
9 Secondly --

02:55 10 Q I'm sorry, on your part, that you were somehow
11 involved in this?

12 A No, no. That was one angle. The second angle was
13 that we didn't find the files and we should have,
14 so we were a little sloppy, or the accusation was
02:56 15 that we were sloppy. What I had learned was that
16 the Saskatoon police had a document destruction
17 policy which meant that they kept files for a
18 period of 10 years of closed cases and after that
19 they were destroyed.

02:56 20 Q And so back on the first application, I think you
21 told us of the four Saskatoon Fisher rape files,
22 you obtained one file but not the other three; is
23 that correct?

24 A That's my recollection, yes.

02:56 25 Q And did you find anything sinister about that or



1 suspicious about that at the time?

2 A No.

3 Q And based on the information that you became aware
4 of in August of 1991 and the months that followed,
02:56 5 namely, the investigation and this issue, did you
6 learn any information that caused you to be
7 concerned that files had gone missing in some
8 sinister way or for sinister purposes?

9 A Not for sinister purposes. I'm part of a
02:57 10 significant organization and recognize that
11 despite your best efforts, sometimes files do go
12 missing, or misplaced, and particularly when it
13 comes to historical files, not current,
14 operational files.

02:57 15 Q If we can go to 114627. This is a letter of
16 August 29th, 1991, it's the cover page. If we can
17 go to the next page, this is a letter from you to
18 Mr. Brown August 20th, 1991. I'm not sure if much
19 turns on the date. And you ask here, or you
02:57 20 indicate to Mr. Brown:

21 "I have been asked to examine the issues
22 that are raised in this application.
23 The applicant has requested a new trial,
24 or alternatively, a reference to an
02:58 25 appellate tribunal. The grant of any of



1 these remedies would affect the office
2 of the Attorney-General of Saskatchewan.
3 Consequently, I am writing to invite you
4 to provide any submissions you may wish
02:58 5 to make in relation to the above-noted
6 topics."

7 And I'm wondering, Mr. Williams, is there any --
8 as far as contacting the Attorney General, is
9 there something different with the second
02:58 10 application that would prompt you to go to them
11 as compared to the first application?

12 A Well, in each of the applications I went to the
13 Attorney General, but just different officers. As
14 you recall, I had made contact with Mr. Fred Dehm
02:58 15 in order to obtain access to the files in
16 Saskatoon. With the second application, in the
17 light of the issues and in light of some of the
18 events, I knew that some of the considerations
19 that we were thinking about, it was prudent to
02:59 20 engage Mr. Brown and those at the office of public
21 prosecutions that were more at an earlier stage,
22 because we anticipated that their input or their
23 participation in the second application would be
24 much more direct.

02:59 25 Q Okay. Go to 333582, please, and this is an August



1 30, 1991 letter from Mr. Wolch to the minister
2 referring to the statement of (V4)---- (V4)---,
3 and are you familiar with (V4)---- (V4)--- and the
4 statement she provided in August of 1991?

02:59 5 A I read the statement at the time and I may have
6 read it since then and it relates to -- Miss
7 (V4)--- was an individual who had accused Mr.
8 Fisher of an assault on her I believe on the same
9 morning that Gail Miller died.

03:00 10 Q And again I think the record suggests that that
11 would not have been information that had been
12 either part of the first application or
13 information that you had investigated on the first
14 application; is that correct?

03:00 15 A I don't believe it was, sir.

16 Q And can you comment generally, what was your --
17 did you draw any conclusions from this
18 information, and just to refresh your memory, Miss
19 (V4)--- was assaulted at 7:07 a.m. on January 31,
03:00 20 1969 according to a police report and her
21 statement on Avenue H about seven blocks away,
22 gave a description, gave a statement to the
23 police, and then in August, I think August 11th,
24 1991 saw a picture of Mr. Fisher in the paper and
03:01 25 from that identified him as the assailant, so



1 that's generally the evidence we've heard, and I
2 guess my question is how did you see that fitting
3 into the Larry Fisher ground, if I can call it
4 that, on the second application?

03:01 5 A When I first looked at it, I didn't assess it I
6 guess in any great detail, but some of the
7 observations that came immediately to mind were,
8 one, given the nature of the assault, the distance
9 from the -- from the location of Gail Miller's
03:01 10 body, it would take, you know, quite an athletic
11 feat to get over there, and secondly, I observed
12 the nature of the attack and the level of violence
13 certainly was much different from what, that which
14 befell Miss Miller if it in fact had been
03:02 15 committed by the same person. It didn't seem to
16 fit into the pattern, but --

17 Q If we can go to 333594. Again, this is a
18 September 4, 1991 memorandum from you to Mr.
19 MacFarlane, and, Mr. Frayer, I have the same
03:02 20 comment with respect to the earlier memos, I
21 simply wish to ask Mr. Williams about the factual
22 information recorded in here. The fact that it is
23 in a memo to Mr. MacFarlane, I don't intend to ask
24 about any advice discussed between the two, I'm
03:02 25 more interested in whether or not this memo



1 captures the factual information, and I take it,
2 Mr. Frayer, you are fine with that?

3 MR. FRAYER: I am.

4 BY MR. HODSON:

03:03 5 Q Thank you. And --

6 A Having --

7 Q Go ahead.

8 A No, I've reviewed it and it does recite my
9 knowledge at that time.

03:03 10 Q Okay.

11 A And accurately relates it.

12 Q Sure. And I would like to just go through,
13 because I think, correct me if I'm wrong, but
14 this memo would set out, at least in September,
03:03 15 1991, your recollection at that time about what
16 files you had from the Saskatoon City Police, what
17 files you didn't have and the reasons; is that
18 correct?

19 A Yes.

03:03 20 Q And so here you say:

21 "On March 22, 1990 Deputy Chief Montague
22 responded in writing to my written
23 requests of March 1, 1990. In the
24 interim I had also examined their files
03:03 25 during a trip to Saskatoon. At the time



1 I learned that the 1968 sexual assault
2 files were not available. A number of
3 older files had been destroyed, as part
4 of their normal file destruction
03:03 5 procedure. The 1968 assaults to which
6 Fisher had pleaded guilty had not been
7 microfilmed before they had been
8 destroyed."

9 And is that your recollection?

03:04 10 A Yes, sir, it is.

11 Q And then:

12 "Despite press reports alleging that
13 Saskatoon police files were lost,
14 recently, the police told me in 1990
03:04 15 that the files were not available. I
16 relayed that information to Hersh Wolch
17 shortly after I had received it."

18 And:

19 "The Centurion Ministries report which
03:04 20 predates Milgaard's second application
21 also notes that the 1968 files
22 concerning Fisher's attacks in Saskatoon
23 were not available. In my dealings with
24 Saskatoon City Police, I have found no
03:04 25 evidence of a cover-up. I saw all



1 relevant, available files that I
2 requested."

3 And that would be an accurate summary, Mr.
4 Williams?

03:04 5 A It is.

6 Q 333600, and this is a file memo of September 6,
7 1991; is that correct?

8 A Yes, sir.

9 Q And this relates to a discussion with the mayor at
03:05 10 the time, Mr. Dayday; correct?

11 A Yes.

12 Q And it appears here that you:

13 "...outlined to him the background of my
14 request, the steps taken to fulfil that
03:05 15 request, and the reasons why I did not
16 insist that a full search of each
17 microfilm tape be conducted at the time
18 of my initial request."

19 And then you say:

03:05 20 "I had obtained information from other
21 sources which satisfied my need for
22 information and enabled an assessment of
23 the issues that had then been raised by
24 the applicant."

03:05 25 Can you elaborate on what that relates to?



1 A Firstly, the sentence, "I outlined to him the
2 background of my request...", I think that flows
3 from the portion of the Milgaard application which
4 initially identified Larry Fisher as Gail Miller's
03:06 5 assailant and at that time we were looking for
6 file information about the sexual assaults which
7 had been -- for which he had entered pleas of
8 guilty. We had gotten some summary information
9 and that summary information was used. To the
03:06 10 extent that we -- I recall personally going in in
11 the company of Sergeant Pearson, we went into the
12 files area of the Saskatoon police and did a
13 manual search of the location where, based on how
14 they had -- how they had filed materials, we did
03:06 15 look through it. We also were advised that other
16 folks, other members of the Saskatoon police had
17 been tasked to make a search and I had no reason
18 to believe that the search was done except in
19 accordance with a thorough investigation.

03:07 20 Q Okay.

21 A And with respect -- and that's what I meant when I
22 say the steps taken to fulfil that request, and
23 when they came up and said lookit, we don't have
24 this, I didn't press the point because I thought
03:07 25 sufficient steps had been taken.



1 Q Is it fair to read into this that what had not
2 been checked in 1990 was to go through and review
3 all the microfilm or do you know if that had been
4 done?

03:07 5 A We reviewed some of the film, but not all, and
6 when I say some, my information was that the files
7 had been put on microfilm in a certain order.

8 Q Yes.

9 A So we looked at the ones, X number of files before
03:08 10 and X number of files after, but there was an
11 enormous number of files that had been microfilmed
12 for that year and I was satisfied that that was
13 sufficient for our purposes.

14 Q And would that have been -- I think we saw an
03:08 15 earlier record that suggested July of 1990 when
16 you and Sergeant Pearson would have been there.
17 Is that when you got the (V5)-- (V5)--- file, is
18 that the occasion?

19 A I believe that was one of the occasions, yes.

03:08 20 Q Were there more than one occasion when you went to
21 look for the Fisher files?

22 A There was more than one occasion when either
23 myself or Sergeant Pearson went to look for those
24 files, yes, or I may have reviewed file material
03:08 25 at the Saskatoon police office.



1 Q If we can go to 016097, this is a September 9th,
2 1991 memo to file of a conversation with Inspector
3 Quinn and you indicate that he advised:

4 "...called to advise that a portion of
03:09 5 (V1)--- (V1-'s file ... had been
6 located. It contained the statement of
7 (V1)--- (V1)- and two investigation
8 reports. The 1970 file of (V5)--
9 (V5)--- had also been retrieved. He
03:09 10 added that the computerized file listing
11 displayed the files of (V5)-- (V5)---
12 and Ms. (V2)---. However, Ms. (V2)---'s
13 file had not been located. The search
14 for it was still underway."

03:09 15 And I think we've heard from other evidence that
16 around this time, or within days of this, the
17 Saskatoon City Police, or there was a Police
18 Commission investigation into these files. Did
19 you become aware of that?

03:09 20 A Yes, sir.

21 Q And can we take it from this memo that on
22 September 9th, 1991, that this would have been the
23 first occasion when you became aware of the
24 (V1)--- (V1)- file being located?

03:10 25 A Yes.



1 Q And was it your understanding that that had been
2 on microfilm, that you located it somewhere in the
3 microfilm and a copy made, or what is your
4 recollection?

03:10 5 A I'm not certain whether a hard copy was made of
6 what was located or whether it was microfilm, sir,
7 I really don't recall.

8 Q And is it fair to say that the (V1)--- (V1)- file
9 or the partial file would have been the only
03:10 10 Saskatoon City Police file that was discovered on
11 the second application that you didn't have on the
12 first application? I didn't ask that very well,
13 but --

14 A It was -- I'm not certain if it was the only one.
03:11 15 I believe later on additional materials from the,
16 from some of the other files were located, perhaps
17 not in Saskatoon, but perhaps in Regina, I'm not
18 certain.

19 Q Maybe from the prosecution.

03:11 20 A From the prosecution, yes.

21 Q I think the evidence we have before this
22 Commission is that of the four Saskatoon Larry
23 Fisher files, if I can call them that, that we
24 have what appears to be a complete (V5)-- (V5)---
03:11 25 file, it appears to be, a partial (V1)--- (V1)-



1 and no file from (V2)----- and no file from (V3)--
2 (V3)----- of original police files.

3 A Okay.

4 Q And taking that as the premise, what I'm trying to
03:11 5 identify is to which of those two, the (V5)--- and
6 the partial (V1)-, did you have on the first
7 application and what did you get on the second
8 application.

9 A I had the (V5)--- on the first application and I
03:11 10 had the (V1)- on the second application.

11 Q Now, I should also point out that in 1993, in the
12 course of the RCMP investigation, some additional
13 RCMP files were located that had copies of the
14 statement of Ms. (V2)----- and Ms. (V3)----- on
03:12 15 their files, that they were RCMP files as opposed
16 to Saskatoon police files. Do you recall being
17 aware of the (V2)----- or (V3)----- statements in
18 any of the investigative work you did?

19 A No, sir.

03:12 20 Q And again, 321950, and I don't propose to ask any
21 questions about what may have flowed between you
22 and Mr. Rutherford, but this is a September 10,
23 1991 memorandum with a transcript of the
24 handwritten statement of (V1)--- (V1)-, and can we
03:12 25 take it from this that on or about this date you



1 would have received from the Saskatoon City Police
2 the (V1)--- (V1)- statement and whatever else was
3 on that file?

4 A Yes.

03:13 5 Q 004421, this is a September 11th, 1991 letter from
6 Mr. Wolch to Mr. MacFarlane on just an issue about
7 use of similar fact evidence by the accused and,
8 in particular:

9 "...whether the criminal conduct of
03:13 10 Larry Fisher would be admissible in
11 proceedings against David Milgaard for
12 the purpose of disproving or raising a
13 reasonable doubt as to Milgaard's
14 guilt."

03:13 15 And we talked a bit about this last week, the
16 issue of to what extent could the Larry Fisher
17 information have been used by David Milgaard's
18 counsel at his original trial; correct?

19 A Yes.

03:14 20 Q And just to refresh my memory here, I think you
21 told us that on the first application that was an
22 issue that you investigated; correct?

23 A Yes.

24 Q And I think you told us that it was information
03:14 25 that could, it's the type of information that



1 could provide a reasonable basis to conclude that
2 a miscarriage of justice may have occurred in the
3 sense that if it wasn't available to Mr.
4 Milgaard's counsel and it may have affected the
03:14 5 verdict, that might be a basis for a miscarriage
6 of justice; is that correct?

7 A Yes, but as you recall, we also went on further to
8 discuss that in making that determination, the
9 minister would also balance that against the type
03:14 10 of evidence that was available to support the
11 conviction.

12 Q And I think you gave us your evidence about the
13 conclusions you reached based on looking at that
14 ground in the first application, correct, as it
03:15 15 related to Larry Fisher, both the Larry Fisher as
16 the perpetrator and the Larry Fisher information
17 being used in a defence; correct?

18 A I believe, yes, my answer was I didn't find enough
19 evidence there to link Mr. Fisher to the Miller
03:15 20 homicide.

21 Q In your investigation of the second application,
22 was there anything by way of new information that
23 you did not have on the first application that you
24 reviewed that caused you to reach a different
03:15 25 conclusion?



1 A The answer to the question as asked is "no" with
2 the following caveat; that in relation to the
3 second application I did not perform the same type
4 of assessment about all of that information, or
03:16 5 certainly not in the same degree as I had on the
6 first. There was a review of the information up
7 to a certain point in time, and I think that point
8 in time was possibly mid-September, but I believe
9 additional details became available after that
03:16 10 time which I did not perform any type of
11 meaningful assessment of, so --

12 Q I'm sorry, what was the date again?

13 A I think up to about mid-September.

14 Q Okay.

03:16 15 A But there were further investigations, or further
16 information came in, and when that additional
17 information came in I was certainly under the
18 impression that the type of assessment and the
19 type of advice that I would be called upon to
03:16 20 provide on the second application would not have
21 the same character, or would not be the same as I
22 had provided on the first.

23 COMMISSIONER MacCALLUM: What additional
24 information, sir, was it from -- relating to the
03:17 25 Fisher similar-fact evidence you mean?



1 A It was. I believe, by then, some of the -- some
2 of the folks had been interviewed.

3 BY MR. HODSON:

4 Q Yeah, I was -- maybe, if I could assist you, I
03:17 5 think you would have had the second application
6 document which had the Centurion Ministries'
7 interviews and their summaries of information they
8 obtained from the victims, you would have had that
9 information; correct?

03:17 10 A Yes.

11 Q And, in addition, you would have had the partial
12 (V1)--- (V1)- file; correct?

13 A Yes.

14 Q And I --

03:17 15 A Sorry, go ahead?

16 Q And I believe, perhaps, some more information on
17 the (V10) (V10)- file; is that correct?

18 A Yes.

19 Q And so, again, am I correct that, subject to the
03:17 20 caveat that you just indicated, that based on that
21 new information, namely the Centurion Ministries
22 information, the partial (V1)--- (V1)- file and
23 the (V10) (V10)- file, that did not cause you to
24 reach a different conclusion than you had reached
03:18 25 on the first application with respect to whether



1 that information may provide a reasonable
2 conclusion that a miscarriage of justice may have
3 occurred?

4 A That's correct.

03:18 5 COMMISSIONER MacCALLUM: Didn't cause you
6 to come to that conclusion?

7 A No, sir, it didn't. But it wasn't a conclusion
8 that I had to relay to anyone because that, that
9 was not -- that would -- it would have been
03:18 10 premature. I knew, then, that this second
11 application would be handled differently.

12 COMMISSIONER MacCALLUM: You mean it was
13 going to succeed for different reasons?

14 A It was the minister would get advice as to how to
03:18 15 deal with it, but not necessarily from me.

16 BY MR. HODSON:

17 Q Maybe I can take a different tack. If the
18 information that we had that you received on the
19 second application, namely the Centurion
03:19 20 Ministries information, the partial (V1)--- (V1)-
21 file and the (V10) (V10)- information, if that had
22 been information that you had on the first
23 application are you able to tell us whether that
24 would have changed the conclusions that you
03:19 25 reached with respect to that information?



1 A Probably not, I don't think it would have, sir.

2 Q Okay. If we can go to 114815. And this is a
3 chronology of events dated September 11th, 1991
4 that has been provided to us, and if I just want
03:20 5 to identify it as, number one, being a document
6 that you prepared, and secondly, that it would be
7 accurate; is that correct?

8 A It is a document I prepared, and it was done to
9 the best of my knowledge, yes.

03:20 10 Q If we can go to 333617. And this is just a fax
11 from you to Mr. Pearson with the (V1)--- (V1)-
12 statement and file; do you recall what Sergeant
13 Pearson was doing at this time or what role he was
14 playing?

03:20 15 A Sergeant Pearson was assisting us again with
16 respect to making inquiries of some of these
17 victims, and I believe it may have happened in two
18 separate contexts. One, around that time we had
19 asked whether or not the police analysts would
03:21 20 take a look at some of the information that had
21 been provided by Mr. Wolch in the second
22 application, and to get their views. I'm not
23 certain whether this was sent for that purpose or
24 whether it was sent to complete Sergeant Pearson's
03:21 25 file, because I know that we had been discussing



1 follow-up interviews with some of the folks.

2 Q Okay. If we could call up 009190. And this is a
3 fax from you to Mr. Brown of September 18, 1991,
4 and on the next page there's part of a media
03:22 5 report, and there's other media reports at the
6 time. Let me just ask this. This says:

7 "Now, the Saskatoon police have
8 apparently admitted that they haven't
9 given full information to the Justice
03:22 10 Department, that really, the Minister
11 was working with just half of the things
12 she should have had, and I find that so
13 difficult."

14 Would you have been aware at this time, September
03:22 15 of 1991, of suggestions in the media that, on the
16 first application, the Saskatoon City Police
17 didn't -- either didn't give you anything or
18 didn't give you the complete set of information,
19 things of that nature?

03:22 20 A That certainly was brought to my attention, and I
21 think the reference is to the portions of the
22 (V1)- file and other materials that were located.

23 Q Okay. And I don't want to ask you about what
24 information was given to the minister, and what
03:22 25 the minister received from the Saskatoon City



1 Police, but I would like to question you about
2 what you received. And, apart from the partial
3 (V1)- file that you identified, do you recall
4 whether there was any other information on the
03:23 5 Saskatoon City Police files that was not provided
6 to you on the first application?

7 A Sir, my recollection is they gave me what they had
8 discovered at the time.

9 Q And were --

03:23 10 A And --

11 Q And, apart from the partial (V1)- file, do you
12 recall there being anything else that you would
13 have received on the second application relating
14 to the Larry Fisher matters that you didn't have
03:23 15 on the first application?

16 A Yes, there were some additional things, but I
17 can't itemize them from memory as we speak.

18 Q Okay. Were they matters of significance; do you
19 recall?

03:24 20 A I think there were additional details, perhaps a
21 statement or occurrence report.

22 Q Related to?

23 A Either -- I don't think there was anything on
24 (V2)-----, but perhaps (V3)-----.

03:24 25 Q Okay. If we can go to 333656. And this appears



1 to be a call September 20, 1991 with you and
2 Harold Pick, counsel of Mr. Fisher?

3 A Yes.

4 Q And it appears here that Mr. Fisher is saying "no
03:24 5 further interviews, no further polygraph"; is that
6 correct?

7 A Yes.

8 Q And can we take it from this that you would have
9 asked Mr. Pick to raise with Mr. Fisher the two
03:24 10 new matters, namely the (V4)---- (V4)--- assault
11 and the (V14)- (V14)- assault; is that correct?

12 A Yes.

13 Q And would that have been something you would have
14 preferred to ask Mr. Fisher in person?

03:25 15 A Yes, we didn't have information about those two
16 when we interviewed him in 1990.

17 Q If we can now go to 333657, please. Now I'm going
18 to go through some documents relating to efforts
19 taken in September 1991 and the following months
03:25 20 relating to Nichol John, and in particular
21 attempts to have her hypnotized and to be -- to
22 receive counselling and examination by I think it
23 was a psychologist, is that correct, by Dr.
24 Fleming?

03:25 25 A Umm, initially it was Dr. Pulos.



1 Q Okay. I'll just go through some of these, but can
2 you give us a general rundown on a couple of
3 matters. First of all, what was the purpose of
4 these interviews, what was -- how did this relate
03:26 5 to the second application, and just elaborate on
6 what it was that these medical and hypnotist
7 experts were being asked to do?

8 A In relation to the second application, it
9 became -- I was convinced that Ms. Demyen had seen
03:26 10 something that was relevant to the slaying of Gail
11 Miller, however it was clear that while she had
12 this recurring nightmare of the event it could not
13 -- and she couldn't articulate it in a conscious
14 state, it occurred to me that perhaps it would be
03:27 15 useful to explore whether her memory could be
16 clarified under hypnosis, and I suggested that to
17 -- as a means of finding out if we could get any
18 information about that, because that had always
19 been an area of concern. I approached her, she
03:27 20 agreed, I made inquiries about folks or
21 professionals who were qualified to do it and
22 identified, among that group, Dr. Lee Pulos. And
23 I guess he was particularly attractive as an
24 initial point because he resided in Vancouver, and
03:28 25 at the time Ms. Demyen resided in British



1 Columbia, so it would have been perhaps more
2 convenient for all.

3 That took place, and upon a
4 review of the tape -- because I did not
03:28 5 participate or wasn't present for the sessions,
6 that was in keeping with certain protocols that we
7 wished to establish -- but upon reviewing the tape
8 I had some concerns about the procedure that was
9 used and I had concerns about whether or not
03:28 10 Ms. Demyen was in fact or had in fact been
11 hypnotized, if not throughout the entire portion
12 of the session at certain important portions of
13 the session, and I obtained the assistance of
14 another professional in Montreal to review the
03:29 15 tape and provide advice to us, on the basis of
16 that advice concluded that we had some real
17 concerns about the hypnosis session that had been
18 undertaken and asked Ms. Demyen whether or not she
19 would undertake another one with, I guess, the
03:29 20 preeminent forensic hypnotist at -- and that's Dr.
21 Martin Orne.

22 The other thing that came
23 clear was that Ms. Demyen was suffering from some
24 type of affliction, perhaps it was post-traumatic
03:29 25 stress, I wasn't certain, but we wanted to find



1 out whether she would explore that, and at the
2 time the department agreed to defray any expenses
3 related thereto. And in that context she was
4 interviewed by Dr. Fleming, and we had his
03:30 5 assessment, and steps were taken between them to
6 pursue that if and when Ms. Demyen chose.

7 In the final result --

8 COMMISSIONER MacCALLUM: Dr. Martin? I'm
9 sorry, I missed his last name?

03:30 10 A It was Dr. Russel Fleming, sir.

11 COMMISSIONER MacCALLUM: No, no, Fleming,
12 but I mean --

13 A Martin Orne.

14 BY MR. HODSON:

03:30 15 Q O-R-N-E?

16 A O-R-N-E.

17 COMMISSIONER MacCALLUM: Yes.

18 A It was as a result of his work that some of the
19 protocols were developed and established for the
03:30 20 reception of evidence, or from the reception of
21 evidence that was obtained or spurred by hypnosis.

22 BY MR. HODSON:

23 Q Now you had mentioned that you had Dr. Pulos' work
24 reviewed by an expert in Montreal; was that
03:31 25 Campbell Perry?



1 A That's correct.

2 Q And at the end of the day what conclusions, if
3 any, did you arrive at based on the various
4 examinations and hypnosis sessions that Ms. John
03:31 5 or Ms. Demyen undertook?

6 A The conclusion was that Ms. Demyen did not, or
7 could not, provide any additional evidence of what
8 took place on that morning, January 1969.
9 Hypnosis did not assist in releasing any
03:31 10 additional information or evidence that had not
11 been presented before the courts at trial.

12 COMMISSIONER MacCALLUM: She did not or
13 could not; which? Which would be right?

14 A Umm, she did not, sir.

03:32 15 COMMISSIONER MacCALLUM: Okay.

16 A I -- I --

17 BY MR. HODSON:

18 Q Okay. You had started off this line of
19 questioning saying you were convinced that Nichol
03:32 20 saw something related to the slaying of Gail
21 Miller. Did your view change in any way after the
22 work done by Dr. Pulos, Campbell Perry, Martin
23 Orne and Dr. Fleming?

24 A It didn't change, but it really -- it was of no
03:32 25 assistance to the assessment, --



1 Q And --

2 A -- in the final analysis.

3 Q And had you considered doing this on the first
4 application, any of this, these steps?

03:32 5 A No, sir, we did not.

6 Q 333667, please. And this is your letter to Dr.
7 Pulos with your instructions; is that correct?

8 A Yes.

9 Q And you say:

03:33 10 "I ... wish to confirm my
11 instruction to you that the Department's
12 only interest is to obtain, if possible,
13 an accurate recall of events that took
14 place in 1969. The recollection of
03:33 15 these events had been recorded in
16 writing shortly after the event.
17 However, the witness has been unable to
18 recall these events since then."

19 And would that be an accurate statement of what
03:33 20 you were instructing Dr. Pulos to do?

21 A Yes.

22 Q And what were you referring to when you say that
23 it had been recorded in writing shortly after the
24 event?

03:33 25 A I'm referring to the statement that Ms. John gave



1 to the Saskatoon City Police in which she
2 implicated Mr. Milgaard as having an encounter
3 with a woman showing a purse, and grabbed the
4 purse, and that she followed them for a period of
03:34 5 time down an alley, --

6 Q And --

7 A -- and the facts surrounding that.

8 Q And you talk here about the:

9 "... potential that the witness may be
03:34 10 required to testify about her
11 recollections at a later date ..."?

12 A Yes.

13 Q And can you elaborate on what you were referring
14 to?

03:34 15 A Well, in the event that there was a hearing of any
16 type that was occasioned by the second
17 application, one of the things I wanted to
18 safeguard was if anything meaningful or productive
19 came from this, that it would be admissible. And,
03:34 20 at the time, I was aware that admissibility of
21 evidence that had been prompted by hypnosis
22 certainly is -- would be the subject of challenge,
23 and that it would be -- the chances for a
24 successful admission would be better if, in the
03:35 25 process of hypnosis, certain safeguards were



1 taken, were -- were followed.

2 For example, whoever would do
3 the interview would have to be very careful not to
4 suggest a set of facts to the witness, or
03:35 5 potential witness, during either the prehypnoic
6 session or during the hypnosis session, and that
7 the entire session needed to be audio and video
8 taped in order to present the clearest evidence of
9 what transpired, and that would be important for
03:36 10 the adjudicator or the trier of fact in making a
11 decision whether or not to accept the evidence
12 and, if so, the weight to be attached to it.

13 COMMISSIONER MacCALLUM: Do you mean that
14 in the context of a new trial, sir?

03:36 15 A Umm, possibly a new trial, or possibly if it was
16 taken to a reference.

17 COMMISSIONER MacCALLUM: I'm just a little
18 puzzled as to what your objective -- were you
19 trying to gather more evidence against Milgaard
03:36 20 for a --

21 A Trying to gather, it could be more evidence
22 against Milgaard or more evidence against anyone
23 who may have assaulted Ms. Miller, we didn't know.
24 She said initially it was David Milgaard, then she
03:36 25 resiled from that at trial.



1 COMMISSIONER MacCALLUM: Yeah, but that
2 played no part in the trial, we have to take that
3 as a legal position.

4 A Correct.

03:37 5 COMMISSIONER MacCALLUM: Yeah, right. So

6 --

7 A Whatever --

8 COMMISSIONER MacCALLUM: -- I guess the
9 question becomes what's the point of further
03:37 10 interrogation of her?

11 A I guess the point is if, for example, she saw
12 someone else --

13 COMMISSIONER MacCALLUM: Yes?

14 A -- and that someone else was then charged, then
03:37 15 we'd want to make certain that this information
16 was taken in a form that would make it admissible.

17 COMMISSIONER MacCALLUM: Okay. Thank you.

18 A And, secondly, for the purposes of even this
19 application, if she said she had seen David
03:37 20 Milgaard, the weight to be attached to that would
21 be very little if the questioner had suggested to
22 her that it was in fact David Milgaard, it would
23 be of little -- it would be of less weight.

24 COMMISSIONER MacCALLUM: Okay.

03:38 25 BY MR. HODSON:



1 Q And would it be correct to describe this as being
2 one of the investigative steps, then, in relation
3 to the second application?

4 A Yes.

03:38 5 Q And since the grounds -- the grounds in the second
6 application, though, were limited to the
7 similar-fact evidence, correct, --

8 A Yes.

9 Q -- and that -- and so to what extent would the
03:38 10 Nichol John information relate to the Larry Fisher
11 similar-fact grounds?

12 A One of the things that troubled us in relation to
13 the similar fact or similar act evidence of Larry
14 Fisher was finding a link linking Mr. Fisher to
03:39 15 that event. Maybe there'd be a description
16 provided of the clothing that might match Mr.
17 Fisher or maybe there was -- there would be
18 something that would solidify it against Mr.
19 Milgaard, we didn't know, so it's in that context.

03:39 20 Q If we can go to 003276.

21 A But, before leaving that, it's really important to
22 stress that I wanted to highlight to Dr. Pulos
23 that his pre-questioning of Ms. John and his
24 questioning of Ms. John had to fall within certain
03:39 25 criteria for admissibility, and that would not



1 permit any kind of leading questions or would not
2 permit the introduction of evidence to the witness
3 that did not come from that witness.

4 Q And did you rely on Dr. Pulos to ensure that
03:40 5 that -- proper steps were taken?

6 A I did. Dr. Pulos had been presented to me as
7 someone who had performed these types of
8 interviews previously for Court-related purposes
9 and, in my discussions with him, he certainly
03:40 10 signaled that he was fully aware of the
11 requirements.

12 Q And then now again, we've gone through this
13 transcript before and I think had a partial video
14 of it, were you present at any of the hypnosis or
03:40 15 the interview by Dr. Pulos?

16 A No, I -- I made the introduction and then I left
17 the building.

18 Q And do you recall, after returning, what Dr. Pulos
19 told you about what he had learned during the
03:41 20 session or what Nichol John had told you?

21 A Oh, Dr. Pulos related his perception was that he
22 felt that, during the course of it, that she
23 had -- she had identified Mr. Milgaard as the
24 killer. That was his take on it.

03:41 25 Q Okay. And if we can go to 002779, did you



1 ultimately accept that as being something that
2 happened in the course of his hypnosis and
3 interview?

4 A I didn't, no.

03:41 5 COMMISSIONER MacCALLUM: I'm sorry, sir?

6 A I didn't.

7 COMMISSIONER MacCALLUM: You didn't? You
8 didn't accept it?

9 A Umm --

03:41 10 COMMISSIONER MacCALLUM: His perception?

11 A No, I didn't.

12 COMMISSIONER MacCALLUM: I'm sorry, that
13 wasn't a fair question.

14 A Well --

03:41 15 COMMISSIONER MacCALLUM: You didn't accept
16 that that was what he might have gathered from
17 his interview; is that right? I'm not asking you
18 to agree with Dr. Pulos or disagree with him but,
19 having seen the tape, did you get the impression
03:42 20 that that's what she said?

21 A No, I didn't.

22 COMMISSIONER MacCALLUM: All right. Okay.
23 Thank you.

24 BY MR. HODSON:

03:42 25 Q And is it correct to say that Dr. Pulos viewed



1 certain conduct and statements of Nichol John in a
2 way different than you viewed the conduct and
3 answers; is that what --

4 A Dr. Pulos' conclusions about those statements and
03:42 5 conduct of Ms. John did not convince me, I wasn't
6 satisfied by his conclusions, and suffice it to
7 say that I thought it desirable to get a second
8 opinion. I just -- it --

9 Q Did the Dr. Pulos interview provide you with any
03:42 10 information of value in the quest that you had
11 undertaken relating to Nichol John's recall?

12 A There was some information of value, yes, sir.
13 However, in terms of the crucial question as to
14 identifying the person that Ms. John had seen
03:43 15 several times in dreams or -- it did not. On the
16 critical question, it did not.

17 Q And here is a letter from Dr. Pulos to you
18 September 26th, 1991, and he says:

19 "After the hypnosis portion of the
03:43 20 interview was over she said, and
21 repeated her statement that Dave
22 Milgaard stabbed the victim on the
23 morning of January 31, 1969. I believe
24 you were present at the end of the
03:43 25 interview and heard her make that



1 statement."

2 Were you, in fact, present and did you hear a
3 statement to the effect described by Dr. Pulos?

4 A I heard a statement, but my recollection was that
03:43 5 she did not identify David Milgaard by name. Umm
6 --

7 Q What do you recall?

8 A I recall words to the effect that, you know, she
9 saw someone stab the woman in the morning. He
03:44 10 attributed it, he inserted David Milgaard as
11 stabbing the victim, but I did not understand her
12 to say that as directly as Dr. Pulos recites in
13 that paragraph.

14 Q The next document, just to call up to identify,
03:44 15 114906.

16 And I simply call this
17 document up, Mr. Commissioner, this is the October
18 2, 1991 memorandum between Douglas Rutherford and
19 the deputy minister, it's been referred to from
03:44 20 time to time. I have concluded that I don't think
21 I can ask any questions about this document in
22 light of Chief Justice Laing's ruling, and I'm
23 simply putting that on the record so that counsel
24 don't think that I have missed it for another
03:45 25 reason, so I don't propose to ask any questions on



1 that.

2 114920.

3 COMMISSIONER MacCALLUM: Does that mean
4 that I can't read it?

03:45 5 MR. HODSON: Well, I think we've all read
6 it, I'm not sure what Mr. Frayer is going to tell
7 us we get to do with it at the end of the day,
8 but it has been referred to, and certainly with
9 other witnesses. I am just indicating that the
10 --

11 COMMISSIONER MacCALLUM: Well that's fair,
12 Mr. Hodson, I'll make my own mind up how far --
13 what I can gather from it, if anything.

14 BY MR. HODSON:

03:45 15 Q I was inclined to ask Mr. Williams to tell me
16 whatever he could about the memo without violating
17 the court order, but I wasn't sure that was a fair
18 question, or not the court order, but the
19 principle annunciated in the case.

03:46 20 This is a document I think,
21 Mr. Williams, that you prepared; is that correct?

22 A Yes.

23 Q And October 8th, 1991, and this would have been
24 based on sort of your review of files and your
03:46 25 recollection at the time; is that correct?



1 A Yes.

2 Q And I believe this memo deals with what
3 information or what files you had on the first
4 application and what new information came out in
03:46 5 the second application; is that correct?

6 A That's correct.

7 Q And you say:

8 "During the assessment of Mr. Milgaard's
9 first application, the Department had
03:46 10 obtained the police files concerning Mr.
11 Fisher's assaults of (V5)-- (V5)---,
12 (V7)--- (V7)---, (V8)-- (V8)---, and
13 (V10) (V10)-. Also, the Department had
14 a summary of the three 1968 assaults in
03:46 15 Saskatoon that formed the basis of other
16 guilty pleas. This summary was obtained
17 from Fisher's statements to Winnipeg
18 police, his interview in July 1990, and
19 court documents obtained by the
03:47 20 R.C.M.P."

21 And again, that would reflect the information you
22 had then on the first application?

23 A Yes.

24 Q And then:

03:47 25 "Before this application no one had



1 tried to connect Fisher to the assault
2 on (V14)- (V14)-. A summary of Mr.
3 Fisher's assaults derived from the
4 police files and from the recent
03:47 5 Centurion interviews is provided below:"

6 So I take it you then go through the new
7 information, if I can call it that?

8 A Yes.

9 Q Or sorry, number 1 is --

03:47 10 A Obtain files, the files obtained by the
11 department, and then we went on to discuss and
12 summarize some of the materials provided to us in
13 the Centurion Ministries submission.

14 Q And then if we can go to the next page, I don't
03:47 15 propose to go through these in detail, but files
16 that were not obtained by the department, and that
17 relates to not obtained by the department on the
18 first application; correct?

19 A Correct.

03:48 20 Q And so here you outline the (V1)-, (V2)----- and
21 (V3)----- files, and again, would that have been
22 information that you obtained from some other
23 source then?

24 A Yes. That information I believe came from a
03:48 25 letter that had been submitted to Saskatchewan



1 Justice.

2 Q Okay. And then down at the bottom you talk about
3 resident (V14)- (V14)-, so again, this would be an
4 accurate memo then as to what files you had and
03:48 5 what information you had on the first application?

6 A Yes.

7 Q 002948, this is an October 10th, 1991 memo to file
8 and looks like this is where you started to talk
9 to Dr. Fleming, is that correct, about unleashing
03:49 10 memory that has been repressed?

11 A Yes.

12 Q 009033, and this is an October 10th, 1991 report
13 from Sergeant Pearson to you that has, it says:

14 "...find attached the requested fact
03:49 15 analysis which was recently completed by
16 our analytical unit."

17 And I think Sergeant Pearson's evidence was that
18 they had their analytical people at the RCMP
19 review the information that had been provided in
03:49 20 the Centurion documents in the second
21 application; is that correct?

22 A That's correct.

23 Q And would this then be information that was
24 gathered for the purposes of assessing the
03:49 25 information in the second application?



1 A Yes, it would certainly help.

2 Q If we can go to 333823, please, and this is a note
3 of October 23, 1991 from Sergeant Pearson to you,
4 and there's two reports here, number one is the
03:50 5 1968 (V14)- report and two is the Saskatoon City
6 Police report of sex cases from 1968, '69 and '70,
7 and if we can go to just that second one first, go
8 to page 333832, and this is a letter from
9 Constable Gelowitz, as he was at the time, to Mr.
03:51 10 Penkala that went through the rapes and sexual
11 assault files for '68, '69, '70, and can you
12 comment on the significance, if any, of this
13 information as far as assessing the second
14 application?

03:51 15 A We had asked for that information in an attempt to
16 develop some profiles of the sexual assaults that
17 had taken place in Saskatoon during that three
18 year period and to see what if any conclusions we
19 could draw from it and it was -- it was examined,
03:51 20 I don't recall what final conclusions we drew from
21 it, but I believe this information formed part of
22 the package that was presented to the Supreme
23 Court of Canada in the reference. It says:

24 "...in all occurrences 4 were identified
03:52 25 in which a ... (knife) was observed by



1 the victim."

2 So that --

3 Q And again, was this information that was part of
4 the source of information in looking at the
03:52 5 similarity of Larry Fisher's assaults with the
6 Gail Miller murder?

7 A Certainly it was part of collecting some
8 information about sexual assaults and, yes,
9 definitely with respect to Mr. Fisher.

03:53 10 COMMISSIONER MacCALLUM: Am I reading that
11 right, that of all those assaults only four could
12 be said to have been committed with the use of a
13 knife?

14 A Well, I think he says in which a weapon was
03:53 15 observed by the victim. They may have been
16 threatened --

17 COMMISSIONER MacCALLUM: Or other weapons?

18 A Or other weapons, yeah.

19 COMMISSIONER MacCALLUM: So one could
03:53 20 reasonably conclude that the use of a knife in
21 rapes was not all that prevalent, at least as far
22 as that sampling is concerned?

23 A Well, I found it a bit surprising. I think there
24 are two points to be made. The first point is
03:53 25 that you could say there are only four rapes that



1 took place with a knife or you could say there are
2 only four rapes in which the victim saw the knife,
3 albeit a knife, or the possession of a knife was
4 threatened, or the use of a knife was threatened
03:54 5 even though the victim didn't see a weapon itself.

6 COMMISSIONER MacCALLUM: Oh, I see.

7 BY MR. HODSON:

8 Q If we can go to 030493, this is an October 24,
9 1991 letter from Mr. Wolch to Mr. MacFarlane,
03:54 10 Department of Justice, that has the Professor Boyd
11 report, and do you have a recollection of
12 receiving that report and reviewing that, the
13 Rossmo/Boyd report?

14 A Yes, I do.

03:54 15 Q And did you have occasion to review the report?

16 A I did briefly, sir. I don't think I spent -- I
17 know that the report tended to favour the position
18 advanced by the Milgaards, but beyond that, I
19 think by October of '91, October 24th, I knew that
03:55 20 my involvement would be quite limited from here on
21 in in terms of assessing that report.

22 Q Do you have a recollection of anything in that
23 report that brought information to your attention
24 that you weren't aware of before or caused you to
03:55 25 look at any other information differently?



1 A No, I think in reviewing some of the reports, I
2 was struck by the, I guess I was struck by the
3 recitation of facts which seemed to me at times to
4 diverge from the facts that had been reported on
03:55 5 the police reports.

6 Q And can you be a bit more specific, facts relating
7 to what?

8 A I think the assault. Some of the, and I'm going
9 by a very hazy memory, but it seems to me that the
03:56 10 Boyd report obtained as a basis of its information
11 some of the facts recited in the Centurion report
12 and quite clearly the interview of a victim some
13 15 or several years after the event will bring
14 about a recitation of the event which may differ
03:56 15 from the recitation of facts provided immediately
16 after the event to the police and there were some
17 discrepancies there.

18 Q If we can go to 152076, please, and this is a
19 memo, October 24, 1991. Mr. Frayer, I'm not sure
03:57 20 if you have any issue with this memo. I simply
21 want to have Mr. Williams comment on the factual
22 information and the conclusions he's reached in
23 this memo. I do not intend to question him about
24 any advice or the purpose. Are you fine with
03:57 25 that?



1 MR. FRAYER: Yeah, I'm comfortable with
2 that.

3 BY MR. HODSON:

4 Q Mr. Frayer has indicated that he's comfortable
03:57 5 with that.

6 And here you set out the
7 frequency of sexual assaults in Saskatoon and I
8 think this relates to the question the
9 Commissioner asked you just a few moments ago
03:57 10 about the number of rapes and other sex offences
11 and the number of weapons, and that would be, I
12 take it, based upon the information you received
13 from the Saskatoon City Police?

14 A That's correct.

03:57 15 Q And then you say:

16 "In this regard, it is important to note
17 that these reports were made shortly
18 after the assaults when the incident was
19 fresh in the victim's memory. For
03:57 20 example, the Centurion Ministries report
21 said that (V5)-- (V5)--- assailant
22 threatened to kill her by breaking her
23 neck. In her February 21, 1970
24 statement to the police, Ms. (V5)--- did
03:58 25 not tell the police that her assailant



1 had threatened to kill her. Her
2 recollection of being struck four or
3 five times in 1970 became a "dozen times
4 in the face with fists" in 1991.

03:58 5 The most startling divergence
6 between the reports of an assault relate
7 to (V14)- (V14)-. I have attached as
8 Appendix 3, portions of the police file
9 that were retrieved recently."

03:58 10 And then you go on to describe -- sorry:

11 "In 1968, Ms. (V14)- said that her
12 assailant grabbed her from behind, and
13 ripped the buttons from her blouse while
14 attempting to undress her. She squirmed
03:58 15 away and crawled into a cupboard. Her
16 assailant stabbed her in the legs with a
17 sharp object as she crawled toward the
18 cupboard."

19 "Her screams frightened him and he left.

03:58 20 She also estimated that her
21 assailant was approximately 6' tall.
22 However, she only saw her assailant's
23 legs and the dirty hands "of a white
24 man". As a result of information
03:58 25 obtained from nearby residents, the



1 police began a search for a light green
2 truck."

3 Etcetera. Can you recall, what was the
4 significance of -- or did you find differences in
03:59 5 the information in the Centurion Ministries
6 statements -- or I'm not sure if they were
7 statements, but summaries of what they said they
8 were told by the victims compared to other
9 records that you had?

03:59 10 A Yes, sir.

11 Q And were they significant?

12 A Some were, some were not. In relation to (V14)-,
13 the (V14)- description, on the one hand shortly
14 after the event she estimated her assailant to be
03:59 15 approximately six feet tall and she assumed that
16 he was Caucasian or a white man. Later on, much
17 later on the height dropped from five-five -- from
18 six foot to approximately five foot four or five
19 foot five and to me that is significant. If it
04:00 20 were six foot to five-ten or so, it's in the
21 range, but there's some perception of someone who
22 is six foot tall as opposed to someone who is five
23 foot five.

24 COMMISSIONER MacCALLUM: And this latter
04:00 25 one was five foot four or five and that was the



1 quote given to Centurion you mean?

2 A Yes.

3 COMMISSIONER MacCALLUM: And anything about
4 race there?

04:00 5 A Native.

6 COMMISSIONER MacCALLUM: Thanks.

7 BY MR. HODSON:

8 Q If I could call up 321731, I just want to show you
9 a couple of documents here and then ask for your
04:00 10 comment. This is an October 29th, '91 fax from
11 Mr. Pearson to you relating to (V14)- (V14)-. If
12 we can go to the next page, he writes:

13 "Just prior to sending this fax, I
14 received a call from (V14)- and she is
04:01 15 currently in a Saskatchewan hospital,
16 suffering from depression and fearful of
17 what is happening in the Milgaard case.
18 (V14)- now tells me she has seen TV and
19 newspaper pictures of Milgaard and
04:01 20 believes strongly it was he who
21 committed the offence upon her. She
22 also indicates the photo she was shown
23 of Larry Fisher, by Joyce Milgaard, was
24 not the person who attacked her."

04:01 25 And then if we could just call up 012073, and



1 this is your file memorandum about your
2 discussion, and it goes on to describe what Ms.
3 (V14)- advised Sergeant Pearson, that:

4 "...she was upset at the treatment that
04:01 5 she had received from Mrs. Milgaard.

6 Initially, Ms. (V14)- had contacted
7 counsel for David Milgaard to secure a
8 photograph of Mr. Milgaard. Ms. (V14)-
9 suspected that Milgaard sexually
04:02 10 assaulted her in 1968. Counsel had
11 referred Ms. (V14)- to Mrs. Milgaard,
12 and the women met in Regina some time
13 later. Ms. (V14)- attended the meeting
14 believing that she could resolve the
04:02 15 suspicions that she had harboured for
16 over 20 years. Instead, the
17 conversation revolved around Larry
18 Fisher.

19 Mrs. Milgaard produced a
04:02 20 photograph of Larry Fisher and asked Ms.
21 (V14)- whether Fisher had assaulted her.
22 (V14)- denied that Fisher was her
23 assailant."

24 And again, we heard a fair bit of evidence from
04:02 25 Sergeant Pearson on this subject. Can you tell



1 us, Mr. Williams, what was your assessment of
2 the, I guess the inclusion of (V14)- (V14)- as
3 one of the Larry Fisher victims and the request
4 to have the similarities of the (V14)- attack
04:02 5 included in the similar act ground; in other
6 words, that look at how (V14)- (V14)- was
7 attacked, she was attacked by Larry Fisher and in
8 a similar way to Gail Miller?

9 A Well, sir, it didn't fit in the sense that Ms.
04:03 10 (V14)-' view, or at least what she told Sergeant
11 Pearson, contradicted the impression that we were
12 left with after reading the Centurion report, it
13 contradicted it in a couple of key instances;
14 firstly, in relation to the identity of the
04:03 15 assailant, and secondly, some of the descriptors
16 of the event. I, quite frankly, I didn't know
17 what to make of it and maybe it was just a
18 mistake, inadvertently it got tossed into the mix,
19 or somebody didn't read it when they put it all
04:03 20 together, but it just --

21 Q Did the inclusion of the (V14)- assault cause you
22 to be -- to view the information, the rest of the
23 information in the second application in a
24 different way?

04:04 25 A Well, my earlier experience reviewing the various



1 submissions prompted me to be very careful about
2 accepting at face value the assertions of fact
3 contained in some of the applications.

4 Q Now, let's just talk a bit about the other seven
04:04 5 assaults. I take it there were eight assaults in
6 the second application, seven of them Mr. Fisher
7 had pled guilty to; correct?

8 A Yes.

9 Q I think in all cases he had been convicted and
04:04 10 pled guilty. I take it you took no issue that he
11 was the perpetrator of those assaults; is that
12 correct?

13 A No, I didn't take issue with that.

14 Q Okay. And then secondly, the information in the
04:04 15 second application described I think Centurion
16 Ministries', or perhaps counsel for David
17 Milgaard's summary of what these victims had said
18 to Centurion Ministries in interviews in 1991,
19 correct; in other words, the particulars of the
04:05 20 offences?

21 A Correct.

22 Q Did you have concerns -- did the inclusion of the
23 (V14)- (V14)- assault cause you to have concerns
24 about the credibility of that information; namely,
04:05 25 the particulars of the seven known assaults?



1 A It did, it caused me to have questions about the
2 accuracy of the events as recalled by the
3 witnesses. Two observations, firstly, many years
4 after the event, although it could be traumatic,
04:06 5 the witness' recall probably is not as accurate as
6 the recall that's immediately after the event, but
7 secondly, there perhaps was some literary license
8 being taken to embellish the degree of violence of
9 some of the applicants, that was the impression I
04:06 10 had comparing the Centurion report to at least one
11 or two of the available police reports that
12 described an identical incident.

13 Q If we can go to 002192, and this is now November
14 6, 1991, and this is Dr. Fleming who I think is a
04:07 15 psychiatrist. Do I have his --

16 A Dr. Fleming is a forensic psychiatrist who works
17 in Penetanguishene which is a hospital for the
18 criminally insane, or hospital for those who have
19 been found not guilty by reason of insanity of
04:07 20 various offences.

21 Q And it appears that you are asking him here:
22 "...to assess Ms. Demyen to determine
23 whether she is suffering from any
24 emotional or psychiatric disorder that
04:07 25 has prevented her from recalling,



1 consciously, the memory of the early
2 morning hours of January 31, 1969."

3 And can you just comment on that request?

04:08 4 A My impression was that Ms. Demyen was having these
5 flashbacks and seemed desirous to discuss it, but
6 could not. I didn't know whether or not there was
7 a medical reason or an explanation for it and I
8 felt that a reference to a professional might shed
9 some light on it. I discussed it with Ms. Demyen
04:08 10 and she consented to it and thereafter I contacted
11 Dr. Fleming and made that request. He agreed to
12 deal with it.

13 Q If we can go to 333960, I think this is where you
14 contact Professor Campbell Perry and ask him to
04:08 15 review the Dr. Pulos video tape and/or transcript;
16 is that right?

17 A That's correct.

18 Q And at the bottom line here you are asking him to
19 review it professionally to see whether or not she
04:09 20 was hypnotized and whether or not the responses
21 obtained in this session are of any value?

22 A Correct.

23 Q Is it fair to say that you had some real doubts
24 about the methodology -- or the process utilized
04:09 25 by Dr. Pulos?



1 A I had doubts about the process because Dr. Pulos
2 did not video tape the pre-hypnosis session and
3 that to me was quite important. In relation to
4 the, to whether or not she was hypnotized, I had
04:10 5 reviewed the tape and I observed that he needed to
6 regress her, to take her back under hypnosis on at
7 least two occasions supplementary to the initial
8 occasion because she appeared to come out of
9 hypnosis and there was some question, at least in
04:10 10 my mind as a lay person, in terms of my knowledge
11 of hypnosis, there was some question in my mind as
12 to whether or not she was under hypnosis
13 throughout the entire period and it was important
14 for us to find out what answers came under
04:10 15 hypnosis and which ones did not and it's in that
16 context that I thought it prudent to get the views
17 of an expert.

18 Q Then go to 031179, and I believe this is Campbell
19 Perry's reply November 12th, 1991, the evaluation
04:11 20 report, and if we can go to page 186, Was the
21 subject under hypnosis:

22 "In my opinion, she was not in
23 hypnosis."

24 And I take it that would have been the bottom
04:11 25 line of his -- I mean, the report goes into much



1 greater detail, but was that your understanding
2 of the report?

3 A That's correct, yes.

4 Q And as a result of that report, did it cause you
04:11 5 to put less weight on Dr. Pulos' hypnosis session
6 and the information he obtained?

7 A Certainly it -- I guess the answer to the question
8 as asked is yes.

9 Q Go to 031224, and this is Dr. Flemings November
04:12 10 18th report to you about his, I think he examined
11 Ms. Demyen for two days, November 13 and 14, 1991;
12 is that right?

13 A Yes.

14 Q About:

04:12 15 "...to determine whether Ms. Demyen
16 might be suffering from an emotional or
17 psychiatric disorder that might have
18 affected her memory..."

19 Is it fair to say that the question was that she
04:12 20 did not have, at least in 1991, a memory of a key
21 time period on January 31, 1969; is that correct?

22 A That's correct.

23 Q And she had a, or appeared to have a memory of
24 that on May 24th, 1969 when she gave the
04:12 25 statement; is that correct?



1 A That's correct.

2 Q What about the March 11th, 1991 statement, her
3 initial statement, and in that statement she does
4 not describe anything about encountering either a
04:13 5 woman or Mr. Milgaard leaving the car or seeing a
6 stabbing or anything of that nature.

7 A The entire episode is omitted from that statement.
8 Whether it was done because of an absence of
9 memory or it was done deliberately to perhaps
04:13 10 lessen her own potential involvement in it I don't
11 know.

12 Q And then if we can go to page 3, and I don't
13 believe the March 3rd statement -- or the March
14 11th statement was provided to Dr. Fleming was it?
04:14 15 I don't believe --

16 A There is a reference on page 3. If we look at the
17 second paragraph right here --

18 Q Sorry. Oh, there, yeah.

19 A -- which appears to have been March 11, 1969.

04:14 20 Q Oh, okay, sorry:

21 "She did give a statement at this point
22 which was not available for review but
23 which might be of interest.

24 Ms. Demyen's best recollection is that
04:14 25 she initially had no memory of the



1 events the police were exploring but
2 once they started talking with her
3 things began to come back to her. At
4 this point, she moved back into the
04:14 5 parental home..."

6 Etcetera. So would that have been something then
7 that you asked Dr. Fleming to look at?

8 A Not specifically. His mandate was as set out in
9 the letter and how he fulfilled it was according
04:14 10 to his professional view of the techniques that
11 would be appropriate.

12 BY MR. HODSON:

13 Q And again, if you scroll down, he says here:

14 "In any event, the statement which she
04:15 15 then provided on May 24, 1969, however
16 it was arrived at, seems to provide the
17 best recollection and the most detail
18 which she has been able to provide
19 either before or since."

04:15 20 And, again, what was your reaction to that

21 A Umm, I had no particular reaction, sir. I just
22 wanted to, I guess, wait until the bottom line.
23 My appreciation of that was simply that she did
24 not acknowledge or affirm certain portions of that
04:15 25 statement at trial, and so it was just another



1 statement.

2 Q If we can go to the next page. And here Dr.
3 Fleming then, I think he then went through what
4 should happen at the preliminary hearing and at
04:16 5 the trial, and he says:

6 "It is possible to think of
7 several hypothetical explanations for
8 the discrepancy between the May 24th
9 statement and her subsequent evidence at
04:16 10 trial. Without wishing to cast a shadow
11 over anyone, one has to first consider
12 that the May 24th statement was a
13 creative effort on the part of the
14 investigating officers who were
04:16 15 evidently attempting to help Ms. Demyen
16 with her recollection of events.
17 However, there does not appear to be any
18 real evidence to support this hypotheses
19 and Ms. Demyen herself seems to recall
04:16 20 that the police seemed to be quite
21 careful in this regard and in spite of
22 spending the night in the Saskatoon
23 women's lock-up, she does not recall
24 feeling particularly pressured by the
04:16 25 investigating officers."



1 And had that been a ground or an allegation that
2 had been alleged in some form or another in the
3 previous application?

4 A I wouldn't say it had been forcefully advanced in
04:16 5 the previous application, but certainly there was
6 the suggestion that the police behaviour towards
7 the three young witnesses at trial may have
8 influenced their testimony. That came either
9 directly or indirectly, there was that nuance, and
04:17 10 I think it came in perhaps sometimes during some
11 discussions we may have had with either Mr. Wolch
12 or Mr. Asper about the development of the witness'
13 statements, how the initial statements they saw
14 and heard nothing untoward or incriminating but
04:17 15 then, as the police had more contacts with them,
16 certainly there were some incriminating statements
17 provided by Mr. Wilson and by Ms. Demyen and then
18 later on by Mr. Cadrain. So there was that
19 suggestion in discussions that, you know, that
04:18 20 just didn't happen without some other factor
21 coming in, but in my interviews with Mr. Cadrain,
22 Ms. Demyen and Mr. Wilson, they were unable, or
23 they did not point to any action by the police
24 that was inappropriate.

04:18 25 Q Yeah. Are these -- and I'll go through the rest



1 of them, but Dr. Fleming goes through various
2 explanations for the discrepancy between the May
3 24th statement and her subsequent evidence at
4 trial; were these hypothetical explanations that
04:18 5 he came up with or did you ask him to test any?

6 A I -- I didn't ask him to test any of those. These
7 are -- this is his report --

8 Q Okay.

9 A -- based on his experience without input from me.

04:18 10 Q He goes on to say:

11 "A second explanation might
12 be that Ms. Demyen did purposely and
13 consciously take a different position
14 during her evidence at trial because of
04:19 15 a much closer relationship with Milgaard
16 than has been demonstrated or because
17 she may have felt particularly
18 threatened by him if she gave evidence
19 more specifically identifying him as the
04:19 20 perpetrator. There is no evidence that
21 she had any close relationship with
22 Milgaard in fact the evidence of her
23 having been assaulted by him would be
24 more in favour of the other possibility,
04:19 25 that is, that she felt intimidated or



1 fearful of him. Since she now still
2 denies that fear of Milgaard had
3 anything to do with her evidence in
4 Court then there would on the surface at
04:19 5 least be no reason now for her to
6 maintain such a position if it were in
7 fact not the case. It would be much
8 simpler to say, yes I saw him do it and
9 I lied in court, since that would likely
04:19 10 have the net effect of keeping him about
11 where he is."

12 And this appears to be his explanation of the --
13 second possible explanation of the discrepancy;
14 correct?

04:19 15 A Yes.

16 Q And that would be something that he came up with
17 as opposed to you asking him to review; correct?

18 A Correct.

19 Q Scroll down.

04:20 20 "A third explanation and the
21 one having reviewed all the
22 circumstances which I find most
23 plausible is that Ms. Demyen has
24 repressed the memory of certain events
04:20 25 for psychological reasons. This assumes



1 of course that she observed certain
2 events in the first place and that the
3 recollections recorded in the May 24th
4 statement are true and not themselves
04:20 5 the product of suggestion.

6 Nevertheless, given Ms. Demyen's past
7 family history of abuse and the evidence
8 of her having been a somewhat disturbed
9 adolescent throughout this entire
04:20 10 period, I think it is quite plausible
11 that powerful psychological defence
12 mechanisms were at work which could
13 explain her memory difficulties. Add to
14 this the fact that she herself claims to
04:20 15 have been assaulted by Mr. Milgaard
16 shortly before the episode and that
17 immediately following she embarked on
18 her heaviest use of mind altering drugs.
19 It would be easy to postulate that this
04:20 20 was directly related to emotional
21 disturbance in the aftermath of the
22 January 31st trip."

23 And then goes on to talk about some other
24 matters. Can you comment, Mr. Williams, on what
04:21 25 you -- what significance, if any, you placed on



1 this information from Dr. Fleming and what you
2 understood him to be saying?

3 A Up to that point he is signaling that there is a
4 repression of memory, and which has a
04:21 5 psychological underpinning, but he's not certain
6 yet. At least to that point he hasn't identified
7 what he thinks it is, but he has certainly
8 considered other options and has, based on his
9 findings of fact or based on the information
04:21 10 gathered from Ms. Demyen, has dismissed them as
11 being inappropriate in the circumstances.

12 Q Now, if we can just go back to the previous page,
13 down at the bottom what he says is that:

14 "This assumes of course that she
04:22 15 observed certain events in the first
16 place and that the recollection recorded
17 in the May 24th statement are true and
18 not themselves the product of
19 suggestion."

04:22 20 And would you agree that that seems to, as much
21 as the explanation provides an answer, it also
22 has a pretty important assumption?

23 A It has a huge caveat --

24 Q Okay.

04:22 25 A -- and in that he recognizes that the value of



1 that earlier recall is only as good as the
2 integrity of the process that prompted it. So if
3 they hadn't -- if the statement were true and not
4 the product of suggestion, then it has some value,
04:22 5 otherwise it's of little value.

6 Q And did you understand, then, that Dr. Fleming had
7 looked at the question or the issue as to whether
8 or not -- that the May 24th statement that she
9 provided may have been untrue, and suggested to
04:23 10 her that that's the reason she couldn't remember
11 in 1991?

12 A I think that's part of his -- that's one of the
13 questions that I assume he would have assumed or
14 subsumed in the first explanation that he
04:23 15 considered on that page.

16 Q Right. And in other words, if she did see
17 something on the morning of January 31, 1969 and
18 can't later remember it, that's one question; why
19 is it that she can't remember. And would you
04:23 20 agree a related question is that, if she didn't
21 see anything on January 31, 1969, how is it that
22 on May 24th, 1969 she said she did and then later
23 says "I can't remember"; is that --

24 A That's one of the, I guess, assessments he might
04:24 25 go through. In all of that, however, the question



1 that kept on troubling me was even if she didn't
2 see anything on the morning of January 1969, why
3 would she have the flashbacks or what she
4 described as flashbacks, so --

04:24 5 **Q** You'd mentioned that -- the flashbacks before.
6 What about the, you had also mentioned the map
7 back in June when we talked about that. Can you
8 tell us, again, what was the significance of that
9 piece of information at this time when you're
04:24 10 engaging experts to review Nichol Demyen?

11 **A** Well, unknown to me Ms. Demyen had been presented
12 with a drawing of the scene, but to the extent
13 that her, quote, "flashback" seemed to coincide
14 with a diagram of the location of the body, it
04:25 15 lent a certain amount of substance or a ring of
16 truth that she may have seen something, some event
17 surrounding the death of Gail Miller.

18 **Q** And so if she would have had a memory of that
19 morning, and the memory did not include witnessing
04:25 20 a murder, would that have been a satisfactory
21 conclusion? Let me rephrase that. If you were
22 able to get her to recall the events of the
23 morning of January 31, 1969, and her recollection
24 was exculpatory to Mr. Milgaard, in other words "I
04:25 25 remember here's where we drove, here's what



1 happened, and I didn't see a murder and these
2 things didn't happen", was that a piece of
3 information that could have been the result of
4 these efforts?

04:26 5 A Yes.

6 Q At the end of the exercise, then, did you gain
7 anything from Dr. Fleming, then, that assisted you
8 in trying to understand Nichol Demyen's state of
9 mind or recollection in late 1991?

04:26 10 A I think what we learned was that she was suffering
11 from an emotional or psychological disorder, that
12 at least his assessment was that this wasn't a
13 ploy, and I think our position was that we would
14 assist her in whatever steps she thought desirable
04:27 15 to deal with it.

16 Q Probably an appropriate time for a break, Mr.
17 Commissioner.

18 (*Adjourned at 4:27 p.m.*)

19 (*Reconvened at 4:43 p.m.*)

04:43 20 BY MR. HODSON:

21 Q Call up 334078, please. This is a report from
22 Sergeant Pearson to you dated November 20th, 1991
23 and outlines some information. If we can go to
24 the next page Mr. Pearson writes, he says:

04:43 25 "I will await the



1 developments in Milgaard's Application
2 before deciding whether it will be
3 appropriate to approach the Fisher
4 victims to obtain details as they
04:43 5 recollect them. You will recall in a
6 previous telephone discussion, our
7 common concern that, in view of Joyce
8 Milgaard's approach to (V14)- (V14)-,
9 there may be a built-in bias in the
04:44 10 details provided in the most recent
11 Application suggesting that Larry Fisher
12 is responsible. Depending on what the
13 Justice Department is doing with the
14 information currently possessed, I am of
04:44 15 the view it would be appropriate to talk
16 with the victims to ensure that all
17 details available are in the hands of
18 the Justice Department. I await a
19 response from you in this regard."

04:44 20 And again, can you tell us, does this accurately
21 describe what you and Sergeant Pearson would have
22 discussed and concerns that you both would have
23 had?

24 A That's correct.

04:44 25 Q And we had touched on this a bit earlier, but as



1 Sergeant Pearson writes, that the:

2 "... in view of Joyce Milgaard's

3 approach to (V14)- (V14)- ...";

4 can you elaborate, what was your concern about

04:44 5 that approach at this time?

6 A My understanding was that Ms. (V14)- wanted to

7 speak with Mrs. Milgaard for one purpose and

8 Mrs. Milgaard turned the interview around to a

9 different purpose. I think, based on what I had

04:45 10 heard from Sergeant Pearson, Mrs. (V14)- wanted to

11 confirm whether or not her assailant was David

12 Milgaard, and in turn got in touch with

13 Mrs. Milgaard for that purpose, but was presented

14 with a photo of Mr. Fisher as being her assailant,

04:45 15 firstly; and then secondly Ms. (V14)-', or a

16 summary of Ms. (V14)-' assault was submitted as

17 part of the chain of Fisher assaults, so it was a

18 completely different purpose from what the -- from

19 what Ms. (V14)- had intended.

04:45 20 Now I bore in mind the fact

21 that Mr. Fisher had pled guilty to a number of

22 assaults so that, insofar as the others were

23 concerned, there was no question that he had

24 acknowledged the offences in relation to those

04:46 25 victims. What may have been uncertain was whether



1 the current description attributed to the victims
2 of the assault in fact reflected what they had
3 relayed, or whether it had been embellished, or
4 whether their memory was imperfect or uncertain.

04:46 5 Q Do you recall discussing with Sergeant Pearson the
6 prospect of interviewing some of the victims to
7 test some of what had been in the Centurion
8 Ministries' summaries?

9 A Yes, but at the time I had not -- I basically
04:46 10 invited him to hold on.

11 Q Okay. If we can go to -- and is it, without
12 getting into advice, would that be because of
13 other developments in relation to the second
14 application?

04:47 15 A Yes. More specifically, whether I would have
16 carriage thereafter, or full carriage.

17 Q Now this is --

18 A This is on --

19 Q -- November 21, --

04:47 20 A Yes.

21 Q -- this is a week before the minister sends the
22 reference to the Supreme Court?

23 A Correct.

24 Q Go to 334136. This is a memo to file November
04:47 25 22nd, 1991, re:



1 "The Impossibility of Nichol John's
2 Statement",

3 and I'm not sure, do you know what that refers
4 to, what it is that you are reviewing?

04:47 5 A I believe the impossibility of Nichol John's
6 statement relates to a submission presented on the
7 second application or it may relate to a
8 submission by Mr. Wolch.

9 Q I think maybe in a follow-up letter; is that
04:48 10 possible?

11 A Yeah, yeah.

12 Q And so just if you can tell us generally, what
13 were you looking at, and what did you conclude?
14 Sorry, let me add one other thing. Is it possible
04:48 15 that this also relates to the Professor Boyd and
16 Rossmo report?

17 A It -- it probably -- it possibly could have. I'm
18 afraid I didn't review this one recently --

19 Q Okay.

04:48 20 A -- so, in terms of the context in which it was
21 developed, I'm not certain.

22 Q And are you able to comment on basically what you
23 reviewed and what you concluded?

24 A If I may have a moment?

04:49 25 Q Sure. Maybe do it in parts. I think the first



1 part is the Avenue N versus Avenue O.

2 A Okay.

3 Q The second one is that her walking pace would have
4 put her at the bus stop before Mr. Milgaard exited
04:49 5 the car?

6 A I had heard some arguments about Ms. John's
7 statement, some from Mr. Wolch, some may have come
8 from Mr. -- from the Boyd report. It is
9 conceivable that this came from the Boyd report
04:49 10 given the timing of the memo in relation to the
11 submission of the Boyd report, and these are my
12 comments on it at the time. I really have nothing
13 further to add to what you see there.

14 COMMISSIONER MacCALLUM: Mr. Williams, I'm
04:49 15 having trouble understanding, not from your
16 position particularly but from in general, why
17 the continuing preoccupation with the Nichol John
18 statement of the 24th of May. It wasn't evidence
19 in the trial?

04:50 20 A I know that, sir.

21 COMMISSIONER MacCALLUM: So what is all
22 this? Do you know? Can you enlighten me?

23 A Well the applicant, the applicant had put some
24 emphasis on Nichol John's statement, because this
04:50 25 was by far -- had she, had she adopted it at



1 trial, this was the only recitation that directly
2 links David Milgaard --

3 COMMISSIONER MacCALLUM: Right.

4 A -- to Gail Miller, --

04:50 5 COMMISSIONER MacCALLUM: No doubt of that.

6 A -- and one of the live questions or issues would
7 be to what extent can the minister rely on that
8 statement in the 690 context even though that
9 statement was not evidence at trial, and I think
04:50 10 that that was an issue that we struggled with, and
11 it may have been an issue that the applicants
12 wanted to make sure that they fully presented
13 their position in the event that the minister
14 chose to look at that statement.

04:51 15 COMMISSIONER MacCALLUM: Well I can see an
16 applicant, for example, saying that "we have
17 evidence that the jury made improper use of this
18 statement at trial, therefore that's a
19 miscarriage of justice", simple. But they didn't
04:51 20 say that, there isn't any evidence of that?

21 A That's correct.

22 COMMISSIONER MacCALLUM: So why is
23 everybody operating on the supposition that the
24 jury did something wrong?

04:51 25 A I don't know.



1 COMMISSIONER MacCALLUM: They weren't smart
2 enough to follow directions given to them three
3 times, by the judge and both counsel?

4 A I'm not certain why there was that, but to the
04:51 5 extent that she was the only -- that was the only
6 statement that linked it, that linked David to
7 Gail, --

8 COMMISSIONER MacCALLUM: Yes?

9 A -- and to the extent that if she were able, for
04:51 10 whatever reason, to reconstitute her recall, then
11 there is that possibility that that might be
12 presented to the minister as something that the
13 minister could now rely on.

14 Against that, the applicants
04:52 15 would want to say "lookit, even if she does say
16 now that she recalls it, it just couldn't possibly
17 have happened the way she described it".

18 COMMISSIONER MacCALLUM: Hmm.

19 A And it -- that's my, my surmise of why Nichol's
04:52 20 statement, which was not introduced at trial or
21 which was not evidence at trial, still is being
22 resurrected as part of the applicant's
23 submissions.

24 COMMISSIONER MacCALLUM: I see. Thank you.

04:52 25 BY MR. HODSON:



1 Q Maybe just a follow-up question on that, Mr.
2 Williams. I think I touched on this back in June
3 when we dealt with this subject, and I believe
4 your evidence was to the effect that -- I think I
04:53 5 put to you two scenarios; one, that if in 1988 or
6 '89 Nichol John said "the reason I did not give
7 evidence at trial consistent with what was in my
8 sworn statement is because I made it up, and I
9 lied in the May 24th statement, and here's why",
04:53 10 and that was credible, that that might be
11 information that would be -- form the basis for a
12 remedy under 690, and I think you said generally
13 yes; is that correct?

14 A That's my recollection, yes.

04:53 15 Q So now, in fairness --

16 A But --

17 Q -- I don't think that was put forward as a ground,
18 but --

19 A No, it wasn't. But, I mean, that and other things
04:53 20 could have formed it, again, depending on what the
21 evidence was at trial.

22 Q And then, secondly, the converse is that if she
23 said "well, the reason I didn't repeat it at trial
24 is because either I was scared", or whatever
04:54 25 reason, "but my statement is true and I have a



1 present recollection", and that was credible, that
2 that would be information that would be important
3 in your assessment, is that correct, even though
4 it may not have been raised as a ground?

04:54 5 A That's correct. I mean in September of '91, you
6 know, the applicant knew that we were dealing with
7 Ms. John, and that was a live issue, as to
8 potentially she might -- her memory might be re --
9 might resurface, so that possibility existed.

04:54 10 COMMISSIONER MacCALLUM: I -- sorry to
11 interrupt again, sir, but I just am baffled by
12 the use to which anybody thought they could,
13 whether it's the applicant or the minister,
14 thought they could make of such evidence without
04:54 15 evidence that the jury had accepted her May 24th
16 statement for truth of contents. If they didn't,
17 where is the issue?

18 A In the 690 context, Commissioner, there was
19 consideration as to whether -- let's say, for
04:55 20 example when Ms. John was interviewed by
21 Mr. Pulos, he was successful --

22 COMMISSIONER MacCALLUM: Yeah?

23 A -- and she says "you know, having now submitted to
24 the hypnosis I now recall, and this is my memory
04:55 25 as refreshed or recalled under hypnosis", and if



1 --

2 COMMISSIONER MacCALLUM: So notwithstanding
3 the trial -- I'm sorry to interrupt --
4 notwithstanding the trial, for example if she
04:55 5 said "yes, and now I remember, it was John Smith
6 from Regina that I saw" --

7 A Okay.

8 COMMISSIONER MacCALLUM: -- and therefore
9 there would have been a miscarriage of justice?

04:55 10 A There would have been a miscarriage of justice.

11 COMMISSIONER MacCALLUM: Oh, okay.

12 A But what if she had said "oh, I affirm the
13 contents of my statement as true"?

14 COMMISSIONER MacCALLUM: Right.

04:55 15 A Then the question would be could the minister
16 consider that, in terms of the second application,
17 as evidence implicating David Milgaard, and in
18 those circumstances the applicants might say
19 "lookit, minister, even though she is now -- says
04:56 20 she remembers it" --

21 COMMISSIONER MacCALLUM: Uh-huh?

22 A -- "it just can't happen the way she said it did".

23 COMMISSIONER MacCALLUM: Okay.

24 BY MR. HODSON:

04:56 25 Q And do I take it from that, Mr. Williams, that



1 given that at trial Ms. John did not recall
2 certain parts of the morning of January 31, '69,
3 that if later she did recall, whether it be
4 inculpatory or exculpatory, that that would be new
04:56 5 in the sense that it was different than what was
6 at trial; is that -- I think you told us, you gave
7 us evidence to that effect, that if it was -- if
8 she had a memory, regardless of which way it went,
9 that would be new because, at trial, she didn't
04:57 10 have a memory?

11 A That's correct.

12 COMMISSIONER MacCALLUM: So that the
13 applicant, then, would be forced into a position
14 of arguing against her the truth of her May 24th
04:57 15 statement because, otherwise, the minister might
16 well conclude that there had been no miscarriage
17 of justice?

18 A Correct.

19 COMMISSIONER MacCALLUM: Yeah.

04:57 20 BY MR. HODSON:

21 Q And so with that, Mr. Williams, to the Avenue N
22 versus Avenue O briefly.

23 A Briefly, that's just a discussion of some of the
24 points that were raised I think in one of the
04:57 25 reports or submissions, and that was my response.



1 Q In reviewing the May 24th statement then, of
2 Nichol John, did you make any, reach any
3 conclusions as to whether what was stated in that
4 statement, if it were assumed to be true, that it
04:57 5 was somehow impossible or that -- implausible?

6 A I didn't reach that assessment, I just simply
7 recall that it wasn't evidence which the jury used
8 to convict.

9 Q But I suppose, if what she describes in her
04:58 10 statement is an event that's not possible, then
11 that might cause you to have some concern about
12 the manner in which the statement was obtained?

13 A Yes, not so much as the manner in which the
14 statement was obtained, but I think if there were
04:58 15 some facts in there that just couldn't have
16 happened it certainly would have been a point that
17 I should bring out to the minister.

18 Q Okay. 157840. This is the Minister Campbell's
19 letter to Mr. Wolch, and go to page 842, is the
04:58 20 Privy Council order ordering the reference. Can
21 you tell us, Mr. Williams, once the Supreme Court
22 reference was ordered, what role did you play as
23 far as the reference case?

24 A My role was to assist Commission Counsel who had
04:59 25 been appointed, Mr. Fainstein and Mr. Frater, in



1 the preparation of the case on appeal, and that
2 involved culling the files for material that I'd
3 collected which was relevant, assisting them in
4 preparing them for publication and binding and
04:59 5 distribution, that was one aspect.

6 The second aspect was to
7 coordinate the, coordinate some of the logistical
8 challenges surrounding the reference, for example
9 witnesses, getting them to and from the hearing.

05:00 10 Thirdly, I was asked to follow
11 up on information that had been -- additional
12 information that had been provided by the parties
13 relevant to the issues. For example, witnesses
14 emerged who provided information, for example
05:00 15 Launa Edwards, and referred us to additional folks
16 who could support the version of events as recited
17 by Ms. Edwards, and we would arrange to have those
18 witnesses interviewed and their statements
19 forwarded for inclusion in the case on reference.

05:00 20 In addition, some of the local witnesses I
21 interviewed, and the results of those went into
22 the case on reference.

23 So I assisted Commission
24 Counsel by providing, or by collecting
05:01 25 information, coordinating the collection of



1 information, so I had a support role.

2 Q And it looks like from the documents that you
3 continued on with your efforts to have Nichol
4 Demyen hypnotized with Dr. Orne, or with Martin
05:01 5 Orne; is that correct?

6 A We did follow up on that.

7 Q And so just 334274, was this then now for the
8 purpose of having this information possibly
9 available for the reference case, or can you --

05:01 10 A Solely for the purposes of the reference. Based
11 on Campbell Perry's assessment and based on what
12 we had observed by watching the tape, there was
13 some issue as to whether or not she had been
14 hypnotized and it was still felt the desirable
05:02 15 thing to -- the conclusion was, from Cam Perry was
16 no, she hadn't been, and so we said, okay, would
17 we get a result if she were properly hypnotized by
18 Martin Orne, so we tried it. It didn't happen.

19 Q Okay.

05:02 20 A Or, shall we say, we did not get a result that was
21 different from that obtained with Lee Pulos.
22 However, we were more confident about the process
23 that was used by Martin Orne because he recorded
24 the entire event. He did have some caveats about
05:02 25 the effectiveness of his session because he was of



1 the view that perhaps certain information had been
2 provided to the witness that might have influenced
3 her views of things, that hypnosis would not --

4 COMMISSIONER MacCALLUM: Did the Supreme
05:03 5 Court get this? I'm sorry, did the Supreme Court
6 see Orne's tape?

7 A Yes, they did.

8 COMMISSIONER MacCALLUM: Okay.

9 BY MR. HODSON:

05:03 10 Q 002663, and this is a letter December 20th, 1991
11 from Mr. Brown, and I take it you would have had
12 some dealings with Murray Brown then in the course
13 of the reference?

14 A I did.

05:03 15 Q And it looks as though the issue of DNA testing
16 was the subject of a discussion with you, and Mr.
17 Brown says:

18 "In our view every effort should be made
19 to analyze the D.N.A. content of all
05:03 20 human tissue samples found at the scene
21 or on the clothing of the victim. It
22 seems to us that we at least owe that
23 effort to Mr. Milgaard."

24 And can you comment on that, what prompted at
05:04 25 this point the decision to look at DNA testing



1 again?

2 A I'm not certain what the specific prompt was. I
3 suspect there was a discussion or a review of some
4 of the efforts we had considered during the course
05:04 5 of the investigation and DNA was mentioned, and it
6 was also mentioned that our information, I think
7 that was in '89, was that wait a couple of years
8 and we think science will catch up, or science
9 will progress to the point whereby you might be
05:04 10 able to get some meaningful results, and Murray
11 may have reminded us that a couple of years have
12 elapsed, so maybe we should give it another try.

13 Q Do you recall if DNA testing was, or your request
14 for DNA testing was any part of the second
05:04 15 application?

16 A The Milgaards did not ask us to conduct DNA
17 testing, but separately when I saw the materials,
18 or saw the issues, I thought DNA would certainly
19 be a conclusive answer, so I explored that
05:05 20 separately with Dr. Fourney and with those at the
21 RCMP labs.

22 Q Are you talking the second application or the
23 first?

24 A No, I'm talking the first application.

05:05 25 Q The first application?



1 A And as a result of the information I obtained from
2 them, it was suggested to me that it would be
3 preferable to wait until scientific developments
4 which were being researched came to fruition and
05:05 5 then sample -- then apply for testing. You may
6 recall that Dr. Fournery and I visited Dr. Ferris'
7 lab I believe in June of 1990 and one of the
8 objectives was to, or at least from Dr. Fournery's
9 viewpoint, was to see what had been done and what
05:06 10 was salvageable.

11 Q So, I'm sorry, so then are you telling us that DNA
12 testing was not part of either the first or second
13 application, a request for DNA testing?

14 A There was -- the Milgaards had attempted DNA
05:06 15 testing with Dr. Ferris and that had proven
16 unsuccessful. I wasn't aware of that until I
17 started looking at it separately because they had
18 not mentioned it, I don't believe they mentioned
19 it in their application, but I thought that that
05:06 20 would be an investigative avenue worth pursuing
21 and I made inquiries. I found out that given the
22 age and the nature of the exhibits, the existing
23 methods of typing and analysing DNA probably
24 weren't suitable and could not get results and I
05:07 25 was told to wait because the research was underway



1 that might produce a methodology to get meaningful
2 results from the samples that still remained, and
3 I may have communicated that to Murray Brown who
4 said, well, look, two years ago, two years have
05:07 5 elapsed since you got that information, shouldn't
6 you at least try it in relation to the Supreme
7 Court reference.

8 Q So do you think it may have been Mr. Brown that
9 prompted this review in December of 1991?

05:07 10 A It quite possibly could have been, yes.

11 Q Okay.

12 A It certainly seems that way from his letter, a
13 discussion that was formalized in a request.

14 Q And prior to this, was there any request made by
05:07 15 anybody on behalf of David Milgaard then to renew
16 efforts to test for DNA?

17 A Not that I recall.

18 Q 326514, this is a memo to file December 20, 1991
19 of an interview with Ute Frank, it says:

05:08 20 "It is being recorded at the request of
21 Ms. Frank..."

22 And:

23 "Before we began to record, Ms. Frank
24 had asked two questions: Firstly, what
05:08 25 is this all about. Secondly, do I have



1 any protection in law from media
2 harassment? And she asked what I could
3 do to shield her from the media?"

4 Do you recall what -- how this interview came
05:08 5 about or what happened?

6 A Ms. Frank was someone that we were interested in
7 speaking to but did not have a location for her
8 until she was interviewed in a news piece on the
9 West Coast because she was protesting, she was a
05:09 10 protester for the forests, and one of our
11 correspondents said I just saw an interview with a
12 Ute Frank and there can't be too many people of
13 that name, so you may want to check it out, and we
14 thought that probably she would be one of the
05:09 15 people in whom the court would have some interest,
16 so steps were taken to verify that this Ute Frank
17 from B.C. was the same individual mentioned in the
18 testimony of George Lapchuk and Craig Melnyk and
19 we were in fact able to get a phone number and
05:09 20 contact with her and I broached the subject of an
21 interview and we discussed several ways in which
22 the interview could be conducted, including
23 questioning with a shorthand reporter and counsel,
24 and Ms. Frank's preference was to have it recorded
05:10 25 by tape without the benefit of counsel and without



1 the presence of a certified shorthand reporter.

2 Q If we can go to 157226, it's a letter from you to
3 Mr. Wolch, December 23, 1991, disclosing for the
4 purposes of the reference, and you indicate:

05:10 5 "The majority of these documents were
6 provided to you on October 1, 1990."

7 What was your understanding of disclosure
8 requirements for the reference on both the part
9 of the Federal Justice, Saskatchewan Justice and
05:11 10 David Milgaard?

11 A Well, insofar as we were concerned, we were to
12 prepare and provide all of the materials that we
13 had collected subject to any privileges that keep
14 them out of court.

05:11 15 Q And what was your understanding of what
16 Saskatchewan Justice and David Milgaard had agreed
17 to provide?

18 A Much the same.

19 Q If we can go to 157231, and again this looks like
05:11 20 to be a follow-up letter to Mr. Wolch December 31,
21 1991, and the next page has a list of various
22 information that was provided. I take it, sir,
23 then you were involved in communicating some of
24 this information?

05:11 25 A I was.



1 Q Go to 334337, please, this is a note of a
2 discussion on December 30, 1991 with Dr. Vivian
3 Emmerson of the Home Office's Central Research
4 Laboratory in England; is that correct?

05:12 5 A That's correct.

6 Q And who and why -- who is Dr. Emmerson and why did
7 you contact Dr. Emmerson?

8 A My -- Dr. Emmerson was the head of the Home
9 Office's Laboratory in Aldermaston. My
05:12 10 information was that at the time that laboratory
11 was a very good one and was working on a process
12 that would allow meaningful testing of old and
13 less than -- of old and perhaps partly
14 contaminated samples and would still be able to
05:13 15 get meaningful DNA results, so I contacted him
16 with a view to trying to interest the lab in
17 performing an analysis of the clothing that still
18 remained in the Gail Miller homicide.

19 Q And where was the clothing at this time?

05:13 20 A It was -- I believe it was in Queen's Bench here
21 in Saskatoon.

22 Q And at this time do you have a recollection of
23 what you had understood might be available for
24 testing of Gail Miller's clothing and, in
05:13 25 particular, what Dr. Ferris had identified in his



1 review.

2 A I believe, based on conversations that we had had,
3 that is, Dr. Fourney had had with Dr. Ferris,
4 there were still a portion, or there was still,
05:14 5 there may have been samples on the dress and
6 perhaps on the underwear and some of the other
7 clothing of the victim, Miss Miller, that might
8 yield something for DNA.

9 Q Do you have a recollection -- I think Dr. Ferris'
05:14 10 evidence here was to the effect that he identified
11 a stain or semen on the panties, but I believe --
12 I don't believe he found anything on any other
13 garments at the time he reviewed it. Do you
14 recall something different from him?

05:14 15 A I know that having, that I saw the copy of the
16 exhibits and certainly whatever stains were on
17 the, at least the crotch portion of the panties,
18 that was all cut away and used in an attempt to
19 obtain DNA. The possibility existed, at least
05:15 20 from the photos of the clothing, I believe in
21 conversations with Dr. Fourney, he said it might
22 possibly yield some usable material.

23 Q Okay. So had you ever examined the exhibits
24 yourself by this time?

05:15 25 A No, I had not.



1 COMMISSIONER MacCALLUM: F-O-R-N-E-Y is it?

2 A F-O-R-N-E-Y.

3 COMMISSIONER MacCALLUM: Yes. So you said
4 the other clothing, apart from the panties, might
05:15 5 yield a sample?

6 A The possibility existed.

7 MR. HODSON:

8 Q If we can then go to 334371, and this is a letter
9 of January 8th, 1992 to Mr. Barry Gaudette, and
05:15 10 can you tell us who Mr. Gaudette was and his
11 involvement in this matter? Maybe go to the next
12 page.

13 A From the title, Mr. Gaudette was the head of the
14 labs in Ottawa and I think head of the RCMP labs
05:16 15 across Canada and I needed -- for any assistance
16 from one of the forensic scientists, I required
17 his permission and so I had made the telephone
18 contact and renewed that with a letter requesting
19 assistance.

05:16 20 Q And did you understand Mr. Gaudette then to have
21 some expertise in the area of DNA testing?

22 A I understood that Mr. Gaudette was responsible for
23 the lab that had expertise and I think I was
24 relying more on Dr. Fournery for the specific
05:16 25 expertise and Mr. Gaudette for the administrative



1 oversight of the entire operation, so I went to
2 him in that capacity.

3 Q So -- and explain for us Dr. Fournery then, what
4 was your understanding of his role and his
05:17 5 expertise in the area of DNA testing?

6 A Well, Dr. Fournery was, at the time, still is, a
7 microbiologist conducting research in various
8 forms of DNA testing and extraction and from the
9 research I've been able to do at the time, he
05:17 10 seemed eminently suitable to provide advice to us
11 and he did provide me with a great deal of
12 information.

13 Q And then as far as the steps you took with respect
14 to the DNA testing and garments, would it be
05:17 15 correct to say that you would have relied upon the
16 RCMP lab people to provide advice at least on the
17 technical matters relating to DNA, and, in
18 particular, what to test, what type of tests,
19 things of that nature?

05:17 20 A That's correct.

21 Q So here in your letter to Mr. Gaudette you talk
22 about, ask for his:

23 "...assistance in the collection,
24 preparation, and transportation of the
05:18 25 samples for testing."



1 You talk about your discussion with Mr. Emmerson,
2 and it appears at this time you are looking at:

3 "...doing the application of P.C.R.

4 based technologies such as short tandem
05:18 5 repeat and mitochondrial testing of the
6 samples..."

7 And those would have been DNA tests that were
8 fairly recent; is that correct?

9 A Those were experimental at that time and those,
05:18 10 short tandem repeats and mitochondrial testing
11 were a bit more discriminating forms of tests than
12 what was then in existence or being used, and I'll
13 use the acronym RFLP because I don't remember the
14 scientific word, that was the prevailing test
05:18 15 methodology that was then recognized. These
16 were -- the mitochondrial and short tandem
17 repeats, this was taking RFLP to a new level and
18 my understanding was that it would permit the
19 testing of older samples, of smaller samples,
05:19 20 samples that may have been partly contaminated,
21 and that was the type of samples that we had.

22 Q And as far as the RCMP lab, what was your
23 understanding as to whether or not the RCMP lab
24 could do this type of testing at that time?

05:19 25 A They could not. They were -- the RCMP lab was



1 experimenting or was doing research on some PCR
2 based technologies, but the information I received
3 was that the lab in was ahead and there was
4 another lab in, I believe it was Houston that was,
05:19 5 that had conducted a great deal of research in
6 terms of short tandem repeats and mitochondrial.
7 The Brits and the Americans were ahead in those
8 areas.

9 Q And then you've attached here for Mr. Gaudette to
05:20 10 look at a draft of your letter to Dr. Emmerson; is
11 that correct?

12 A Correct.

13 Q And then if we can go to the next page, it appears
14 as well you raised the question at least for
05:20 15 getting the court, if the court wants to know why
16 a second request for the release of exhibits, you
17 are asking for a short description of the
18 technology:

19 "...and the procedure that was used by
05:20 20 Dr. Ferris and an explanation of why the
21 procedures that we propose to use may
22 succeed when the one used by..."

23 Him,

24 "...did not."

05:20 25 And do you recall if you were ever made aware of



1 that, as to -- was it just as you said, the
2 difference in technology?

3 A An explanation was provided, the details of which
4 I don't recall right now, yes.

05:20 5 Q If we can go to the next page here in this draft,
6 this is your draft letter to Dr. Emmerson;
7 correct?

8 A Yes.

9 Q If we can go to the next page, I just want to show
05:21 10 you a couple of documents and get your
11 recollection. In your draft letter to England you
12 say:

13 "We understand that advances in DNA
14 testing technology has expanded the
05:21 15 scope of materials that may be tested.
16 We have identified six known samples
17 from four individuals to be compared
18 with five unknown samples."

19 And:

05:21 20 "The unknown samples are blood and semen
21 stains that were found on the victim's
22 underwear."

23 And then go on to talk about:

24 "The known samples include hair from the
05:21 25 victim's head and pubic area; head hair



1 and blood from the convict; blood from a
2 third party whom the convict has accused
3 of the crime; and a blood stain from a
4 friend of the accused..."

05:21 5 And so I think if we look at the four
6 individuals, we're talking David Milgaard, Gail
7 Miller, Ron Wilson and Larry Fisher; is that
8 correct?

9 A That's correct.

05:21 10 Q And then you talk about five unknown samples and
11 that you say:

12 "...found on the victim's underwear."

13 And then I want to go to, call up 334378, and
14 this is Mr. Gaudette's fax back to you of January
05:22 15 9th, '92 indicating that he's marked up your
16 draft letter. Do you see that?

17 A Yes.

18 Q "...is generally good. My comments all
19 relate to page 2..."

05:22 20 And then if we go to the next page, he writes
21 here where you say the unknown samples that were
22 found on the victim's underwear, and he writes at
23 the bottom:

24 "List these separately by garment.

05:22 25 State where and how samples have been



1 stored. State when known samples were
2 obtained."

3 And then if we can go to 334382, I believe this
4 is the January 6th, 1991 letter that was actually
05:22 5 sent. If we can go to the third page, that's
6 your signature, this would be the letter that was
7 actually sent; is that correct?

8 A That's correct.

9 Q And just go back a page, here you write:
05:23 10 "There were semen stains on the victim's
11 panties, girdle with attached stockings,
12 dress and slip."

13 And I'm wondering, Mr. Williams, if you have any
14 recollection as to how the -- it appears that the
05:23 15 draft talks about semen stains on the underwear
16 and then this letter lists that there were semen
17 stains on the victim's panties, girdle, dress and
18 slip, and do you recall where you got that
19 information from or how this got put in the
05:23 20 letter?

21 A My recollection is that that information found its
22 way into the letter from one or two sources. One
23 would be my review of the trial transcripts,
24 particularly the evidence of I think Sergeant
05:24 25 Paynter, which -- and secondly, it may have come



1 from information I received from one of the RCMP
2 scientists who examined photographs of those items
3 from the trial, but I think much of it probably
4 came from my review of the trial transcripts.

05:24 5 Q Okay. And would it be correct to say then that
6 the statement here that there were semen stains on
7 the victim's panties, girdle, dress and slip,
8 would you agree that would not have been based on
9 any scientist testing it to prove semen; is that
05:24 10 fair?

11 A That's fair.

12 Q As opposed to either your understanding of the
13 evidence or someone's visual review as opposed to
14 a test that identified it?

05:24 15 A That's fair, yes.

16 Q And if we can just scroll up, I think here you
17 identify that Dr. Ferris:

18 "...was unsuccessful in his attempt to
19 test the clothing and other exhibits
05:25 20 using RFLD technology."

21 And is that, I think, what you told us earlier?

22 A Yes.

23 Q It's the same technology?

24 A Yes. I says D. It seems to me it should have
05:25 25 been a P, but --



1 Q P, correct.

2 A Yeah.

3 Q If we can then go to 334386, it appears that this
4 is a fax back from -- now, Vivian Emmerson, I
05:25 5 understand that's a male; is that correct?

6 A Yes.

7 Q Dr. or Mr. Emmerson?

8 A It is.

9 Q And saying attaching information. The next page,
05:25 10 and this is some information that talks about the
11 polymerase chain reaction, the PCR that has been
12 introduced in casework?

13 A Yes.

14 Q And then the next page is Dr. Gill, and was
05:26 15 Dr. Gill the individual that was originally
16 contemplated doing the testing?

17 A Yes.

18 Q If we can go to 334413, and this is Mr. Emmerson's
19 letter back to your January 6th fax, January 15th,
05:26 20 and he says:

21 "Currently we are only using the DQa
22 Amplitype system in casework. We would
23 be unable to offer DNA sequencing or
24 short tandem repeats for casework
05:26 25 analysis because we have not completed



1 our validation of these new methods."

2 And again, what was your understanding then of
3 what they were telling you?

4 COMMISSIONER MacCALLUM: What's the date of
05:26 5 that, please?

6 MR. HODSON: It's January 15th, 1992.

7 COMMISSIONER MacCALLUM: Thanks.

8 A He was stating that the more sophisticated or
9 discriminating methods were still in an
05:27 10 experimental stage and they weren't ready to be
11 used in actual cases and he wasn't prepared to use
12 them in an actual case until such time as they had
13 developed the research and they had validated it,
14 because it was really too important for them to
05:27 15 have this new research released before its time.

16 Q And is it my understanding -- or my understanding
17 is that at some point they did validate, or some
18 labs validated the short tandem repeat and PCR
19 methodology, but it was only after various
05:27 20 testing; is that correct?

21 A Yes, I believe two or three years elapsed before
22 the validation process. Part of the validation
23 process would involve a comparison of the results
24 for, let's say, short tandem repeats with one of
05:28 25 the knowns, let's say DQ Alpha.



1 Q Now, comment on that. DQ Alpha would have been a
2 DNA typing method after RFLP; is that correct?

3 A Yes, it's an advancement, one step better than, or
4 more discriminating than RFLP, and that was the
05:28 5 information I had at that time.

6 Q And do you recall whether the RCMP was doing DQ
7 Alpha at this time?

8 A The RCMP was not. There were labs in the United
9 States doing DQ Alpha, one was Roche Laboratory.

05:28 10 Q In North Carolina?

11 A In North Carolina.

12 Q And then I think as well the English lab basically
13 said that the hair from Gail Miller would not be
14 sufficient to get her DNA typed, that they would
05:28 15 need a blood stain; is that correct?

16 A Yes.

17 Q If we can go to the next page, and then it
18 appears -- sorry, 334423. And this is your letter
19 back on January 16th. Now, this would be the
05:29 20 starting day of the reference case; is that right,
21 January 16th?

22 A Yes.

23 Q And you confirm that you can provide a control
24 sample from the victim and you say:

05:29 25 "I noted your comments concerning the



1 use of Dqa amplitype system for
2 casework. I wondered whether DNA
3 sequencing or short tandem repeats could
4 also be used, as a check on the results
05:29 5 obtained in the Dqa amplitype system."

6 Are you trying to get sort of indirectly some of
7 the new technology to check the DQ Alpha?

8 A Yes.

9 Q 334429, please, and here Mr. Emmerson writes back
05:29 10 saying:

11 "I regret that we can only use the DQa
12 Amplitype system for casework because we
13 have not yet completed our validations
14 using DNA sequencing or short tandem
05:30 15 repeats and therefore are not prepared
16 to use these in casework until we have."

17 And so I take it at this time your options were
18 RFLP or DQ Alpha; correct?

19 A Mostly DQ Alpha, yes.

05:30 20 Q And why not RFLP?

21 A Based on the information I had received, it likely
22 would not provide meaningful results and we had --
23 by then we knew that RFLP had been attempted by
24 Dr. Ferris and without successful results.

05:30 25 Q And did that influence your thinking about whether



1 or not RFLP would be suitable in 1992?

2 A Yes. Well, two things, or two factors emerged,
3 one was the perceived quantity of DNA that might
4 be available for testing, and then secondly, the
05:31 5 conditions under which the samples had been stored
6 were not ideal and there was always the risk of
7 contamination and there was concern that DQ Alpha
8 would be far more discriminating than RFLP.

9 Q And then if we can go to 334449. This looks to be
05:31 10 a memo January 21, 1992 from you to Mr. Frater
11 just identifying the exhibits that would be
12 required; is that correct?

13 A That's correct.

14 Q I think the record reflects that on January 17th,
05:31 15 1992 the Court of Queen's Bench released these
16 exhibits to the Supreme Court for the reference;
17 does that accord with your recollection?

18 A It does.

19 Q And you were now telling Mr. Frater what you
05:31 20 needed to do the DNA testing; correct?

21 A Well, yes, those items had been identified.

22 Q And so the panties, the stockings, the slip, the
23 brassiere, the dress, and the toque I take it
24 would all be garments that you would look for
05:32 25 human tissue from the perpetrator; is that a fair



1 way to put it?

2 A Yes.

3 Q 334504. And this is your memo to file indicating
4 you had talked to Dr. Peter Gill in England and
05:32 5 they'd:

6 "... begin to work on our exhibits when
7 they arrived."

8 And so can you tell us, at this point, what was
9 your plan as to what you were going to send and
05:32 10 what testing was going to be done?

11 A The plan was to send the exhibits we'd received
12 over to England for DQ Alpha testing, but in
13 speaking with Dr. Gill he mentioned that it would
14 take a few weeks to complete, and one of the
05:32 15 concerns we had was to get the matters tested
16 effectively, but sooner rather than later, but the
17 lab in Great Britain had a, you know, had an
18 inventory of work --

19 Q And --

05:33 20 A -- that preceded ours.

21 Q Yeah. And so 334449 is the January 21 memo. This
22 would be, this list of exhibits, that's what you
23 planned on sending to England to be tested?

24 A Yes sir.

05:33 25 COMMISSIONER MacCALLUM: Umm, you said you



1 needed it sooner?

2 A Well --

3 COMMISSIONER MacCALLUM: For the purposes
4 of the Supreme Court reference?

05:33 5 A Yes.

6 COMMISSIONER MacCALLUM: Not knowing the
7 Supreme Court reference would go on as long as it
8 did?

9 A Correct.

05:33 10 BY MR. HODSON:

11 Q So did you have a concern about the two-week time
12 frame, then, or a few weeks to complete?

13 A It -- it was of some concern because I think, by
14 then, we'd had some kind of indication as to the
05:34 15 Court's schedule or the amount of time they were
16 prepared to allocate.

17 Q So 230350. And this is the court order of the
18 Supreme Court January 30th, 1992. The next page,
19 and this would be the list of exhibits, then, that
05:34 20 you had planned on sending to England for DNA
21 testing; correct?

22 A Correct.

23 Q And that would be the panties, girdle and
24 stockings, slip, brassiere, dress, the envelope
05:34 25 containing two vials, the toque --



1 A Well, --

2 Q I'm sorry?

3 A -- yeah, I'd like to correct my response. Those
4 were the exhibits we wished to have removed
05:34 5 from -- or to have transmitted to Ottawa from
6 Court of Queen's Bench. That list was informed
7 by, I guess, partly what materials Mr. Wolch had
8 obtained from Queen's Bench previously, and also
9 from our review of the transcripts.

05:35 10 One of the things that we had
11 planned to do was to have someone knowledgeable in
12 DNA examine these and make a further selection or
13 refinement from them for testing. So this was
14 let's say the full set but I wasn't certain, when
05:35 15 I'm requesting that, whether all or some of those
16 would find their way to the testers.

17 Q Did you consider just sending them to the lab in
18 England and letting them do the testing?

19 A I -- I did, but we thought that it might be more
05:35 20 advantageous or more expeditious to have someone
21 in Canada review it, see, identify the garments
22 that had the best possibility of yielding DNA, and
23 just sending those.

24 Q So at this point I think this court order simply
05:36 25 releases these to the agents of the Attorney



1 General and you're telling us that you had
2 contemplated, then, a further step of having the
3 garments tested by someone in Canada?

4 A Examined --

05:36 5 Q Yeah.

6 A -- by someone in Canada, yes.

7 Q And would that be someone with the RCMP, then, --

8 A Yes.

9 Q -- the RCMP lab? If we can go to 009437. And
05:36 10 this is a February 17th, 1992 report of Patricia
11 Alain, if we can just go to the last page?

12 COMMISSIONER MacCALLUM: Date again,
13 please, I'm sorry Mr. Hodson?

14 MR. HODSON: It's February 17th, 1992.

05:36 15 BY MR. HODSON:

16 Q And so we can go back to the first page. You're
17 familiar with Patricia Alain?

18 A Yes. Ms. Alain, at the time, was, I think, head
19 serologist for the RCMP lab.

05:37 20 Q And I think at the time she was also doing some
21 work, or someone reporting to her was doing some
22 work on the secretor status of David Milgaard; is
23 that correct?

24 A That's my understanding, yes.

05:37 25 Q And this is her report of February 17th, 1992, and



1 it says the items were received personally from
2 the clerk of the Supreme Court on February 3rd.
3 Can you tell us, Mr. Williams, did you -- what
4 instructions if any, then, did you give to
05:37 5 Ms. Alain -- or, actually, let me back up. What
6 steps did you take to find somebody to do this
7 review of the exhibits for the purpose of
8 identifying stains that could be tested in
9 England?

05:37 10 A I think, following discussions either with Dr.
11 Fourney or Barry Gaudette, Ms. Alain was
12 identified as someone who could perform that
13 function. I had taken possession of the exhibits,
14 because they'd been transported via an RCMP craft
05:38 15 to Ottawa, I brought them to the Court where they
16 remained until that day, and Ms. Alain examined
17 them.

18 Q Okay. So you would have talked to Dr. Fourney and
19 Mr. Gaudette, or one or both of them, about who
05:38 20 you should get in the RCMP to test the clothing?

21 A To examine it --

22 Q To examine?

23 A -- for the purposes of identifying which, which of
24 the garments could possibly yield samples for
05:38 25 subsequent testing.



1 Q And what was your understanding of Pat Alain's
2 role at the time, and her experience in these
3 matters?

4 A Umm, that she was an experienced serologist who
05:38 5 had the ability to identify the types of stains we
6 were looking for that would, or could, produce
7 DNA.

8 Q And what instructions did you provide her and in
9 what format were those instructions provided?

05:39 10 A I -- my recollection is that they were verbal or
11 oral instructions to examine them and to identify
12 garments that had, or could, yield DNA suitable
13 for testing for DQ Alpha.

14 Q And do you have a recollection of any specific
05:39 15 instructions as far as what garments to check for
16 semen stains?

17 A I don't. I -- I know that there is documentation
18 which signals that she selected some items
19 specifically for semen and other items for others,
05:39 20 but I don't have a specific recall of that.

21 Q Are you able to tell us what generally, then, what
22 you believe you communicated to her as far as what
23 you wanted from her?

24 A Umm, just generally to examine the items and
05:40 25 identify those that contained stains that might



1 yield DNA.

2 Q And --

3 COMMISSIONER MacCALLUM: You didn't confine
4 yourself to semen stains?

05:40 5 A No, sir.

6 COMMISSIONER MacCALLUM: No.

7 BY MR. HODSON:

8 Q And do you recall anything else in your
9 discussions, then, with Ms. Alain about the work
05:40 10 that she was going to do for you?

11 A Well, apart from that, and to provide assistance
12 in terms of ensuring that we packaged it properly
13 so that whatever results were obtained would be
14 meaningful ones.

05:40 15 Q Now in her report she identifies the items and
16 then, if I can just draw to your attention a
17 couple of -- exhibit P.10 is the dress, 6 and 7
18 are the panties and girdle, and 13 I think was the
19 two small green capped plastic vials, I believe
05:41 20 those were the vials that had the frozen semen
21 from the trial and I think they had basically
22 dissipated; is that correct?

23 A Yes, it was dried matter, powdery matter at that
24 time.

05:41 25 Q And then 35 was the blue toque, and that was the



1 toque that Helen Gerce found in her yard next to
2 the Cadrain house, correct, that may or may not
3 have had blood on it?

4 A I believe so, yes.

05:41 5 Q And so if we go to the next page, under *Purpose*,
6 Ms. Alain indicates that purpose:

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

05:41 10 And that would be the panties, the girdle,
11 this -- the two vials and the toque.

12 "2. To examine 8, 9, 10, and 15 ...",
13 which are the slip, the brassiere and the dress
14 and the Gail Miller scalp hair:

05:42 15 "... for stains or samples suitable for
16 known standard purposes as sources of
17 'Gail Miller' "

18 And:

19 "3. To examine exhibit 41 ...",
05:42 20 which is Ron Wilson's blood:

21 "... to determine suitability for DNA
22 typing analysis."

23 Now do you have a recollection Mr. Williams, at
24 this time, of having any understanding about
05:42 25 whether or not Ms. Alain checked Gail Miller's



1 dress for semen stains as distinct from blood
2 stains?

3 A No, sir, I -- I observed her examine the dress but
4 I -- I couldn't have ind -- I didn't know enough
05:42 5 to know whether it would be for purpose number 1
6 or number 2.

7 Q And you say you observed her; what do you recall
8 of that?

9 A I believe -- no -- I recall that the exhibits were
05:42 10 brought by the clerk, and there was a library or a
11 large area in the Court area, and I was present
12 when the seals were broken.

13 COMMISSIONER MacCALLUM: So Ms. Alain did
14 this in the courthouse?

05:43 15 A She did it -- did -- that examination was in the,
16 in the Supreme Court building.

17 COMMISSIONER MacCALLUM: In Saskatoon?

18 A In -- in Ottawa, sir.

19 COMMISSIONER MacCALLUM: Oh, in Ottawa?

05:43 20 A Yes. At least the initial, the initial one was
21 there, whether she took them back to her offices
22 or labs I'm not certain, but I do know that the
23 initial examination was in the Supreme Court
24 building in Ottawa.

05:43 25 BY MR. HODSON:



1 Q And what do you remember about -- what did you
2 observe?

3 A She used various instruments to scrutinize the
4 documents -- not documents -- I mean the garments.
05:43 5 She looked at them, whether she used a magnifying
6 glass or some other instrument, I remember she had
7 instruments that she used to assist her just
8 ordinary vision.

9 Q Okay. And what is your recollection of what she
05:44 10 did, if anything, with the dress?

11 A I -- I don't recall, sir. She made certain
12 selections but --

13 Q And did she take anything with her, then, or what
14 happened to the exhibits when she was done with
05:44 15 them?

16 A I'm not certain whether she merely identified
17 certain other exhibits or she made a -- notations
18 as to which ones would be for purpose 1 as set out
19 in that document, and purpose 2, and left it
05:44 20 there, or whether she took physical possession of
21 them. I just don't recall.

22 COMMISSIONER MacCALLUM: You just don't
23 recall her looking at the dress or not looking at
24 it?

05:44 25 A I recall her looking at the, at the garments



1 including the dress, but whether she was examining
2 it for the purpose of finding a stain or for the
3 purpose of determining whether it had material
4 suitable for use as a standard for Gail Miller, I
05:45 5 couldn't tell the difference between those two
6 types of examinations.

7 COMMISSIONER MacCALLUM: Yeah.

8 BY MR. HODSON:

9 Q Yeah. And I think the distinction there, then, is
05:45 10 to test the dress for Gail Miller's blood for the
11 purposes of a known match, or her -- and,
12 secondly, to test the dress for semen to identify
13 the perpetrator?

14 A Yes.

05:45 15 Q And --

16 A She looked at the dress, but I couldn't tell
17 whether it was for one purpose or another, --

18 Q Okay.

19 A -- because I didn't know.

05:45 20 Q What about, do you have any recollection, you said
21 she had some tools present; did she have any
22 blotting paper or conduct any of the acid
23 phosphatase test, which I understand is to blot
24 part of the dress and put it on blotting paper,
05:45 25 spray it; do you recall any of that happening?



1 A I really don't. The specifics of what she did
2 just didn't stay with me.

3 Q Now would you, I think the exhibits were released
4 by the Court to the Attorney General's office,
05:46 5 would you then have maintained possession of the
6 exhibits or do you recall if you would have turned
7 them over to the RCMP?

8 A I believe, from the Court, it went directly to
9 Sergeant Pearson when he made a trip to --

05:46 10 Q Okay, sorry, I'm sorry. At this time, when Pat
11 Alain is looking at them at the Supreme Court, I
12 think you said in the library at the courthouse?

13 A In a, in a library-like area. It was a place with
14 large tables and --

05:46 15 Q And were you present because you were the
16 custodian of the exhibits?

17 A I -- I was present because I was part of the chain
18 of continuity, I had received the exhibits from
19 the plane and taken them to the Court, and just to
05:46 20 confirm that they were in the same condition as
21 when I had deposited them there.

22 Q But once they were removed from the Court on the
23 January 30th, 1992 order they were released to the
24 Attorney General's -- Canada?

05:47 25 A Yes.



1 Q I'm just wondering, were you the person then who
2 was the recipient of them and then the custodian,
3 or were they turned over to the RCMP?

4 A Umm, I believe they were turned over to the RCMP,
05:47 5 I don't think I kept custody after that. I may be
6 mistaken but that's my recollection.

7 Q And so do you think Ms. Alain may have taken some
8 of the exhibits, then, back to a lab or to another
9 location?

05:47 10 A Yes.

11 Q Do you recall that or do you think that's likely
12 what happened?

13 A I think that's likely what happened. I have no
14 specific recall of it.

05:47 15 Q And then, if we can scroll down, she says that:

16 "A positive presumptive test for semen
17 was made on a stain on exhibit 6 ...",
18 the panties, and then:

19 "Positive presumptive tests for blood
05:47 20 were made on stains on ...",

21 the toque, and then a:

22 "Visual examination identified residue
23 of unknown source in each vial ..."

24 And I think, would you agree with me Mr.

05:48 25 Williams, that her results are that semen was



1 found on the panties and it doesn't say it was
2 found anywhere else?

3 A That's correct.

4 Q What was your understanding as to whether or not,
05:48 5 at this time, she had checked the dress for semen
6 stains, and what were the results of that test?

7 A I knew, sir, that she had looked at the dress.
8 Whether it was for semen stains or for finding
9 material that would support a standard for Gail
05:48 10 Miller, I wasn't certain.

11 Q Yeah. Now Ms. Alain's evidence at the Larry
12 Fisher preliminary hearing, and evidence that this
13 Commission will receive from her, is to the effect
14 that she did examine the dress and did an acid
05:48 15 phosphatase test on certain parts of it; do you
16 have any knowledge of that or do you recall being
17 made aware of that?

18 A I don't recall, sir.

19 Q What was your understanding, at the time, as to
05:49 20 whether or not the dress had been tested for
21 semen?

22 A I didn't direct my attention to the specifics of
23 her tests, I relied on her to examine it knowing
24 what our objectives were, namely to identify
05:49 25 stains suitable for providing DNA, and I simply



1 left it up to her to perform her tasks.

2 Q And if we could just scroll up. And the reason I
3 ask, in looking at this lab report under *Purpose*
4 it seems to suggest that four exhibits were
05:49 5 checked for semen and four exhibits were checked:

6 "... for stains or samples suitable for
7 known standard purposes as sources of
8 'Gail Miller'",

9 in other words number 1. Now, in fairness,

05:50 10 Ms. Alain's evidence is different, but just on
11 the report itself seems to suggest that only four
12 items were checked for semen, namely the panties,
13 the girdle, the toque, and the residue, and that
14 the dress was only checked for blood. And do you
05:50 15 have a recollection of having that view at the
16 time, or having a different view at the time, or
17 are you able to shed any light on that?

18 A I am afraid I can't shed any light on it, I -- I
19 just didn't ask -- I didn't specify that breakdown
05:50 20 to her, but left it up to her to make whatever
21 decisions were necessary.

22 Q And then if we can go down on *Conclusions* it talks
23 about:

24 "A single stain ...",

05:50 25 4-5 millimetres:



1 "... diameter was found on exhibit 6

2 "...",

3 the panties.

4 "This stain appears to be an

05:51 5 uncontaminated semen stain. This stain

6 appears to be of sufficient quantity

7 that a PCR based DNA typing technology

8 could be attempted. No opinion

9 regarding the quality of the stain can

05:51 10 be given due to the age of the stain and

11 unknown storage conditions."

12 And was it your understanding, after receiving

13 this report, that the panties were the only piece

14 of Gail Miller's clothing that had a semen --

05:51 15 that had semen on them?

16 A I wouldn't say the only, but they were the ones

17 that provided a stain that was suitable for

18 testing by virtue of PCR.

19 Q Okay. So, can you elaborate, did you think there

05:51 20 might be semen stains on other garments that --

21 that were what?

22 A I didn't discount that possibility, but we were --

23 we were hoping, by then, to get something from the

24 underwear because we knew that portions of the

05:51 25 underwear had, had been tested previously, and the



1 likelihood is, or the likelihood was that whoever
2 donated the sperm that was found on the crotch
3 portion also donated the sperm that was found on
4 other parts of the panties, and so since Ms. Alain
05:52 5 had identified a stain large enough that it could
6 provide samples for meaningful results, that's as
7 much as we had wanted.

8 Q Okay. So I'm not clear here; did you think that
9 there may have been other stains that she didn't
05:52 10 check because she found the panties, or did you
11 think that she had checked everything to try and
12 identify sufficient semen to do a DNA test?

13 A I really didn't address the question as you posed
14 it. We were just happy to get some samples that
05:52 15 could provide DNA testing.

16 Q Okay. Now paragraph 2 talks about the blood stain
17 on the dress for the known sample of Gail Miller,
18 and I take it that's something that the English
19 lab had --

05:53 20 A Had requested?

21 Q -- identified?

22 A Yes.

23 Q And then the next page, it indicates here that:

24 "No potential semen stains were
05:53 25 identified on exhibit 7 ...",



1 the girdle, so it would appear that the girdle
2 was checked and nothing found?

3 A For -- yes.

4 Q And then go on to *Remarks*, it goes on to talk
05:53 5 about:

6 "Based on the size of the suspect semen
7 stain on ..."

8 the panties, the blood on the toque:

9 "... and the unknown residue in ...",
05:53 10 the vial:

11 "... the following options are available
12 ..."

13 And I take it, prior to getting this report, is
14 it fair to say your plan was to take whatever
05:53 15 Gail Miller clothing had an identifiable stain
16 and send it to England for DNA testing?

17 A Yes, that was the initial plan.

18 Q And that would be the DQ Alpha test?

19 A Yes.

05:53 20 Q Yeah. And so here Ms. Alain writes that:

21 "Amplified Fragment Length Polymorphism
22 ... Technology ... can only be done on
23 an exclusionary basis ...",
24 and only done through Roche Biomedical:

25 "b. ... (RFLP) technology."



1 But:

2 "Since the size, age and quality of the
3 stain are of borderline suitability, the
4 potential successful application of this
5 technology is low."

6 That can:

7 "... be done at the RCMP ...",
8 lab. The next page.

9 "... DQ alpha analysis. Probability of
10 discriminating with this system is very
11 low. This ...",

12 is available in England and America. And then

13 STR:

14 "Short Tandem Repeats ... Probability of
15 discrimination is very good, however
16 this technology is in its infancy and
17 has not been sufficiently explored on
18 old forensic samples."

19 It then they go on to say:

20 "Based on the suspect stains and the
21 available technologies, AMPFLP
22 technology as done by Roche Diagnostics
23 is recommended as the best option."

24 And:

25 "4. If DQ alpha technology is preferred,



1 then it is recommended that the known
2 standards be examined first to ensure
3 that they are of different types, prior
4 to examination of the suspect stain."

05:55 5 And then, as well, some photographs. So what is
6 your recollection of how this information came
7 about? Had you asked Ms. Alain to address, or to
8 get her advice, the RCMP lab's advice on what
9 type of testing should be done?

05:55 10 A It appears as if that request was made, yes, or if
11 it weren't, she provided her views. And based on,
12 based on what I read in number 5 on that page, it
13 appears as if she did in fact, that is Ms. Alain,
14 did in fact take away the exhibits that were
05:55 15 released at the courthouse because it -- she
16 states that she transferred two exhibits for
17 photography, and received on a certain date and
18 returned back.

19 Q Okay, yeah, 6 and 35, that's the panties and the
05:56 20 toque. And I can check, Mr. Williams, I believe
21 the continuity or the exhibit tags can confirm
22 that those went, but your belief is the RCMP, Pat
23 Alain, took them with her?

24 A Yes.

05:56 25 Q Umm, go to 231497. Here is your letter back to



1 Ms. Alain, and you say:

2 "In view of your remarks

3 concerning the suspect stain on Exhibit

4 6 ...",

05:56 5 which is the panties:

6 "... and ... your letter, the Department

7 of Justice will follow the

8 recommendation that Roche Diagnostics be

9 approached to perform AMPFLP DNA

05:56 10 analysis on the sample from Mr. Milgaard

11 and the Court exhibits.",

12 and that you'll go contact Mr. Barry Gaudette to

13 arrange:

14 "... the testing of the sample and

05:57 15 exhibits."

16 So I take it, then, that you followed her advice

17 and changed course and decided to go to North

18 Carolina with a different testing procedure?

19 A Initially, that was what was considered, but I

05:57 20 guess after additional consideration a decision

21 was taken to go to North Carolina, not with the

22 AMPFLPs, but with DQ Alpha.

23 Q Okay. At this point, it's AMPFLP, I think later

24 on it gets changed back to DQ Alpha; correct?

05:57 25 A Yes.



1 Q But at this point is it fair to say, February
2 24th, 1992, that, based on Patricia Alain's report
3 of February 17th, 1992, you decided not to send
4 Gail Miller's clothing to England to do DQ Alpha
05:57 5 as had been contemplated earlier?

6 A That's correct.

7 Q I see it's 6:00, Mr. Commissioner.

8 I can, for the benefit of the
9 parties, indicate that I have some DNA, basically
05:57 10 just to finish off the DNA and Mr. Williams'
11 involvement. I will be done in sufficient time to
12 allow all parties to complete their examination of
13 Mr. Williams tomorrow, how's that for -- and in
14 the event that -- well I, we'll see how we go
05:58 15 tomorrow, it may well be that we may need to sit a
16 little bit longer tomorrow if we're able to finish
17 up Mr. Williams. Based on my discussions with
18 counsel, I'm hopeful that that will happen, I have
19 Mr. Fainstein here Wednesday morning so --

05:58 20 COMMISSIONER MacCALLUM: Make sure that the
21 support staff is apprised, especially Irene.

22 (Adjourned at 5:58 p.m.)
23
24
25



OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATES:

We, Karen Hinz, CSR, and Donald G. Meyer, RPR, CSR, CRR,
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foregoing pages contain a true and correct transcription
of our shorthand notes taken herein to the best of our
knowledge, skill, and ability.

_____, CSR

Karen Hinz, CSR

Official Queen's Bench Court Reporter

_____, RPR, CSR, CRR, CBC

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Official Queen's Bench Court Reporter



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