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

Delta Bessborough Hotel at

Saskatoon, Saskatchewan

****

On Monday, January 30th, 2006

Volume 114

Inquiry Proceedings

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Mr. Alexander Pringle, Q.C., and *Mr. Marshall Hopkins, Esq.,*	**for** Justice Calvin Tallis (Retired)

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(Reconvened a 1:30 p.m.)

COMMISSIONER MacCALLUM: Good afternoon.

ALL COUNSEL: Good afternoon.

MR. HODSON: We are scheduled, for today and tomorrow, to hear the application brought by Mr. Wolch on behalf of David Milgaard for an order accommodating the manner in which Mr. Milgaard provides evidence to this Commission.

You will recall that, earlier, Mr. Wolch had indicated that he intended to bring an application for an exemption, he modified that position on January 16th, and is seeking an accommodation by way of written interrogatories.

In accordance with your earlier directions we scheduled a date where Mr. Wolch could give -- have his experts and medical people give viva voce evidence. In his notice of motion he relies upon the report of Dr. Baillie and the report of Mr. Grymaloski, who is a therapist of David Milgaard's, I believe. They are both present today, the Commission has arranged to have them here.

The process will be as follows: Mr. Wolch will lead the evidence first of Dr.

Baillie, then of Mr. Grymaloski. You had earlier asked the parties, Mr. Commissioner, to identify for me or for the Commission their position on the motion, and I communicated to all the parties, and I understand -- and I stand to be corrected -- but I understand that the Government of Saskatchewan, Federal Justice, and the RCMP take no position on the application; is that correct?

MR. GIBSON: Right.

MR. HODSON: And the other parties, other than Mrs. Milgaard, the other parties provided me with a memorandum on Thursday outlining their position on the motion. And keep in mind what I had asked the parties is two things; 1) are opposed to any accommodation; and secondly, are you prepared to live with some type of accommodation. So I think we have made some movement on that.

Perhaps, before we start, I would ask counsel for the parties who will be opposing the specific relief perhaps just to briefly state their position before Mr. Wolch proceeds with the evidence.

And the last bit of

housekeeping, the report of Dr. Baillie you had put a publication ban on pending this motion, Mr. Wolch advises me he has no difficulty with that ban now being lifted and the report being made public, so if you would lift the order we'll make arrangements to have the report made public.

COMMISSIONER MacCALLUM: Yes, it's lifted then, thank you.

MR. HODSON: Then maybe, Mr. Elson, if you wish to speak on your behalf or that of others?

MR. ELSON: Mr. Commissioner, I was the author of the memorandum that was provided to Commission Counsel on Thursday. I did so at the request of my client and also at the request of the other clients, the other parties with standing, that Mr. Hodson has identified.

Perhaps the best way I can do this is refer to the memorandum that I asked all counsel to approve before I submitted it to Mr. Hodson. I don't know whether or not a copy can be placed on the screen. It is a memorandum dated January 26th, 2006, I don't believe it was actually provided to Mr. Hodson until the next day, January 27th, although I did advise him generally as to its contents on the 26th. As

indicated:

"This memorandum is prepared for the purpose of setting out the position of certain parties, with standing, in response to the application of David Milgaard for an accommodation for the receipt of his evidence. These parties are Mr. Justice ... Tallis, T.D.R. Caldwell Q.C., Serge Kujawa, Q.C., the Saskatoon Police Service, Eddie Karst and Larry Fisher. For the purpose of this memorandum, these parties are simply referred to as the Respondents.

There is general consensus among the Respondents, and their counsel, that there are several shortcomings in the evidence filed in support of the Milgaard application, and that it does not come close to justifying any form of accommodation. Despite these shortcomings, the Respondents agree that it would not be unreasonable for Mr. Milgaard to be given some form of accommodation which would be sensitive to his circumstances

and, at the same time, permit the Inquiry to ask him some important questions.

As to the form of the accommodation, it is the Respondents' position that Mr. Milgaard's evidence be received through a video and audio recording, much in the same way as it was done for Mrs. and Mrs. Danchuk and for Elmer Ullrich. However, given the particular importance of Mr. Milgaard's testimony, it is the Respondents' submission that the receipt of this testimony be subject to specific conditions, the particulars of which are as follows:

1. The evidence must be given under oath;
2. The examination of Mr. Milgaard must be conducted, in person, by Commission Counsel;
3. Counsel for all parties with standing would be encouraged to present Commission Counsel, on a strictly confidential basis, with specific questions they wish to have put to Mr.

Milgaard, with the understanding that Commission Counsel has the final decision on the order and wording of all questions put to the witness;

4. Copies of the video and audio recording must be provided to counsel for all parties with standing well in advance of its presentation to the Inquiry. If any counsel is of the opinion that further questioning is called for, such further questions can be given to Commission Counsel for the purposes of re-direct examination. If there is any disagreement as to the propriety, use or necessity of such further questioning, it would be open for counsel to apply to ...",

you, Mr. Commissioner:

"... for a ruling.

Although ...",

we have:

"... not stipulated it in the above conditions, ...",

I must advise you, Mr. Commissioner, that:

"... certain of the Respondents believe

it may be advisable for ..."

you, sir:

"... to be present at the examination. It may assist in the receipt of the evidence and in maintaining the order and solemnity of the proceeding. Having said this, it is a matter which the Respondents leave to the Commissioner's discretion."

Mr. Commissioner, that summarizes the position on behalf of the parties that I generally described as the Respondents, and certainly includes my client, the Saskatoon Police Service. I don't know whether or not any of the other counsel for the parties with standing to which I have referred in this memorandum wish to add any comments but I'm -- I take it that they are welcome to do so.

MR. HODSON: I think not. So perhaps, with that, Mr. Wolch can proceed with his application.

COMMISSIONER MacCALLUM: We should mark that memorandum I guess.

MR. HODSON: Certainly. We'll maybe -- I'll have Commission's staff put it a doc. ID, and we'll put it in the system and it will become

a public document, and as well we'll have Dr. Baillie's document marked with a doc. ID as well, and Mr. Grymaloski's report as well, Mr. Wolch, should be included as well.

COMMISSIONER MacCALLUM: Okay. Mr. Hodson, just before you sit down, I understand from you that we can't find a witness to use on Friday of this week. I had intimated that we might sit this Friday but, apparently, that is not possible?

MR. HODSON: That's correct. We have Mr. Tallis on this week with Dr. Ferris in the middle, and Friday Mr. Tallis, his counsel is not available on this short notice. I think the following Friday will be available so I think, according to our plans, is that we will not sit on this Friday but likely February 10th.

COMMISSIONER MacCALLUM: Thank you very much. Mr. Wolch?

MR. WOLCH: Yes, thank you, Mr. Commissioner. I call Dr. Baillie.

DR. PATRICK HUGH FORSYTH BAILLIE, sworn:

COMMISSIONER MacCALLUM: It is B-A-I-L-L-I-E, I understand?

A Yes sir.

COMMISSIONER MacCALLUM: Thank you.

BY MR. WOLCH: (ON QUALIFICATIONS)

Q Dr. Baillie, before I begin I want to take you through a -- your curriculum vitae fairly quickly. It might be easier if we had it on the screen, I suppose.

MR. HODSON: I can arrange that.

MR. WOLCH: If that can be done, that would expedite matters, I would think.

Just starting on the first page, you work out of the Peter Lougheed Centre of the Calgary General Hospital?

A That's correct.

Q And your occupation is?

A I'm a psychologist with the Calgary Health Region.

Q And you indicate Registration, Chartered Psychologist, and a number of others factors, a Diplomate, American Board of Forensic Examiners; what is that exactly?

A The American Board of Forensic Examiners was set up in the mid-1990s. It was established as an agency that would evaluate credentials of people working in different aspects of forensic psychiatry and forensic psychology, primarily it was a clearing house that simply reviewed

credentials and decided whether somebody met a particular standard.

Q Okay. And the fact that I may skip through some of these doesn't mean that I am ignoring it, just it's on the record, so to speak, and I don't think everything has to be explained.

Under your academic qualifications you indicate the Faculty of Law, University of Calgary; can you tell us about that?

A In 1998 I took a sabbatical from the hospital and completed the first year of my law school studies and then over the next four years, on a half-time basis, completed the rest of my degree, so I earned my Bachelor of Laws in 2003.

Q Could I ask you to move the mic' a little closer to you, I have kind of plugged ears, I'm having a hard time hearing.

A Certainly.

Q You say you took a sabbatical from?

A In '98-'99, and then the rest of the program was completed on a half-time basis, with the degree being earned in 2003.

Q And so you are a member of the bar?

A No, I have not done my articles or been called to the bar at this point, I simply have my degree.

There's an outstanding plan for articles, but other factors have postponed that.

Q I see. And your previous education in graduate studies would be generally what?

A In the field of clinical psychology. In 1992 I completed by Doctoral Degree through Virginia Commonwealth University, that was preceded by a Masters Degree in 1990 from Virginia Commonwealth, and a Masters Degree in 1987 from the Ontario Institute for Studies and Education, which is part of University of Toronto, and then prior to that my Bachelor of Science Degree completed in 1983 at McGill University.

Q And if we can just turn the page, and it indicates your undergraduate studies were at McGill University?

A Yes, they were.

Q And you took what there?

A A major in psychology and Bachelor of Science Degree.

Q And you indicated you are currently working out of the Peter Lougheed Centre in Calgary?

A Yes. I started with the Calgary Health Region in 1991 as an intern, at the end of the internship I was offered a position within the forensic

program, so I started that in November of 1992 and I have been there since that time.

Q And you list the activities, under number 1 it talks about "clinical psychological assessment", and can you elaborate on that?

A That would typically involve doing a clinical interview and psychological testing of individuals who had been referred to our program.

My work has two primary sources of referrals, I do pre-sentence assessments for the courts in Alberta, and then I do assessments for individuals who have been referred for treatment, those being primarily referred from probation for my role as a coordinator of the Sex Offender Treatment Program. So about half of my work are the presentence Court assessments, the other half is treatment related.

Q Okay. You've indicated you've done 1,389 assessments?

A Up until the date of the CV which is January 1st of this year.

Q And under heading number 2 you talk about reports for the three levels of court in Alberta?

A Yes.

Q How is it you had come to do reports for them, how

does that start?

A The program has an arrangement through Alberta Justice for funding related to the provision of those reports, so although my paycheque is from Alberta Health, there's some indirect funding from Alberta Justice to Health to cover the costs related to our program. In Calgary we have a standard form that is used for a judge who is requesting a pre-sentence assessment, that may be at the request of counsel or it may be on the judge's own motion, and for those patients who are in an out-patient capacity, they would be referred to our program and one of the psychiatrists or one of the psychologists would undertake to do the pre-sentence assessment.

Q Okay. You also refer to the National Parole Board?

A Yes.

Q How does your work take you to the National Parole Board?

A Well, my work takes me there in two routes; one, through the hospital from time to time the National Parole Board has requested assessments. In addition, since 1994, I have been a contractor with Correctional Services Canada which has led to

the writing of approximately 600 assessments for the parole board in that private practice sort of capacity.

Q And under heading 3, provide expert evidence, you have testified in the courts?

A Yes, I have.

Q And you've been qualified as an expert?

A Yes, I have.

Q I won't take you through any of the other four activities. And I see you've listed also your previous work experience prior to 1991?

A Yes.

Q If we can just turn the page, you've listed here conferences and workshop attendance. They sort of speak for themselves I suppose. I count approximately 13 there?

A And those are conferences that provide a mix between my two areas of interest. The more recent conferences have been primarily with the Canadian Institute for Administration of Justice, I was asked to sit on their board of directors for a period of four years and have continued my involvement with the association after completing my term on the board, and then other conferences have been for things like treatment of sexual

offenders, risk assessments, those sorts of issues.

Q If we can just scroll down I suppose the page a bit here, psychological assessment, you've got patient-participatory instruments administered, scored and interpreted -- here's where it gets a bit difficult for most of us. What does this all mean?

A As I indicated, in doing an assessment, it's typically a combination of a clinical interview and psychological testing, so in an optimal situation, the testing provides me some additional information comparing this individual to many other individuals who have completed these tests. All of these tests have standardization samples, so I know where this person sits in terms of things like their IQ, their memory, their academic achievement and various personality characteristics as well as some of these tests look at neuropsychological functioning.

Q Okay. If we can just turn the page, please.

A These are simply more tests in different categories, objective personality measures, career vocational inventories, and then the risk assessment measures are listed in the middle of

the page towards the bottom of the screen.

Q Okay, if we can just scroll up, please, and you have your teaching experience, you've been a guest instructor at the faculty of law recently?

A Yes. For the last three years I've been teaching part of a required second year law course on interviewing, negotiating and counselling. Prior to that at the University of Calgary I was a sessional instructor for three years teaching in the faculty of kinesiology and then there was some teaching experience when I was doing my degree in Virginia.

Q If we just turn the page, I take it the top of the page is your previous teaching experiences?

A Yes.

Q And if we just roll it up a little bit, please, and under other professional activities you've got consultation and outreach?

A Yes.

Q And it appears to be the last 10 years I take it you've worked with the Calgary Police Service?

A Yes, since September, 1995 I've been the consulting psychologist with the police service doing critical incident debriefings, crisis management sorts of activities, so if an officer,

for example, is involved in a shooting, either discharging his weapon or being shot at, then typically I would be paged and sent out to meet with that officer as soon as possible and then to do some follow-up treatment as well. I also do the psychological testing for the recruit candidates who have applied to the police service for employment and then provide a small part of the employee assistance program that is offered to all members of the service and their families.

Q It also indicates the clinical psychologist, that's what we touched on earlier is it?

A Yes, contract positions. I don't maintain what I would consider to be a traditional private practice, I have contracts with Corrections Canada, I have the position with the police service, but I do very little independent work. I do some immigration assessments and those sorts of intermittent applications that come up, but because of my relationship as often the court's expert in pre-sentence assessments, it's my position that I will not do any pretrial work for defence or for Crown, although I have done pre-sentence work on things like long-term offender applications and dangerous offender

applications.

Q If we can just turn the page then, the top of the page, other consultation that you've done, I won't take you through it, it speaks for itself. If I can go down to the invited presentations and workshops, and I take it that the title speaks for itself. Can you elaborate a bit on what's involved here?

A Well, if I look at the second one, standards of conduct, codes of practice, and other ethical confusions, since September of 2003 I have been the chair of the discipline committee of the College of Alberta Psychologists. That's the committee that's responsible for dealing with any ethics complaints. The Province of Alberta has been going through a restructuring of all of the health-related professions in terms of discipline and self regulation, so this was a presentation that was done at the annual meeting late last year to address some of those changes which, as of January 15th, came into effect.

Q And if we can just turn the page, and as indicated, these are all papers you've presented or you've attended at workshops and presented with the assistance of others?

A Yes.
Q And I note that you had certain other appointments, you were an ombudsman at McGill University and a governor when you were a student?
A Yes, that's correct.
Q And if we can go to extra-curricular, you've got a wide range of writing for the *New York Times, Toronto Star*, *Globe and Mail*, etcetera, etcetera, various other things I won't take you through, and if we can turn the page, please, and we have here reviewed papers, posters, and presentations. Can you tell us the significance of the term reviewed papers, etcetera?
A The majority of these are papers or presentations that have only occurred as a result of peer review, somebody would read the paper or assess the proposed presentation and make a determination as to whether or not it was worthy of inclusion in a particular program or journal.
Q And I count approximately 30 there, I'm not going to take you through it, but I note that you were published in the *Alberta Crown Attorney's Newsletter* as well?
A Yes, and again, the papers reflect a mix of my interests in sports psychology and forensic

psychology.

Q Okay. And if we can turn the page, please, and continue with the papers, they pretty well speak for themselves, and scroll down to the bottom, please, and then turn the page, and you've listed reported cases and I believe there's approximately 18 or so that you've listed here, and I take it it's all levels of court?

A Yes. Well, I haven't had any cases at the Supreme Court yet, but certainly the three levels in Alberta.

Q Okay. And I take it they speak for themselves in terms of who you appeared in front of and, generally speaking, the evidence you give to court covers a wide range does it?

A Yes.

Q Depending on what's at issue and what's at stake?

A Everything from risk for sexual re-offence to assisting the court in understanding factors that may make a breach of trust theft fall into the category of extraordinary circumstances for the purposes of sentencing.

Q And just perhaps for completeness we can scroll down and turn the page?

A I would just emphasize that of course these are

the reported decisions, and as, Mr. Commissioner, you are well aware, the number of written reports is only a fraction of the actual decisions, so I would estimate that I've provided in excess of 500 reports to the courts.

Q Dr. Baillie, I've gone through it fairly quickly with you. I would like to now turn to your actual report, and perhaps we can get that up, I'm not sure by number or by document.

MR. ELSON: Mr. Commissioner, I rise just at this point, I appreciate that this witness has been qualified, My Friend is seeking to qualify this witness to give an opinion with respect to the matters that are contained in the report, and obviously from the CV and from this witness' testimony he's obviously qualified on a number of issues, but I was listening very closely to the questions My Learned Friend was putting and also to the answers that Dr. Baillie was giving and I heard nothing with respect to the subject matter that has been raised in the report which we've all received copies of; namely, post-traumatic stress disorder, and then secondly I heard nothing with respect to the ability of this witness to express an opinion in those cases

where he was not actually assessing the patient in question, but was rather giving, as he describes it, a commentary with respect to historical information but without the kind of clinical interview that he described in his testimony. I think, with the greatest of respect, it's incumbent upon Mr. Wolch to qualify the witness with respect to those specific subject matters. Clearly this witness is qualified to express opinions on matters that were identified in his CV and identified in his testimony, but it doesn't touch upon the specific circumstances of this case and I think at the very least there should be some general description of that.

COMMISSIONER MacCALLUM: You could either get into that, Mr. Wolch, on your own accord or we can allow cross-examination on the subject of the witness' qualifications to give opinion evidence, or, as a further alternative, we could simply await cross-examination at large to cover those aspects of the matter.

MR. WOLCH: Well, I was going to elaborate a bit during the report, but if counsel wants to question, I have no problem.

COMMISSIONER MacCALLUM: We'll allow cross-examination on the witness' credentials then with respect to the offering of an opinion as he has done in his report of the 13th of January, 2006.

BY MR. ELSON: (ON QUALIFICATIONS)

Q Mr. Commissioner, since I was the one that raised the objection, I guess it's incumbent upon me to lead off in whatever cross-examination might be conducted.

Dr. Baillie, my name is Richard Elson, I'm counsel for the Saskatoon Police Service. I don't want to ask you any specific questions about your report, but I would like to cover some of your experience in the subject matter which you have identified in the report, and you would agree with me that part of the subject matter in the report relates to the subject of post-traumatic stress disorder; is that correct?

A Yes.

Q I was reviewing your CV and very carefully hearing the questions that were put by Mr. Wolch to you and also your answers. In the cases where you have either testified or provided a written report

to the court as an expert for the court, have you ever had to deal with an instance in which a prisoner or the person subject of your testimony or subject to your report was indeed found to suffer from post-traumatic stress disorder?

A Yes.

Q And specifically in what type of circumstances would you have been called upon either to provide expert testimony or a report with respect to such a patient?

A I think it's actually occurred in all three areas of my work, or all four areas in fact. It has been through the police service with an officer who had been involved in a shooting incident making some recommendations to the service. Now, granted, this is not in a court setting, making recommendations to the service about that officer's capability for return to work.

In the court setting or, more broadly, before administrative tribunals, certainly that's been the issue that has been raised in a number of reports to the National Parole Board and has been raised in civil assessments for damages flowing from a particular tort, so it has been addressed in the Court of

Queen's Bench, it has been addressed in the parole board. I cannot think of a specific case where it would have been addressed in the Provincial Court in a pre-sentence report, but I don't doubt that it has been, and then it's also been addressed in my clinical work with the police service.

Q Now, in those cases where you have dealt with persons found to be suffering from post-traumatic stress disorder, would that diagnosis have been made by you or would it have been made by a psychiatrist?

A In those cases the diagnosis would have been made by me.

Q Right. Now, I have heard it said, and correct me if I'm wrong, that there was a dispute between the fields of clinical psychology and psychiatry as to which of those two professions is better able to make a diagnosis of post-traumatic stress disorder. Is it fair to say that there is a dispute between those two professions as to who is better equipped professionally to make that diagnosis?

A I think there may be some individuals who are plotting territory and setting up camp on particular diagnoses, but I think in general the

professions understand that each has something to contribute to the process.

Q All right. Now, with respect to those patients where you had arrived at a diagnosis of post-traumatic stress disorder, would it be fair to say that those patients would have been subjected to a clinical interview conducted by yourself; is that a fair assessment?

A Ordinarily, yes.

Q When you say ordinarily, that suggests to me that there might be an exception to the rule.

A Some individuals where I'm doing an assessment for the parole board may choose not to participate in the interview because, frankly, they are not going to participate in the parole hearing, but there is still an administrative requirement for a report to be drafted. In those circumstances, my opinion would be based on a file review, but as in the case of the letter that I provided to Mr. Wolch, I would not consider that to be a comprehensive assessment because the individual hasn't participated.

Q Right. So if we go back to the situation with somebody with the parole board, if you've been asked to express an opinion as to whether or not

someone is suffering from post-traumatic stress disorder, in those instances where you do it without a clinical interview, would you agree with me that the weight of your opinion would perhaps be, and I say this with the greatest of respect, arguably less than it would be if it had been done with a clinical interview?

A I appreciate your respect, but I don't think that it's even necessary. There is a limitation when I am unable to have first-hand clinical observation. I don't think that that makes the report useless, but it is a limitation that I respect.

Q And by virtue of it being a limitation, it might arguably be seen to have less value and less force than would otherwise be the case with a clinical interview?

A I think that's fair.

Q And would that also apply with respect to psychological testing; in other words, I take it that in most of the cases -- forgive me if I'm confusing, I have unfortunately the bad habit of doing that from time to time with witnesses -- but in those cases where you have made a diagnosis of post-traumatic stress disorder, it invariably comes with a clinical interview and a set of

psychological tests; is that correct?

A I don't know if I would say invariably. Certainly that would be my preference.

Q And again, if the person in question were not subjected to the psychological testing you've described, again your opinion as to whether or not that person had such a condition as post-traumatic stress disorder, for example, would have less value than might otherwise be the case?

A The diagnosis of PTSD -- sorry, post-traumatic stress disorder is abbreviated as PTSD often -- the diagnosis of PTSD is based on criteria that have been established by the American Psychiatric Association and laid out in their diagnostic and statistical manual of mental disorders. There is no criteria that is related to a test result. Where the testing can be helpful is for the personality measures such as the Minnesota multiphasic personality inventory in its second edition or the Millon clinical multiaxial inventory. Those tests include what are called validity scales which give me information about how this person is presenting himself or herself in the assessment process. Some people may choose to present themselves in a glowingly positive

manner because they are looking for a positive evaluation. Other individuals may amplify the degree of distress that they are experiencing and so skew the results in a negative direction. So while there are scales on those tests that can address characteristics of post-traumatic stress disorder, the primary utility of them in doing an assessment like this doesn't relate to the diagnostic criteria per se, it gives me additional information about whether the person is faking good or faking bad in the vernacular.

Q I understand that. While we're talking about additional information per se, it's my understanding that in the last number of years in addition to clinical interviews, in addition to testing, to the extent that they might be of some assistance to you, there are also laboratory tests done, and when I talk about that, I'm talking about medical laboratory tests. For example, MRI examinations, it's my understanding that there is some evidence to the effect that individuals with PTSD, post-traumatic stress disorder, have a smaller hippocampus, for example, than might otherwise be the case. Are you aware of clinical evidence in that regard that has been used notably

by psychiatrists in making the diagnosis of post-traumatic stress disorder?

A There is a limitation in that line of research that there are certainly some individuals and therefore a trend towards different morphology between individuals with depression, individuals with not, individuals with psychopathy, individuals who don't meet that criteria, but there is so much variability within subjects that by no means is that a diagnostic criteria at this point, so again I go back to the diagnostic criteria as outlined in the DSM don't make reference to those sorts of testing because it's simply not at the level of scientific rigor that we know this is a definitive marker.

Q I appreciate that. Do you from time to time, though -- I take it you are aware of the research that suggests that an MRI may be helpful in the assessment of a PTSD patient?

A I haven't read it in any detail. I'm simply aware that that sort of research is going on.

Q There's also evidence with respect to ketone secretions as I understand it, that individuals with post-traumatic stress disorder may have abnormal levels of ketones?

A May have, yes.
Q May have. Does information, blood tests or laboratory tests that may be provided to you in that respect, is that of any value to you in your assessment?
A It really has limited value because I go back to the issue of the diagnostic criteria. We don't add on other factors. Again, the testing may tell you whether a person is presenting in one direction or the other, but if the symptoms are present and the four criteria are met, then the diagnosis is established. The test results may enhance that diagnosis, strengthen that diagnosis or weaken that diagnosis, but the test results per se do not change whether or not the diagnosis is made.
Q Thank you. I was listening very carefully to the evidence you gave in response to my earlier question about cases where you were called upon either to give expert testimony or reports with respect to persons suffering from post-traumatic stress disorder, and correct me if I'm wrong, but I did not hear you say in your answer to my question that you have ever been called upon to assess a person with that condition in order to

determine whether or not they could testify either in a court of law or in some other form of judicial proceeding. Have you ever had occasion to assess a patient that was believed to be suffering from post-traumatic stress disorder in order to assess the ability of that person to give evidence in a judicial proceeding?

A I think the closest that would have come up is an assessment for fitness to stand trial which, as you know, the criteria are outlined in section 2 of the *Criminal Code* and relate to the ability to communicate with counsel, not a willingness to communicate with counsel, and most of the individuals that I've seen for assessments of fitness to stand trial have been fit, so even if the diagnosis of PTSD had existed in those cases, I would have been making an opinion to the court that the individual was fit to stand trial.

Q Now, I take it then from that answer that you have never then dealt with an occasion -- you say that that's the closest you've come, so I take it then in answer to my specific question, you have never dealt with the assessment or, for that matter, even the commentary of a patient with post-traumatic stress disorder in determining

whether or not that person would be fit and competent to give evidence in a judicial proceeding?

A To the best of my recollection, I have not done that.

MR. ELSON: Thank you, Dr. Baillie. I have no further questions.

COMMISSIONER MacCALLUM: Thanks. Anybody else?

MR. WOLCH: Thank you, Mr. Commissioner.

COMMISSIONER MacCALLUM: Any submissions?

MR. WOLCH: No. I prefer to proceed and --

COMMISSIONER MacCALLUM: I'm satisfied that Dr. Baillie has the requisite combination of experience and academic qualifications in the area of psychology and particularly with respect to post-traumatic stress syndrome to offer his opinion on that subject. Any limitations upon his ability to do so are ones to be attributed to weight as opposed to qualification.

BY MR. WOLCH:

Q Thank you, sir. Perhaps I could have the report brought up then.

Now, Dr. Baillie, on the screen is the report of January 13th, 2006 and I'm going

to skip the first page which, as you indicate yourself, is background and turn to the second page if I could, and I would like to start with your involvement. Could you -- I don't want to have you just read it out. Could you tell us about your involvement and what you did?

A After my receipt of an Email from you on December 7th indicating that you wanted me to go ahead with doing this assessment, I made arrangements with the Commission office to come to Saskatoon and review some of the documents, some of the huge volume of documents that's available to the Commission. Through the assistance of people like John Agioritis and Mel Thoen, I was able to get access to many of the documents that I was looking for which primarily related to mental health assessments giving me a general understanding of some of the issues that would need to be addressed in the questioning of Mr. Milgaard and dealing with his appearances before the parole board, for example.

At the offices I also had the opportunity to have a brief conversation with Mr. Hodson about the application process and I think by the end of that involvement had a sense of

where things were going. What was very helpful to me was to then have a telephone conversation with Mr. Grymaloski in early January where he, in the course of that 30 minute conversation, was able to describe to me some of the concerns that he had from his professional experience providing treatment with Mr. Milgaard over the last 10 years or so.

Q If I could interrupt you, I know you are not reading from your report, but we should try to keep up with it. I think you are on the next page. Okay, I'm sorry to interrupt you, but just carry on so we can perhaps read it if we want, or do both hopefully.

A Well, as you know, by early January a circumstance had arisen where I was asking for arrangements to be made that I could go to Vancouver and do the clinical interview with Mr. Milgaard. I had also spoken with my psychological assistant, who is very much my right arm and does all of the testing for me, and, frankly, many of the courts are more interested in the test results than they are in my opinion so she is a very important part of the process, and we had made tentative arrangements to go to Vancouver to meet with your client.

However, as you indicated to me, your client had some resistance to that process going ahead, and when I was able to chat with Mr. Grymaloski I became more aware of what those concerns were; specifically the potentially debilitating nature that even that interview could have if I was to start to touch on issues that may be of relevance to the Inquiry, so at that point I sought your guidance as to whether you wanted me to proceed with writing some sort of a report or to abandon the process, and you indicated that even in the absence of the interview you would like me to provide some of the commentary that is provided in this letter.

Q You mentioned that speaking to you could have a debilitating effect?

A I think, in my review of the documents, it became clear that Mr. Milgaard has seen a wide range of mental health professionals, I would estimate probably 20 if not more psychiatrists and psychologists within the correctional system, and from my conversation with Mr. Grymaloski I can understand Mr. Milgaard's reluctance to want to meet with somebody who he doesn't really know, therefore doesn't trust, and who is another mental

health professional coming in to poke and prod and see what sort of reaction I get from him. So Mr. Milgaard's primary concern, as relayed to me by you and by Mr. Grymaloski, was that talking about the circumstances of his conviction and incarceration forces him to relive some of those memories which he has worked so hard to get past and, therefore, has the potential to be debilitating for him.

My understanding has been in the past, when he has had those sorts of recollections, it has led to hospitalization or at least the possibility of hospitalization. So I'm in no position to force him to participate in that interview, ethically it would be inappropriate for me to do that, and functionally it was extremely difficult to do, I had no way of arranging the interview, and, frankly, no desire to want to put him through that, recognizing that that would therefore place some limitations on the information that I could provide to the Commission.

Q Would that reaction that he has be consistent with a person who does have the disorder?

A Yes.

Q It comes as no surprise to you in particular that he doesn't want to talk to you?

A Not at all. The -- apart from the events that give rise to an individual having post-traumatic stress disorder, that is going through some sort of typically life-threatening event and having had a strong fear reaction to it, the primary symptom of a person with post-traumatic stress disorder are the efforts that are put into avoiding anything that has anything to do with the provoking stimulus with that life-threatening event.

Q And now you mentioned that he may have been seen by about 20 different people in the mental health field; I take it that information comes to you from the reports you saw from the Commission's office?

A Yes.

Q And in a general sense, those type of assessments, what are -- given your correctional experience, which is considerable, how does the normal psychiatrist or psychologist approach the individual in custody to assess them?

A You would -- well, first it depends on the purpose of the assessment, and most of my assessments

would be for individuals who will be appearing in front of the parole board. So that would begin by doing a file review of -- there are four different categories of files that I would typically look at; the sentence/administration files would tell me the details of the current sentence and the transcripts from sentencing if they are available; the -- I'm blanking on the name of the second file, I'll come back to it; the third would be the psychology file, which would indicate to me whether the person has had any previous assessments, including test assessments; there is a discipline and dissociation file which gives me information about the person's disciplinary conduct while in custody, so violations of everything from the wake-up time to having shown disrespect towards staff; and then the one that I am forgetting, the official name for it is sort of the progress reports that looks at everything from the correctional plan to participation in treatment programs to interactions with parole officers to the development of release plans.

And having reviewed those documents, and sort of having a mental framework of the type of individual that I would be likely

to assess, I would then arrange to do an interview with that person.

Q How does the person speaking to the --

A Case -- sorry -- case management files, as it comes back to me.

Q Case management files. How does the professional look at the conviction that placed the person in that position?

A I would -- I can only say that it varies. In my experience, in my personal experience, my professional experience is that simply because an individual denies having participated in a particular offence is not diagnostic in and of itself. Some of my colleagues take a different view and would come to the conclusion that the denial is part of the symptomology of the individual. My perspective is that the individual can take a position either telling me his version of it or saying that "I didn't, I wasn't involved, it wasn't me". But certainly there are many, many people who practice in this area -- and I think I would fall victim to the, this myself to a degree -- that it is not my position to retry the case.

And a wise mentor of mine -- and

I should probably mention the name so that we know where some of my biases come from -- the Honourable Alan Gold was my mentor for years and, as I'm sure everyone here knows, assisted in the negotiations of the compensation package for Mr. Milgaard and his mother. Alan Gold's first piece of advice to me in 1982 was "it's really easy to make up your mind when you've only heard one side of the story", and so when someone comes to me in a correctional facility and says, "here's my version of why I didn't do it", you can easily get drawn into saying "oh, well that seems reasonable" without having reviewed the files; similarly, when you only review the files and have the official version of what happened, it may lead to certain biases that say "well, then anything that this individual tells me is going to be irrelevant unless he wants to accept responsibility for having engaged in the offence." So in some circumstances the interviews can become quite adversarial, and the person doesn't want to participate, because they feel as though they have already been labelled before walking into the room.

Q Would I be correct in thinking that, if you walk

into the room convicted of a horrific rape and murder, it would be almost impossible to walk out with a positive diagnosis?

A I don't think that it's necessary for the diagnosis to be given, in that the purpose of a diagnosis is to facilitate communication between people who know what the diagnosis means, so when a psychiatrist in a parole report uses a particular label that label is only meaningful if the members of the parole board understand where it comes from. So my preference is actually not to put diagnoses, but to put descriptors, so that the members of the board aren't confused by any technical language that I may be using.

Certainly, there are a range of approaches in Mr. Milgaard's documents. Some of the psychiatrists and psychologists use specific labels, some do not, they prefer the descriptor approach. I think that -- if I may, the gist of your question is whether the assessor, having certain notions about the individual being assessed, can be swayed to the point of giving a positive evaluation of that individual, and my answer is I think that it would be difficult, in a case of somebody who has been accused of a rape

and murder, for the assessor to swing so far as to give a positive evaluation.

Q Are you able to comment on, let's say, David being there in front of 20 or so psychiatrists proclaiming innocence and appreciating that it's not being accepted, not being believed?

A The only word that I can think of is "frustrating", and clearly that's an understatement.

Q You also mentioned that you might use descriptors instead of a name that might mean different things to different people; what do you mean by a "descriptor"?

A I think it may be more useful to the board or to the courts, if I go back to that context, in describing this individual, describing his behaviours, describing what does or does not create a significant risk for this individual engaging in future violence and behaviour for example, rather than using a label.

So let's take the term "psychopathy". It tends to be rather inflammatory when somebody sees it as a diagnosis on an institutional file, there are certain preconceived notions about psychopathy that are immediately

generated, but even within psychopathy there are a range of possible behaviours. The label of psychopathy isn't even a diagnosis, it's based primarily on a test score that's derived from an instrument developed in British Columbia, the Psychopathy Checklist, now in its revised version. The cutoff score is 20 for an individual to be considered moderate and the absolute cutoff score is 30 for a person to then be given the diagnosis of psychopathy, but there are a number of ways of getting to a score of 30, and so when I use the term it may mean something different to you than it does to me, and it may mean something different to a person who has even been trained on the instrument, because they may have derived the score from a different mechanism.

So, again, there's an inherent limitation in the label unless everybody understands what it is that is being described, so I go back to using paragraphs instead of an individual label to describe what it is that makes this person tick.

Q If you can, in the file review that follows, could you take us through some of these terms and how you saw it being used and what, perhaps, they

mean?

A You are referring to about half-way down page 3?

Q Under -- yeah.

A Yeah.

Q If you look at the big screen you can see where I put the red arrow.

A Thank you. These are labels that I found in various documents that I was able to locate in the Commission files. They tend to fall into a number of different clusters. The schizoid, psychopathic, sociopathic character disorder, and then there is a personality disorder unspecified; those are labels that typically refer to what we would call axis 2 diagnoses.

The DSM is set up as a five-axis model; axis 1 are primarily the organic sorts of disorders, so depression, anxiety, schizophrenia, substance abuse, etcetera; axis 2 are the personality disorders, the enduring characteristics of an individual that are unlikely to be situation-specific, and so these diagnoses fall under that general category of axis 2 labels.

A schizoid individual is someone who tends to be a little bit of a -- sorry -- tends to be a loner, not a little bit but

significantly a loner, primarily because of distance and aloofness from people, difficulty forming close relationships, and a lack of interest in pursuing those relationships.

The psychopathic personality type or the sociopathic personality type are these criminally entrenched, glib, manipulative, superficial, parasitic individuals who offend at essentially any opportunity that they are given, or at least take advantage of other people at any opportunity that they are given.

Similarly, the character disorder with strong antisocial features, again a formal diagnosis but indicative of somebody who is chronically using others to get ahead.

And then, in the way that I have presented them, there is a bit of a bridge there.

The situational psychotic illness, schizophrenia, manic depressive phase or manic depressive illness or manic depressive disease or manic depressive disorder, all of these labels are used to describe somebody who is showing some bizarre behaviour.

The fundamental characteristics of schizophrenia include hallucinations and

delusions. Hallucinations are what we think -- or sorry -- what we hear or smell or taste or see that other people around us don't see, so we may be hearing voices inside our head, we may be seeing people that aren't actually in the room; and the delusions are the distortions in thought where an individual believes something that is simply demonstrably untrue.

I've also included the substance abuse and acute psychotic reaction as other labels that are given in that area.

The manic depressive or bipolar illness is also identified in the last of the footnotes as a major affective disorder. Bipolar individuals tend to be restless, impulsive, hyperactive, and go through periods of up to several days of not requiring any sleep, having sort of frenetic behaviour. It can be goal-directed behaviour in the sense of "you know, I need to get this project done", but it's done over a period of several days without any appreciable awareness of what else is going on in their surroundings.

So there are personality disorders, there is psychosis, there is substance

abuse, and there is this reference bipolar or manic depressive disorder.

Q Just in a general sense, in terms of age, how does age affect diagnoses, I mean as a person is being diagnosed?

A Well a personality disorder is, according to the diagnostic criteria, not to be labelled, not to be given, when an individual is under the age of 18 years. I would certainly prefer, and I think most of my colleagues at the hospital would agree, that we're looking for a longer period of those symptoms having been present. So the fact that somebody turned 18 two weeks ago, yes they may technically meet the diagnostic criteria, but in giving somebody a diagnosis of a personality disorder I'm referring to long-standing characteristics that are causing clinically significant impairment in social or occupational functioning, and so somebody would ordinarily need to be older before they are given that particular category of diagnosis.

Q Now you mentioned, pursuant to my question, that the nature of the crime will play a part in these interviews?

A Yes.

Q It's almost impossible to be human and not look at somebody and say "look, if you are a rapist/killer, there is something wrong with you"?

A The first file that I had after starting my work at the Calgary General Hospital was an individual who had used an axe in what was assessed as being an attempted suicide -- or sorry -- an assisted suicide of his girlfriend. Without getting into the details of why he used an axe rather than anything else, when I met with my supervisor to talk about the fact that that act in and of itself did not yield a particular diagnosis, my supervisor's response was "then we have a problem with our diagnostic categories".

The fact is that a single act like that does not generate a diagnosis. If it points to a pattern of behaviour, criminogenic, non-compliant, antisocial behaviour, then other diagnoses may become viable, but a single act typically doesn't get you a full-blown diagnosis.

The latest revision of the Diagnostic Manual includes what are called V codes, which are allowed as a way of indicating when treatment is taking place for something other than a standard diagnosis. One of the V codes is

for adult antisocial behaviour, so under newest criteria a single act would get you that diagnosis, but a single act does not get you any of the diagnoses that I have just read.

Q Or shouldn't get you that?

A Should not, yes.

Q And if David was, in the interview, protesting innocence or getting agitated about not being believed, could that affect how the interviewer looks at him, as if he is blocking it out or not accepting, or things like that?

A Yes. And there are multiple references to that in the therapy notes that I was able to find in the files.

In one circumstance they referred to Mr. Milgaard as being agitated by another issue that was going on at the time and, therefore, was not showing any remorse and was not open to any discussion about "his offence", and I thought that the language was interesting in that I would refer to it as "the offence", but this mental health professional labelled it as "his offence", thereby suggesting that there was a need for him to take responsibility regarding what he had done in order for therapy to move forward.

Q And I take it David's not showing remorse for the, for the action, would have an effect in the penal system?

A Yes. Despite documents to the contrary, my experience with the parole board is that accepting responsibility is one of the preconditions to be granted any form of conditional release.

Q So David would have the experience of going in front of all these assessors, plus the parole board and everybody else, and not being listened to so to speak?

A Correct.

Q And I take it you are aware that, between the time of the conviction and the time of the assessments -- I don't want to go into vivid detail -- but there were some horrific experiences in the jail?

A Yes.

Q And if we can just turn the page. So David would have been prescribed medication I take it?

A Yes. Some of them were given as mood stabilizers, some were given to reduce his level of anxiety, some were given for sleep, and then certainly there were a range of other medications given for health complications that he had over the years.

Q And, from the files that you saw, how did he appear to react to stress?

A Repeatedly the files suggested that Mr. Milgaard did not respond at all well to stress. The parole board made a number of references to it, I've cited one of them on the top of page 4, which is the parole board reviewing the documentation and saying:

> "You have demonstrated, on previous occasions, your difficulties in coping with stressful situations. You have provided also evidence of your unpredictability when attempting to cope with anxiety and/or personal difficulties."

Other National Parole Board panels refer to his impulsivity when under periods of stress and suggested, and I quote:

> "... when frustrated he is unpredictable.",

close quotes.

Q I noted, and I thank you for not going into in your report, into the details of the early years in jail, but you do indicate, and I have to go through it; can you tell us what you were

referring to in this sentence regarding multiple suicide attempts?

A The documentation described four attempts that I was able to discern. That's not to suggest that there were or were not others, there were simply four that I located documentation, including swallowing barbed wire, which resulted in him requiring surgery in hospital, having perforated part of his intestine; ingesting leather dye; cutting himself on his arms; and on at least one occasion attempting to hang himself.

Q You indicate that some of the professionals viewed that as manipulative but it could have been fatal?

A Yes.

Q Is that --

A Certainly the, he came very close to death in the swallowing the barbed wire and ingesting the leather dye, I'm not aware of the severity of the cuts that he administered and I don't know the details of the circumstances of at least the one hanging that I located, but the other two clearly had the potential to be lethal.

Q And I take it, as a rapist/murderer, he wouldn't get the greatest amount of sympathy?

A No.

Q And you say here in terms of mental health information; can you elaborate on that please?

A Generally despite the labels, despite the multiple reports, the notes that I was able to find coalesced around this idea that he had that Mr. Milgaard does not tolerate stressful situations, that he has a poor capacity for dealing with those situations, and that his behaviour can become unpredictable and, at times, pose a risk of injuring himself.

Q Okay. If we can just scroll down that page, please. So it might be more -- a bit helpful doctor, occasionally if you glance at the screen you will see I highlight portions of the report --

A Good.

Q -- that I am referring to, and feel free to refer to your report that's in front of you, but just so you see what we're talking about.

A Thank you.

Q Now this talks about the issues related to the diagnosis of PSD or PTSD, and you indicate that Dr. (sic) Grymaloski's report where he indicates that David met the diagnostic criteria, can you take us through that portion please?

A Mr. Grymaloski's report, and the one that I am

referring to is the document that was provided to the Commission back in November, should not be viewed as being an assessment report because that has not been Mr. Grymaloski's role in providing services to Mr. Milgaard. Mr. Grymaloski has served as a therapist and that establishes a different agenda for the process of treatment.

Mr. Grymaloski is much more likely to follow along the issues that his clients is raising rather than pushing for certain areas of exploration, particularly when an individual is resistant to discussing those issues, so what Mr. Grymaloski is able to describe in his report as the foundation for the diagnosis of post-traumatic stress disorder is based on the contact that he has had with Mr. Milgaard and on his professional experience, even without having done the sort of pre-sentence-like assessment that I might have undertaken.

Q You say here that:

> "In short, Mr. Grymaloski's diagnosis of Posttraumatic Stress Disorder ... is made on the basis of ... clinical observation and professional experience ... Nonetheless, I have no quarrel with

the diagnosis in this case."

Can you elaborate on that, please?

A There's nothing in the information that I have reviewed that would cause me to believe that that diagnosis is inaccurate. To the contrary, the information that I have seen supports the appropriateness of that label being given in this case.

You have an individual -- I mean, again, there are four diagnostic criteria; the first is the exposure to that particular event -- and, I mean, we're moving on to the next paragraph here -- but in my opinion those four elements are present here.

Q Can you go through them, please?

A Sure. And, if I may, I've brought a copy of the DSM so that we can look at them specifically and I can, at the very least, read them into the record. The:

"Diagnostic criteria for ... Posttraumatic Stress Disorder:

A. The person has been exposed to a traumatic event in which both of the following were present:

(1) the person experienced, witnessed,

or was confronted with an event or events that involved actual or threatened death or serious injury, or a threat to the physical integrity of self or others

(2) the person's response involved intense fear, helplessness, or horror."

"B. The traumatic event is persistently reexperienced in one (or more) of the following ways:

(1) recurrent and intrusive distressing recollections of the event, including images, thoughts, or perceptions."

"(2) recurrent distressing dreams of the event."

"(3) acting or feeling as if the traumatic event were recurring (includes a sense of reliving the experience, illusions, hallucinations, and dissociative flashback episodes, including those that occur on awakening or when intoxicated)."

"(4) intense psychological distress at exposure to internal or external cues that symbolize or resemble an aspect of

the traumatic event

(5) physiological reactivity on exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event".

The third criteria:

"C. Persistent avoidance of stimuli associated with the trauma and numbing of general responsiveness (not present before the trauma), as indicated by three (or more) of the following:

(1) efforts to avoid thoughts, feelings, or conversations associated with the trauma

(2) efforts to avoid activities, places or people that arouse recollections of the trauma

(3) inability to recall an important aspect of the trauma

(4) markedly diminished interest or participation in significant activities

(5) feeling of detachment or estrangement from others

(6) restricted range of affect (e.g., unable to have loving feelings)

(7) sense of a foreshortened future (e.g., does not expect to have a career, marriage, children, or a normal life span)"

The fourth criteria:

"D. Persistent symptoms of increased arousal (not present before the trauma), as indicated by two (or more) of the following:

(1) difficulty falling or staying asleep

(2) irritability or outburst of anger

(3) difficulty concentrating

(4) hypervigilance

(5) exaggerated startle response".

There are two other criteria that I would not consider to be part of the four core criteria; first is that the:

"Duration of the disturbance ...",

has to be:

"... more than 1 month.",

and the last is that:

"The disturbance causes clinically significant distress or impairment in social, occupational, or other important areas of functioning.

Q And how do you relate that to David?

A I think that he meets the diagnostic criteria having had the threat to his personal integrity played out by the conviction and incarceration, having had feelings of helplessness in the face of that particular event or process of events, having the avoidance of stimuli that are associated with that experience. That's not to say that Mr. Milgaard can't appear in public and talk about issues that are tangentially related to his incarceration, for example, his appearance here in October to advocate on behalf of two other individuals, he can talk about the circumstances of other individuals much more capably than he can talk about his own experiences.

I viewed part of the videotape from his presentation before the Morin Inquiry which I believe was in 1997 and at that time Mr. Milgaard in his first response to a question before the Commission said, "What if I don't want to talk about it," and then followed it up with, "I may not feel like talking about it," and during the part of the interview that I've been able to watch, at no time did he make any reference to his own incarceration or his own case. This was obviously a Commission looking into a wrongful

conviction that wanted to obtain evidence about the effects of wrongful conviction. Mr. Milgaard made some other comments later on in the day about the effects that it may have on some individuals, but at no time did I see him making any reference to how it had affected him personally, it's simply a topic that, in my experience, he doesn't want to go anywhere near, and in terms of the other symptoms, things like the flashbacks, the nightmares, etcetera, those have been documented in institutional files and the ongoing issues about distractibility, concentration, etcetera, have been reported to me by Mr. Grymaloski.

MR. WOLCH: Mr. Commissioner, I'm happy to keep going. I'm not sure when you want us to break. I leave it to you.

COMMISSIONER MacCALLUM: Let's go another 15 minutes.

MR. WOLCH: I'll just keep going until I'm advised.

COMMISSIONER MacCALLUM: Okay. Maybe you could ask the witness if the traumatic events to which he refers, I specifically refer to the first criteria in what seems to involve exposure to a life threatening event, I wonder if that

relates to post-conviction matters or is he meaning to imply that Gail Miller's murder somehow does this?

BY MR. WOLCH:

Q Dr. Baillie, rather than me doing a bad job on that, maybe you can just directly focus on the Commissioner's --

A And let me be perfectly clear about that. No, I'm referring to the conviction and to the sequelae that flow from the conviction. I think that this is a particularly unique case in that in response to the questions that I was asked earlier about other assessments of PTSD, in most of those cases there has been a discrete event or an event that was relatively circumscribed in time in refugee applications. For example, there may be an individual who was tortured during incarceration over a period of, let's say, six months, we can then define that six month period as being the event. In Mr. Milgaard's case, there was not only the conviction itself, but the sequelae that then went on for at least 23 years.

COMMISSIONER MacCALLUM: Could we just have that up, just scroll back and let's look at the one then, please.

A So again --

COMMISSIONER MacCALLUM: I would have thought, sir, that that meant personal exposure to the traumatic event, seeing a death, for example, or experiencing a threat to one's own well-being, physical well-being.

A Yes, the threat to one's --

COMMISSIONER MacCALLUM: But here the evidence seems to be that Mr. Milgaard had nothing to do with the death, nor did he know anything about it.

A And I'm not referring at all to Gail Miller's death, I'm referring to the threat to his personal integrity that comes from the wrongful conviction and incarceration and various things that happened to him during that incarceration.

COMMISSIONER MacCALLUM: So you are getting into post-conviction matters then?

A Yes.

COMMISSIONER MacCALLUM: On a personal level of Mr. Milgaard, it means post-conviction, not pre-conviction?

A Yes, that's correct.

COMMISSIONER MacCALLUM: Okay, thanks.

BY MR. WOLCH:

Q So just to follow up on that, obviously being found guilty of a crime you didn't commit would have an horrific effect on you?

A Yes, and certainly the horror would be proportionate to the seriousness of the allegations.

Q If you are sentenced to life for a rape and murder you didn't do, your feeling with your family and community and everything else would be difficult to describe?

A Yes.

Q And then if you go into jail and you suffer indignities in jail which cause you to even try to take your own life, that would -- would that be separate or compounding?

A I think that it would be compounding, and that's -- you may be using better language than mine, that's what I meant by this is not a discrete event, it is a mixture of characteristics that go back to his arrest in May of 1969 probably up until the present. I'm sure that there are some individuals who still don't accept that this was a wrongful conviction and that he may from time to time face questions about that issue, so every time that those sorts of questions come

up -- I have not assessed him and therefore there are limitations to my opinion, but I would expect that those questions would be difficult for him to respond to and address.

Q You mention you saw a video and I believe that was after you wrote your report?

A Yes.

Q I would like to go into that a little more. That was the Morin Inquiry?

A Yes.

Q And the video is about how long?

A I've looked at about three hours of it so far. It was a panel discussion that was generated through AIDWC and included Rubin Carter and Mrs. Milgaard as moderators of a discussion amongst a number of individuals, male and female, who had been wrongfully convicted and demonstrably found innocent and released from custody.

Q And out of the three plus hours, what portion would David have actually been speaking?

A He was asked a number of questions, but I would suggest that his presentation out of that time probably amounts to sort of seven to 10 minutes.

Q And how did he appear to you?

A He appeared quite reluctant. Mr. Carter as

moderator asks him the first question and asks Mr. Milgaard to speak about his experiences in custody and, as I indicated, his first response is, "Maybe I don't want to talk about it," and when Mr. Carter pushes him and says you need to talk about it, you need to tell this Commission what happened to you, he repeats, in essence, the response by saying, "I may not want to talk about it."

COMMISSIONER MacCALLUM: This is '97 was it did you say?

BY MR. WOLCH:

Q Yes, sir. And how was his demeanour, how would you describe him, or can you, I don't know.

A Compared to the intensity and passion of everyone else on the panel when talking about their experiences, Mr. Milgaard seemed quite clearly to struggle with the sorts of issues that were being addressed. He was vague, he was scattered, it was clear that, it was clear to me that he was uncomfortable in the situation.

Q Now, what is the effect of this disorder, and specifically in David's case what are the things we should worry about?

A Given that the primary ongoing symptom of

post-traumatic stress disorder is this attempt to avoid elements that are associated with the original traumatic event, forcing a person to experience those is likely to create significant anxiety or, in the vernacular, stress.

Q And in this case what may very well happen?

A Well, the information available to me says that in the face of significant stress, Mr. Milgaard's behaviour can become unpredictable and potentially self-injurious. Mr. Grymaloski advises me that on occasions when he had asked questions about what had happened to him, it was not infrequent that Mr. Milgaard would flee and not be seen for a period of time, so I think if faced with the sort of anxiety provoked by coming here and testifying in this sort of a forum, it's entirely possible that he would flee and therefore be of no service to himself or anybody else. That's how he would deal with the anxiety of the situation.

COMMISSIONER MacCALLUM: That's according to Mr. Grymaloski, not you?

A No, that's my opinion, sir.

COMMISSIONER MacCALLUM: But you mentioned Mr. Grymaloski?

A Mr. Grymaloski has had the experience of asking,

and Mr. Grymaloski is here, he can testify for himself, but he certainly in his report indicated some issues in his experience with Mr. Milgaard and described to me that when pressing questions were put to Mr. Milgaard, that Mr. Milgaard would often flee and not be seen for a period of time. I raise it simply because that's consistent with the post-traumatic stress disorder.

BY MR. WOLCH:

Q So just turn the page on the report, you've indicated that, I believe, that when you do a diagnosis or offer an opinion, you try and look at the entire picture?

A Yes.

Q And I take it in some assessments you do, the individual may have potentially a motive to be diagnosed in a certain way?

A Yes.

Q For example, if somebody is charged with a crime of a serious nature, they may want to be judged to be mentally unfit or mentally incompetent or whatever it might be?

A That's correct.

Q So do you take into account the other motives that may give rise to the symptoms that you are being

told about?

A Yes. I think in undertaking an evaluation in the context that you are describing, I have to keep in mind that the person may have a motive to present one way or the other. Again, when I was referring to the value of testing, I said that the two primary personality scales include these validity measures that give me some indication of how strongly a person is presenting in one direction or the other, trying to fake good or fake bad as the terms can be simply summarized.

In this case, my -- the information available to me includes Mr. Grymaloski's 10 years of experience with Mr. Milgaard never wanting to discuss these issues, the videotape that you provided to me that shows Mr. Milgaard being extremely reluctant to discuss these issues, and so unless we're of the opinion that he has spent the last 10 years trying to build his case for not wanting to appear before a Commission that obviously 10 years ago he didn't know was going to exist, then it is more likely that his behaviour has been consistent over that time and reflects his genuine intentions.

Q As you are aware, Mr. Milgaard has been declared

innocent?

A Yes.

Q And another man has been convicted of the crime?

A Yes.

Q Mr. Milgaard has been compensated?

A Yes.

Q Other than suffering from the disorder which brings back horrific memories, is there any other rational conclusion as to why he wouldn't want to talk about it?

A Other than the diagnosis, I think that there is likely to be a general sense of wanting to put it past him, wanting to leave it as history and not be constantly bringing it up. As you are well aware, Mr. Milgaard has moved to a different phase of his life and has recently become a father. I think that it's unfortunate, but when Mr. Milgaard's obituary is written, at hopefully a distant point in the future, the obituary will almost invariably start, "David Milgaard, who spent 23 years in jail for a crime that he did not commit."

His life has been defined on the basis of something that he didn't do and he's now in a position, like many of us, to be able to

choose how his life, from this point forward, is going to be defined, and so he's very much focused on the issues related to his fatherhood. Each of us wants to have some sort of a, I'm not going to use the term legacy, but we want to have our own reputation that's consistent with how we view ourselves, and so his reputation to this point has been largely defined by something over which he had no responsibility.

To go back to that, he sees, from his comments, and sorry, I'm reflecting on his comments in the press conference and to Mr. Grymaloski, to go back to that is to distract him from the new focus that he has. He wants to be focused on being a responsible father and looking to the future rather than dealing with these extremely difficult issues from his past.

MR. WOLCH: This might be an appropriate time, sir.

(Adjourned at 3:12 p.m.)

(Reconvened at 3:33 p.m.)

BY MR. WOLCH:

Q If we can bring the document back up. Thank you. I think we're roughly at the point on page 5 where you offer an opinion regarding psychological

fitness to testify and you allude to your conversation with Mr. Hodson and I would like you to elaborate on this, I don't want to put -- I would like to hear from you.

A What I discussed with Mr. Hodson was my view that there needed to be some sort of balancing test here and the balance is between the relevance of the evidence that Mr. Milgaard may be able to provide to this Commission and the effect that providing that evidence may have on his mental health. In other words, if the evidence was of limited relevance but was likely to have a significant effect on his health, then I think it would be more difficult to suggest that he needs to be here.

Conversely, if the effect on his mental health could be limited with information that is highly relevant to the proceedings, then that would establish a different balance and hopefully the opportunity to make some arrangements for that evidence to be admitted.

Q And you refer to some suggested areas that Mr. Hodson referred to. Can you tell us about that?

A Well, I can't really do that balancing test without knowing the areas of potential inquiry,

and so Mr. Hodson was kind enough to provide me with a copy of the proposed list of the 12 subject areas and they are simply reviewed in that paragraph that you've highlighted.

My conclusion was that some, if not all, of those areas could leave him with the sense that he was once again being put on trial, being asked, for example, about the allegations of activities or conversations that took place during the drive from Regina to Saskatoon, being asked about possession of a knife, being asked why he had changed his pants at Mr. Cadrain's house, being asked why he was eager to leave Saskatoon and checking the car when it was at the Hillcrest Texaco, I think that each of those areas of inquiry has a significant potential for him to feel as though he's being called to task and has to answer for his behaviour.

Q And you say this, there would likely be a sense of him being held in some way, even if only slightly, responsible for his own wrongful conviction?

A What I mean there is that there's a sense that had he done things differently or had the circumstances been different for those elements that were under his control, that perhaps the

outcome would not have been what it was and therefore there is a suggestion that he would be in that small way responsible for the outcome that had eventually befallen him.

Q And what would be the effect of that feeling on him?

A I can't even imagine how devastating that would be, but an implication that he was responsible for his own incarceration I suspect would be an overwhelmingly difficult prospect for him to face and could result in a serious deterioration in his mental health.

Q If we could just turn the page there, just highlight that top paragraph. Can you tell us about the manner of questioning, how it can be less offensive or less triggering of emotional harm?

A I think the questions that are asked broadly in terms of what can you tell us about the drive from Regina to Saskatoon, what can you tell us about the first time that you were interviewed by the police, what can you tell us about arriving at Albert Cadrain's house, those sorts of questions are less likely to trigger the difficulties that I've alluded to than would a question, for

example, of did you tell anybody that you had committed this crime, did you reenact it, why didn't you tell the police that you never left the car for that period of time, why didn't you tell the police about X, Y and Z, the sorts of why questions or how questions tend to convey more of a sense of responsibility on the actor for the outcome, whereas a can you tell us about recollection type of question I think would be less debilitating for him.

Q And can you highlight the paragraph in your report here, can you tell us what you were saying in this paragraph?

A I think what I'm referring to in terms of this type of question is any question that raises the implication that he was in even a small way the architect of his own misfortune could cause him to flee, so potentially he could be here for the first few questions and then may quite literally dart out of the room, if not dart out of town, and that doesn't help him, doesn't help the Commission, significantly responds to the distress that he's feeling, but I don't think responds in any effective way, so the more difficult the questioning, the more likely it is for Mr.

Milgaard to have that sort of panic response and want to flee.

Q Okay. And when you say panic response, that's because of his condition I take it?

A Yes, that -- I mean, I want to avoid this at all cost is the third criteria of PTSD and in this case my way of avoiding it is to metaphorically get out of town.

Q You talk about how he perceives the questioning. What are you referring to there?

A I think that we can be careful about how we ask an individual a question, but we cannot control the way that the individual perceives that question, and I think given Mr. Milgaard's sensitivity following his incarceration to any suggestion that he was responsible for that fate, his sensitivity is a whole lot higher than the rest of us would have and therefore even a well-crafted sentence has the potential for causing him difficulty.

Q And how serious could the difficulty be?

A It's difficult for me to estimate. Again, it depends on what reaction he has to the question. The potential is there, and I emphasize I'm being speculative at this point, but the potential is there for a marked deterioration in his level of

functioning.

Q Now, you talk about possible accommodations, and can you tell us about what you foresee as possibly ways of accommodating David?

A Well, I see three potential accommodations that are discrete and then of course they could be mixed in varying degrees. The first is the issue of Mr. Milgaard providing written responses to written questions. That's a proposal that you've described to me and Mr. Grymaloski has described to me that Mr. Milgaard would be open to; in other words, Commission Counsel and other parties would sit down and draft the sorts of questions dealing with relevant material that would be provided by Mr. Milgaard. Those questions would be provided to him, he would then have an opportunity to provide written responses that would be returned to the Commission. I have some concern about that from a psychological point of view because it strikes me as being a labour-intensive approach. Yes, he doesn't have to appear here, the adversarial nature of cross-examination isn't necessarily as significant, but this is likely to be a process that takes a fair amount of time.

The second option would be for

an accommodation that would include the videotape and audiotape that was described earlier today, if, for example, you and Mr. Hodson and potentially the Commissioner were to travel to Vancouver and meet with Mr. Milgaard there, it would not bring him back to Saskatoon, it would potentially have him in a more comfortable environment, whether it's Mr. Grymaloski's office or somewhere that he's more familiar with and he could answer questions in a format of questions posed primarily by Mr. Hodson without marked cross-examination.

The third option would be to look at other sources of information that have already been provided by Mr. Milgaard, his depositions and testimony in various proceedings relating to his appeal of his wrongful conviction, the hearing before the Supreme Court, for example, the depositions that are given as part of his civil suit against the various levels of government. My understanding is that there have been repeated occasions when Mr. Milgaard has been asked literally thousands of questions when under oath that may deal with some of the subject areas that are of relevance to this Commission.

The then integration of the various approaches, for example, if that other evidence was to be read into the record or introduced in one way or another to the record and the number of questions was to be therefore significantly reduced that needed to be put to Mr. Milgaard, perhaps those could be provided to him in writing and then clarification sought by doing the video and audiotaped interview. I simply put that forward as one of the suggestions that in my mind would abbreviate the amount of time that Mr. Milgaard is dealing with this and would be less intrusive than having him come and appear before the Commission.

Q Let me share with you the difficulty I have, and maybe you can help me, and that is this, the idea of having the suggestion that he testify in Vancouver comfortably and as best we can seems to be the best idea, I don't quarrel with that, that it's easier on David, it's quicker than writing, it's easier on everybody. How do I cope with the idea that David is prepared to write, he thinks that's the less stressful, whether it is or not he'll learn differently, but he believes it, how do we deal with that?

A I think that he believes it for a particular set of reasons, and I don't know what those reasons are, clearly I haven't had the opportunity to discuss that with him, but there are individuals who could be influential in, (a), challenging some of the beliefs that he has about why that would be his preferred method, and (b), encouraging him to then look at the alternative of doing the videotaping. In my mind the videotaping is preferred because it is discrete in the sense of it's over and done and is not the sort of labour-intensive process that goes along with providing written responses to many questions, and almost invariably those written responses may lead to other questions, so the process goes through several iterations and takes a great deal of time. I think if people who have persuasion with Mr. Milgaard were to propose that to him, potentially he may be more amenable to doing the videotaped approach.

Q Okay. See, because the difficulty is David perceives having the writing putting him in control in terms of nobody around him, nobody hassling him, he can take it home, do it, hand it in, and he hasn't been intimidated, threatened, or

he has control over the triggers.

A And I don't mean to put a question back to you, but I don't know if he is aware of the volume of questions that may need to be addressed, and how much time he is looking at. He may be thinking that -- and I don't mean to be glib -- he may be thinking that 'this is sort of a final exam and I will be done in three hours'. I would be surprised if the questions coming from the Commission could be condensed into that period of written responses. So he may be working under the assumption there is a short period of time involved in the written questions and, therefore, knowing that there is a short period of time involved in the video questions may be a preferable option. I don't know.

Q So that what you are saying is that perhaps Mr. Grymaloski in further sessions, or David's family, or even myself, might be able to bring him around?

A I'd just be reluctant about having Mr. Grymaloski put into that role, because he is there to provide assistance to David, and yes there is a measure of assistance in recommending the less-intrusive option, but if David is resistant to it, then I wouldn't want that to become a factor in their

therapeutic relationship. So Mr. Grymaloski could raise it, but if there was significant objection to it, then my recommendation as a therapist would be that he drop it and move on.

That doesn't necessarily hold for other individuals of his family, or for you, in terms of encouraging him to look at that option.

Q Okay. And, as you are aware, David became a father over the weekend.

A Yes.

Q Is there a way to approach him, at this point in time, that wouldn't be harmful?

A Well, and I mean he, my understanding is that he became a father on Friday --

Q Yes.

A -- and so we're three days down the road. I think that he is going through the, a period of adjustment as anybody might to those sorts of circumstances, but knowing whether or not now is a good time or two weeks from now would be a good time would be entirely speculative on my part.

Q So that I take it in summary, then, you are comfortable with the diagnosis of post-traumatic stress disorder?

A Yes.

Q And you are also comfortable there is the potential to do David serious harm if he is forced to re-trigger memories?

A Yes.

Q Is there anything else you can add, Dr. Baillie, or is -- that I may have skipped out or skipped over?

A Not that comes to mind, no.

Q Thank you.

Those are my questions, Mr. Commissioner.

COMMISSIONER MacCALLUM: Thanks.

MR. HODSON: Mr. Commissioner, if I could just address one point, and it may cause Mr. Wolch to ask some further questions.

This witness, in giving evidence and the report, referred to the outline of questions. And obviously it's my role, if Mr. Milgaard appears in the normal fashion, to ask the questions, unless Mr. Wolch reads. One of the difficulties that -- and he also talked about the nature of the questions, and I certainly provided him with an outline of the areas, and the witness responded about with concerns about

the "why" questions, asking why, but why he would have a knife or why he would drive around. And I've looked at my outline, the "why" question isn't there, it's primarily the "what" question, a recollection of facts as to what happened as opposed to challenging him why he did certain things. That's not to say that it might not be appropriate, if it's relevant, to ask a why question; for example "what, was there a reason that you changed your pants", that might give an innocent explanation for that, for example that would be relevant, as opposed to challenging him.

So I just wanted to point that out, and I appreciate (a) I don't want to be giving evidence, but (b) I think it's particularly important if we're looking at an accommodation that involves being very precise and careful about the questions, and I just didn't want this witness to take from my outline, which was given to Mr. Wolch and others so that we knew subject areas -- and I'm not faulting him for that, I'm just pointing out -- that it would not have been my intent to challenge the witness and say, "well why did you get out of the car", "why did you do this", "why did you do that", but

rather "tell us what you did".

So, again, and so I wanted to raise on that point before Mr. Wolch was finished in the event that he had some questions.

COMMISSIONER MacCALLUM: Thanks.

BY MR. WOLCH:

Q Just on that point, Dr. Baillie -- and I appreciate Mr. Hodson's position, and if he has any direct questions to ask I encourage him to do it -- if I understand you right you are saying that the open-ended questions are less threatening than the why questions?

A Yes.

Q That doesn't mean an open-ended question will not cause harm?

A That's correct, because -- and that goes to the issue that you raised from my report about how Mr. Milgaard perceives the question. I appreciate the clarification that Mr. Hodson is offering. I think that it has the potential to remove some of the concern that I have, but the overriding concern persists regarding the way that Mr. Milgaard views the questions and whether they, from his perspective, are seen as putting him on trial.

Q Yes, and can then re-trigger the horrific circumstances of being convicted of a terrible crime he didn't commit, triggering horrific experiences in jail that I've deliberately avoided, triggering meeting with professionals who believe you are a killer, etcetera, etcetera, and multiple suicide attempts?

A All of which are things that he has indicated that he would like to put in his past and leave there.

Q Thank you.

MR. HODSON: I understand Mr. Elson, Mr. Fox, Mr. Wilson, and anybody else wish to cross-examine?

BY MR. ELSON:

Q Dr. Baillie, we've met. Again, for the record, my name is Richard Elson and I represent the Saskatoon Police Service at this Commission of Inquiry.

Mr. Commissioner asked you a question that I wanted to pursue a little bit further, and he was asking you a question with respect to the traumatic event, and I actually had that listed as one of the first questions I wanted to put to you as well.

I take it that you are familiar

with the National Center for Posttraumatic Stress Disorder in the United States; are you aware of that institution? I understand it primarily deals with post-traumatic stress disorder in the context of American military veterans?

A Correct.

Q And, as I read from their web site, the National Center for Posttraumatic Stress Disorder Fact Sheet, it indicates that:

> "Posttraumatic Stress Disorder, or PTSD, is a psychiatric disorder that can occur following the experience or witnessing of life-threatening events such as military combat, natural disasters, terrorist incidents, serious accidents, or violent personal assaults like rape".

Now, granted, that's not an exhaustive definition, but it prompted me to do some further research through the Internet and elsewhere, and I certainly was not able to find any literature that specifically dealt with the traumatic event being the conviction of an offence, whether or not the accused had committed the offence. Are you aware of any literature that identifies the conviction as being the traumatic event to

trigger the PTSD? And I'm dealing simply with the conviction as opposed to the incarceration, which I will get to in a moment.

A First, I would emphasize that what's on that organization's web site is not the diagnostic criteria.

Q I appreciate that.

A And I accept your reservation that it was not intended to be an exhaustive list because one of the events can be an event that challenges the integrity of the person.

As I've indicated on the bottom of page 4, "threat to the physical integrity", and so the circumstances that you have described are certainly the more common circumstances in which PTSD can be developed. As I indicated in response to I believe your question earlier, working with police officers who have either had to discharge their weapon or been on the receiving end of shots, the circumstances under which an officer would discharge his weapon is when he perceives his life to be threatened and the use of force is necessary. So that, I would agree with you, is the more common circumstance.

I am not aware of a large-scale

study that would have looked at the conviction itself as having been that traumatic event, at least in part because we would hope that the number of individuals exposed to that consequence is relatively limited, so it would be difficult to do the research. In fairness to your question, no, I have not seen a study that defines wrongful conviction as that traumatic event.

Q Right. And, in fairness, I didn't confine my question to wrongful conviction, --

A Sorry, right.

Q -- I confined my question to conviction per se. So if I could re-put the question, and I appreciate your answer, but if I could re-put the question: You are not aware of any literature or any studies or any analysis that finds the conviction per se to be the triggering traumatic event?

A I'm not aware of any studies, no.

Q All right. Now when we talk about -- and I also appreciate the answer that you gave when I put the definition to you from the National Center for Posttraumatic Stress Disorder, it's not taken out of the DSM-IV, and you are quite right, the DSM-IV criteria talks about the person experiencing,

witnessing, or:

> "... confronted with an event or events that involved actual or threatened death or serious injury, or a threat to the physical integrity of self or others."

You would agree with me -- I'm referring to the Coles notes version of the DSM-IV, not the version you have, but I believe I'm referring to that criteria correctly -- you would agree with me that the question really depends on whether or not the threat to physical integrity is of such a degree that it could constitute a traumatic event? We're not saying that any threat to physical integrity could constitute such a traumatic event; you would agree with that proposition?

A Yes, and in fact I would emphasize that proposition, because criteria (a) is actually that two-part definition in which both parts have to be present, so we're talking about part A.:

> "the person experienced, witnessed, or was confronted with an event or events that involved actual or threatened death or serious injury, or a threat to the physical integrity of self or others",

and:

"(2) the person's response involved intense fear, helplessness, or horror."

So simply the exposure does not get you the diagnosis unless that second criteria is also met.

Q And the response has to be the immediate response, is that correct?

A Not necessarily, no.

Q It's my under -- as I read the definition, the person has been exposed -- we've gone over it a thousand times and forgive me for going over it again -- the person has been exposed to a traumatic event in which both of the following were present; I read that as saying that the response has to be relatively close in time to the traumatic event?

A And that's the only distinction that I'm drawing, I'm not saying that it has to be simultaneous, but clearly a response that is generated years later would not fall into the "in which" language that's used in that sentence.

Q So in the case dealing with David Milgaard, if the conviction per se of an offence he did not commit were to be the traumatic event, it would have to

be regarded as a threat to his physical integrity as you described, and the response by Mr. Milgaard to the conviction per se would have to be one involving intense fear, helplessness, or horror. It would be fair to say that, in the information you received, you did not find evidence of a response of intense fear, helplessness, or horror that was relatively close in time to the traumatic event, namely the conviction?

A One of the reasons that I have difficulty isolating the traumatic event to simply the conviction is that during the first year of his incarceration one of the coping strategies was to be focused on the outcome of the appeal process. As you know, the appeal decision came down exactly one year after the conviction, and his appeal was denied. There are multiple references in the file documents to how he was looking forward to that appeal as his exoneration, so he may have delayed the sense of helplessness by believing that he sort of had one more option available to him.

Even after that appeal decision came down in January of 1970, he then had hope regarding the appeal to the Supreme Court of Canada, so again the feeling of helplessness may

have been delayed by a focus on those things that were still to come that he saw as having the potential for exoneration.

Q Let's talk a little bit about the incarceration. It's my understanding -- and, again, maybe I'll put the same question I put to you before but except do so in the context of an incarceration rather than a conviction: Are you aware of any literature or study that has identified the traumatic event being the simple incarceration, ignoring for a moment what occurs in the incarceration, --

A Yes.

Q -- but the simple incarceration as being the traumatic event?

A Yes.

Q And what type of literature are you aware of in that respect?

A Primarily in the context of refugee applications for individuals who had been incarcerated in their home country.

Q Would it not be fair to say that, for individuals who had been incarcerated in their home country with respect to refugee applications, it was the event or the events which occurred during

incarceration which were essentially the traumatic event? I'm referring to acts of torture or violence while in custody.

A Not necessarily. And in some of the applications it would be an individual who for political reasons was incarcerated, and, as a result of that incarceration or as a result of events associated with the incarceration, lost their standing in the community, lost their employment, lost their home, etcetera, and so by the time the incarceration was done, even if nothing happened of particular note during the incarceration, that period of time became a significant trigger for the post-traumatic stress.

Q All right. And in those proceedings, though, where a person is making an application for refugee status, presumably that incarceration, if it was the triggering event for post-traumatic stress disorder, did not prevent them from giving evidence in support of their refugee status application?

A And I grant that in most of the cases the individual has been forthcoming in describing to me the nature of their incarceration, yes.

Q And certainly has been forthcoming in describing

the events leading up to the incarceration?

A Yes.

Q You --

A Let me just -- if I can take it a step further?

Q By all means.

A There is a body of research that says that, for some individuals, retelling their story is therapeutic. The context in which they tell the story, the support that they are given for the story, helps them to overcome the trauma. It has to be handled carefully by a therapist, but I will fully accept that there is some research that points to that.

That's not to say that every individual with PTSD is going to respond to that particular intervention. Certainly, from a critical incident approach, there is a belief that if we get front-line responders to tell us what happened to normalize the process for them and allow them to move on, that that may mitigate against the production of symptoms of PTSD, but it is not universal and so the fact that one individual responds positively to telling the story repeatedly doesn't mean that all individuals with PTSD are necessarily going to benefit from

that approach.

Q The therapy, or the treatment that you are referring to in that respect I understand is referred to as exposure therapy?

A Broadly, yes.

Q On that same point, I understand that prosecutors from time to time have had to deal with victims coming forward and giving evidence with respect to traumatic events they have experienced, notably victims of rape or sexual assault, and I take it that you would have had occasion perhaps, from time to time, to deal with such witnesses?

A Yes.

Q Is it not fair to say that some of those witnesses indicate an extreme reluctance to testify and to relive the events of their experience, but that when ultimately compelled to give evidence they find the actual giving of the evidence to be therapeutic in nature, that it's good sometimes to get off their chest and they are able to give evidence in a manner that surprised even themselves?

A There are certainly some individuals who have that experience. I would caution, though, that there are other individuals who find the process to be

extremely frustrating and, therefore, the giving of the evidence and the outcome to that evidence being provided to the Court can be detrimental for them. I am certainly aware of both scenarios playing out.

Q Now in the case of Mr. Milgaard, when you were conducting the file review I understood -- and correct me if I'm wrong -- I understood from your report and from your evidence that primarily the material you reviewed consisted of mental health records relating to Mr. Milgaard and also related to transcripts of this Commission of Inquiry?

A Yeah.

Q Is that correct?

A I -- that was primarily what I was looking for, yes.

Q Did you review any other statements or evidence given by Mr. Milgaard in related proceedings?

A Umm, I had the, the tape from the -- sorry, prior to writing my report I had some of the questions and answers that were given in other proceedings; since writing the report I have had the opportunity to review the video tape, part of video tape from the Morin Inquiry.

Q Let me be somewhat more specific; did you have

occasion to review the testimony or the transcript of the testimony that Mr. Milgaard gave before the Supreme Court of Canada?

A Not in its entirety. I looked at parts of it.

Q Right. And when you read parts of it you were able to discern that Mr. Milgaard did, at that time, give evidence with respect to specific events leading up to the events involving himself, Mr. Cadrain, and Ms. John, and Mr. Wilson in January of 1969?

A I am aware that he gave those answers. I'm also aware of some information relating to his functioning during the time that he was in Ottawa, including a communication -- I'm not sure who the author, I believe it was David Asper who was the author of the letter that was sent to the parole board regarding some observations that Mr. Asper had made, I may be in error, it's in my binder -- regarding some observations that Mr. Asper had made about Mr. Milgaard's functioning; the sense that he was out of it, the sense that he was distressed by the process before the Supreme Court.

So yes, he gave the evidence, I'm not disputing that at all. The question that

I keep coming back to, though, is the effect of giving that evidence.

I think that it's -- to go back to my report, Mr. Milgaard could sit here and answer some of the questions, potentially all of the questions that are put to him, particularly if Mr. Hodson is able to phrase those questions in an appropriate manner, and other counsel as well. My concern is about what happens after he has left the Inquiry and the effect that could come to him at that point.

Q Now --

COMMISSIONER MacCALLUM: Sorry, Mr. Elson, I didn't get a date on the most recent date of mental health records that you examined?

A Well, Mr. Grymaloski's report from November of 2005, the last before that I believe would have been 1993.

COMMISSIONER MacCALLUM: Okay.

BY MR. ELSON:

Q So there would have been nothing -- it's a fair point that Mr. Commissioner raises -- there would have been nothing that you would have reviewed between 1993 and 2005?

A That's correct.

Q Now were you aware that Mr. Milgaard had submitted to an examination for discovery in the civil proceeding he had commenced in May of 1996?

A Yes.

Q And did you have occasion to read the transcript of the examinations for discovery which were conducted by Mr. Halyk, Mr. Kennedy, and Mr. Kovatch, as he then was?

A I did not review that material. I was aware of the availability of the transcript but I did not review it.

Q And were you aware that, at the time of that examination for discovery, Mr. Milgaard had already begun the therapeutic relationship with Mr. Grymaloski, which I understand began in May of 1995, exactly one year prior?

A Given the chronology, yes.

Q And are you aware of any occasion in which Mr. Milgaard required hospitalization or medical care as a consequence of testifying at the examination for discovery?

A There is some uncertainty regarding when the hospitalizations have or may have occurred. The information that was provided to me is that there may have been as many as six periods of

hospitalization over the last decade. I indicated to Mr. Wolch, as I did in my report, that having access to that information may be useful, but that requires us to determine which hospitals the admissions occurred at and to have Mr. Milgaard's consent for the release of those records, and that would require me or somebody having some communication with Mr. Milgaard about when those hospitalizations occurred. So I can't say, one way or another, whether it occurred shortly after his appearance at the Supreme Court, shortly after the deposition given in the civil proceeding, or completely unrelated to those events.

Q It would seem to me, in my own simple way of thinking, that Mr. Grymaloski would have been aware of whatever consequences would have occurred if they occurred subsequent to the examination for discovery in 1996. Mr. Grymaloski was of no assistance to you in providing information as to what may have occurred subsequent to that examination for discovery?

A In fairness to him, I don't recall asking him about that specific time period.

Q Now, having said that, you indicate that the information with respect to those hospital

admissions would have been of some use to you --
A Yes.
Q -- in making your assessment?
A Yes.
Q And it may very well be that those hospital admissions had absolutely nothing to do with him having to -- Mr. Milgaard having to remember events of 1969, 1970, or 1971?
A As I've indicated, they may or may not be related to that circumstance.
Q And I take it that you were not aware as to the nature of the testimony Mr. Milgaard gave in May of 1996 at the examination for discovery specifically dealing with the events of January 31st, 1969, and the events for some days thereafter?
A I am not aware of the specific information, no.
Q Now when you talk about Mr. Milgaard may find or may perceive some responsibility on his own part for his wrongful conviction, am I off base in suggesting that that opinion of yours really has nothing to do with whether or not David Milgaard is suffering from post-traumatic stress disorder, somebody may feel responsible for the consequences which befall them innocently in the absence of

suffering from post-traumatic stress disorder?

A Somebody -- I agree with that last sentiment, yeah, somebody may feel that sense of responsibility. In the context of an individual who has post-traumatic stress disorder there would be a heightened sensitivity to that implication and there would likely be a heightened response to the anxiety that flows from his understanding of a sense that he had a role to play.

Q And, as to the degree that there is that heightened response, it would be very subjective to identify that, would it not, there is really no objective criteria by which we could do it?

A I think that it -- well, certainly for me it would be speculative because I haven't had the opportunity to do an interview with him. In terms of assessing severity, I mean we can pull out various scales, but ultimately they come down to a sort of "on a scale of 1 to 10 how much this is affecting you", and that is subjective, based on the experiences of the individual.

Q So to rephrase, perhaps, the answer you've given and the question I put, perhaps not as eloquently as I should have: If you have somebody who has no mental disorder whatsoever, who has been

wrongfully convicted, there is no mental history, there is no even remote suggestion of post-traumatic stress disorder, no schizoid personality disorder, no borderline or bipolar, it is still conceivable in those circumstances that such a person, when confronted with some perhaps embarrassing questions, might feel a degree of responsibility for the consequences that befell them and might feel very badly about it?

A Yes.

Q So we don't confine that experience to individuals who suffer from any kind of a particular personality disorder?

A Well, and to be clear, post-traumatic stress disorder is not a personality disorder.

Q I'm sorry.

A It's okay, it's a mental disorder but it's not axis 2, it's axis 1.

But, no, we do not confine that consequence to those individuals that have a mental disorder. What I'm saying is that, in the context of the likely diagnosis of post-traumatic stress disorder, the response that Mr. Milgaard or any individual with that diagnosis might have to that suggestion would be significantly higher than

an individual who does not have that diagnosis.

Q Now the C. criteria out of the DSM-IV is:

"Persistent avoidance of stimuli associated with the trauma and numbing of general responsiveness (not present before the trauma), as indicated by three (or more) of the following:",

and then it proceeds to describe seven sub-criteria. And I won't repeat those now but it basically, as you've indicated, talks about avoidance of stimuli, and I believe you answered Mr. Wolch's question with respect to the presence of Mr. Milgaard in the Commission hearing room on October 24th of 2005. To actually come before the Commission hearing room, a Commission that is charged with the responsibility of determining the circumstances and how it may have occurred or how it did occur that David Milgaard was wrongfully convicted, actually coming into the hearing room; would you not agree with me that that is inconsistent with him attempting, repeatedly, to avoid stimuli associated with the trauma, assuming the trauma is the conviction and incarceration?

A I would agree that that act, in and of itself, is

inconsistent.

My understanding is that when Mr. Milgaard appeared at that time, that he had in effect a written statement that he wished to read, that was then followed by a question and answer with the media, and by having the written statement, that may have been a way of him managing his anxiety about the situation. As I believe he indicated, he came here because he saw this as being the optimal environment in which to make his point.

I agree with your premise that it's inconsistent with the general issue of avoidance, but I think there may have been some overriding features of his decision to do that, or his way of managing the anxiety, that made it possible for him to enter into that situation.

Q On those same lines, would you agree with me that his attendance at an examination for discovery for a period of three to four days, if my memory serves me correctly, I stand to be corrected by counsel who is more familiar with the transcript than I am, but I understand he was in Saskatoon attending an examination for discovery on May 6th, 7th and 8th and maybe the 9th of May. Would you

agree with me that his attendance at an examination for discovery in a civil proceeding answering questions by opposing counsel with respect to the events and circumstances leading up to his conviction would also be inconsistent with the category C., namely, repeatedly trying to avoid the stimuli in question?

A Well, first I think we need to be clear that avoidance for many individuals of PTSD cannot be universal. If there was a very serious car accident, for example, that doesn't mean that the person will never again get into a car, there would be a level of anxiety associated with every time that they get into the car and as time goes by that level of anxiety may be diminished, so it's not that you end up with absolute 100 percent complete avoidance of anything to do with the stimuli, so I accept the notion that him coming and participating in the deposition would have been an indication that he wasn't avoiding Saskatoon and wasn't avoiding that sort of adversarial questioning. Again, I don't know what effect that appearance would have had on him and I don't know what other strategies he might have had in place for how to deal with the anxiety of that

situation.

Q I understand. I wonder if I could have the memorandum of January 26, 2006 from the Respondents to Mr. Hodson placed on the screen. That's today's memorandum that had been earlier read. If we could just scroll down to this part here. Dr. Baillie, I understand you were present when I read this memorandum into the record this afternoon?

A Yes, I was.

Q And I take it that until today you were not aware that the parties who submitted this memorandum had stated this particular position; is that correct?

A That's correct.

Q What is your response to the conditions that the Respondents are suggesting to the Commissioner with respect to the receipt of Mr. Milgaard's evidence; namely, that it be a video and audio recording subject to the four conditions that are enumerated in the memorandum?

A My first reaction is that it is consistent with one of the options that I had put forward as showing an accommodation. It says the examination must be conducted in person, it doesn't say where. I would suggest that if the examination was to

take place in Vancouver, that that might address some of the concerns that have been raised as opposed to another room here or for an extended period of time here.

Q If I could interrupt you, the omission as to where was deliberate --

A Okay.

Q -- because that has been left open to be determined by either the Commission or Commission Counsel and Mr. Wolch, so we take no position as to where it occur.

A Okay. Apart from that issue, I see the proposal as being consistent with one of the options that I presented and therefore I'm comfortable with it.

Q And in your mind, would this represent a reasonable middle ground?

A Yes.

MR. ELSON: Thank you, Dr. Baillie. I have no further questions.

BY MR. FOX:

Q Dr. Baillie, my name is Aaron Fox, I'm the lawyer for Eddie Karst, he was one of the original police investigators. I'm sure you've probably seen his name mentioned a few times when you went through the material. You've covered most of the ground

and I'm just going to try and sort of sum up what my limited understanding is of what you've said and make sure I've got it right.

I think it would probably go without saying that as a professional, and a medical professional in your particular field, prior to making a diagnosis or rendering an opinion, you obviously would like to have access to as much relevant information as possible?

A Yes.

Q And in a perfect world, if there are medical records available, you would like to see those medical records?

A That's correct.

Q They might have information that's relevant, they might have information that's irrelevant, but you would like to cover that base off, see the medical records and see if there's anything that helps you with the diagnosis?

A Yes.

Q And in a perfect world you would like to obviously meet with the individual if you can and make some assessment there, either through your discussions with them, whatever checks you might make of them, whatever tests you might administer, again, just

to help you make your diagnosis?
A Yes.
Q You might also in a perfect world, and depending on the particular case, but maybe access information from third parties, others who have dealt with the individual, and that could be family or whoever and sometimes those opinions may be tainted or jaded or whatever, but it's just more information that you can get to put in there and help you make your assessment?
A Referred to as collateral sources, yes, they are helpful.
Q Right. Now, in this case I think it's -- you haven't spoken to David Milgaard yourself?
A That's correct.
Q Okay. And as I understand it, you've not seen any medical records in relation to David Milgaard that have been generated since 1993 other than Mr. Grymaloski's report of November 4th, 2005?
A That's correct.
Q Okay. And have you had occasion to review Mr. Grymaloski's file?
A No, I have not, simply the report that was put before the Commission, and then my conversation with Mr. Grymaloski earlier in January.

Q What I'm getting at though, did you ask him to, for example, release to you his file, his notes, that sort of thing?

A No, I did not.

Q Did it occur to you that you might want to do that?

A Not in these circumstances. Again, it's quite clear that Mr. Grymaloski has worked hard to develop a therapeutic relationship with Mr. Milgaard and I think that asking for disclosure of notes from a 10 year period had the significant potential to jeopardize that relationship. Mr. Grymaloski was useful in giving me a summary of some of those contacts, so I did not push with him the issue of wanting to access the entire file.

Q You see of course the difficult position that that puts us all in, you appreciate that?

A Yes.

Q And I think in fairness, you've recognized that yourself when you've testified today and recognized that in your report?

A There are limitations that take my report out of the realm of being a "assessment" and into, as was characterized earlier, a commentary or opinion.

Q Sure. And I think page 3 of the report, and I'm

not sure if it needs to be brought up, but the last full paragraph on that page and the concluding sentence in that page, or paragraph:

"... I accepted the information provided by you --"

That's referring to Mr. Wolch,

"-- and by Mr. Grymaloski regarding Mr. Milgaard's reluctance to meet with me and I did not have any contact with him. I am, therefore, unable to offer what could be called an "assessment" of him, but I can provide commentary related to other information made available to me."

That would be that portion right there?

A Yes.

Q And we can just highlight that.

A Yes.

Q And so it would be fair to say that in looking at your document dated January 13th, 2006, which is what I've highlighted here, that portion, this would be referred to by you as a commentary on Mr. Milgaard's situation as opposed to an assessment?

A That's correct.

Q And in your commentary you make reference to real and substantial harm, I think I saw those words

mentioned a couple of times?
A Yes.
Q And that's really what you are attempting to comment on, what might cause real and substantial harm to Mr. Milgaard; correct?
A Yes.
Q And it obviously goes without saying, none of us want to see any real and substantial harm caused to him, and again, the somewhat difficult position you are left with is that it's, I think you are comfortable in agreeing with Mr. Grymaloski's diagnosis that there's a post-traumatic stress disorder condition that Mr. Milgaard suffers from?
A Yes.
Q Correct? The somewhat difficult part for you is to assess, okay, if he's going to be questioned about the events, say, of January 31st, 1969, what impact is that going to have on him.
A It is undeniably more difficult for me to form a comprehensive opinion on that point without some of the sources of information that you've described.
Q Sure. And not very hard for any of us, even me being a cynical defence lawyer, to recognize that speaking about all of these events is probably

very uncomfortable and would not be very pleasant. The bigger step or the bigger question I guess is will it cause real and substantial harm if that takes place.

A And I think as I've indicated in the report, if not in my oral testimony today, there are two issues, one is the effect that testifying may have on him, it's not necessarily purely related to the ability to testify, but the effect that it could have on him, and some indications, although I haven't been able to get access to the records, of past occasions of testifying causing him to have mental breakdowns, for lack of a better word.

Q Sure. And that was the next point I was going to get at, is that obviously in making that assessment, one of the logical things you would look to is what has happened in the past?

A Yes.

Q Mr. Elson questioned you about, or asked you questions about the examination for discovery and that would be fair to say would have been a fairly adversarial situation, you would have enough knowledge of the court process to recognize he's being questioned in a fairly adversarial circumstance?

A And again, my understanding of the chronology is at that time the DNA results hadn't yet been produced and so the sense of exoneration was still a significant question mark in some people's minds.

Q Sure. Would you understand, or are you aware at this point in time that there is no issue with the factual statement that David Milgaard was not responsible for the death of Gail Miller?

A Oh, of course there's absolutely no doubt about that in my mind.

Q But you understand -- but do you understand that that's more or less the premise on which we're here?

A Yes.

Q In other words, it's not really open to anybody to suggest the contrary?

A Well, the title of the Commission is the Commission of inquiry into the wrongful conviction, so I would assume from that that everybody is working from that premise.

Q And that would be a dramatically different situation, say, for example, in 1996 where that issue still seemed to be a live issue at that point in time?

A I would say it's a potentially different scenario. I can't say that it's dramatically different because I don't know how he would perceive it.

Q I'm wondering, Dr. Baillie, why you didn't read the transcripts of the examination for discovery?

A In part because the content of the answers isn't particularly relevant to the question that the effect of giving those answers may have.

Q Do you think it might be useful, though, to see, for example, if there were any questions put to him about how he was doing, how he was feeling while the discovery was going on, that sort of thing?

A It's certainly possible, yes.

Q And it didn't occur to you that you might want to look at that to see what is in there?

A In part my oversight was because I wasn't aware until relatively late in the process of those transcripts and that I had made two trips to Saskatoon and reviewed a pile of documents and frankly hadn't come across those yet.

Q Okay.

A And so didn't have the time to be able to respond to the Commission's desire to have this report addressed and go through all of that information.

Q And I appreciate what you say about the large volume of material. Were you aware when you prepared your commentary that those examinations for discovery had taken place?

A I had become aware of it during that week.

Q And I was curious, as I understand it, you made no specific inquiries of Mr. Grymaloski as to how Mr. Milgaard dealt with the aftermath of those exams for discovery? That was I believe the answer that you gave to Mr. Elson.

A That's the best of my recollection. I can look at my handwritten notes from that telephone conversation. Obviously the 30 minute conversation was not transcribed into my letter to Mr. Wolch.

Q Sure.

A To the best of my recollection, I did not ask specifically how Mr. Milgaard had dealt with that situation, but the information that was provided to me indicated that there had been the six hospitalizations over the last 10 years that may have been related to those sorts of occurrences.

Q Well, you see, that doesn't get us very far.

A I understand.

Q You see, and what I was just wondering, Dr.

Baillie, is here's a circumstance where Mr. Milgaard was questioned for, it looks like, three days by three different lawyers about a lot of aspects of this particular matter and it would seem that in assessing how he might respond to some questioning now, how he responded at that time, whether he in fact needed hospitalization or treatment or whatever, would be fairly important?

A And I don't quarrel with you. I think in a perfect world, as I indicated, to use your language, as I indicated in the report, had I had information based on the hospital admissions to which I was being led, if I had been able to see that information it would have clarified that question for me. There are hurdles, as I indicated, in obtaining that information. I don't dispute with anybody that having that information would have been useful.

Q Did you ask for that information?

A I wasn't able to decide -- I was unable to determine, (a), where the hospitalizations had occurred, or (b), to be able to get Mr. Milgaard's consent for the release of that information.

COMMISSIONER MacCALLUM: Was that "or" or "and"?

A Sorry? That was an and.

COMMISSIONER MacCALLUM: Yeah, he didn't consent.

BY MR. FOX:

Q So Mr. Milgaard wouldn't consent?

A No, I didn't ask for it because again --

Q I think that's what you wanted clarified, Mr. Commissioner?

COMMISSIONER MacCALLUM: It is.

A I did not ask for his consent. My comment was I didn't have his consent.

BY MR. FOX:

Q Yeah, okay.

A And I didn't know where those hospitalizations had occurred. To say they occurred in, let's say, Toronto, still leaves me with many, many hospitals to which those admissions could have occurred.

Q Did you ask Mr. Grymaloski to provide what information he could as to where those hospitalizations occurred, when they occurred and if consents would be provided?

A Well, I asked Mr. Grymaloski if he knew where those hospitalizations had occurred and when those hospitalizations occurred. I did not ask him regarding the issue of consent.

Q And what Mr. Grymaloski was able to tell you is that he was aware that there may have been as many as six hospitalizations, but doesn't know if they directly related to Mr. Milgaard speaking about the events of his conviction or what led up to it or his incarceration afterwards?

A That was my understanding, yes.

Q Would I be correct as well that in terms of his attendance, for example, at the Supreme Court of Canada, you didn't follow up or check to see if there were any specific medical records that related to any treatment that occurred after he testified at the Supreme Court of Canada?

A Again, there was no follow-up in terms of medical records, but as I've indicated, there were some documents I believe, although I could be in error, that it was a letter from Mr. Asper describing his observations of Mr. Milgaard's behaviour.

Q We've heard the statement made that the problem that Mr. Milgaard has isn't with speaking of it, it's just that afterwards -- maybe I'll read it, and I think this is on page 2 of your report, right there, the point -- this is Mr. Wolch:

"The point that has to be realized is it's not the testifying that's the

problem, it's not the speaking, it's the memories that get triggered from it that is the problem, and I don't think anybody really wants to see David back in hospital, and that's what's happened in the last few years any time he talks about the incident, he's hospitalized shortly thereafter. It's not a problem with speaking, it's the effect it has on him, and that's what I'm trying to determine, to put before the Commission our position."

Would I be correct, Dr. Baillie, that you haven't seen a single medical record of any hospitalization of David Milgaard as a result of speaking about the Gail Miller murder or his conviction?

A That's correct.

COMMISSIONER MacCALLUM: If you are going to be a while, Mr. Fox, we'll have to put you over.

MR. FOX: I think I'm just about finished if you can give me a minute or two more, Mr. Commissioner?

COMMISSIONER MacCALLUM: All right.

BY MR. FOX:

Q Thanks. Have you been able, Mr. Baillie, or Dr. Baillie, I'm sorry, have you been able to make any distinction between the effect of Mr. Hodson speaking with Mr. Milgaard versus, say, you as a medical professional speaking with Mr. Milgaard? Do you understand the point I'm, what I'm getting at there? I appreciate why his experience with speaking with medical people over an extended period of time and them frankly not believing him and throwing that back at him I'm sure has had a significant effect on him. Of course Mr. Hodson to my knowledge isn't a medical man, but that might be a less stressful situation than another medical professional such as yourself perhaps speaking to him directly?

A I'm sorry, I'm getting caught up in the question.

Q Yeah.

A And if you are asking -- well, sorry, let me see if I can have you ask it again.

Q Sure, and what I was just saying, are you able to comment on the distinction between Mr. Hodson speaking with Mr. Milgaard about some of these matters versus you as a medical professional?

A I think that the distinction can be drawn that Mr.

Hodson has in fact met with Mr. Milgaard on I believe November the 17th and has had some discussion with Mr. Milgaard in the presence of Mr. Wolch and I believe Mr. Grymaloski, so Mr. Milgaard was open to that meeting, but expressed through Mr. Wolch and through Mr. Grymaloski his reluctance to meet with me, so that would suggest to me that there's a difference in his approach to the two different types of questions.

Q One might take from that that he's more comfortable speaking -- nothing personal here -- more comfortable speaking with Mr. Hodson than another medical person?

A I think the overall context is different. If it was Mr. Hodson and Mr. Milgaard only, I don't know what that scenario would lead to, but in the meeting that I understand to have occurred in November, Mr. Milgaard was assisted by people whom he trusts.

Q The last thing I wanted to just ask you about was there is, you talked about tangential questions which might not cause as much of a problem versus, I think you used the word pressing questions, and an example of a pressing question would have been when you saw the Morin tape, and we haven't seen

the Morin tape, so I'm speaking just from what you've told us, but there is, as I understand it, Mr. Carter specifically was asking him to describe his experience while incarcerated and that's what you would view as a very pressing question?

A Yes.

Q And again, one doesn't know because you haven't spoke with David or looked at the medical records, but, for example, speaking about friends or activities of January 31st, 1969, which was the day they were in Saskatoon, but he was not involved in the death of Gail Miller, might not be as pressing or as traumatic to deal with as, say, actually speaking about the incarceration?

A Again, the only information that I have is his statement of every time I talk about it, I get physically sick, I don't want to go there. I don't know -- and I think I actually said in the report that I had to make a certain degree of assumption as to what it was that he was referring to.

Q Yeah. And I think -- and that was my next question, I think you've already answered it, when you say, you know, he said in the past every time I have to go there, not exactly sure what there is

when he's referring to that; would that be fair?

A Yes.

MR. FOX: Thank you, Doctor. Those are all the questions I have.

MR. HODSON: Mr. Commissioner, I canvassed to see whether if we pushed we might get Dr. Baillie done today and I don't think we will. Mr. Wilson has perhaps 15 to 20 minutes and Mr. Wolch has some redirect, so I apologize, Dr. Baillie, but I think probably tomorrow morning then followed by Mr. Grymaloski, but probably another 45 minutes to an hour, not even that. Okay?

COMMISSIONER MacCALLUM: Yes, thanks.

(Adjourned at 4:39 p.m.)

OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATE:

We, Karen Hinz, CSR, and Donald G. Meyer, RPR, CSR, Official Queen's Bench Court Reporters for the Province of Saskatchewan, hereby certify that the foregoing pages contain a true and correct transcription of our shorthand notes taken herein to the best of my knowledge, skill, and ability.

_____, CSR
Karen Hinz, CSR
Official Queen's Bench Court Reporter

_____, RPR, CSR
Donald G. Meyer, RPR, CSR
Official Queen's Bench Court Reporter

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