

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

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

\*\*\*\*\*

On Wednesday, June 21st, 2006

Volume 167

Inquiry Proceedings



**Commission Staff:**

Mr. Douglas C. Hodson, Commission Counsel  
Ms. Candace D. Congram, Executive Director  
Ms. Jodie Kendry Document Assistant  
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Ms. Irene Beitel, Clerk to the Commission  
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and Mr. Don Meyer, RPR, CSR,  
Mr. Jerry Wilde, Security Officer  
Mr. Jason White and Mr. Jay Boechler, Inland Audio  
Technicians



Appearances :

*Ms. Joanne McLean,*                           **for** Ms. Joyce Milgaard

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

*Mr. Glen Luther, Esq.,*               **for** Mr. T.D.R. (Bobs) Caldwell

*Mr. Garrett Wilson, Q.C.,*           **for** Mr. Serge Kujawa

*Mr. Pat Loran, Esq.,*                 **for** the Saskatoon Police Service

*Mr. Chris Boychuk, Esq.,*           **for** Mr. Eddie Karst

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

*Mr. David Frayer, Q.C.,*           **for** Minister of Justice  
(Canada), The Hon. Vic Toews

*Mr. Marshall Hopkins, Esq.,*       **for** Justice Calvin Tallis  
(Retired)



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Transcript of Proceedings

(Reconvened at 9:03 a.m.)

COMMISSIONER MacCALLUM: Good morning.

ALL COUNSEL: Good morning.

09:03

EUGENE WILLIAMS, continued:

BY MR. HODSON:

Q Morning, Mr. Williams. If we could call up Sergeant Pearson's report, 056743, and go to page 772.

09:03

Hang on, I think we're turned off here.

09:04

And when we finished yesterday we were dealing in May of 1990, and we had talked a little bit about, you had told us your concerns about public disclosure of Larry Fisher as a suspect, and how that would impact on your investigation. And I think what the record reflects, Mr. Williams, in the evidence we've heard, is that the public disclosure or the disclosure of Larry Fisher as a suspect came in, really, three phases, and let me just run through those with you and see if you agree.

09:04

09:05

The first disclosure was through Joyce Milgaard, I think to Larry Fisher's mother and to Linda Fisher, and I think that ended up



1 being communicated to Larry Fisher in prison. And  
2 so, to the extent that there were -- actually,  
3 there's four phases, sorry, so that would be the  
4 first one, the direct communication.

09:05 5 The second would be, I think,  
6 where Joyce Milgaard, I think sometime in March of  
7 1990, gave this information, gave his name and  
8 information to a number of media outlets on an  
9 embargoed basis, and I think her evidence was and  
09:05 10 Mr. Asper's evidence was that the media were asked  
11 to go and investigate, or it was given to them for  
12 the purposes of them investigating Mr. Fisher and  
13 gathering whatever they could, but on the  
14 understanding, some understanding, that it would  
09:05 15 not be made public at least for some time.

16 The third disclosure, the third  
17 phase, came I think on May 10th, 1990 when John  
18 Harvard, a Member of Parliament from Winnipeg,  
19 raised the issue in either the House of Commons or  
09:06 20 in a committee meeting -- I think it may have been  
21 a Justice Committee, I'll show you a document in a  
22 moment -- I think it was a committee meeting that  
23 had disclosed, in a question to Minister Kim  
24 Campbell, not Mr. Fisher's name but asked a  
09:06 25 question about "aren't you investigating a suspect



1 who's in jail in Prince Albert".

2 And then the fourth disclosure  
3 would be around June 21 or 22, 1990 when the CBC  
4 publicly named Larry Fisher in the media, and then  
09:06 5 subsequently many other media sources also  
6 disclosed the public name.

7 Does that -- now that's, I  
8 think, the evidence that we've heard on the  
9 record, does that sound right to your  
09:06 10 recollection, or does that accord with your  
11 recollection?

12 A I'm certainly aware of the disclosures of John  
13 Harvard and the CBC documentary. Until I learned,  
14 during the course of this Inquiry, about  
09:06 15 Mrs. Milgaard's disclosures, I wasn't aware of  
16 those.

17 Q Okay. So again, just to put that in context, here  
18 we are in May 1990, May 10th, and this is  
19 Mr. Pearson. And I think you've told us that,  
09:07 20 after Mr. Pearson became involved, did -- I think  
21 you told us that his communication with Mr. Asper  
22 was fairly frequent and you had less direct  
23 contact with Mr. Asper; is that right?

24 A Yes. I believe my contact might have been  
09:07 25 biweekly or once a month.



1 Q And so, here, Mr. Asper has advised Mr. Pearson  
2 that:

3 "... Mrs. Milgaard has been talking with  
4 John Harvard, a member of Parliament,  
09:07 5 who raised certain questions with the  
6 Standing Justice Committee, who brought  
7 the Milgaard case up in the House of  
8 Commons."

9 And also that:

09:07 10 "Mr. Asper ... indicated that  
11 Joyce Milgaard had been in contact with  
12 Star Phoenix reporter Cam Fuller and  
13 that Fuller will soon be releasing a  
14 story on the details provided him by  
09:08 15 Mrs. Milgaard."

16 And I take it you would have become -- you would  
17 have become aware of this around this time,  
18 either from Sergeant Pearson or through people  
19 associated with government, that John Harvard had  
09:08 20 raised this issue?

21 A Yes.

22 Q And if we can go to 212998, please, 997 is the  
23 doc. ID. Can you tell us just generally, when  
24 issues are raised in the media, I think you told  
09:08 25 us that you are then called upon for a briefing





1 note. What happens when these issues are raised  
2 either in a parliamentary committee or in the  
3 House of Commons in this manner; what does that  
4 mean for you on this case and your task as  
09:08 5 investigator?

6 A The first thing you'd do is identify or try and  
7 verify the facts that had been alleged, whether  
8 it's been -- whether it's by Mr. Harvard or  
9 someone else. Obviously, if your minister is in  
09:09 10 that committee or if it's in the House and it  
11 comes by way of a question in Question Period,  
12 you'd like to have your minister armed with the  
13 facts so that an intelligent and responsive answer  
14 can be given to the question, and consequently you  
09:09 15 make inquiries to determine what the facts are,  
16 you prepare a briefing note which sets out the  
17 background, sets out any potential areas in which  
18 questions may arise and suggested responses.

19 Q And then what about when the information, though,  
09:09 20 comes out before -- in this case I presume you  
21 would not have had a heads-up that John Harvard  
22 was going to raise this with your minister?

23 A No. Sometimes, in those circumstances, you do a  
24 bit of scrambling and get in touch very quickly  
09:10 25 with the legislative assistants to brief them



1           verbally.

2           **Q**       Okay. And I want to go through just parts of this  
3                   because I think there is a couple of issues, here,  
4                   that come out. If we could go to page 999,  
09:10 5                   please, and this is Mr. Harvard questioning the  
6                   minister about the Ferris report, and according to  
7                   -- next, sorry, just scroll up to the top. And he  
8                   asked questions about the Ferris report indicating  
9                   that it supports David Milgaard's application and  
09:10 10                  that it hasn't reached your desk, what's the  
11                  hold-up, and the minister says:

12                         "Well, the hold up is a result of new  
13                         witnesses being identified by the  
14                         applicant. The original application  
09:11 15                         that was made, or submission that was  
16                         made was under investigation by the  
17                         department, but recently the applicant  
18                         identified new witnesses that he thought  
19                         would assist his case and which required  
09:11 20                         the department to prolong its  
21                         investigation in order to look at those  
22                         areas of evidence. So it is not delay  
23                         in the department that has resulted in  
24                         the time frame, but rather the  
09:11 25                         applicant's identification of new



1 witnesses that he felt could assist his  
2 case."

3 And would you agree, generally, with that  
4 comment/response?

09:11 5 A Yes.

6 Q If we can then scroll down, asks about when you  
7 might be able to move on it, she says she does not  
8 have the report. And then Mr. Harvard says:

9 "Let me ask you this, Madam Minister,  
09:11 10 have you read or tested the Ferris  
11 report? ... The Ferris report, in  
12 effect, says that the semen that was  
13 found at the murder scene 21 years ago  
14 could not have belonged to Mr. Millgard.  
09:11 15 Has your department, have you, tested  
16 that report to find it either valid or  
17 invalid?"

18 And the minister's response:

19 "I cannot answer that, Mr. Harvard,  
09:12 20 because I have not had the report on my  
21 desk, but I assume it will come with a  
22 fairly comprehensive review of all the  
23 evidence that has been put forward in  
24 support of Mr. Milgaard's application."

25 And, again, it appears at this time that the



1 Ferris Report, as you told us yesterday, would  
2 not have gone to the minister without your  
3 comprehensive report?

4 A That's correct.

09:12 5 Q And although your, the minister's legal department  
6 had done the test to find out whether it was valid  
7 or invalid, I think your evidence has been that in  
8 August of '89, with the assistance of Patricia  
9 Alain, you tested the Ferris Report and found that  
09:12 10 the, at least the conclusion that David Milgaard's  
11 counsel drew from the report was invalid; is that  
12 fair? So it was tested and you concluded that --  
13 maybe "concluded" is too strong a word -- but your  
14 view at the time was that, based on Patricia  
09:12 15 Alain's advice, the Ferris conclusion was invalid?

16 A That's correct.

17 Q And that had not been communicated to the minister  
18 because you had not completed investigating the  
19 other matters that had been raised on behalf of  
09:13 20 David Milgaard?

21 A That is correct.

22 Q And I think you said that it was done by way of, I  
23 think your words were 'instalments', were they;  
24 that the grounds were put in by way of  
09:13 25 instalments?



1 A Yes. And by that I mean simply that the first two  
2 grounds came in December of 1988, then February  
3 28th, 1990, then June of 1990, so --

4 Q And would you -- did you consider giving your  
09:13 5 report to the minister in instalments then?

6 A No.

7 Q And why not?

8 A I had submitted a report at a time when I felt  
9 that the application or the applicants had  
09:13 10 completed their submissions, but it would -- it  
11 would put the minister in a very difficult or  
12 embarrassing position to make a decision on a  
13 report that is incomplete, or make a decision on a  
14 file for which all of the grounds had not been  
09:14 15 investigated, because the quality of the decision  
16 depends on the quality of the information that you  
17 provide, and had the minister made a decision and  
18 announced it only to find that there are  
19 additional grounds, it would simply mean starting  
09:14 20 over again.

21 Q Okay. So are you telling us that the minister  
22 would only make a decision after all the grounds  
23 put forward had been fully investigated and, if  
24 you gave a report by instalments knowing that  
09:14 25 there were still grounds to investigate, it



1           wouldn't speed up the minister's decision?

2           A           It wouldn't speed up the minister's decision. My  
3           supervisors wouldn't permit such a report to go  
4           forward.

09:14 5           Q           And then, if we can go to the next page, here  
6           Mr. Harvard raises another issue. He says:

7                        "Well, I should tell you, Madam  
8           Minister, that Mr. Millgard's council  
9           has submitted the Ferris Report to  
09:15 10          another forensic expert in my home  
11          province, a prominent forensic expert.  
12          His preliminary response is that the  
13          Ferris Report is sound. It just seems  
14          to me that if Mr. Millgard's council  
09:15 15          with very limited resources can do at  
16          least that, I would have thought that  
17          the Justice Department with its, you  
18          know, amount of resources could have  
19          done even more than that, particularly  
09:15 20          in 15 months."

21                   And then:

22                        "Well, Mr. Harvard, I mean I am not  
23          going to comment on the nature of the  
24          report. But I think you will recognize  
09:15 25          that in the process of criminal trials



1 expert testimony is adduced and it is  
2 tested. And I certainly have been part  
3 of trial processes where expert  
4 testimony has been severely criticized  
09:15 5 and challenged, and often undermined in  
6 the process of examination, and  
7 cross-examination. So, I think it is  
8 important that if I am being asked as a  
9 minister to exercise ministerial  
09:15 10 discretion on this case, based not on a  
11 trial procedure but on representations  
12 that have been made to me, that I do so  
13 based on a careful evaluation of that  
14 report."

09:16 15 And let's just pause there. I think this is  
16 where the first public mention was made, and  
17 although he doesn't call him by name, Mr.  
18 Markesteyn, I believe that's who Mr. Harvard is  
19 referring to; is that correct?

09:16 20 A That's correct.

21 Q And is this, can you recall, is this when you  
22 became aware that another ground was going to be  
23 added to the application; namely, the Dr.  
24 Markesteyn report, or to supplement the earlier  
09:16 25 ground?



1 A That was the first signal, or one of the first  
2 signals, yes.

3 Q Had you been aware, prior to Mr. Harvard raising  
4 this in the House of Commons parliamentary  
09:16 5 committee, that David Milgaard's counsel was  
6 getting another forensic report?

7 A I'm not certain of that, that Mr. Harvard raised  
8 it, but I believe I had had some conversations  
9 either with Mr. Wolch or Mr. Asper in early June  
09:17 10 at which time he signaled to me that such a report  
11 was on its way.

12 Q Yeah. I think, and I will show you some documents  
13 as we go through, I think you, subsequent to the  
14 May 10th discussion in the parliamentary  
09:17 15 committee, you contacted Dr. Markesteyn directly  
16 and had some follow-up. Does that assist your  
17 memory at all?

18 A Yes.

19 Q And so it may be that -- is it possible that this  
09:17 20 was the first time you became aware and then did  
21 some follow-up or do you think that Mr. Wolch or  
22 Mr. Asper told you that they were getting another  
23 report?

24 A No, I think this was the first time. I may have  
09:17 25 followed it up with Mr. Wolch or Mr. Asper after





1 that.

2 Q And then if we can go to the next page, and then  
3 Mr. Harvard says:

4 "Mr. Harvard: Just two or three more  
09:17 5 quick questions, Mr. Chairman. Madam  
6 Minister, the counsel for Mr. Milgaard  
7 tells me that the real killer has  
8 possibly been already identified. That  
9 the real killer is serving time in jail  
09:18 10 in Saskatchewan. That the RCMP have  
11 been appraised of this, in fact, the  
12 RCMP have interviewed this man twice.  
13 Can you comment on that? What do you  
14 know about that?

09:18 15 The minister:

16 "Ms. Campbell: I know nothing about it  
17 at all.

18 Mr. Harvard: You know knowing.

19 Ms. Campbell: No.

09:18 20 The Chairman: About that case.

21 Mr. Harvard: You know nothing about the  
22 RCMP investigating.

23 The Chairman: All right qualify that."

24 And I think this is the first public disclosure  
09:18 25 of the fact that the RCMP were investigating what



1 Mr. Harvard called the real killer and that he's  
2 serving time in jail in Saskatchewan.

3 Do you have a recollection of  
4 being, of this information coming out in this  
09:18 5 format and can you tell me what your response was  
6 or what did this do to your work?

7 A The mere mention of the real killer was  
8 discomfoting. My only concern was that given the  
9 fact that gossip was fairly rampant in the  
09:19 10 penitentiary system, that it would take longer  
11 rather than shorter to identify who Mr. Harvard  
12 was talking about, but at that time it just  
13 heightened the need for us to accelerate whatever  
14 work that we had to do with Larry Fisher before  
09:19 15 his name became public.

16 Q And then as far as this issue coming up, did you  
17 then have to follow up with a briefing to the  
18 minister about what you were doing in connection  
19 with this?

09:19 20 A Yes.

21 Q And am I correct that until your investigation of  
22 Mr. Fisher had been completed, that you would not  
23 have otherwise reported to the minister about this  
24 new ground?

09:19 25 A Certainly not in detail. Where this new ground is



1 in the public domain, we would be remiss if we did  
2 not advise the minister of what the facts were as  
3 we then understood it. We would do so in a  
4 general way so that the minister could respond  
09:20 5 intelligently to questions put, whether it's in  
6 the House of Commons or in the daily scrums by  
7 journalists, so you would definitely have to brief  
8 the minister on what had happened and what steps  
9 you were planning to take and what the timetable,  
09:20 10 to the extent that you could estimate it for the  
11 completion of the work, would be.

12 Q If we can then go to 159870, this is the next day,  
13 a report by Dan Lett re: *RCMP reopen man's murder*  
14 *case. Prisoner's mother finds evidence*, and the  
09:21 15 report:

16 "The RCMP are investigating a  
17 suspect they believe may be responsible  
18 for a murder that a Winnipeg man was  
19 convicted of 21 years ago.

09:21 20 Winnipeg MP John Harvard told  
21 the Commons justice committee yesterday  
22 the investigation, which has been going  
23 on for the last two months, involves a  
24 man now serving time in the Saskatchewan  
09:21 25 federal penitentiary for rape and



1 assault charges."

2 And then go back to the full page, and then

3 quotes Mrs. Milgaard saying:

4 "I went out and interviewed

09:21 5 people and did what the Justice

6 Department should have done," Milgaard

7 said. "I found out that he (the second

8 suspect) had a record consistent with

9 the type of crime.

09:21 10 "There is far more evidence

11 against him than they used against my

12 son."

13 Now, let me just pause there, and I think the

14 evidence from Mrs. Milgaard was that Dan Lett

09:21 15 would have had this information in advance of May

16 11th, he would have been told, I think her

17 evidence was, probably sometime in March, all the

18 details, but there was an arrangement not to

19 publish it, but I think once Mr. Harvard made it

09:22 20 public, then that part he reported on. Did this

21 type of reporting, again, is there anything you

22 wish to elaborate on that you haven't already

23 told us about the impact this type of reporting

24 would have on your investigation of Mr. Fisher?

09:22 25 A Well, certainly to the extent that we would devote



1           some time to briefing the minister, that's time  
2           that you would not be devoting to pursuing the  
3           file. In relation to this newspaper article, when  
4           you start identifying the types of offences that  
09:22 5           an inmate is, or has been convicted of, it makes  
6           life for that inmate fairly difficult.

7           Q       Now, I want to get your comment on Mrs. Milgaard's  
8           view as expressed in this article about what the  
9           Justice Department's responsibility and role was  
09:23 10          and she says here:

11                        "I went out and interviewed  
12                        people and did what the Justice  
13                        Department should have done?"

14                        "I found out that he ... had a  
09:23 15                        record consistent with the type of  
16                        crime."

17           And I think that can be taken, taken one of two  
18           ways, and let me put them to you and get your  
19           comment. The first way would be that you, and  
09:23 20           when I say you, the Justice Department, should  
21           have, on December 28, 1988, or at some point  
22           thereafter, gone out and investigated and tried  
23           to find another culprit or another suspect; in  
24           other words, that you should have gone out and  
09:23 25           found Larry Fisher before Mrs. Milgaard did, and



1 let me ask you that, and we've covered this I  
2 think in some respects already, but when the  
3 application was filed by Mr. Milgaard on December  
4 28, 1988, did you view it as your responsibility  
09:23 5 or the Justice Department's responsibility to  
6 conduct an investigation to try and identify  
7 another suspect or find out who the real culprit  
8 might be?

9 A No.

09:24 10 Q And why not?

11 A The role of the minister is to review the  
12 applications on the basis of the grounds advanced.  
13 Larry Fisher was not even on the radar screen in  
14 December of 1988 insofar as the Justice Department  
09:24 15 was concerned. The perception that the exercise  
16 of the royal prerogative or one aspect of it as is  
17 demonstrated in Section 690, the perception that  
18 that involves a re-examination of the entirety of  
19 a homicide investigation is misplaced, and to the  
09:24 20 extent that Mrs. Milgaard and her counsel had that  
21 view, I don't know where it came from, but it  
22 certainly was not supported either by the record  
23 of 690 investigations in the past or by the record  
24 of the application for clemency.

09:25 25 Q Now, let's go back. If -- I think you mentioned



1 it was not in the application. We have heard  
2 evidence from Peter Carlyle-Gordge and from other  
3 witnesses, including I think Linda Fisher and  
4 Bryan Wright, that in 1983 Mrs. Milgaard and Peter  
09:25 5 Carlyle-Gordge, who was working with her, at least  
6 Mr. Carlyle-Gordge interviewed the Cadrains and  
7 some others and identified that Larry Fisher lived  
8 in the basement of the Cadrain house at the time  
9 of Gail Miller's murder and was in jail serving  
09:25 10 time for rape and efforts were made to locate  
11 Linda Fisher, but it appears, based on the  
12 evidence we've heard so far, that apart from  
13 putting an ad in the paper and getting a response,  
14 there may not have been any further follow-up. If  
09:26 15 in December, 1988 the application had included  
16 that information saying, by the way, we've  
17 discovered that a rapist lived in the basement of  
18 the Cadrain house at the time of the murder and  
19 his name is Larry Fisher, he might be a good  
09:26 20 suspect, if that had been included in the  
21 application, can you tell us what if anything you  
22 would have done with that?

23 A My practice at the time was to identify all of the  
24 grounds and likely I would have questioned Mr.  
09:26 25 Wolch as to whether or not that was indeed another



1 ground.

2 Q Yeah, and let's assume it is.

3 A Okay.

4 Q This is in the application and it's saying lookit,  
09:26 5 we think the real killer or someone who is a good  
6 suspect was living in the basement of the house my  
7 client visited that morning.

8 A I would have investigated it at the time; that is,  
9 I would have started that as part of the  
09:27 10 investigation in 1988 or early 1989.

11 Q And is it fair to say that, would you have taken a  
12 similar approach as what you did on February 28th,  
13 1990 in the sense of getting Sergeant Pearson and  
14 conducting that type of investigation?

09:27 15 A If my past practice is any indication of what I  
16 likely would have done, I think, yes, that was the  
17 process or the procedures that were appropriate,  
18 and I suspect I would have done that two years  
19 earlier as I did in February of 1990.

09:27 20 Q And so I think, just so that we have this clear  
21 then, on a 690 application in this case, once the  
22 application is filed, you've told us your job is  
23 to go investigate the grounds to be able to give  
24 advice to the minister; is that correct?

09:27 25 A Yes.





1 Q And that your role is not -- not to go out and  
2 investigate and try and find the real killer or  
3 find evidence that would point to someone else  
4 doing the crime?

09:28 5 A Correct.

6 Q And that would be, I think you've told us, would  
7 be the responsibility of the applicant if the  
8 applicant felt that that would give rise to a  
9 grounds for a relief?

09:28 10 A Certainly there would have to be a factual basis  
11 set out that signaled that that should be pursued.  
12 I mean, anyone in making a 690 application could  
13 say, for example, by the way, John Doe I believe  
14 is a bad person and likely is the killer and  
09:28 15 without more, you might not go down that road  
16 until such time as you have some information that  
17 signals that it's meritorious to look at it.

18 Q Absent DNA, would it be fair to say that  
19 identifying the true culprit, or a strong  
09:29 20 likelihood that the true culprit, would that not  
21 be the strongest ground that a wrongfully  
22 convicted person could put forward to undo the  
23 conviction?

24 A In the circumstances of this case it was.

09:29 25 Q Okay.



1 A A lot depends on the case. Sometimes there isn't  
2 any human material around or discovered.

3 Q And so just to pursue this a bit further then. As  
4 far as in David Milgaard's case, and I think  
09:29 5 you've told us that he did not have to come  
6 forward and prove someone else committed the  
7 crime, but I think you told us he had to put  
8 forward, if he chose to pursue that as a ground,  
9 in other words, I think if he chose to put forward  
09:29 10 a ground that said someone else committed the  
11 crime, therefore I didn't, it would be his  
12 responsibility to put forward sufficient  
13 information or evidence to cause the minister to  
14 say there's a reasonable likelihood that a  
09:29 15 miscarriage of justice occurred?

16 A Or, as the starting point, that this is  
17 sufficiently serious that it should be examined.

18 Q And so it may -- and I think what you've testified  
19 to is that on the basis of an anonymous phone call  
09:30 20 to Mr. Wolch, that was enough for you to start an  
21 RCMP investigation to try and gather evidence to  
22 see if Larry Fisher was the killer?

23 A Yes.

24 Q And so again, just to summarize then, as far as  
09:30 25 Mr. Milgaard putting forward a ground that someone



1           else committed the crime, in this case it was  
2           enough to say here's information, this fellow  
3           lived there and the other facts that we've heard,  
4           and I think you've said that was enough to say  
09:30 5           lookit, this is serious, we better pursue it, and  
6           you did pursue it?

7           A           That's correct.

8           Q           So back to this quote, I think the first  
9           interpretation that can be taken is, as I've  
09:30 10           mentioned, is that you should have gone out right  
11           at the start and investigated, reinvestigated the  
12           entire murder and to find the true suspect, you've  
13           commented on that. The second interpretation that  
14           I think can be put on this comment is that after  
09:31 15           giving you the name Larry Fisher, that she went  
16           out and interviewed people and did what the  
17           Justice Department should have done; in other  
18           words that, she's commenting on what happened  
19           after February 28th, 1990, and again, I'm not sure  
09:31 20           what -- let's talk about that. Do you understand  
21           that interpretation?

22           A           Yes.

23           Q           And if that's what was intended by those words, or  
24           if that's how a reader would view those words, can  
09:31 25           you comment on that?



1 A Well, I think the comment has to be framed in the  
2 context of how the information came to us. The  
3 information came to us from Mr. Wolch on the basis  
4 that an anonymous caller had provided certain  
09:32 5 info. We did spend some time trying to track that  
6 down, but subsequently, once Larry Fisher had been  
7 identified, within a week or so we had at least  
8 taken preliminary steps to determine or find out  
9 information about Linda Fisher, to locate her and  
09:32 10 to arrange an interview. Indeed we may be  
11 criticized for that delay; however, my view is we  
12 took the time required to gather the information  
13 that was, I thought, necessary to do an informed  
14 interview of Linda Fisher.

09:32 15 Q And is it your evidence then, Mr. Williams, that  
16 to this extent the Justice Department did go out  
17 and interview people and investigate the Larry  
18 Fisher information once provided to you?

19 A Yes, and certainly if you take a look at the  
09:33 20 activities of Sergeant Pearson, they were  
21 numerous, they were detailed and they were  
22 intensive.

23 Q Now, again I want to, and I apologize for asking  
24 this question again, but this is a different  
09:33 25 subject matter. As far as going out in the media



1 here and saying to Mr. Lett in response to this,  
2 number 1, it's not our job to go out and  
3 investigate and find another suspect when an  
4 application is filed unless the ground is raised,  
09:33 5 and number 2, here is a list of everything  
6 Sergeant Pearson and I have done to investigate  
7 it, would you please publish that in response, and  
8 I think from what you've told us earlier, for the  
9 reasons you've told us earlier, you could not put  
09:34 10 forward that position in the media?

11 A Certainly not in that detail, no. I would  
12 certainly tell him we've received the information,  
13 we're actively investigating it.

14 Q Is it fair to say this, Mr. Williams, we've  
09:34 15 touched on this issue on a number of occasions  
16 when things are in the media reported where you've  
17 indicated you take issue with their accuracy, with  
18 their completeness and the fact that your side, if  
19 I can call it that, of the story either isn't put  
09:34 20 forward, isn't put forward properly or you can't  
21 comment for the reasons you've stated?

22 A Correct.

23 Q And we've spent some time. Can we summarize by  
24 saying that as far as arguing the 690 application  
09:34 25 of David Milgaard in the media, that the Federal



1 Justice Department was not inclined to do so, nor  
2 was it in a position to do so?

09:34 3 A That's correct. The decision on a Section 690  
4 application is that of the minister, not of  
5 departmental officials.

6 Q But even let's say it's the minister, but my point  
7 is as far as debating and dealing with these  
8 issues in the media.

09:35 9 A To do so before the minister has made a decision  
10 would be perceived as having prejudged the  
11 application, showing a bias. I mean, this is a  
12 decision for the minister. Officials have no  
13 business giving their views about a decision that  
14 is reserved only for the minister.

09:35 15 Q Okay, and I appreciate that point. Let's go a  
16 step further, and maybe this isn't a question for  
17 you, but putting aside your views, the minister,  
18 though, could have gone back on day one and said  
19 okay, let's fight this battle in the media, let's  
09:36 20 send out a media release on August 9th, '89 with  
21 the Patricia Alain report, even though I haven't  
22 decided let's just put it out in the public domain  
23 that we have it and let's respond to everything  
24 that's in the media to put forward our side of the  
25 facts even though the minister hasn't made the



1 decision, but in order to put the other side of  
2 the story out there so that the public is informed  
3 of what the minister has, has done and sort of the  
4 position taken. Do you follow that?

09:36 5 A Yes, I follow the suggestion.

6 Q And my question is, is to try and probe a bit.  
7 You've told us that the department, and certainly  
8 you could not get into arguing this case in the  
9 media for the reasons you've stated, it wasn't  
09:36 10 your decision, but go a bit broader, I want to  
11 understand why the minister and the department  
12 wouldn't engage in arguing this case in the media.

13 A I think for the same reason that anyone who's  
14 called upon to make a decision, whether it's a  
09:36 15 judge, whether it's a tribunal, makes a decision  
16 at the conclusion of the evidence and of  
17 submissions and there's one decision that's made.  
18 Throughout the course of any type of hearing  
19 you'll get evidence presented by one side and  
09:37 20 countered by another. Our way of proceeding is,  
21 has been our tradition, is to listen until all of  
22 the submissions and all of the evidence is heard  
23 and then make a decision or a recommendation.

24 Q Based on what's provided to you or based on what's  
09:37 25 in the media?



1 A Based on what's provided, what's on the record,  
2 and certainly tribunals, commissions make their  
3 findings on the basis of the record before them,  
4 certainly not on the basis of what's publicly  
09:37 5 disseminated.

6 Q And I think Mr. Asper's evidence was to the effect  
7 that they decided to, at some point during the  
8 first application, to move from the legal arena to  
9 the public arena and fight their application in  
09:38 10 the media and in the public realm and that's where  
11 their focus was.

12 A Yeah.

13 Q And is it fair to say that you would have been  
14 aware that, and maybe not that explicit, but that  
09:38 15 you would have come to the realization that that's  
16 where they were fighting the battle?

17 A Yes. It was being converted from a, call it an  
18 administrative or quasi-judicial decision by the  
19 minister into a political one, and the minute you  
09:38 20 politicise any aspect of the criminal justice  
21 system, you run the risk of bringing it into  
22 disrepute.

23 Q In what way?

24 A For the same way that this isn't a popularity  
09:38 25 contest. The decision that the minister makes is





1 one that affects a finding of the court and  
2 consequently such a decision must be based on some  
3 fairly clearly established principles and not  
4 merely on the political winds or the popular  
09:39 5 movements that have attracted media attention, so  
6 once you politicise it, it perpetuates the  
7 perception that if you want to get out of jail,  
8 you mount a media campaign. That is not how our  
9 system of justice works.

09:39 10 Q And so --

11 A And consequently we resist embarking on that type  
12 of response as being an appropriate one. The  
13 appropriate response is to gather the evidence,  
14 make a decision based on the facts we've  
09:39 15 collected.

16 Q And I asked this question of Mr. Asper and Mrs.  
17 Milgaard and I'll try it with you. Is there a  
18 risk as well that in going into the public media,  
19 or political arena, whatever you want to call it,  
09:40 20 but going the route Mr. Asper said they did, which  
21 included to politicise it, does that then at least  
22 raise the potential risk that the political  
23 campaign may adversely affect the legal route?

24 A It could, yes. It does raise that risk.

09:40 25 Q And is it fair to say that I think from your



1 evidence that the minister and the department  
2 dealt with these applications on a legal or  
3 administrative or quasi-judicial basis as opposed  
4 to politically, media, public domain?

09:40 5 A Yes.

6 Q If we can go to 333392, please, and I suppose just  
7 on that, you talked about the risk to the system.  
8 Does it -- did one of the outcomes or did you have  
9 the observation that by the time the minister's  
09:41 10 decision came out in February of 1991, that what  
11 was in the public domain by way of facts or  
12 alleged facts about David Milgaard's case differed  
13 significantly with the facts that you had been  
14 presented with and you had uncovered?

09:41 15 A That's correct.

16 Q And in fact is it fair to say that what was in the  
17 public domain about the facts in many respects  
18 were significantly wrong and misleading?

19 A Yes, and I believe the testimony you've heard  
09:41 20 previously certainly confirms that.

21 Q And certainly the -- I think whether it was an  
22 observation or evidence, but certainly Mr. Asper  
23 indicated this, as did Mrs. Milgaard, that the  
24 public certainly became strong supporters of David  
09:42 25 Milgaard's case as did the media based upon the



1 information that was in the public domain that I  
2 think you are saying differed from what was on the  
3 official record or on the legal application, if I  
4 can call it that. Would you agree with that?

09:42 5 A Yes. I mean, for example, despite the fact that  
6 we knew that Deborah Hall's observations mirrored  
7 that of the witness, the trial witnesses, it was  
8 routinely repeated in media reports that Deborah  
9 Hall and Ute Frank had evidence that contradicted  
09:42 10 the testimony of the trial witnesses. Dr. Ferris'  
11 report was trumpeted and hailed as a report that  
12 excluded David Milgaard as the perpetrator when,  
13 at a time when those close to the event and those  
14 who had submitted the report knew that it didn't  
09:43 15 have -- it didn't go as far as what was being  
16 reported.

17 Nevertheless, I saw no  
18 corrections in the press, I saw nothing from Dr.  
19 Ferris to amend, clarify their published remarks  
09:43 20 attributed to his report. It -- that perception,  
21 which we now know about Dr. Ferris' report to be  
22 wrong, was permitted to continue and regrettably  
23 we felt constrained about disputing it until such  
24 time as a decision was made, and at that time  
09:44 25 there was a detailed response to each of the



1           submissions that had been made in support of the  
2           application, but even in its reporting, the  
3           reporting of Justice Minister Campbell's letter,  
4           there were certain editorial liberties taken which  
09:44 5           took the letter out of context.

6           **Q**       By that time it was too late?

7           **A**       By that time it was too late to undo what had been  
8           done. No one could understand how, in light of  
9           all of the evidence, quote, "to the contrary", the  
09:44 10           Minister of Justice could come up with a contrary  
11           opinion.

12           **Q**       And let's just focus on that for a moment with Dr.  
13           Ferris, because if that report is true in the  
14           sense that the semen found at the scene exculpates  
09:45 15           David Milgaard, in other words, proves his  
16           innocence I think were the words used; in other  
17           words, it wasn't quite DNA type of evidence, but  
18           for that time it maybe was of a similar legal in  
19           the sense it's physical evidence that a forensic  
09:45 20           person tested and says this could not have come  
21           from David Milgaard and it's the semen found at  
22           the scene of the crime, so that would be pretty  
23           strong, compelling evidence if it were true?

24           **A**       Yes.

09:45 25           **Q**       And so I think we have seen in the record that it



1 was repeated many, many times in the media that  
2 Dr. Ferris' report did this, and I want to focus  
3 on two different groups. First from the public's  
4 perspective, I think it's maybe evident, but after  
09:45 5 hearing that and reading that for months, if not  
6 years, that when a decision came out that rejected  
7 the application, that the public might say "well  
8 hang on a minute here, we read that Dr. Ferris,  
9 who is a respected forensic pathologist, tested,  
09:46 10 did some type of report and said it proves David's  
11 innocence, if it proves his innocence how could  
12 they not give him a remedy?", and that was the  
13 type of public reaction that was out there;  
14 correct?

09:46 15 A Correct.

16 Q Which would then cause people to doubt the  
17 minister's decision; fair, is that fair?

18 A Yes.

19 Q And that "how could" -- and in a sense, we then  
09:46 20 talk about the other grounds and I'm not going to  
21 try and get you to speculate and analyse the  
22 public perception, but I think you've identified  
23 that that was certainly one of the downsides that  
24 came out of this application being argued in the  
09:46 25 media or being politicised, is I think where we



1 started on this; correct?

2 A Correct.

3 Q Let's talk about David Milgaard for a moment, and  
4 I think I've shown you a number of his letters to  
09:46 5 the minister talking about the Dr. Ferris report  
6 and "why can't I get out of jail", we heard his  
7 evidence here from March of this year where we  
8 talked in the same vein, that I think Dr. -- Mr.  
9 Milgaard still believes that the Dr. Ferris report  
09:47 10 proves his innocence and it wasn't acted upon; was  
11 that a concern?

12 A If I understand your question to be was I  
13 concerned that we didn't communicate directly with  
14 David Milgaard?

09:47 15 Q No. I'm just trying to go back, when you talk --  
16 we started down this line about the, I think your  
17 words were that the minute you have this  
18 application politicised, the effects that it may  
19 have on the justice system, I think were your  
09:47 20 words; is that right?

21 A Yes.

22 Q That once you get into that arena we're talking  
23 about -- what I want to explore a bit is what are  
24 some of the risks of what happens as a result of  
09:47 25 going in that arena. And so then you go and say



1 "here's David Milgaard who is in jail, who  
2 believes that the Dr. Ferris report proves his  
3 innocence, believes, according to his letters,  
4 that the minister has never looked at it, it has  
09:48 5 never been tested", and then when the decision  
6 comes back and says it doesn't prove what he says  
7 it proves, or your lawyer says it proves, and it  
8 doesn't seem to connect with him and the public,  
9 and I'm just sort of -- your reaction, again, to  
09:48 10 having this issue argued in the media or being  
11 politicised; is that one of the risks, then, that  
12 happens is that the legal message back maybe  
13 doesn't get through to many people?

14 A That's correct.

09:48 15 Q If we can go to -- and we'll come back to this a  
16 bit later, to this issue, Mr. Williams -- if we  
17 can go back to this article, it's March -- or  
18 sorry, May 12th, 1990, so this is two days after  
19 Mr. Harvard raised it in the House about  
09:48 20 Milgaard's counsel getting another expert report.  
21 And this is from your department's media clipping  
22 service so presumably this is something you would  
23 have seen; is that correct?

24 A Yes.

09:49 25 Q It says:



1 "Manitoba's chief medical  
2 examiner has reviewed forensic evidence  
3 from the David Milgaard case to  
4 determine if the Stony Mountain  
09:49 5 Institution inmate was unjustly  
6 convicted of a 1969 murder.

7 Dr. Peter Markesteyn confirmed  
8 yesterday he has finished reviewing  
9 scientific evidence from the Milgaard  
09:49 10 trial and is preparing a report on his  
11 findings.

12 The examiner is the second  
13 noted pathologist to conduct an  
14 independent review of the case. His  
09:49 15 report traces the steps of Dr. James  
16 Ferris, head of forensic pathology at  
17 Vancouver General Hospital."

18 And I think we saw, in Mr. Harvard's comments  
19 when he asked the minister a question, he said  
09:49 20 that, although he didn't name Dr. Markesteyn, he  
21 said that he has already reviewed it and  
22 confirmed Dr. Ferris' findings.

23 And then if we could just go  
24 back, I'll finish up and then ask you some  
09:50 25 questions, go back to the main page. Now in this





1 article I think Dr. Ferris also expresses concern  
2 that no one has contacted him or called him, and  
3 we touched on this a bit earlier, but was there a  
4 reason that you did not go back to Dr. Ferris and  
09:50 5 question him about -- did you see a need to go  
6 back to Dr. Ferris and question him about his  
7 report prior to the Dr. Markesteyn issue arising?

8 A Initially, I didn't intend to, but wiser heads and  
9 minds prevailed and a decision was taken to  
09:50 10 interview Dr. Ferris.

11 Q After the Dr. Markesteyn issue came up?

12 A Yes.

13 Q And, had Dr. Markesteyn not been brought in, is it  
14 correct to say that you likely would not have  
09:50 15 followed up with Dr. Ferris?

16 A Probably not.

17 Q And did you see any need to?

18 A Based on -- based on what Dr. Ferris had in his  
19 report and the comments from Pat Alain, I didn't  
09:51 20 see the need initially, but I thought that, after  
21 further consideration I thought it would be  
22 prudent to test out certain hypotheses I had about  
23 the Ferris Report and what it meant with Dr.  
24 Ferris directly.

09:51 25 Q And I think you did that on June 12th of 1990; is



1                   that right?

2           A           That's correct.

3           Q           And did Dr. Ferris agree with your hypotheses?

4           A           Yes.

09:51 5           Q           And I'll take you to that memo shortly. Here, Mr.  
6                   Asper says that:

7                                 "... he requested Markesteyn review the  
8                                 evidence because it appears the Justice  
9                                 Department has little interest in  
09:51 10                                challenging Ferris's findings."

11                   Did you have any discussion with Mr. Asper about  
12                   that or --

13          A           I didn't.

14          Q           And then:

09:52 15                                "In Ottawa, department  
16                                officials continue to dodge questions  
17                                about the status of Milgaard's  
18                                application."

19                   Would that be -- would it be fair to say that, as  
09:52 20                   you've told us earlier, you would not be  
21                   responding to specific questions about what you  
22                   did with Dr. Ferris' report, things of that  
23                   nature?

24          A           Well, keep in mind this is May of 1990, and the  
09:52 25                   most often-asked questions was "have you completed



1 your investigation, when will you finish, and when  
2 will the minister make a decision?" At that time  
3 we were still trying to track down certain aspects  
4 of the Larry Fisher investigation and, if by  
09:52 5 saying in response to a question that "I can't  
6 tell you when we'll be finished but we're working  
7 on it as quickly as we can and we have a couple of  
8 leads to investigate", if that's dodging the  
9 question, then so be it.

09:53 10 Q Okay. If we could then go to 025918. Now this  
11 doesn't have a date on it, I believe it to be  
12 around May, May 12th, 1990, and this is a  
13 *StarPhoenix* report by a Garnet Fraser and it  
14 quotes John Harvard:

09:53 15 "... says Justice Department laziness is  
16 keeping David Milgaard in prison.

17 'They've been quite lethargic  
18 in pursuing this,' Liberal John Harvard  
19 said Saturday from his Winnipeg home.

09:53 20 'They simply have not been serious about  
21 it.'

22 And do you take issue with that, Mr. Harvard's  
23 comment, and Mr. Fraser's reporting of that?

24 A I disagree with it.

09:53 25 Q Again, can you tell us, would this be -- and I



1 have not gone through and I won't go through all  
2 the articles, Mr. Williams -- but would this be  
3 indicative of other articles that were in the  
4 media on a fairly regular basis being critical of  
09:54 5 your department and you specifically?

6 A Yes.

7 Q And in fact I think, although this one doesn't  
8 name you, many of them do, and they certainly  
9 start to name you, personally, as the person  
09:54 10 responsible for the delay and responsible for  
11 keeping David Milgaard in jail; is that correct?

12 A That was the accusation, yes.

13 Q And can you tell us what effect, if any, that had  
14 on the work that you were doing and how do you  
09:54 15 deal with those types of accusations?

16 A Well, sometimes you put on your elephant suit and  
17 you continue. The reality is when there is an  
18 accusation, it's not about me, it's about the  
19 Justice Department. And consequently that  
09:55 20 generates interest from the minister's office on  
21 down, because it's -- this isn't about Williams,  
22 this is about an entire federal department, and  
23 one of the key departments, performing a very  
24 important function. Consequently, senior  
09:55 25 management certainly did take notice, and were in



1 touch with me and my supervisors to satisfy  
2 themselves that all that could be done was being  
3 done as expeditiously as possible, and that we  
4 were responsible and responsive in executing or in  
09:55 5 completing our mandate.

6 It is one thing to be quick,  
7 it's another thing to hurry and to miss steps that  
8 are really critical to making a well-reasoned and  
9 knowledgeable decision. This is a very, very  
09:56 10 important decision that the minister makes, it  
11 affects the liberty of a subject and it has a  
12 bearing on the integrity of the administration of  
13 justice, it's not taken lightly.

14 Similarly, charges like this,  
09:56 15 this isn't about Williams, this is about the  
16 Justice Department, which is much more than one  
17 individual, that certainly catches the attention  
18 of all.

19 Q And when you say "all" you are talking about the  
09:56 20 public and the politicians; is that fair?

21 A I'm talking about the public, I'm talking about  
22 the minister, I'm talking about the senior  
23 departmental officials from the deputy on down.

24 Q Okay. Now although this one doesn't name you --  
09:56 25 and I appreciate your comment that it, you are



1 saying that this isn't just about you, it's about  
2 the department -- I think you will agree that,  
3 certainly, other articles specifically identified  
4 you as being the problem --

09:57 5 A Yes.

6 Q -- as opposed to the department? And so, again,  
7 is your evidence, "well, that may be so, but I'm  
8 simply doing my job and therefore, to the extent  
9 they target me, they target my employer"?

09:57 10 A Every counsel employed by the department is a  
11 reflection on the department.

12 Q Okay. Did you perceive -- and I don't want to  
13 focus simply on this article -- but articles like  
14 this; did you perceive them as an attempt by David  
09:57 15 Milgaard's counsel or David Milgaard, or people on  
16 his behalf, to influence you to give a more  
17 favourable review of his application?

18 A My assessment was that these articles weren't  
19 geared so much towards me but they were more  
09:58 20 geared towards the minister and the  
21 decision-maker. My role was relatively minor in  
22 the overall scheme of things, but to the extent  
23 that pressure could be brought to bear on the  
24 decision-maker, whether it's by virtue of  
09:58 25 questions in the House of Commons or in committee,



1 by virtue of a growing public swell of support,  
2 those types of influences would be lost on me but  
3 may not be lost on someone with a high political  
4 profile.

09:58 5 Q And --

6 A And this is what this is about, politics.

7 Q And so is it fair to say that was your observation  
8 at the time, that these were -- and, I mean, I  
9 think that's Mr. Asper's evidence before this  
09:58 10 Commission -- attempts to influence, politically,  
11 the minister and to get the public to put pressure  
12 on the minister to give a favourable decision, and  
13 I think you've termed that to be 'political  
14 pressure'; is that fair?

09:59 15 A Yes.

16 Q And, again, did that have any -- let's just talk  
17 about that; did that have any effect on what you  
18 were doing?

19 A Well it certainly highlighted, for me, the need to  
09:59 20 be -- just to move as quickly as I could. To the  
21 extent that we could do the tasks that we had  
22 identified to complete that aspect of the  
23 investigation, that would certainly speed up the  
24 minister's ability to respond.

09:59 25 Q Let's just talk about you and your work. You said



1           that you were a small part in this and it  
2           didn't -- it was aimed at higher-ups, the  
3           political decision-makers. I think some of the  
4           articles, though -- and let me ask you this.  
09:59 5           Certainly, through this time period, would you  
6           agree that, in the public domain, you were --  
7           accusations were made against you and you were  
8           ridiculed about what you were doing or not doing  
9           on a number of occasions in the media; is that  
10:00 10          fair?

11          A           Yes.

12          Q           And did you have the perception or the feeling  
13           that either this, that this may be done to say  
14           "lookit, if the decision, if you think this is bad  
10:00 15           just wait to see what happens if the decision is  
16           unfavourable", in other words the pressure on you  
17           in the media to say -- and I think, I can't  
18           remember which witness said it -- but the easiest  
19           way to avoid all this was to give a favourable  
10:00 20           ruling, in other words that was the easy decision,  
21           grant the application and there is no more media  
22           pressure?

23          A           Correct.

24          Q           And so I'm asking you, Mr. Williams, whether that,  
10:00 25           whether you perceived that to be in play there





1 with you, that part of the strategy, in addition  
2 to affecting the minister, was to put pressure on  
3 you in the public realm to say "here's what you're  
4 dealing with". And you haven't decided yet or you  
10:01 5 haven't done -- I mean this is still mid-stream,  
6 and I'm trying to get from you whether you  
7 perceived this to be either a direct or an  
8 indirect attempt to try and influence you in the  
9 work you were doing for your client, the minister?

10:01 10 A I think that's one way of looking at it. I was  
11 certainly aware of that influence, but I didn't, I  
12 didn't let it guide my activities.

13 Q But is it fair to say that it would have been in  
14 your, something in your thinking at the time when  
10:01 15 you read a story like this, or other stories, that  
16 "okay, well why" -- did you ever ask Mr. Asper  
17 "why are you" -- or Mr. Wolch "why are you doing  
18 this to me"?

19 A No.

10:01 20 Q But, in your mind, I take it did you come to a  
21 conclusion in your own mind saying, okay, well it  
22 must be to try and influence me or to influence  
23 the minister or to -- it must be somehow related  
24 to them trying to get a positive response to their  
10:02 25 application?



1 A This was part of their strategy to get the results  
2 they thought was appropriate. I didn't agree with  
3 it.

4 Q Why didn't you agree with it?

10:02 5 A Well I'd been, by then I'd been a lawyer for a few  
6 years, there are certain courtesies that lawyers  
7 extend to each other, that within the confines of  
8 a courtroom there are certain positions lawyers  
9 take on behalf of their client but it's never  
10:02 10 personal. This was personal, this was public,  
11 this was personal and public in circumstances in  
12 which I had been dealing with these counsel, they  
13 had been dealing with our investigators and knew  
14 the level and the extent of our activity,  
10:03 15 notwithstanding that knowledge they did nothing to  
16 correct the perception that we were lethargic,  
17 lazy.

18 Q Did you --

19 A One could say that someone who is wrongly accused  
10:03 20 suffers, and to the extent that the department was  
21 wrongly accused, it suffered, and that was  
22 perpetuated over an extended period of time. It  
23 could have been or should have been corrected by  
24 those in a position to do so, who could speak  
10:03 25 publicly, but they didn't.



1 Q Okay. You say they did nothing to correct; did  
2 you have concerns that they may have actually --  
3 and I will show you some articles where Mr. Asper  
4 states, states publicly things of this nature  
10:04 5 about you and the department -- and, again, you  
6 expressed a concern that they didn't take steps to  
7 correct what was in the media, I think the  
8 evidence at least from Mr. Asper, in some  
9 respects, is that he put it in the media, in other  
10:04 10 words it was his statements?

11 A Well, it's for him to --

12 Q No, and I'm just asking you, you -- I think you  
13 said you had hoped that they would go out and  
14 correct what was in -- the perception in the  
10:04 15 media?

16 A Yes. Obviously, I was being terribly naive.

17 Q If we could go to this comment. So this is,  
18 again, right around the Markesteyn report, I think  
19 May 12th of 1990. And according to the records it  
10:04 20 appears, Mr. Williams, if this assists you, I  
21 don't think you have had contact yet with Dr.  
22 Markesteyn, I think that's coming shortly, and  
23 I've got a letter that shows you had a discussion  
24 with him on May 14th, 1990 sending him the charge  
10:05 25 to the jury, so I will be getting to that, just to



1 put this in a time frame. Here it says:

2 "Asper says a report by a  
3 Vancouver pathologist concluded semen  
4 found inside Miller's body could not  
10:05 5 have been Milgaard's. Ironically,  
6 Asper's own persistence is the main  
7 reason cited by the department for the  
8 delays, he says."

9 Now presumably the Vancouver pathologist is Dr.  
10:05 10 Ferris. Can you comment on this, this report,  
11 and what, if anything, you could or would do with  
12 it?

13 A I'd file it. Because, by then, I knew that that  
14 was simply putting a spin on an aspect of the  
10:06 15 application that wasn't merited by the facts.

16 Q Now I mean the semen, I think this is the first,  
17 at least that I can find, that talks about -- I  
18 think the other ones talk about semen found in the  
19 snow, this one talks about semen found inside the  
10:06 20 body?

21 A There wasn't any that had been kept. As you may  
22 recall, that during the autopsy Dr. Emson had  
23 removed certain bodily fluids, some of which were  
24 semen, but that wasn't kept, it was discarded. So  
10:06 25 I don't know where that information came from, it



1 was just --

2 Q Would it be fair to say that, if what is  
3 attributed to Mr. Asper here was in fact true,  
4 that the:

10:06 5 "... semen found inside Gail Miller's  
6 body could not have been Milgaard's.",  
7 that that would provide a basis for remedy?

8 A Yes.

9 Q And presumably, if it was presented as evidence at  
10:06 10 his trial back in 1970, it likely would have  
11 resulted in an acquittal?

12 A It would have, certainly, it would have informed  
13 the result. I'm not aware if -- I mean there are  
14 a number of items that are published as fact which  
10:07 15 knowledgeable folks know that isn't true.

16 Q And so again on that, I think it's fair to say  
17 that the public reading this might conclude that  
18 "why have you not done something, Mr. Williams,  
19 you have had this report from Dr. Ferris who's  
10:07 20 world-renowned, he did the *Dingo* case in" --

21 A Australia.

22 Q -- "Australia, you have had the report that proves  
23 his innocence, why haven't you done something with  
24 it, David Milgaard is still in jail"?

10:07 25 A That was a proposition that was put to me on a



1 number of occasions.

2 Q And how did you respond to it?

3 A At the time?

4 Q Yeah?

10:07 5 A I simply said that "there are certain assumptions  
6 that you have made that aren't correct, as I see  
7 it. You may wish to take a look at the trial  
8 transcript, you may wish to take a second look at  
9 the Markesteyn Report, we're still conducting our  
10:08 10 investigation, and once we've done that we will  
11 complete our report and the minister will make a  
12 decision. That's the process, it would be  
13 inappropriate for me to comment publicly about it  
14 at this time."

10:08 15 Q And if we go down here, Mr. Asper says:

16 "I keep getting confronted  
17 with the Justice attitude, that we can't  
18 evaluate the case so long as new  
19 evidence is coming in," Asper said."

10:08 20 And we've talked about that before. Would you  
21 have advised Mr. Asper about -- similar to what  
22 you have told us, that until all the grounds were  
23 pursued the minister couldn't make a decision,  
24 because if she did with only half of the grounds  
10:08 25 pursued, it would make her decision --



1 A It would just be a springboard to a second  
2 application to finish off what you didn't do on  
3 the first one. That's -- that's the practical  
4 reality of it.

10:09 5 Q Did you ever say to Mr. Asper "if you would have  
6 included it all in the initial application we  
7 would have investigated it"?

8 A I didn't say that to him because when he presented  
9 the, for example when he presented the Larry  
10:09 10 Fisher material, this was -- this was new, this  
11 was unsolicited stuff from an anonymous  
12 correspondent or a correspondent who wished to  
13 remain anonymous. This was material coming into  
14 their office, that was the way it was presented,  
10:09 15 so in those circumstances you couldn't challenge  
16 him on something that you perceived -- or he  
17 didn't have at the time that he made the initial  
18 application.

19 Q And then, just go over here, the quote from John  
10:10 20 Harvard says:

21 "... pride, not thoroughness,  
22 is the more likely cause of the wait."

23 And he's talking about the delay by your  
24 department. Quote:

10:10 25 "'I think there's a reluctance in any



1 institution to admit a mistake.

2 People's reputations are at stake. If  
3 they did submit it to the courts, it  
4 would be a tacit admission of failure by  
10:10 5 some fairly high-profile people.'"

6 And then it goes on to talk about:

7 "... Joe Penkala was a lieutenant ...  
8 who discovered semen on the snow beside  
9 the body."

10:10 10 I just want to talk about this, about the:

11 "... reluctance in any institution to  
12 admit a mistake."

13 Did you see any concern, Mr. Williams, in your  
14 institution as far as admitting a mistake with  
10:10 15 respect to the original trial?

16 A No. We didn't prosecute. But keep in mind that  
17 those involved in this activity all had a  
18 prosecution background, and in my role as  
19 prosecutor I have withdrawn countless charges  
10:11 20 where the evidence did not support the charges  
21 laid by the police, that is part of our  
22 responsibility and it's that type of mindset that  
23 informs our conduct, because we appreciate the  
24 role we play in the criminal justice system.

10:11 25 This isn't about mistakes, this





1 is about evidence, either reaching a threshold  
2 that permits you to make a decision --

3 Q And I guess what --

4 A -- in favour let's say of whether it's a  
10:11 5 prosecution, or in favour of an applicant, or not.  
6 It has nothing to do with mistakes, this is -- we  
7 have no personal stake in the outcome.

8 Q I guess that's what I was getting at.

9 Mr. Harvard, it seems to be saying, is that the  
10:12 10 reason that Federal Justice is delaying is because  
11 if you grant a remedy, or the minister does, you  
12 are admitting a -- that you made a mistake, or a  
13 mistake, and I don't know if that's your mistake  
14 or someone else's?

10:12 15 A I don't know what he was referring to. It may be  
16 that, if there were a mistake, it was a mistake in  
17 taking so long to grant the remedy. I just don't  
18 know.

19 Q Okay. If we can then go to 057611. And this is  
10:12 20 the next day, an article by, again, Garnet Fraser,  
21 May 14th, 1990. And, actually, just -- we should  
22 just go back.

23 And Mrs. Milgaard is commenting  
24 on the Fisher information and then she -- yeah, if  
10:13 25 we could, yeah, thank you, call that out -- and



1           then she:

2                   "... came to Saskatoon in March to speak  
3                   to the people named by the source. She  
4                   says the person named by her contact is  
10:13 5                   the same man the RCMP are investigating  
6                   and the contact said the police, 'have  
7                   done nothing with the information.' "

8           And I'm not sure, I think that may be referring  
9           to Sidney Wilson. And if we could just follow  
10:13 10           those three columns, and then about David Asper  
11           asking Joyce Milgaard:

12                   "... to keep mum until they could get a  
13                   confession ... They went along but, when  
14                   they told Winnipeg MP John Harvard of  
10:13 15                   their plight, he told the house justice  
16                   committee about the investigation.  
17                   Joyce Milgaard wishes he hadn't.

18                           'We had asked him to ask Kim  
19                   Campbell ... about the forensic report,'  
10:14 20                   she said. 'We were shocked. I'm very  
21                   grateful he's brought all this attention  
22                   but I wish he had done it a different  
23                   way.' "

24           Just on this question of asking whether Kim  
10:14 25           Campbell had the Ferris Report, would you have



1 told David Asper or Mr. Wolch that on previous  
2 occasions, that the minister would not have had  
3 the report until your departmental report goes  
4 through the channels?

10:14 5 A I believe we would have given them information  
6 from which they would make that deduction. I have  
7 no specific recall of telling him that we sent the  
8 Ferris Report on to the minister or not.

9 Q And I guess my question is this; did the Milgaards  
10:14 10 need to get John Harvard to ask the minister in  
11 committee, or through some political channels,  
12 "have you had the Ferris Report on your desk", or  
13 is that something you would have informed Mr.  
14 Milgaard's counsel of on other occasions?

10:15 15 A Had they asked me I would have told them "no, the  
16 minister doesn't have the Ferris Report".

17 Q Okay. So you are telling you don't have a  
18 recollection, but if Mr. Asper phoned you and said  
19 "lookit, does Kim Campbell have the Ferris  
10:15 20 Report", you would have said "no she doesn't"?

21 A That's correct.

22 Q And then here she says:

23 "The Justice Department

24 didn't even want her to be involved, she

10:15 25 says. 'When I came to Saskatoon, my



1 lawyer said the department was furious  
2 and was saying I would ruin the  
3 investigation. What investigation?  
4 They've had this information since  
10:15 5 1980!'"

6 And I think what she's talking about in 1980 is  
7 the information the city police had in -- when  
8 Linda Fisher went in, I'm presuming that in  
9 August of 1990; would you agree with that?

10:15 10 A Yes.

11 Q It seems logical. So now here this, I think the  
12 article talks both about the Saskatoon City  
13 Police, the RCMP and the Justice Department and I  
14 think you've told us that you would agree that  
10:16 15 yes, you did not want her to be involved in the  
16 investigation of Larry Fisher, that being Joyce  
17 Milgaard?

18 A Well, certainly she was presented to us as  
19 potentially the ace in the hole for getting Larry  
10:16 20 Fisher to confess. I certainly didn't want that  
21 level of involvement by Mrs. Milgaard and it was  
22 in that context I said no to her participation.

23 Q And you had talked earlier about the concerns you  
24 had with Warden Sullivan, and was this the type of  
10:16 25 information in the media you were concerned with



1 at the time that may come back to say I was  
2 offered her services and I turned them down and  
3 it's going to come back and -- I can't remember  
4 your words, but --

10:16 5 A Yes.

6 Q Come back to haunt you?

7 A Well, I believe I said to the warden just make a  
8 note of it in the event that it's required in the  
9 future.

10:16 10 Q And so here I think you are agreeing that yes, you  
11 did say to both her lawyer, or to her lawyer, Mrs.  
12 Milgaard's lawyer, that you did not want her  
13 involved in the investigation and she says that  
14 you were saying that you had ruined the  
10:17 15 investigation. Now, I think maybe you've used  
16 different words, but I think it's fair to say you  
17 were concerned that her involvement may prejudice  
18 the investigation?

19 A Prejudice or jeopardize, yes.

10:17 20 Q And then she says:

21 "What investigation? They've had this  
22 information since 1980!"

23 And in fairness, this is the reporter putting  
24 that quote in with the Justice Department, but --

10:17 25 A The perception remains, and the perception is



1 that, you know, for 10 years you've had this  
2 information and you've done nothing with it. The  
3 reality is we were alerted to the Fisher  
4 information on February 28th, 1990. The quote in  
10:18 5 the context gives the impression that the  
6 department's been sitting on the information for  
7 over 10 years, that's not correct, but you can't  
8 disagree with the suggestion that police  
9 authorities have had this information for 10 years  
10:18 10 because they did get it in 1980, so it's partly  
11 true, but it's not completely true.

12 Q Okay. And then the right-hand side it says:

13 "Joyce Milgaard is co-operating with the  
14 department but she's angry she and Asper  
10:18 15 seem to be doing all the investigating,  
16 while Campbell hasn't yet looked at the  
17 case."

18 And again --

19 A Well, it's a neat juxtaposition. It's true  
10:18 20 Campbell didn't look at the case, but her  
21 officials were looking at the case.

22 Q And is it fair to say that the investigation to  
23 identify a ground, I think you've told us, is  
24 their responsibility?

10:19 25 A Yes.



1 Q And once the ground is raised, it's your  
2 responsibility to investigate it for your client?

3 A Yes, but keep in mind the context in which those  
4 words appear. It signals that Mrs. Milgaard is  
10:19 5 co-operating and that she and her counsel are  
6 doing the investigating. By contrast, Minister  
7 Campbell is doing nothing. Because Minister  
8 Campbell hasn't looked at the case, it sets up  
9 that juxtaposition. You know the reality was at  
10:19 10 the time, as of February 28th, Sergeant Pearson  
11 was on the case and a number of steps had been  
12 taken and those steps had been communicated to Mr.  
13 Asper. Whether he communicated those further to  
14 his client I don't know, you'll have to ask him,  
10:20 15 but the conclusion that's drawn is a misleading  
16 one given the facts as we understood them.

17 Q And again, would this be the type of information  
18 in the media then that caused you the concerns you  
19 discussed about -- you discussed earlier?

10:20 20 A Yes.

21 Q Go to 159860, please. I want to talk a bit about  
22 the May 14th, or May 15th, 1990 encounter that  
23 Joyce Milgaard had with the Minister Kim Campbell  
24 I believe in Winnipeg. I have selected one  
10:20 25 article at random, there are many that talk about



1 this, and you are familiar with the encounter are  
2 you?

3 A Yes.

4 Q Can you tell us, and we've seen a clip of it, or  
10:20 5 evidence about it, but can you tell us what  
6 effect, if any, the encounter and the minister's  
7 reaction and the subsequent media portrayal of the  
8 incident and the minister's reaction had on your  
9 work?

10:21 10 A Indirectly the media attention that this incident  
11 provoked elevated the Milgaard application from a  
12 regional to a national story. Shortly after that  
13 it attracted the attention of the prime minister  
14 and to the extent that the prime minister's office  
10:21 15 was in communication with the Milgaard family, it  
16 brought a certain urgency to the department's  
17 efforts to get this matter completed.

18 Q And apart from that, was there anything that, as  
19 far as the investigation and the work you were  
10:22 20 doing, did it have any impact on that?

21 A Well, at the time we were going as fast as we  
22 could to get it done.

23 Q I think --

24 A There was just -- just more of the same, more  
10:22 25 briefing notes and more attempts to accelerate the





1 speed with which we could deal with the Fisher  
2 interviews.

3 Q I think what the articles disclose, and certainly  
4 Mrs. Milgaard's evidence and Mr. Asper's evidence  
10:22 5 was that it was, I think in part, staged to  
6 demonstrate that Kim Campbell had not yet received  
7 the Ferris report and that in a public setting  
8 Mrs. Milgaard was going to hand it to her to say  
9 lookit, your officials have not bothered to give  
10:22 10 it to you yet, so I'm going to give it to you  
11 directly, because once you read it you'll agree  
12 with everybody else that it proves David's  
13 innocence, and I think that's -- I'm summarizing  
14 from some of the articles on that, but I think  
10:23 15 that was the intent or that's how it was  
16 portrayed. Would you agree with that?

17 A That's certainly a strategy that's plausible in  
18 the circumstances, yes.

19 Q In other words, if Eugene Williams had given you  
10:23 20 this report 15 months ago like he should have,  
21 according to I think what was portrayed, then you  
22 could have made your decision much quicker, and  
23 I'm wondering if that was something that you -- I  
24 mean, to the extent that it affected you, did you  
10:23 25 perceive this as saying okay, Eugene Williams



1 didn't give it to you, so we'll give it to you?

2 A I guess if the question is, if that was their  
3 intention, certainly, you know, they could take  
4 that approach.

10:23 5 Q And I take it after this, is it fair to say that  
6 you did not go and give the Ferris report to the  
7 minister?

8 A True.

9 Q That it went with the departmental report?

10:24 10 A I did not then give the Ferris report to the  
11 minister.

12 Q Just go to -- there's one comment here about the  
13 Markesteyn report, and:

14 "Campbell said the department  
10:24 15 has not completed its report because  
16 Milgaard's lawyer, David Asper, brought  
17 forward new evidence as recently as  
18 March 15?"

19 And that would be the Linda Fisher statements as  
10:24 20 in the March 15 letter:

21 "But Asper said the new  
22 evidence has nothing to do with the  
23 forensic report.

24 "That excuse is utterly hollow.  
10:24 25 That report has been in the department's



1 hands since December 1988, and no one  
2 has even bothered talking to him," Asper  
3 said.

4 In light of the department's  
5 failure to follow up, Asper has called  
6 in Dr. Peter Markesteyn, Manitoba's  
7 chief medical examiner, to comment  
8 independently on Ferris's report."

9 And again, sorry to bring this up again, but it  
10 appears that Mr. Asper is thinking that -- is it  
11 fair to say that according to this quote, Mr.  
12 Asper's understanding of what you were doing and  
13 how the department worked and how the minister  
14 would deal with the application was wrong?

15 A Yes.

16 Q And are you able to tell us whether or not you  
17 would have had discussions with him to inform him  
18 about how you were handling this matter? In other  
19 words, I think he's saying, according to this,  
20 that okay, the new Fisher stuff came forward in  
21 March of 1990, but why didn't you give the Ferris  
22 report to the minister a year ago.

23 A I think his comments proceed on the basis, or on  
24 the deeply-held belief, I guess, that the Ferris  
25 report is so persuasive, so conclusive of the



1 application that by itself it merited a remedy and  
2 in the circumstances, the circumstances being that  
3 if you believe that, then the failure to act on it  
4 is reprehensible. What I don't understand is if  
10:26 5 he is so convinced of that, why was there the need  
6 to get Dr. Markesteyn to comment independently on  
7 Dr. Ferris' report, but that is the media line  
8 that's being advanced. I can see that it has and  
9 can strike a responsive cord, and certainly to the  
10:26 10 extent that we did not contact Dr. Ferris by way  
11 of a follow-up exposed us to some criticism which  
12 I have to assume and take responsibility for, but  
13 subsequently we didn't speak directly with Dr.  
14 Ferris.

10:27 15 Q Go to 333393, please, this is your May 15th, 1990  
16 letter to Dr. Markesteyn and it refers to a  
17 discussion of May 14th, 1990 and you are sending  
18 him a copy of the judge's charge to the jury.

19 "If there are any further materials that  
10:27 20 you require, please do not hesitate to  
21 ask."

22 Can you tell us how or what prompted you to  
23 contact Dr. Markesteyn directly?

24 A I believe there had been some communication  
10:28 25 between myself and probably Mr. Asper and in light



1 of the published reports that Dr. Markesteyn was  
2 doing an examination, I called him. It appeared  
3 as if, based on the news reports, that whatever  
4 review he had been conducting had or was nearing  
10:28 5 completion and so I called him and during the  
6 course of our conversation he asked for certain  
7 materials that would assist him in completing his  
8 report and I agreed to provide them.

9 Q And so did you talk -- did you talk to Mr. Asper  
10:28 10 about your intent to contact Dr. Markesteyn?

11 A I may have, but in light of the fact that Dr.  
12 Markesteyn had been publicly identified given the  
13 fact that he's the chief medical examiner and a  
14 public official, I thought it not inappropriate  
10:29 15 that I contact him directly.

16 Q And why would you not simply wait for him to get  
17 his report out and get it and then follow up, what  
18 prompted you to go immediately?

19 A I'm not certain now as we speak why I did what I  
10:29 20 did then. It just seemed to me that there has  
21 been so much talk about the Markesteyn report as  
22 being supportive, I thought it prudent to check  
23 with him directly.

24 Q There was some suggestion in some of the documents  
10:29 25 I think, and I'm trying to put my finger on them,



1 about a concern that Dr. Markesteyn might not have  
2 the complete record. Was that a concern?

3 A Certainly it's a logical reason for contacting him  
4 to see precisely what he had.

10:30 5 Q Would you have shared with Dr. Markesteyn in this  
6 call your thoughts about Dr. Ferris' report and  
7 what Patricia Alain had provided you?

8 A No.

9 Q And so what would you have discussed with him  
10:30 10 then?

11 A To get a general description of the nature of his  
12 work, how it would relate to Dr. Ferris', some  
13 indication as to the timing of the report. It had  
14 been mentioned in the press as being imminent. To  
10:30 15 the extent that Dr. Markesteyn's report would  
16 perhaps shed some light on the Ferris report,  
17 certainly I would have to take that into account  
18 in terms of the timetable for completing my work.  
19 It may require additional investigation and it  
10:30 20 would certainly require some discussion in terms  
21 of the departmental report.

22 MR. HODSON: This is probably an  
23 appropriate spot to break for the morning.

24 (Adjourned at 10:31 a.m.)

10:49 25 (Reconvened at 10:49 a.m.)



1 BY MR. HODSON:

2 Q If we could call up 333400 and go to page 403 of  
3 that, please, and this is an article May 12th,  
4 1990 in the Winnipeg *Free Press* and I think it was  
10:50 5 part of the Justice Canada collection, so -- and  
6 it's, I don't know what the right term is, an  
7 essay, an article written by David Milgaard that  
8 was published, and I take it this is something you  
9 would have been made aware of?

10:50 10 A Yes.

11 Q And there's just one comment here, we were talking  
12 about the Ferris report and the reaction to the  
13 public about its value, and this is Mr. Milgaard  
14 himself writing May 12th, 1990 and he says here:

10:50 15 "The Federal Department of Justice has  
16 our application (for review) which  
17 includes a report from Dr. James Ferris,  
18 a world-renowned forensic expert that  
19 states critical evidence used to link me  
10:51 20 to the crime in fact proves I did not do  
21 it. They have had this report since  
22 December 1988. Why am I still in  
23 prison?"

24 And so I think at this stage, and certainly I  
10:51 25 think this is Mr. Milgaard's evidence in March of



1 this year as well, a similar sentiment. Would  
2 that also sort of play into the public -- I think  
3 you talked before about how the public would view  
4 the minister and the department by getting this  
10:51 5 information in the media about the value of the  
6 Dr. Ferris report, and would you agree that in  
7 addition to what's put in there about the value  
8 of the Dr. Ferris report, here we have Mr.  
9 Milgaard who is in prison saying lookit, they've  
10:51 10 had a report that proves my innocence for 15  
11 months and they've done nothing with it. That  
12 would also generate some public sympathy and  
13 support?

14 A Yes, and perhaps some hostility against the  
10:52 15 department in the sense why have you been sitting  
16 on this for so long.

17 Q And I suppose if we equate for the moment the Dr.  
18 Ferris report, let's say it was a DNA report, and  
19 I think would you agree that certainly in some  
10:52 20 media reports and in some correspondence even from  
21 Mr. Asper, the effect given to Dr. Ferris' report  
22 is the equivalent of DNA; is that fair? In other  
23 words, that it proves that David Milgaard could  
24 not have, and I appreciate that there's a few  
10:52 25 assumptions there --





1 A Yeah.

2 Q But --

3 A Certainly the, if I use the word spin, the message  
4 that was being communicated was that this was  
10:52 5 proven science that established beyond any doubt  
6 that Mr. Milgaard was innocent.

7 Q Well, in 1997 the DNA experts said with respect to  
8 a different stain on the clothing that that could  
9 not have come from David Milgaard, it came from  
10:53 10 Larry Fisher?

11 A Correct.

12 Q And so here I guess we're talking about a  
13 different source, but assuming that the semen  
14 belonged to the perpetrator of the crime, Dr.  
10:53 15 Ferris saying based on my forensic scientific  
16 tests it could not have come from David Milgaard  
17 therefore proves his innocence, --

18 A Yes.

19 Q -- comparing that to DNA saying I've done the DNA  
10:53 20 and it doesn't come from David Milgaard, is there  
21 much difference?

22 A Certainly not in the minds of some members of the  
23 public, but the way it was presented, it was  
24 clothed with a reliability that it didn't deserve.  
10:53 25 Now, what has happened is that nowhere in any of



1           these articles is there any discussion about where  
2           or what Dr. Ferris looked at or where it came from  
3           and there's no critical, or any examination of  
4           what it is he examined to reach his conclusion,  
10:54 5           that's missing from the equation.

6                         The second thing is you had  
7           referred me to an article just before the break in  
8           which Mr. Asper was quoted as saying that certain  
9           bodily fluids removed from the victim was the  
10:54 10           source material that Dr. Ferris used to do  
11           whatever testing that resulted in this conclusion  
12           and to the extent that that basic fact is wrong  
13           but it signals a level of intimacy between the  
14           perpetrator and the victim, and in those  
10:55 15           circumstances, if you add to that the conclusion  
16           of Dr. Ferris that it could not have come from  
17           David Milgaard, that increases the public's -- it  
18           exacerbates the misleading information that was  
19           being disseminated at that time and it increases  
10:55 20           the potential hostility to which the department  
21           were sitting on what appears to be such compelling  
22           information for so long.

23           Q           Now, what Dr. Ferris told this Commission when he  
24           testified and when shown the headline, I think it  
10:55 25           was of Dan Lett's article that says proves



1 innocence, he said that's wrong, and I think what  
2 Dr. Ferris pointed to, after some questions, was  
3 in his own report, I think his initial conclusion  
4 was in the report that was given to Mr. Wolch and  
10:56 5 Mr. Asper in 1988, that the sample was  
6 contaminated and should not have been put in as  
7 evidence. He then went on to say assuming it not  
8 to be contaminated, then, much as Mr. Tallis had  
9 argued at trial, it then goes to it could not have  
10:56 10 come from Mr. Milgaard assuming he's a  
11 non-secretor.

12 A Okay.

13 Q And so what Dr. Ferris told us is that the first  
14 part of his report should have been included in  
10:56 15 the spin or the media or whatever was put out  
16 there?

17 A It never was. I don't know if the media, if the  
18 reporters who had it read it and, if they read it,  
19 whether they understood it, and I say understood  
10:56 20 in terms of the significance, is there a  
21 relationship between the two parts of Dr. Ferris'  
22 conclusion, the first one being that it was likely  
23 so contaminated that it ought not to have been  
24 introduced, but assuming uncontamination, and he  
10:57 25 vehemently disagreed with that, then it would



1 exclude.

2 Q So again, are you telling us that given what was  
3 in the media and what was being, I think you  
4 referred to an article from Mr. Asper, or what was  
10:57 5 being said about the value of Dr. Ferris' report,  
6 are you saying that, maybe not understandable, but  
7 you could certainly see how there would be some  
8 hostility towards the department for not doing  
9 something with this report by David Milgaard  
10:57 10 himself and the public?

11 A Yes.

12 Q If we can go to 056774, and so this is May 17th,  
13 just sort of we'll keep track of Mr. Fisher here,  
14 I think Sergeant Pearson has already testified  
10:58 15 about the challenges he faced in trying to get Mr.  
16 Fisher to meet, and then I think his Legal Aid  
17 lawyer Mr. Carter then went on a sabbatical or  
18 something right about the time and then you had to  
19 wait for Mr. Pick to get involved; is that right?

10:58 20 A That's correct.

21 Q And so in addition to Mr. Fisher, there was some  
22 challenges with his counsel that delayed matters a  
23 bit; is that correct?

24 A That's correct.

10:58 25 Q And so this is just an update, and it's now the



1 end of May that Mr. Fisher will agree to meet; is  
2 that correct?

3 A Yes.

4 Q If we can go to 333405, this is a May 17th, 1990  
10:58 5 memo, it's actually from Mr. MacFarlane to Mr.  
6 Corbett, and it's got to E.W., which I presume is  
7 you; is that correct?

8 A Yes.

9 Q And it's talking about:

10:59 10 "Once the report of the Chief  
11 Medical Examiner for Manitoba has been  
12 completed --"

13 Which is Dr. Markesteyn,

14 "-- we should meet briefly to discuss  
10:59 15 the next step. If Milgaard's counsel is  
16 prepared to give us a copy, that is  
17 fine. If not, we should consider how  
18 best to approach this issue.

19 In the latter situation, we may  
10:59 20 wish to write to Dr. Markesteyn and ask  
21 for a copy."

22 Was there a concern here that you wouldn't get  
23 the Markesteyn report or you wouldn't get it  
24 until after the media got it?

10:59 25 A I think the concern was that we should get it



1 quickly and that we should take steps to have it  
2 analysed or to review it and to see whether or not  
3 we needed additional assistance to better  
4 understand its terms.

10:59 5 Q And was it because of the fact that this issue --  
6 was it because of the fact of how the Ferris  
7 report was portrayed in the media and how the  
8 Markesteyn report was already being portrayed in  
9 that John Harvard had said the report, although it  
11:00 10 hadn't been done, confirms Dr. Ferris' findings?

11 A Yes, that was part of it. I think the other  
12 consideration was that, as you've noted, there was  
13 a great deal of criticism of the department in  
14 terms of its slowness in completing its work.

11:00 15 Q If we can go to 333406, this is a May 18th, 1990  
16 note of a conversation you had with Mr. Wolch  
17 where he agreed to provide a copy of the report  
18 once it was received. Yeah, so here's the  
19 comment:

11:00 20 "In that regard, Dr. Markesteyn  
21 requested a copy of the judge's charge  
22 to the jury in the Milgaard case. It  
23 was apparent that Dr. Ferris did not  
24 read the judge's charge to the jury."

11:01 25 And again, was that something that you had raised



1 with Dr. Markesteyn then, to make sure that he  
2 had it?

3 A Yes.

4 Q If we can go to 333409, the next page, this is a  
11:01 5 May 21, 1990 letter to Mr. Wolch just confirming  
6 that you were going to get a copy of the report,  
7 and I'm just wondering if you could shed some  
8 light on this. Was it -- why would you not let  
9 Mr. Asper and Mr. Wolch get the report and they  
11:01 10 may decide not to use it? I'm just trying to  
11 understand, was it because it had been put in the  
12 public domain that --

13 A It was already out there and it -- what was  
14 already out there. The fact that Dr. Markesteyn  
11:02 15 was engaged, had done certain steps and apparently  
16 at least, based on the media reports of John  
17 Harvard, his conclusions confirmed that of Dr.  
18 Ferris. That was in the public domain. One of  
19 our concerns would be that the information is in  
11:02 20 the public domain, but the material itself, that  
21 the report itself may be delayed in being sent to  
22 us or we may not get an opportunity to examine it,  
23 so simply we're just writing to confirm.

24 Q Would it be correct to say that based on your  
11:02 25 information from Patricia Alain and your view of



1 Dr. Ferris' report, that when it's reported in the  
2 public domain that Dr. Markesteyn confirms Dr.  
3 Ferris' finding, that you would have said "hang on  
4 a minute here, I have my doubts, if he reaches the  
5 same conclusion, then he's probably got incomplete  
6 information," or something of that nature?

7 A Well, at that time I was very curious to see what  
8 it is or what his findings were.

9 Q And did you know of Dr. Markesteyn, had you dealt  
10 with him previously?

11 A I hadn't dealt with him previously, but once he  
12 had been identified, I made certain inquiries. I  
13 found out that he was a well-respected forensic  
14 pathologist.

15 Q So is your concern here, I'm not quite sure if  
16 I've got this right, that the value of the  
17 Markesteyn review and report was already being  
18 relied upon by the Milgaards in that it was in the  
19 public domain, is that right, and yet you didn't  
20 have the report and you didn't know what the  
21 report said and you were concerned about making  
22 sure you get it; is that correct?

23 A Yes. The report's conclusions or the conclusion  
24 that whatever his findings were supported the  
25 recommendations or the findings of Dr. Ferris,





1 that was in the public domain despite the fact  
2 that the report had not been completed, so for all  
3 intents and purposes, the value of the Markesteyn  
4 report had been achieved because here we have  
11:04 5 another scientist who has examined this material  
6 and come to the same conclusion as Dr. Ferris  
7 despite the fact that, you know, perhaps the  
8 paperwork hadn't yet been completed, in that he  
9 hadn't finished his report, so insofar as the  
11:04 10 public is concerned, here's yet another pillar of  
11 support on the scientific front for David  
12 Milgaard, but we had yet to receive it.

13 Q Okay. If we can go to 056775 of the Pearson  
14 chronology, please. This is May 24th, 1990, and  
11:05 15 we'll switch gears back to Linda Fisher for a  
16 moment. So this is -- just to put this in  
17 perspective, May 10th is when John Harvard made  
18 public the fact that the RCMP were investigating a  
19 suspect and June 21 or 22, I think it was June 22,  
11:05 20 1990 is when the CBC published his name, and so  
21 this is in the intervening period, and it is May  
22 24th, this is still, you are waiting, or Mr.  
23 Pearson is waiting to hear back from Larry  
24 Fisher's lawyer about a meeting, and this is a  
11:05 25 note of, from Sergeant Pearson, but I think this



1 is also included in a later report to you, but he  
2 gets a telephone call, he says:

3 "Telephone call was placed to  
4 Linda Fisher at her residence in Cando,  
11:06 5 she had called me earlier on in the day.  
6 She was concerned because Joyce Milgaard  
7 and a reporter with the Winnipeg Free  
8 Press made a surprise visit to her at  
9 her school class in North Battleford.  
11:06 10 Linda indicated that Mrs. Milgaard  
11 wanted to obtain a photograph of Larry  
12 Fisher, however this was not given.  
13 Linda Fisher is concerned about this  
14 type of contact by Mrs. Milgaard.  
11:06 15 Mrs. Milgaard will be staying in  
16 Saskatoon for the next couple of days,  
17 however it is uncertain if she will be  
18 contacting myself."

19 And let me just pause there. Would you have  
11:06 20 been -- do you recall being made aware of that,  
21 that the media had, I mean it appears here the  
22 media now were visiting Linda Fisher with Joyce  
23 Milgaard?

24 A I think, shortly after that event, I was made  
11:07 25 aware of this.



1 Q And, again, any additional concerns than what you  
2 have already mentioned about media contact with  
3 Linda Fisher and public disclosure of her and  
4 Larry Fisher?

11:07 5 A Well at -- on May 24th Larry's name had not been  
6 in print, but certainly we were concerned that it  
7 would simply be a matter of time, I mean here's --  
8 here's the, here's the reporter not merely showing  
9 up, but requesting a photo. Well, it's one thing  
11:07 10 to print a name, it's another thing to print a  
11 name with a photo on top, because that, that's the  
12 clearest form of identification there is.

13 Q And then, again, it looks as though, as well in  
14 this conversation between Mr. Pearson and Linda  
11:07 15 Fisher after the visit from Joyce Milgaard, it  
16 says:

17 "During our telephone

18 discussion, Linda also related to me  
19 that she now recalls losing a second  
11:08 20 knife from her residence. She is not  
21 sure exactly when this went missing, but  
22 it would have been around the time of  
23 the Miller murder, but she is not nearly  
24 as specific about the time as she was on  
11:08 25 the description of the previous knife



1 she mentions. She did indicate this was  
2 a bone handled hunting type knife and it  
3 is one which she has the mate of yet.  
4 She will turn it over to me ..."

11:08 5 And then he goes on, Pearson, to talk about a  
6 second knife found near -- the bone-handled  
7 hunting knife. Now you would have been familiar  
8 about -- and I had showed you earlier the March  
9 15th, 1990 story where Joyce Milgaard and David  
11:08 10 Asper had said that a second knife went missing,  
11 a bone-handled hunting knife that may have been  
12 the murder weapon, and it had gone missing;  
13 right?

14 A Yes, yes.

11:08 15 Q And here, this is May 24th, it appears that Linda  
16 Fisher is now saying that she -- let me back up.  
17 I think, in your interview with her, she described  
18 the missing knife and it was different than the  
19 murder weapon, the maroon-handled paring knife?

11:09 20 A Yes.

21 Q And here we are May 24th, she is now saying that  
22 she remembers losing a second knife around the  
23 time of the Miller murder, and it happens to match  
24 the description of the other knife, the  
11:09 25 bone-handled hunting knife that has now gone



1 missing. Do you remember being made aware of this  
2 information from Linda Fisher through --

3 A Well, I -- I was made aware of the fact that she  
4 now recalled missing a second knife, a  
11:09 5 bone-handled knife, but at that time I was under  
6 no -- I didn't believe that there was any missing  
7 bone-handled knife. I'm aware that a knife of  
8 that description was later recovered near the  
9 scene of Miss Miller's body, but I'm not certain  
11:10 10 I'm understanding you when you say --

11 Q Okay. Maybe I --

12 A -- a missing bone-handled knife?

13 Q Yeah, so let me back up. In March of 1990 Mr.  
14 Asper and Mrs. Milgaard indicated, March 15th of  
11:10 15 1990, --

16 A Yes.

17 Q -- that they had been searching records and that a  
18 second knife was found in the vicinity of the  
19 murder, a bone-handled hunting knife?

11:10 20 A Yes.

21 Q And they, being Mrs. Milgaard and Mr. Asper, said  
22 that it went missing during the trial. We've  
23 heard plenty of evidence before this Commission of  
24 Inquiry that says otherwise from the prosecutor  
11:10 25 and defence counsel and police officers, that it



1 was found, it was found not to be related to the  
2 murder, wasn't put in as evidence at trial because  
3 Mr. Caldwell didn't think it was part of his case,  
4 and Mr. Tallis certainly didn't want to put the  
11:10 5 knife in as evidence, and so it was returned to  
6 the police.

7 A Yes.

8 Q And so that, that's the evidence, but what I am  
9 trying to get at here, May 24th it appears that  
11:11 10 after Joyce Milgaard and Dan Lett visit Linda  
11 Fisher, Linda Fisher then calls Sergeant Pearson  
12 and says "I now remember losing a second knife  
13 around the time of the murder and it's a  
14 bone-handled hunting knife", and I'm wondering  
11:11 15 what, if anything, you did with that information?

16 If --

17 A I would have received it. To the extent that the  
18 information that we had at that time didn't  
19 connect that knife with the killing I just put it  
11:11 20 aside.

21 Q I think, from the Milgaards' perspective, that  
22 they had been -- and for many years pursued that  
23 this bone-handled hunting knife may have also been  
24 used in the murder, and I guess maybe I'm not  
11:11 25 asking the question well. Did -- were you



1 suspicious of Linda Fisher's information here on  
2 May 24th that, after having examined her and after  
3 having her go through and confirm that her missing  
4 paring knife did not match the maroon-handled  
11:12 5 paring knife, that she is now saying "okay, but I  
6 lost another knife around that time, and it's a  
7 bone-handled hunting knife"?

8 A The timing of her recollection was a bit curious  
9 in that it followed, by not too many days, a visit  
11:12 10 by Mrs. Milgaard, but I didn't have any -- any  
11 suspicions. I mean, people lose cutlery and  
12 knives and --

13 Q And I take it, then, that you did not -- and I  
14 think Sergeant Pearson, he ended up getting the  
11:12 15 matching knife to this, and I think it was a steak  
16 knife --

17 A Yes.

18 Q -- as opposed to a hunting knife. But I take it  
19 you didn't get this information and say "I better  
11:13 20 go back to Linda Fisher, it now looks like another  
21 knife may be the murder weapon that went missing",  
22 or did you leave that to Sergeant Pearson?

23 A Oh, I left it to Sergeant Pearson, he was gonna  
24 run it down and, if there was something further,  
11:13 25 then we would go with it.



1 Q And if we can go to, actually, 056777. I think  
2 here's the note at the top, May 29th, where  
3 Pearson advises you that Fisher's lawyer -- yeah  
4 -- doesn't want to talk until the end of the  
5 month.

11:13

6 "Also advised Mr. Williams of the  
7 look-alike knife that Linda Fisher is  
8 now claiming that she lost sometime  
9 during the time she was with Larry  
10 Fisher. Williams advised that the  
11 murder weapon and other knives have been  
12 accounted for. I will still arrange to  
13 pick up this knife."

11:13

14 So it appears, here, that you were satisfied that  
15 the knives had been accounted for and that if she  
16 lost another steak knife or whatever, hunting  
17 knife, that it was not of concern to you?

11:14

18 A That's correct. But, you know, that didn't  
19 prevent him from following it up, and he did.

20 Q 002510. This is a May 29th, 1990 memo to file of  
21 a call you had with Dr. Markesteyn. You spoke  
22 with him on May 29th:

11:14

23 "... to request a copy of his completed  
24 report. Dr. Markesteyn indicated that  
25 he was currently working on the report

11:14





1 and expected to have it completed by  
2 June 1 ... Dr. Markesteyn indicated that  
3 a number of individuals and  
4 organizations had expressed an interest  
11:15 5 in obtaining a copy of his report."

6 And I think that would be the media; is that  
7 correct?

8 A Yes.

9 Q "He had no objections to  
11:15 10 providing me with a fax copy of it. He  
11 also agreed to address the question -  
12 whether the scientific evidence  
13 exonerated David Milgaard."

14 Let me just pause there. Did you ask him to  
11:15 15 address that question?

16 A I believe I had.

17 Q And why?

18 A That had been the spin or the presentation that  
19 was the subject of the Ferris Report, and  
11:15 20 certainly I wanted to find out if he shared that  
21 view, and, if so, on what basis.

22 Q And Dr. Markesteyn had no difficulty addressing  
23 that?

24 A No, he didn't.

11:15 25 Q And then:



1 "Dr. Markesteyn also had  
2 access to the psychiatric file of David  
3 Milgaard. Further he indicated that a  
4 professional source, (non-medical) had  
11:15 5 advised him that Albert Cadrain had been  
6 admitted to a psychiatric facility after  
7 the trial of David Milgaard."

8 And, again, do you recall how that came about?

9 A We were having a conversation and he imparted that  
11:16 10 bit of information to me. It, in a sense, it was  
11 a bit of a heads-up that there might still be more  
12 --

13 Q And so --

14 A -- to come.

11:16 15 Q And so more, more information about others?

16 A Yes.

17 Q And so 'professional source (non-medical)', is  
18 that Mr. Asper, does he fit that category?

19 A Dr. Markesteyn didn't say that. That's how I  
11:16 20 recorded his words. My take on it was probably a  
21 lawyer.

22 Q Okay. And so would this be the first information  
23 you became aware of that Albert Cadrain had been  
24 admitted to a psychiatric facility after the trial  
11:16 25 of David Milgaard?



1 A I'm not sure if it was the first, we may have  
2 heard about it through other family members, but  
3 it was certainly timely.

4 The fact of the matter is you've  
11:17 5 got Dr. Markesteyn in Winnipeg looking at the  
6 forensic information and, yet, the chain of gossip  
7 or the information highway is such that he is  
8 aware of some of the medical treatments of one of  
9 the key trial witnesses in this case. My take on  
11:17 10 it was that that information could only have come  
11 from someone who was readily familiar with the  
12 case, and when I talked about a non -- a  
13 'professional source (non-medical)', it might have  
14 been, it might have been a journalist as well as a  
11:18 15 lawyer.

16 Q Okay.

17 A So --

18 Q We know on May 26th, 1990, Paul Henderson  
19 interviewed Dennis Cadrain in B.C., and I think  
11:18 20 that's where this information about Albert first  
21 came about.

22 A Yeah.

23 Q So this is a few days after, so -- okay. And when  
24 you say that it was a heads-up did you then, are  
11:18 25 you then saying that you believed this would



1           become another ground to be advanced, then?

2           A           I was alert to the fact that we may get additional  
3           materials in support of the application, yes.

4           Q           And then the last paragraph says you:

11:18 5                       "Spoke with Murray Brown, Director of  
6                       Prosecutions Province of Saskatchewan  
7                       ...",

8           and advised him that the:

9                       "... report would be forthcoming shortly  
10                      ..."

11           Why would you be speaking to Murray Brown at this  
12           time?

13           A           I'm not certain why. He had called to find out  
14           what's happening with the application, you know,  
11:19 15           in light of the widely-publicized reports about  
16           Dr. Markesteyn's involvement. This is, you  
17           know -- it -- I let him know that the report would  
18           be coming shortly and I would give him a copy.

19           Q           So 333433, please. This is a May 31, 1990 file  
11:19 20           note of a discussion with Dr. Markesteyn, and I  
21           think the -- it indicated that his report was done  
22           on June 1. I think it's actually dated June the  
23           4th if I'm not mistaken, June the 4th, 1990 is the  
24           date of his report, and so this is May 31. He  
11:20 25           says he:



1                    "... called to advise me that his report  
2                    would be completed today."

3                    It appears that he phoned you; is that right?

4            A            Yes.

11:20 5                    "He also indicated that he had spoken  
6                    with David Asper concerning the  
7                    distribution of the report. Mr. Asper  
8                    requested Dr. Markesteyn to provide his  
9                    report only to Asper, who would then  
11:20 10                    distribute the report to those  
11                    requesting it."

12                    Did that cause you concern?

13            A            No, not unduly.

14            Q            And I take it you would have just contacted Mr.  
11:20 15                    Asper to get the report?

16            A            Yes.

17            Q            Then:

18                    "I asked Dr. Markesteyn  
19                    whether the forensic evidence exculpated  
11:20 20                    David Milgaard."

21                    And I think that's the question you had earlier  
22                    asked him to address; correct?

23            A            Yes.

24            Q            And is it fair to say that that was the effect put  
11:20 25                    on, or your word was 'spin' put on Dr. Ferris'



1 report, is that in Dr. Ferris' opinion the  
2 forensic evidence exculpated David Milgaard?

3 A Yes.

4 Q And you wanted Dr. Markesteyn to address that in  
5 his report because you believed, based on what  
6 Patricia Alain told you, that his answer would be  
7 "no, it doesn't"; is that correct?

8 A I wanted to find out what his response would be.

9 Q Or, if he did say it does exculpate him, that it  
10 would be something for you to go back to Patricia  
11 Alain to?

12 A Yes.

13 Q And the reason -- is it -- I think you told us the  
14 reason you wanted that in the report, would it be  
15 so that the issues that arose with Dr. Ferris'  
16 report in the media could be avoided if, in fact,  
17 his opinion was similar to Dr. Ferris'?

18 A If his opinion was similar to Dr. Ferris I would  
19 certainly have to look, again, at the basis of his  
20 opinion and see and get a view, or a second view,  
21 either from Pat Alain or from somebody else. But  
22 I wanted to avoid a situation in which Dr. Ferris  
23 was reporting on one question and Dr. Markesteyn  
24 on a separate question.

25 Q Okay. But I think what Dr. Ferris, in his report,



1           said, number 1 the semen is contaminated, should  
2           not have been admitted, and there is no forensic  
3           value in it; correct?

4           A           Yes.

11:22 5           Q           Then he went on to say "however, based on what was  
6           put in at trial and assuming it is not  
7           contaminated", --

8           A           It exculpated.

9           Q           -- "it exculpates him". And the last part of his  
11:22 10          report, paragraph that says "this evidence  
11          exculpates David Milgaard", is the paragraph that  
12          was quoted frequently in letters and media  
13          articles?

14          A           Yes.

11:22 15          Q           But I think what Dr. Ferris told us, that that  
16          ignored the assumption and the finding earlier in  
17          his letter that the semen was no value?

18          A           Yes.

19          Q           Is that correct?

20          A           Yes.

21          Q           And so, and I think when I asked Dr. Ferris the  
22          question here at the Inquiry to the effect that  
23          "did the forensic evidence exculpate David  
24          Milgaard at the time you gave your opinion", his  
11:22 25          answer was "no, it didn't, and nor did it prove



1 his innocence", and that the -- his report, I  
2 think his evidence was that his report was  
3 misconstrued, and was that -- would that be --

4 A That would be consistent with the opinions that we  
11:23 5 had received, yes.

6 Q Okay. So here, with Dr. Markesteyn, is it fair to  
7 say that you wanted his report to address the  
8 question of 'does the forensic evidence exculpate  
9 David Milgaard', and if it's "yes" you would  
11:23 10 pursue that with your people and with him to see  
11 whether or not there is something additional that  
12 was not in Dr. Ferris' report, if the answer is  
13 "no" then you would hope that that answer and that  
14 report would at least address some of what was in  
11:23 15 the media?

16 A Yes.

17 Q So here:

18 "I asked Dr. Markesteyn  
19 whether the forensic evidence exculpated  
11:23 20 David Milgaard. Dr. Markesteyn said:  
21 'I can't say the forensic evidence  
22 excludes him.'"

23 And is that basically saying that it doesn't  
24 prove his innocence?

11:23 25 A Yes.





1 Q Is that how you took it?

2 A That's how I took it.

3 Q And then he says:

4 "He did note, as have the scientists  
11:23 5 consulted by the department, that the  
6 forensic evidence does not inculcate  
7 David Milgaard.",

8 in other words that it doesn't link him. And I  
9 think that's what -- was consistent with what  
11:24 10 Patricia Alain and Dr. Ferris said, "it's  
11 contaminated and it's of no value"; correct?

12 A Yes.

13 Q And then it says:

14 "Dr. Markesteyn told me however, that  
11:24 15 his report was silent on the question  
16 quoted above."

17 And would that be the question of "does the  
18 forensic evidence exculpate David Milgaard?"

19 A Yes.

11:24 20 Q And what conclusions, if any, did you draw from  
21 the fact that the question he said he would put in  
22 his report and answer was not going to be in his  
23 report, but the answer he gave you was that it did  
24 not exculpate David Milgaard?

11:24 25 A I think my sense was that the question I had asked



1 of him was not part of his original mandate from  
2 David Asper and, complying with that mandate from  
3 David Asper, he had stuck to the four corners of  
4 the questions put to him by Mr. Asper.

11:25 5 Q But he had earlier told you that he would address  
6 that question in his report?

7 A Yes. Obviously, he changed his mind.

8 Q And did you conclude that that was based on a  
9 discussion between he and Mr. Asper?

11:25 10 A I surmised as much.

11 Q Did it concern you that the -- and I take it you  
12 thought that the question of "does the forensic  
13 evidence exculpate David Milgaard" to be a pretty  
14 important, if not the most important, question for  
11:25 15 any forensic pathologist reviewing this matter to  
16 consider?

17 A I think in the context of his engagement, and that  
18 is he was retained, I assumed, to support the  
19 Ferris Report which had, among its conclusions,  
11:25 20 indicated that the forensic evidence should have  
21 exculpated David Milgaard, that that was pretty  
22 important. But I could see that, if he could not  
23 come to that conclusion, it would be contra, it  
24 would cut down the value of the Ferris Report if  
11:26 25 his report came to an opposite conclusion. If it



1           were silent, it would still permit the applicant  
2           to argue "lookit what Dr. Ferris had to say, and  
3           it's not contradicted directly by Dr. Markesteyn".

4           Q       But in other -- are you saying, then, allowing  
11:26 5           those on behalf of David Milgaard to argue  
6           silence, infer the silence to be in their favour  
7           when Dr. Markesteyn has said otherwise?

8           A       Well, he wouldn't have said otherwise in writing,  
9           he may have said it to me.

11:27 10          Q       Well I --

11          A       Yeah.

12          Q       To you, but --

13          A       It permitted the applicants to still rely on Dr.  
14          Ferris' report for that portion of it that -- that  
11:27 15          indicates that the forensic evidence exculpated  
16          David Milgaard, because there would be nothing in  
17          writing in Dr. Markesteyn's report to contradict  
18          that directly.

19          Q       And you would be precluded, for reasons you have  
11:27 20          told us earlier, to go to the media and others and  
21          say "yes, but Dr. Markesteyn told me on the phone  
22          that his opinion is that it doesn't exculpate  
23          him"?

24          A       Yes.

11:27 25          Q       And if we could go to 157075. This is a June 5,



1 1990 letter from Mr. Asper to you enclosing the  
2 report. If we can scroll down, it says:

3 "Please find enclosed a copy  
4 of the report of Dr. Peter Markesteyn,  
11:28 5 who as you know is the Chief Medical  
6 Examiner for the Province of Manitoba.  
7 You will note that the report confirms  
8 the original report of Dr. James Ferris  
9 which was submitted with our  
11:28 10 application."

11 Was it your understanding, based on review of the  
12 report and your discussion with Dr. Markesteyn,  
13 that he in any way confirmed the original report  
14 of Dr. Ferris?

11:28 15 A He confirmed aspects of it, but not its con -- not  
16 all of its conclusions.

17 Q Did he, in your view, confirm the, as you put it,  
18 the spin put on Dr. Ferris' report that the  
19 forensic evidence proves David Milgaard is  
11:28 20 innocent?

21 A No.

22 Q In fact, based on your discussion with Dr.  
23 Markesteyn, did it in fact disagree with -- and  
24 I'll use your word -- the 'spin' put on Dr.  
11:29 25 Ferris' report?



1 A Yes.

2 Q In fact, directly contradicted it?

3 A Yes.

4 Q Did you become aware that the Dr. Markesteyn  
11:29 5 report then was portrayed in the media, at this  
6 time and later, as being confirming Dr. Ferris'  
7 findings?

8 A Yes.

9 Q And can you tell us what steps, if any, did, or  
11:29 10 could you, take to address that?

11 A The first step was to interview Dr. Markesteyn and  
12 get his views on our record --

13 Q Okay.

14 A -- for the purpose of advising the minister.

11:29 15 Q And I think, by June 12th, you talked to Dr.  
16 Markesteyn, Dr. Ferris, Dr. Merry -- and we'll go  
17 through these documents -- but essentially, I  
18 think, did they not -- or tell us; what did they  
19 confirm for you?

11:29 20 A Dr. Ferris confirmed that the oft-quoted phrase  
21 that was used to support the proposition that the  
22 forensic evidence excluded David Milgaard was  
23 based on a hypothetical that did not reflect the  
24 evidence at trial, and that the contamination at  
11:30 25 the scene rendered the forensic material



1           unsuitable for any meaningful test results. That  
2           conclusion was shared by Dr. Markesteyn and Dr.  
3           Colin Merry and, in addition, the -- I believe the  
4           doctors also questioned the accuracy of the  
11:30 5           testing procedures that were used to determine  
6           David Milgaard's secretor status.

7           Q       So in other words if it had not been contaminated,  
8           even though they said it was, but if it had not  
9           been all three of them told you that the -- is  
11:31 10           that correct -- that the test done to determine  
11           David Milgaard's secretor status in 1969 was  
12           flawed?

13           A       Yes. I'm not certain all three of them did, at  
14           least two of them did.

11:31 15           Q       Markesteyn and Merry?

16           A       Yes.

17           Q       And I think Dr. Ferris has told us that he would  
18           have advised Mr. Wolch of that. I think back in  
19           '88 or '89, or at some point, there is a record  
11:31 20           that he made that observation. I can't recall  
21           whether he said he told it to you or not. But do  
22           you have any -- we'll see in the report shortly  
23           then. So would that have, the information you got  
24           from those three doctors, then, would that have  
11:31 25           confirmed the conclusions you reached back in



1 August of 1989?

2 A It was certainly consistent with the findings of  
3 Pat Alain, yes.

4 Q Did you ask yourself or these doctors how could,  
11:32 5 based on what they told you, how could his report  
6 be out there to state something which I think you  
7 were saying is completely wrong and be put forward  
8 as proving innocence when it proves nothing, I  
9 think is what Dr. Ferris told you; is that  
11:32 10 correct?

11 A Yes. They didn't have an answer for it.

12 Q If we can go back to the letter, and with some  
13 regret I am now going into the dog urine area, Mr.  
14 Williams. This -- Mr. Asper says:

11:32 15 "However, it goes further to suggest  
16 ...",

17 talking about Markesteyn's report:

18 "... that the samples used to link David  
19 Milgaard to the scene of the crime could  
11:32 20 well have been dog urine, which could  
21 have caused the results suggesting the  
22 presence of sperm and/or blood.

23 Assuming that these samples were in fact  
24 semen, Dr. Markesteyn confirms that they  
11:33 25 could not have come from David



1 Milgaard."

2 And let's just go through parts of that. I think  
3 this is when -- maybe just tell us, generally,  
4 what your take was of this theory that the semen  
11:33 5 was dog urine?

6 A Either it is or it's not. If it's dog urine you  
7 can't get any meaningful results from it, it's  
8 contaminated, it's not human material, therefore  
9 no meaningful conclusions can be drawn.

11:33 10 If it's human material, then  
11 it's contaminated or it may be contaminated,  
12 and --

13 Q Is it fair to say, though --

14 A And --

11:34 15 Q Oh, sorry?

16 A -- when you take a look at the last line of the  
17 first paragraph:

18 "Assuming that these samples were in  
19 fact semen, Dr. Markesteyn confirms that  
11:34 20 they could not have come from David  
21 Milgaard."

22 does not take into account the strong likelihood  
23 of contamination.

24 What, in fact, the first  
11:34 25 submission reflects is a misunderstanding of the





1 Crown's theory at trial, because the Markesteyn  
2 Report is being offered to cast aspersions on  
3 what was then perceived by David Asper and Hersh  
4 Wolch as the Crown's theory of the case, and that  
11:35 5 is that the Crown had introduced the forensic  
6 material in an attempt to link David Milgaard to  
7 the offence. And by Dr. Markesteyn describing it  
8 as dog urine, it just basically says "here's the  
9 piece of evidence upon which the Crown relied,  
11:35 10 now we now know to be dog urine, that -- that is  
11 something significant that the minister should  
12 take a look at in terms of giving us a remedy,  
13 and if it's not dog urine and if it is human  
14 then, since we now know that David Milgaard is  
11:35 15 not -- is -- since we now know that David  
16 Milgaard is a non-secretor, the fact that it  
17 contains A means that it couldn't have come from  
18 him. Therefore, either way you look at it, our  
19 client deserves a remedy because we understand  
11:36 20 that the Crown had used this evidence to link him  
21 to the offence."

22 Q And so is it your view that that premise was  
23 wrong?

24 A Yes.

11:36 25 Q And I think what, if we can go back, what Mr.



1 Tallis told the Commission is that the suggestion  
2 of either Dr. Markesteyn, or anybody, that this  
3 frozen substance was dog urine or contaminated  
4 would have hurt David Milgaard's position at  
11:36 5 trial? In other words, Mr. Tallis said he wanted  
6 that physical evidence to be uncontaminated semen  
7 because, based upon the tests the Crown had done  
8 on David Milgaard, the evidence was he was a  
9 non-secretor; and would that be consistent with  
11:36 10 what Mr. Tallis told you about his strategy at  
11 trial?

12 A Yes.

13 Q And so in other words, introducing contamination,  
14 I think what Mr. Tallis said, that that actually  
11:36 15 hurt or would have hurt --

16 A It destroyed his defence.

17 Q Yes. So can you tell us how this ground that it's  
18 now maybe dog urine fits into the ground of saying  
19 there was a miscarriage of justice? Let's just  
11:37 20 focus, let's say it is dog urine.

21 A The ground that it's -- to say that it's dog urine  
22 is only useful if in fact the Crown had relied on  
23 that forensic evidence to tie David Milgaard to  
24 the scene. If the Crown hadn't, whether it's dog  
11:37 25 urine or something else, it doesn't really matter



1 because no one, at least not the prosecution, had  
2 tried to use that forensic information to tie  
3 David Milgaard to the scene, so it was a non-event  
4 as far as I was concerned.

11:37 5 Q Now, what Mr. Asper told us is that the fact that  
6 it might be dog urine was sensational and that it  
7 would cause people to consider in a negative way  
8 the work of the police; in other words, just the  
9 headline "David Milgaard convicted by dog urine",  
11:37 10 which eventually is reported, I mean, at first  
11 it's reported a possibility, then a likelihood,  
12 then a probability and then it is dog urine, and  
13 that that was, I think his evidence was, that that  
14 was the value in this, that you could get it out  
11:38 15 in the public and sensationalize it and put  
16 political pressure on the minister?

17 A It cast aspersions on the quality of the  
18 investigation.

19 Q And again, by the public saying if David Milgaard  
11:38 20 was convicted by dog urine, again that would,  
21 would you agree, would cause people to cast doubt  
22 about the justice system and about the  
23 investigation, trial, etcetera?

24 A Yeah. It certainly reflects badly on the forensic  
11:38 25 work that was done at that time and that was used



1 and introduced at trial.

2 Q And if it were true, then I take it that would be  
3 a ground that would be considered by the minister?

4 A Yes.

11:38 5 Q And if it's not true, it would not be considered  
6 by the minister?

7 A It would be considered, but it wouldn't support a  
8 relief.

9 Q And what effect if any then would it have on, by  
11:39 10 having it out in the public domain, as being a  
11 credible position put forward?

12 A It gives the applicant the initial advantage of  
13 casting some aspersion on the integrity of the  
14 evidence-gathering process and on the, of the  
11:39 15 analysis that was used in connection with the  
16 trial. The advantage is that it will take some  
17 time for the minister to respond publicly to it,  
18 but in the meantime, a great deal of public  
19 support can be generated by having this  
11:39 20 information in the public domain.

21 Q I posed this question to Mr. Asper and I'll pose  
22 it to you as well in a bit different way. Up  
23 until this point, June 5, for a number of months,  
24 if not over a year, in the public domain was the  
11:39 25 suggestion that Dr. Ferris' review of the forensic



1 evidence, and the forensic evidence is the semen,  
2 that that proves David Milgaard is innocent  
3 because that came from the killer and it can't  
4 possibly have come from him; correct?

11:40 5 A Yes.

6 Q That's out there. Now what's introduced is Dr.  
7 Markesteyn saying his report, and Mr. Asper saying  
8 it confirms Dr. Ferris' finding, but it now says  
9 that it's dog urine or could be dog urine or might  
11:40 10 be dog urine or I can't eliminate it as being dog  
11 urine, let's just put it in the category that  
12 introduces that the semen sample may be dog urine,  
13 and the question is, and I think both Dr.  
14 Markesteyn and Dr. Ferris agreed on this, that  
11:40 15 that directly knocks the underpinnings out of Dr.  
16 Ferris' opinion. In other words, if he's saying  
17 this frozen lump is semen and proves David  
18 Milgaard's innocence, another scientist comes  
19 along and says yeah, but what you examined, Dr.  
11:41 20 Ferris, isn't the semen of the killer, it's dog  
21 urine; if it's dog urine it can't prove David  
22 Milgaard's innocence. Correct?

23 A Correct.

24 Q And I don't believe, and again based on the media  
11:41 25 articles that I looked at, that that issue came



1 out?

2 A It never surfaced.

3 Q And I guess why did you not go out and say lookit,  
4 media, if it's dog urine, then Dr. Ferris' opinion  
11:41 5 is of no value, how can it be both?

6 A My comments are restricted to apprising our  
7 minister and in the -- and before I do that, it  
8 would be inappropriate for me -- I could simply  
9 say to the reporter, look, you may wish to take a  
11:41 10 close look at Dr. Ferris' report and compare his  
11 conclusions to those of the findings of Dr.

12 Markesteyn to check to see whether or not they are  
13 compatible, I've made that suggestion to some  
14 reporters, and they simply say, look, I don't have  
11:42 15 time to read that, tell me, give me a quote, what  
16 have you got to say, but --

17 Q Did you view the Markesteyn report, the  
18 submission, and let's just focus on it being dog  
19 urine, as being inconsistent and contradictory to  
11:42 20 the spin that was put on Dr. Ferris' report?

21 A It didn't support it, it was contradictory,  
22 because if Markesteyn was right, then Ferris had  
23 to be wrong.

24 Q Okay. Now, I think Mr. Asper's evidence was that  
11:42 25 in light of that, I don't know if he said it was a



1 contradiction, but I think he was alive to the  
2 fact that the dog urine might undermine Dr.  
3 Ferris' opinion, but on its own the dog urine had  
4 a lot of media mileage?

11:43 5 A And that was its primary value.

6 Q And that's the value -- and that's what he said.  
7 Now, I want to ask you as the person who's  
8 evaluating this information, what kind of mileage  
9 did it have with you, the Dr. Markesteyn report,  
11:43 10 and what effect, if any, did it have on your  
11 review of the reliability of other information?

12 A Well, I would be looking at Dr. Markesteyn's  
13 report in the context of the evidence that was  
14 advanced at trial. The evidence advanced at  
11:43 15 trial, bottom line, in relation to the forensic  
16 information, was that it was so contaminated that  
17 no meaningful results can be obtained and  
18 consequently it wasn't put to the jury.

19 Dr. Markesteyn's conclusion that  
11:44 20 it may well be dog urine certainly fit into the  
21 position ultimately taken at trial about dealing  
22 with this evidence, that it was contaminated  
23 material. Consequently, it had no impact, it was  
24 neutral in terms of its potential impact on the  
11:44 25 outcome of the trial.



1 Q Okay.

2 A So insofar as that aspect is concerned, it didn't  
3 really affect, one way or another, or could not,  
4 our understanding of the evidence that was led at  
11:44 5 trial.

6 In relation to the other  
7 assumption, and this is a big assumption, and the  
8 assumption is that assuming that it is human semen  
9 and it's uncontaminated, then it might well  
11:45 10 support the contention that it excludes David  
11 Milgaard as the perpetrator, but we all know that  
12 it couldn't have been uncontaminated, so that  
13 hypothetical did not have a ring of applicability  
14 to the facts of our case because we know that the  
11:45 15 area was contaminated. So the Markesteyn -- in  
16 sum, the Markesteyn report did not really advance  
17 the applicant's position at all.

18 Q And again, the last part of my question was the  
19 fact that it was put forward in the public domain,  
11:45 20 in the media as being something that you believed  
21 to be other than what it really was, what effect  
22 if any did that have on your thinking at the time?

23 A Well, certainly what it signaled to us was that a  
24 fairly detailed explanation of that ground would  
11:46 25 be required when the minister responded to the





1 applicant.

2 Q Did you consider going back to Mr. Asper and  
3 saying lookit, Dr. Markesteyn told me this doesn't  
4 exculpate him, what about this, what about that?

11:46 5 A But by then the damage had been done because all  
6 of the news stories were out there in the public  
7 domain well before we had an opportunity to digest  
8 the report. It's too late.

9 Q The next paragraph is:

11:46 10 "With all due respect, this is the kind  
11 of action that we anticipated your  
12 office would take when we first  
13 submitted the application on behalf of  
14 David Milgaard."

11:46 15 And I think from your evidence you are telling us  
16 that you did, although you didn't go to Dr.  
17 Markesteyn, you did go to Patricia Alain and had  
18 it reviewed; is that right?

19 A That's correct.

11:46 20 Q And then:

21 "Surely by now you must accept that this  
22 is not a frivolous application. Rather,  
23 it is one which demands immediate  
24 attention from your Department."

11:47 25 I would like your comment on that. As far as the



1           credibility or reliability of this piece of  
2           information in the Markesteyn report, not only  
3           what the report says, but what it doesn't say,  
4           and the circumstances under which it was obtained  
11:47 5           and provided to you, can you tell us what if any  
6           observations you made or conclusions you made  
7           about the applicant's application?

8           A       It was an advocacy piece, it was an argument, it  
9           was a submission that really didn't withstand any  
11:47 10           close scrutiny.

11                   COMMISSIONER MacCALLUM:   What do you mean,  
12           the application as a whole or the, is this about  
13           the report, the Ferris report?

14           A       I'm referring specifically to the suggestion --  
11:48 15           the application as it had come to us, yes.  It  
16           wasn't frivolous in that a number of well  
17           respected and well intentioned folks had turned  
18           their attention to it, but it wasn't, it hadn't  
19           reached that level of persuasion that it signaled  
11:48 20           immediate positive action on the part of the  
21           minister.

22           BY MR. HODSON:

23           Q       But am I correct, it sounds like at this time if  
24           you and Mr. Asper would have got Dr. Markesteyn,  
11:48 25           Dr. Ferris and Dr. Merry in a room together, in a



1 short time period you would have all left the room  
2 saying the same thing; is that -- that the -- that  
3 there's nothing there?

4 A Yes. Within a week I had spoken with Dr.

11:48 5 Markesteyn and Dr. Merry and it wouldn't have  
6 surprised me that within a day or two thereafter  
7 the results of our conversation would have been  
8 communicated back to Mr. Asper.

9 Q Okay. And what did you make of the fact that the

11:49 10 conclusions you drew from your review of the  
11 report and your discussions with Ferris,  
12 Markesteyn and Merry, and given what position Mr.  
13 Asper was taking publicly about the value of these  
14 reports, what did you make of that?

11:49 15 A Quite frankly, what I made was that the thrust,  
16 and the main thrust of the applicant wasn't to  
17 satisfy the, quote, "legal" criteria, but was to  
18 satisfy the political criteria in order to get a  
19 positive result. I mean, from a media

11:49 20 perspective, we had been out-manoeuvred. There  
21 were certain types of utterances we could not say  
22 to counter what was then being published.

23 Q Are you able to tell us whether your experience  
24 with this ground and this report, did it influence  
11:50 25 your thinking with respect to other information



1 that you received from Mr. Milgaard's counsel?

2 A Well, it certainly caused us to look at their  
3 submissions with a great deal of care, careful  
4 scrutiny.

11:50 5 Q Why?

6 A Because our experiences in examining the earlier  
7 bases signaled that some of it was incomplete,  
8 some of it was misleading, and to that extent,  
9 when you've been bitten once, you are twice shy,  
11:50 10 you take a look at it very closely, but you look  
11 at it, you don't dismiss it peremptorily and so we  
12 continued to look.

13 Q The next paragraph, Mr. Asper says:

14 "There is a clear perception that it is  
11:51 15 only in response to public pressure that  
16 your Department seems to show any  
17 interest in this case. Moreover, the  
18 truth of the matter is that the  
19 Applicant has had to do all the work  
11:51 20 with virtually no resources available to  
21 him."

22 And your comment on that, please?

23 A I think that is written more for the press than it  
24 is for me.

11:51 25 Q In what respect?



1 A Well, it wouldn't surprise me that copies of that  
2 letter were circulated to the media.

3 Q And for what purpose?

4 A To record the view of the applicant's counsel.

11:51 5 What had -- what you had in the past were a series  
6 of articles which basically carried the following  
7 media line, the department had not done anything  
8 to further the investigation of this application,  
9 had sat on information, whether it was for 15  
11:52 10 months, 10 years or 20 years. By virtue of the  
11 contacts Mr. Asper had had with me and with  
12 Sergeant Pearson, he knew that there was a  
13 significant effort being made to track down at  
14 least the information with respect to Larry Fisher  
11:52 15 and with me he knew that in relation to Deborah  
16 Hall work had been done.

17 That notwithstanding, and keep  
18 in mind that this is, what, May of 19 --

19 Q June.

11:52 20 A June of 1990, that's eight months after the  
21 interviews of Deborah Hall, several months after  
22 the interviews with Justice Tallis and four or  
23 five months after the raising of Larry Fisher, and  
24 in those circumstances I found it surprising that  
11:53 25 he would be writing to me signaling that the



1 applicant had to do all the work. My sense was  
2 that the real audience for that was the press.

3 Q And did you respond, I don't believe, based on my  
4 review of the documents, it appears it wasn't your  
11:53 5 practice to formally respond and take issue with  
6 these various things, but simply to acknowledge  
7 the letter; is that right?

8 A Correct.

9 Q And why was that?

11:53 10 A You choose which sword to die on. If you start  
11 contesting that, you open yourself to the  
12 accusation of bias. I'll record it, thank you for  
13 your comments, take them into consideration, let's  
14 move on.

11:54 15 Q Were you concerned that letters you would send to  
16 Mr. Asper responding to these items would end up  
17 in the media?

18 A Whenever I write, I write from the vantage point  
19 that it will end up on the front page of *The Globe*  
11:54 20 *and Mail*.

21 Q And that was with respect to your dealings with  
22 Mr. Asper?

23 A That's with respect to my dealings with Mr. Asper  
24 and also with respect to many other dealings.  
11:54 25 That's the reality.



1 MR. HODSON: I plan on going through the  
2 Markesteyn report and perhaps it's better maybe  
3 we break for lunch here and I'll pick it up at  
4 1:30.

11:54 5 (Adjourned at 11:54 a.m.)

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

7 BY MR. HODSON:

8 Q If I could call up 155517, please. And this is a  
9 June 4th, 1990 -- this is the Dr. Markesteyn  
01:32 10 report, and you are familiar with this, are you,  
11 Mr. Williams?

12 A I am.

13 Q Just a couple points here. The next page talks  
14 about having the charge to the jury, and I think  
01:32 15 that's what you provided to him; is that right?

16 A That's correct.

17 Q And I think the record reflects, at this time,  
18 that Mr. Tallis' closing address to the jury, and  
19 in fact Mr. Caldwell's -- well, let me just talk  
01:33 20 about Mr. Tallis' closing address to the jury was  
21 not transcribed or prepared; is that right?

22 A I believe so.

23 Q And it's my understanding from the evidence that  
24 right, right around the time of the Supreme Court  
01:33 25 reference, the shorthand notes of Mr. Tallis'



1 closing address were located and transcribed, and  
2 so that -- and we have before this Commission a  
3 fairly close, it's not a transcript but it's close  
4 to a transcript, of those remarks, but I think it  
01:33 5 was '92 that they were available; is that right?

6 A Yes.

7 Q And in his closing address Mr. Tallis addresses  
8 the issue of the forensic issue and puts to the  
9 jury his suggestion that the frozen semen  
01:33 10 basically is exculpatory for Mr. Milgaard; you  
11 would have become aware of that at a later date?

12 A Is exculpatory or is --

13 Q Is exculpatory to Mr. Milgaard. I think Mr.  
14 Tallis said to the jury "this frozen semen" --

01:34 15 A Is exculpatory?

16 Q -- "is exculpatory", yes.

17 A I've since learned that, yes.

18 Q Yes. And again, if that had been available at the  
19 time, I take it would that have been something you  
01:34 20 would have given to Dr. Markesteyn and Dr. Ferris,  
21 as well, to deal with this issue of what was  
22 before the jury on --

23 A Yes.

24 Q -- the semen? If we can go to the next page.  
01:34 25 Under Window of Opportunity, and I didn't touch on





1 this in detail in the Ferris Report, I think this  
2 is an opinion on the question of time frame and  
3 whether or not David Milgaard could do the things  
4 that the evidence, or the Crown contended at the  
01:34 5 trial, within the time frame; is that a fair  
6 summary of that issue?

7 A Yes.

8 Q And here I think Dr. Ferris commented on it, and I  
9 think he was saying that "lookit, it could not  
01:35 10 have occurred as suggested by the evidence"; Dr.  
11 Markesteyn I think is saying "on some of the  
12 points I can't comment but on others, in  
13 particular here", I think he is saying that, you  
14 know, "clothes can be ripped off a person in a  
01:35 15 matter of seconds, certainly in less than a  
16 minute", etcetera, so giving some comment. Is it  
17 correct to say that this issue of whether there  
18 was or wasn't enough time to do what the evidence  
19 suggested, would that be a matter that was before  
01:35 20 the jury, in other words that would not give rise  
21 to a ground for a Section 690 relief?

22 A Correct. What -- the window of opportunity is  
23 merely a submission that re-argues an issue that  
24 was properly left for the jury to determine.

01:35 25 Q And so, certainly, I think in Mr. Tallis' closing



1 address he raises the issue about the time it  
2 would take to do all these things, and where Mr.  
3 Milgaard was and wasn't, and I think the judge, in  
4 his charge to the jury, put the time frame as to  
01:36 5 when -- when Mr. Milgaard could have committed the  
6 crime, if in fact it was he who committed the  
7 crime, and I think Mr. Tallis said it was a fairly  
8 tight time frame; is that your understanding?

9 A Yes.

01:36 10 Q So is it fair to say that, to the extent that Dr.  
11 Ferris and Dr. Markesteyn give their opinions,  
12 based on reviewing the transcript, about whether  
13 something could or couldn't have happened in the  
14 time frame, that that would be basically  
01:36 15 re-arguing the case and not a matter that would be  
16 considered a ground under Section 690?

17 A Correct. Unless there was some significant new  
18 fact that had emerged that might affect the  
19 arguments that had been put to the jury, simply  
01:36 20 re-arguing a position that was advanced before the  
21 jury will not, will not support the re-opening.

22 Q And if we can go to 522, please, of this report.  
23 At the top it says:

24 "I share Dr. Ferris' concerns  
01:37 25 about the integrity and continuity of



1                   the samples of the alleged semen ...",  
2                   and then talks about that, and I think Dr.  
3                   Markesteyn's opinion here was that this was  
4                   contaminated and of no value; correct?

01:37 5           A           Yes.

6           Q           And then he goes on to comment about -- scroll  
7                   down a bit, please -- about:

8                                 "Human semen does not freeze  
9                   into a yellowish stain at -40 ...",  
01:37 10           below. He talks about its characteristics, then  
11                   goes on to comment about whether or not it is of  
12                   human origin, and then says:

13                                 "In order to reach a firm scientific  
14                   conclusion whether the semen retrieved  
01:37 15                   from the snowbank four days after the  
16                   assault was indeed human one needs to  
17                   review the methodology used by the  
18                   serologist ...",

19                   and then goes on to say that he has:

01:38 20                                 "... been informed that the original  
21                   notes ... are no longer available.",  
22                   etcetera. Do you have any recollection of being  
23                   in touch with Staff Sergeant Paynter, following  
24                   up on this at all?

01:38 25           A           I don't believe I contacted Staff Sergeant



1 Paynter, I believe that Ms. Alain had tried to  
2 retrieve or secure the notes of Sergeant Paynter.

3 Q Staff Sergeant Paynter's evidence before this  
4 Commission is that he did do the human test, or  
01:38 5 whatever test is referred to here in Dr.

6 Markesteyn's opinion, and confirmed that the semen  
7 was of human nature.

8 A Okay.

9 Q And Dr. Markesteyn, I think in his opinion, says  
01:38 10 he did not -- he could not confirm that from Staff  
11 Sergeant Paynter, there was a bit of an issue  
12 there, and I don't think -- I think Staff Sergeant  
13 Paynter's evidence was he doesn't recall being  
14 asked for them.

01:38 15 But, in any event, do you have  
16 any recollection of efforts made, that you made or  
17 Patricia Alain may have made, to get that?

18 A I certainly didn't make a request for them.

19 Q And so I think his conclusion is that:

01:39 20 "The only way of excluding this semen  
21 from being of non-human origin would  
22 have been the morphology and/or species  
23 specific antigen-antibody reaction  
24 tests.",

01:39 25 which I think is essentially what Staff Sergeant



1 Paynter did, but I don't think Dr. Markesteyn  
2 knew that at the time. As was it your  
3 understanding of Dr. Markesteyn's opinion that,  
4 lookit, this, the fact that it was described as  
01:39 5 being yellow suggests that it might be urine, dog  
6 urine?

7 A Yes.

8 Q And the only way to know if it's not is whether  
9 these two tests were done, or tests were done in  
01:39 10 '69 to exclude it, and since we don't know if they  
11 were done or not we can't eliminate the  
12 possibility that it's dog urine?

13 A That's my understanding of his position.

14 Q As opposed to saying "it is dog urine" or "likely  
01:40 15 dog urine"?

16 A Yes.

17 Q And then in the next page, again we have been  
18 through this a few times, but talks about the A  
19 antigen test, and then he makes mention here  
01:40 20 about:

21 "The Judge, however, made it quite clear  
22 to the jury that, in his opinion, there  
23 was no evidence to show that  
24 contamination of the semen with blood  
01:40 25 had occurred."



1 And then:

2 "I agree with Dr. Ferris'

3 conclusion on page five of his letter

4 that assuming the fact that Mr. Milgaard

01:40 5 is blood A, non-secretor and the semen

6 revealed the presence of type

7 A-antigens, a limited number of

8 interpretations can be based on this

9 evidence. He listed them ...",

01:40 10 and:

11 "I must stress, however, my assumption

12 that Mr. Milgaard is an A, non-secretor

13 is based on the evidence submitted at

14 the trial. This assumption could be

01:41 15 subject to challenge. The determination

16 of the non-secretor status of Mr.

17 Milgaard, although perhaps acceptable at

18 that time, would now no longer serve as

19 proof of his non-secretor status."

01:41 20 And I think this would be one instance where one

21 of Mr. Milgaard's experts raised, squarely, this

22 issue, said "lookit, I don't think, don't rely on

23 the 1969 tests for a secretor status"?

24 A Correct.

01:41 25 Q And would it be fair to say that, apart from the



1 dog urine argument, that the premise of the Dr.  
2 Ferris opinion, being that the semen proves  
3 innocence, is that David Milgaard is a  
4 non-secretor?

01:41 5 A Yes.

6 Q And given that Dr. Markesteyn is now saying that  
7 assumption should not be made, don't rely on the  
8 old test, did you consider having David Milgaard  
9 undergo a new test to determine the secretor  
10 status, or did it matter to you?

11 A I considered it, quite frankly it wouldn't have  
12 mattered, because if we were right in assuming  
13 that the material collected was contaminated,  
14 whether David Milgaard proved to be an A secretor  
01:42 15 or not, it wouldn't advance the application,  
16 because the forensic evidence was put forward in  
17 this application on the basis that its  
18 interpretation at trial was misunderstood by all  
19 the parties, including the jury. We now know that  
01:42 20 that was not the case, and we knew it then.

21 Q Yeah. Did you inquire of Mr. Asper and Mr. Wolch  
22 to see whether they were gonna get this test done,  
23 or is that something you expected they might do?

24 A I don't -- I recall we had some conversations, I'm  
01:43 25 not certain when, as to whether or not David would



1 or might take a test, but we didn't insist on it,  
2 and my recollection is we didn't ask for it --

3 Q Did you --

4 A -- at that time.

01:43 5 Q And did you have any concerns with the fact that,  
6 despite Dr. Markesteyn and then Dr. Merry raising  
7 this issue, that the foundation of Dr. Ferris'  
8 opinion with the spin on it, if I can use your  
9 words, the one that it proves innocence, is  
01:43 10 dependent upon David Milgaard being a  
11 non-secretor; the fact that that is now being  
12 raised squarely by these experts saying "you can't  
13 assume that", did you have any concerns that that  
14 was not being tested by them?

01:43 15 A No, it -- for the purposes of my assessment all it  
16 meant was that a fundamental plank in the  
17 application had just been removed.

18 Q Okay. And so if you would have found out around  
19 this time, June of 1990, that David Milgaard was a  
01:44 20 secretor, are you telling us that it wouldn't have  
21 made any difference on this ground because it  
22 wasn't there anyway?

23 A Correct.

24 Q Go to the next page. I suppose in the media,  
01:44 25 though, would it have had an impact in the media?





1 A It would only have had an impact in the media if  
2 it had been released, and the likelihood is that,  
3 unless the Milgaards released it, we would not  
4 have released that information pending a decision  
01:44 5 by the Minister of Justice.

6 Q Then in the Conclusion he says:

7 "I agree with Dr. Ferris that  
8 the serological evidence presented at  
9 the trial failed to link David Milgaard  
01:45 10 with the semen retrieved from vagina,  
11 snowbank, and crotch of panties."

12 And I think that is consistent with what Patricia  
13 Alain told you as well; correct?

14 A Yes.

01:45 15 Q And then:

16 "If, to everyone's  
17 satisfaction, it was established that  
18 the origin of the yellowish patch was  
19 unadulterated, uncontaminated human  
01:45 20 semen, then the presence of the  
21 A-antigen in this specimen clearly, from  
22 a serological point of view, could not  
23 be Mr. Milgaard's."

24 And I think Dr. Markesteyn's, the premise of that  
01:45 25 is that David Milgaard is a non-secretor;



1 correct?

2 A Correct.

3 Q And so, again, did you take issue with that  
4 statement?

01:45 5 A I didn't take issue with it, because it's a  
6 qualified statement, and the qualifications are  
7 contained in the following description:

8 "If, to everyone's

9 satisfaction, it was established that  
01:46 10 the origin of the yellowish patch was  
11 unadulterated, uncontaminated human  
12 semen ...",

13 so the premise upon which Dr. Markesteyn is  
14 operating is that the semen was without  
01:46 15 contamination and without adulteration.

16 Q Is the difference here, between Dr. Ferris and Dr.  
17 Markesteyn's report, that in Dr. Ferris' report he  
18 put the contamination on page 2, put his  
19 conclusion on page 5, the exoneration conclusion,  
01:46 20 and what Dr. Markesteyn did is he put them in the  
21 same sentence?

22 A Yes.

23 Q And so that in the case of Dr. Ferris' report, the  
24 back half of the report was what was often quoted,  
01:46 25 but the qualifier or the front part that said



1 "lookit, it's of no value", --

2 A Was ignored.

3 Q -- was ignored. So, here, Dr. Markesteyn included  
4 it in the --

01:47 5 A In the same sentence in which he draws the  
6 conclusion that it could not be Mr. Milgaard's, it  
7 could not be Mr. Milgaard's if these assumptions  
8 are right.

9 Q And so, so that I have it correct, depending on  
01:47 10 how you read the reports, if you read the reports  
11 of Dr. Ferris and Dr. Markesteyn in their entirety  
12 with all qualifications, then on this issue of  
13 whether or not this semen proves David Milgaard's  
14 innocence, I suppose on one interpretation maybe  
01:47 15 Dr. Markesteyn's report does confirm Dr. Ferris'  
16 report?

17 A It does, provided that the assumptions of  
18 unadulterated, uncontaminated human semen  
19 accurately reflects the facts at trial.

01:47 20 Q If you state that what Dr. Ferris' opinion says is  
21 that the frozen semen at trial, or his review of  
22 that proves that David Milgaard is innocent, if  
23 that is your characterization of the Dr. Ferris  
24 report then would you agree that Dr. Markesteyn's  
01:48 25 report does not confirm that finding?



1 A Yes.

2 Q And so it's -- is it fair to say that, depending  
3 how you characterize what's in the report, Dr.  
4 Markesteyn may or may not confirm Dr. Ferris?

01:48 5 A Correct.

6 Q And I think what you have told us, within about a  
7 week of this you met with all three, and basically  
8 reached consensus amongst all three and you that  
9 they were all basically saying the same thing?

01:48 10 A Yes.

11 Q And that is that the forensic evidence did not  
12 prove David Milgaard's innocence?

13 A Correct.

14 Q If we can go to 106948. And this is Dr. Merry's  
01:48 15 report of June 1, 1990 that I think went to Mr.  
16 Asper; did you get this as part of Dr.  
17 Markesteyn's report, do you think?

18 A I'm not certain. I may have.

19 Q And I think Dr. Markesteyn said the dog urine  
01:49 20 theory likely, or primarily came from Dr. Merry,  
21 and here's the words he used, that:

22 "... I do not believe that the  
23 possibility can be excluded that the  
24 frozen yellowish substance found near  
01:49 25 the body of the deceased was dog urine,



1 from a dog positive for a blood group  
2 antigen cross reacting with the human  
3 blood group A."

4 And it goes on to talk about the dogs would have  
01:49 5 this antigen. And so is that, is that your  
6 understanding of what, in early June 1990, the  
7 extent of the scientific evidence was, based on  
8 what Dr. Merry and Dr. Markesteyn had at that  
9 time, they said "we can't exclude the fact that  
01:49 10 this frozen substance might be dog urine"?

11 A That's correct.

12 Q And I think later, about a year later, Dr.  
13 Markesteyn, it was made aware to him by Neil Boyd  
14 and Dr. Rossmo -- you are familiar with who those  
01:50 15 two gentlemen are?

16 A Yes, they were subsequently engaged by, or they  
17 prepared a report looking at the evidence of the  
18 Milgaard application, which was included as part  
19 of the second application to the Minister of  
01:50 20 Justice on behalf of David Milgaard.

21 Q Okay. And I think what they drew to Dr.  
22 Markesteyn's attention was the fact that, as part  
23 of this frozen semen substance that was tendered  
24 as evidence at the trial of David Milgaard for  
01:50 25 which Dr. Markesteyn and Dr. Merry said "you can't



1 exclude it from being dog urine", were seven human  
2 pubic hairs?

3 A Yes.

4 Q And that, based on that, I think Dr. Markesteyn

01:50 5 then said, "okay, well" -- and he may have

6 qualified it a bit still -- but essentially said

7 "okay, it's likely not dog urine, that might

8 answer it". When did you become aware of that

9 fact -- and I think it was in Victor Molchanko's

01:51 10 trial evidence where it was described, it was on

11 the Court record in any event -- that human pubic

12 hair were part of the frozen semen sample?

13 A I may have -- I probably encountered it at the

14 time I reviewed the transcript. Its significance

01:51 15 to me was probably partly lost on me in terms of

16 looking at its relevance to the identity of the

17 semen. I had assumed, based on my understanding

18 of the trial evidence, that the material that had

19 been recovered was of human origin, but that it

01:51 20 may have been contaminated. Now when Dr.

21 Markesteyn raised the possibility that it may have

22 originated from an animal, it prompted us to take

23 another look at it. Then he was reminded of the

24 fact that human pubic hairs were found in it.

01:52 25 From my vantage point, once you



1 introduce the element of contamination, regardless  
2 of the source or regardless of the origin, keep --  
3 bearing in mind the use of that evidence at trial,  
4 it really -- nothing really turned on it insofar  
01:52 5 as the application was concerned.

6 Q All right. But I suppose -- and, again, are you  
7 telling us that, I suppose, one contamination  
8 scenario is that in fact it is human semen, but  
9 the contamination that took place is that dog  
01:52 10 urine contaminated human semen, the perpetrator's  
11 human semen?

12 A Yes.

13 Q The other scenario, which is what I think is  
14 portrayed certainly in the media reports, is that  
01:53 15 the entirety of the sample was dog urine and,  
16 hence, Dr. Merry's suggestion that that's how  
17 semen, that's why you could find antigens and  
18 sperm in the frozen substance; in other words that  
19 the entirety of the frozen lump came from an  
01:53 20 animal?

21 A Yes.

22 Q And was that your understanding of what was at  
23 least being put forward in the media, in part,  
24 dependent upon Dr. Merry and Dr. Markesteyn's  
01:53 25 report?



1 A Yes.

2 Q And so in other words it had no human origin but,  
3 rather, Mr. Penkala came along, found some frozen  
4 dog urine, it was put in at the trial and used to  
01:53 5 convict David Milgaard?

6 A Yes, that was one of the messages.

7 Q If we can go to the next page. And you would  
8 agree, if that were true, that that would  
9 certainly be a ground, under Section 690, that  
01:54 10 would -- that would be a ground that would be  
11 considered by the minister if it was, after trial,  
12 discovered that what was said to be David  
13 Milgaard's semen was in fact dog urine?

14 A Had the case proceeded on the basis that the  
01:54 15 authorities had collected human semen which linked  
16 David Milgaard to the offence when in fact it was  
17 dog urine, that certainly would have provided  
18 grounds for reviewing the correctness of that  
19 conviction.

01:54 20 Q If we could go to the next -- here. So this is  
21 Dr. Merry's report where he talks about secretor  
22 status, and he says:

23 "... it is not possible to be certain if  
24 David Milgaard is a secretor or  
01:54 25 non-secretor of blood group A antigen."





1 And I think Dr. Merry went further and said that  
2 the very test done in 1969, the manner in which  
3 they did it ensured that David Milgaard would be  
4 a non-secretor, because the process would have  
01:55 5 destroyed any antigens that would have been in  
6 the saliva sample; is that correct?

7 A That's correct.

8 Q And that's something that you became aware of  
9 around this time from Dr. Merry's report?

01:55 10 A Yes, and also from an interview with Dr. Merry.

11 Q 333458, please. And this would be your letter of  
12 the same date to Mr. Asper:

13 "Thank you for your letter  
14 and the enclosed copy of Dr.

01:55 15 Markesteyn's report. I have noted your  
16 comments."

17 And I think you told us earlier, instead of  
18 responding in detail to Mr. Asper's letter, you,  
19 for reasons earlier stated, chose simply to  
01:56 20 acknowledge the letter; is that correct?

21 A That's correct.

22 Q If we can go to 333459. This is a June 6th, 1990  
23 letter from Mr. Wolch and Mr. Asper and it talks  
24 about:

01:56 25 "We have provided you



1 initially with the report of Dr. James  
2 Ferris, as well as the affidavit of  
3 Deborah Hall. We then provided full  
4 trial transcripts and the affidavit of  
01:56 5 David Milgaard. We then provided you  
6 with the statements of people who link  
7 another person as being the murderer,  
8 which gave rise to Sgt. Pearson's  
9 investigation.

01:57 10 On June 5, 1990, we forwarded  
11 to you a copy of the report of Dr. Peter  
12 Markesteyn, which confirms the findings  
13 of Dr. Ferris."

14 And I think you've told us that you take issue  
01:57 15 with that last statement?

16 A Yes.

17 Q And then:

18 "Enclosed are copies of the  
19 handwritten statements of Ronald Dale  
01:57 20 Wilson and Dennis Cadrain. The Wilson  
21 statement is self-explanatory. The  
22 Cadrain statement is given by the  
23 brother of Albert Cadrain, and it  
24 invites your office to contact Dennis  
01:57 25 for further information."



1 Now the Wilson statement, which we'll spend a bit  
2 of time with, was taken June 4th, 1990, and in  
3 that statement Mr. Wilson recants on some of the  
4 evidence he gave at Mr. Milgaard's trial, and  
01:57 5 you're familiar with that statement?

6 A I am.

7 Q When and how did you first become aware that Ron  
8 Wilson had given a statement recanting some of his  
9 trial evidence?

01:57 10 A Published reports emanating from the Winnipeg *Free*  
11 *Press*.

12 Q And so was it a case that someone, that you read  
13 the paper or someone brought to your attention  
14 this information?

01:58 15 A Well at the time we had, had caused some of the  
16 clerks in our publication -- or in our  
17 communications section to canvass the newspapers  
18 and to bring to my attention articles dealing with  
19 the Milgaard application.

01:58 20 Q And were you surprised to learn about this in the  
21 newspaper before you received it from Mr.  
22 Milgaard's counsel?

23 A I wasn't surprised. It had happened previously.

24 Q And --

01:58 25 A I was surprised that Ron Wilson was now being



1 elevated as a ground for the application.

2 Q And why was that?

3 A Not that long ago we had asked whether or not  
4 there were additional things that they were  
01:58 5 working on, or additional grounds to be advanced,  
6 we'd received nothing in reply. But "surprised"  
7 might be a funny word, it was a continuation of a  
8 pattern.

9 Q Were you thinking that 'why wasn't this canvassed  
01:59 10 from 1986 to 1988 and included in the  
11 application?'

12 A It occurred to me, but then it may well be -- and  
13 I think one of the arguments was that, but for the  
14 publicity that we had generated in relation to the  
01:59 15 application, people like Mr. Wilson would not have  
16 come forward and didn't come forward until such  
17 time as this public outcry had stimulated them to  
18 come forward and 'fess up.

19 Q Did you have concerns about the timing and the  
01:59 20 manner in which the Ron Wilson recantation was  
21 obtained and provided to you?

22 A Once I read the statement, certainly a number of  
23 concerns emerged, and questions.

24 Q And so let -- and we'll go to the statement in a  
02:00 25 moment, but just the fact that -- and I take it it



1 would be around June 6th, 1990, around this date,  
2 I don't know when -- around this date you would  
3 have become aware, I take it, that Ron Wilson  
4 recantation would now be a new ground --

02:00 5 A Yes.

6 Q -- in the application? And my question is did you  
7 have concerns about why now, and if Ron Wilson was  
8 going to recant why didn't they talk to him before  
9 they filed the application, and why did they not  
02:00 10 get this information then, and what is it that's  
11 caused him to do it now; did you have a concern  
12 about that?

13 A Sir, I really didn't think about those three  
14 questions, I was just thinking about the time that  
02:00 15 it, and what kind of time frame it would take to  
16 run this aspect of the application down.

17 Q Okay. You told us earlier that with respect to  
18 Linda Fisher going into the city police in 1980,  
19 one of the things you said, well, why now, why  
02:00 20 would she go in now and do this as opposed -- what  
21 might have triggered that?

22 A Yes.

23 Q And that was the purpose of my question.

24 A I understand. Linda Fisher is in a slightly  
02:00 25 different position from Ron Wilson. Ron Wilson



1 had testified at trial and to the extent that his  
2 testimony formed a significant part of the body of  
3 circumstantial evidence that underpinned the  
4 conviction of David Milgaard, it wasn't surprising  
02:01 5 to find a recanting witness as part of a Section  
6 690 application. Traditionally, or our past  
7 experience had indicated that that is a very  
8 popular ground. The timing of it I found  
9 surprising, but --

02:01 10 Q And so, yes, why did you find it surprising?

11 A Well, most of the time you don't get -- most of  
12 the time you have to cultivate a witness in order  
13 to generate the recant, particularly in this case  
14 where Wilson had testified under oath at trial.  
02:02 15 To recant would mean that he would expose himself  
16 to a significant risk, namely, that of perjury. A  
17 decision to disavow evidence that you've given  
18 under oath is one that's not taken lightly and I  
19 would have imagined that it would have taken some  
02:02 20 time to have cultivated the relationship to the  
21 point that gave Wilson the confidence to run the  
22 risk of a perjury charge by recanting publicly his  
23 trial testimony, so in light of the fact that we  
24 had been in communication with Messrs. Asper and  
02:02 25 Wolch over the last month or so, whether it dealt



1 with the Larry Fisher evidence or whether it dealt  
2 with the Markesteyn, until those news reports  
3 surfaced, we had received no inkling or very  
4 little inkling that, apart from the Cadrain thing,  
02:03 5 which was a bit of a heads up, but nothing about  
6 Wilson. I had expected maybe something about  
7 Cadrain, but nothing about Wilson.

8 Q And so nothing from Mr. Asper, Mr. Wolch saying --

9 A -- this was coming.

02:03 10 Q Yeah. And so I think you told us earlier, but the  
11 fact that Ron Wilson was not mentioned in the  
12 application as being a ground, or his evidence, I  
13 think you told us that therefore you saw no need  
14 to follow up and interview him?

02:03 15 A Correct.

16 Q If in the original application in December of 1988  
17 counsel for Mr. Milgaard had put forward the  
18 proposition that said we think Ron Wilson gave  
19 false evidence at trial, for whatever reason, and  
02:03 20 that we think he may or will recant some of it but  
21 we're concerned who and how that's obtained and we  
22 think you, Justice Department, ought to pay him a  
23 visit and get from him his current recollection of  
24 events because we think that may give rise to a  
02:04 25 ground, would that be something, in that scenario,



1 would you pursue that?

2 A Yes. At that point in time one of the thoughts  
3 that had occurred to me was the following: When  
4 you break down the most incriminating evidence  
02:04 5 that was led at David Milgaard's trial, you had,  
6 if I may call them, the three amigos, the three  
7 friends, Wilson, Cadrain and John, you had the  
8 reenactment evidence of Melnyk and Lapchuk, you  
9 had some of the forensic evidence, you had the  
02:05 10 knife, those were the key ingredients that led to  
11 the conviction. By then the forensic and  
12 reenactment evidence had been challenged, there  
13 had been some discussion about Nichol John. The,  
14 what I call the heads up with respect to Albert  
02:05 15 Cadrain I anticipated, but when Wilson came along,  
16 I was of the view that probably on the heels of  
17 the Larry Fisher ground, that this would likely be  
18 the last one, because there wasn't anything else  
19 left.

02:05 20 Q Did you expect it to be the last ground? You  
21 started out saying lookit, if you analyse the  
22 case, are you saying let's go back to 1986 then,  
23 are you saying that of the main evidence, Wilson,  
24 John, Cadrain, you would have anticipated that  
02:06 25 would be the likely starting ground in challenging





1 the conviction, being the incriminating evidence  
2 from at least Wilson and Cadrain and partially  
3 John?

4 A Yes.

02:06 5 Q And the fact that those three were not addressed  
6 in the application, other than the mention of  
7 John, which I think you described as a tease --

8 A Yes.

9 Q -- I guess did that surprise you that the  
02:06 10 application did not address Cadrain and Wilson  
11 initially?

12 A It didn't surprise me. I felt that given the  
13 experience of counsel, they had looked at the  
14 matter, investigated it and found that there  
02:06 15 wasn't the basis to advance it as a ground, that  
16 was my assumption, but as time passed, we -- I  
17 started to sense a pattern and that is that to the  
18 extent that we had not given a favourable decision  
19 on the first aspects of the application, that  
02:07 20 there would be -- there would be additional  
21 grounds by installment. With each submission  
22 there was a, there was significant press coverage,  
23 it kept the story alive in the minds of the  
24 public, particularly in Western Canada, and by now  
02:07 25 it was starting to get national exposure, so with



1 the June 6th letter coming on the heels of the  
2 June 5th letter containing the Markesteyn report,  
3 I was basically resigned to the fact that this  
4 would take a bit longer.

02:08 5 Q Okay. But just back on the Wilson evidence  
6 itself, I think would it be fair to say that his  
7 evidence at trial would have been key and  
8 significant evidence that led to the conviction of  
9 David Milgaard?

02:08 10 A Yes.

11 Q And similarly, Albert Cadrain's evidence, and in  
12 particular his observation of blood, I think that  
13 was the primary incriminating evidence he had,  
14 would also be significant evidence at trial?

02:08 15 A Yes.

16 Q And I think Nichol John, I think you told us that  
17 what she testified to at trial was not in and of  
18 itself directly incriminating?

19 A Correct.

02:08 20 Q And so you talked about the motel room incident  
21 and the forensic which had already been dealt  
22 with.

23 A Excuse me, sir, if I may just --

24 Q Yes?

02:08 25 A -- amend a response to the earlier question.



1 Nichol John did have a conversation with Wilson in  
2 Calgary in which there were certain words  
3 exchanged. Wilson later on recanted them, and  
4 that is words to the effect that Wilson said that  
02:09 5 David had indicated that he had gotten a girl in  
6 Saskatoon and Nichol had said yes, I know.

7 Q Yes.

8 A So the extent that that reference could have been  
9 interpreted as being inculpatory for David  
02:09 10 Milgaard, Nichol John was -- that evidence could  
11 be construed as exculpatory of her, or by her of  
12 him.

13 Q Yeah. Now, I believe at trial, and I could be  
14 wrong on this, I believe at trial that would have  
02:09 15 been hearsay from Wilson and I don't think Nichol  
16 John, I think probably hearsay from -- I don't  
17 think the evidence was put in at trial.

18 A Okay. I stand corrected.

19 Q No, it was certainly in the statements.

02:10 20 A Yes.

21 Q But I'm not sure that --

22 A -- it entered the record?

23 Q And I'm thinking because it was hearsay evidence,  
24 but I'll maybe check that for you, Mr. Williams.

02:10 25 But back on the Wilson evidence then, again back



1 on the timing, I think you said that -- is it  
2 correct to say that if Ron Wilson was going to  
3 recant, did you expect that that might have been  
4 done prior to the application being filed, or at  
02:10 5 least him checked into?

6 A Yes. By June of 1990 I had spoken with Nichol  
7 John, I had learned that she had been approached  
8 by Mrs. Milgaard to, quote, "recant", I had  
9 learned that Mrs. Milgaard had also approached Ron  
02:11 10 Wilson to recant. The information I had obtained  
11 was that neither Ms. John nor Mr. Wilson had done  
12 so and thus I was a bit surprised when in 1990  
13 Mr. Wilson's recanted statement arrived.

14 Q Mr. Asper's evidence before this Commission is, on  
02:11 15 this point is essentially that when the  
16 application was filed, there was no need to talk  
17 to Cadrain and Wilson or check them out because  
18 that was your job, to go out and interview these  
19 people and find out if they recanted, and that in  
02:11 20 May of 1990 I think he said by then he realized  
21 you weren't doing it and so therefore he went out  
22 to do what he thought you should do, and I'm  
23 paraphrasing but --

24 A Well, we agree to disagree.

02:11 25 Q Pardon me?



1 A My, and the department's, fundamental approach to  
2 an application is that we investigate the grounds  
3 that are advanced and to the extent that in doing  
4 so we discover additional matters that need to be  
02:12 5 investigated, we do. Mr. Asper proceeded on the  
6 basis that once you raised an issue, that then  
7 that entitled, or his expectation it appears was  
8 that the department would look at the entirety of  
9 the evidence that was led at trial. We had  
02:12 10 neither the ability nor the mandate to do that, so  
11 we focused on the grounds that were raised, and  
12 particularly when those grounds were advanced by  
13 experienced counsel.

14 Q And you mentioned that before. Did you have --  
02:12 15 would it be correct to say when the application  
16 was received and you mentioned that it would, you  
17 were aware that they had been working on this file  
18 for three years, or thereabouts, I think from '86  
19 to the end of '88, did you assume that if Ron  
02:13 20 Wilson had any evidence or that any ground  
21 relating to Ron Wilson existed, that counsel for  
22 Mr. Milgaard would have raised it?

23 A Yes.

24 Q And the fact that there was nothing in the  
02:13 25 application relating to Ron Wilson meant that



1           there was nothing that they felt Ron Wilson had to  
2           say would give rise to a ground for remedy?

3           A           Yes.

4           Q           You are familiar, Mr. Williams, I think I provided  
02:13 5           you with two transcripts from 1981, January 26 and  
6           April 15, 1981 of Joyce Milgaard's telephone  
7           interviews of Ron Wilson, and I think you've had a  
8           chance to briefly review them?

9           A           I have.

02:13 10          Q           And prior to me showing them to you in recent  
11          weeks, were you aware that those transcripts  
12          existed?

13          A           I was not aware that they existed.

14          Q           Were you aware -- I think you said you were aware  
02:13 15          that Mrs. Milgaard had talked to Ron Wilson many  
16          years earlier?

17          A           Yes.

18          Q           Were you aware of the contents of those  
19          discussions prior to me showing you those  
02:14 20          transcripts?

21          A           No. I had received a description in fairly  
22          general terms that Mrs. Milgaard had approached  
23          them with a view towards getting them to recant,  
24          but beyond that, I did not know the details of the  
02:14 25          conversation.



1 Q And we've been through those transcripts on a  
2 couple of occasions, I don't propose to bring them  
3 up, but in those discussions I think Mrs. Milgaard  
4 is probing with Mr. Wilson about his evidence at  
02:14 5 trial and Mr. Wilson talks about the polygraph and  
6 the difficulties he faced with the polygraph and  
7 raised some questions about what he had said at  
8 trial and asked to see the transcripts to maybe go  
9 over it, and again I think different people  
02:14 10 characterized what he said differently, but if  
11 those transcripts had been provided to you in  
12 December, 1988 as part of the application and said  
13 here, Mrs. Milgaard talked to Ron Wilson, he's a  
14 key witness, in these statements he talks about  
02:15 15 the polygraph and problems he had with the  
16 polygraph operation and the questioning, there's  
17 also in these transcripts he talks about he's not  
18 sure whether he saw blood, he's not sure about  
19 certain things and wants to look at the transcript  
02:15 20 and we think that Mr. Wilson, we think Mr. Wilson  
21 lied at trial and we think he may now be in a  
22 position to shed more light on that. Is that  
23 something that you would pursue with Mr. Wilson in  
24 that context and then that's put forward as a  
02:15 25 ground, here are the transcripts?



1 A Yes.

2 Q Would those transcripts of interviews of a key  
3 witness in 1981 be of assistance to you in  
4 considering the application under Section 690  
02:15 5 generally?

6 A Yes.

7 Q And apart from it being a ground or not, would it  
8 be -- would it be of assistance to know what Mr.  
9 Wilson said in 1981?

02:16 10 A Yes.

11 Q When it became a ground on June the 6th, 1990, and  
12 we'll get into Ron Wilson's recantation, I think  
13 you ended up interviewing Ron Wilson; is that  
14 correct?

02:16 15 A That's correct.

16 Q Would it have been of assistance to you in your  
17 dealing with the Ron Wilson recantation, the  
18 circumstances under which the recantation came  
19 about and, three, your examination of Ron Wilson  
02:16 20 about the details, would it have been assistance  
21 to you to have the 1981 transcripts of Joyce  
22 Milgaard's interviews with Ron Wilson?

23 A Yes, and with respect to each of the elements  
24 you've just identified.

02:16 25 Q Okay. And let's talk about those. First of all,





1 the circumstances under which the recantation was  
2 obtained, can you tell us about how that might  
3 have assisted you?

4 A Sometimes recantations evolve. The information  
02:17 5 that had been provided to me at the time was that  
6 Mr. Henderson had visited Mr. Wilson and at the  
7 conclusion of eight hours of discussion, or  
8 several hours of discussion, I believe the number  
9 eight was mentioned, a statement emerged. That  
02:17 10 statement contradicted four or five key factual  
11 assertions that Mr. Wilson had made at trial.

12 Accompanying the statement was a  
13 letter which signaled that Mr. Wilson had perhaps  
14 had a crisis of conscience over the last several  
02:17 15 years, had been bothered by the testimony that he  
16 had given at trial. In the circumstances, knowing  
17 that he had been approached in 1981, knowing the  
18 nature of the approach, the questions that were  
19 asked, the responses given, that certainly  
02:18 20 informed me in terms of what questions to ask and  
21 how to approach Mr. Wilson in terms of  
22 understanding why, in 1990, he had chosen to  
23 recant when he had not done so 10 years  
24 previously.

02:18 25 Q If we can just talk generally about recantations,



1 and I think you mentioned that they are fairly  
2 common tools or grounds in wrongful conviction  
3 applications?

02:18 4 A In several of the ones that I've had to review,  
5 yes.

6 Q And I think it goes without saying that if a  
7 person is wrongfully convicted, that almost  
8 automatically that means someone at trial must  
9 have given wrong evidence, although maybe that's  
02:18 10 not, maybe that's too broad a statement.  
11 Likely -- likely a witness lied at trial?

12 A Quite often, yes, or was mistaken.

13 Q Or was mistaken. And again with recantations, and  
14 let's focus on what you did with the David  
02:19 15 Milgaard application and the Ron Wilson  
16 recantation, but what were the things then that  
17 you looked for in testing a recantation, are there  
18 certain things that tend to show that they are not  
19 credible, that tend to show that they are credible  
02:19 20 or how do you approach a recantation 20 years  
21 later?

22 A Well, one of the first things you do is look at  
23 the facts that are now being disputed and you look  
24 to determine whether there is any other evidence  
02:19 25 that objectively confirms or not the accuracy of



1 the facts that are subject to the recant.  
2 Sometimes if there is an event in which there are  
3 only two individuals who witnessed it, one, the  
4 deceased and the other the witness, you then look  
02:20 5 to see if there are any objective indicators  
6 around the story that, or the version that the  
7 witness is now offering to see whether it  
8 objectively confirms material elements of the new  
9 version.

02:20 10 If the event is one that has  
11 been witnessed by a number of others, you would  
12 then check to see whether their accounts coincide  
13 or how it compares, whether they have any interest  
14 for or against the issue that might influence or  
02:20 15 inform their perceptions, steps like that, can the  
16 facts be objectively confirmed by other evidence  
17 that was led that's unassailable, and if not, then  
18 you proceed to the next step.

19 Q And that would be testing the veracity of the  
02:21 20 recantation, is that fair, the new evidence you  
21 are testing, is this believable in light of other  
22 known objective facts; is that a fair way of --

23 A That's one question. The other question is the  
24 reason for the recant, why did you lie, because  
02:21 25 when you do take the oath it is a very, very



1 serious step, and at trial, and I think at the  
2 prelim, the seriousness of the oath and the  
3 repercussions to the witness for violating that  
4 oath I think were squarely put to Mr. Wilson. You  
02:21 5 take a look at the reasons advanced, you take a  
6 look at the background, the training and the  
7 experience of the witness, is it someone who is  
8 new to the court system, shy, retiring, easily  
9 intimidated, you look at the circumstances in  
02:22 10 light of the reasons that are being advanced.

11 Q So is it correct to say that you would test the  
12 credibility and veracity of the reasons put  
13 forward by the recanter for the recantation?

14 A I would test the reasons advanced by the recanter,  
02:22 15 yes.

16 Q And so that if the reasons turned out not to be  
17 valid or to be suspect, therefore, the recantation  
18 might be suspect; is that a fair way to put it?

19 A Yes.

02:22 20 Q And would you be testing or concerned about a  
21 person recanting who is not truly recanting?  
22 Maybe I didn't ask that very well, but wouldn't  
23 you just accept the recantation and say, okay,  
24 here we go, good enough for me, let's move on, why  
02:22 25 would you -- why would you want to test where a



1 witness recants?

2 A Because it's a very serious step. Where a witness  
3 has testified under oath, albeit many years ago,  
4 and they now recant, we felt -- or I felt it was  
02:23 5 our obligation to look into the circumstances  
6 behind that. Sometimes it may just be a change of  
7 heart, sympathy, someone will say look, this  
8 person has been in jail for 10, 15 years, they  
9 should be out, they were convicted on the basis of  
02:23 10 evidence I provided, maybe I'm not sure today of  
11 what I said, I don't feel right about them still  
12 being in jail and, you know, maybe I was wrong.

13 Q And so the recantation would be a means to an end  
14 where the recanter says I think this person should  
02:23 15 get out of jail and I can help by saying I lied at  
16 trial when maybe he or she didn't; is that fair?

17 A Certainly the motive has been a factor, yes.

18 Q And so are you telling us that one of the reasons  
19 you would test a recantation is to make sure it's  
02:24 20 a genuine recantation and not an effort by a  
21 witness to over -- for whatever reason, sympathy,  
22 guilt, to try and assist a convicted person?

23 A Correct.

24 Q So in other words, to make sure the recantation is  
02:24 25 genuine?



1 A Yes.

2 Q And I take it, Mr. Williams, that that was a  
3 possibility, that again let's deal with Ron  
4 Wilson, but just drawing on your experience, that  
02:24 5 20 years later you were not satisfied to simply  
6 accept Mr. Wilson's statement then?

7 A I reviewed the statement, I reviewed some of the  
8 conclusions I had drawn. On the basis of the  
9 information I had assembled which did not support  
02:25 10 some of the conclusions, I certainly wanted to  
11 clarify those points.

12 Q What about the notion that, and I think this was  
13 advanced a bit later, that says okay, even if you  
14 don't believe Ron Wilson's recantation in 1990,  
02:25 15 he's a liar then, that means he was a liar in  
16 1970, therefore, regardless of whether his  
17 recantation is true or not, the fact that he  
18 recanted, true or not, means either he's telling  
19 the truth and therefore he lied at trial or he's  
02:25 20 lying now which means he was a liar at trial?

21 A Our courts have established certain tests for the  
22 introduction of fresh evidence. The leading case,  
23 and I still think it is, is the case of *Palmer*, it  
24 sets out certain criteria against which evidence  
02:25 25 that's now advanced as being fresh evidence should



1 be measured. It's -- I think these rules, they  
2 are court driven rules, have been, have evolved as  
3 a result of the experience, human experience and  
4 criminal justice experience, and based on those  
02:26 5 experiences, it signaled to us that before we  
6 would accept what was being offered at face value,  
7 we should at least investigate it, test it,  
8 because the decision that would be taken would  
9 have significant repercussions for the  
02:26 10 administration of criminal justice.

11 Q If we can just go back to my earlier question  
12 about the, and I think you told us that having the  
13 1981 transcript, the two transcripts of Mrs.  
14 Milgaard's interviews of Ron Wilson would have  
02:26 15 assisted you in the three areas, and I think the  
16 three areas were in your review of the  
17 circumstances under which the recantation was  
18 obtained on June 4th, two, the substance of the  
19 statement, the recantation, and three, your  
02:27 20 interview or your examination following  
21 Mr. Wilson, and so let's just go back to the  
22 circumstances.

23 You talked a bit about  
24 recantations being an evolutionary process. Do I  
02:27 25 take from that that you were, you had some



1 concerns that 20 years after Mr. Milgaard's  
2 conviction, apparently out of the blue Ron Wilson  
3 in one day recants his evidence?

4 A Yes.

02:27 5 Q And was that suspicious to you?

6 A Surprising.

7 Q Surprising. And was that because your experience  
8 was that it took witnesses a little longer to do  
9 that, or tell me what --

02:27 10 A Well, surprising. Unless there was some traumatic  
11 event or some event that accompanied that change  
12 of heart, my own experience, and perhaps it's  
13 limited, but -- was that it takes a little bit  
14 longer than that to undo or to disavow your sworn  
02:28 15 evidence before a court at a time when one of your  
16 buddies was on trial for murder -- I mean, that's  
17 one of the most serious offences, if not the most  
18 serious in the *Criminal Code* -- and to sit in a  
19 chair like this in front of a jury of 12 men and  
02:28 20 women presided over by a judge and give evidence  
21 when you know what's at stake is not a task that's  
22 taken lightly, so when you disavow from that  
23 evidence 20 years later, the question is why.

24 Q And so again, just on the circumstances, and I'll  
02:29 25 deal with this a bit later when we talk about Mr.





1 Henderson's interview, do I take it a red flag  
2 went up saying, okay, I need to find out how it  
3 was that, just as you've said, he suddenly had a  
4 change of heart and why not -- instead of June  
02:29 5 4th, 1990, why not 1985, why not 1980, what  
6 happened to cause this person today to recant his  
7 evidence?

8 A Yes.

9 Q What led to it. And let's talk a bit about the --  
02:29 10 and I don't propose to get into them in too much  
11 detail, but in the 1981 transcripts, would the  
12 fact that, and I think in those transcripts Mr.  
13 Wilson says to Mrs. Milgaard, talks about certain  
14 uncertainties and concerns about the polygraph and  
02:29 15 asks for an opportunity to read through the  
16 transcripts to see if he might be able to shed  
17 some more light, and I think the evidence is that  
18 that was never done. Can you tell us, is that  
19 something that would, that would you look to the  
02:30 20 1981 interviews and say, okay, was there some hint  
21 there that maybe Mr. Wilson was having doubts  
22 about his evidence and maybe was ripe for a  
23 recantation or was thinking that way, or tell us,  
24 what would you be looking for?

02:30 25 A Well you'd certainly look at the discussion to see



1 what was discussed; whether there were any  
2 problems identified by the witness, and if so what  
3 they were; what, if any, prompts were offered or  
4 were suggested to the witness; any inducements;  
02:31 5 any threats; if not, what was the context of the  
6 discussion; were there any, shall we say,  
7 movements, howsoever small, away from the  
8 positions taken at trial; does this 1990 statement  
9 reflect an evolution of thought that had been  
02:31 10 generated earlier, those are some of the things  
11 I'd be looking for. Without a detailed  
12 examination of the statement, you know, I'd merely  
13 be speculating, but those are some of the  
14 categories of things that I would look for.

02:32 15 COMMISSIONER MacCALLUM: Excuse me, Mr.  
16 Hodson, before I turn the page again.

17 One of the preambles to this  
18 discussion was a question by Mr. Hodson that,  
19 along the lines that one must be sure -- he asked  
02:32 20 you to agree or not -- one must be sure that the  
21 recantation is genuine, and you said "yes". But  
22 that's, literally, not so. I mean you're not  
23 making findings of credibility, are you, you are  
24 trying to determine whether there's anything  
02:32 25 obviously wrong with the recantation?



1 A Correct.

2 COMMISSIONER MacCALLUM: You're just  
3 making -- on the basis of that you make a  
4 recommendation to the minister?

02:32 5 A That's so.

6 COMMISSIONER MacCALLUM: Okay, yeah.

7 BY MR. HODSON:

8 Q And just on that point, as far as the genuineness,  
9 would you view it as your task, in dealing with  
02:32 10 the recantation, to probe it to get whatever  
11 information you could to assess, then, the  
12 reliability or the genuineness of the recantation?

13 A Yes. I mean someone, if you take the Wilson  
14 recant for a moment, someone says "I was  
02:33 15 browbeaten into taking this position". Well one  
16 of the things you would want to do is take a look  
17 at the circumstances of which any statement had  
18 been given to test whether or not that motive for  
19 giving false evidence at trial can be supported by  
02:33 20 what the record reveals.

21 COMMISSIONER MacCALLUM: But, I mean, you  
22 don't carry your -- you don't carry your testing  
23 questions to the extent that a defence lawyer  
24 would in a trial setting, do you, you are not  
02:33 25 expected to do that?



1 A No, I'm not. Sometimes someone would accuse me of  
2 doing that, but --

3 COMMISSIONER MacCALLUM: They have, yes.

4 A They have.

02:34 5 COMMISSIONER MacCALLUM: Yes.

6 A But there -- I think the attitude and the position  
7 I take is not quite as strident as defence counsel  
8 might take with a contradictory witness at trial,  
9 but that is not to say that I would not explore a  
02:34 10 statement to see whether or not it has a  
11 reasonable basis in fact.

12 COMMISSIONER MacCALLUM: Uh-huh.

13 A So if someone says "I was browbeaten" my question  
14 would be "well what did they do to you, how did  
02:34 15 that happen, what were the circumstances".

16 By contrast, the defence counsel  
17 might take a slightly more aggressive in -- not  
18 inquisitorial -- but "isn't it a fact, sir, that  
19 this didn't happen," --

02:35 20 COMMISSIONER MacCALLUM: Uh-huh.

21 A -- "that your motive was prompted by greed?",  
22 etcetera, etcetera, whereas we'd be trying to get  
23 an outline of the circumstances which the witness  
24 now feels prompted him or her to change the  
02:35 25 testimony.



1                   COMMISSIONER MacCALLUM: Yeah. As Mr.  
2                   Hodson began by asking or suggesting to you, you  
3                   simply don't take a recantation at face value and  
4                   pass it on to the minister, and just say "there  
02:35 5                   you are, you decide"?

6           A           You really, you really take a look at what is  
7                   said, the reasons for it, and sometimes there are  
8                   some *bona fides*, or there are reasons that just  
9                   have that ring of truth, but notwithstanding, you  
02:35 10                  ask the question.

11           BY MR. HODSON:

12           Q           And let me give you an example. I think what you  
13                   are saying is that you would check out and  
14                   investigate and probe all the relevant facts that  
02:36 15                  would be necessary for someone to test the  
16                   credibility of the recantation, the credibility of  
17                   the reasons; is that fair?

18           A           Yes. My job would be to provide the minister with  
19                   sufficient context for the recantation so that the  
02:36 20                  minister can assess how much weight to put on it.

21           Q           So if a witness said -- and this is an example not  
22                   related to this case -- but if a witness said  
23                   "well, I lied at trial, I'm now recanting, at  
24                   trial I was paid \$10,000 to lie and the money was  
02:36 25                  put into my account", I take it you would go check



1 the bank records and check all those to find out  
2 whether that was true, and if you found facts that  
3 established that there was no such payment, no  
4 such bank account, that would be information that  
02:36 5 would be relevant to considering the credibility  
6 of the recantation; is that fair?

7 A Yes.

8 Q And so you're, I think what you're saying is  
9 gathering all the facts and testing, but doing it  
02:37 10 with a --

11 A With the view that the ultimate decision-maker  
12 will decide how much weight to give to it.

13 Q Is it fair to say, though, that your approach to  
14 it is, in a way, to challenge it -- or not  
02:37 15 challenge it -- but to --

16 A Test.

17 Q -- test, and so it's a case of saying "okay, I'm  
18 going to probe not only the recantation, but also  
19 the reasons"?

02:37 20 A Yes.

21 Q And would that be the presumption, being that the  
22 original statement at trial under oath, would  
23 there be somewhat of a presumption of regularity  
24 or a starting point that "lookit, they testified  
02:37 25 under oath at trial and they were cross-examined



1 by counsel, the jury heard them, the judge was  
2 there", that the starting point is that some  
3 credence has to be given to their sworn evidence?

02:38 4 A Yes, and some credence has to be given to the  
5 manner in which the trial evidence was tested, and  
6 we take that as the starting point. And it may  
7 well be that a witness misspoke at trial, and we  
8 admit of that possibility, or that they lied at  
9 trial.

02:38 10 Q And so would one of the tasks be to say "well  
11 okay, if they lied at trial, why didn't counsel  
12 and/or the judge and/or the jury figure it out"?

13 A It's -- I understand the question, but sometimes,  
14 despite the best forensic questioning by an  
02:38 15 examiner, a jury will believe an aspect of a  
16 witness' testimony.

17 Q Okay. So we just go back, again, to the three  
18 points and what value the '81 transcripts would  
19 have had. I think you've told us, in looking at  
02:38 20 the circumstances and why it was that Ron Wilson  
21 recanted on June 4th, 1990, I think you've told us  
22 that knowing what transpired in '81 would have  
23 assisted you in understanding and probing those  
24 circumstances; is that fair?

02:39 25 A Yes.



1 Q Secondly, the substance of the statement, in fact  
2 what exactly he did recant and what he didn't in  
3 the June 4th, 1990 statement; would knowing what  
4 he said in '81 and didn't say in '81 be of  
02:39 5 assistance to you in that respect?

6 A Yes.

7 Q And three, in your examination of Ron Wilson,  
8 which we will get to later in July, when you're  
9 questioning him if you would have had the  
02:39 10 transcripts of the '81 interviews, would those be  
11 tools or resources you would have used in  
12 questioning Mr. Wilson, either to test him or to  
13 get him to elaborate?

14 A Yes.

02:39 15 Q If we can go back to 333459. We've covered a fair  
16 bit of Ron Wilson, so this is the -- again, just  
17 go back and scroll down -- so this is where the  
18 Ron Wilson statement is introduced. And then, as  
19 well, we talk about the Dennis Cadrain statement,  
02:40 20 'Dennis Cadrain tells us that his brother Albert  
21 currently resides in a tree house in Dennis' back  
22 yard and basically drifts around the lower  
23 mainland and Vancouver Island. Further, Dennis  
24 tells us that Albert suffered from serious  
02:40 25 psychiatric infirmities during the course of the





1 Milgaard investigation which ultimately resulted  
2 in his committal to the psychiatric unit at the  
3 University Hospital in Saskatoon.

4 Apparently, Albert became  
02:40 5 convinced of Milgaard's guilt by virtue of a  
6 vision that he saw one day while gazing skyward.  
7 Albert claimed that he saw the Virgin Mary  
8 stomping upon a snake, which bore the face of  
9 David Milgaard. Later, Albert claimed that David  
02:41 10 has a purple halo and that Albert's Yogi had said  
11 that the purple halo meant that Milgaard was a  
12 murderer.

13 Our information is that Albert  
14 clings to these visions to this very day.'

02:41 15 And then, 'Obviously, we take  
16 the view that the enclosed statements provide  
17 further dramatic proof of the wrongful conviction  
18 of David Milgaard. It is unfortunate that your  
19 office did not speak with these people at the  
02:41 20 outset, even if only to confirm their evidence.  
21 The fact is, however, that the truth of what  
22 happened in this case is of great concern to us.  
23 That David Milgaard remains imprisoned is of  
24 greater concern.'

25 So I take it that you would have



1 read this letter as advancing new grounds, being  
2 the Ron Wilson, Albert and/or Dennis Cadrain,  
3 information?

4 A Yes.

5 Q And what did you understand -- I take it the Ron  
6 Wilson one is pretty straightforward, that he has  
7 recanted his evidence, if that's credible that  
8 that might be considered a ground?

9 A Yes.

02:41 10 Q What about the Albert Cadrain information, what  
11 did you understand this ground to be?

12 A Well this was, if I could use the word, a  
13 collateral attack on Albert by his brother Dennis.  
14 Essentially the recitations are designed to cast a  
02:42 15 great deal of doubt on the veracity of Albert's  
16 trial testimony, and basically saying "lookit, had  
17 the jury known that Albert was mentally unstable,  
18 they may have given his evidence a slightly  
19 different weight." The information about Albert  
02:42 20 speaks in general terms. That Albert suffered  
21 from serious psychiatric infirmities during the  
22 course of the investigation certainly signals a  
23 connection of psychiatric problem at the trial,  
24 because the investigation preceded the trial.  
02:43 25 Some of the other graphic details about visions



1           certainly raise questions, but that wasn't coming  
2           from a health professional, it was coming from a  
3           brother, and coming from a brother who my  
4           information up until that time suggested was  
02:43 5           highly protective of Albert, and some of this just  
6           seemed to go against the grain. But it was out  
7           there, my sense was that we needed to run this  
8           aspect of the story down.

9           **Q**       And if we just talk about Albert Cadrain for a  
02:43 10           moment, and the nature of his evidence, I think  
11           his evidence at trial was -- I think the most  
12           significant damning evidence was his observation  
13           of blood on David Milgaard the morning of the  
14           murder, and I think as well in a hurry to leave  
02:44 15           that day, and then some suggestions about the  
16           Mafia and a few things on the road. But I think  
17           --

18           **A**       Well, it certainly confirmed the cosmetic case  
19           incident.

02:44 20           **Q**       And, I'm sorry, and the cosmetic case. So in  
21           looking at that evidence, and let's take it as a  
22           given that three years after the trial Mr. Cadrain  
23           was hospitalised for psychiatric issues, and  
24           perhaps let's take it as a given that he had  
02:44 25           psychiatric issues from then through until this



1 time, 1990; would psychiatric illnesses or  
2 problems that came to light, or that existed after  
3 the completion of the trial process, would that be  
4 something that could give rise to say "okay, well  
02:45 5 this might explain his evidence being" -- I'm  
6 trying to understand that, under the Section 690  
7 grounds, would that --

8 A It might, and I use that qualifiable term.  
9 Periodically, witnesses get ill, and they get ill  
02:45 10 after trial. The question is were they ill at  
11 trial and, if so, did that illness affect their  
12 perception, did it affect their observations, did  
13 it skew it. Is the fact of the illness something  
14 that the jury ought to have known, and that might  
02:45 15 have affected the observations; were the witness'  
16 evidence, was it confirmed by others who did not  
17 suffer that illness, and if so to what extent was  
18 it confirmed; could it be confirmed by independent  
19 sources; those are some of the factors that you  
02:46 20 take into account in terms of assessing the impact  
21 of illness post-trial.

22 Q Is it correct to say that the simple bare fact  
23 that a couple years after the trial a witness was  
24 hospitalised and then suffered psychiatric illness  
02:46 25 from then on, in and of itself, get you in the 690



1 door?

2 A No. You have to take a look at some of the  
3 details. It could, it has in the past and it  
4 could, but it's not automatic.

02:46 5 Q It's not automatic. And I take it that it would  
6 have to be a connection between the subsequent  
7 illness, and the fact that it's a subsequent  
8 illness automatically makes it new; correct?

9 A Yes.

02:46 10 Q It's not something known at the time, and it's  
11 some connection that says "the evidence, his or  
12 her evidence at trial, is now suspect, and there  
13 is a reasonable likelihood of a miscarriage of  
14 justice, so that the accused ought to be given an  
02:47 15 opportunity to deal with this new information that  
16 the evidence at trial may not have been reliable"?

17 A Yes. Quite frequently in what I call *bona fides*  
18 cases there is a reference to the Court in terms  
19 of whether it would accept the fresh evidence.

02:47 20 Q And let's take another scenario where, if it were  
21 established that Albert Cadrain was in fact  
22 suffering mental illness at the time of the trial,  
23 the investigation, and his evidence, and that it  
24 was later discovered that he was suffering this  
02:47 25 illness during the course of the investigation and



1 trial; again, does that automatically get you a  
2 690 remedy, or does it again depend upon how it  
3 impacts on the evidence?

4 A I think it's the latter, it depends on the nature  
02:47 5 of the illness and its impact on the evidence.  
6 Somebody can be suffering from depression, but to  
7 the extent that those moods and the symptoms don't  
8 result in distorted perceptions of certain events,  
9 the fact that they may be emotionally distraught  
02:48 10 or psychiatrically impaired may not necessarily  
11 translate into a review.

12 But on the heels of the Ferris  
13 Report, the Deborah Hall assertions, the Larry  
14 Fisher, the Ron Wilson, and the Markesteyn Report,  
02:48 15 adding Albert Cadrain was just -- and particularly  
16 when you talk about, you know, a witness who had a  
17 vision and that the Virgin Mary was trying to kill  
18 a snake, when all that is made public it certainly  
19 adds to the fuel that signals something went wrong  
02:49 20 at that trial and it reinforces our resolve to  
21 check it out. It is just a really, really  
22 colourful tale that requires some investigation.  
23 Q Okay. So, if we can go to the next page of this  
24 letter, Mr. Asper says, 'We must insist that this  
02:49 25 matter be resolved with the utmost speed and that



1 the Milgaard case be re-opened forthwith.' And I  
2 think you've told us that, in this letter, we have  
3 Ron Wilson, Dennis Cadrain, Albert Cadrain the day  
4 before Dr. Markesteyn and Dr. Merry?

02:49 5 A That's basically the bottom line, would like a  
6 speedy resolution, and just heaping additional  
7 stuff on the fire. That's fine, but our task is  
8 to check it out, we've checked out the other three  
9 grounds previously and found that it wasn't  
02:50 10 entirely as presented, and armed with that  
11 information you can certainly understand why we  
12 would take a look at these grounds, particularly  
13 when you have a recant 20 years later and when you  
14 have such colourful language to describe Albert's  
02:50 15 condition.

16 One of the things I would look  
17 for is -- would be some type of report coming from  
18 the family, more closely related to the parent,  
19 with some reference to a doctor or some medical  
02:50 20 practitioner that we could consult in order to  
21 ascertain the nature of the illness, the impact  
22 the illness may have had on Mr. Cadrain's ability  
23 to observe and to recount, and, generally, the  
24 impact at trial.

02:50 25 Q If we can go back to the previous page, did you



1 expect that this information -- and, again, we  
2 know that the Wilson information you said was in  
3 the media -- the information on Albert Cadrain,  
4 can you tell us what your thinking was at that  
02:51 5 time about whether this was information that was  
6 destined for the media?

7 A Without a doubt, it was destined, and I think it  
8 emerged not too long thereafter.

9 Q Did you look at this, at the time, thinking, okay,  
02:51 10 well this -- and you said the word "colourful  
11 tale" -- was drafted or designed more to grab  
12 media attention than to grab your attention?

13 A Certainly.

14 Q And I'm trying to understand how that might have  
02:51 15 affected your approach to it. Let me give you two  
16 examples.

17 A Well, before you go on, --

18 Q Oh, sorry?

19 A -- it's designed to grab my attention. Basically  
02:51 20 they are saying, lookit, do you really want it  
21 known that one of the trial witnesses is a looney  
22 or is psychiatrically infirm, and that this  
23 infirmity is manifested by visions? Do the right  
24 thing, be the hero, open up this thing  
02:52 25 immediately.





1 Q And avoid Albert Cadrain being exposed publicly?

2 A That's pretty much it.

3 Q Let me give you the two examples. In one  
4 scenario, you talked about a doctor's report, if

02:52 5 the ground was "Albert Cadrain's evidence at

6 trial, we've now discovered, is unreliable, here

7 is a doctor report that has the diagnosis and an

8 opinion on these matters", and when, when he or

9 she was of the opinion that he suffered this

02:52 10 medical condition, whether it existed in '69-'70,

11 if so would it have affected Albert Cadrain's

12 ability to observe, recall, etcetera, followed up

13 by information from family members that would

14 either -- that would support the fact that this

02:52 15 existed in '69-'70, and that it was going to

16 remain confidential and not disclosed due to the

17 sensitive nature of it, on one extreme versus the

18 other, which is I think what you've described here

19 as "a more colourful tale"; would you have

02:53 20 approached what I just described differently than

21 how you approached what is in this letter?

22 A I think we approached each of them in the

23 circumstances of this case quickly and

24 expeditiously. You certainly, when you get a

02:53 25 ground which is more fully developed by way of



1 "here's some medical information, here are the  
2 consents, here is a family member who at least can  
3 identify a medical practitioner that may have  
4 treated Albert, may identify the hospital in which  
02:53 5 he had been" -- it says the University Hospital in  
6 Saskatoon, is there an attending physician, what  
7 was the nature of the illness, if it's his brother  
8 maybe he knows whether it was schizophrenia,  
9 whether it was depression, whether it was  
02:54 10 something else, was it treatable, was it treated,  
11 and if so by what means, those are some of the  
12 additional facts that would give you a leg up in  
13 terms of tracking down this ground.

14 Q And so, if in fact this were true and that Albert  
02:54 15 Cadrain did suffer visions during the course of  
16 the investigation, would that be something that  
17 would be a factor in a Section 690 application?

18 A Oh, definitely, yes.

19 Q And if it was something that happened after, in  
02:54 20 other words was a later issue that may not have  
21 affected his evidence at trial --

22 A That, also, would be something to know. We do  
23 know that Mr. Wilson, Mr. Cadrain, and Ms.  
24 John/Demyen took substances, which would now be  
02:55 25 called controlled substances, during that period



1 of time, don't know what -- with what frequency  
2 and with what impact, certainly that would have a  
3 bearing.

4 Q And so again on, just on the Albert Cadrain  
02:55 5 information, are you telling us that you would  
6 have either expected or hoped for more information  
7 to support this contention that Albert Cadrain  
8 suffered mental illness at the time of trial and  
9 therefore his evidence is not relevant, or did  
02:55 10 that simply mean you had to do more legwork?

11 A We had to go more legwork. I mean it's general,  
12 it -- he suffered serious psychiatric infirmities  
13 and he was committed, and there is a discussion of  
14 visions, we don't know when those began or -- and  
02:56 15 what impact they had on his perception of reality,  
16 those are things that we'd have to look into.

17 Q And are you saying that there could be a situation  
18 where Albert Cadrain genuinely did have these  
19 visions at a later point in his life, yet his  
02:56 20 evidence at trial may well have been reliable?

21 A Yes.

22 Q And again, you talked about the corroboration, did  
23 the fact that other witnesses had corroborated his  
24 evidence about witnessing the compact, the  
02:56 25 cosmetic bag being thrown out of the car by David



1 Milgaard, where did that fit in in your thinking?

2 A Well it certainly had an impact in our assessment  
3 of, let's say, the deficits that any psychiatric  
4 infirmities may have had. He may well have had a  
02:56 5 psychiatric infirmity, but if what he saw was also  
6 observed by those who did not have any deficit,  
7 what turns on it.

8 Q And I suppose the trick or the challenge, then, is  
9 to find out whether it was a genuine observation  
02:57 10 by Mr. Cadrain, or whether that observation was  
11 influenced by a mental illness that was not known  
12 at the time, that if it had been known at the time  
13 and had been presented before the jury might have  
14 affected the credibility of that evidence; is that  
02:57 15 correct?

16 A Yes.

17 Q And so, based on this letter, that would be your  
18 challenge, to go down that path and sort out that  
19 issue?

02:57 20 A Try to, yes.

21 Q And the fact that the visions, you talked before  
22 about this being colourful, did you have a concern  
23 about what this information, if put in the public  
24 domain, would do to the perception of the public  
02:57 25 about not only what you were doing, but about Mr.



1 Milgaard's conviction?

2 A Well, keep in mind that this would come on the  
3 heels of the dog urine story, it would certainly  
4 cause members of the public to wonder the basis  
02:58 5 upon which people were being convicted of murder.

6 Q Did you initially doubt this information from  
7 Albert Cadrain on the basis that, lookit, this is  
8 nothing more than something to put in the media,  
9 did it cause you to be more doubtful based on your  
02:58 10 past experiences of stories going into the media?

11 A I approached it with a certain degree of  
12 skepticism. I realized that there may be kernels  
13 of truth in it, but that there may also be some  
14 embellishments which were designed to capture the  
02:58 15 attention of the reading or viewing public. I  
16 couldn't ignore it, and if it's being sourced to  
17 Dennis, who is Albert's brother, certainly there  
18 -- it's something that required some fairly urgent  
19 follow-up.

02:58 20 Q Okay. That would be an appropriate spot to break.

21 *(Adjourned at 2:59 p.m.)*

22 *(Reconvened at 3:15 p.m.)*

23 BY MR. HODSON:

24 Q Call up 016475, please, this is the statement of  
03:15 25 Dennis Cadrain, and I think you told us that after



1 getting the information on the June 6th letter you  
2 would have had a number of things to do, to follow  
3 up not only on Dr. Markesteyn, Dr. Merry, Ron  
4 Wilson, and now Dennis and Albert Cadrain; is that  
03:15 5 correct?

6 A That's correct.

7 Q And so we'll go through in a bit of a  
8 chronological fashion here. The first -- this is  
9 the statement of Dennis Cadrain that was provided  
03:15 10 to you and you had mentioned earlier that you --  
11 did you -- that this was from a brother who may  
12 have been protective of Albert; is that right?

13 A Yes.

14 Q And did you have concerns that maybe Dennis, that  
03:15 15 that might be influencing his observations?

16 A It could be a factor. That's a question I would  
17 have to ask.

18 Q And we've been through these statements many  
19 times, I'll just touch on parts of them, but here  
03:16 20 at the bottom I think Dennis confirms that he  
21 remembers the day that Albert came back from  
22 Regina:

23 "At this time I told Albert about the  
24 murder that had occurred in our  
03:16 25 neighbourhood on the day they'd left



1                   Saskatoon. Albert then told me he'd  
2                   seen blood on David Milgaard's clothing  
3                   the morning they left town. I have  
4                   always been under the impression that  
03:16 5                   Albert first heard about the murder from  
6                   me on the day he returned home. Until  
7                   now I was not aware that he'd been  
8                   questioned about the murder earlier by  
9                   Regina police. Albert never told me  
03:16 10                  about this."

11                  Just on that issue about Albert, do you recall  
12                  putting any significance on that, Albert's  
13                  questioning by the Regina police?

14                  A           Not in the context of his information. I knew  
03:17 15                  that Albert had been arrested by the Regina police  
16                  and had had -- and had not been treated well by  
17                  them.

18                  Q           And what -- and was that based on what was in the  
19                  transcript at the trial? I think Mr. Tallis  
03:17 20                  questioned Mr. Cadrain about his involvement with  
21                  the Regina police.

22                  A           I believe so.

23                  Q           And then I think the evidence suggests that Albert  
24                  Cadrain, and this is what's confirmed by Dennis,  
03:17 25                  that upon his return to Saskatoon he told Dennis



1 that he saw blood on David Milgaard the morning of  
2 the murder and then Dennis talked to him and  
3 Albert then went into the Saskatoon City Police  
4 station with this information; is that correct?

03:17 5 A That's my understanding.

6 Q And the fact that Albert went into the Saskatoon  
7 City Police station voluntarily with the  
8 incriminating information, was that a fact of  
9 significance to you when you looked at his  
03:17 10 evidence and in the context of, later on we'll see  
11 his mention about the treatment by police and  
12 pressures and things of that nature?

13 A Yes, it was.

14 Q In what way?

03:18 15 A Well, firstly, Albert's statement wasn't  
16 prompted -- Albert volunteered to go to the  
17 police. Although he had been arrested and  
18 imprisoned in Regina, when he arrived home he was  
19 not under any type of supervision by the police  
03:18 20 and when he learned of the homicide, on his own  
21 volition he decided to bring to the attention of  
22 the police authorities what he had observed the  
23 morning that he and David Milgaard, Nichol John  
24 and Ron Wilson left Saskatoon in January, 1969.  
03:18 25 This was not a situation in which the police had





1 him in, under their control, had detained him and  
2 had prompted him by whatever means to implicate  
3 his friend, this was a situation in which he on  
4 his own volition brought his concerns, brought his  
03:19 5 observations to the attention of the police.

6 Q And I think what the record shows is the day that  
7 he went into the police station, March 2, 1969, he  
8 gave a statement which, that he observed blood on  
9 David Milgaard and a few other matters, but I  
03:19 10 think that was the primary piece of evidence that  
11 was given on the first day. Is that your  
12 understanding?

13 A Yes.

14 Q And so if we can scroll down, Dennis Cadrain's  
03:19 15 statement talks about Albert going into the police  
16 station voluntarily and Dennis says:

17 "I recall that he went to see the police  
18 on his own and that they continued to  
19 question him day after day for a long  
03:20 20 period of time -- maybe for as long as a  
21 month. Albert told me at one point that  
22 police were questioning him as though he  
23 were a murder suspect. I recall him  
24 telling me at a later date that the  
03:20 25 police finally believed him. He



1 indicated that the police had given him  
2 a very hard time. It was a very  
3 upsetting time for Albert."

03:20 4 And what did you make of that information, and  
5 we'll see this in a bit more detail in Albert's  
6 later statement about this suggestion that the  
7 police questioned him as though he were a suspect  
8 and gave him a hard time?

03:21 9 A I don't know if I attached too much significance  
10 to it. I later learned that the reason for that  
11 was due to the fact that the police didn't believe  
12 him. At the time a reward had been offered and  
13 the implication of David Milgaard in the homicide  
14 certainly didn't fit into the then existing police  
03:21 15 theory as to who the likely culprit might be, so I  
16 think what the police did was certainly attempt to  
17 verify or probe whether Albert was in fact telling  
18 the truth and they were persistent in that.

19 Q And so checking the validity of his story?

03:21 20 A Keep in mind that what he was signaling was that  
21 one of his friends may have been implicated in the  
22 homicide and that's a fairly serious charge.

23 Q And so the information you learned later, where  
24 did that come from, that the police had questioned  
03:21 25 him because they didn't believe him?



1 A I spoke with Albert, I spoke with some of the  
2 police officers who were involved in the  
3 questioning.

4 Q And so your understanding was that the police  
03:22 5 questioning was, as opposed to putting pressure on  
6 Albert to give incriminating evidence, was  
7 challenging the incriminating evidence; is that  
8 what you are saying?

9 A They didn't believe him.

03:22 10 Q Didn't believe his incriminating evidence?

11 A Yes.

12 Q And if we can go down to the bottom, Dennis says:

13 "At the time I had no reason to believe  
14 that what Albert told police was not  
03:22 15 true."

16 What significance, if any, did you ascribe to  
17 that statement?

18 A I was waiting for the other shoe to drop. What it  
19 signaled to me was that when Dennis first spoke  
03:22 20 with Albert in 1969, he believed him. It  
21 signaled, in the context of the statement, that  
22 there would be some further intervening event that  
23 now prompts Dennis to question the faith he placed  
24 in the accuracy of Albert's initial statements.

03:23 25 Q Here he says:



1 "Later I came to have serious concerns  
2 about my brother's credibility.

3 Knowing my brother as I do, I  
4 am certain that he would not  
03:23 5 intentionally lie about anything. But I  
6 also know that he is prone to  
7 exaggeration and suggestion, and that he  
8 could easily be coerced and manipulated  
9 by police. If ideas were planted in  
03:23 10 Albert's mind it is quite possible that  
11 he would come to accept them as the  
12 truth."

13 Let me just pause there. Can you -- what was  
14 your thinking about -- let's just talk about  
03:23 15 Albert's evidence of observing blood on David  
16 Milgaard, which is what he told the police on  
17 March 2nd, '69. What was your thinking about  
18 how, if at all, that could have been planted?

19 A I didn't think it could have been because before  
03:24 20 Albert mentioned it to the police, he mentioned it  
21 to his brother, he mentioned it in the context  
22 of -- I wouldn't call it a spontaneous response,  
23 but a volunteered response upon hearing the news  
24 that there had been a homicide in the  
03:24 25 neighbourhood the day he left for Calgary.



1 Q And so here the statement says:

2 "... he is prone to exaggeration ... and  
3 that he could easily be coerced and  
4 manipulated by police. If ideas were  
03:24 5 planted in Albert's mind it is quite  
6 possible that he would come to accept  
7 them as the truth."

8 Now, Dennis is not saying that happened with  
9 respect to the blood evidence, but saying he's  
03:24 10 the type of person --

11 A Who is susceptible, yes.

12 Q And again, are you saying that, well,  
13 notwithstanding that, Albert told Dennis he  
14 observed blood and then went in and told the  
03:24 15 police, so therefore how could the police have  
16 suggested him?

17 A Correct, but also in the context of the balance of  
18 Albert's testimony, in light of that assertion  
19 that he is susceptible, then you would certainly  
03:25 20 want to keep that in the back of your mind in  
21 terms of looking at what else he said and looking  
22 at what might be the sources that would influence  
23 his recall of the events.

24 Q And so again would that mean going back to look at  
03:25 25 what would be in his first statement to the police



1 in March of '69 and compare that to what he ended  
2 up saying at the preliminary hearing and trial?

3 A Correct, and also comparing what he said in his  
4 statement to what he may have told his family  
03:25 5 before he went to the police, because if the  
6 suggestion is that Albert is malleable, and  
7 malleable at the hands of police authorities, is  
8 he also malleable at the hands of his family, and  
9 if the story he told to his family before he went  
03:26 10 to the police was not informed or influenced by  
11 the family, then it would certainly affect your  
12 assessment of his statement to the police as not  
13 being the product of manipulation or suggestion.

14 Q And then:

03:26 15 "Frankly, I would not consider my  
16 brother to be a reliable witness and for  
17 this reason I have had concerns that  
18 David Milgaard may have not received a  
19 fair trial."

03:26 20 And what did you make of that statement?

21 A On the heels of the preceding paragraph it flows,  
22 quote, "logically", but it's not taken in any type  
23 of context of the evidence that Albert said at  
24 trial, but it does make for good quotes in a  
03:27 25 newspaper article.



1                   What you have are two  
2                   suggestions; one, someone who was easily coerced  
3                   and manipulated, and two, because of that you have  
4                   a brother saying I don't consider my sibling to be  
03:27 5                   a reliable witness. Certainly that can get a lot  
6                   of mileage and certainly is worthy of our  
7                   consideration in terms of assessing Albert's  
8                   testimony.

9                   However, there aren't any  
03:27 10                  details that are provided to support the  
11                  contention that he's unreliable and there are no  
12                  details provided, at least in those two pages, to  
13                  support or to identify the portions of Albert's  
14                  story or statement that may have been coerced that  
03:28 15                  may have been the result of a plant by the police.  
16                  It is a broad accusation which does not have any  
17                  specific reference point in relation to Albert's  
18                  statement or testimony.

19           Q           Okay. And scroll down, he says:

03:28 20                    "Another concern relates to my sister,  
21                    Celine, who was home on the morning that  
22                    David Milgaard and his friends came to  
23                    our house. Celine told me some years  
24                    ago that she remembered David being in  
03:28 25                    our house that day and that she did not



1 see any blood on his clothing. My  
2 sister said her observations never came  
3 out in trial because she was not  
4 contacted by the defense. It is  
03:28 5 possible, however, that she was  
6 questioned by police and told them that  
7 she had seen no blood. If that was the  
8 case, it would appear that police may  
9 have suppressed important evidence."

03:28 10 And can you tell us, what was your response or  
11 your view about this statement?

12 A Certainly it's something to look into. One of the  
13 questions that you would have to ask is what was  
14 the timing of Celine's observations of David  
03:29 15 Milgaard in comparison with Albert's.

16 Q And I believe, at least the evidence we've heard,  
17 that Celine Cadrain did give a statement to the  
18 police, I think on March 2nd, 1969, stating that  
19 she saw David Milgaard after he had changed his  
03:29 20 clothes and observed no blood on the clothes that  
21 he had changed into. Does that accord with your  
22 recollection?

23 A Yes.

24 Q What about the comment here about:

03:29 25 "...it would appear that the police may





1                   have suppressed important evidence."

2           A           It's a bald statement. I think the -- I think the  
3                   inference is that perhaps Celine's statements may  
4                   have been suppressed and not disclosed to  
03:29 5                   Mr. Tallis.

6           Q           And so the reader of this statement, are you  
7                   saying, might come to the conclusion that Albert  
8                   and Celine both saw David Milgaard at the same  
9                   time, Celine saw no blood, she told the police  
03:30 10                   that, the police suppressed that, Albert saw  
11                   blood, but Albert is mentally ill and not  
12                   reliable?

13           A           Yes, and it comes on the heels of the suggestion  
14                   that you've got the police, or you've got Albert  
03:30 15                   in contact with the police over several days in  
16                   circumstances in which Albert can easily be  
17                   coerced and is quite malleable, so you have a  
18                   couple of ingredients which have formed the basis  
19                   of wrongful convictions in the past and that is  
03:30 20                   undue police pressure on a vulnerable witness  
21                   coupled with suppression of exculpatory evidence,  
22                   and those are the two ingredients that pop out of  
23                   that statement.

24           Q           And if those had been true, then, might give the  
03:30 25                   basis for a remedy under Section 690?



1 A Yes.

2 Q And so you would have pursued these to determine  
3 whether or not what is suggested here was in fact  
4 the case?

03:31 5 A Yes.

6 Q And on Celine Cadrain, I think there was a  
7 reference, Sergeant Pearson interviewed her and  
8 that was followed up and it was concluded, I  
9 think, by Sergeant Pearson, that was his evidence,  
03:31 10 that much as she had said in her statement, she  
11 observed David Milgaard after he had changed his  
12 clothes; is that correct?

13 A That's correct.

14 Q Did you -- it also says here that it never came  
03:31 15 out in trial because she was not contacted by the  
16 defence. Did you have any discussion with  
17 Mr. Tallis about that issue?

18 A I don't believe I did specifically.

19 Q What Mr. Tallis told this inquiry is that around  
03:31 20 this time he, I asked him the question why he did  
21 not contact other members of the Cadrain household  
22 to get information. He indicated that he thought  
23 it was his secretary, but someone had phoned, had  
24 been in touch with Mrs. Cadrain, Albert's mother,  
03:32 25 and Mrs. Cadrain indicated that her child, a small



1 child had observed blood on David the morning of  
2 the murder, but that she did not want him involved  
3 in the case, or words to that effect, and  
4 therefore Mr. Tallis said he did not contact  
03:32 5 Celine or any other Cadrain family members for  
6 fear that the information that the youngster, I  
7 think he called him, whom I'm assuming was Ken  
8 Cadrain, that this information might come to the  
9 attention of the police and/or Mr. Caldwell,  
03:32 10 because Mr. Tallis was of the view that it had  
11 not, and that was his reasoning at the time of  
12 trial as to why he did not contact Celine Cadrain  
13 or other Cadrain family members to see what they  
14 observed. Were you aware of any of that back at  
03:33 15 the time?

16 A No.

17 Q And then at the bottom he says:

18 "I have additional insights into my  
19 brother, Albert, that are pertinent to  
03:33 20 the Milgaard case. I prefer not to  
21 detail them in writing at this time but  
22 am willing to disclose them to the  
23 Justice Department or their  
24 representatives."

03:33 25 And I think what Dennis told the Commission was



1           that he did not, I think this related to Albert's  
2           mental condition, that he did not want to put it  
3           in writing but was prepared to discuss it with  
4           you. Was that your understanding?

03:33 5           A           Yes.

6           Q           Now, did you follow up and meet with Dennis  
7           Cadrain then?

8           A           I did.

9           Q           And again, I think there's a memo here, but can  
03:33 10          you tell me just generally what was your  
11          recollection of that or what did you glean from  
12          that meeting?

13          A           Dennis confirmed in large measure what had been  
14          written. I believe I attempted to get some  
03:34 15          details from him. Throughout, and without having  
16          reviewed, at least in the recent past, my note of  
17          the interview with Dennis, my lasting impression  
18          over all these years was that Dennis was quite  
19          protective of Albert, that some of the broad-based  
03:34 20          statements did not, were not based on references  
21          to specific aspects of Albert's testimony, but  
22          reflected some of Dennis' experiences with Albert  
23          many years after Albert had testified, but there  
24          was a genuine concern of Dennis for Albert's  
03:34 25          well-being.



1 Q And in what sense about his well-being, about how  
2 he might be used in this, in the Milgaard  
3 application or --

4 A No, I think Albert -- Albert then was, or had had  
03:35 5 a number of, call it life reversals, things had  
6 not gone well for him, and that, you know, Dennis  
7 was properly, quite properly concerned about his  
8 brother. He wasn't certain whether or not or how  
9 he would withstand or come across if he were  
03:35 10 interviewed and if he had to get involved in any  
11 type of judicial proceeding having regard to his  
12 past history of illnesses and reversals.

13 Q And is your recollection, and again I will take  
14 you to your memo a bit later, but is it your --  
03:35 15 when you say he confirmed what was written --

16 A In general terms, yeah.

17 Q That he thought Albert had suffered mental illness  
18 at the time of the investigation and trial?

19 A I believe so.

03:35 20 Q If we can go to 000248, and this is the statement  
21 of Ron Wilson that was also included with the June  
22 6th letter, and I take it you are familiar with  
23 this statement?

24 A Yes, I am.

03:36 25 Q Can you -- and we'll go through parts of this, but



1           what was your -- I take it you would have heard in  
2           the media that Ron Wilson had recanted his  
3           evidence; is that right?

4           A           That's correct.

03:36 5           Q           Before you read the statement?

6           A           Yes.

7           Q           What was your initial reaction after having read  
8           through the statement in light of -- and I take it  
9           you would have had the letter as well. Actually,  
03:36 10          the letter from Mr. Asper simply says it's  
11          self-explanatory, but what was your initial  
12          reaction?

13          A           I can't say it on the record. It was just -- I  
14          wouldn't say I was flabbergasted. I was quite  
03:37 15          surprised.

16          Q           And why was that?

17          A           Well, it was probably the last element of the,  
18          quote, "Crown's case", strong Crown's case that  
19          had come under attack, and I just -- I had seen a  
03:37 20          number of statements. As a prosecutor, police  
21          often bring statements as part of the Crown's case  
22          and it just left me with a feeling of unease. I  
23          identified a number of areas that I knew that we  
24          had to explore and set about doing some research  
03:38 25          in terms of going back to the trial transcripts to



1 get an appreciation of what the trial record  
2 showed about the five or six points of departure  
3 that Mr. Wilson now had in his recantation.

03:38 4 Q Now, would you have known that Paul Henderson  
5 would have actually written the statement or taken  
6 the statement when you got it, or that someone  
7 other than Ron Wilson had written it?

03:38 8 A Oh, yes. I mean, the print of the Wilson  
9 statement bears a resemblance to that of Cadrain  
10 and bears a resemblance to that of Linda Fisher's  
11 statement.

12 Q And so explain a bit further, you said you were, I  
13 think, flabbergasted. What was it -- was it the  
14 manner in which the words were presented in the  
03:38 15 statement, was it the content, what was it that  
16 caused you the unease?

17 A Well, firstly, the statement wasn't presented to  
18 the minister in relation to the 690 application at  
19 first blush, it was presented at a parole hearing  
03:39 20 for David Milgaard one or two days earlier, and it  
21 was at that point that the press picked up the  
22 story on the statement and then it was relayed to  
23 us, but its first, its initial use, as I recall,  
24 was to assist a parole hearing for David Milgaard.

03:39 25 Q I think the parole hearing was June 7th, I think



1           you got it on June 6th, or the letter is dated  
2           June 6th.

3           A           Okay.

4           Q           So in that time frame, it may have been that week;  
03:39 5           does that sound right?

6           A           Well, the letter may have been dated June 6th, but  
7           I don't believe we received it on June 6th.

8           Q           Okay. So your recollection is that it was around  
9           the time of -- this statement is -- I'm not sure  
03:39 10          which version of this -- this is a fax of June  
11          6th, 1990 from the Four Seasons Resort in Kelowna.

12          A           To whom?

13          Q           Well, this in fact may be -- I think the evidence  
14          we've heard is that Dan Lett was provided with a  
03:40 15          copy of this statement before it was sent to you  
16          and he then had an interview with Mr. Wilson, I  
17          think that was by telephone, around June 6th.  
18          I'll be showing you the newspaper article --

19          A           Okay.

03:40 20          Q           -- shortly. Were you aware of that?

21          A           I subsequently became aware when the article was  
22          published.

23          Q           Okay.

24          A           But I wasn't -- I suspect that based on some of  
03:40 25          the published reports, that it had arrived at the





1 press before it had arrived at our office.

2 Q Okay. And again, just to the parole hearing, what  
3 concerns did you have about that?

4 A I didn't have any, quote, "concerns". I mean, if  
03:41 5 counsel chose to use it for that purpose, I think  
6 courtesy would signal that you would give the  
7 minister at least an opportunity to view the  
8 statement and be in a position to make some kind  
9 of a response, but, you know, we were blind sided.

03:41 10 Q And did the circumstances under which the  
11 statement was taken and provided to you then cause  
12 you to have some doubts or concerns about the  
13 statement?

14 A Not necessarily just those. I mean, this was a --  
03:41 15 this was just another chapter in a pattern in  
16 which information relating to the application was  
17 first disclosed to the press before it reached us.

18 Q And was your concern then that the material was  
19 drafted to attract the attention of the media as  
03:41 20 opposed to your purposes? I'm not sure I --

21 A Well, I mean, there are two separate issues. I  
22 think the first is the delivery and the timing of  
23 the delivery of this statement of Ron Wilson, a  
24 key witness at the trial, was made to a reporter  
03:42 25 for the *Winnipeg Free Press* and I think that's



1           instructive in that it was not made to  
2           representatives of the Minister of Justice who  
3           were then tasked with assessing the 690  
4           application. The significance to me was this was  
03:42 5           another chapter in the political, or the  
6           politicisation of the 690 process, that it would  
7           first be reported in the press before it reached  
8           the minister's door and that we would then be put  
9           on the defensive because the headlines could well  
03:43 10          be here's yet another plank in the Crown's case at  
11          trial that's been destroyed by the industry of the  
12          Milgaard camp who have now unearthed a recanting  
13          witness whose recant discloses that he was  
14          manipulated by the police at trial.

03:43 15          Q           Okay. Let me just go back again to see if I can  
16          understand your concern. You've already told us  
17          that with respect to the Deborah Hall information,  
18          the Dr. Ferris information and the Dr. Markesteyn  
19          information, that what was put out by the media by  
03:43 20          those on behalf of David Milgaard about those  
21          grounds were wrong and differed from what you  
22          believed to be the facts as presented to the  
23          minister; correct?

24          A           It was incomplete. It was later completed when we  
03:43 25          did our investigation. In hindsight, I would say



1           yes, it was wrong, because it omitted certain  
2           things that would have given the -- or that would  
3           have clarified the initial media reports.

4           **Q**       But I think you told us earlier that the person  
03:44 5           who reads the media reports about Deborah Hall,  
6           Dr. Ferris and Dr. Markesteyn, I think you said,  
7           would get the impression that based on that, those  
8           were all strong grounds that point to David  
9           Milgaard's innocence?

03:44 10          **A**        Yes.

11          **Q**        And you are saying but the record that you  
12          investigated reflected quite the opposite?

13          **A**        Yes.

14          **Q**        And I appreciate that in between there you are  
03:44 15          saying that it was the manner in which the  
16          information may have been presented and put in the  
17          media that caused there to be this difference  
18          between the two; is that fair?

19          **A**        That's fair.

03:44 20          **Q**        I think you also then told us as well, it became  
21          apparent to you that information that was being  
22          put forward to you, and I think you said this with  
23          Dr. Markesteyn, was put together, I think from  
24          your perspective, with the eye to how the media,  
03:45 25          how valuable it might be in the media or political



1 arena as opposed to how value for you; correct?

2 A Yes.

3 Q And you talk about that, with the dog urine  
4 information, that although substantively in the  
03:46 5 merits you didn't see any value, in the media, it  
6 would certainly have value with the public?

7 A Yes.

8 Q And would it therefore follow that you may have  
9 been suspicious that any further information  
03:46 10 prepared or provided or obtained by the Milgaard  
11 group, presented to the media first and then  
12 presented to you, you might have the same concerns  
13 or doubts that much like Deborah Hall, Dr. Ferris,  
14 Dr. Markesteyn, that perhaps the information  
03:46 15 that's in the media, and prepared for the media,  
16 on closer scrutiny will not be factually sound?

17 A Correct.

18 Q And is that the case when you've got the Ron  
19 Wilson information, that it went to the media  
03:47 20 first, and in reading the statement did you think  
21 that the statement was geared towards playing well  
22 in the media?

23 A Yes.

24 Q And was it your view, then, that this is a piece  
03:47 25 of information that, much like the previous three



1 that you had gone through, you had some doubts  
2 about; is that -- not saying you wouldn't pursue  
3 them, but is it fair to say the starting point is  
4 that you were maybe a bit of a skeptic?

03:47 5 A Yes.

6 Q Because of what had happened previously?

7 A Yes.

8 Q And if, in fact, this statement had simply been  
9 part of a -- the first application December 28th,  
03:47 10 '88, here's a recantation, no other history, would  
11 you have had the same level of skepticism as you  
12 did when you got it in June of 1990?

13 A Probably not.

14 Q Okay. So that's one area. I think the  
03:47 15 circumstances of how it came about, you are  
16 saying, caused you to be a skeptic. When you got  
17 and read the statement I think you said you were  
18 flabbergasted, so apart from the fact that it's  
19 going to the media first, what about the  
03:48 20 substantive content of it? And we'll go through  
21 this, but I'm just trying to get a sense of --

22 A In terms of the substantive content, I would read  
23 it first just to get a general idea of where it  
24 was going, then I would reread it to highlight  
03:48 25 just what factual elements I would need to



1 research, and then, thirdly, I would start doing  
2 the research.

3 Q Okay. But what was it that jumped out of the  
4 statement, though, that caused you to be taken  
03:48 5 aback or were concerned?

6 A Well the reason for the recant was police  
7 manipulation and coercion, that's the first thing,  
8 so whenever there is a recant there has to be a  
9 reason and the reason was so framed. Why I found  
03:48 10 that a bit surprising was because I hadn't seen  
11 any indication of it. When I reviewed the trial  
12 and trial transcripts there was no -- it was a  
13 subject that was skirted or broached by counsel.

14 And the second observation was  
03:49 15 that --

16 COMMISSIONER MacCALLUM: I'm sorry, you saw  
17 no allegation in the trial transcript of police  
18 coercion?

19 A That's correct.

03:49 20 COMMISSIONER MacCALLUM: Okay.

21 A Because, in the cross-examination of Ms. John,  
22 counsel had devoted some time to the impact that  
23 -- upon her of being housed in the women's wing of  
24 the police lockup, and counsel had challenged  
03:49 25 Wilson about whether he was bothered by the police



1           questioning and what they had done to him, and the  
2           impression, whether it was bravado or not, as I  
3           recall the -- is it was no big thing, it was no  
4           big deal for him. And I had kept in mind that, at  
03:50 5           the time that he had testified, Wilson had had a  
6           number of contacts with the police, and by that I  
7           mean he had been arrested on a couple of  
8           occasions, charged, and had been convicted, and I  
9           believe he was then -- he had just finished his  
03:50 10          second stint in the provincial jail, so it's not a  
11          fellow where -- or a teenager who is naive and  
12          hasn't had any police contacts. He had, at that  
13          time, a criminal record and had been detained and  
14          had been sentenced to jail. So those types of  
03:50 15          contacts certainly inform, or could inform, the  
16          responses to police questioning and pressure, and  
17          it's certainly something to take into account in  
18          determining whether or not, in a given set of  
19          circumstances, he was intimidated by the police.  
03:51 20          He had had enough contacts that, you know, he knew  
21          what, more or less, to expect.

22                                    And so, when I saw that coming  
23                                    out as a ground, I was quite surprised.

24                                    COMMISSIONER MacCALLUM: Okay.

25                                    BY MR. HODSON:



1 Q If we can maybe just --

2 A What I mean, when I saw that coming out as a  
3 ground, when I saw the allegation that there was  
4 police intimidation as the reason for this recant,  
03:51 5 or that the police intimidation prompted him to  
6 testify as he did, and now that he's seen the  
7 light many years later he is recanting and  
8 explaining his trial testimony in the context of  
9 "eh, the police intimidated me", that's what I was  
03:50 10 surprised by.

11 Q So, before you had an opportunity to question Mr.  
12 Wilson, you had doubts about his suggestion in the  
13 statement that police intimidation caused him to  
14 give false evidence?

03:51 15 A Yes.

16 Q And that was based upon your review of the trial  
17 record?

18 A Yes.

19 Q Go through parts of this statement. Here Mr.  
03:51 20 Wilson says:

21 "I am providing this

22 statement to Milgaard's investigator,  
23 Paul Henderson, because I believe that  
24 he is innocent and because I believe  
03:51 25 that my testimony was coerced by





1 police."

2 Let's start there; what was your reaction or  
3 concerns that came out of that?

4 A When someone says they believe that their  
03:51 5 testimony was coerced by police, I found it a kind  
6 of curious choice of words, either you were  
7 coerced or you were not. And then if you say "I  
8 believe I was coerced" I'd be looking, in the next  
9 series of lines, to see precisely what it is that  
03:51 10 they did to coerce.

11 And I hate to parse words, but  
12 "the police coerced me, the police leaned on me",  
13 to "the police planted something in my head",  
14 those are the words I would expect, but someone  
03:52 15 says "I believe the police coerced me" signals  
16 that that understanding come -- has an external  
17 impetus.

18 Q Are you talking Mr. Henderson?

19 A I'm not, I'm not speculating as to who it was, but  
03:52 20 he says "I believe I was coerced".

21 Q External to Ron Wilson?

22 A External to Wilson.

23 Q Well, if Mr. Henderson is the only other guy in  
24 the room with him taking the statement, is there  
03:52 25 anybody else who would be --



1 A I have no idea of what the, what the exposures  
2 were over the 20-year period between his trial  
3 testimony and the time that Henderson spoke to  
4 him.

03:53 5 Q And I take it, at the time you read this, you  
6 would not -- initially read it anyway -- you would  
7 not have known about the circumstances of who was  
8 there with Mr. Henderson, what was discussed, how  
9 long it took, things of that nature; that's  
03:53 10 something you probed into?

11 A That's correct.

12 Q Would it be fair to say that, after reading that  
13 part, that one issue that you wished to probe was  
14 whether there was any external impetus for these  
03:53 15 words?

16 A I would -- certainly, that's an area I wanted to  
17 check into.

18 Q Did you have concerns about whether this statement  
19 were Ron Wilson's words, or Mr. Henderson's words,  
03:53 20 or is that --

21 A I recognize that Wilson didn't write the statement  
22 and that whoever did had a pretty good command of  
23 the English language. I would be looking, in the  
24 statement, for words that I would expect from  
03:54 25 someone of Wilson's background, training, and



1 education to describe the events. So some of the,  
2 some of the, what I call the introductory  
3 language, didn't bother me. For example  
4 "subsequent to my testimony", that's something  
03:54 5 that a lawyer would use or someone who has had a  
6 fair bit of involvement with the legal profession  
7 might use, people would say "after I testified".

8 Q Did that concern you? And I take it a  
9 statement -- a statement-taker, whether it be a  
03:54 10 police officer or you or someone else, would often  
11 involve -- I guess it depends on the type of the  
12 statement, whether it was a narrative or a Q and A  
13 -- but would there not be some of the  
14 statement-taker's words used in statements or --

03:54 15 A Yes, I understand that, and that's why the initial  
16 part didn't bother me. But sometimes when you get  
17 into the, what I call the meat or the substance of  
18 the complaint, wherever possible I try to use the  
19 words that the interviewee used.

03:55 20 Q And so would that be something that you would look  
21 for in the statement and want to probe with Mr.  
22 Wilson, "where did these words come from in the  
23 statement, are they yours, and what did you mean  
24 by them"?

03:55 25 A Well certainly, to the extent that there are words



1           that are ambiguous, I would want to probe that,  
2           yes.

3           Q       And would you have a concern or a question that  
4                    "are these Mr. Wilson's words or are they Mr.  
03:55 5           Henderson's words that Mr. Wilson has agreed to"?

6           A       It didn't occur to me at the time, but certainly,  
7                    as I continued to look into it, those were some  
8                    concerns that arose.

9           Q       And then, if we can scroll down, I think he talks  
03:55 10                   about the trip. A bit of a narrative there:

11                   "... we all returned to Regina, where I  
12                    was arrested for fraud, as I recall, and  
13                    sentenced to a jail term.

14                   I was serving the remainder of  
03:56 15                   this jail sentence at a bush camp  
16                    outside Regina when two police  
17                    detectives, one from Regina and the  
18                    other from Saskatoon, started  
19                    questioning me about the Gail Miller  
03:56 20                    case. I recall them telling me that I  
21                    was a suspect in the murder because they  
22                    knew that I and the others had arrived  
23                    in Saskatoon on the morning of the  
24                    murder and had left town the same day."

03:56 25                   What, if any, significance did you put on that



1 statement, that he was told that he was a  
2 suspect?

3 A That had the potential to frighten him, because  
4 these police officers were investigating a murder,  
03:56 5 and here they approach him and tell him he's a  
6 suspect.

7 Q And did you find anything unusual about that, that  
8 he would be --

9 A No, it wasn't unusual, but it certainly would be a  
03:57 10 factor to keep in mind, the extent to which that  
11 feeling that he was under suspicion might prompt  
12 him to try and deflect some suspicion from himself  
13 and turn it on someone else.

14 Q Okay. And so that would be significant  
03:57 15 information in looking at the recantation and the  
16 reasons, that if Mr. Wilson thought he was a  
17 suspect early on, that that might influence him to  
18 give evidence that might not be very reliable?

19 A Yes. And certainly you would have to keep in mind  
03:57 20 whether, at the time that he made the  
21 incriminating comments about his friend, whether  
22 he was still under the belief that he was a  
23 suspect, so the timing of his first knowledge of  
24 his position vis-a-vis the investigators would be  
03:57 25 something I'd be alive to.



1 Q So, if at some point in the investigation he was  
2 made aware that he was not a suspect, that that  
3 would be important?

4 A Yes.

03:58 5 Q And then he says:

6 "I distinctly remember  
7 telling the detectives during this  
8 initial questioning that I knew nothing  
9 about the murder and hadn't even heard  
03:58 10 about it. They told me that they  
11 thought I was lying. But it was true."

12 And again, at this time, would you have been  
13 aware that Ron Wilson had initially given a  
14 statement to Inspector Riddell in early March '69  
03:58 15 that described the event that morning, and he  
16 essentially said that nothing happened, and --

17 A I think I was generally aware. I may not have had  
18 a copy of it at that time but I believe I took  
19 steps to get a copy of it.

03:58 20 Q And, again, what significance, if any, did you  
21 place on that, the fact that Ron Wilson had  
22 initially told the police, when questioned, that  
23 David had not left his company for more than I  
24 think a minute or two, or something like that, had  
03:58 25 nothing incriminating in the statement in any



1 event?

2 A There was nothing incriminating.

3 Q And, again, did that -- what significance did that  
4 have in your assessment of Ron Wilson's  
03:59 5 recantation, the fact that when he first talked to  
6 the police he gave a statement that did not  
7 incriminate David Milgaard?

8 A I'm not certain I understand the question, sir?

9 Q Okay. When you're going to look at Ron Wilson's  
03:59 10 recantation and the fact that the police, he says  
11 the police manipulated and coerced him, --

12 A Yes.

13 Q -- the starting point is the first time he talks  
14 to the police he says "here's what happened that  
03:59 15 morning" --

16 A Nothing happened.

17 Q -- "and nothing happened"?

18 A Yes.

19 Q And then later on, after interaction with the  
03:59 20 police, something did happen?

21 A Yes.

22 Q And then he later, 20 years later, says "lookit,  
23 the police manipulated me into lying", and  
24 ultimately a couple weeks later, when he finds out  
03:59 25 that he gave a statement early on he says "oh



1           yeah, that was the one they were supposed to use,  
2           and that's the true one", and so I'm trying to get  
3           your sense, when you look at this, and how you are  
4           assessing Ron Wilson's recantation?

04:00 5           A           At that point I am simply flagging it as that  
6           that's a point I have to pursue.

7           Q           But would you agree that his initial statement to  
8           the police would be a significant piece of  
9           information in assessing -- if he gave an initial  
04:00 10          statement to the police that was  
11          non-incriminating, and then after a number of  
12          interviews with the police ended up giving an  
13          incriminating statement, would that not be a flag  
14          that perhaps the police interaction may have  
04:00 15          influenced his incriminating statement?

16          A           That certainly is a flag, and in that context I  
17          would certainly be looking at the circumstances  
18          under which he gave the incriminating statements.

19          Q           Okay. And if we can scroll down, it talks about  
04:00 20          -- scroll up:

21                                 "During this period of time  
22                                 being held in the Regina Correctional  
23                                 Centre. I was 17 years old and very  
24                                 frightened because I felt that the  
04:01 25                                 police were trying to pin the murder on





1 me. I don't recall how long police  
2 questioned me in Regina but believe I  
3 was kept in jail there for the remainder  
4 of my term."

04:01 5 Anything there that jumped out at you as being of  
6 concern?

7 A Well, yes, certainly what is significant about  
8 that is the assertion that he was a young  
9 17-year-old, afraid and incarcerated and being  
04:01 10 questioned in connection with a murder, so it more  
11 or less sets or tries to establish him as a  
12 frightened young person who may thus be vulnerable  
13 to police manipulation and pressure.

14 Q And so that's something that, if true, might be a  
04:01 15 factor that would support the contention that  
16 there was police manipulation?

17 A Yes.

18 Q And on the other hand, if it turned out not to be  
19 true, what does that mean?

04:02 20 A Well, it would certainly be a factor in assessing  
21 some of the other things that he later had to say.

22 Q Again, would that be something you would then want  
23 to check, is what kind of person was this back  
24 then and --

04:02 25 A Yes.



1 Q Scroll down.

2 "Sometime later, maybe two  
3 weeks after police started questioning  
4 me, I ended up somehow being questioned  
04:02 5 by police in Saskatoon. I can't recall  
6 being escorted there by police but know  
7 that I wouldn't have gone there on my  
8 own. I was hooked up to a polygraph and  
9 they started asking me the same  
04:02 10 questions again. Had I killed Gail  
11 Miller? Did I think David Milgaard had  
12 killed her? They asked me the same  
13 questions over and over. I kept  
14 answering no, I didn't kill Gail Miller  
04:02 15 and didn't think David Milgaard had. I  
16 recall that I was questioned on the  
17 polygraph twice for maybe as long as six  
18 hours. It was like a sweat session. My  
19 mind was exhausted and I was mentally  
04:03 20 scrambled. I remember it now being like  
21 brainwashing. Finally I began to  
22 implicate Milgaard in the murder,  
23 telling police the things they wanted to  
24 hear."

04:03 25 What was your reaction to that?



1 A It didn't accord with my understanding of how  
2 polygraph sessions worked at that time. I just  
3 felt it was -- I felt that I needed to flag that  
4 for further exploration. Certain words that were  
04:03 5 used:

6 "... I was questioned on the polygraph  
7 twice for maybe as long as six hours."  
8 seemed extremely long for a polygraph session.  
9 "Mentally scrambled", "brainwashing", and those  
04:04 10 were all -- those were all terms that I needed to  
11 flag.

12 Q What do you mean "flag"?

13 A Well they are, they are fairly strong accusations,  
14 and in the light of what I had recalled of the  
04:04 15 trial transcript I was surprised that there had  
16 been no complaint in the past, and I needed to  
17 check the timetable of the interviews of Ron  
18 Wilson so that I could verify that.

19 Q Were you --

04:04 20 A So that's what I mean when I say "flagged".

21 Q Flagged. And was it something that I think you  
22 said earlier, 20 years later, after no previous  
23 mention -- at least that's what you understood --  
24 in one day Mr. Wilson would then conclude that he  
04:05 25 had been brainwashed, or whatever he describes



1 here; was that something that was concerning you?

2 A It raised a question in my mind.

3 And, secondly, what you have is  
4 you have areas of the statement in which the  
04:05 5 detail is quite, quite explicit, and then there  
6 are some other areas in which it's general, and I  
7 wanted to test what it was about those portions of  
8 it that resulted in such detail.

9 Q And again, these words, did you have concerns that  
04:05 10 these may have been words that -- I can't recall  
11 how you said it before -- that were attractive to  
12 the media or to --

13 A Well words like "sweat sessions", "exhaustion",  
14 "mental", "mentally scrambled", and  
04:06 15 "brainwashing", those are -- those are some words  
16 that can be used in a pejorative sense to, or in a  
17 pejorative manner to describe unlawful police  
18 activity, that they put this guy through -- they  
19 sweated this guy out. It's some of the stuff that  
04:06 20 you see in some movies. And "brainwashing", well,  
21 it has a certain media attraction. And my job was  
22 to find out whether the allegation was, in fact,  
23 supported by the facts, so I flagged that area.

24 Q And if Mr. Wilson's recantation had simply said  
04:06 25 "lookit, this has bothered me all these years, I



1 think I gave evidence which I now think not to be  
2 true, and here are the areas where I gave evidence  
3 that I don't think that happened and I lied",  
4 period, how would you approach that type of  
04:07 5 recantation?

6 A In much the same way as did here, however there  
7 wouldn't be the same types of triggers. If  
8 somebody says it in that fashion I have to take a  
9 look at who is saying it, and I would approach it  
04:07 10 in a similar fashion, perhaps with not as many  
11 flags having been raised.

12 Q But what, the same type of thing, "why are you  
13 telling us now, why didn't you do this before, why  
14 did you lie"?

04:07 15 A Yes.

16 Q If we can scroll down -- or sorry, he says here:

17 "I am now certain that I was  
18 manipulated by police into lying and  
19 later giving false testimony against  
04:07 20 Milgaard."

21 What was your reaction to that statement?

22 A Well he has added, to coercion, manipulation; he  
23 has added, to sweat sessions and brainwashing,  
24 manipulation and coercion; so we're just  
04:08 25 getting -- shall we say we're building on the



1 allegation that there was bad police behaviour in  
2 relation to this witness.

3 Q If we could then scroll down.

4 "I also recall that sometime  
04:08 5 prior the point where I started to  
6 implicate Milgaard police were using  
7 statements allegedly made to them by  
8 Shorty Cadrain to convince me that David  
9 had killed Gail Miller.

04:08 10 One of the allegations, I  
11 recall, was that Cadrain had seen blood  
12 on Milgaard's pants on that morning at  
13 his house. In Court, I testified as to  
14 having seen the blood on Milgaard  
04:08 15 myself. In truth, I have no  
16 recollection of seeing the blood on his  
17 pants. I believe that the police  
18 somehow convinced me that I had to have  
19 seen the blood because Cadrain had."

04:08 20 What was your reaction to that, or your concerns,  
21 if any?

22 A The point that is being made in those two  
23 statements is that "here's an example of police  
24 manipulation, using Albert Cadrain's statement and  
04:09 25 recollections to influence Ron Wilson's memory of



1 the event". It supports the contention that the  
2 police manipulated him into thinking or into  
3 believing in a state of facts that independent, of  
4 his own recollection, he could not attest to.

04:09 5 Q And the fact that he now says:

6 "... I have no recollection of seeing  
7 the blood on his pants.",  
8 as opposed to saying "I didn't see blood on the  
9 pants"; is there any significance to that?

04:09 10 A Well, it's a situation in which it's present  
11 recollection 20 years after the event. It was  
12 significant because it takes away one of the  
13 aspects of his testimony that I believe tended to  
14 implicate David Milgaard.

04:10 15 Q Was the observation of blood?

16 A Was the observation of blood.

17 Q If we go to the next page.

18 COMMISSIONER MacCALLUM: No, yes that's  
19 true, but what about the phraseology "having no  
04:10 20 recollection" as opposed to "I didn't see any  
21 blood on him"; wasn't that what you meant?

22 BY MR. HODSON:

23 Q Yes.

24 A Yeah. To me, that signaled the influence of the  
04:10 25 writer, and not necessarily David -- I'm sorry --



1 Ron Wilson.

2 Q In what respect? I don't --

3 A Well, it -- it was an area that I needed to  
4 explore. "I have no recollection" as opposed to  
04:11 5 "I didn't see any blood" is, again, one of the --  
6 there is a nuance there.

7 If you say "I didn't see it", it  
8 denies that it existed; if you say "I have no  
9 recollection today", it leaves open the  
04:11 10 possibility that you did see it but you no longer  
11 recall having seen it.

12 Q And would it be fair to say that, if 20 years  
13 later a witness says "lookit, at trial I testified  
14 I saw blood and, today, I don't remember seeing  
04:11 15 blood", is that a recantation?

16 A Not necessarily. It's lack of recall 20 years  
17 later.

18 Q Okay. So --

19 A But as presented in a statement, "I have no  
04:11 20 recollection", it gives the impression that he  
21 didn't see it when, in fact, that's not what he  
22 says.

23 Q When he says:

24 "I believe that the police somehow  
04:11 25 convinced me that I had to have seen the





1                   blood because Cadrain had.",  
2                   so in other words "I don't remember today but I  
3                   think the police must have convinced me that I  
4                   saw it because Cadrain saw it", --

04:12 5           A           Yes.

6           Q           -- "and that explains why I don't remember today"?

7           A           Yes.

8           Q           The next page --

9           A           It's well-crafted.

04:12 10          Q           In what respect?

11          A           Well, for the very point that you just made. When  
12                   you look at it uncritically, many people read  
13                   through the "I have no recollections" and just  
14                   simply assume it didn't happen, "I didn't see it"  
15                   as opposed to "I have no recollections of having  
16                   seen it".

17          Q           If you go to the next page, it says:

18                                   "From reading the transcript  
19                   of my 1970 trial testimony, a copy of  
20                   which was provided to me by Paul  
21                   Henderson, on this date, I can attest to  
22                   having made the following additional  
23                   allegations against Milgaard in the  
24                   trial:",

04:12 25                   And what significance, if any, did you put to the



1 fact that he had reviewed his trial transcript,  
2 or of his evidence, I think, in conjunction with  
3 giving this statement?

4 A Well, based on my earlier experiences in  
04:13 5 questioning Deborah Hall, I wanted to fully  
6 explore the circumstances of -- under which he  
7 reviewed the transcripts, what portions, and  
8 whether or not it was a complete review or a  
9 selected review.

04:13 10 Q Okay. And then he goes through and identifies  
11 some of his allegations at trial, the maroon  
12 handled knife, and he says:

13 "This was not the truth. I  
14 saw no knife prior to our arrival in  
04:13 15 Saskatoon.",

16 and that:

17 "... David purchased a paring knife to  
18 cut ... meat ...",  
19 on the way out of the city. Again, what was your  
04:13 20 reaction, if any, to that?

21 A His trial observation, that he had observed a  
22 maroon-handled paring knife with David Milgaard,  
23 was a significant piece of evidence because it  
24 matched or was similar to the murder weapon.

04:14 25 Q And so that if he is now saying "lookit, I didn't



1 see a knife, that's wrong evidence", that would be  
2 significant?

3 A Yes, it would be.

4 Q And then he goes on, if we can scroll down:

04:14 5 "I recall that detectives  
6 showed me several knives, including one  
7 with a maroon-handle, and that they  
8 pressured me to tell them that the knife  
9 with the maroon handle was the one I saw  
04:14 10 and that I had seen David Milgaard with  
11 this knife before we got to Saskatoon." ;  
12 what did you make of that statement?

13 A Certainly, it supports the contention that the  
14 police pressured or coerced him into making an  
04:14 15 identification of the murder weapon when, in fact,  
16 that was not his independent recall.

17 Q Just scroll down to the bottom. And again, if  
18 that were true, then that would be something that  
19 would --

04:14 20 A That would be significant, it would be a factor in  
21 a recommendation for relief.

22 Q And he says:

23 "- that Nicol John was  
24 hysterical when I returned to the car  
04:15 25 after we'd gotten stuck in the snow and



1 I'd gone for help.

2 I have no recollection of her  
3 being hysterical at that time. The  
4 allegation that Nicol became hysterical  
04:15 5 after witnessing a murder take place  
6 makes no sense to me. If Nicol had seen  
7 Milgaard kill someone she would never  
8 have continued with us on the trip."

9 What concerns, if any, did you have with that  
04:15 10 statement?

11 A It appeared to be a rationalization of Nichol's  
12 behaviour as an attempt to distance himself from  
13 the earlier testimony that when he arrived back at  
14 the car he observed Nichol John in an hysterical  
04:15 15 state. He's now rationalizing that that could not  
16 have happened on the basis -- based on the fact  
17 that had she been so hysterical, she wouldn't have  
18 continued the trip, but in fact she did, so  
19 therefore she wasn't hysterical.

04:16 20 Q And the rationalization, where would that come  
21 from?

22 A I don't know.

23 Q But is that something you would be concerned  
24 about?

04:16 25 A It's something I would want to explore.



1 Q And:

2 "- that someone found a women's compact  
3 in the glove compartment of the car  
4 after we left Saskatoon.

04:16 5 I have no independent  
6 recollection today of this having  
7 occurred."

8 And again --

9 A Well, he's saying "no independent recollection",  
04:16 10 bearing in mind that by then I had had contact  
11 with Justice Tallis and had the benefit of his  
12 recollections of what his client had told him  
13 about the compact incident, so the fact that Mr.  
14 Wilson has no independent recollection didn't  
04:17 15 disturb me, but I was caught by the language that  
16 was used. The fact -- the use of "no independent  
17 recollection" in the context of his trial  
18 testimony that he testified that he saw David  
19 Milgaard take the case from Nichol and throw it  
04:17 20 out signals that whatever recollection he had at  
21 trial was not independent, the inference being  
22 that it was put there by police authorities.

23 Q I'm sorry, I didn't follow that one.

24 A Okay. Today he has no independent recollection of  
04:17 25 the cosmetic case. Based on the interviews that I



1 had conducted of Justice Tallis, Justice Tallis  
2 confirmed that his client did not deny that he  
3 threw the cosmetic case out of the car window, so  
4 there was a strong basis for me to believe that  
04:18 5 the cosmetic case incident did in fact take place.

6 When Mr. Wilson says in his  
7 statement that he has no independent recollection  
8 of this thing having occurred, that is, the  
9 cosmetic case, the impression it can leave is that  
04:18 10 whatever recollection he had in the past was given  
11 to him by police authorities.

12 Q So in other words, you are reading -- the use of  
13 the word independent into recollection is to  
14 signal to somebody, to the reader, that back in  
04:18 15 '70 when he testified that he saw it, that it  
16 wasn't an independent recollection?

17 A Yes.

18 Q Did that have a flag for you then for something to  
19 follow up on?

04:18 20 A Yes.

21 Q Scroll down:

22 "- that when we were alone in Calgary,  
23 Milgaard told me he'd "hit a girl" or  
24 "got a girl" in Saskatoon and put her  
04:19 25 purse in a trash can.



1                   This testimony was planted in  
2                   my mind by police. At no time did  
3                   Milgaard confess anything like this to  
4                   me."

04:19 5                   What was your reaction to that?

6           A           Initially it was something I would have to follow  
7                   up on.

8           Q           Okay. And what -- was there anything that jumped  
9                   out from this statement?

04:19 10          A           Not initially. I mean, statements and events that  
11                   are recited take place in a certain context and  
12                   the context, as I recall, for that exchange  
13                   between David -- sorry, Ron Wilson and Nichol John  
14                   occurred shortly after the bus, they went to the  
04:20 15                   bus depot, and I didn't see it there in the  
16                   statement.

17          Q           I think in his original statement he said they had  
18                   went to the bus station to phone his friend  
19                   Heather Beaton.

04:20 20          A           Yes.

21          Q           And what about the language that:

22                                "This testimony was planted in my mind  
23                                by police."

24                   What did you make of that?

04:20 25          A           That squarely puts the accusation against the



1 police of coercion, that is something we would  
2 have to look into. One of the things that I  
3 would, that signaled to me to be necessary to do  
4 was to develop time lines for the taking of the  
04:20 5 various statements and when these inculpatory  
6 utterances were made.

7 Q Did you draw a distinction between coercion and  
8 planting in his mind?

9 A I did in the sense that one could say coerced and  
04:21 10 manipulated. If it's planting in the mind, it's  
11 part of the coercive process, whether you want to  
12 use coercion or manipulation.

13 Q And then he says, scroll down:

14 "By the time Milgaard went to trial  
04:21 15 police had me convinced, in one sense,  
16 that he was guilty. Deep down I wasn't  
17 sure, however, and felt badly that I may  
18 have been manipulated into testifying  
19 against an innocent person and putting  
04:21 20 him away."

21 Did you have any concerns with that statement  
22 when you initially reviewed it?

23 A It certainly follows the theme of, that had been  
24 suggested earlier on, that the police brainwashed  
04:21 25 him into thinking that his friend was in fact





1 guilty and that thought influenced his testimony.

2 That was another area that had to be flagged.

3 Q And if we can scroll down:

4 "At the time, I was heavily involved in  
04:22 5 drugs, including heroin, speed,  
6 marijuana and L.S.D. I consider myself  
7 not to have been mentally stable at that  
8 period of my life. I have thought about  
9 David Milgaard many times; he's been in  
04:22 10 my thoughts off and on for the past 20  
11 years. I know how he has suffered in  
12 prison - where it must be like time is  
13 standing still. David Milgaard was my  
14 friend.

04:22 15 I was manipulated into lying  
16 against him - manipulated into believing  
17 my own lies.

18 I have been haunted through all  
19 of these years by my role in helping to  
04:22 20 convict David. Although he has suffered  
21 the most, I feel that I was also a  
22 victim of this case."

23 Any concerns about that statement?

24 A Well, certainly the passage in which Mr. Wilson  
04:23 25 recites his drug and alcohol abuse signals that



1 here was a vulnerable 17-year-old who was ripe for  
2 manipulation or coercion by the police. It also  
3 provides a rationale for why he is coming out some  
4 20 years later. It's a question of conscious,  
04:23 5 he's been haunted.

6 Q So if we can go back to your earlier comment when  
7 you first got this statement, and I think you said  
8 you were flabbergasted by the content, and can you  
9 just elaborate a bit further, was it the case that  
04:23 10 there was so much in here that, if true, if  
11 established to be true, that it would -- would  
12 have been something that, is it fair to say, would  
13 have provided the basis for a remedy?

14 A Yes. When I say flabbergasted, I mean, he was  
04:24 15 cross-examined by Mr. Tallis and he was  
16 cross-examined specifically on the police pressure  
17 and tactics towards him, having regard to the  
18 succession of statements which move from "I know  
19 nothing and David Milgaard is not implicated" to  
04:24 20 statements which implicated his friend. He had an  
21 opportunity then to recite, or at least to  
22 dissociate himself, but he didn't, and the entire  
23 fabric of this statement sets out a basis to  
24 explain why he didn't. A vulnerable 17-year-old  
04:24 25 who was initially frightened because of the fear



1 that he might be the target of a homicide  
2 investigation, his mind and his emotional state  
3 had been adversely affected by drug abuse, and  
4 he's not referring to what is referred to as soft  
04:25 5 drugs like marijuana, he's talking about heroin,  
6 speed and acid among those substances that he  
7 took. That certainly lends some credence to the  
8 suggestion that here was a vulnerable, mixed-up,  
9 brain-addled young person who might be the perfect  
04:25 10 target for police manipulation or coercion and  
11 that backdrop gives, or has the potential to lend  
12 some credence to the suggestion that he was  
13 manipulated and coerced.

14 Q And so on the face of the statement, are you  
04:25 15 saying, again just on the face of what's in the  
16 statement, if true, painted perhaps a compelling  
17 picture, if true, that he had been manipulated by  
18 the police to give false evidence and that it  
19 would be a ground for a miscarriage of justice?

04:26 20 A If true, yes.

21 Q And was that something -- I'm just trying to get  
22 back to the -- why did that surprise you, that  
23 this would come on June 6th or 7th, or whenever  
24 you received it, was that what caused you the  
04:26 25 surprise?



1 A No, I think what caused me the surprise initially  
2 was the fact that this was an area that had been  
3 the subject of cross-examination at trial, that  
4 Mr. Wilson at the time was no shrinking violet in  
04:26 5 terms of, what I could understand, in terms of his  
6 contacts with the law, and I think what was, may  
7 have been surprising for me was just the fact that  
8 within the last several, within the last month I  
9 had received at least two or three fairly  
04:27 10 significant new grounds to investigate. It was  
11 just perhaps the last shoe that fell, it was the  
12 last thing that happened on the file. I mean, two  
13 days previously you had Markesteyn and the dog  
14 urine, before that you had something else and  
04:27 15 there was something else, so between February and  
16 June a significant number of new areas of  
17 investigation had surfaced.

18 Q Did you have any concerns that this recantation or  
19 this statement may have been connected in any way  
04:27 20 to the revelations that had been made about Larry  
21 Fisher as the killer? Now, at this point he had  
22 not been publicly identified, but if you  
23 presume -- or did you assume that Mr. Henderson  
24 would have been aware of Larry Fisher as the  
04:28 25 culprit?



1 A I assumed that if Mr. Henderson was working with  
2 the Milgaards, that he would have ready access to  
3 their information about the allegation that Fisher  
4 was the culprit.

04:28 5 Q And again, was that something, when you got the  
6 statement, did you consider whether or not this,  
7 the timing of this recantation may have been  
8 somehow connected to the fairly recent, at least  
9 within the last four months, revelation that  
04:28 10 another suspect was identified?

11 A I thought that the, that the timing of the  
12 revelation was designed to cause us to give up and  
13 simply say let him have a remedy. We had been  
14 under significant pressure to come to a decision.  
04:29 15 We were looking into it and there was obviously  
16 not going to be, quote, "a quick fix", to run down  
17 the Markesteyn report and to check into that, run  
18 down Dennis and Albert Cadrain, run down Larry  
19 Fisher and run down Ron Wilson. When I say run  
04:29 20 them down, I mean fully investigate them, and  
21 fully investigate them at a time when the  
22 newspapers were accusing us of being lazy, of  
23 having sat on important information, where  
24 pressure was being brought to bear in the House of  
04:29 25 Commons by Mr. Harvard and in committee, so the



1 easy way out would be simply to raise your hands  
2 and surrender and say give up, give them what they  
3 want, that was my take on it, and --

4 COMMISSIONER MacCALLUM: You understood  
04:30 5 this to be an attempt to make you give up?

6 A Yes.

7 COMMISSIONER MacCALLUM: It wasn't your  
8 inclination to give up? No?

9 A No.

04:30 10 MR. HODSON: How about if we give up for  
11 today. It's 4:30.

12 A Let's adjourn.

13 COMMISSIONER MacCALLUM: Maybe I'll just  
14 ask you one thing before we go, sir.  
04:30 15 Stylistically I think everyone would agree,  
16 without trying to cast aspersions on the author,  
17 the statement reads more like a composition --

18 A It does.

19 COMMISSIONER MacCALLUM: -- than a  
04:30 20 statement, and you did mention in passing that  
21 when you took statements you attempted, where  
22 possible, to use the words of the declarant. Do  
23 you do this to the extent possible or do you just  
24 use some of the words of the declarant and some  
04:31 25 of your own or how do you work that? I'm asking



1           you because you are obviously an experienced  
2           person in taking statements.

3           A       It depends on the person you are interviewing.  If  
4           I'm interviewing a witness who uses my language or  
04:31 5           the vocabulary that I use, then I feel more  
6           comfortable in providing a summary in the language  
7           that I use.  Where the witness doesn't express  
8           himself or herself as I do, I will definitely  
9           provide a summary in words that I understand, but  
04:32 10          when it comes to what I would call the, some  
11          really critical points in the interview, I attempt  
12          to quote the words of the witness because at some  
13          later date, if the witness is challenged, the  
14          challenge is more likely to succeed if the  
04:32 15          language that is attributed to them isn't words  
16          that they would ordinarily use, and that came home  
17          to me as a young prosecutor when a police officer  
18          used 20 dollar words to a fellow with a grade 5  
19          education and when counsel asked him what he  
04:32 20          meant, he looked at it and he said "I don't know",  
21          he didn't understand the words, and the statement,  
22          although admitted, was given very little weight  
23          because the vocabulary of the officer did not  
24          reflect the knowledge and understanding of the  
04:33 25          witness.  It may have captured the meaning, but at



1           some future date when you are putting the  
2           statement to the witness to refresh his or her  
3           memory, the important parts have to resonate or  
4           have to have some meaning for that witness for it  
04:33 5           to be useful, and that lesson always stayed with  
6           me.

7                        COMMISSIONER MacCALLUM:   Thanks.   Until  
8           tomorrow then.

9                        *(Adjourned at 4:33 p.m.)*

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**OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATE:**

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

\_\_\_\_\_, CSR

Karen Hinz, CSR

Official Queen's Bench Court Reporter

\_\_\_\_\_, RPR, CSR

Donald G. Meyer, RPR, CSR

Official Queen's Bench Court Reporter



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