

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

\*\*\*\*\*

Transcript of Proceedings

and

Testimony before the Commission  
sitting at the  
TCU Place at  
Saskatoon, Saskatchewan

\*\*\*\*\*

On Thursday, June 22nd, 2006

Volume 168

Inquiry Proceedings



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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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- BY MR. HODSON

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1 Transcript of Proceedings

2 (Reconvened at 9:03 a.m.)

3 COMMISSIONER MacCALLUM: Good morning.

4 ALL COUNSEL: Good morning.

09:03 5 EUGENE WILLIAMS, continued:

6 BY MR. HODSON:

7 Q Good morning, Mr. Williams.

8 A Good morning.

9 Q If we could call up 000248. We finished yesterday  
09:03 10 dealing with Ron Wilson's June 4th, 1990  
11 statement, I took you through most of that. If we  
12 could go to page 253 of that document, and I took  
13 you through the main statement, and as well with  
14 the main statement, which I think was about six  
09:03 15 pages, there was a one page supplement. Do you  
16 recall that being part of the statement?

17 A Yes.

18 Q And it appears that it's the same date and I  
19 believe the evidence was that it was just  
09:03 20 something added after the initial statement was  
21 taken and it may well be that after Mr. Wilson  
22 gave the statement he read the transcript of  
23 Nichol John's evidence, and he says:

24 "I learned for the first time that Nicol  
09:04 25 claimed that our car became stuck in an



1 alley behind a funeral home on the  
2 morning in January 1969 that we arrived  
3 in Saskatoon."

4 He says:

09:04 5 "It is true that our car got stuck in  
6 the snow while we were driving around  
7 looking for Shorty Cadrain's house that  
8 morning. It is also true that at some  
9 point we stopped the car and asked a  
09:04 10 lady for directions.

11 But I saw no funeral home in  
12 the location where we became stuck. I  
13 recall that we became stuck at an  
14 intersection at the end of a block. I  
09:04 15 do not recall seeing a funeral home and  
16 would have so testified if I had been  
17 asked that question during the trial."

18 Again, what was your reaction, if any, to this  
19 information when you initially reviewed it,  
09:04 20 anything jump out at you about it?

21 A My initial thought was that it seemed to fly  
22 contrary to the statement or the evidence of  
23 Nichol John about the location of, or about where  
24 the car got stuck. It also seemed to be  
09:05 25 consistent with one of Mr. Wilson's earlier



1 initial statements to the police.

2 COMMISSIONER MacCALLUM: Consistent or  
3 inconsistent?

4 A Consistent, sir.

09:05 5 BY MR. HODSON:

6 Q Now, I think Mr. Wilson's evidence at the trial,  
7 or maybe it was the preliminary hearing, he in  
8 fact drew I think the letter "S" or some mark on  
9 the map that was right beside the funeral home.

09:05 10 Were you aware of that in your review of the  
11 transcript? I think he had identified -- the  
12 evidence at trial was Nichol John had the vehicle  
13 on the incline in the back alley, Ron Wilson had  
14 the vehicle turned around at an intersection and I  
09:05 15 think on the map he put it right adjacent to the  
16 funeral home.

17 A That is so, but as -- my recollection may be hazy,  
18 but it seemed to me that in one of his earlier  
19 statements or his run-throughs when he visited the  
09:06 20 area, initially he did not identify the funeral  
21 home as the location.

22 Q Oh, I'm sorry, on the initial statement?

23 A Yes.

24 Q Okay. And the initial drive-through I think?

09:06 25 A Well, the police investigators had taken him to



1 the area to see whether or not he could identify  
2 any landmarks and that's what I mean by the  
3 initial drive-through.

4 Q Okay. So you've got Ron Wilson's statement, and  
09:06 5 we went through it in some detail yesterday, and I  
6 think you told us that it raised a number of  
7 issues and concerns that you needed to pursue; is  
8 that correct?

9 A Yes.

09:06 10 Q And just to summarize, I think you told us that  
11 certainly you would want to explore the  
12 circumstances under which Ron Wilson provided the  
13 recantation statement; is that correct?

14 A It is.

09:06 15 Q And in particular you told us an explanation as to  
16 why 20 years later he would provide a recantation,  
17 what might have prompted that, and I think as well  
18 secondly you also said how it could all happen in  
19 one day, I think you said you found that  
09:07 20 surprising, that just being contacted, that he  
21 would immediately recant as opposed to what you  
22 thought might be an evolutionary process, so you  
23 would want to probe that a bit?

24 A Yes.

09:07 25 Q I think you also told us that you want to probe





1 and question a bit the actual composition of the  
2 statement; in other words, you had some concerns  
3 about the language used. Is that correct?

4 A Yes.

09:07 5 Q And I think you said you would want to check  
6 whether, just how it came to be that the words got  
7 on paper and the statement got signed, or to that  
8 effect; is that fair?

9 A Yes, it is.

09:07 10 Q So that would be -- that would require, I presume,  
11 an interview of at least Mr. Wilson; is that fair?

12 A Yes, sir.

13 Q Did you ever consider talking to Paul Henderson?

14 A No, I did not.

09:07 15 Q And so the circumstances would be, the starting  
16 point would be to talk to Ron Wilson then?

17 A It was Mr. Wilson's statement.

18 Q Right. And then I think you told us as well, the  
19 secondary would be to look at the substance of  
09:08 20 what it was that Ron Wilson was recanting and I  
21 believe you told us that that would require you to  
22 go back, I think you talked about making a time  
23 line of his dealings with the police; is that  
24 right?

09:08 25 A Yes.



1 Q And so is it correct to say that you would go  
2 check the record that existed about his dealings  
3 with the police, his evidence at trial and check a  
4 couple of things against that record; number 1,  
09:08 5 the reasons Mr. Wilson put forward for lying at  
6 trial, and that was police manipulation, is that  
7 correct, so that would be one thing, to go back  
8 and say let's test what he says as to why he lied  
9 and why he's now recanting?

09:08 10 A Yes.

11 Q And the second thing would be let's take a look at  
12 his new version of events, the after-recantation  
13 version of facts, and let's test that against the  
14 record or other known facts; is that correct?

09:09 15 A That's correct.

16 Q And then in that process I think you told us you  
17 would then be checking the accuracy and  
18 completeness of his recanted statement?

19 A Correct.

09:09 20 Q And I think as well in response to a question from  
21 the Commissioner, you indicated that it would be,  
22 the purpose of this would be to gather all this  
23 information so that you could provide it to the  
24 minister who could then assess the significance or  
09:09 25 the weight that ought to be given to this



1 recantation?

2 A That's correct.

3 Q And would it be fair to say that in light of the  
4 timing of this statement; in other words, when it  
09:09 5 was given, in the midst of the application, June  
6 of 1990, the manner in which the statement was  
7 composed and the content of the statement, that I  
8 think you told us yesterday you concluded that it  
9 would be a significant undertaking to follow up on  
09:09 10 the things that needed to be followed up on?

11 A Yes.

12 Q In fact, it wasn't a simple one-statement  
13 recantation that can be checked quickly, it  
14 involved a fair bit of work; would that be  
09:10 15 correct?

16 A It involved some research. I initially recognized  
17 that I would have to review his previous  
18 statements, the statements of some of the police  
19 investigators and his testimony both at trial and  
09:10 20 at the preliminary inquiry.

21 Q And I think you also told us words to the effect  
22 that for, because of the timing, the content and  
23 what else had gone on in this application, you had  
24 some suspicions or concerns about the recantation;  
09:10 25 is that fair?



1 A It raised some questions, yes. I had some  
2 concerns about it.

3 Q If we can go to 105315, I'll just carry on  
4 chronologically, so this is -- and there's a fair  
09:10 5 bit of activity in the month of June, Mr.  
6 Williams, dealing with everything from Dr.  
7 Markesteyn's report to Albert Cadrain, Dennis  
8 Cadrain and Ron Wilson, so this is June 6th, '90  
9 and this is a note of Chief Penkala of a call from  
09:11 10 you and it appears that you are seeking -- let me  
11 just read through this note and see if you can  
12 confirm that you had requested this information.  
13 According to Mr. Penkala, you called to see:

14 "1. Whether file has polygraph result  
09:11 15 report relative to the witness Ron  
16 Wilson who was questioned in regard to  
17 case.

18 Wishes to have established the times and  
19 dates (length of time of questioned) in  
09:11 20 this regard and also other previous  
21 occasions when Wilson was questioned."

22 And again, is that accurate, is that what you  
23 would have asked from Mr. Penkala?

24 A Yes.

09:11 25 Q And that would fit in with what you just told us



1 about what you needed to do to check --

2 A Yes.

3 Q -- Mr. Wilson's recantation. And then scroll  
4 down:

09:11 5 "2. Request similar information on the  
6 witness Nichol John. This also includes  
7 documentation of polygraph results and  
8 report of polygraphist.

9 Please establish these particulars and  
09:12 10 where possible, fax documentation to Mr.  
11 Williams."

12 At this time did you -- were you under the  
13 impression that Nichol John may have undergone a  
14 polygraph examination?

09:12 15 A Yes.

16 Q And what was that based on?

17 A I knew that from a review of the file materials,  
18 both Mr. Wilson and Ms. John had been escorted  
19 from Regina to Saskatoon to meet with Art Roberts.  
09:12 20 I assume that they had either been questioned or  
21 perhaps had been polygraphed by Mr. Roberts.

22 Q Is it, I think, correct, that you knew at least  
23 from Ron Wilson's recantation statement that he  
24 was polygraphed?

09:12 25 A That he had, yes. I also knew that Ms. John had



1           been questioned by Mr. Roberts, so I asked the  
2           question as to whether or not she had been  
3           polygraphed and, if so, if I could have those  
4           results.

09:13 5           Q           Yeah.

6           A           I believe that -- I believe that the information  
7           is she was not polygraphed, but merely questioned.

8           Q           That's the evidence the Commission has, yes.

9           A           Yup.

09:13 10          Q           And at some point did you become aware of that?

11          A           Yes.

12          Q           And what was your understanding of, with respect  
13          to Ron Wilson, what was your understanding at the  
14          time as to what was tested by Inspector Roberts as  
09:13 15          far as Ron Wilson's statement?

16          A           My understanding was that Mr. Wilson had initially  
17          given the police statements in which he denied any  
18          involvement by David Milgaard in the Gail Miller  
19          homicide. However, on another occasion, or  
09:13 20          subsequent to those initial statements he started,  
21          or he implicated Mr. Milgaard and I believe the  
22          police wanted to test whether the second  
23          statements could be confirmed as accurate or as  
24          truthful by having Mr. Wilson undergo a polygraph  
09:14 25          test. I think it would have increased their



1           comfort level about the quality of the information  
2           before they took the step of laying an information  
3           charging someone with murder.

09:14 4           Q           Was it your understanding that Ron Wilson's  
5           incriminating statement was verified by the  
6           polygraph test?

7           A           Yes.

8           Q           And what was that understanding, where did that  
9           come, what was that based upon?

09:14 10          A           It was based on information that I gleaned from  
11          the file.

12          Q           And did you talk to any police officers about what  
13          they believed had happened as far as the  
14          polygraph?

09:14 15          A           I believe, yes, I believe I spoke with Detective  
16          Karst, Detective Short, and some of the other  
17          members.

18          Q           And as well, I think a bit later, you also talked  
19          to Inspector Roberts; is that right?

09:15 20          A           Yes, I did.

21          Q           There is some evidence before the Commission that  
22          suggests -- and I think it stems from Inspector  
23          Roberts' evidence at the Supreme Court on the  
24          reference, certainly the evidence we've heard from  
09:15 25          Mr. Caldwell, Mr. Karst, and others is consistent



1 with what your understanding was, that Ron  
2 Wilson's incriminating statement was verified by  
3 the polygraph, in other words that it was tested  
4 and determined by Mr. Roberts to be truthful. And  
09:15 5 in Inspector Roberts' evidence before the Supreme  
6 Court there is a suggestion that he may have  
7 tested only the initial statement of Mr. Wilson,  
8 in other words where he said nothing  
9 incriminating, and that he failed on that test, in  
09:15 10 other words that he -- Mr. Roberts concluded Mr.  
11 Wilson was lying when he said David Milgaard was  
12 not involved, and that he then gave the statement,  
13 but that the incriminating statement wasn't  
14 subsequently tested. Were you aware of that, or  
09:16 15 did you ever have any information to that effect,  
16 at the time?

17 A At the time, I wasn't aware of that.

18 Q Okay. And I'm not sure, I'm not suggesting that  
19 that's -- there is two different versions or two  
09:16 20 different understandings, Mr. Williams, of what  
21 may have happened, and Mr. Roberts is deceased so  
22 he can't testify here. But so your understanding  
23 was, throughout your involvement, that Ron  
24 Wilson's incriminating statement of May 23rd, May  
09:16 25 20 -- the May 23rd statement, which was I guess





1           supplemented on one point on May 24th, but the May  
2           23rd statement, it was your understanding that  
3           that statement was tested by Inspector Roberts by  
4           a polygraph test and Inspector Roberts concluded  
09:16 5           that Ron Wilson was being truthful when he made  
6           those incriminating statements; is that correct?

7           A           That's correct.

8           Q           And did the fact that -- did that fact influence  
9           your thinking in dealing with Ron Wilson's  
09:17 10           recantation?

11          A           It certainly did.

12          Q           And can you elaborate a bit on that?

13          A           The recantation, some 20 years later, contradicted  
14           some of the facts recited in the earlier  
09:17 15           statement, and those facts apparently had been  
16           tested by the polygraph examiner, and Mr. Wilson  
17           had been tested, and at the time the test results  
18           were that he was telling the truth. Bearing in  
19           mind that memories fade over time, it's not  
09:17 20           unusual for folks to have a different perception,  
21           but it certainly was a starting point in terms of  
22           beginning to probe some of the aspects of the  
23           recantation.

24          Q           And is it correct to say that, in testing the  
09:17 25           credibility of the recantation, you would be



1 comparing Ron Wilson's July -- June 1990  
2 recollection of events versus his January -- well,  
3 1969-1970 recollection of events and testimony  
4 under oath as verified by a polygraph?

09:18 5 A Yes. I think, in terms of testing the accuracy of  
6 this new information in contrast to what had been  
7 provided earlier, as you've described, yes, I  
8 would be.

9 Q And so, if you went back to the original record  
09:18 10 and the original evidence, to the extent that you  
11 couldn't poke holes in that, or to the extent that  
12 you concluded that it was, for reasons including  
13 the polygraph -- let me rephrase that. If you go  
14 back and take a look at what Mr. Wilson said in  
09:18 15 '69-'70, and based upon the circumstances, the  
16 fact it's under oath and the polygraph; if you  
17 concluded that there wasn't anything suspect or  
18 inappropriate about his '69-'70 evidence would  
19 that cause you to think that the recantation,  
09:19 20 then, is less credible?

21 A It would cause me to think that the recantation  
22 was less accurate. The other thing I would be  
23 looking at would be the extent to which some of  
24 the facts recited in 1969 had been confirmed by  
09:19 25 other evidence, --



1 Q Okay.

2 A -- whether it was testimonial or objective.

3 Q And so, again, is that saying "what's more  
4 reliable, Ron Wilson's June 1990 version of events  
09:19 5 or his 1970 version of events"; is that a fair way  
6 of putting it?

7 A Yes.

8 Q And if the 1970 version of events, for objective  
9 reasons based on other facts and the polygraph,  
09:19 10 you found to be more credible than the 1990  
11 version, then that would be a factor in assessing  
12 the recantation; is that fair?

13 A I think that's fair. That would be, that would  
14 certainly be an element that I would point out to  
09:20 15 the minister in my report, yes.

16 Q Okay. If we could go to 159853. I now want to --  
17 again, we'll just go chronologically and jump  
18 around on a few topics. The -- this is an article  
19 June 6th, 1990, so again this is the same day I  
09:20 20 think you are dealing with the Ron Wilson  
21 information, it's the day after you get the Dr.  
22 Markesteyn report, and I think you told us  
23 yesterday that the dog urine story or -- was  
24 something that would be -- would get -- you  
09:20 25 anticipated was designed for the media and would



1 get heavy play in the media; is that fair?

2 A That's fair.

3 Q And so here's an article by Dan Lett *Milgaard*  
4 *evidence 'shaky', examiner says*, and we talked  
09:20 5 yesterday when we went through the report about, I  
6 think what Dr. Markesteyn said is "because I don't  
7 know what tests were done in 1969-'70 to determine  
8 whether it was human, I can't rule out the  
9 possibility that it's dog urine"; is that a fair  
09:21 10 summary of what Markesteyn said?

11 A Yes.

12 Q And so, here, the article says:

13 "Asper said after reading the  
14 Markesteyn report it seems entirely  
09:21 15 likely that his client was convicted  
16 partly on the basis of dog urine left in  
17 the snow after the murder."

18 I wouldn't mind your comment on that assertion  
19 based on what you knew the facts to be at the  
09:21 20 time?

21 A My understanding of the case that was presented to  
22 the jury was that neither -- well, the Crown  
23 certainly did not rely on the forensic evidence in  
24 an attempt to link David Milgaard to the crime  
09:21 25 scene, so the suggestion that the conviction was



1           flawed because the substance that was presented to  
2           the jury as human semen was in fact dog urine is  
3           inappropriate, given the record of the trial.

4                           In essence, the speculation that  
09:22 5           the conviction was based on dog urine assumes that  
6           the jurors were told that this substance linked  
7           David Milgaard to the crime scene when, in fact,  
8           they were not told that.

9           Q           Okay. So that would be one concern.

09:22 10          A           Yes.

11          Q           Is there anything else?

12          A           Well, what's not stated -- and keep in mind that  
13          the article is, is just one snapshot of one aspect  
14          of the material that had been presented -- there  
09:23 15          is no attempt in the article to relate the dog  
16          urine and its impact to the report of Dr. Ferris.

17          Q           Okay.

18          A           Because Dr. Ferris' report assumes that the  
19          substance was human and Dr. Ferris' conclusions  
09:23 20          were predicated on the fact that the substance was  
21          human.

22          Q           So, in other words, there is no statement by Mr.  
23          Lett that says "Dr. Markesteyn's report  
24          effectively eliminates any value to Dr. Ferris'  
09:23 25          report because what Dr. Ferris said to be the



1 perpetrator's semen is now dog urine"?

2 A Correct.

3 Q What about if we could just scroll up one, to:

4 "Markesteyn said the  
09:24 5 technology was available in 1969 to  
6 conclusively analyse the two yellowish  
7 spots, but the tests were never  
8 performed."

9 Now we know, from Sergeant Paynter's evidence at  
09:24 10 the Commission, that they were performed, and I  
11 don't think Dr. Markesteyn in his report -- and I  
12 stand to be corrected -- I think he said he made  
13 efforts to see if they were done, and couldn't  
14 confirm that they were done, so I don't think he  
09:24 15 went so far as to say --

16 A The tests were never performed.

17 Q Actually, what Markesteyn says -- and don't call  
18 it up but it's at page 155522 -- he says:

19 "I have been informed that the original  
09:24 20 notes on which this evidence by Staff  
21 Sergeant Paynter was based are no longer  
22 available. Staff Sergeant Paynter  
23 informed me that he does not remember,  
24 some 20 years after the event, whether  
09:24 25 or not he performed specific tests to



1 determine the human origin of these  
2 specimens."

3 And then I think Dr. Markesteyn says that's the  
4 only way you would know whether or not they were,  
09:25 5 so I think Dr. Markesteyn is saying "we don't  
6 know whether the tests were done"; correct?

7 A Correct.

8 Q And so again, here, it's said by Mr. Lett that  
9 Markesteyn said the tests were never performed  
09:25 10 even though they could have been performed?

11 A That seems to overstate Markesteyn's remarks.

12 Q Now what about -- and again, these are not Mr.  
13 Asper's words but they're Dan Lett's words in the  
14 article attributed to Mr. Asper about the -- and  
09:25 15 again the -- Dr. Markesteyn said "I can't  
16 eliminate the possibility that it is dog urine",  
17 and it appears here, would you agree, that the  
18 statement is made that, the:

19 "... entirely likely that his client was  
09:25 20 convicted partly on the basis of dog  
21 urine ...",

22 and did you have concerns about the impression  
23 being put forward in the public that, as opposed  
24 to being "possibly dog urine" or "can't eliminate  
09:26 25 dog urine", that it now was dog urine?



1 A It converts a possibility into a fact.

2 Q What about as far as your dealings with the police  
3 officers at the time. We heard from, for example,  
4 Mr. Penkala, who was the chief of police at the  
09:26 5 time, who testified here, who was the person who  
6 found the frozen semen back in 1969, and I think  
7 it's fair to say he had concerns and took issue  
8 with how things were being portrayed in the media,  
9 and in particular this story or this sort of  
09:26 10 suggesting that he, Mr. Penkala, picked up some  
11 dog urine, said it was semen, put it in the trial,  
12 and convicted an innocent person. And did you  
13 experience, in your dealings with -- in your  
14 efforts and your investigation with police  
09:26 15 officers, can you tell us whether you observed any  
16 adverse reaction to these; did these issues come  
17 into play in your dealings with the police  
18 officers?

19 A Well certainly the members of the Saskatoon police  
09:27 20 force with whom I dealt were quite anxious to get  
21 these issues resolved, certainly the media line  
22 that you described affected them. Some of the  
23 principals involved, some of the senior officers  
24 at -- in 1990 had been key investigators in the  
09:27 25 homicide investigation, and of course they were





1 concerned that some of their work was now being  
2 portrayed as being slipshod. In my dealings with  
3 them they were quite anxious that I get all of the  
4 facts that I requested and they were quite anxious  
09:27 5 that I get to the bottom of it.

6 Q Now we talked yesterday, in some depth, about your  
7 inability to participate in the media battle, if I  
8 can call it that, in the media campaign?

9 A Yes.

09:28 10 Q And what I am talking about is responding to  
11 information that was being put forward by people  
12 on behalf of David Milgaard in the media, and you  
13 told us about why you couldn't, why the minister  
14 couldn't, and why you chose not to even if you, if  
09:28 15 you could, because this, I think you told us this  
16 issue did not deserve to be argued in the media;  
17 is that correct?

18 A That's correct.

19 Q And I believe the evidence that we've heard from  
09:28 20 at least some officers and some officials, and in  
21 particular Mr. Caldwell, Mr. Penkala, and perhaps  
22 others, was that they, too, felt constrained from  
23 commenting and responding because of your  
24 investigation. In other words, I think  
09:28 25 Mr. Penkala said words to the effect that because



1 you were out investigating this he did not want to  
2 come out and publicly say "lookit, this is wrong,  
3 and here's why it's wrong", for fear that that  
4 would somehow draw him into the debate. He had  
09:29 5 other reasons as well. But in other words,  
6 because you were investigating the matter and  
7 there was a Section 690 investigation underway,  
8 many, if not all, of the people who were adversely  
9 affected by the media stories felt that it was not  
09:29 10 appropriate to comment in the media and respond to  
11 what was being put forward, some of which touched  
12 on their conduct; would you agree?

13 A Yes.

14 Q And that's something you would have been aware of  
09:29 15 at the time?

16 A Yes.

17 Q And would it be correct to say that that, in turn,  
18 put some time pressure on you, as well, to say  
19 "lookit, get this resolved, because there's some  
09:29 20 people out there whose conduct and reputation was  
21 affected directly by what was in the media, and  
22 they wish to have the record resolved in whatever  
23 way, but some with some finality to it"?

24 A Correct. As you can well appreciate, upon  
09:30 25 receiving that statement on the 6th of June, I was



1 in immediate contact with Chief Penkala exploring  
2 some -- or asking him to obtain or search for some  
3 of the materials that I thought would be of  
4 assistance in resolving some of the issues.

09:30 5 Q If we can go to 229913. This is the same day,  
6 this is a front-page story in the Saskatoon  
7 *StarPhoenix*, *Key evidence in conviction called*  
8 *flawed:*

9 "A key piece of evidence used  
09:30 10 to convict David Milgaard of murder was  
11 likely worthless, according to a new  
12 forensic review."

13 And I think you've already told us that you did  
14 not agree with that because the semen was not  
09:31 15 used, in your view, to link David Milgaard to the  
16 crime?

17 A That's correct. But, still, the perception was  
18 that a key piece of evidence was used --

19 Q And --

09:31 20 A -- or a key piece of evidence was worthless when,  
21 in fact, it was not a key piece of evidence.

22 Q And then:

23 "In the report, Dr. Peter  
24 Markesteyn says investigators failed to  
09:31 25 eliminate the possibility that the two



1 yellowish frozen lumps were dog urine.

2 They were found by then lieutenant Joe

3 Penkala - now Saskatoon's police chief.

4 'The evidence doesn't exclude  
09:31 5 it (as dog urine),' Markesteyn said from  
6 Winnipeg. 'There are various sources of  
7 yellow stains in a snowbank.'

8 David Asper, Milgaard's lawyer,  
9 is more blunt about the report.

09:31 10 'It concludes that what Penkala  
11 found in the snow could very well be dog  
12 urine,' said Asper."

13 And so, again, that would be -- it was a bit  
14 different from Dan Lett's article, but again  
15 suggesting that the current chief of police in  
16 Saskatoon found dog urine and used it at the  
17 trial of David Milgaard as his semen to convict  
18 him of the crime?

19 A That was the perception that it created.

09:32 20 COMMISSIONER MacCALLUM: Have you got a  
21 date for that, Mr. Hodson?

22 MR. HODSON: Yes, it's June 6th, it's the  
23 same date, June 6th, 1990.

24 COMMISSIONER MacCALLUM: Okay, thank you.

09:32 25 A So you can well appreciate the news articles came



1 at the same time that I received the Wilson  
2 statement, so it was just a question of which one  
3 to juggle.

4 BY MR. HODSON:

09:33 5 Q If we can go to 056743, which is the Pearson  
6 chronology, and go to page 777, and this is down  
7 at the bottom. This is June 7th, Mr. Pearson:

8 "Returned a call to ...",  
9 you:

09:33 10 "... who indicated he had spoke with  
11 Chief Penkala ...",  
12 about file material, and then it goes on to  
13 explain -- go to the next page -- a bit of  
14 Wilson's recantation. And then here, scroll down  
09:33 15 to 157, it says:

16 "Williams wishes to attend  
17 Saskatoon on June 12th for the purpose  
18 of reviewing police file material and  
19 interviewing police investigators, prior  
09:33 20 to taking a legal deposition from Mr.  
21 Wilson. I have this arranged through  
22 City Police Insp. John Quinn.",  
23 and the file is available. So I think, is this  
24 where you would then make arrangements to go back  
09:34 25 and look at the police file and interview police



1           investigators, to basically probe the issues you  
2           felt you needed to probe with Ron Wilson?

3           A           Yes.

4           Q           And did you feel you had to do that first, before  
09:34 5           you went and questioned Ron Wilson?

6           A           Yes. And the reason is quite simply this; that if  
7           I questioned Mr. Wilson before checking with the  
8           police, and certain things came up, then I would  
9           have to go back to the police and then possibly go  
09:34 10           back to Mr. Wilson. I felt it more prudent to  
11           obtain information from the police files and from  
12           the investigators so that I could gain a knowledge  
13           of at least their perceptions of the event so that  
14           I could ask informed questions to Mr. Wilson.

09:35 15           Q           And do you recall when, approximately when you  
16           would have made efforts to try and arrange, then,  
17           an interview of Ron Wilson? I take it you knew  
18           you had to do it, but --

19           A           At or shortly after my visit to Saskatoon I made  
09:35 20           -- I contacted, I think it was, Sergeant Tidsbury  
21           in Kelowna and asked him to make arrangements or  
22           to see whether he could locate Mr. Wilson, and  
23           also to make arrangement for an interview.

24           Q           And did you -- what happened? I mean I'll go,  
09:35 25           take you through some of the documents, but were



1           there some challenges in arranging the interview?

2           A       There were some challenges.  Sergeant Tidsbury  
3           informed me that he had made contact, I believe it  
4           was telephone contact with Mr. Wilson, that a date  
09:36 5           had been identified, a place had been identified,  
6           and I believe it was June 20th, and because we  
7           would be driving from Kelowna to Nakusp and it  
8           would be about a five-hour drive we anticipated  
9           arriving around the lunch hour, and we tentatively  
09:36 10          scheduled an interview either at 1:00 or 1:30, but  
11          that we would call Mr. Wilson upon arrival to  
12          confirm the time.  That was the arrangement.  So  
13          there was a bit of uncertainty in terms of the  
14          time, but certainly it was Sergeant Tidsbury's  
09:36 15          understanding that he relayed to me that the date,  
16          the location, the purpose of the interview had all  
17          been explained to Mr. Wilson and he had  
18          acquiesced, or he had agreed to be interviewed on  
19          that date.

09:37 20          Q       Just a couple of points before you go further.

21          One, you went to Sergeant Tidsbury, then, of the  
22          RCMP Kelowna to find Mr. Wilson; is that right?

23          A       To locate him.

24          Q       To lo --

09:37 25          A       From the statement I knew that Mr. Wilson was then



1 in Nakusp, in British Columbia.

2 Q Did you go to Mr. Asper and Mr. Wolch to get their  
3 assistance in locating him; do you remember?

4 A I don't believe I did, I may have, but I don't  
09:37 5 remember.

6 Q But the statement does say Nakusp, B.C.; is that  
7 right?

8 A Yes.

9 Q Okay. And did you know, at this time, that Mr.  
09:37 10 Wilson had engaged legal counsel?

11 A Not at the time of the statement, but I certainly  
12 learned that on the day that --

13 Q And what happened on the day, then, on the date  
14 set for the interview?

09:37 15 A We arrived in Nakusp, we -- the RCMP officers  
16 telephoned Mr. Wilson, there was no response. It  
17 was a day partly cloudy with intermittent showers,  
18 and once there were -- was no response to two  
19 calls, a patrol car was dispatched to Mr. Wilson's  
09:38 20 residence and he was located outside the  
21 residence. He was reminded that, you know, the  
22 interview was to go on, and he indicated that he  
23 wasn't prepared to be interviewed, and that he had  
24 a lawyer and we should contact the lawyer. The  
09:38 25 lawyer was Mr. Watson, we had some conversations,





1 and Mr. Watson indicated to me that his client had  
2 had conversations with counsel for the Milgaards  
3 and had heard that I -- my interviewing style was  
4 such that it had caused some of the earlier  
09:39 5 witnesses some discomfort, and he wasn't prepared  
6 to be interviewed by me on that date.

7 Q So it didn't happen?

8 A It didn't happen.

9 Q If we could just call up 334936. And did you  
09:39 10 discover the circumstances under which Mr. Wilson  
11 then got legal counsel, or why he got legal  
12 counsel, did that concern you at all?

13 A No, it didn't concern me, he was entitled to be  
14 represented.

09:39 15 Q And did -- were you concerned with the fact that  
16 he didn't want to be interviewed by you?

17 A Well, I was certainly disappointed. I had flown  
18 across from Ottawa to Kelowna to meet him, and we  
19 had following that a five-hour drive, yes, I was  
09:39 20 quite disappointed.

21 Q And what about his reasons for not being  
22 interviewed?

23 A Well, those were the reasons offered to me, I had  
24 to be a little circumspect about them.

09:40 25 Q I think you -- I mean Mr. Wilson wouldn't know



1 anything about your interviews of Deborah Hall and  
2 Linda Fisher or anybody else other than through  
3 Mr. Asper or Mr. Wolch; is that -- was that a fair  
4 assumption?

09:40 5 A I -- I would assume so, unless, of course, he had  
6 still had some contact with Deborah Hall.

7 Q And did you have concerns that counsel for David  
8 Milgaard were trying to preclude you from talking  
9 to Ron Wilson?

09:40 10 A I had some concerns that their, whatever comments  
11 they had made to the witness had dissuaded the  
12 witness from continuing with the interview.

13 Q You told us yesterday that the, you viewed the  
14 Wilson recantation, I think, as the final -- and I  
09:40 15 can't recall your exact words -- but something to  
16 say "lookit, give up, give us a remedy, because  
17 there's so much there and we're gonna clobber you  
18 in the media". You then told us you had all this  
19 work to do to investigate all these things. Did  
09:41 20 the fact that Mr. Wilson was now saying -- and I  
21 will show you a letter later where, in addition to  
22 saying he won't talk to you, he says "I won't talk  
23 to anybody other than a Court"?

24 A Correct.

09:41 25 Q And so he took that position as well; didn't he?



1 A Yes.

2 Q And I'm trying to understand, what was your take  
3 on it? Is it fair to say that the Wilson  
4 recantation -- could the Wilson recantation, the  
09:41 5 statement alone, be a ground or be something  
6 considered by the minister in the absence of an  
7 examination of Mr. Wilson with respect to that?

8 A Yes. I mean Mr. Wilson didn't have to speak with  
9 us. We said fine, if he chooses not to answer our  
09:41 10 questions then we will certainly take a look at  
11 the statement, assess its contents against what is  
12 known, bring that assessment to the attention of  
13 the minister, and the minister can make her own  
14 assessment as to the weight to be given, and in  
09:42 15 the absence of any clarification by him it may  
16 receive little, if any, weight.

17 Q Okay. And I guess that was the question I was  
18 pursuing, that it could still be considered?

19 A It could still be considered, however, the fact  
09:42 20 that Mr. Wilson was prepared to spend several  
21 hours with Mr. Henderson and not prepared to spend  
22 any time with us was -- in order to clarify some  
23 obvious inconsistencies would be taken into  
24 account.

09:42 25 Q Okay. If we can go to page 963 of this, this is a



1 taped conversation between Joyce Milgaard and  
2 David Asper, and it is around the time, I think  
3 it's around June 6th, 7th, 8th, somewhere in  
4 there, of 1990, and there is a reference here to a  
09:43 5 discussion with you, and Mr. Asper says:

6 "And of course Williams now has to see  
7 Wilson, right away. Uh, I haven't been  
8 able to get a hold of Wilson."

9 And I think Mr. Asper's evidence is that this was  
09:43 10 after you had been given the statement of Ron  
11 Wilson, that Mr. Asper said he had been advised  
12 that you were gonna interview him or needed to  
13 speak to him, Joyce Milgaard says:

14 "Oh, you're kidding, we've got to get to  
09:43 15 him before Justice does."

16 Mr. Asper says:

17 "Oh, we will, don't worry, they want his  
18 address, they want his address. Listen  
19 to this exchange, this is beautiful, and  
09:43 20 by the way I'm, I've got to get back to  
21 Saskatchewan and you'll hear why, Hersh  
22 and Williams have an exchange which  
23 says, Williams who says 'Give me his  
24 address', Hersh says 'Um, I don't know  
09:44 25 if I want to do that', Williams says,



1 'Well, I'll tell you, you know, the  
2 witnesses that you've provided us so far  
3 haven't been so good for you', and uh,  
4 Hersh said 'Who, you mean Linda  
09:44 5 Fisher?', and um, Williams says 'Yeah',  
6 and Hersh says, 'That's because you go  
7 in and intimidate her and belittle her  
8 and make her feel like a lyer', and he  
9 says Williams took a giant step  
09:44 10 backwards, and said I'm interested that  
11 that's what their impression was. The  
12 bottom line is, I'm going to see both  
13 Deborah and Linda because they both felt  
14 like dirt after Justice was through  
09:44 15 there. I mean, you talked to Linda  
16 right afterwards, didn't you?"

17 Do you recall a conversation of this nature with  
18 Mr. Wolch where you asked for Ron Wilson's  
19 address and had this exchange about -- as Mr.  
09:44 20 Asper advises Mrs. Milgaard?

21 A I don't. It's quite possible that I spoke with  
22 Mr. Wolch and asked for Mr. Wilson's address, but  
23 I'm not certain that the conversation attributed  
24 to us about Linda Fisher and Debbie Hall arose in  
09:45 25 that particular context. It may have happened,



1 but I don't recall it.

2 Q Let's just go back for the address. Do you think  
3 you would have contacted Mr. Wolch to get Ron  
4 Wilson's address for the purposes of interviewing  
09:45 5 him?

6 A Yes.

7 Q You --

8 A That -- that's a logical step that I may have  
9 taken, yes.

09:45 10 Q And so you don't have a recollection, but you are  
11 saying that's something you could have done?

12 A Yes.

13 Q And do you have a recollection of Mr. Wolch  
14 saying, not being prepared to provide it to you or  
09:45 15 any steps on behalf of Mr. Wolch or Mr. Asper to  
16 not, to block access to Mr. Wilson?

17 A I don't recall that. It may have happened. I  
18 just don't recall it.

19 Q In any event, you told us that Sergeant Tidsbury  
09:46 20 had located Mr. Wilson in Nakusp?

21 A Yes.

22 Q Now what about the conversation here where,  
23 according to Mr. Asper, through Mr. Wolch, that  
24 what's attributed to you is saying that:

09:46 25 "...the witnesses you provided us so far



1                   haven't been so good for you."

2                   Do you have a recollection of having that  
3                   discussion with Mr. Wolch?

4           A           I don't. It's not my usual practice to comment on  
09:46 5           the results of an interview before those were  
6           communicated to the minister. It's just -- it's  
7           just not something I would say.

8           Q           And so are you telling us you don't have a  
9           recollection of saying it and it's not something  
09:46 10          you think you would have said or --

11          A           That's my evidence.

12          Q           Or are you saying I didn't say it?

13          A           Because I can't recall, I can't deny it  
14          specifically, but it's not something I would  
09:47 15          ordinarily say.

16          Q           And why is that?

17          A           The language. Like, over the years of doing this  
18          kind of work, I have rarely commented on the  
19          results of my conversations with witnesses in  
09:47 20          these types of circumstances.

21          Q           Okay. If we can go back to 056778, please, just  
22          down at the bottom, so this is now June 8th, 1990,  
23          and Sergeant Pearson made a patrol, met with  
24          Fisher's lawyer Stephen Carter, made contact with  
09:48 25          Larry Fisher, Carter had a private conversation



1 with Fisher at which time Pearson was permitted to  
2 interview Fisher:

3 "...who stated he wanted to answer  
4 questions only once and mentioned making  
09:48 5 a legal deposition. As Fisher did not  
6 wish to be interviewed twice, it was  
7 agreed we would arrange for the taking  
8 of a legal deposition."

9 And it goes on to say:

09:48 10 "Fisher gave me the impression he was  
11 stalling, however, I am at a  
12 disadvantage as publicity is building  
13 and access to Fisher is difficult."

14 And so that would have been the situation at the  
09:48 15 time?

16 A Yes.

17 Q And so it appears here, June 8th, 1990, Sergeant  
18 Pearson is able to arrange a legal deposition of  
19 Larry Fisher, that's something that you had been  
09:49 20 seeking for a bit?

21 A Correct.

22 Q And I take it that would have been a positive  
23 step?

24 A Yes.

09:49 25 Q If we can go to the next page, here as well





1 Sergeant Pearson reports about his meeting with  
2 Carter, that:

3 "Fisher advised he will not submit to a  
4 polygraph examination or provide a blood  
09:49 5 sample."

6 And Pearson goes on to say:

7 "I explained the suspicion that has been  
8 cast upon him and if he is innocent to  
9 cooperate so we can ensure his name and  
09:49 10 name of Tammy is cleared prior to his  
11 release from prison. Fisher states he  
12 has already been identified as the  
13 person being talked about..."

14 And so again it appears, and I think this is what  
09:49 15 Sergeant Pearson told us, that his approach with  
16 Mr. Fisher was lookit, co-operate with us and you  
17 can help clear your name, and Mr. Fisher's  
18 response was to the effect, lookit, I've already  
19 been identified, at least within the prison, as  
09:50 20 the person responsible, and that I think Sergeant  
21 Pearson said that may have hampered his ability  
22 to develop a rapport and an interrogation process  
23 with Mr. Fisher; is that correct?

24 A That's correct.

09:50 25 Q And then go to the bottom of the page, and it



1 appears then on June 12th that it's set up that  
2 you would be in Saskatoon June 13th and 14th to  
3 review the files and interview police officers; is  
4 that right?

09:50 5 A That's right.

6 Q And the next page, June 14th, Pearson says that he  
7 met with you at the federal prosecutor's office:

8 "I updated him on what happened with my  
9 interview with Fisher and we agreed we  
10 would continue on with the legal  
11 deposition on June 20th when Williams  
12 passes through from B.C. en route to  
13 Ottawa."

14 So I think you went out, a couple of days in  
09:51 15 Saskatoon, then went to try and interview with  
16 Wilson and then on the way back you were going to  
17 do Mr. Fisher; is that right?

18 A That was the plan, yes.

19 Q And then as well here it looks as though you asked  
09:51 20 Sergeant Pearson to follow up with Celine Cadrain  
21 and presumably this arose out of Dennis Cadrain's  
22 statement and the information he had there?

23 A Yes.

24 Q If we can then just go back, a few more, pick up  
09:51 25 the newspapers articles back to June 7th, 004759,



1 and I think just so we have this chronology, June  
2 6th was the earlier news reports about the  
3 Markesteyn report, I think that hit on Wednesday,  
4 June the 6th, which is when you would have  
09:52 5 received, around the time you received that  
6 information, and I showed you a couple of  
7 articles. Here's June 7th in the *Free Press*, it  
8 says:

9 "The Federal Justice Department  
09:52 10 has conducted a sloppy and incomplete  
11 investigation of David Milgaard's claim  
12 of innocence, perhaps wasting another  
13 two years of the life of Canada's  
14 longest-serving prisoner, an MP and  
09:52 15 Milgaard's lawyer have charged.

16 Winnipeg lawyer David Asper  
17 said he was shocked to learn federal  
18 investigators have not bothered to  
19 contact any of the original witnesses in  
09:52 20 the case, especially since one has  
21 already recanted his original testimony.

22 "How do you explain where 18  
23 months went?" Asper said. "We are  
24 insisting that the minister react  
09:53 25 immediately to this latest evidence. I



1 can only hope they don't use this as an  
2 excuse to prolong the whole thing."

3 I wouldn't mind your comment on that, and, in  
4 particular, to the suggestion about the fact that  
09:53 5 you "have not bothered to contact any of the  
6 original witnesses, especially since one has  
7 already recanted".

8 A I guess Mr. Asper could have been excused for his  
9 ignorance because I didn't tell him that by then  
09:53 10 we had contacted at least Nichol John. Since the  
11 testimony of the original witnesses, with the  
12 exception of Ms. John, had not been brought into  
13 question in terms of the original application, our  
14 focus was on the Ferris report and on the evidence  
09:53 15 by Deborah Hall that Melnyk and Lapchuk had lied.  
16 The comment seems to stem from his expectation  
17 that by merely filing an application, that all of  
18 the critical evidence that was used to convict an  
19 accused would be re-examined on a Section 690  
09:54 20 application. That is not the case.

21 Q In your discussions with Mr. Asper and Mr. Wolch,  
22 did you get any different impression from them as  
23 to what their understanding was of the Section 690  
24 process than what they stated in the media?

09:54 25 A In my discussions with them, as I recall, I would



1 indicate that we would pursue the grounds that  
2 they had advanced and that we would only contact  
3 some of the other witnesses to the extent that we  
4 were required to do so in pursuing the grounds  
09:55 5 that they had advanced.

6 Q And so is it your evidence that you would have  
7 advised Mr. Asper prior to at least this article,  
8 but back, let's say back in '89, that you would  
9 not be contacting any other witnesses unless those  
09:55 10 witnesses affected the ground put forward?

11 A Yes. It may well be that he wished that we would,  
12 but that didn't necessarily mean that we would.

13 Q And what about the comment about the Justice  
14 Department has conducted a sloppy and incomplete  
09:55 15 investigation, perhaps wasting another two years  
16 of the life of David Milgaard?

17 A It makes for good copy. He's entitled to his  
18 opinion. I disagreed with it.

19 Q And again, but from the public perception you  
09:56 20 talked yesterday about hostility towards the  
21 Justice Department.

22 A Well, certainly it paints the department in a very  
23 bad light. It signals that it perpetuates the  
24 earlier media line that the only time the  
09:56 25 department would move would be in response to a



1 fire created by the media.

2 Q If we can go to -- sorry.

3 A The record certainly shows that that wasn't the  
4 case. However, it wasn't -- what we were doing  
09:56 5 did not reach the public in the same way as the  
6 accusations of our inactivity did.

7 Q If we can go to 039140, this is again the next  
8 day, an article again by Dan Lett, June 7th.

9 Actually, it's the same day as the article I just  
09:57 10 read to you, sorry, so this is another article in  
11 the *Winnipeg Free Press*, and this now I think is  
12 the first reporting about the Ron Wilson  
13 statement, and the evidence we heard from Mrs.

14 Milgaard, and I think Mr. Asper, is that before  
09:57 15 the statement was sent to you, it was provided to  
16 Dan Lett. I think in return for earlier favours  
17 or helpful reporting or whatever, but it was a bit  
18 of a pay-back and he was given an exclusive to  
19 talk to Mr. Williams and then this article came  
09:57 20 out with both the statement and Mr. Lett's  
21 interview with him. Were you aware of that at the  
22 time?

23 A I wasn't aware of the details of any arrangement  
24 between Mr. Milgaard's counsel and Mr. Lett.

09:58 25 Certainly to the extent that the article quoted



1 Mr. Wilson, it signaled that there had been some  
2 close co-operation.

3 Q It says:

4 "In an interview from his home in  
09:58 5 British Columbia, Ron Wilson..."

6 And then goes on to talk.

7 A Yes.

8 Q Did you have concerns that Dan Lett got access to  
9 Ron Wilson via the Milgaards before you did? In  
09:58 10 fact, I think it took you about a month; did it  
11 not?

12 A Yes, that's correct. At the time -- I mean,  
13 there's no property in a witness and if the  
14 witness chooses to be interviewed by the press, so  
09:58 15 be it. However, at some point in time I would get  
16 my turn.

17 Q Did the fact that the Ron Wilson statement, the  
18 recantation statement, you talked yesterday about  
19 suspicions or concerns about the timing, did the  
09:58 20 fact that it appeared in a newspaper article with  
21 an interview by Dan Lett around the time you  
22 received it or within a day, what effect if any  
23 did that have on your perception of what was  
24 happening?

09:59 25 A Sir, it was merely a continuation of a series of



1 events in which the department was confronted  
2 with, shall we say, significant evidence brought  
3 to its attention by the media, significant  
4 evidence relating to an application to the  
09:59 5 Minister of Justice. It was akin, in my view, to  
6 arguing your case on the courthouse steps before  
7 you go into the court to present the argument to  
8 the person who had to receive it. It was a  
9 continuation of a pattern that we had observed  
09:59 10 over the last several months. It came as no  
11 additional surprise.

12 Q And then what about the headline *Milgaard witness*  
13 *says police forced him to lie. Witness lied 'out*  
14 *of fear'*, and then the article which we've been  
10:00 15 through goes on to talk about the statement and  
16 quotes many parts of the June 4th statement as  
17 well as Mr. Lett's interview with Mr. Wilson. Do  
18 you have any comment on that?

19 A Well, it certainly reinforced my resolve to get to  
10:00 20 the bottom of it. I would make the necessary  
21 inquiries and deal with it. It also meant  
22 developing some briefing materials for our  
23 minister because this was a new element, it was a  
24 variation of the theme of police misconduct on the  
10:01 25 file. It came on the heels of publicized articles





1 that cast some doubt on the quality of the police  
2 investigation with respect to the forensic, or the  
3 gathering of the forensic evidence. This is now  
4 followed by an allegation of police misconduct in  
10:01 5 terms of coercing a key Crown witness to perjure  
6 himself on the stand. That is a very, very  
7 serious charge.

8 Q And was it your understanding then that at this  
9 point, this would be the first time that the  
10:01 10 Milgaards had introduced police misconduct as a  
11 ground or as part of a ground of a miscarriage of  
12 justice?

13 A Well, yes. You can intimate that there is  
14 misconduct if the initial investigation is sloppy  
10:02 15 insofar as the intimation is or the allegation is  
16 you picked up dog urine and dressed it up as semen  
17 to convict my client, some would say that's  
18 misconduct, but in the so-called traditional  
19 wrongful conviction scenes as may have occurred in  
10:02 20 *Marshall* where there was evidence of police  
21 intimidation of a youthful witness, or in other  
22 instances, this is the first time in relation to  
23 this file that the allegation has been made that  
24 police behaviour resulted in perjured testimony  
10:02 25 and --



1 Q Did that surprise you, that this would be years  
2 after, at least a year and a half after the  
3 initial application, and I think you said earlier  
4 you believed that from '86 to '88 counsel for Mr.  
10:03 5 Milgaard would have reviewed whatever it was  
6 necessary to review in order to put forward the  
7 grounds?

8 A It surprised me, as I mentioned yesterday, because  
9 I had felt that Mr. Wilson had had a chance at  
10:03 10 trial to delve into this, but -- and it didn't  
11 surface then. However, I was also surprised  
12 because in my discussions, informal discussions, I  
13 had only heard good things about the police  
14 officers involved in that file, so when you get  
10:03 15 this, it caused me to sit up and take notice.

16 Q And who would those discussions have been with?

17 A With some Crown counsel, with some defence counsel  
18 in this area.

19 Q So just back on the timing, I'm trying to  
10:04 20 understand whether -- you talked about yesterday  
21 the fact that a recantation would happen sort of a  
22 number of months after the original application  
23 and 20 years after the event, that this, that a  
24 recantation would happen, and I think you said  
10:04 25 lookit, I would want to understand how come now.



1 Did you have the same concerns about this issue of  
2 police misconduct; in other words, why wasn't this  
3 raised back in '88, why didn't we hear about it in  
4 the last 15 months, why now?

10:04 5 A I think the answer to that is bound up in, you  
6 know, in a particular fact. Sometimes people keep  
7 things in and then it's released. It was just one  
8 of the areas that I knew that I had to probe.

9 Q So whether it came up in June of 1990 or March of  
10:05 10 1986 or December of 1988, it wouldn't have  
11 mattered to you, you would have pursued it and  
12 tried to determine whether it had merit?

13 A Yes.

14 Q Do you recall, prior to this information coming  
10:05 15 forward, whether Mr. Asper or Mr. Wolch in any of  
16 their discussions with you prior to, let's say,  
17 June of 1990, ever raised with you police  
18 misconduct in dealing with Ron Wilson or any other  
19 witness as an issue?

10:05 20 A They did not.

21 Q Go to 333463, this is a letter June 7th, 1990, and  
22 I probably should have showed you this earlier  
23 when I asked you the question, this is your letter  
24 to the RCMP in Kelowna, June 7th, which I think is  
10:06 25 the day after, or shortly after you received Ron



1 Wilson's statements where you write to them to  
2 obtain their assistance in locating a witness, and  
3 you say:

4 "Yesterday Ronald Wilson ... was  
10:06 5 identified to us as having important new  
6 evidence..."

7 So can we draw from this that it was June 6th,  
8 1990 that you got Ron Wilson's statement?

9 A Yes.

10:06 10 Q And I think that would be -- just give me a  
11 moment. So here then you ask them to arrange for  
12 a member to contact Mr. Wilson and obtain his  
13 consent for an interview, you say he's employed at  
14 Kal Tire, and I think that's in the statement  
10:06 15 isn't it?

16 A Yes.

17 Q And so does this assist you in your recollection  
18 as to whether or not you would have asked Mr.  
19 Wolch or Mr. Asper for Ron Wilson's address or  
10:07 20 whether you would have relied on the RCMP?

21 A Obviously I went to the RCMP. It doesn't preclude  
22 me asking Mr. Wolch for the address, I just didn't  
23 recall that.

24 Q Okay. 220863, this is again a June 7th, 1990  
10:07 25 article, *Justice official to meet with forensic*



1 pathologist, and I think this is where Ferris is  
2 commenting that, it looks like you've contacted  
3 him by now, confirm that there's a visit:

4 "It comes more than a year and  
10:07 5 a half after Ferris examined trial  
6 documents and concluded that Milgaard  
7 couldn't be linked to the murder..?"

8 And then it goes on to say:

9 "Ferris said he has wondered  
10:08 10 for years "how this guy got convicted."

11 Despite his report, Ferris  
12 heard nothing from the feds until a  
13 second forensic opinion was made public  
14 this week.

10:08 15 "The Department of Justice has  
16 been sitting on their hands for two  
17 years," Ferris said."

18 Again, what's your comment on that suggestion?"

19 A Well, if I had been sitting on my hands, I guess I  
10:08 20 was using my feet to type all the letters that  
21 emanated. He's entitled to his opinion. It may  
22 be wrong, but there's precious little you can do  
23 once the accusation is made.

24 Q And it appears that:

10:08 25 "Ferris said the latest



1 report --"

2 Of Dr. Markesteyn.

3 "-- makes him "feel even more strongly  
4 that there is a reasonable doubt as to  
10:09 5 Milgaard's guilt."

6 "I'm somewhat relieved there's  
7 another person who agrees with me," he  
8 added."

9 Now, he doesn't say in there -- I mean, he uses  
10:09 10 the words reasonable doubt as to guilt as opposed  
11 to proves innocence. Did you put any  
12 significance on that or again was this something  
13 that would have been drawn to your attention?

14 A Certainly Dr. Ferris' comments would have been  
10:09 15 appropriate in the context, in a trial context.  
16 Reasonable doubt is the standard that's used as --  
17 that's the level against, or the level that the  
18 Crown's evidence must attain in order to sustain a  
19 conviction, proof beyond a reasonable doubt. By  
10:09 20 now Mr. Milgaard had already been convicted and  
21 the reasonable doubt as to his guilt is no longer  
22 an appropriate standard in the context of the  
23 Section 690. It signals misunderstanding of the  
24 process. This is not a situation in which you are  
10:10 25 trying to re-argue the case at trial and say



1           there's reasonable doubt here or there's  
2           reasonable doubt there. That reasonable doubt has  
3           been extinguished by a guilty verdict.

4           Q           So an expert 20 years later saying "had you called  
10:10 5           me in 1970 and I testified, I think I could have  
6           raised a reasonable doubt based on the evidence"  
7           is something that is re-arguing the case?

8           A           It's re-arguing the case, and you must keep in  
9           mind that this expert is, has based his opinion on  
10:10 10           an incomplete appreciation of the trial evidence.  
11           He was of the view that the semen was used to link  
12           David Milgaard to the crime when in fact it  
13           wasn't.

14           Q           If we could go to 229581, this is an article in  
10:11 15           June, I think it's around June 9th, it's an  
16           article of Dan Lett, *Milgaard witness to be*  
17           *interviewed*. Just call out that part. And this  
18           is where it's a report that he, about you  
19           interviewing Ron Wilson, and you say:

10:11 20                        "I'm prepared only to comment that these  
21                        claims have been received ... and will  
22                        be investigated," Williams said."

23           And again, would that be the extent of which --

24           A           Could you repeat the quote, sir?

10:11 25           Q           Yeah. It says here that -- what's attributed to



1 you by Mr. Lett is he's writing about the fact  
2 that Wilson's statement is received and you are  
3 going to interview him, and you say:

4 "I'm prepared only to comment that these  
10:12 5 claims have been received ... and will  
6 be investigated," Williams said."

7 And my question was whether would that be the  
8 extent to which you were able to or willing to  
9 comment publicly on what you were doing?"

10:12 10 A Yes.

11 Q And as well:

12 "... the department was busy analysing a  
13 report prepared by Manitoba's chief  
14 medical examiner, Dr. Peter Markesteyn,  
10:12 15 which it received on Tuesday."

16 Now, I think you told us that when you received  
17 Dr. Markesteyn's report, and based on your  
18 discussion with him, when you received the report  
19 you were satisfied that it confirmed the advice  
10:12 20 you had already received and confirmed two  
21 things; one, that the forensic evidence did not  
22 prove David Milgaard's innocence and, two, that  
23 it was of no value basically in determining the  
24 guilt or innocence of David Milgaard; is that  
10:12 25 fair?





1 A That's fair.

2 Q And again, for reasons you've already told us, you  
3 would not have been able to tell Dan Lett that  
4 lookit, we've got the Markesteyn report and, by  
10:13 5 the way, here's what it really means and here's  
6 what he told me on the phone, but what's not in  
7 his report.

8 A I couldn't tell that to Mr. Lett.

9 Q If we can then just go back, and I think here is  
10:13 10 where Mr. Penkala made an effort to, in the media,  
11 take issue with what -- we've got to go to the  
12 full page there, please -- and I won't go through  
13 this, but again where he made some comments  
14 about -- I think his concern was that:

10:13 15 "...the media's preoccupation with  
16 Milgaard's claims of innocence has been  
17 hard on the victim's family..."

18 And:

19 "...is disappointed in the attitude of  
10:14 20 the media in this entire affair..."

21 Etcetera. So again, would you have been aware of  
22 this? This is a day or two after the dog urine  
23 story comes out?

24 A Yes.

10:14 25 Q And again, any comment on that?



1 A No, sir.

2 Q 004760, this is a June 9th, 1990 article in the  
3 *Saskatoon StarPhoenix* five days after Ron Wilson's  
4 statement, *Investigator says witness recanted*  
10:14 5 *after prodding*, and it says:

6 "Getting a key witness to  
7 recant testimony used to convict a man  
8 of a 1969 murder took about eight hours  
9 of gentle prodding, an American private  
10:14 10 investigator probing the case said  
11 Friday?"

12 And then talked about investigator Paul Henderson  
13 tracked down a key witness last week:

14 "Henderson said Wilson  
10:15 15 eventually recanted the testimony that  
16 helped convict Milgaard."

17 And:

18 "I just sort of parachuted  
19 into Ron Wilson's life Sunday night,"  
10:15 20 Henderson said in an interview Friday.

21 I talked to him Monday. His  
22 recantation was evolutionary over the  
23 course of the whole day."

24 And then goes on to talk about it a bit further.

10:15 25 I take it you would have become aware of this



1 media article?

2 A Yes.

3 Q And would this be your first piece of information  
4 about what happened? In addition to getting the  
10:15 5 statements from Ron Wilson, in addition to reading  
6 what Dan Lett wrote about him in his interview  
7 with Ron Wilson, would this be your first piece of  
8 information about the interaction between Ron  
9 Wilson and Paul Henderson?

10:15 10 A Yes. It describes in some detail the process by  
11 which the interview came about, the length of time  
12 it took and, to use Mr. Henderson's words, the  
13 evolution of the recant.

14 Q When you saw this information, can you tell us  
10:16 15 whether this raised any flags or issues for you  
16 that you felt that you needed to check into?

17 A A six-page statement that is the result of an  
18 eight-hour interview certainly raised questions.

19 Q And why is that?

10:16 20 A It seemed as if the six pages was a distillation  
21 of a significant amount of conversation. I  
22 certainly wanted to find out what else was  
23 discussed that may not have found its way into the  
24 statement.

10:16 25 Q Why would that be important?



1 A Certainly, it would perhaps provide some hints as  
2 to motivation for the statement, what type of  
3 information was provided to Mr. Wilson that jogged  
4 his memory. Those are some -- the circumstances  
10:17 5 surrounding the giving of the statement are often  
6 used, at least in the criminal process, to  
7 determine its admissibility and, if admissible,  
8 the weight to be attached.

9 Q Did you become aware that Paul Henderson had taped  
10:17 10 some or all of his interview with Ron Wilson on  
11 June 4th, 1990?

12 A Later on I became aware of that. I wasn't at the  
13 time.

14 Q And did you make efforts to try and get a copy of  
10:17 15 that tape?

16 A Later on, we did.

17 Q And what happened?

18 A I was advised that the tape was lost, but this  
19 was, when I say "later on" --

10:17 20 Q The second application?

21 A Second -- not -- I think it was the second  
22 application, yes.

23 Q I think around the time of the Supreme Court  
24 reference, perhaps?

10:17 25 A Yes.



1 Q And so on the first application, then, is it  
2 correct to say you would not have been aware or  
3 you don't recall being aware that Paul Henderson  
4 had taped --

10:18 5 A I didn't know a tape existed of that interview  
6 until, I think, the second application.

7 Q And would that tape have been of assistance to you  
8 in evaluating the recantation?

9 A Yes.

10:18 10 Q And in what way?

11 A It would provide a record of the discussion, and  
12 quite apart from a transcript, it would also  
13 record tone of voice and the interaction between  
14 the two.

10:18 15 Q And, again, is it fair to say that what was  
16 discussed between Mr. Henderson and Mr. Wilson  
17 prior to the statement being given would be  
18 relevant to determine the veracity and  
19 completeness; is that fair?

10:18 20 A Certainly. I mean you have a six-page statement  
21 coming on the heels of an eight-hour interview, --

22 Q Now is it --

23 A -- that means that there's been some intellectual  
24 exercise to assimilate the information provided  
10:19 25 during that time into the six-page statement, and



1           certainly you would want to look at what I would  
2           call the raw material or the raw data that was  
3           used.

4           **Q**       But were you suspicious about what Mr. Henderson  
10:19 5           may have said to Mr. Wilson on that date and --

6           **A**       I wouldn't, I wouldn't say suspicious, but it was  
7           certainly something that I wanted to probe. I  
8           didn't know who Paul Henderson was, I had no  
9           reason to suspect his motives, I just needed to  
10:19 10           find out.

11           **Q**       And so would it be correct to say that the tape,  
12           or a record of everything that was discussed  
13           between Mr. Henderson and Mr. Wilson, could on the  
14           one hand answer many questions you may have had  
10:19 15           about the circumstances of the statement, perhaps  
16           satisfy you that the statement was appropriately  
17           taken and the information was properly obtained;  
18           is that fair?

19           **A**       Certainly, yes, it would.

10:20 20           **Q**       And on the other hand the tape, I guess on the  
21           other extreme, might provide information that  
22           would cause you to cast doubt about the veracity  
23           and completeness of the recantation; is that fair?

24           **A**       Well, it would certainly help me understand the  
10:20 25           context in which some of the allegations were



1           made.

2           **Q**       And again, just so that I'm clear on this, I think  
3           you told us yesterday that if -- let's contrast  
4           what happened to let's say it had been a  
5           three-month set of interviews between Mr.  
6           Henderson and Mr. Wilson where there was, as you  
7           say, an evolutionary process. Presumably, it  
8           would still be important to go back and verify  
9           everything that happened there; is that correct?

10          **A**       Yes.

11          **Q**       Did the fact that it happened to be -- and I think  
12          the words "out of the blue" were used by somebody,  
13          maybe even by Mr. Henderson -- that it happened,  
14          and in one day after eight hours and a six-page  
15          statement, are you telling us that that, in and of  
16          itself, raised a flag in your mind that this needs  
17          to be checked thoroughly?

18          **A**       No, I wouldn't say the one-day, let's say,  
19          eight-hour discussion raised a flag by itself, but  
20          it certainly -- whether it was evolutionary over  
21          months or one day, I was more concerned with some  
22          of the details of the recant. Certainly, the  
23          process and the procedure that was used, the  
24          length of time, the relationship or lack of  
25          contact between Henderson and Wilson in the past,



1           those were all things you take into account.

2           **Q**        Would --

3           **A**        Umm --

4           **Q**        Yeah.  Would what Mr. Henderson said to Mr. Wilson  
10:22 5           during the course of that interview be of  
6           relevance to you?

7           **A**        Yes.

8           **Q**        We have heard Mr. Henderson tell this Commission  
9           that, when he interviewed Ron Wilson, he had  
10:22 10           formed the view that Ron Wilson's statement had  
11           been coerced by the police and that he felt that  
12           -- he felt, before he talked to Mr. Wilson, that  
13           was Mr. Henderson's view, that Mr. Wilson's  
14           statement was obtained by police misconduct, and  
10:22 15           that he put that to Mr. Wilson in the interview,  
16           saying "I know why you lied, the police made you  
17           do it, they manipulated and coerced you".  And I  
18           think he also said that a recanting witness needs  
19           an out, needs a sort of a -- to not necessarily  
10:22 20           blame somebody else, but a reason to recant.  Now  
21           I'm summarizing lengthy evidence from him, but  
22           basically to that effect.  Can you tell us, were  
23           you aware of that information in your interviews  
24           with Mr. Wilson at the time?

10:22 25           **A**        I was not.





1 Q And can you tell us, if you had been, how would  
2 that have affected your assessment of the  
3 recantation?

4 A It would certainly have helped me explain the  
10:23 5 language that was used in the statement, firstly;  
6 secondly, it would cause concern, because in  
7 effect what you have is Henderson leading Wilson  
8 in terms of what I would call the key parts of his  
9 testimony.

10:23 10 "You were manipulated, weren't  
11 you?", that's the phraseology of the questioner,  
12 that's not the description coming from the  
13 witness, and sometimes that has an impact on the  
14 assessment of the veracity of that recantation.

10:24 15 I would prefer to ask "What did  
16 the police do to you, and tell me in your own  
17 words", because that's the witness' recount of it.

18 And if that recount, objectively  
19 viewed, signals coercion, then that's what it is,  
10:24 20 but if someone reaches the conclusion that they  
21 were coerced and that conclusion is merely  
22 repeated in the statement, then it raises, for me,  
23 the question, well, what were the actions that  
24 comprised this collusion, what were the actions  
10:24 25 that you say was part of this manipulation? We



1 had conclusory statements, and what we didn't have  
2 was a description of the police actions that  
3 merited that conclusion, and that's what I was out  
4 to verify. I wasn't going to take issue with the  
10:25 5 conclusion, per se, I wanted to find out what were  
6 the underlying facts that un -- that pinned those  
7 conclusions.

8 Q And I think we will see, as you went through the  
9 interview, you questioned Mr. Wilson about that  
10:25 10 and I believe, based on some memos we'll see, your  
11 assessment was that he did not have much in the  
12 way of details to support the conclusions that  
13 were in his statement; is that fair?

14 A Yes, that's fair.

10:25 15 Q And did -- is it fair to say that the significance  
16 of that is that, if the grounds or the reason for  
17 a witness saying "here's why I lied", if the  
18 reasons are checked and the reasons are suspect,  
19 in other words they are conclusionary and they  
10:25 20 don't have the background, does that then cause a  
21 concern with respect to the veracity of the  
22 recant?

23 A Yes, it does.

24 Q In other words, if my reason for lying is flawed  
10:26 25 or --



1 A Non-existent.

2 Q -- non-existent, then you question the recant; is  
3 that fair?

4 A That's fair.

10:26 5 Q And so if -- you're telling us that to know what  
6 Mr. Henderson said to Mr. Wilson then, in the  
7 context of taking this statement, would be of  
8 assistance, then, in assessing the grounds and the  
9 recant, is that right, and just the whole picture?

10:26 10 A Yes.

11 Q Now what Mr. Henderson also said, though, that  
12 with -- and I think Mr. Asper may have said the  
13 same thing -- that with the witness, it's very  
14 difficult to get a witness to recant in the sense  
10:26 15 that it's very difficult for someone who has lied  
16 at trial to get them to admit that they lied at  
17 trial, and that -- very difficult for a witness to  
18 accept personal responsibility and say "lookit, I  
19 lied, my friend ended up with this time in jail",  
10:27 20 and therefore if you can find a lever or an out,  
21 or something to put to them, it makes it easier  
22 for them to recant. Do you follow that logic?

23 A Yes.

24 Q And I suppose, I think what you are telling us,  
10:27 25 that if that's the approach taken you better be



1 careful, because if the lever or the out provided  
2 is wrong, you've basically undermined the  
3 recantation?

4 A Correct.

10:27 5 Q Probably an appropriate spot to break.

6 (Adjourned at 10:27 a.m.)

7 (Reconvened at 10:48 a.m.)

8 BY MR. HODSON:

9 Q Call up 105317, please. And I believe this is a  
10:48 10 letter from Chief Penkala to you dated June 11th,  
11 1990 -- it's actually from Constable Farion to  
12 Inspector Quinn, but I think it's sent on to you,  
13 with the information regarding the details that  
14 you had asked Mr. Penkala to put together about  
10:48 15 length of interview, etcetera, and polygraph  
16 information?

17 A Yes.

18 Q And you would have received this information; is  
19 that right?

10:48 20 A I did.

21 Q And as far as time for length of interviews,  
22 etcetera, we have been through this before, maybe  
23 I can just summarize. I believe what the police  
24 record consisted of would be police reports that  
10:49 25 talked about the dealings with Ron Wilson and



1 Nichol John; correct?

2 A Yes.

3 Q The statements of those individuals?

4 A Yes.

10:49 5 Q And no record, though, of any polygraph, either  
6 the questions asked or the polygraph records; is  
7 that correct?

8 A That's correct.

9 Q If we can then go to 002483. This is a June 12th,  
10:49 10 1990 memo about a June 11th meeting with Dr.  
11 Ferris, and I believe you told us earlier that you  
12 did not interview Dr. Ferris under oath or with a  
13 court reporter because he was a professional, is  
14 that right?

10:50 15 A Yes, it -- that's correct.

16 Q And so, unlike Deborah Hall, being the other  
17 ground with Dr. Ferris, you were content to  
18 interview and prepare a memorandum of your  
19 discussion with him?

10:50 20 A Yes.

21 Q And you say here:

22 "Of particular interest was Dr. Ferris'  
23 assertion on page 7 of his report that  
24 the serological evidence presented at  
10:50 25 the trial of David Edgar Milgaard could



1                   be reasonably considered to exclude him  
2                   ... from being the perpetrator of the  
3                   murder of Gail Miller."

4                   And that would be the often-quoted statement  
10:50 5                   appearing in the media and, in fact, in the  
6                   Milgaard application; correct?

7           A           Yes.

8           Q           And so that's what you were going to -- that's  
9                   what you had already tested with Patricia Alain  
10:50 10                   and got the conclusion that Dr. Ferris was -- the  
11                   conclusion was wrong because it didn't take into  
12                   account some other facts; correct?

13          A           Correct.

14          Q           And you also wanted to get his comments on Dr.  
10:50 15                   Markesteyn's report, you:

16                                "Initially, our discussion  
17                                centred on identifying all the sources  
18                                to which Dr. Ferris referred, during the  
19                                preparation of his opinion and the  
10:51 20                                formation of the conclusions contained  
21                                therein."

22                   And why was that a concern for you?

23          A           It would help me understand what he had at his  
24                   disposal. I mean certainly, to the extent that he  
10:51 25                   had conducted a thorough review or reviewed the



1 entire transcript, and if, based on that review of  
2 the entire transcript, he still came up with that  
3 conclusion, that would certainly inform the  
4 questions that I would put to him. If, on the  
10:51 5 other hand, it turned out that he didn't have the  
6 full picture, then I could better understand and  
7 appreciate why he said what he said.

8 Q And I think, here, Dr. Ferris says:

9 "He readily admitted that he had not  
10:51 10 seen Dr. Emson's autopsy report, the  
11 photographs of the murder scene, which  
12 showed the position and the condition of  
13 the body. Apparently, he had not read  
14 the evidence of the Crown's key  
10:52 15 witnesses, the prosecutor's address to  
16 the jury and the judge's charge to the  
17 jury."

18 Is that correct?

19 A That's what I learned, yes.

10:52 20 Q And when you learned that information did that  
21 cause you to have concerns, apart from the  
22 concerns that you had already identified, but did  
23 that cause you to have other concerns about the  
24 usefulness or validity of Dr. Ferris' opinion?

10:52 25 A It did. It certainly underscored the fact that he



1 may have had a misapprehension of what the trial  
2 evidence was that linked David Milgaard to the  
3 crime, and particularly he misapprehended, he felt  
4 that the Crown led evidence of the semen to link  
10:52 5 Mr. Milgaard to the crime scene when, in fact, it  
6 did not. And acting under the belief that the  
7 jury considered that evidence as inculpatory when  
8 it should -- when that evidence at -- should not  
9 have even been entered, or assuming that the Crown  
10:53 10 was able to put -- make a link of that evidence to  
11 David Milgaard, he felt that his conclusion would  
12 be that it would have been exculpatory, so that  
13 was the basis of his conclusion, it became clear  
14 to me that the underlying facts upon which the  
10:53 15 conclusion was based was insufficient.

16 Q And indeed, I think you mentioned here, the  
17 prosecutor's closing address to the jury and the  
18 judge's charge to the jury were matters that he  
19 had not read; is that correct?

10:53 20 A Yes.

21 Q And when Dr. Ferris testified here I did provide  
22 him a copy, with a copy of Mr. Caldwell's closing  
23 address, the charge to the jury, and Mr. Tallis'  
24 closing address to the jury, which wouldn't have  
10:54 25 been typed up by this time, and I think his





1 evidence was to the effect that that certainly  
2 would have impacted on his opinion had he known  
3 about that.

4 And is it fair to say then, in  
10:54 5 your discussion with him on June 11th, 1990, Dr.  
6 Ferris acknowledged to you that if he would have  
7 had the information that you identified for him,  
8 that he may have reached, or would have reached a  
9 different conclusion than he did?

10:54 10 A Yes.

11 Q You then asked him to comment on Dr. Markesteyn's  
12 report, and he again goes on to say he agrees:

13 "... in general agreement with the  
14 findings ... that 'he could not exclude  
10:54 15 the yellow frozen lumps which contained  
16 sperm, as having originated from a dog.'  
17 He noted that there was a reasonable  
18 doubt that it was human ..."

19 If we can go to the next page -- actually, sorry,  
10:55 20 the previous page. It looks as though you also  
21 questioned him about his assertion that the  
22 assault occurred at a different location than  
23 that which the body was found; is that all right?

24 A Yes.

10:55 25 Q And I think he and Dr. Markesteyn had different



1 views on that; is that right?

2 A My recollection is that Dr. Markesteyn didn't

3 opine on that aspect.

4 Q And again, in the next page, Dr. Ferris is saying

10:55 5 he did not detect a blood pattern from the

6 original assault. Again, would that be -- I think

7 you told us yesterday that those matters would be

8 re-arguing the trial so they weren't issues that

9 were of significant concern to you?

10:55 10 A Correct.

11 Q If we can then scroll down, and here's what Dr.

12 Ferris says that he was asked, and presumably this

13 is what Mr. Wolch and Mr. Asper asked him to do;

14 is that right?

10:55 15 A Yes.

16 Q And:

17 "... that he was asked to review the

18 trial evidence on the basis of the facts

19 established at trial.",

10:56 20 and then goes on to:

21 "His opinion, which ignored the

22 contamination of the semen, proceeded on

23 the assumption that the evidence only

24 established the following facts:"

10:56 25 and then goes on:



1 "Taking only these facts into account,  
2 Dr. Ferris concluded that the evidence  
3 could be reasonably considered to  
4 exclude him ... from being the  
10:56 5 perpetrator of the murder.";

6 correct?

7 A Correct.

8 Q And would it be fair to say that what he was asked  
9 to consider was, in effect, Mr. Tallis' argument  
10:56 10 and submission to the Court at the trial, and the  
11 evidence he elicited from Staff Sergeant Paynter  
12 and the others, and the argument he put to the  
13 jury?

14 A Yes.

10:56 15 Q And in fact the assumption here, the facts that  
16 were assumed, and I think Mr. Tallis told us that  
17 he got all those facts in, but the question of  
18 contamination came in and the question that was  
19 put to Mr. Paynter by the trial judge was "based  
10:57 20 upon the fact that there could be contamination,  
21 can you tell us whether or not the frozen lump  
22 came from a secretor or a non-secretor", and he  
23 said "no, I can't". Effectively I think,  
24 according to Mr. Tallis, effectively it -- maybe  
10:57 25 'wiped out' is too strong a word -- but adversely



1 affected this position that he was putting  
2 forward?

3 A Correct.

4 Q And so, again, was it your understanding, then,  
10:57 5 that what Dr. Ferris was opining on here was the  
6 very matter that Mr. Tallis had considered and put  
7 forward at trial?

8 A Yes.

9 Q "Dr. Ferris noted that the  
10:57 10 serological evidence should not have  
11 been admitted because the continuity of  
12 the sample had not been satisfactorily  
13 established. He readily admitted that  
14 the semen was probably contaminated as a  
10:57 15 result of being piled up with the  
16 blood-stained snow outdoors for four  
17 days.

18 He also acknowledged that the  
19 testing performed on David Milgaard's  
10:58 20 saliva may have been wrong. Therefore,  
21 the non-secretor status attributed to  
22 David Milgaard may be wrong."

23 And, again, that's -- would be an accurate  
24 reflection of what was stated?

10:58 25 A Yes.



1 Q You then indicate you talked to Dr. Colin Terry,  
2 and I think that should be Colin Merry, is that  
3 right?

4 A Yes, that is correct.

10:58 5 Q The next page. And basically:

6 "Dr. Terry indicated that proper testing  
7 methods used could only produce a  
8 negative result even if David Milgaard  
9 were in fact a secretor. The sample was  
10:58 10 not properly preserved, so that when the  
11 stain was tested, the matter which would  
12 have signalled Milgaard's secretor  
13 status had been destroyed by naturally  
14 occurring chemical reactions."

15 Is that right?

16 A That was the information I received.

17 Q In other words, that there was absolutely no value  
18 to the secretor test done on David Milgaard in  
19 1969 according to Dr. Merry?

10:58 20 A Yes.

21 Q Because, if they had done that test on every  
22 secretor, the antigens would have been destroyed  
23 by the time they went to test them?

24 A Yes.

10:58 25 Q And you then say:



1 "I then asked Dr. Ferris to  
2 take into account the contamination of  
3 the semen specimen, to which he alluded  
4 on page 4 of his report, and which is  
10:59 5 noted in Dr. Markesteyn's report, and  
6 indicate whether the evidence excluded  
7 David Milgaard. Dr. Ferris then stated  
8 that the serological evidence did not  
9 link David Milgaard to the offence,  
10:59 10 however, you could not say it ...  
11 excluded him."

12 Is that what Dr. Ferris told you?

13 A Yes.

14 Q So, in other words, the oft-quoted opinion of Dr.  
10:59 15 Ferris that it did exclude him and proved him  
16 innocent, Dr. Ferris was saying to you "that's not  
17 true, that's wrong"?

18 A "It's wrong if you take contamination into  
19 account".

10:59 20 Q And he also told you "you must take contamination  
21 into account because I believe it was  
22 contaminated"?

23 A Yes.

24 Q And so were you satisfied on your discussion --  
10:59 25 after your discussion with Dr. Ferris -- actually,



1 let me just go down to the conclusion. You say:

2 "The often quoted paragraph  
3 in Dr. James Ferris's report:

4 'On the basis of the evidence that I  
11:00 5 have examined, I have no reasonable  
6 doubt that serological evidence  
7 presented at the trial failed to link  
8 David Milgaard with the offence and  
9 that in fact, could be reasonably  
11:00 10 considered to exclude him from being  
11 the perpetrator of the murder.'

12 is perhaps best summed up by Dr. ...  
13 Emson during a recent interview. The  
14 latter noted:

11:00 15 Dr. Ferris provided a  
16 re-interpretation on the evidence on  
17 what we now know to be a fallacy."

18 Again, that was your conclusion?

19 A Yes.

11:00 20 Q You say:

21 "Very little, if any weight  
22 can be given to a conclusion that  
23 blindly ignored the obvious  
24 contamination of the samples that were  
11:00 25 collected. The conclusion is also wrong



1                   because an essential fact upon which it  
2                   is based, namely, David Milgaard's  
3                   status as a non-secretor, has not been  
4                   established."

11:00 5                   And you then go on to talk about the saliva test.  
6                   So is it your evidence that, after talking to Dr.  
7                   Ferris, you and he were of the same mind as far  
8                   as the value of the forensic evidence in  
9                   establishing whether or not David Milgaard was  
11:00 10                  innocent?

11                  A                   I can say that, after talking with Dr. Ferris, the  
12                   conclusions that he reached was consistent with  
13                   conclusions reached by Pat Alain, the serologist  
14                   that we had retained, and it coincided with  
11:01 15                  information I later obtained from Dr. Markesteyn.

16                  Q                   Now would it be correct to say that virtually  
17                   everything, then, that had been in the media,  
18                   along the lines of saying "the serological  
19                   evidence presented at trial proves David Milgaard  
11:01 20                  is innocent", that being attributed to Dr. Ferris,  
21                   Dr. Ferris was now telling you "that's not true";  
22                   correct?

23                  A                   Yes.

24                  Q                   Did you say to Dr. Ferris "why don't you contact  
11:01 25                  the media and correct what's being attributed to





1           you", or did you consider going to the media and  
2           saying "lookit, what you are reporting isn't  
3           right, Dr. Ferris is not saying that"?

4           A           I did not ask Dr. Ferris to do that and I did not  
11:01 5           consider doing that.

6           Q           And, after this discussion with Dr. Ferris, did  
7           you have reason to believe that he would be  
8           talking to Mr. Asper and Mr. Wolch about your  
9           meeting?

11:02 10          A           I wouldn't be surprised if he did speak with them,  
11          with Mr. Wolch and Mr. Asper.

12          Q           Do you have any --

13          A           I knew that there had been contact between them  
14          and --

11:02 15          Q           Did you expect that they would --

16          A           Would contact?

17          Q           Yes?

18          A           Yes.

19          Q           After your meeting with Dr. Ferris did you  
11:02 20          continue to see, in the media, reports stating  
21          that, according to Dr. Ferris, the forensic  
22          evidence at trial proved that David Milgaard was  
23          innocent?

24          A           I think that was repeated. I have no specific  
11:02 25          recall now of it, but I think the line, or there



1           were later stories which repeated that  
2           information.

3           Q       And I think what -- I think, by this time, the dog  
4           urine story may have become more prevalent than  
11:03 5           the proves innocence, but I think, from looking at  
6           the articles, both still continued on?

7           A       Yes.

8           Q       And I suppose, if Dr. Ferris' opinion is not what  
9           it's reported to be, that the dog urine story --  
11:03 10           that effectively, if Dr. Ferris is saying "lookit,  
11           my opinion doesn't prove his innocence", then now  
12           Dr. Markesteyn's dog urine story could still be  
13           there to say "okay, well, David Milgaard got  
14           convicted by dog urine", and I think you've told  
11:03 15           us the fallacy you found with that is that the  
16           evidence wasn't put to the jury as linking David  
17           Milgaard to the crime; is that right?

18          A       That's right.

19          Q       Can you tell us, apart from what's in the memo,  
11:03 20           what was your discussion with Dr. Ferris like, was  
21           it a cordial discussion or did you sense any  
22           animosity from him?

23          A       I didn't sense any animosity. It was cordial, it  
24           certainly was -- Dr. Ferris is a professional,  
11:04 25           he's been involved with lawyers in the courts,



1           having testified, I would imagine, often. I was  
2           not adverse in interest to Dr. Ferris, and I  
3           simply wanted to explore a couple of the areas,  
4           and one was to identify the facts upon which his  
11:04 5           opinion was based, and then secondly to get his  
6           further view about the impact of contamination if  
7           he had not taken that into account. He may well  
8           have felt a chill but I had no axe to grind with  
9           Dr. Ferris.

11:04 10          Q           I think later -- and I can't recall the exact  
11           words -- but I think Dr. Ferris indicated that he  
12           did not -- and I'm not gonna get his words right  
13           -- but that he did not feel comfortable in his  
14           discussions with you, or that there was some  
11:05 15           disconnect there; did you perceive that at all?

16          A           I didn't see it. It may well be that maybe for  
17           reasons of language or vocabulary, we didn't have  
18           that free-flowing conversation, but from my  
19           vantage point it was not an adversarial encounter,  
11:05 20           there was -- it was cordial but certainly not  
21           warm.

22          Q           Had you been aware, up until your meeting with  
23           him, that Dr. Ferris had been quoted in the media  
24           -- in addition to his report being quoted, that he  
11:05 25           was also speaking in the media about the case on



1           behalf of David Milgaard?

2           A           I believe there had been a couple of quotes, but  
3                       the fact that he was a supporter of David Milgaard  
4                       didn't --

11:05 5           Q           Did you get any sense that you, being a lawyer,  
6                       had maybe confronted him, being a forensic  
7                       pathologist, in an area that you reached a  
8                       conclusion maybe slightly different from him and  
9                       that he ended up agreeing with you, that that may  
11:06 10           have caused some discomfort on his part?

11           A           It may have. I hadn't thought of it in that term  
12                       at the time.

13           Q           Would it be fair to say, though, that when you  
14                       went to interview him, maybe challenge is too  
11:06 15           strong a word, but you were going to him saying  
16                       lookit, what the media has reported about what you  
17                       had to say, I want to check if it's right. You  
18                       checked it with him and he basically agreed with  
19                       you and said no, it's not right?

11:06 20           A           Yes.

21           Q           And two weeks earlier in the paper he had said  
22                       lookit, you've been sitting on your hands for two  
23                       years, you should have come out and talked to me,  
24                       and I'm very glad that Dr. Markesteyn has verified  
11:06 25           and confirmed my earlier findings?



1 A That was said in the media, yes.

2 Q And so perhaps at the meeting -- I'm trying to  
3 understand whether that may have been a reason for  
4 Dr. Ferris to have the, to take away from his  
11:07 5 meeting with you -- and I wish I could remember  
6 his exact words -- but that he did not feel  
7 comfortable in his discussions with you or  
8 something like that.

9 A Well, his discomfort may flow from the fact that  
11:07 10 he had been widely quoted, his opinion had been  
11 widely quoted, and he had now come to realize that  
12 the basis of the opinion, the facts underlying  
13 that opinion were incomplete and the quality of  
14 the decision, the quality of the opinion is often  
11:07 15 based on the quality of the -- and the totality of  
16 the information that goes into it, that was  
17 considered before the conclusion was drawn.

18 Q Did you have any -- oh, sorry.

19 A He came to a conclusion based on an incomplete  
11:07 20 appreciation of the facts and, having done so, and  
21 having had it widely publicized, I could see where  
22 he might feel some discomfort now knowing that his  
23 oft-quoted view was slightly wrong.

24 Q Okay. Did you have any discussion with him about  
11:08 25 his DNA efforts or was that part of this



1 discussion?

2 A I'm not certain if it was part of that discussion,  
3 but there was another meeting in which Dr. Forney  
4 and I met Dr. Ferris. It may have been this, but  
11:08 5 I don't think so.

6 Q If we can go to 002507, and this is your  
7 memorandum of your meeting with Dr. Markesteyn and  
8 Dr. Merry on June 12th, is that right, or a  
9 discussion with them?

11:09 10 A Yes, and again the correction, I don't know where  
11 I got the Terry. It should have been Merry.

12 Q And you indicate you spoke with them and you say:

13 "The main objective was to obtain a  
14 clarification on certain items contained  
11:09 15 in Dr. Markesteyn's report, and to  
16 obtain Dr. Markesteyn's reaction to  
17 public announcements that his report  
18 confirmed the findings of Dr. Ferris'  
19 report."

11:09 20 And can you just elaborate on that a bit?

21 A There had been a number of newspaper articles in  
22 which the headlines signaled that Dr. Markesteyn's  
23 report echoed the findings of Dr. Ferris. My  
24 reading of it, I had a different take on it and I  
11:09 25 wanted to find out whether Dr. Markesteyn's own



1 view was, or reflected that of the published  
2 reports.

3 Q Scroll down to the bottom, you say:

4 "I drew Dr. Markesteyn's attention to  
5 paragraph 3 of David Asper's letter to  
6 me dated June 6, 1990, and asked whether  
7 the following quote accurately summed up  
8 the conclusions contained in his  
9 report:"

10 And the quote from Mr. Asper's letter is:

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

15 Dr. Markesteyn stated that although he  
16 agrees with the assumptions contained on  
17 page 5 of the Ferris report, he:

18 1. disagrees with the conclusion that  
19 Milgaard could not have done it because  
20 there was insufficient time.

21 2. disagrees with the conclusion that  
22 the serological evidence exonerates  
23 Milgaard."

24 Is that correct, that's what Dr. Markesteyn told  
25 you?



1 A That's how I recorded it, yes.

2 Q And so in fact that he -- the conclusion about --  
3 I think Dr. Ferris, just on number 1, said lookit,  
4 I don't think there was enough time for David  
11:11 5 Milgaard to have committed the crime based on a  
6 number of factors. Would that be something you  
7 would expect a forensic pathologist to provide an  
8 opinion on?

9 A I wouldn't expect a forensic pathologist to do so,  
11:11 10 but he did, and in my view it was simply  
11 re-arguing the case.

12 Q Okay. And so Dr. Markesteyn said I don't agree  
13 with that, but secondly he says, he told you he  
14 did not agree with Ferris' conclusion that the  
11:11 15 serological evidence exonerates Milgaard?

16 A Yes.

17 Q And was that not what was put into the media by  
18 Mr. Asper as the value of Dr. Markesteyn's report?

19 A It was.

11:11 20 Q What did -- did you ask Dr. Markesteyn about that,  
21 about the fact that lookit, the media is  
22 reporting, according to -- through David Asper  
23 that your report confirms Dr. Ferris' findings?

24 A I asked it to him in the form of the question that  
11:12 25 was referred to on page 1 by simply quoting what





1 Mr. Asper had written to me and what I drew from  
2 that is simply that Mr. Asper misunderstood what  
3 Dr. Markesteyn was trying to say in his report.

4 Q And then down at the bottom you say:

11:12 5 "Although Dr. Markesteyn criticized  
6 several aspects of the serological  
7 evidence, it was his opinion that the  
8 serological evidence did not exonerate  
9 David Milgaard as Gail Miller's killer."

11:12 10 And that's what he told you?

11 A Yes.

12 Q Again, the same question I asked you before, I  
13 take it you did not go to the media and say  
14 lookit, contrary to what's being reported, Dr.  
11:12 15 Markesteyn actually disagrees with Dr. Ferris'  
16 conclusion in his report and now Dr. Ferris also  
17 agrees with Dr. Markesteyn?

18 A I did not go to the media with that, no.

19 Q And that's for the reasons you've already stated?

11:13 20 A Yes.

21 Q And I take it that this information that you  
22 gathered, then, was for your client, the Minister  
23 of Justice, to consider the grounds put forward as  
24 opposed to being put into the media?

11:13 25 A Yes.



1 Q 010035. Did you ask Dr. Markesteyn at the meeting  
2 of June 12th, 1990 why he didn't put in his report  
3 what he told you on the telephone; namely, that in  
4 his view the serological evidence does not  
11:13 5 exonerate David Milgaard?

6 A No, I didn't.

7 Q If that had been in his report, I suppose that may  
8 have affected what would have appeared in the  
9 media?

11:13 10 A It might have, to the extent that he answered the  
11 question in the same way that he answered it when  
12 I spoke with him.

13 Q This is a letter June 12th, 1990 from both Mr.  
14 Asper and Mr. Wolch, and so this is again the same  
11:14 15 day I think you are visiting Dr. Markesteyn. A  
16 number of outstanding matters, number 1:

17 "1) We have heard through sources in  
18 the Office of the Minister of Justice  
19 that the investigation into Larry Fisher  
11:14 20 is complete, and has been complete since  
21 the middle of May of 1990."

22 I take it from what you've told us, that's not  
23 true, the investigation was not complete?

24 A That's correct, and I think the record that you  
11:14 25 have before you certainly dealing with the



1 activities of Sergeant Pearson as he then was and  
2 myself reflects that we were actively pursuing  
3 several aspects of the Larry Fisher investigation.

4 Q Now, I think what we've seen as of this date,  
5 Sergeant Pearson had secured from him, he had  
6 interviewed Mr. Fisher once, he had a few days  
7 earlier obtained from Mr. Fisher his agreement to  
8 undergo a legal deposition, he said no to the  
9 blood sample, no to the polygraph, but Sergeant  
10 Pearson was continuing to work on that?

11 A That's right.

12 Q And we know that ultimately you got all three;  
13 correct? The blood sample may have come --

14 A -- much later.

15 Q Much later?

16 A Yes.

17 Q So at this time, June 12th, 1990, would you have  
18 shared with Mr. Asper the steps that you were  
19 going to take with Larry Fisher, or did you?

20 A I'm not certain. I believe -- I know that there  
21 were conversations, separate conversations I had  
22 with Mr. Asper and conversations that Sergeant  
23 Pearson had with Mr. Asper about the next steps in  
24 the investigation. I think between the two of us,  
25 we likely indicated that that was one of the



1 things we wanted to do.

2 Q We did see a week or so ago a taped conversation  
3 between Joyce Milgaard, I think in the media, or  
4 some report where she was telling the media to  
11:16 5 take their cameras out to the -- was it the  
6 Regional Psychiatric Centre, is that where you  
7 interviewed Larry Fisher?

8 A Yes.

9 Q Do you recall whether there were media cameras  
11:16 10 there when you went to interview him?

11 A I don't recall.

12 Q And I take it from that tape, that Joyce Milgaard  
13 was aware of an interview and presumably Mr. Asper  
14 would have been aware?

11:16 15 A Well, certainly, because the details, the details  
16 of that interview were known to counsel for Mr.  
17 Fisher, Mr. Pearson and myself, because we made  
18 the arrangements, and only the folks with whom we  
19 shared that information would know it, so I assume  
11:17 20 that we had communicated with either Mr. Wolch or  
21 Mr. Asper.

22 Q So again, do you have any idea where Mr. Asper  
23 would have got -- you are telling us this  
24 information he got from a source was --

11:17 25 A It was likely Mr. Pearson or myself.



1 Q Okay. I'm sorry, he says here we have heard  
2 through sources in the office of the minister that  
3 the investigation is --

4 A I don't know where he got that information from.

11:17 5 Q Then, number 2, and I will not read this because I  
6 don't understand it, but it's a request that came  
7 from Dr. Merry through Mr. Asper to you about  
8 getting some information about testing, and I  
9 think this relates to the, Dr. Merry had some  
11:17 10 questions about the possible human origin of  
11 material, etcetera, and I don't believe you  
12 provided this information to Mr. Asper; is that  
13 right?

14 A I don't believe I did. I likely would have  
11:18 15 referred that request to Pat Alain and asked her  
16 to deal with it.

17 Q Okay. Now, number 3, it says:  
18 3) Finally, further to our conversation  
19 with respect to the witnesses whom your  
11:18 20 investigator has interviewed..."  
21 And Mr. Asper has confirmed that he's talking  
22 about you?

23 A Yes.

24 Q As opposed to Sergeant Pearson:  
11:18 25 "...we can advise that these witnesses



1 were left with a very negative  
2 impression about your investigator.  
3 Specifically, Debra Hall tells us that  
4 she was made to feel as though she was  
11:18 5 wasting the investigator's time. She  
6 felt that the investigator was twisting  
7 everything that she said, and made her  
8 feel "like an ass". Moreover, she  
9 indicates that this investigator made  
11:18 10 her feel that she was not believed, and  
11 in fact was somehow lying about the  
12 contents of her Affidavit. Essentially,  
13 her impression was that even though she  
14 had nothing to gain by coming forward,  
11:19 15 she was simply trying to say that  
16 Messrs. Melnick and Labchuk were lying  
17 when they gave their evidence at the  
18 trial, and that for coming forward, she  
19 was made to feel "useless" in this whole  
11:19 20 thing.

21 We understand that Linda Fisher  
22 had much the same feeling after your  
23 investigators visited with her."

24 And can you give me your comment about what --  
11:19 25 this is an allegation against you and your



1 treatment of Deborah Hall and Linda Fisher. I'm  
2 just wondering what your reaction was to this.

3 A Well, my reaction was that it wasn't so. It may  
4 well be that Ms. Hall felt that she may have given  
5 up more than she wanted to in the sense that what  
6 she said during the interview contradicted certain  
7 material allegations in her affidavit. Whether a  
8 witness feels good or not about their experience  
9 of being questioned is a separate issue from  
10 whether the behaviour of the questioner  
11 contributed to that bad feeling. If I had been --  
12 if I had acted improperly during the course of the  
13 interview, or at any time in my contacts with  
14 Ms. Hall, certainly I would have had something to  
15 account for. I did not. And the fact that the  
16 accusation was made didn't disturb me unduly  
17 because I felt quite content that whatever I had  
18 done was proper and could be supported by the  
19 record and, consequently, or perhaps by that time  
20 I had obtained a copy of the transcript and a copy  
21 of the tape of the interview. It had been  
22 reviewed by my superior, both of them, and as a  
23 result of that they chose to keep me on the file.

24 Had the behaviour been  
25 inappropriate in any respect, the decision would



1 have been different, so by then that decision had  
2 been made and I looked at it as just another form  
3 of advocacy in an endeavour perhaps to inform my  
4 future behaviour in terms of questioning  
11:21 5 witnesses.

6 Q And did you view it as trying to put pressure on  
7 you as far as the rest of your investigation?

8 A It was simply a message, you know, we'll complain  
9 if you go too hard on our guys.

11:22 10 Q You said yesterday that you viewed at one point  
11 that information or steps were taken to make it  
12 very difficult on you so that the easy thing to do  
13 would be just to give up and give him a remedy, or  
14 words to that effect?

11:22 15 A Well, what I said was that the application by  
16 installments, coupled with the media program,  
17 might have persuaded someone to say, you know,  
18 just let it go, because within a very short period  
19 of time you had Larry Fisher, you had Albert  
11:23 20 Cadrain, you had Dr. Markesteyn, you had Ron  
21 Wilson, and not having, not just having them, but  
22 there were some fairly serious allegations. You  
23 had the allegation that it was a sloppy  
24 investigation, that we had been sitting on our  
11:23 25 hands, that dog urine had been used to link David





1 Milgaard to the offence, that the police had  
2 botched the investigation and that they had  
3 coerced witnesses. All of those allegations were  
4 untrue, they were patently false, but there was a  
11:23 5 succession of them and we were not then ready to  
6 come public with our findings because the --  
7 because the investigation had not been concluded.  
8 One way to end it all would have simply been to  
9 give up, send it to the courts, send it somewhere,  
11:24 10 but give a remedy. We chose not to do so.

11 Q

12 If we can just talk a bit about the Deborah  
13 Hall -- and I think what Mr. Asper and Mr. Wolch  
14 are saying, that Deborah Hall said she was felt --  
15 "...she indicates that this investigator  
11:24 16 made her feel like she was not being  
17 believed, and in fact was somehow lying  
18 about the contents of her Affidavit."

18 And that:

19 "...she was simply trying to say that  
11:24 20 Melnick and Labchuk were lying when they  
21 gave their evidence at trial..."

22 And we went through this before, and I think what  
23 you've told us, that her affidavit contained an  
24 omission, number 1, and that it failed to  
11:24 25 state -- in fact, an omission or a misstatement



1 because the words attributed to David Milgaard  
2 were, "oh, yeah, sure", and not the words that  
3 she gave you in the examination; correct?

4 A Yes.

11:25 5 Q Now, I suppose one could say that's a lie, it  
6 could be interpreted as being a lie?

7 A Yes.

8 Q In that it's saying here's what David Milgaard  
9 said, he said (a), and when you question her she  
11:25 10 says, well, he really said (b), that again whether  
11 it's an omission, but it could be construed as a  
12 lie; correct?

13 A Yes.

14 Q And secondly, in her affidavit she says Melnyk and  
11:25 15 Lapchuk lied at the trial when they described the  
16 conduct of David Milgaard and the words?

17 A Yes.

18 Q And I think in your examination she ended up  
19 saying, well, no, they were right about the  
11:25 20 conduct and the words, but I viewed them  
21 differently?

22 A Correct.

23 Q And so again, is one interpretation then of, as a  
24 result of her examination, that maybe when in her  
11:25 25 affidavit she said that Melnyk and Lapchuk lied at



1 trial, that wasn't right?

2 A Correct. I mean, she may well have gotten that  
3 feeling as a result of the answers to the  
4 questions that we posed and as a result of perhaps  
11:26 5 recognizing or realizing that in fact what she had  
6 to say mirrored the testimony of Melnyk and  
7 Lapchuk, except for the interpretation, but what I  
8 found interesting about the comments was that  
9 although there was a notation of how Ms. Hall  
11:26 10 felt, there was no description of any, shall we  
11 say, bad behaviour on my part.

12 Q So the complaint was?

13 A She felt bad, but that could come from a variety  
14 of reasons, and it could come from skillful  
11:26 15 questioning or it could come from brow-beating a  
16 witness, but there was no specific accusation of  
17 wrongdoing and it's really hard to defend that.

18 Q And I suppose, just back, that if a witness gives  
19 an affidavit and in the course of an examination  
11:27 20 gives different evidence than what's in the  
21 affidavit, whether it's because the affidavit is  
22 incomplete or the affidavit is wrong, but ends up  
23 giving further information, I suppose a witness  
24 then might feel as though they were not being  
11:27 25 believed in the original affidavit?



1 A Possibly, yes.

2 Q And is it fair to say, Mr. Williams, that after  
3 your examination of Deborah Hall, that you did not  
4 believe the contents of her affidavit based on  
11:27 5 what she told you under oath at the examination,  
6 at least parts of it?

7 A Certainly parts of it were clarified. When she  
8 said that Melnyk and Lapchuk lied, that statement  
9 had to be taken in the context that what she felt  
11:27 10 was a lie focused on her different interpretation  
11 of actions that both she and Melnyk and Lapchuk  
12 observed, they both saw the same thing. She felt  
13 that their perception of it as being real was a  
14 lie because she thought it was a joke.

11:28 15 Q But certainly her affidavit had been put forward  
16 as supporting the lie being, the Melnyk and  
17 Lapchuk lie being not the interpretation, but the  
18 fact that the incident did not occur, the words  
19 were not spoken and the conduct didn't occur?

11:28 20 A That's correct.

21 Q And at some point are you telling us that the lie  
22 of Melnyk and Lapchuk may not have been that it  
23 didn't happen, but that just when it did happen,  
24 it was a joke, when they perceived it differently?

11:28 25 A Yes.



1 Q However, at the trial Melnyk and Lapchuk were not  
2 asked the question, "Did you take it as a joke?"  
3 Correct?

4 A I don't believe they were.

11:28 5 Q And so I guess I'm trying to understand what --  
6 were you saying that, okay, when she said Melnyk  
7 and Lapchuk were lying at trial in her affidavit,  
8 did you not understand that to be her saying  
9 lookit, they made up this story about David  
11:29 10 committing this, doing this conduct and saying  
11 these words? Was that not your understanding?

12 A That was my initial understanding. After I spoke  
13 with her, she explained it in terms of different  
14 perceptions.

11:29 15 Q And that she explained it saying, okay, he did  
16 something to the pillow, he did utter words?

17 A Yes.

18 Q But I took them differently?

19 A Yes.

11:29 20 Q And I suppose if the version that you obtained in  
21 the examination of Deborah Hall had been all  
22 contained in the affidavit, then the examination  
23 may not have --

24 A -- taken place.

11:29 25 Q Taken place.



1 A Correct.

2 Q What about Linda Fisher, did you have -- when you  
3 got this letter did you have any -- what was your  
4 thinking there as far as your -- how had you  
11:30 5 perceived your relationship with Linda Fisher to  
6 this point?

7 A Quite cordial, quite friendly.

8 Q Did she in fact, after your examination of her,  
9 had she stayed in contact with Sergeant Pearson?

11:30 10 A Yes, she did, and as far as I was aware, she made  
11 no complaint to Sergeant Pearson. Later on I  
12 believe she delivered certain letters to him,  
13 letters from her husband, and there had been at  
14 least one or two additional contacts, and bear in  
11:30 15 mind that she did contact Sergeant Pearson at some  
16 later date when representatives of Milgaard  
17 arrived with the media to take photos of her, or  
18 to interview her I should say.

19 Q And what did you then, what was your perception of  
11:30 20 the purpose of -- I think you are telling us  
21 lookit, I don't agree with -- I mean, Deborah Hall  
22 may be upset, but not because of anything I did,  
23 it was because of what she did, and nothing about  
24 Linda Fisher, correct, that was your sense at the  
11:31 25 time?



1 A Yes.

2 Q What was your perception then, or what did you  
3 think Mr. Asper and Mr. Wolch were trying to do  
4 with this letter?

11:31 5 A Well, I think if you take a look at the last  
6 paragraph, or the second last paragraph --

7 Q Perhaps I can -- let me read this to you and then  
8 I'll ask you the question again.

9 A Yeah.

11:31 10 "From these reports, it would  
11 appear that your investigator in essence  
12 cross-examined these people in what we  
13 understand to be a non-adversarial  
14 process, at least for the time being.  
11:31 15 None of these people had counsel  
16 present, and they had no idea that they  
17 were going to be subject to what  
18 ultimately occurred.

19 If your Department is taking  
11:31 20 the view that credibility is in issue  
21 and that your Department is in the  
22 process of weighing evidence, then we  
23 would respectfully suggest that your  
24 Department's activities are beyond the  
11:31 25 purview contemplated within Section 690.



1 Fundamental justice requires that if you  
2 are going about the process of having an  
3 informal hearing, that the "hearing" be  
4 one where both sides are fairly  
11:32 5 represented. As we have said from the  
6 outset, this should occur in the  
7 Courtroom and not by virtue of in camera  
8 interviews."

9 And again, does that, back to my question, what  
11:32 10 was it that you thought they were getting at  
11 here?

12 A My view is that they were trying to persuade us to  
13 alter how we conducted the investigation. Keep in  
14 mind that we weren't present when Deborah Hall  
11:32 15 provided her affidavit, we weren't present when  
16 Albert Cadrain, Dennis Cadrain, Ron Wilson were  
17 interviewed. We received statements that  
18 contained some very serious charges, had some  
19 conclusory opinions, and those statements were  
11:33 20 advanced for their accuracy, for their truth in  
21 the hope and the expectation that the Minister of  
22 Justice would act on them. Those statements were  
23 provided in a non-adversarial context without  
24 counsel being present and that was consistent with  
11:33 25 the 690 approach.





1                   Also consistent with the 690  
2                   approach was the duty of departmental counsel,  
3                   where those statements required clarification, to  
4                   obtain that clarification, and if it meant  
11:34 5                   interviewing a witness, then that was the  
6                   appropriate thing to do.

7                   Fundamental justice requires  
8                   that we, at the department, take the steps  
9                   required to ensure that the information that's  
11:34 10                  being presented is accurate. It is not a  
11                  cross-examination process, although some of the  
12                  questions were leading questions. It seemed to me  
13                  to signal a request to change the way in which we  
14                  were doing what we were doing. Keep also, keep in  
11:34 15                  mind also that by then we had certainly provided  
16                  clarification on a number of factual assertions  
17                  that turned out to be incomplete. My sense was  
18                  this was another attempt to get us to change how  
19                  we were doing things, hopefully maybe to be,  
11:35 20                  quote, "more inclusive" of the Milgaards in terms  
21                  of including them when we went out to do our  
22                  interviews.

23           Q           And I was going to ask that, the timing of this is  
24                   the week after Ron Wilson's statement went in?

11:35 25           A           Yes.



1 Q And right around the time you are making efforts  
2 to interview him, did you perceive that this  
3 letter and the complaints about Deborah Hall and  
4 Linda Fisher were part of a plan or an attempt to  
11:35 5 get them present when Ron Wilson was being  
6 examined by you?

7 A Yes. I mean, keep in mind, at some point in time,  
8 if you are going to go out and interview Ron  
9 Wilson and it's going to be an eight hour  
11:36 10 interview, no consideration was given to calling  
11 us up and saying "lookit, we intend to interview  
12 Mr. Wilson, do you think your investigator is  
13 available to go out and also take a deposition at  
14 the same time?" That wasn't considered and it was  
11:36 15 not done at any stage.

16 Q Now I think, in the case of Mr. Wilson, we'll see  
17 that his counsel was present?

18 A It may well be the case, yeah.

19 Q Yeah.

11:36 20 A Well, his counsel was present, I'm not certain if  
21 he was present when Mr. Henderson met with him.

22 Q No, I'm sorry, when you examined?

23 A Oh yes. Oh yes.

24 Q Your comment here, Mr. Asper and Mr. Wolch talk  
11:37 25 about weighing evidence and credibility, and I



1           wouldn't mind just your comment on to what extent,  
2           if any, you felt that, in the course of your  
3           examination, you were weighing evidence or  
4           credibility?

11:37 5           A       My job wasn't to weigh evidence or determine  
6           credibility, but I -- my job was to uncover facts  
7           that would permit the Minister to do that if and  
8           when required. So that in dealing with a witness  
9           who, for example, comes up with a different  
11:37 10          version of events than had previously been  
11          reported, you would certainly want to point out  
12          the areas of difference, you would want to develop  
13          information about how this thing came about, what,  
14          if any, motives might have prompted it, the  
11:38 15          circumstances of the giving of the statement,  
16          whether there were any inducements, the extent to  
17          which the new version can be confirmed by  
18          independent facts or by other witnesses, and the  
19          extent to which the old version could be  
11:38 20          confirmed. It permits the minister, in those  
21          circumstances, to make an informed decision as to  
22          what version, or what portions of versions, to  
23          believe.

24           Q       If we can go to 185365. And again, this appears  
11:38 25          to be a letter from Patricia Alain -- I don't



1 propose to go through it -- but a letter to you  
2 with the Dr. Markesteyn report. Presumably, you  
3 would have given that to her for her comment?

4 A Yes.

11:38 5 Q And she makes a comment about the, I think this  
6 issue about whether or not canine blood has the A  
7 antigen, etcetera, and just commenting on what --  
8 actually the one, I will read the one, she does  
9 say:

11:39 10 "The morphological differences of human  
11 spermatozoa and canine spermatozoa are  
12 several. The experienced examiner would  
13 not have any problems in distinguishing  
14 between human and canine spermatozoa."

11:39 15 So in other words telling you that, lookit, that  
16 back at the time -- and we know from Sergeant  
17 Paynter that he did this -- that an examiner  
18 could tell the difference. In other words, there  
19 are differences, you are able to detect the  
11:39 20 difference between canine and human; correct?

21 A Yes.

22 Q If we can go to 333474. This is a July 5, 1990  
23 memo, but it relates to a June 4th meeting with  
24 Mr. Karst, and I think you told us earlier that,  
11:40 25 in order to prepare yourself for the questioning



1 of Ron Wilson on his recantation, you  
2 interviewed -- you reviewed police files and  
3 interviewed police officers; is that right?

4 A Yes.

11:40 5 Q And one of those would have been Mr. Karst, who  
6 was involved in dealings with Ron Wilson in and  
7 around May 1969; is that correct?

8 A Yes.

9 Q And you say:

11:40 10 "... I provided Mr. Karst with a copy of  
11 the statement, and copies of occurrence  
12 reports he prepared on May 25, 1969, the  
13 day after the interviews were  
14 conducted."

11:40 15 And I think you start off by saying the  
16 allegations -- you were putting to Mr. Karst  
17 "here's what Ron Wilson has alleged in his  
18 statement, I'd like to get your version of  
19 events"; is that a fair way to put it?

11:40 20 A Yes.

21 Q Mr.:

22 "... Karst indicated that the May 21,  
23 1969 conversation with Ron Wilson was  
24 taped. However, the tapes have been  
11:40 25 lost. He also said that during his



1 interviews with Mr. Wilson the  
2 conversations were conducted in a normal  
3 tone. He advised Wilson initially, that  
4 he was also under investigation."

11:41 5 Again, was there anything there that caused you  
6 concern with this information?

7 A No.

8 Q And, again, did it surprise you that, if Mr.  
9 Milgaard was a suspect in the police  
11:41 10 investigation, that his travelling companions  
11 might be as well, either as a part of the event or  
12 at least -- either part of it or aware of the  
13 incident?

14 A Yes, it might have been a joint enterprise.

11:41 15 Q And then:

16 "In response to the  
17 suggestion that Karst had shown Wilson,  
18 Mr. Cadrain's statement to persuade the  
19 latter to change his account, Detective  
11:41 20 Karst denied that charge. He noted that  
21 he would use information from other  
22 witnesses, where necessary without  
23 identifying those witnesses.

24 Specifically he noted as  
11:41 25 follows:



- 1                   1.    There was no truth to the charge that  
2                                    the police manipulate Wilson.  
3                   2.    He did not pressure Wilson into saying  
4                                    that Wilson saw Milgaard with the maroon  
5                                    handled knife."

6                   And then you have a note:

7                                    "( The occurrence report reveals that  
8                                    Wilson selected the knife during his  
9                                    conversations with Art Roberts, the  
10                                  polygraph operator, who then advise  
11                                  Karst when the latter arrived to pick up  
12                                  Wilson after the tests were performed. )

- 13                   3.    He denied planting the story about  
14                                    Milgaard getting the girl in Saskatoon.  
15                   4.    He stated that no incentives, deals,  
16                                    promises or threats, express or implied,  
17                                    were offered to persuade Wilson to  
18                                    testify.  
19                   5.    Wilson told the police about the  
20                                    observations of Melnyk and Lapchuk who  
21                                    testified about Milgaard's re-enactment  
22                                    of the stabbing. Mr. Karst also  
23                                    recalled that Wilson volunteered the  
24                                    information about Nichol John's  
25                                    hysteria."



1 And again, I just want you to comment on this, in  
2 going to -- and let's put Mr. Karst aside for the  
3 moment -- in going to the police to say "okay,  
4 the witness says you coerced, manipulated, and  
11:42 5 bullied the witness", did you expect the police  
6 to say "oh, of course we did, yes", and can you  
7 tell us; what was your purpose in approaching  
8 them and what were you trying to get from the  
9 police officers?

11:43 10 A I was trying to do a couple of things. I wanted  
11 to get a, I wanted to get a timeline on their  
12 activities with the witness, and I wanted  
13 specifically to draw to their attention the  
14 allegations brought against them and to get their  
11:43 15 response to it, to those allegations.

16 Q And was it a case of if the officers said "well we  
17 didn't manipulate, coerce or bully", that that was  
18 good enough to answer that concern for you?

19 A Well, it's not just a conclusion, it's also to  
11:43 20 take the officers step by step through what they  
21 did in relation to what revelations were made.

22 So, for example, what I had  
23 learned was that Mr. Wilson had identified the  
24 murder weapon at a time when neither Detectives  
11:44 25 Karst or Short were present, he had done so in his





1           conversations with Art Roberts, and Karst only  
2           learned of that when he went to pick up Wilson at  
3           the conclusion of the interview. Well if that's  
4           how it came about I'd be interested to find out  
11:44 5           what, if any, discussions or conversations that  
6           they may have had with him about the knives before  
7           or after, and the information I got was that there  
8           wasn't any, and then I spoke with Art Roberts, got  
9           his views on it.

11:44 10                        So it wasn't just a question of  
11           saying "well did you manipulate, coerce", it's a  
12           question of contacting the folks who were involved  
13           in it to get their accounts, comparing the  
14           accounts, and to see whether or not there's any  
11:45 15           truth or any support, one or the other, for the  
16           versions that had been advanced.

17           Q           What about this statement number 5, and I think  
18           the evidence that was at trial, and what we've  
19           heard is that the information about Melnyk and  
11:45 20           Lapchuk came to the attention of the police and  
21           authorities by Ron Wilson, and I think Ron Wilson  
22           may have told Mr. Karst --

23           A           Yeah.

24           Q           -- on the trip up to Saskatoon; what significance  
11:45 25           did that play?



1 A I mean if it were a situation, if the story was  
2 planted by the police, how would they know about  
3 Melnyk and Lapchuk? How would they know some of  
4 the details that formed part of the narrative in  
11:46 5 the absence of volunteered statement from the  
6 witness Wilson? So you take a look at the details  
7 surrounding the statement to assess the  
8 opportunities of the police to gain that  
9 information so that they could embellish or plant  
11:46 10 the story. It's just an indicator.

11 Q You mean --

12 A If, in fact, he had been coerced or pummeled or  
13 pushed into it, why would he volunteer this, I  
14 would have thought that experience would show that  
11:46 15 he would simply do what he was requested to do  
16 without volunteering additional stuff.

17 Q So the fact that Ron Wilson voluntarily brought  
18 forward Melnyk and Lapchuk with information that  
19 was incriminating, is that something that you --  
11:46 20 tell me how that affected your observations or  
21 assessment of Ron Wilson's suggestion in 1990  
22 that, in 1969 and '70, he was manipulated, coerced  
23 and bullied by the police?

24 A I found it inconceivable that the police would be  
11:47 25 able to plant that information with him. Where



1 the information is volunteered, it signals to me  
2 that it comes not as a result of coercion, or  
3 particularly when it has to do with an event  
4 separate in time from the events surrounding the  
11:47 5 homicide. That re-enactment happened several  
6 weeks, or perhaps months, later.

7 Q Okay. And if we go down again, and:

8 "A review of Mr. Karst's  
9 occurrence report of May 25, 1969  
11:47 10 recounts that Detectives Karst and Short  
11 interviewed Mr. Wilson in Regina on May  
12 21, 1969. Wilson then implicated  
13 Milgaard and accepted an invitation to  
14 return to Saskatoon for a lie detector  
11:48 15 test. On the way to Saskatoon, Wilson  
16 disclosed additional details about his  
17 trip with Milgaard."

18 And I think that was the elevator break-in  
19 incident?

11:48 20 A Yeah.

21 Q What did you make -- what was the significance of  
22 this information from Mr. Karst in the reports?

23 A Well it put into context the opportunities to  
24 coerce or manipulate Wilson. What it signaled to  
11:48 25 me is that, unlike what was stated in the



1 statement, in his statement the impression that  
2 was left on the reader was that once Wilson had  
3 been brought to Saskatoon he was examined  
4 repeatedly, continuously for hours, and the story  
11:48 5 was either sweated out of him or planted. That,  
6 or those sets of interviews, took place on May  
7 23rd and 24th, 1969.

8 What we -- what I learned at the  
9 time was that the first im -- indication that  
11:49 10 Wilson had implicated Milgaard came not in  
11 Saskatoon after a sweat session, but came in  
12 Regina during the course of a -- of an interview,  
13 and there were some times, which I don't remember  
14 right now, but --

11:49 15 Q We have been --

16 A -- set up --

17 Q -- through that in some detail --

18 A Right.

19 Q -- and I think the evidence is that on May 22nd or  
11:49 20 May 21st in Regina a police report says Mr. Wilson  
21 says "yeah, that's when I think David Milgaard may  
22 have committed the murder."

23 A Yeah.

24 Q And so then -- but what is the significance of the  
11:49 25 fact that that information is given in Regina



1 before he is brought to Saskatoon; did that -- was  
2 that of significance in your evaluation of the  
3 June 4th recantation?

4 A Yes. The June 4th recantation seemed to give me  
11:50 5 the impression that the police action was  
6 continuous, this signaled that the information  
7 came in intervals, over a three or a four-day  
8 period.

9 Q And I think the, then the fact that further  
11:50 10 information was provided on the trip back from  
11 Regina to Saskatoon, and I think you talked about  
12 over the course of the next few days more  
13 information was provided; was that the information  
14 you gained?

11:50 15 A Yes.

16 Q And what was -- and I think what we've heard is  
17 that Mr. Wilson then added further pieces of  
18 information, I think namely getting -- stopping  
19 for directions, I think getting stuck, I'm not  
11:50 20 sure on the knife thing, that may have come after  
21 Inspector Roberts, but there was a number of  
22 things that were added to his story prior to the  
23 polygraph?

24 A Yes.

11:51 25 Q And that --



1 A I guess what all of this signaled to me was that  
2 the circumstances, whether they are the physical  
3 surroundings, the timing of the provision of the  
4 information by Wilson, was apparently different  
11:51 5 from the scene that the six-page statement  
6 appeared to portray, and it just helped me to  
7 frame my questions of Mr. Wilson.

8 Q And to the extent that these additional pieces of  
9 information were provided by Mr. Wilson, let's  
11:51 10 talk May 22 -- May 21, 22, 23, right before the  
11 polygraph, would you check those pieces of new  
12 information versus other known facts?

13 A Yes.

14 Q And, in particular, what Mr. Tallis said that Mr.  
11:51 15 Milgaard had told you about that morning?

16 A Yes.

17 Q And to the extent, then, that information added by  
18 Mr. Wilson on May 21, 22, 23, before the  
19 polygraph, was verified or at least corroborated  
11:52 20 by other evidence that you felt to be reliable,  
21 can you tell us what significance did that have?

22 A Well it would certainly detract from the accuracy  
23 of the information in the new statement that  
24 contradicted the earlier statements.

11:52 25 Q Then let's go down to the polygraph, and I



1 think -- and I can state this generally -- I think  
2 what Mr. Wilson's evidence, at least before this  
3 Commission, is in looking at the recantation it  
4 would appear that the factual information provided  
11:52 5 to the police prior to the polygraph with  
6 Inspector Roberts, other than Mr. Wilson's comment  
7 to the police saying "I think this is when David  
8 Milgaard committed the murder", but I think what  
9 Mr. Wilson said that what he ended up recanting  
11:53 10 was really what was provided to Inspector Roberts  
11 at the polygraph. And I could be wrong on a few  
12 items there, but I think the evidence we've heard  
13 indicates that what he ended up recanting was what  
14 he provided to Mr. Roberts, and that was namely  
11:53 15 identifying the maroon-handled paring knife and  
16 the confession by David Milgaard in Calgary, and I  
17 think the blood, as well, was another item there.

18 But, again, did that -- do you  
19 recall looking at that issue as to what pieces of  
11:53 20 information he was recant -- was it the  
21 information he gave to Inspector Roberts, to  
22 Short, to Karst, to Mackie?

23 A I recall looking at that, and I also recall that  
24 in the statement there was no distinction made  
11:54 25 between the polygraph operator and Short, Karst,



1 and Mackie, they were all lumped together as "the  
2 police", but from my vantage point it was  
3 important to separate what portions of the  
4 incriminating information were given to whom and  
11:54 5 when.

6 Q Okay. So that would be important to know who --  
7 who -- when he gave incriminating statements --

8 A Yes.

9 Q -- to which officers, under what circumstances,  
11:54 10 and when?

11 A Yes.

12 Q Okay. I think that answers my earlier question.  
13 Let's just turn, now, to the polygraph. I take it  
14 you asked Detective Karst about what happened at  
11:54 15 the polygraph?

16 A Yes.

17 Q And I think, according to this memo, Art Roberts  
18 and Ron Wilson were the only people in the  
19 polygraph room; is that correct?

11:54 20 A Yes.

21 Q And that, after he was done the polygraph, he came  
22 out and Detective Karst then took Wilson in and  
23 took a statement?

24 A Yes.

11:55 25 Q If we can go to the next page?





1 A I think it was also important that -- to note --  
2 and this was rather unusual for that time at  
3 least -- to have the statement sworn before a  
4 Justice of the Peace.

11:55 5 Q And why was that? What significance did you have  
6 with that?

7 A Most statements taken by police officers, at best  
8 you get the interviewee to sign and initial them,  
9 but to have taken the additional step of taking it  
11:55 10 before a Justice of the Peace to swear the  
11 accuracy, to swear that what is stated is true  
12 under oath, I think that was a fairly, for me at  
13 least, unusual step.

14 Q If we could just go back to the previous page. I  
11:55 15 think what your memo says, according to Detective  
16 Karst, that he delivered Wilson to the polygraph  
17 and:

18 "... Art Roberts interviewed Wilson and  
19 performed a polygraph test. Mr. Wilson  
11:56 20 was truthful except for two answers  
21 which he admitted were lies."

22 Then:

23 "At 3:00 ... Detective Karst  
24 went to the Cavalier motel where Art  
11:56 25 Roberts was staying. He learned that



1 Mr. Wilson had picked out a knife. He  
2 took Mr. Wilson to the police station to  
3 take a statement from Mr. Wilson, then  
4 accompanied Wilson to have the statement  
11:56 5 sworn before a Justice of the Peace. In  
6 this statement, Mr. Wilson attributed to  
7 Mr. Milgaard the following utterances  
8 ... 'I fixed her' ...",

9 the clothing, and:

11:56 10 "He noted also that Nichol  
11 John would scream; and he recounted the  
12 incident with the compact as well as the  
13 utterances attributed to Milgaard in the  
14 bus depot."

11:56 15 So it appears, here, you are having Mr. Karst  
16 identify, with the assistance of the reports,  
17 when Mr. Wilson's incriminating statements came  
18 about, and it appears that a number of them came  
19 about after the polygraph session; is that  
11:56 20 correct?

21 A Yes.

22 Q And what significance, if any, did you place on  
23 that, that the -- that it was after the polygraph  
24 that Mr. Wilson provided incriminating evidence  
11:57 25 that he had not earlier provided to the police?



1 A I'm not -- well certainly the timing of the  
2 statement, in terms of the length of time and the  
3 circumstances under which those incriminating  
4 statements were taken, would help at least shed  
11:57 5 some light on the suggestion that he had been  
6 through a sweat session. The fact that  
7 apparently, after the sweat session, he was  
8 content to go before a Justice of the Peace and  
9 swear to it under oath was certainly a factor to  
11:57 10 be considered.

11 Q And no -- just back on, and I think the evidence  
12 we've heard, that everything Ron Wilson had said  
13 to the city police before he went in to see  
14 Inspector Roberts, although it was, some of it may  
11:58 15 have been viewed as incriminating, it was not the  
16 type of evidence that would have given rise to a  
17 charge against Mr. Milgaard?

18 A Correct.

19 Q And that the incriminating evidence, which if we  
11:58 20 just go back to the previous page that's stated  
21 here, that his statement "I fixed her", that he  
22 had seen blood on Milgaard's clothes, the pants  
23 were ripped, Nichol John would scream, the  
24 incident with the compact, as well as Mr.  
11:58 25 Milgaard's utterances at the bus depot in Calgary,



1 in other words a confession; that the fact that  
2 prior to Ron Wilson seeing Inspector Roberts,  
3 despite the fact that he had on May 21-22  
4 volunteered more or given more information to the  
11:58 5 Saskatoon City Police, you know, that they got  
6 stuck, they were in the vicinity and a few things  
7 like that, what significance did you place on the  
8 fact that it wasn't until Inspector Roberts met  
9 with him that all this new information came about,  
11:59 10 and in other words if -- why didn't it come out  
11 before?

12 A At the time I wasn't focusing on why it didn't  
13 come out before, I was focusing more on the  
14 circumstances and the nature of the contacts  
11:59 15 between the various police officers and Wilson.

16 Why it didn't come up before, I  
17 had some, some speculations, but the -- I had not  
18 considered -- the 'why' it didn't come up before  
19 at that time. I was more concerned, I guess, with  
11:59 20 looking at what behaviour did the police, or what  
21 types of pressures did the police exert that may  
22 have accounted for these incriminating statements.

23 Q And are you telling us that because Mr. Wilson, in  
24 his recantation, made allegations that the police  
12:00 25 manipulated, coerced and bullied him and planted



1 ideas in his mind, that that became the primary  
2 focus or a main focus in your examination of the  
3 Ron Wilson evidence?

4 A Yes. I mean his evidence was sworn and it was  
12:00 5 before a jury and was subject to  
6 cross-examination, but I think what we were doing  
7 or what I was focusing on now was the types of  
8 contacts, the nature of the contacts, and the  
9 opportunities the police had to instill or plant  
12:00 10 things in Wilson's mind, coerce -- or coerce him  
11 as he had argued in his six-page statement.

12 Q If his recantation had simply been "lookit, I was  
13 young, I was stoned, I just wanted to get out of  
14 there so I gave them what I thought they needed to  
12:01 15 hear so I could leave"?

16 A That certainly would have -- I would certainly  
17 look at that but, I mean, that would shift the  
18 focus --

19 Q And I guess --

12:01 20 A -- away from, away from bad police behaviour and  
21 the allegation that they coerced or suborned  
22 perjury, from here's a witness who wants the  
23 police out of his life and who, for his own  
24 reasons, maybe his convenience, spins a tale to  
12:01 25 get out of -- or to avoid lengthy interrogation.



1                   COMMISSIONER MacCALLUM: Excuse me, Mr.  
2 Williams, but I'm not sure you answered counsel's  
3 question.

4                   He seemed to me to be asking  
12:02 5 why you had not focused more on that portion of  
6 the police interviews which took place before  
7 Roberts at the polygraph session, because surely  
8 there was an opportunity for something wrong to  
9 have occurred, and you say that's where your  
12:02 10 focus was, you were looking for places where the  
11 police might have exerted undue influence. So,  
12 bearing that in mind, why didn't everything come  
13 out before the Saskatoon police on the 21st and  
14 20 -- at Regina and Saskatoon police on the 21st  
12:02 15 and 22nd, why was Roberts so suddenly successful  
16 in what he did?

17           A           As framed, I don't know the answer to that, other  
18 than Roberts had better interviewing skills than  
19 did Detective Karst.

12:02 20           BY MR. HODSON:

21           Q           It's --

22           A           Umm --

23                   COMMISSIONER MacCALLUM: Was that something  
24 that you were able to determine at that time?

12:03 25           A           No, it wasn't, sir.



1 BY MR. HODSON:

2 Q I suppose -- and just one last question and we'll  
3 break and I'll pick it up after lunch -- but I  
4 suppose, just following up on that, that if the  
12:03 5 incriminating evidence that Mr. Wilson recanted  
6 was the evidence that came about as a result of  
7 his interaction with Inspector Roberts, which I  
8 think is essentially the case, then I suppose one  
9 view might be on the one hand is that the reason  
12:03 10 it came out at that time and the reason Inspector  
11 Roberts was able to get it is because the  
12 polygraph assisted in saying to Mr. Wilson "you're  
13 lying to us" and therefore, as a result of being  
14 informed of that, that the truth came out; that's  
12:03 15 one version, correct?

16 A Yes, yes.

17 Q Another version at the other extreme might be that  
18 whatever happened in that room with Inspector  
19 Roberts as a result of the polygraph, and however  
12:03 20 that was used, it caused Mr. Wilson to give  
21 untruthful information because of what happened  
22 between he and Mr. Roberts, and that that's where  
23 he may have been manipulated in some form or  
24 another to give false evidence; those -- that  
12:04 25 would be two possible scenarios?



1 A Two possibilities. It may be that the lever of  
2 having a polygraph there may have persuaded Wilson  
3 that he couldn't fudge the truth and prompted him  
4 to come out with the version that he did.

12:04 5 Q Is it fair to say though, from reading Ron  
6 Wilson's June 4th statement, that it was the  
7 polygraph that seemed to be of utmost concern with  
8 -- that seemed to get him off track, or that he  
9 was attributing his lies at trial, in addition to  
12:04 10 other police conduct, but it was the polygraph  
11 that seemed to be the focus of his contention that  
12 that somehow got him off track?

13 A Yes.

14 Q Yeah. That's probably an appropriate spot to  
12:05 15 break for lunch.

16 *(Adjourned at 12:05 p.m.)*

17 *(Reconvened at 1:34 p.m.)*

18 BY MR. HODSON:

19 Q Call up 000836. It would appear in mid June,  
01:34 20 1990, Mr. Williams, that we've gone through a  
21 number of interviews that you did: The Saskatoon  
22 police, you did Dr. Markesteyn, Dr. Ferris, Albert  
23 Cadrain, a number of witnesses on about a one week  
24 period in there. Is that correct?

01:34 25 A That's correct.





1 Q And that would be basically following up on the  
2 information that came to light on June 4th and  
3 5th; namely, Ron Wilson, Dennis Cadrain, Dr.  
4 Markesteyn?

01:34 5 A Yes.

6 Q And then I think as well in there some Larry  
7 Fisher that was still unfinished business from  
8 before; is that correct?

9 A That's correct.

01:34 10 Q And in the circumstances, did you believe that you  
11 had moved reasonably quickly to deal with these  
12 issues that were presented on or about June 6th?

13 A Yes. As soon as we received the information, we  
14 took steps to begin the verification process in  
01:35 15 terms of contacting the police to invite them to  
16 search their files, identifying the potential  
17 witnesses where they were located with a view to  
18 setting up interviews.

19 Q And so here, this memo is June 16, 1990, but it  
01:35 20 deals with a June 15, 1990 meeting with Albert  
21 Cadrain; is that correct?

22 A Yes.

23 Q And I'll go through this memorandum with you, but  
24 can you tell us, what was your general observation  
01:35 25 of Albert Cadrain when you met with him?



1 A I recall Mr. Cadrain as being a -- he was a  
2 short-sized fellow who was quite agitated about  
3 the subject of his testimony at trial. He seemed  
4 to be in reasonably good health at the time, his  
01:36 5 responsiveness to my questions was good, although  
6 from time to time he would take off on a bit of a  
7 tangent or a sojourn. He seemed to appreciate the  
8 nature of my work, the questions I was asking and  
9 was more or less responsive. When I say he was  
01:36 10 responsive, but on occasion he would take off on a  
11 tangent. I found him to be, to say the least, an  
12 engaging personality.

13 Q And if we can scroll down, I think you put to him  
14 his March 2 statement and his evidence at trial;  
01:37 15 is that correct?

16 A I did.

17 Q And he confirmed it other than the one statement  
18 about what David Milgaard did with his clothes  
19 after he changed them that morning. I think he  
01:37 20 now told you that he thought maybe he took them  
21 out to the garbage as opposed to returning them to  
22 the car; is that right?

23 A Yes.

24 Q And here you have:

01:37 25 "Mr. Cadrain responded emphatically and



1                   affirmatively when I asked him whether  
2                   he had told the truth when he was a  
3                   witness at the trial."

4                   And I take it that was the case?

01:37 5           A           Yes.

6           Q           And at the bottom:

7                   "...whether he saw blood on Mr.  
8                   Milgaard's clothing and whether he saw  
9                   Mr. Milgaard take the ladies compact  
01:37 10           case from Nichol John and throw it out  
11                   the window of the car. Mr. Cadrain  
12                   replied "yes" to each question."

13          A           Yes.

14          Q           Would it be fair to characterize, and I appreciate  
01:37 15           that he gave more evidence than just these two  
16           points, but that the -- would you agree that the  
17           two major pieces of incriminating evidence at  
18           trial that Mr. Cadrain gave were the observation  
19           of blood on the clothing of David Milgaard and his  
01:38 20           observation of Mr. Milgaard throwing the compact  
21           or cosmetic bag out of the car?

22          A           Yes.

23          Q           And I think there was a few other, you know, that  
24           he was maybe in a hurry, cleaning the car, some --  
01:38 25           a few other circumstances, but the two primary



1 pieces of incriminating evidence would be the  
2 blood and the compact; is that your recollection?

3 A Yes.

4 Q And to the extent that the compact incident was  
01:38 5 corroborated by what Mr. Tallis told you David  
6 Milgaard had told him, did that give you any  
7 comfort as far as Mr. Cadrain's recollection or  
8 powers of observation at the time back in 1969?

9 A Yes, it certainly confirmed his version. I also  
01:38 10 was reminded that Ms. John had testified to the  
11 same effect.

12 Q If we can -- down here Mr. Cadrain then talks  
13 about Mr. Milgaard breaking the aerial on the car  
14 radio as preventing -- I think to prevent the  
01:39 15 inhabitants of the car, the people in the car from  
16 listening to the news; is that right? Is that a  
17 story he told?

18 A That's what he told and that's what I recorded.

19 Q And I think the evidence at trial was that the  
01:39 20 radio didn't work at the time. Can you tell us  
21 whether that was a consideration of yours in  
22 looking at Mr. Cadrain's 1990 recollection?

23 A It was. My sense was that it may have been a bit  
24 of confabulation.

01:39 25 Q And tell us, how did that -- let me -- actually, I



1           should just go down to the next paragraph, I think  
2           you also question him about his psychiatric  
3           treatment and Mr. Cadrain told you about his stay  
4           in a psychiatric facility; is that correct?

01:39 5           A           Yes.

6           Q           And this would have been after, a few years after  
7           the trial?

8           A           Yes.

9           Q           So what did you make of this, this confabulation  
01:40 10          and the fact that Mr. Cadrain, 20 years later, was  
11          maybe adding some things that he didn't say at  
12          trial that maybe weren't true or didn't, weren't  
13          consistent with other evidence, what did you make  
14          of that?

01:40 15          A           I looked at it from the standpoint did it detract  
16          from his trial testimony. If it did, then that  
17          certainly would be something I would bring to the  
18          attention of the minister. If it was just a  
19          detail, I mean, the radio didn't work and he has  
01:40 20          now added that David Milgaard broke it, broke the  
21          aerial. Well, that's a detail, it may have been  
22          confabulation, but it really doesn't advance the  
23          narrative in the sense that it doesn't advance the  
24          evidence that is, in my view, either exculpatory  
01:40 25          or inculpatory of David Milgaard's guilt.



1 Q What about the contention that the aerial incident  
2 and the soiled clothes in the garbage being a  
3 product of his mental illness, if I can call it  
4 that, and therefore the observation of blood and  
01:41 5 the compact also being suspect, I mean, let's add  
6 to that the visions of the Virgin Mary and the  
7 snake, so that you've got all that put together,  
8 how do you distinguish between post-trial  
9 confabulation and decide that that, the trial  
01:41 10 testimony was also not confabulation?

11 A I think what you -- what I did is I looked at the  
12 timing for the onset of the illness, the timing  
13 for the reports of visions, checked those with him  
14 and then looked at those in connection with the  
01:42 15 observations. I mean, we've got observations of  
16 soiled clothing, we have other witnesses who  
17 testified. Whether he put it in the garbage or  
18 took it back out to the car, it's a detail. What  
19 is and what remained consistent was that there was  
01:42 20 a change of clothes at that time; what remained  
21 consistent, regardless of the detail as to how the  
22 clothes were disposed, was that there was the  
23 observation of blood. To what extent did the  
24 psychiatric illness affect that? I think the real  
01:42 25 question is whether, or was Mr. Cadrain suffering



1 from any psychiatric impairment at the time that  
2 he made the observations that affected his  
3 perception of events or could have coloured it.

4 Q Would it be fair to say that, and maybe  
01:42 5 presumption is too strong a word, but that having  
6 gone through a preliminary hearing, a trial,  
7 having been interviewed by police, by the Crown  
8 prosecutor and being examined and cross-examined  
9 in the presence of a jury, that there might be an  
01:43 10 assumption or even a presumption that if there was  
11 something to signal mental illness at the time,  
12 that it would have come out in that process?

13 A Yes.

14 Q And again, would it be fair to say not a certainty  
01:43 15 that it would come out, but that, correct to say,  
16 that one would hope that if a witness was  
17 suffering mental illness and having delusions,  
18 having gone through all of the people that he  
19 needed to go through to be interviewed, questioned  
01:43 20 and cross-examined, that you thought that that  
21 would likely have come up if it existed at the  
22 time?

23 A Yes. Keep in mind that there would be a number of  
24 opportunities for, say, erratic or that type of  
01:43 25 behaviour to be observed. Certainly the story was



1 tested on a number of occasions and there was a  
2 certain consistency throughout, and while there's  
3 never any certainty, that is the system that we've  
4 chosen to test or verify.

01:44 5 Q In fact, I think the evidence at trial in his  
6 statement was he did have some statements that  
7 were viewed by some as strange; namely, that David  
8 Milgaard told him that he was in the Mafia?

9 A Yes.

01:44 10 Q I think that was in his initial statement that was  
11 given to the police and available to Mr. Tallis.

12 A Yes.

13 Q And part of, I think, some of the questioning. So  
14 again, is that something that would influence your  
01:44 15 thinking, that if the Mafia comment was a product  
16 of mental illness, then it was there and it was  
17 explored and --

18 A It gave us an opportunity to test that aspect of  
19 it at trial.

01:44 20 Q You also, if we can scroll down, appear to have  
21 questioned him about his interview with Mr.  
22 Henderson; is that right?

23 A Yes.

24 Q And why did you do that?

01:45 25 A A statement had been prepared by Mr. Henderson





1 relating to his interview of Albert Cadrain.

2 Q Okay. I think -- actually, I think at this point  
3 it was just Dennis. He talked to Albert Cadrain,  
4 talked to Dennis Cadrain and got a statement from  
01:45 5 Dennis Cadrain. I think the statement from Albert  
6 comes about a week later.

7 A Yes.

8 Q So at this point when you are talking to Albert, I  
9 think the statement of Dennis Cadrain was the only  
01:45 10 statement that existed. Does that sound right?

11 A That sounds right. I guess my question was if Mr.  
12 Henderson were out meeting Dennis, why didn't he  
13 also speak with Albert, because Albert is the one  
14 that testified at trial and Dennis did not, as I  
01:45 15 recall, or if he did, he certainly --

16 Q He did not.

17 A He did not. He didn't provide any incriminating  
18 evidence to, or any evidence with respect to David  
19 Milgaard. I found it a little surprising that  
01:46 20 Henderson would be there with Albert, but would  
21 not take a statement, or did not take a statement  
22 from Albert at that time, preferring instead to  
23 take a statement from his brother, which cast  
24 doubt on Albert's mental capacity.

01:46 25 Q And so here you ask him and Albert does say that



1 he was questioned by Mr. Henderson and that Albert  
2 said:

3 "...that Mr. Henderson did not appear to  
4 be very interested in what Albert had to  
01:46 5 say after Albert maintained the accuracy  
6 of his trial testimony. Thereafter, Mr.  
7 Henderson spoke primarily to Dennis and  
8 Albert did not follow their  
9 conversation."

01:46 10 What was the significance of that, if any?

11 A Albert testified at trial, Dennis did not. If --  
12 in light of the fact that it was Dennis' statement  
13 that came, or was provided to the department, that  
14 that statement cast aspersions on Albert's mental  
01:47 15 capacity, it signaled to me that maybe there was a  
16 distinct focus of Mr. Henderson's interview and  
17 that was to cast some doubt on Albert's trial  
18 testimony's reliability, and since he couldn't get  
19 it, and since he couldn't get a recant from  
01:47 20 Albert, he would attack it collaterally by getting  
21 Dennis' views on Albert's mental condition.

22 Q Okay. And after your interview with Albert -- and  
23 was Dennis present when you interviewed Albert?

24 A No, he was not. He was close by, but I believe I  
01:47 25 interviewed Albert and Dennis separately.



1 Q And when you were done interviewing Albert  
2 Cadrain, what if any conclusions did you draw  
3 about the issue of the reliability of his evidence  
4 at trial and whether or not his mental illness,  
01:48 5 subsequent mental illness or concurrent mental  
6 illness affected the reliability of that evidence?

7 A I didn't believe that it affected it adversely.  
8 Albert was -- the nature of the illness did not  
9 appear to affect the perception of past events was  
01:48 10 the recollection at least of the significant  
11 portions of the trial testimony. There were some  
12 changes in the details and I recorded those.

13 Q And is it fair to say that if it -- to adversely  
14 affect his trial evidence, it would have to be one  
01:49 15 of two things, one, that as a result of his mental  
16 illness the, his observation of blood could be  
17 attributed to his mental illness as opposed to his  
18 actual observation?

19 A Yes.

01:49 20 Q And, secondly, that if that couldn't be  
21 established, that the mere existence of him having  
22 a mental illness at the time had been brought to  
23 the attention of the jury, it might have affected  
24 the jury's assessment of his powers of  
01:49 25 observation?



1 A That's correct.

2 Q And so those would be the two things you would be  
3 looking at?

4 A Yes.

01:49 5 Q And I take it, Mr. Williams, I think we heard this  
6 from, I can't remember which witness, but that a  
7 person suffering from mental illness could still  
8 have the power of observation and the ability to  
9 relate that, what he or she saw to a court; is  
01:49 10 that fair?

11 A Yes.

12 Q And the simple fact that a person may suffer from  
13 a disability at the time and happens to witness an  
14 event or see something does not necessarily  
01:50 15 preclude that person from having an accurate  
16 recollection and relating that to a court; is that  
17 fair?

18 A That's correct.

19 Q On the other hand, I suppose in some cases it  
01:50 20 might have a different result, that it may affect,  
21 and that's the challenge?

22 A That's the challenge. It really depends on the  
23 nature of the illness and whether or not the --  
24 whether or not it affects the powers of  
01:50 25 observations and the ability to recall accurately



1 what was observed.

2 Q Did you draw any conclusions or make any  
3 assessment as to whether or not, based on what  
4 Albert told you, whether he was suffering from a  
01:50 5 mental illness at the time, '69, '70, or whether  
6 it was something that came later?

7 A My view was that it came after the events he  
8 observed.

9 Q And what was that based on?

01:50 10 A It was based on his narrative of the events that  
11 triggered the mental instability and his  
12 description to me of the onset of it, which, in my  
13 recollection, occurred after the trial.

14 Q And I think we -- Dennis Cadrain as well commented  
01:51 15 on that, that it was perhaps as a result of the  
16 questioning and the trial process itself that  
17 resulted in stresses on Albert?

18 A I believe so, yes.

19 Q In your interview with Albert Cadrain, did you get  
01:51 20 into -- there's one comment here that:

21 "He stated that the repeated questioning  
22 by the police, and their apparent  
23 disbelief of his initial statement,  
24 coupled with suggestions that he may be  
01:51 25 involved in the murder were very



1                   distressing."

2                   And I take it Albert Cadrain told you that the  
3                   police didn't believe him when he told the police  
4                   he saw blood on David Milgaard?

01:51 5           A           Yes.

6           Q           And they put him through extensive questioning on  
7                   that?

8           A           Yes.

9           Q           To challenge his incriminating evidence?

01:51 10          A           Yes.

11          Q           Did he say anything about the police trying to get  
12                   him to provide more incriminating evidence than he  
13                   had already provided?

14          A           No.

01:52 15          Q           Or was it the opposite?

16          A           No. My recollection is that Albert was of the  
17                   view that the police were challenging the accuracy  
18                   of his information because they felt that he had  
19                   come forward in response to a bulletin offering a  
01:52 20                   reward and before they would act on any of his  
21                   information they took sufficient steps to ensure  
22                   that what he was telling was the truth, and so  
23                   after they received his version of events, they  
24                   would then contact some of the people whom he had  
01:52 25                   identified as participants in one form or another



1 and tried to get confirmation of key aspects of  
2 his statement and, failing which, they went back  
3 to him and questioned him again.

4 Q How did you square that piece of information with  
01:53 5 the information you just got from Ron Wilson that  
6 said, I guess the flip side being that the police  
7 actually worked him the other way, to manipulate  
8 and coerce him to give incriminating evidence.

9 A It didn't square with Wilson. There were two  
01:53 10 statements which were diametrically opposed in  
11 terms of attributing motive to the police  
12 activity.

13 Q So you have one witness saying I went in with  
14 incriminating evidence against David Milgaard and  
01:53 15 they didn't believe me and they pressured me and  
16 questioned me hard, another witness saying I went  
17 in with no incriminating evidence against David  
18 Milgaard and they pressured me hard to get me to  
19 give incriminating evidence at relatively the same  
01:54 20 time?

21 A Yes. It may well be that the police were  
22 persistent in their questioning in the face of  
23 contradictory stories from two people who had  
24 shared some of the same experiences.

01:54 25 Q In your discussion with Albert Cadrain, did you



1 take anything out of his description of his  
2 contact with the police, that the police had  
3 mistreated him in any way?

4 A Certainly not in relation to his contacts with the  
01:54 5 Saskatoon police. He described some events  
6 surrounding his arrest and detention in Regina  
7 that signaled to me that he had some bitter  
8 experiences with the Regina police force. Those  
9 experiences notwithstanding, he did volunteer  
01:54 10 information to the Saskatoon police and was  
11 content to return to them to answer the questions  
12 they had of him.

13 Q And so again, just so I understand, on your  
14 meeting with Albert Cadrain on June 15th, 1990,  
01:55 15 your memo says he talked about "repeated  
16 questioning by the police, and their apparent  
17 disbelief of his statement".

18 A He didn't complain about the behaviour of the  
19 Saskatoon police in terms of coercion or pressure,  
01:55 20 he was distressed because he felt that they didn't  
21 believe what he was telling them when he told it  
22 to them initially, and sometimes the second or  
23 third times.

24 Q And so his stress, if I can call it that, or  
01:55 25 distress, was the fact that they weren't believing





1 him and continuing to question him?

2 A Yes.

3 Q And he didn't say anything or you didn't hear him  
4 say anything that the police coerced or  
01:55 5 manipulated or bullied or pressured him?

6 A That's correct.

7 Q And can you tell us, what was your, based on what  
8 Albert Cadrain told you about his interaction with  
9 Paul Henderson, what was your assessment of that,  
01:56 10 what did you take out of that as far as why Paul  
11 Henderson didn't take his statement or what  
12 happened between Mr. Henderson and Albert Cadrain?

13 A My perception was that Mr. Henderson didn't take a  
14 statement from Mr. Cadrain because whatever  
01:56 15 Mr. Cadrain had to say would not support the  
16 Section 690 application of David Milgaard.

17 Q If you then scroll down, it looks as though you  
18 then interviewed Dennis Cadrain; is that right?

19 A Yes.

01:56 20 Q And that was separate from Albert Cadrain?

21 A Yes.

22 Q And I'll go through this, or parts of it with you.  
23 What was your general observation of Dennis  
24 Cadrain?

01:56 25 A Dennis seemed, you know, he was an okay fella. He



1 appeared to be a bit protective of Albert and  
2 seemed to have a genuine affection for him. That  
3 was basically it.

4 Q And we'll see here, I think in his statement to  
01:57 5 Paul Henderson, he said in his statement that he  
6 had other comments and insights that he would  
7 provide directly to Federal Justice; is that  
8 right?

9 A Yes.

01:57 10 Q And would that have been what you then questioned  
11 him on?

12 A Yes.

13 Q It appears you asked Dennis about whether, or you  
14 discussed with him whether Albert actually saw  
01:57 15 blood on David Milgaard's clothing, and it appears  
16 that Dennis says lookit, I'm not sure he did or he  
17 didn't; is that fair?

18 A Yes.

19 Q And then the next page, you say that:

01:57 20 "Dennis' concern was based in part on  
21 the observations of their older sister,  
22 Celine ... who was at the residence..."

23 And didn't see blood. Is that right?

24 A Yes.

01:57 25 Q And was it your understanding that Dennis' -- at



1 least part of Dennis' doubts about Albert's  
2 observation of blood may have been related to the  
3 fact that he knew his sister was there as well and  
4 his sister didn't see blood?

01:58 5 A That's correct.

6 Q And, I mean, we know from the record that Celine  
7 Cadrain saw David Milgaard after he had changed  
8 the clothes that Albert Cadrain said he saw blood  
9 on. Would you have known that at the time?

01:58 10 A Yes.

11 Q And did you provide that information to Dennis  
12 Cadrain?

13 A I don't believe I did. I'm not certain.

14 Q And can you tell us, was Dennis saying lookit,  
01:58 15 Albert could not have seen blood, he didn't see  
16 blood, or was it a case of saying lookit, I'm just  
17 not sure that he was reliable?

18 A I think it's the latter.

19 Q What about -- did you question him about the fact  
01:58 20 that it was Dennis who was first told by Albert  
21 that he saw blood and that it was Dennis who told  
22 Albert to go to the police with the information if  
23 he felt it was true, and I think Dennis also said  
24 at the time that he believed Albert when he told  
01:58 25 him that?



1 A Yes.

2 Q And did you canvass that with Dennis, as to what  
3 would have changed from 1969 to 1990?

4 A I may have. It just seems to me that, and I'm  
01:59 5 searching back over that conversation, it seemed  
6 to me that Dennis was quite impressed by the fact  
7 of Albert's emotional decline and in 1990 was  
8 concerned that perhaps what he had, what Albert  
9 had told him in 1969 might have been influenced by  
01:59 10 Albert's emotional instability, but at the time  
11 maybe Albert believed it and Dennis believed  
12 Albert when he heard it.

13 Q The memo talks about Albert's later drug use, the  
14 stress from the trial and the questioning, an  
02:00 15 incident being dangled from a building in Regina,  
16 and then an incident where Albert had accused  
17 someone else of setting a fire -- I think that was  
18 in the '70s and Dennis Cadrain told us about  
19 that -- and let me put it this way; would this be  
02:00 20 a fair summary of what Dennis was saying to you,  
21 that after David Milgaard was convicted, that over  
22 the course of the next 20 years Albert Cadrain's  
23 mental condition deteriorated and a number of  
24 incidents took place where Albert may have  
02:01 25 exaggerated or made up stories, and based on that



1 Dennis, in 1990, was saying "in light of what I  
2 have learned over the last 20 years I doubt, I  
3 have concerns about what, whether what Albert said  
4 in 1969 and '70 were reliable and accurate"?

02:01 5 A I would adopt that, yes, as a summary of Dennis'  
6 comments to me.

7 Q And that's how you took it from him, that it was  
8 the post-trial --

9 A Events.

02:01 10 Q -- events that caused him to look back and say "in  
11 light of that information maybe, in 1969-'70,  
12 Albert was suffering from the things that I later  
13 learned"?

14 A Yes.

02:01 15 Q Do you recall talking to Dennis about Albert  
16 seeing visions, and things of that nature, between  
17 the preliminary hearing and trial?

18 A I probably did, but as we speak now I --

19 Q Did you --

02:02 20 A I note I didn't note it in that memo.

21 Q Did you have a recollection as to whether or not  
22 Dennis was saying that these visions that Albert  
23 had occurred before or after the conclusion of  
24 David Milgaard's trial?

02:02 25 A It most certainly occurred after, whether they



1 occurred before, I'm not certain.

2 Q If we go down to your findings and conclusions,  
3 what about any sense of Dennis' interaction with  
4 Paul Henderson, did you probe that with him at  
02:02 5 all?

6 A Not extensively.

7 Q So your conclusions are:

8 "Albert Cadrain's testimony  
9 at trial was corroborated by the Crown's  
02:02 10 other witnesses, 'Ron Wilson also saw  
11 blood on Milgaard's clothing; and  
12 corroborated Cadrain's testimony that  
13 Milgaard changed within the view of the  
14 others at the preliminary at page 484.  
02:02 15 Wilson also corroborated Cadrain's  
16 testimony that Milgaard had purchased a  
17 pairing knife in Rosetown."

18 What was the significance, to you, of the fact  
19 they bought a paring knife after leaving  
02:03 20 Saskatoon?

21 A There had been evidence that they had had a paring  
22 knife on -- between Regina and Saskatoon, --

23 Q And is that --

24 A -- and it went missing, so they bought another.

02:03 25 Q And so the fact that they bought a knife in



1 Rosetown, if they had a knife on the way into  
2 Saskatoon, why would they need to buy one on the  
3 way out unless they lost it?

4 A Yes.

02:03 5 Q And would the inference there be that perhaps that  
6 was the murder weapon?

7 A Yes.

8 Q And then you go on to talk about the police  
9 investigative steps about Albert Cadrain, that  
02:03 10 his:

11 "... account was incorrect in two  
12 respects. He had denied that he had  
13 taken drugs on the night before Gail  
14 Miller died; and he understated the  
02:04 15 degree of questioning he had encountered  
16 by the Regina Police ..."

17 Again, what was the significance of that?

18 A The significance of the understatement,  
19 understating the degree of questioning by Regina  
02:04 20 Police?

21 Q Yes?

22 A Quite frankly he had received pretty, call it,  
23 severe treatment at the hands of the Regina  
24 Police, and to the extent that that may have got  
02:04 25 -- intimidated him, it certainly might have



1 informed or may have made him more susceptible to  
2 police pressure.

3 Q Okay. And I'm wondering here, though, the fact  
4 that Albert's story that he gave to the Saskatoon  
02:04 5 police, I think the police said he was wrong on  
6 two accounts?

7 A Well one was they had asked him whether or not he  
8 had taken drugs and he said "no", and subsequent  
9 investigation revealed that he had taken drugs the  
02:05 10 night before Gail Miller died, and that might have  
11 had an impact on his powers of observation; was he  
12 under the influence of drugs at the time of --  
13 that David Milgaard arrived at the, at his  
14 residence, and if so to what extent did that have  
02:05 15 on his ability to observe accurately.

16 Q Okay. I'm sorry, I had maybe read this a bit  
17 differently, I thought what you were saying was  
18 that the police doubted Albert's story so they  
19 then tested him on the blood, and when they tested  
02:05 20 Albert's story they found that two of the things,  
21 in addition to the blood he talked about, were  
22 incorrect; one when he said he was not taking  
23 drugs the night before, and one his treatment by  
24 the police?

02:05 25 A Yes.





1 Q So that, after further questioning, the police did  
2 in fact point out two errors in his original  
3 statement?

4 A That's also true, yes.

02:06 5 Q And I'm wondering, was that significant in your --

6 A Not that significant.

7 Q You then go on, at the bottom, to say:

8 "However, the police lost their  
9 scepticism when they checked Albert's  
02:06 10 story by interviewing Sharon Williams  
11 ...",

12 and also interviewing David Milgaard and his  
13 demeanour. Can you tell us -- and then the next  
14 page -- and:

02:06 15 "Their investigation revealed that  
16 Albert Cadrain was telling the truth."  
17 What, can you elaborate on what you are stating  
18 there?

19 A The -- Albert Cadrain had come to the police with  
02:06 20 a story that implicated David Milgaard, the police  
21 followed up and questioned David Milgaard about  
22 it, and my recollection is that the discussions,  
23 or the impression that the police officer had  
24 following his interview with David Milgaard was  
02:07 25 that he expected Mr. Milgaard to be -- to have a



1 different demeanour -- if -- than the one that Mr.  
2 Milgaard displayed during the interview. That's  
3 my recollection. I think they felt that, if you  
4 were a 17-year-old being accused of murder, that  
02:07 5 the response would have been much different from  
6 the response that they received. That's my  
7 general recollection several years after the  
8 event.

9 Q And what about the Sharon Williams interview or  
02:07 10 statement, that was David -- that was his  
11 girlfriend or a friend he was going to see in  
12 Edmonton?

13 A Yeah. I think what they'd learned from Sharon  
14 Williams was that in her dealings with Mr.  
02:07 15 Milgaard he was quite forceful in terms of his  
16 demands for, shall we say, sexual relations and  
17 intimate relations, and that they felt that, based  
18 on what she had said, the possibility existed that  
19 he may have had the propensity to do what was done  
02:08 20 to Ms. Miller.

21 Q And so are you saying, here, what you learned from  
22 the interviews and the file review is that  
23 although the police initially were skeptical of  
24 Albert Cadrain's statement about observing blood,  
02:08 25 after challenging him and checking him on that and



1 getting some further information about Mr.

2 Milgaard, that the skepticism --

3 A Started to lessen, yes.

4 Q And how would that be important in considering --

02:08 5 I mean, I take it you are looking at that in the

6 context of Albert, the ground put forward that

7 Albert Cadrain is -- was mentally unstable at the

8 time; is that fair?

9 A Yes.

02:09 10 Q And so how did that fit in?

11 A Well it, it was just another circumstance. It

12 didn't really address the main issue as to whether

13 Albert was, quote, "mentally unstable" at the time

14 of his observations, but it added some context to

02:09 15 the fact as to the reasons why the police went

16 back to Albert and tested his initial statement to

17 them.

18 Q So is it fair to say that the Albert Cadrain -- I

19 think you told us that once Mr. Asper wrote you on

02:09 20 June 5, 1990 with the Dennis Cadrain statement,

21 that basically that was a new ground being added,

22 although not specifically stated in the letter as

23 such it was "here's another reason why there was a

24 miscarriage of justice"?

02:09 25 A Yes.



1 Q And that, in order to investigate that ground, you  
2 went back and looked at the evolution of Albert  
3 Cadrain's evidence, his treatment by the police,  
4 his dealings with police, to try and assess this  
02:10 5 new ground that Albert Cadrain's evidence at trial  
6 was unreliable?

7 A That's correct.

8 Q And I take it, is that something that you would  
9 not have done if this ground had not been put  
02:10 10 forward?

11 A That's correct.

12 Q And, by the end of the process, is it correct to  
13 say that essentially there was enough grounds, or  
14 all the grounds put forward required you to  
02:10 15 effectively review almost everything?

16 A Yes.

17 Q Then scroll down. Here you talk, this is where  
18 you mention in the memo that an explanation why  
19 Celine Cadrain did not see blood is that she saw  
02:10 20 David after the clothes were changed?

21 A Yes.

22 Q And that would explain or, I guess, answer Dennis  
23 Cadrain's concern that maybe Albert didn't see it  
24 because Celine didn't see it?

02:11 25 A Correct.



1 Q If we can scroll down, here you talk about:

2 "Neither the timing nor the  
3 nature of Albert Cadrain's emotional  
4 instability is clear; nor is the  
02:11 5 motivation between Dennis Cadrain's  
6 current statement. Dennis Cadrain had  
7 accompanied Albert to the police station  
8 on March 2, 1969, and had given a  
9 statement to the police in which he  
02:11 10 quoted Celine as saying that David  
11 Milgaard wanted to get out of town right  
12 away. From Dennis personal assessment  
13 of Milgaard, which was obtained during  
14 Milgaard's first stay, he described  
02:11 15 Milgaard in 1969 as a 'real goof'."

16 And I'm wondering, what, were you trying to  
17 assess Dennis' 1990 position versus his 1969  
18 position?

19 A I think the paragraph is essentially expressing  
02:11 20 some doubts or reservations about what we had  
21 learned, noting that the full story hadn't -- had  
22 not emerged in terms of the nature of Albert's  
23 illness, and secondly Dennis' newfound -- or  
24 Dennis' motive, now, of questioning Albert when in  
02:12 25 1969 he had been supportive of his brother and



1 had, in fact, accompanied his brother.

2 Q And then you go --

3 A Albert --

4 Q And then you go on to the next paragraph?

02:12 5 A Yeah.

6 Q You say:

7 "The timing of the statements

8 of Dennis Cadrain and Ron Wilson, a few

9 days before David Milgaard's parole

02:12 10 hearing, coupled with the parting

11 statements of Albert Cadrain suggests to

12 the writer that fear of retribution may

13 have motivated Dennis to attempt to

14 shield or excuse Albert. Although

02:12 15 Dennis Cadrain did not testify, and is

16 younger than Albert, Dennis regards

17 himself as Albert's guardian. The

18 prospect of Milgaard's release and

19 possible angry retribution may explain

02:13 20 Dennis' attempt to distance Albert as a

21 reason for Milgaard's imprisonment.

22 Each of David Milgaard's travelling

23 companions that this writer has

24 interviewed still fear him, even though

02:13 25 over twenty years has elapsed."



1 And would that have been your view at the time?

2 A It was.

3 Q And what, I think June 7th was the parole hearing,  
4 were you thinking that -- you told us yesterday  
02:13 5 that you thought Ron Wilson's statement may have  
6 been related -- or may have been obtained to try  
7 and use at the parole hearing; is that right?

8 A That was my information, yes.

9 Q And where did you get that information from?

02:13 10 A I believe I got it from some of the parole  
11 authorities.

12 Q And so did you -- again, were you looking to try  
13 and find out why now, why would Dennis Cadrain say  
14 this now, and why would this come up as an issue  
02:13 15 on June 4th or June 6th or whenever it came up?

16 A Yes.

17 Q As far as the fear, you talked here about the  
18 parting comments of Albert Cadrain; what was that  
19 parting comment or parting statements of Albert,  
02:14 20 this fear of retribution?

21 A Albert indicated to me that if -- Albert was  
22 concerned that David Milgaard would be released on  
23 parole and that, if released on parole, he may  
24 come after Albert and, if he did, Albert said that  
02:14 25 he'd be ready for him.



1 Q And so this is what Albert told you on the June  
2 15th interview?

3 A Yes.

4 Q And so, again, was that something that you thought  
02:14 5 may have influenced Dennis' statement, in other  
6 words in an effort to protect Albert?

7 A Albert was -- was -- I wouldn't call it obsessed,  
8 but was quite concerned about the possibility that  
9 David Milgaard would be paroled and was concerned  
02:15 10 that, if that were to happen, that David might  
11 seek some retribution against Albert for having  
12 testified at trial.

13 Q Okay. So, after having visited Albert and Dennis  
14 Cadrain, can you tell us what -- did you think any  
02:15 15 further steps needed to be taken to investigate  
16 this ground or had you gathered the facts that you  
17 felt you needed to gather?

18 A One of the -- I thought that most of what I could  
19 have gotten had been obtained. Certainly, there  
02:15 20 were some additional investigative steps I could  
21 have taken in relation to Albert in terms of  
22 getting from him details of the illness and  
23 getting consents for his hospital records,  
24 however, I decided against doing so.

02:16 25 Q And why was that?





1 A To the extent that Albert was, quote, "lucid",  
2 that his observations did not appear to have been  
3 affected by whatever emotional instability he had  
4 encountered -- I believe it was a form of  
02:16 5 depression -- and that it didn't seem to have  
6 affected his, quote, "powers of observation", nor  
7 his powers of retelling what he had seen in 1969.

8 Q If counsel for David Milgaard had provided you  
9 with a medical report, or a medical assessment of  
02:16 10 Albert Cadrain with a medical opinion about his  
11 condition in 1969 as a ground, would that have  
12 caused you to maybe do something different?

13 A Yes.

14 Q And in what way?

02:17 15 A If -- I guess a lot would depend on how the  
16 application was framed or how that ground was  
17 framed, but if the suggestion was 'a witness who  
18 testified at trial and who provided incriminating  
19 evidence was, at the time of the observations and  
02:17 20 at the time of trial, suffering from a serious  
21 mental impairment that adversely affected his  
22 ability to accurately perceive events as they  
23 unfolded and to accurately retell those events,  
24 and had the jury known this then perhaps their  
02:17 25 assessment of Mr. Cadrain's evidence might have



1           been different', that type of ground certainly  
2           would have caused us to launch some inquiries.

3           Q           And would your investigation of Albert Cadrain,  
4           the Albert Cadrain ground as presented to you,  
02:18 5           would it be dependant upon how it was put forward  
6           to you then?

7           A           Yes.

8           Q           And I think how it was put forward to you was the  
9           statement of his brother saying "I don't think  
02:18 10           Albert was reliable at the time", and as well the  
11           letter of Mr. Asper saying Albert saw visions?

12          A           Yes.

13          Q           And so is it correct to say that you investigated  
14           what you were given, and namely talked to Dennis  
02:18 15           Cadrain, talked to Albert Cadrain, and left it at  
16           that?

17          A           Yes. The depth of the investigation often depends  
18           on what you -- what the complaint is and what you  
19           receive.

02:18 20          Q           And I -- as far as -- I take it you weren't asked  
21           by counsel for David Milgaard to go and obtain a  
22           doctor and have Mr. Cadrain examined by a doctor,  
23           anything of that nature?

24          A           No.

02:18 25          Q           If you had been approached on the basis that says,



1 "lookit, in order to advance this ground we  
2 believe that an expert ought to be retained to  
3 examine his medical records, conduct an  
4 examination, and give a medical opinion to assist  
02:19 5 and identify whether or not Mr. Cadrain's mental  
6 faculties were adversely affected in 1969 and  
7 1970, would you assist us, Federal Justice  
8 Department, in arranging and independent medical  
9 or something"; is that something you would be  
02:19 10 inclined to look at?

11 A We'd certainly consider it. I would be --  
12 certainly do it very, very cautiously, because the  
13 fact that one accuses another of being mentally  
14 unstable and then asks the federal department to  
02:19 15 follow up on it is an area in which you would  
16 proceed with some caution, yeah.

17 Q Yeah. And would the fact that the person who is  
18 alleged to be suffering from the mental  
19 difficulties at the time is basically saying  
02:19 20 otherwise, is that fair, is denying it, saying  
21 "no, I saw what I saw", would that be a factor as  
22 well?

23 A Certainly, that would be a factor. The other  
24 thing would be whether or not the person is  
02:19 25 currently under care, and if so the nature of it,



1 and going back dealing with the family, finding  
2 out the nature of the problem, and if so what  
3 impact those problems may have had on the  
4 observations at trial and the testimony -- or not  
02:20 5 the observations at trial, but the observations of  
6 the event and the testimony at trial, yeah.

7 Q Did you have concerns at this time, Mr. Williams,  
8 that the Albert Cadrain mental instability issue,  
9 if I can put it that way, was a ground that was  
02:20 10 designed more for the media than for a legal  
11 ground in the legal application that you were  
12 considering?

13 A Yes.

14 Q And would that have influenced your approach in  
02:20 15 investigating it?

16 A Yes.

17 Q And can I take it, from that, that it would be --  
18 are you telling us that you maybe wouldn't have  
19 taken it as seriously as -- and maybe that's the  
02:20 20 wrong word, but --

21 A I mean the, you take a look at when the ground was  
22 advanced, what was submitted to support the  
23 ground, compare that with the submissions of the  
24 earlier grounds, it wasn't as well-researched as  
02:21 25 the others and it was presented in a fashion



1 designed more for the eyes and -- of the reading  
2 public than it was for the eyes of the Minister of  
3 Justice.

4 Q And at this time, June 15th, 1990, did you expect  
02:21 5 the Albert Cadrain mental health issue to hit the  
6 media?

7 A Yes.

8 Q If we can go to 003561. This is your June 19th,  
9 1990 memo regarding your attempted interview of  
02:22 10 Ron Wilson, and I think you've covered parts of  
11 this, about -- I think this describes your effort  
12 to interview them, and here you talk about:

13 "Kenneth Watson, counsel ...

14 arrived at the Nakusp detachment ... and

02:22 15 advised me that his client did not wish

16 to be interviewed. Apparently, his

17 client was concerned about the nature of

18 my questioning, after Wilson had spoken

19 to David Asper, counsel to Mr. Milgaard.

02:22 20 Mr. Watson alluded to a concern

21 expressed by Mr. Asper that other

22 witnesses had been intimidated,

23 belittled and not believed. I invited

24 Mr. Watson to remain during the

02:22 25 questioning to protect his client's



1 interests. He told us that he would  
2 consult his client and advise us  
3 accordingly. He returned within a half  
4 hour to repeat that his client would  
02:22 5 only testify in a courtroom setting."

6 And I think you touched on that this morning; do  
7 you wish to elaborate on any of that as far as  
8 what happened there?

9 A No, sir.

02:23 10 Q Did you --

11 A Umm --

12 Q Yeah. Did you -- did you perceive, at this time,  
13 that what was happening was an attempt to avoid  
14 Mr. Wilson being subjected to cross-examination,  
02:23 15 or examination, or an interview?

16 A Yes.

17 Q And did you perceive that to come from Mr. Asper,  
18 or from people on behalf of David Milgaard, that  
19 they did not wish to have Ron Wilson subjected to  
02:23 20 questioning by you or anybody else?

21 A Certainly my sense was that, on the heels of their  
22 earlier letter, any questioning of Mr. Asper -- or  
23 of Mr. Wilson they would object to unless they  
24 were also present.

02:23 25 Q And did you draw any inferences or conclusions



1 from the fact that the witness there put forward  
2 as saying "he has now recanted", that they do not  
3 wish to have you talk to him, or if so under  
4 certain circumstances?

02:24 5 A I found it curious that Mr. Wilson was prepared to  
6 undergo an eight-hour discussion with someone he  
7 didn't know, more or less a cold interview, was  
8 prepared to discuss the situation with Mr. Lett,  
9 but was not prepared to discuss it with counsel  
02:24 10 for the minister.

11 Q Did that cause you to question or have doubts  
12 about the credibility of his statement?

13 A It caused me to question some of the tactics that  
14 were being used in connection with our pursuit of  
02:24 15 this 690 application. On the one hand, we were  
16 being encouraged to speed up and complete the  
17 application, on the other hand, on the basis of  
18 the representations by Mr. Watson whom I had no  
19 reason to disbelieve, it would appear that counsel  
02:25 20 for the applicants had taken certain steps that  
21 frustrated our ability to test some of the aspects  
22 of Mr. Wilson's recant.

23 Q And was it your understanding that the block, if I  
24 can call it that, originated from Mr. Asper as  
02:25 25 opposed to Mr. Wilson?



1 A Yes.

2 Q There was some evidence that -- and, again, this  
3 is June 19th -- that a July 6th, 1990 meeting had  
4 been scheduled or talked about between perhaps you  
02:25 5 and other officials and Mr. Wolch and Mr. Asper;  
6 do you have any recollection of that? And let me  
7 add a bit further, I think it was in one of the  
8 taped conversations between Joyce Milgaard and  
9 David Asper that this meeting was to take place,  
02:25 10 but then Mr. Asper said he was informed that  
11 because Ron Wilson had not gone through an  
12 interview yet Justice wasn't prepared to meet  
13 because they had to do the interview, and then  
14 there was efforts made by Mr. Asper to get Ron  
02:26 15 Wilson to be interviewed by you, and that which  
16 ended up happening in July, and there seems to be  
17 a suggestion there that a meeting -- and perhaps  
18 it was the equivalent of what happened on October  
19 1, 1990 -- that that meeting was gonna happen on  
02:26 20 July 6th and that it didn't happen because Ron  
21 Wilson wouldn't agree to the interview, and when  
22 that came to light, the interview happened?

23 A There -- there may have been a discussion about a  
24 meeting to discuss some aspects of the case.  
02:26 25 Certainly in July, or by July 6th we had not





1 completed some of the planned steps to be taken in  
2 relation to the Larry Fisher evidence, so although  
3 there may have been discussions about meeting with  
4 counsel it didn't -- or it seems to me now that it  
02:27 5 would not have been as comprehensive or as  
6 complete a review of what we had as was the case  
7 in October of 1990.

8 Q And maybe it wasn't the October 1 equivalent, but  
9 do you have a recollection of there being a  
02:27 10 meeting with counsel being talked about in early  
11 July?

12 A That's a definite possibility, yes.

13 Q And that that meeting being delayed because of Mr.  
14 Wilson's unwillingness to meet with you?

02:27 15 A But -- I think that that was part of it, and  
16 possibly the other part was the reason for the  
17 unwillingness to meet. I mean here is a situation  
18 in which we're trying to complete the  
19 investigation at the behest of the applicant, and  
02:27 20 it appears as if they are throwing a, call it a  
21 roadblock to frustrate a proposed meeting to  
22 interview a recanting witness.

23 Q If we can go to the next page -- sorry, let's just  
24 back up. The fact that his client would only  
02:28 25 testify in a courtroom setting, am I right that



1           that would only happen if the minister granted a  
2           remedy?

3           A           Yes, or if there was some type of hearing.

4           Q           Okay.

02:28 5           A           That harkens back to a suggestion contained in Mr.  
6           Wolch and Mr. Asper's letter to me complaining  
7           about the process.

8           Q           Right. But again, if we talk about Section 690,  
9           the only way the minister could put this matter in  
02:28 10          a courtroom would be to send a reference to a  
11          Court of Appeal --

12          A           Or a new trial.

13          Q           -- or a new trial?

14          A           Yes.

02:28 15          Q           And so granting the remedy?

16          A           Yes.

17          Q           So, in other words, at this time the position of  
18          Mr. Wilson is "here is my statement, I will not  
19          talk to you about it unless, basically, the  
02:28 20          minister grants a remedy, and then I'll tell my  
21          story"?

22          A           Yes.

23          Q           Which is ultimately what happened at the Supreme  
24          Court; correct?

02:29 25          A           He did testify at the Supreme Court, but before



1           that I did get a chance to interview him.

2           **Q**       Right.  Probably an appropriate spot to break for

3           --

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

02:46 5                       *(Reconvened at 2:46 p.m.)*

6           BY MR. HODSON:

7           **Q**       Call up 003561, please.  So when you left, after

8           you had the discussion with Mr. Watson, how was

9           the meeting left?  Is it correct to say that Mr.

02:46 10           Wilson wasn't going to be interviewed; is that

11           correct?

12           **A**       That's correct.

13           **Q**       And so then the next page -- oh, sorry, leave it

14           on page 2.  It would appear then that, am I right,

02:46 15           that this memorandum was prepared outlining your

16           thoughts about the recantation statement on the

17           basis that you did not believe you would have an

18           opportunity to question him; is that right?

19           **A**       That's correct.

02:46 20           **Q**       So in other words, you made some observations

21           about the statement in the absence of having an

22           opportunity to put them to Mr. Wilson?

23           **A**       Yes.  In preparation for the interview, I, as you

24           discovered, I had collected certain information

02:47 25           and had assimilated it in a certain fashion to



1 canvass with Mr. Wilson so as to get a better  
2 understanding. That wasn't going to happen. The  
3 review of that material was relatively fresh in my  
4 mind and I thought it prudent to record, or to  
02:47 5 summarize the allegations that had been prepared  
6 and to note some of the areas that, some of the  
7 factual matters that we had gathered that could  
8 affect the assessment of the new recant by Mr.  
9 Wilson.

02:47 10 Q And am I correct that if Mr. Wilson had agreed to  
11 be interviewed on the date scheduled when you were  
12 there, that this memo would have been a  
13 post-interview memo taking into account what he  
14 would have told you?

02:48 15 A Yes.

16 Q And a couple of comments here, you've got, you  
17 say:

18 "Although Mr. Wilson recalls the lie he  
19 allegedly told at trial, he now has no  
02:48 20 recall of Nichol John being hysterical  
21 when he returned to the car, nor of  
22 anyone finding a ladies make-up kit in  
23 the glove compartment of the car after  
24 they left Saskatoon."

02:48 25 What was the significance of that?



1 A At the outset of that memo I was simply  
2 reviewing -- I was reviewing the assertions in the  
3 seven page statement. The "no recall of Nichol  
4 John", "nor of anyone finding a ladies make-up kit  
02:49 5 cosmetic bag in the glove compartment", certainly  
6 those were two items that tended to show that  
7 possibly something had happened around the time  
8 that they got stuck. Firstly, Nichol being  
9 hysterical may have signaled that she saw  
02:49 10 something that unnerved her and then, secondly,  
11 the finding of the make-up kit and David's  
12 disposal of it, those were two items, two  
13 circumstances that tended to signal that maybe the  
14 victim's make-up kit had been taken and put into  
02:49 15 the glove box by one member of the party, but now  
16 Mr. Wilson was resiling from those positions in  
17 his recant.

18 Q And were you identifying what you thought might be  
19 contradictions then in his recall?

02:50 20 A At that point, no. This is basically an  
21 introductory to summarize what I perceived then to  
22 be some of the key departures in the recant from  
23 the information contained in Mr. Wilson's earlier  
24 statements and in his trial testimony.

02:50 25 Q And then scroll down under number 2, "Summary of



1 Police Contacts with Ronald Wilson - March - May  
2 1969," and I think you go through and identify  
3 from the police reports the statements and your  
4 interviews with, or from the trial record I take  
02:50 5 it, the contacts?

6 A Yes.

7 Q And that's for the reasons you stated earlier,  
8 that if he was coerced, manipulated and bullied by  
9 the police, then looking at his interaction with  
02:50 10 the police would be informative?

11 A Yes.

12 Q And you start off by saying:

13 "Milgaard's trial counsel posed detailed  
14 questions to Mr. Wilson concerning the  
02:51 15 latter's contacts with the police at the  
16 preliminary inquiry and trial."

17 Why is that important?

18 A That is important because my reading of the  
19 cross-examination of Mr. Wilson by Mr. Tallis, the  
02:51 20 objective was to probe whether or not Mr. Wilson's  
21 testimony had been informed or influenced by the  
22 police.

23 Q And so is that saying that if he had been coerced  
24 and bullied and manipulated, that that's something  
02:51 25 defence counsel was alive to and tried to elicit



1 and probed at the prelim and at the trial?

2 A Yes.

3 Q And go to the next page, I think you then go  
4 through the evidence, and go to number 4, and you  
02:51 5 talked about this earlier, the fact that in Regina  
6 on May 21 Wilson added some information that was  
7 not in his original statement; is that right?

8 A On May 21?

9 Q Yes. Actually, if we can just go back to  
02:52 10 paragraph number 1. We see on March 3 Wilson gave  
11 his initial statement to the police, you are  
12 familiar with that, to Inspector Riddell?

13 A Yes.

14 Q And I think he describes some of the things that  
02:52 15 happened that morning, but nothing that's  
16 incriminating?

17 A Correct.

18 Q And you would -- did you become aware at some  
19 point, I think in July, 1990, and thereafter, the  
02:52 20 position taken by Mr. Wilson, his counsel and  
21 counsel for David Milgaard, that Ron Wilson's  
22 initial statement of March 3, 1969 was the truth  
23 and the complete truth and that everything after  
24 that was derived from police influence?

02:52 25 A Yes.



1 Q And so -- and again, based on your review of the  
2 record, did you find any merit in that suggestion,  
3 that the first statement was the truth and the  
4 complete truth?

02:53 5 A After I had completed my discussions with Mr.  
6 Wilson, I did not find merit in that assertion.

7 Q And I think Mr. Wilson has acknowledged before  
8 this Commission that, as has Mr. Tallis, that  
9 based on what David Milgaard told him about the  
02:53 10 events of the morning of January 31, there were a  
11 number of, in Mr. Tallis' words, significant  
12 omissions in Ron Wilson's first statement. Would  
13 you agree with that?

14 A Yes.

02:53 15 Q And so if we can go through that, it appears that  
16 what was added by Mr. Wilson after March 3rd was  
17 that -- if we can go down to paragraph 4 -- that I  
18 think what was not in the first statement, added  
19 May 21, '69, is that Milgaard had left the car  
02:54 20 when they became stuck at approximately 6:45 on  
21 the morning of the murder, and can you tell us  
22 what significance would be in that fact, and I  
23 think you've told us Mr. Tallis had confirmed that  
24 David Milgaard accepted that or corroborated that;  
02:54 25 is that fair?





1 A Yes.

2 Q And so what is the significance in the fact that  
3 two months after Mr. Wilson gave his statement to  
4 the police, after further contact with the police  
02:54 5 he now reveals a new fact which he didn't before  
6 but which is corroborated by David Milgaard and  
7 others?

8 A It certainly goes towards confirming the accuracy  
9 of the statement.

02:54 10 Q And so to the extent that this piece of  
11 information, getting stuck and David leaving the  
12 car having come as a result of police questioning,  
13 did the fact that it happened to be corroborated  
14 by David Milgaard, what did that tell you about  
02:54 15 whether Mr. Wilson had been manipulated, coerced  
16 and pressured into giving that piece of  
17 information?

18 A Regardless of the impetus that prompted the  
19 statement, it seemed to be accurate, or at least  
02:55 20 seemed to reflect --

21 Q I suppose is it fair to say that if police  
22 pressure and coercion results in truthful evidence  
23 coming from a witness, it's probably okay, apart  
24 from physical or -- I mean, as long as it's not  
02:55 25 improper questioning.



1 A I take a different view. I say that persistent  
2 police questioning, particularly in a homicide  
3 investigation, if that elicits evidence, that's  
4 fine, but when I hear the word coercion and  
02:55 5 manipulation, I cannot condone those types of  
6 pressures as being desirable for eliciting  
7 information, regardless of its accuracy.

8 Q And then if we can scroll down to paragraph 5,  
9 this talks about the -- sorry, if we can -- sorry,  
02:56 10 part of paragraph 4, on the trip to Saskatoon  
11 Wilson tells Karst:

12 "...that he and Milgaard had discussed B  
13 & E's, along with rolling someone and  
14 purse snatching to finance their trip.  
02:56 15 Wilson admitted that Milgaard broke into  
16 an elevator office on the road to  
17 Saskatoon. This was confirmed by later  
18 investigation."

19 I think again these would be facts that are  
02:56 20 consistent with what Mr. Tallis told you David  
21 Milgaard told him?

22 A I believe so, yes.

23 Q And so again, in looking at Mr. Wilson's  
24 suggestion that, and it was some of this  
02:56 25 information -- is it fair to say that some of what



1 Mr. Wilson was now saying was a lie at trial was  
2 information that Mr. Tallis told you David  
3 Milgaard had told him?

4 A Yes.

02:57 5 Q And did that affect your assessment then of the  
6 validity of Ron Wilson's recant?

7 A It did, it did in a negative way, in that here was  
8 Mr. Wilson recanting certain facts that we knew  
9 from other sources and objective sources and  
02:57 10 confirmed sources to be correct.

11 Q And so I suppose it's possible, though, that in  
12 recanting, he recanted some that were lies and  
13 recanted some that were not lies perhaps because  
14 he forgot or perhaps because of the nature of  
02:57 15 questioning?

16 A I don't know. He came up with a different  
17 version. I had no reason to believe, based on the  
18 initial police investigation, that the main  
19 elements of his trial testimony were lies.  
02:58 20 Consequently, the recants as contained in the  
21 seven page statement prepared by Mr. Henderson  
22 signaled to me that he was recanting things that  
23 had a basis in fact.

24 Q So he may have recanted too much?

02:58 25 A Yes.



1 Q And in doing so, to try and figure out which of  
2 the recantations is credible and which are not  
3 becomes more difficult, if not impossible?

4 A I guess my experience has been that if a witness  
02:59 5 forgets, that's one thing. If a witness says that  
6 it didn't happen and I was pressured, that's  
7 another, and to the extent that this recant dealt  
8 with events that had been the subject of testimony  
9 by others that had been confirmed by counsel for  
02:59 10 the accused or for Mr. Milgaard, it certainly  
11 caused me to question the veracity of this  
12 recanted -- of those parts of the recanted  
13 information.

14 Q Would you agree that if a witness is to recant,  
02:59 15 that a great deal of care must be taken in  
16 ensuring that both the basis of the recant and  
17 what is recanted has got to be accurate?

18 A Yes.

19 Q Because in order to test the recant, if, as I said  
03:00 20 earlier, if too much is recanted, if something is  
21 recanted that is factual, the credibility of the  
22 recanter is in issue; fair?

23 A Certainly the accuracy of what is now put forward  
24 as the truth would be in issue, yes, and I guess  
03:00 25 consequently the credibility would be.



1 Q And again paragraph 5 just talks about the  
2 revelation on May 22nd about during the drive to  
3 Saskatoon, or the drive around Saskatoon Mr.  
4 Wilson indicated that they had, that he and the  
03:00 5 travelling companions had met a girl while looking  
6 for Cadrain's house from whom they sought  
7 directions and as they were driving away Milgaard  
8 said "the stupid bitch". Again, that would be  
9 information that was not in the original March 3rd  
03:00 10 statement, but was given to the police before the  
11 polygraph; correct?

12 A Yes.

13 Q And then the next page, you detail what happened  
14 from the reports during the polygraph and that:  
03:01 15 "Wilson admitted to Mr. Tallis at the  
16 preliminary inquiry that Mr. Roberts  
17 correctly confronted him with two lies  
18 that he told in answer to two questions  
19 during the polygraph test."

03:01 20 And I think what Mr. Tallis told us, that  
21 obviously at the trial he did not want the  
22 issue -- he did want the fact to be known by the  
23 jury that Ron Wilson had undergone a polygraph  
24 test for obvious reasons, but at the preliminary  
03:01 25 hearing he did probe Mr. Wilson a bit on that.



1 Does that accord with your recollection?

2 A Yes.

3 Q And was that something, the fact that at the  
4 preliminary hearing Ron Wilson had indicated yes,  
03:01 5 I did lie and I was confronted with lies at the  
6 polygraph, did that have some significance?

7 A My understanding was that when Mr. Wilson lied,  
8 that was done deliberately so that the polygraph  
9 operator could test, or it could establish some  
03:02 10 benchmarks.

11 Q And I think there was also another lie as well  
12 that was tested. Do you recall that?

13 A There may well have been, sir.

14 Q If you can then go down to the bottom of the page,  
03:02 15 you then set out, and I won't go through this, but  
16 an exchange at the preliminary inquiry, and this  
17 is where Mr. Tallis was questioning Mr. Wilson  
18 about being afraid of the police and what was  
19 happening I think on the moccasin line in jail  
03:02 20 because he was in custody and wasn't he afraid  
21 that people in custody might find out that he's an  
22 informant, things of that nature. What did you  
23 read into that or what was the significance of  
24 that?

03:02 25 A The significance of this line of questioning was



1 to add or to shed some light on Mr. Wilson's  
2 assertion in certain parts of his statement that  
3 he was a vulnerable 16 or 17-year-old youth in  
4 prison accused of murder and essentially this line  
03:03 5 of questioning was broached by Mr. Tallis at  
6 either the -- at the preliminary in an endeavour  
7 to find out the extent to which, if that were the  
8 case, it might have -- Wilson might have been  
9 influenced by the police to adopt a story that  
03:03 10 implicated his client.

11 Q Then go to the next page, here you then have a  
12 section "The Recent Allegations vs. The Historical  
13 and Evidentiary Record". And can you just tell us  
14 what you are setting out here?

03:04 15 A What I'm trying to set out is the context in which  
16 some of the recanted facts took place and  
17 juxtapose that with the recanted facts.

18 Q So paragraph 1(a), Ron Wilson in his recantation  
19 said the police treated him as a suspect I think  
03:04 20 around the time of the polygraph and here you  
21 point out that on April 25, 1969, based on the  
22 blood type of Ron Wilson, that he was not believed  
23 to be a suspect after that date?

24 A Correct.

03:04 25 Q Now, that did not preclude the police from taking



1 a different position with Mr. Wilson though did  
2 it?

3 A It did not.

4 Q And so this would just be saying lookit, here's a  
03:04 5 fact that was there, whether the police continue  
6 to tell him he was a suspect as a questioning  
7 technique was still a possibility?

8 A It was.

9 Q Next page, you talk about the fact that by his own  
03:05 10 evidence at the prelim and trial:

11 "...Mr. Wilson did not appear concerned  
12 or bothered by the questioning of the  
13 Saskatoon police."

14 A Yes.

03:05 15 Q And is that a case of, that if Mr. Wilson felt  
16 that he was manipulated, coerced and bullied by  
17 the police, that you would expect him at the  
18 preliminary hearing or trial to --

19 A Say something.

03:05 20 Q -- say that?

21 A Yes.

22 Q And --

23 A Or to respond to the questions by Mr. Tallis in a  
24 way that would signal his discomfort or signal  
03:05 25 firstly whether he had been influenced by the





1 police and, if so, to what extent.

2 Q And did you get a sense from the trial record that  
3 Ron Wilson was maybe sort of on the other side of  
4 the spectrum of being scared?

03:05 5 A In response -- the perception I had was that he  
6 was a bit cocky in response to Mr. Tallis'  
7 questions, which sought to maybe give him an out  
8 or signal that he was perhaps a bit intimidated or  
9 concerned by the police questioning of him about a  
03:06 10 homicide, and maybe it was false vibrato, I don't  
11 know, but the record speaks for itself.

12 Q Then you talk about in (c) the fact that he had a  
13 fair bit of police involvement and a criminal  
14 record. What was the significance of that?

03:06 15 A I simply recited those facts to signal that this  
16 young man had had a number of police contacts,  
17 that the fact that some police officers were  
18 questioning him was not a novel event for him  
19 and -- so that could inform someone's perceptions  
03:06 20 as to whether or not he was frightened. This was  
21 an experience that he had undergone on several  
22 occasions. Now, you can look at it both ways, he  
23 had had a number of police contacts, therefore, he  
24 knew what to expect, therefore, he may be  
03:07 25 frightened, or, you know, he had contacts with the



1 police so it was not something out of the  
2 ordinary.

3 Q And so that would be contrasted with a 17-year-old  
4 youth who had had no trouble with the law, never  
03:07 5 even had contact with the police or the jail  
6 system, that that might be a situation where a  
7 witness might be intimidated; is that fair?

8 A Yes.

9 Q Then you talk about the polygraph and the  
03:07 10 suggestion that he went through a six hour  
11 session, or sweat session, and then you make a  
12 number of comments there. Just scroll down,  
13 please. That after he was questioned on the  
14 polygraph he wanted to make a statement, there was  
03:07 15 no prior arrangement that he would make a  
16 statement, and again, the second statement, was  
17 that something you felt was significant, his, what  
18 appeared from the record, his desire to give a  
19 statement?

03:08 20 A Yes.

21 Q And what significance did that have?

22 A It seemed to counter the suggestion that he was  
23 pressured into making the statement.

24 Q And then last, (d):

03:08 25 "If Mr. Wilson's brain was scrambled as



1 a result of his questioning, he did not  
2 complain at the preliminary inquiry or  
3 at trial when he was given every  
4 opportunity to do so."

03:08 5 And I think we heard evidence or even questions  
6 to Mr. Wilson, that lookit, if the police did in  
7 fact pressure you when you gave them the  
8 statement, what happened in August of '69 and  
9 January of 1970 when you went into court with a  
03:08 10 judge present and testified, what pressure did  
11 they have there to force you to do, to give  
12 statements that you knew to be lies. Is that the  
13 point you are getting at here?

14 A Yes.

03:08 15 Q Go to the next page. Sorry, just go back,  
16 paragraph 3, it talks about manipulated by the  
17 police into lying and later giving false evidence,  
18 and references the fact that:

19 "...police were using the statements  
03:09 20 allegedly made to them by Shorty Cadrain  
21 to convince me that David had killed  
22 Gail Miller."

23 And I think this is the statement saying that Ron  
24 Wilson said lookit, I said I saw blood because  
03:09 25 Albert Cadrain said he saw blood, so I must have



1           seen blood; is that right?

2           A           Yes.

3           Q           And then the next page you say firstly:

03:09 4                        "This charge was denied by the officers  
5                        who took Ron Wilson's statement."

6           And that was your interview with Mr. Karst?

7           A           Yes.

8           Q           And:

03:09 9                        "Certainly, the timing of the  
10                       statements, the fact that Wilson  
11                       implicated Milgaard before the so-called  
12                       "sweat sessions", coupled with the fact  
13                       that Wilson's description of the blood  
14                       spots on Milgaard's clothing differed  
03:09 15                       from the description provided by Albert  
16                       Cadrain, mitigate against the accuracy  
17                       of that suggestion."

18           What is the significance of that or what was it  
19           that Wilson described the blood differently than  
03:10 20           Cadrain?

21           A           If in fact the police had planted the idea of the  
22           blood based on what Albert Cadrain had said, I  
23           would have thought that there would be more --  
24           that you would get the same description from  
03:10 25           Wilson that Cadrain had provided, so if Wilson's



1           only reference point was what he had learned, I  
2           expected to find that he would have adopted or he  
3           would have recited what he had been told, but that  
4           didn't happen, it was just a fact to consider.

03:11 5           **Q**       Paragraph 4 talks about the knives. Paragraph 5  
6           talks about the part:

7                        "That the police planted the story that  
8                        Milgaard confessed to getting a girl or  
9                        "hit a girl" in Saskatoon and put her  
03:11 10                  purse in a trash can."

11                    You say:

12                        "This portion of Mr. Wilson's statement  
13                        contains facts in the narrative that  
14                        only Mr. Wilson could know. Wilson and  
03:11 15                  Milgaard were in the bus depot trying to  
16                        telephone Heather Beaton, a former  
17                        girlfriend of Wilson, who was residing  
18                        in Calgary while Wilson and Milgaard  
19                        were in the city. How would the police  
03:11 20                  know that detail to put the conversation  
21                        into the context of the Milgaard  
22                        admission. There is no indication on  
23                        the police file that they were aware of  
24                        Ms. Beaton's existence or identity  
03:11 25                  before it was revealed by Mr. Wilson."



1 And I think in that statement, in his May 23rd  
2 statement, that's when he says that when he and  
3 Milgaard went into the bus depot, that he was  
4 going to phone his friend Heather Beaton, that's  
03:12 5 when Milgaard related the story to him. Correct,  
6 that's what you are referring to?

7 A Yes.

8 Q And you are saying, well, how could the police  
9 plant that story when they didn't know about  
03:12 10 Heather Beaton?

11 A Yes.

12 Q Now, I take it that that observation relates to  
13 the suggestion by Ron Wilson that the police  
14 planted that story in his head; correct?

03:12 15 A Yes.

16 Q And I think what you are saying is, well, the  
17 planting of that idea in his head couldn't have  
18 happened if the police didn't know about Heather  
19 Beaton and the bus depot; correct?

03:12 20 A Yes.

21 Q And would you agree, though, that if Mr. Wilson  
22 was being pressured to give an incriminating  
23 statement and was asked the question by the  
24 police, lookit, have you -- think about when you  
03:13 25 were in Calgary, is there any time, lookit, did



1 David Milgaard not make any admission to you, and  
2 assume that type of questioning, and to the point  
3 where Ron Wilson says, okay, yeah, now I did.

4 Well, where was it that that happened, when did  
03:13 5 that happen, and he says, well, and what he's told  
6 us is that he made it up, and he says, okay,  
7 well -- and then he puts the lie in the context  
8 somewhere in his version because the police have  
9 asked him where and when did it happen. So in  
03:13 10 other words, he then says, okay, well, we were at  
11 the bus depot in Calgary when I was phoning my  
12 friend, that's when he told me, because the police  
13 pressed and said tell me when he told you. I  
14 mean, that's a scenario where the lie could end up  
03:13 15 in his statement; agreed?

16 A Yes.

17 Q And is the problem -- I suppose in that scenario,  
18 and let's assume for a moment that that lie comes  
19 as a result of some coercion or bullying or  
03:14 20 improper police technique, the fact that Ron  
21 Wilson includes the lie with the Heather Beaton  
22 phone call wouldn't make that -- I mean, that  
23 would be possible wouldn't it?

24 A It would be possible. In the circumstances in  
03:14 25 which you describe, that's a possibility. That is



1 an aspect that I had wished to test with Mr.  
2 Wilson.

3 Q Yup.

4 A But in the absence of that, I simply noted it.

03:15 5 Q And I guess, just in that scenario, is there a  
6 difference here between Mr. Wilson saying "lookit,  
7 the police pressured me and I finally lied and I  
8 made up a story" versus going a step further and  
9 using the words "the police manipulated me and  
03:15 10 planted in my mind a story"; so in other words  
11 that the Heather Beaton story, if I can call it  
12 that, might withstand scrutiny if it was just  
13 "yes, the police influenced me inappropriately and  
14 I finally gave them something and I lied", but  
03:15 15 that it doesn't fit when the allegation takes a  
16 step up and is "they actually planted it in my  
17 mind"; is that fair? Am I reading your comment  
18 right?

19 A You're reading my comment right.

03:16 20 Q And so that by Mr. Wilson, in advancing one of his  
21 reasons for lying in saying that "they actually  
22 manipulated and planted it in my mind", was  
23 perhaps creating quite a high bar when you went to  
24 test the credibility of that reason; is that fair?

03:16 25 A He was creating a high bar when I went to test the





1 veracity of this recant, yes.

2 Q But there is a difference, then, between police  
3 bullying and pressuring and planting a story in  
4 your mind; is that agreed?

03:16 5 A Yes.

6 Q And I think the point you are making here is how  
7 could the police plant a story they didn't know  
8 about?

9 A Precisely.

03:16 10 Q Next page. And here you talk about his statement  
11 where he says:

12 "I might also add that I am sure  
13 Milgaard killed that nurse, Gail  
14 Miller."

03:17 15 Then you say:

16 "Contrary to his recent  
17 allegation, Mr. Wilson was convinced of  
18 Mr. Milgaard's guilt before charges in  
19 this case were laid."

03:17 20 So, again, that's taking a look at what he  
21 appeared to say at trial versus what he said in  
22 1990?

23 A Yes.

24 Q Here:

03:17 25 "Mr. Wilson's allegation was denied



1                   categorically by Mr. Karst, whose  
2                   version the writer prefers to the bare  
3                   allegation of Mr. Wilson."

03:17 4                   And I take it, at this point, you had talked to  
5                   Mr. Karst and you hadn't talked to Mr. Wilson?

6           A           That's correct.

7           Q           And, apart from the fact that you didn't talk to  
8                   Mr. Wilson, were you satisfied with Mr. Karst's  
9                   explanation of his treatment of Ron Wilson, was  
03:17 10                   there anything in that discussion that caused you  
11                   to have any concerns that Mr. Karst's treatment of  
12                   Ron Wilson may have been, in any way,  
13                   inappropriate?

14           A           I had no concerns about Mr. Karst's treatment of  
03:18 15                   Mr. Wilson.

16           Q           And then you say, you talk about the Calgary bus  
17                   depot conversation, and you say that it does not:

18                   "There doesn't appear to be any outside  
19                   sources which could inform the police of  
03:18 20                   the detail required to put the  
21                   statements in the context in which it  
22                   appears."

23                   And so, in other words, you said "I can't figure  
24                   out how else the Saskatoon police would know  
03:18 25                   about the Heather Beaton call at the Calgary bus



1 depot to plant it so, therefore, it must have  
2 come from Wilson"?

3 A Yes. The information that I had was that it was  
4 either Mr. Wilson or it was Mr. -- or Mr.  
03:18 5 Milgaard.

6 Q Paragraph 6 you talk about the no recall about the  
7 compact and the fact that Ms. John and Mr. Cadrain  
8 recall the events. So, again, that would be a  
9 case where you are testing known facts, or facts  
03:19 10 which appear to be corroborated, with his  
11 recantation?

12 A That's correct.

13 Q Next page. Your conclusions:

14 "Counsel for Milgaard has

03:19 15 submitted an unsworn statement, signed  
16 by Mr. Wilson in which the latter  
17 recants portions of his trial testimony.  
18 It would also appear that counsel,  
19 further to his remarks contained in his  
03:19 20 June 12, 1990 letter, has discouraged  
21 Mr. Wilson from consenting to an  
22 interview to explore the allegations  
23 contained in the latter's statement."

24 And that was Mr. Asper's letter to you  
03:19 25 complaining about Linda Fisher and Deborah Hall?



1 A Yes, and also the representations made by  
2 Mr. Watson.

3 Q And I take it, at the time you're writing this,  
4 you're of the view that Wilson is not going to  
03:19 5 talk to you?

6 A Correct.

7 Q You say:

8 "I have also learned that Mr.  
9 Wilson is distraught about this episode  
03:20 10 in his life and is only prepared to  
11 entertain questions before a judge.  
12 This latter information raises several  
13 questions concerning the manner in which  
14 this statement was taken; it was  
03:20 15 reported that at least 8 hours of  
16 questioning was involved in the taking  
17 of this seven page document. Further,  
18 it raises several questions about the  
19 accuracy of the statement.

03:20 20 It is not known whether any  
21 documentation or other 'aide memoirs',  
22 if any, were provided to the witness to  
23 refresh his memory. Nor is there any  
24 information whether there were any  
03:20 25 inducements or threats, expressed or



1 implied which prompted Mr. Wilson to  
2 break his 20 year silence."

3 You talk about Mr. Wilson being afraid:

4 "... when they were together in Calgary  
03:20 5 in 1969.)"

6 And you say:

7 "It was reported to this writer that  
8 Mrs. Milgaard unsuccessfully sought to  
9 obtain a statement from Mr. Wilson a  
03:20 10 year ago."

11 Do you know where the source of that information  
12 was?

13 A I believe I heard that from one of the witnesses,  
14 whether it was Mr. Lapchuk or Ms. John, or  
03:21 15 someone.

16 Q Is it possible it was a reference to the 1981  
17 attempt? You say "a year ago".

18 A I said "a year ago". The possibility exists that  
19 it may have gone back to the '81 attempt, but I --  
03:21 20 the fact that I used "a year ago" signals to me  
21 that the information was of fairly recent vintage.  
22 I re -- I seem to recall that it, that that  
23 information may have emanated from Mr. Lapchuk,  
24 who I now know has passed on.

03:21 25 Q And so he --



1 A That's my best recollection.

2 Q And he said "lookit, a year ago they tried to get  
3 a statement from" --

4 A From Wilson to recant.

03:21 5 Q We'll deal with your interview with Mr. Lapchuk a  
6 bit later and maybe that will assist your memory  
7 on that point.

8 A Okay.

9 Q You then go on to say:

03:22 10 "This unsworn statement  
11 contains a number of comments which are  
12 wrong on the basis of the facts  
13 disclosed to us by witnesses and  
14 documents created contemporaneously with  
03:22 15 the events they record. These  
16 statements also contradict an earlier  
17 statement which flowed from a successful  
18 polygraph examination by Mr. Wilson, and  
19 from evidence given under oath at the  
03:22 20 preliminary inquiry and at trial.

21 In these circumstances, little  
22 if any weight can be given to the  
23 unsworn allegations contained in this  
24 recent statement. It also appears that  
03:22 25 the applicant has actively intervened to



1                   discourage or prevent any attempt to  
2                   question this witness to determine the  
3                   accuracy of the statement."

4                   So that would have been your position at the time  
03:22 5                   based on your review of the record, interviews of  
6                   other witnesses?

7           A           Yes, sir.

8           Q           I will, at a later date, be going through your  
9                   examination of Ron Wilson, but generally, after  
03:22 10                   you questioned Mr. Wilson, did your view change at  
11                   all?

12          A           Not significantly, no, it did not.

13          Q           And did it cause you to have -- to put any more  
14                   validity into Mr. Wilson's recantation or less  
03:23 15                   validity?

16          A           It's less validity, sir. It didn't fly.

17          Q           So am I correct that before you interviewed him  
18                   you said "little, if any, weight can be given to  
19                   this recantation", after you interviewed him you  
03:23 20                   had even less confidence in the validity of the  
21                   recantation; is that correct?

22          A           That's correct.

23          Q           003558. This is the letter from Mr. Watson the  
24                   day after, to you, confirming that it was:

03:24 25                                           "Mr. Wilson's position is



1                   that he will be making no statements to  
2                   you. I understand that you are in  
3                   possession of a copy of his June 4th,  
4                   1990 statement to Mr. Henderson. Any  
03:24 5                   further evidence he gives will be before  
6                   a Court.

7                                   I would confirm my advice to  
8                   you that my client was aware from Mr.  
9                   Asper that some other witnesses  
03:24 10                   interviewed by your Department were  
11                   dissatisfied with their treatment. I  
12                   understand from you and Mr. Asper that  
13                   Mr. Asper has written to your Department  
14                   expressing his position with respect to  
03:24 15                   that treatment."

16                   And I think that confirms the -- what you told us  
17                   earlier?

18           A           Yes.

19           Q           Go to 009487. This is a June 22nd, 1990 letter --  
03:24 20                   actually, if we can call up 157090, is a better  
21                   version of that, 157090. While you are looking  
22                   for that maybe we'll start with this version.  
23                   Were you able to find it? We'll just use this  
24                   copy. If you can still see if you can find that  
03:26 25                   other version that has the whited-out or the





1 blocked-out version.

2 This is a letter June 22, 1990  
3 from Mr. Asper to Mr. MacFarlane, and would there  
4 be any significance to you that Mr. Asper is now  
03:26 5 dealing with Mr. MacFarlane, who is, I guess, two  
6 rungs up the ladder?

7 A I guess the significance is Mr. Asper chooses to  
8 go to a higher authority.

9 Q And did you -- was it your perception that there  
03:26 10 was significance to that, in other words he was  
11 doing it for a reason, as opposed to sending it to  
12 one of the Justice lawyers that it was perhaps  
13 intended to send a message?

14 A Yes. He is signaling he wishes no longer to deal  
03:26 15 with me directly.

16 Q And did your relationship, your professional  
17 relationship then with Mr. Asper at this time, did  
18 you still -- were you still talking to him on the  
19 telephone, did you have civil discussions with  
03:27 20 him?

21 A Well, between the 18th and -- certainly, I was  
22 cordial, but I wouldn't call our relationship  
23 warm. I was quite disappointed by his efforts to  
24 frustrate our activity, frustrate our ability to  
03:27 25 discuss Mr. Wilson's statement with him, I did not



1 know -- let me back up.

2 I have always been careful as to  
3 when I make accusations, and particularly personal  
4 accusations, about the conduct of counsel. I knew  
03:27 5 that neither Mr. Wolch nor Mr. Asper possibly had  
6 seen the transcript or heard the tapes of my  
7 interviews. That notwithstanding, they were quite  
8 prepared to accept the word of the witness, absent  
9 any details, that I had behaved improperly, and  
03:28 10 they had converted that information and believed  
11 it without question, and more importantly, they  
12 had acted upon it as if it were true and had  
13 dissuaded someone, some other potential witnesses,  
14 from co-operating. I felt that they had laid the  
03:28 15 charge, held the trial, convicted, and imposed a  
16 sentence on the basis of information that had not  
17 been tested in any way.

18 His, Mr. Asper's, desire to go  
19 two rungs up, that was entirely his prerogative.

03:29 20 Q I see it's 3:30, Mr. Commissioner, we should  
21 probably break here, and I think Mr. Williams will  
22 be back in the fall.

23 Next week we have Joyce Milgaard  
24 finishing up on Monday, Mr. Williams is not  
03:29 25 available next week, and Murray Sawatzky on



1 Tuesday, Wednesday, Thursday.

2 COMMISSIONER MacCALLUM: Okay. And we will  
3 be telling counsel, will we -- or perhaps it's  
4 already been done -- what additional witnesses we  
03:29 5 expect to hear from in September, as well as  
6 finishing up the ones who are outstanding?

7 MR. HODSON: Yes. Counsel have been  
8 provided with the -- the sitting dates have been  
9 confirmed and I will be likely in the first week  
03:30 10 of July, possibly next week, sending a list of  
11 witnesses to counsel, remaining witnesses to  
12 counsel.

13 COMMISSIONER MacCALLUM: And would you  
14 please impress upon them, Mr. Hodson, that,  
03:30 15 although our rules provide for applications for  
16 counsel -- by counsel to have certain witnesses  
17 produced, if that's to be the case I want it to  
18 be done in a timely way, that is to say certainly  
19 before the end of July we would want to know  
03:30 20 about any applications they have to call  
21 witnesses that you don't propose to call.

22 MR. HODSON: Yeah.

23 COMMISSIONER MacCALLUM: Because I think  
24 everybody will agree that this Inquiry has been  
03:30 25 on a long time and we do not want to return here



1 in October.

2 MR. HODSON: What I will --

3 COMMISSIONER MacCALLUM: September is  
4 enough of a stretch.

03:31 5 MR. HODSON: I will, perhaps on the  
6 weekend, send out a tentative list of witnesses  
7 and at least get counsel to start thinking if  
8 there are -- I think the rules provide that if I  
9 do not call them, they can ask me to, and if I  
03:31 10 don't, they can then ask you.

11 COMMISSIONER MacCALLUM: Yes.

12 MR. HODSON: So I will certainly try to  
13 ensure -- I'm assuming that all counsel, they  
14 have a general idea of who's left on my witness  
03:31 15 list, I can tell you that. If there are  
16 witnesses that are not on there, certainly they  
17 will be able to tell me quickly.

18 COMMISSIONER MacCALLUM: Okay. Thanks.

19 (Adjourned at 3:31 p.m.)

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1 **OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATES:**

2 We, Karen Hinz, CSR, and Donald G. Meyer, RPR, CSR,  
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5 contain a true and correct transcription of our shorthand  
6 notes taken herein to the best of our knowledge, skill,  
7 and ability.

8  
9  
10  
11  
12 -----, CSR

13 Karen Hinz, CSR

14 Official Queen's Bench Court Reporter

15  
16  
17  
18 -----, RPR, CSR

19 Donald G. Meyer, RPR, CSR

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