

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
Sheraton Cavalier Hotel at
Saskatoon, Saskatchewan

On Wednesday, October 4th, 2006

Volume 193

Inquiry Proceedings



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Transcript of Proceedings

(Reconvened at 9:00 a.m.)

COMMISSIONER MacCALLUM: Good morning.

ALL COUNSEL: Good morning.

MR. HODSON: Good morning. The last

witness for the Commission to hear from is Pat
Alain. And Ms. Alain is a former RCMP, I think
her title was Chief Serologist or in the
serologist department, and when we looked at
scheduling her evidence we did not have a day
that her evidence would fit and we were concerned
that we were not able to get her in. So we had
her come to Saskatoon about ten days ago, and
Mr. Hardy questioned Ms. Alain under oath, and we
video taped that examination, so I propose to
play it. The reason it's by way of video rather
than having her here was due to scheduling
concerns I had.

So her evidence relates to
the examination of exhibits back in 1992, it's
about an hour and 39 minutes is the evidence of
Ms. Alain, and then after that I will have a few
other DNA matters and some clean-up, so we should
be finished by, hopefully, no later than 11:30
this morning.



1 MS. PATRICIA ALAIN: Yes, I am.

2 MR. JORDAN HARDY: And when did you retire?

3 MS. PATRICIA ALAIN: I retired from the
4 Royal Canadian Mounted Police forensic laboratory
5 in January of 2001.

6 MR. JORDAN HARDY: And as you've mentioned,
7 you were previously employed with the Central
8 Forensic Laboratory in Ottawa?

9 MS. PATRICIA ALAIN: I was actually
10 employed by the directorate of the Forensic
11 Laboratory, the directorate being responsible for
12 all six of the RCMP forensic laboratories.

13 MR. JORDAN HARDY: Okay. And we have a
14 copy of your curriculum vitae from 1997. I'll
15 refer to the document, the document is 287591,
16 and then I understand that you've had a chance to
17 review that document, Ms. Alain?

18 MS. PATRICIA ALAIN: I have.

19 MR. JORDAN HARDY: And is that CV accurate,

20 --

21 MS. PATRICIA ALAIN: Yes, it is.

22 MR. JORDAN HARDY: -- at least until 1997,
23 at which point it was current at least at that
24 time?

25 MS. PATRICIA ALAIN: Yes.



1 MR. JORDAN HARDY: And I just want to touch
2 on a couple of aspects of the CV. I see, in the
3 middle of the first page, there is a section
4 referred to as Employment History, and in the
5 second line of that paragraph it notes promoted
6 to Serology Section Head June 1974, Forensic
7 Laboratory, Edmonton, Alberta?

8 MS. PATRICIA ALAIN: Yes.

9 MR. JORDAN HARDY: And that would be
10 accurate?

11 MS. PATRICIA ALAIN: Yes, it is.

12 MR. JORDAN HARDY: And what were your
13 duties in that position?

14 MS. PATRICIA ALAIN: As a Section Head I
15 was responsible for anywhere from three to nine
16 individuals, over which I was responsible for
17 their -- the administrative work involved in --
18 as a Section Head. I also performed casework, I
19 was involved in their training -- excuse me --
20 additional training, as new techniques became
21 available then it was my responsibility to ensure
22 that these techniques got developed
23 appropriately, and that everyone was proficiency
24 tested on these new techniques as they came
25 along.



1 MR. JORDAN HARDY: Okay. And you mentioned
2 that you attended to actual casework?

3 MS. PATRICIA ALAIN: I did.

4 MR. JORDAN HARDY: And would that involve
5 standard serology lab work, so to speak?

6 MS. PATRICIA ALAIN: Yes, it did.

7 MR. JORDAN HARDY: Including the study and
8 analysis, identification of bodily fluids?

9 MS. PATRICIA ALAIN: Yes.

10 MR. JORDAN HARDY: Okay. And you continued
11 in that position for 15 years, it would appear,
12 until April of 1989?

13 MS. PATRICIA ALAIN: Yes.

14 MR. JORDAN HARDY: And in April of 1989 I
15 see that you were promoted to Chief Scientist,
16 Serology, at the Central Forensic Laboratory in
17 Ottawa, Ontario?

18 MS. PATRICIA ALAIN: Yes.

19 MR. JORDAN HARDY: And what were your
20 duties in that new position?

21 MS. PATRICIA ALAIN: As the Chief Scientist
22 I was responsible for the training, the
23 introduction of any new serological techniques as
24 well as scientific reviews of the, each of the
25 various sections, Serology Sections of each of



1 the laboratories. And, at that same time, I was
2 also asked to assist with the implementation of
3 the new DNA testing by assisting with the
4 acceptance of cases for DNA testing.

5 MR. JORDAN HARDY: Okay. And you continued
6 in that position until July of 1992?

7 MS. PATRICIA ALAIN: Yes.

8 MR. JORDAN HARDY: And would that -- I --
9 we'll refer from time to time to the transcript
10 from your testimony at the Larry Fisher
11 preliminary hearing, and I assume you've had a
12 chance to review that transcript?

13 MS. PATRICIA ALAIN: Yes, I have.

14 MR. JORDAN HARDY: Uh, if I read it
15 correctly, I believe you confirm that this
16 position that you've got described for us, was
17 that an administrative position?

18 MS. PATRICIA ALAIN: It was predomin -- it
19 was administrative in all aspects.

20 MR. JORDAN HARDY: Okay. Now I guess, in
21 comparison to what you mentioned with your work
22 in, or at the forensic laboratory in Edmonton,
23 did you continue to do casework while you were
24 Chief Scientist, Serology?

25 MS. PATRICIA ALAIN: I did not conduct



1 actual casework while I was Chief Scientist,
2 Serology. I would review reports and other
3 documentation from the various sections of each
4 of the other laboratories, but I did not actually
5 conduct casework.

6 MR. JORDAN HARDY: Okay. And just to be
7 certain, when we refer to 'casework', am I
8 correct in assuming that that means actual lab
9 work, sort of hands-on day-to-day lab work?

10 MS. PATRICIA ALAIN: Yes.

11 MR. JORDAN HARDY: Okay. And would I be
12 correct that, for the remainder of your career up
13 until your retirement, that you similarly
14 remained in administrative-type positions; would
15 that be accurate?

16 MS. PATRICIA ALAIN: Yes, it is.

17 MR. JORDAN HARDY: Okay. And we will be
18 focusing today on your work in this case, in the
19 David Milgaard matter in 1992, and as we've
20 covered you were in the position of Chief
21 Scientist, Serology, at that time I believe?

22 MS. PATRICIA ALAIN: Yes.

23 MR. JORDAN HARDY: And we'll get into that
24 in a little bit more detail shortly. Now the
25 documents, Ms. Alain, would indicate that you



1 first became involved in the David Milgaard
2 matter in approximately 1989, and would that
3 sound accurate --

4 MS. PATRICIA ALAIN: Yes.

5 MR. JORDAN HARDY: -- from your
6 recollection?

7 MS. PATRICIA ALAIN: Yes.

8 MR. JORDAN HARDY: And the first record
9 that we have that mentions your name is a memo to
10 Eugene Williams dated August 8th, 1989, and I'll
11 refer to document 002477, and I believe that
12 would be behind tab 2 in your binder.

13 MS. PATRICIA ALAIN: Yes, it is.

14 MR. JORDAN HARDY: Have you had a chance to
15 review this document?

16 MS. PATRICIA ALAIN: I have reviewed this
17 document.

18 MR. JORDAN HARDY: And we'll -- again, it's
19 a memo to Mr. Williams from yourself dated August
20 8th, 1989. I'm not going to review the document
21 in any detail. It would appear to indicate that
22 you were consulted on a number of serological
23 issues arising from Staff Sgt. Paynter's original
24 work in the Gail Miller murder investigation?

25 MS. PATRICIA ALAIN: Yes.



1 MR. JORDAN HARDY: Is that correct? And,
2 in the very first paragraph under the Regina
3 versus Milgaard, it refers to some materials that
4 you would have reviewed including the
5 transcripts, which I assume would be from the
6 original case, the preliminary hearing, and the
7 trial of David Milgaard. It also refers to some
8 comments of Dr. Ferris. Would you have had some
9 materials from Dr. Ferris at that time, do you
10 recall, a report?

11 MS. PATRICIA ALAIN: I do not remember
12 seeing a copy of the report. I do remember -- I
13 do remember reviewing written document, or
14 written comments that Dr. Ferris had made
15 regarding exhibits. It was not in the form of a
16 letter, I'm not really sure what it was actually
17 from, but it did contain written comments from
18 Dr. Ferris.

19 MR. JORDAN HARDY: Okay. It also refers to
20 submissions by Mr. Wolch and Staff Sgt. Paynter's
21 lab reports?

22 MS. PATRICIA ALAIN: Yes.

23 MR. JORDAN HARDY: And would all of this,
24 then, fit with your recollection about your
25 initial involvement in terms of being consulted



1 on some of these initial matters?

2 MS. PATRICIA ALAIN: Yes.

3 MR. JORDAN HARDY: And, again, I am not
4 going to get into the details, we've covered this
5 to some degree within the context of the hearing
6 already, dealing with questions surrounding A
7 Antigens and secretor status and such. I think
8 we'll let the documents speak for itself,
9 although I should mention -- and I believe this
10 would be correct -- that you continued to consult
11 with Mr. Williams with respect to these types of
12 issues, I believe, through 1989 and 1990?

13 MS. PATRICIA ALAIN: Yes.

14 MR. JORDAN HARDY: Okay. And again, as I
15 mentioned, this would include matters surrounding
16 Mr. Milgaard's secretor status, for example?

17 MS. PATRICIA ALAIN: Yes, it did.

18 MR. JORDAN HARDY: And, as well, I believe
19 you were asked to look at any report by a Dr.
20 Peter Markesteyn; is that --

21 MS. PATRICIA ALAIN: I actually do not
22 remember seeing the report by Dr. Peter
23 Markesteyn.

24 MR. JORDAN HARDY: Okay. Does that name
25 sound familiar to you at all or --



1 MS. PATRICIA ALAIN: I -- I -- Dr.
2 Markesteyn was the Medical Examiner in the
3 Province of Alberta, Chief Medical Examiner for
4 many years, and as a result of that I knew him
5 personally because we had worked on many cases
6 together, but I was not aware that he was even
7 involved in this case until you just mentioned
8 it.

9 MR. JORDAN HARDY: Okay. Okay. And I'm
10 not going to turn to those documents that
11 indicate your consideration of such matters, but
12 I will refer to some of the doc. ids just for the
13 record; 002475, 002473, 016135, and 002511.

14 I do want to focus today, Ms.
15 Alain, on some work you conducted in February of
16 1992 relating to the examination of several of
17 the original physical exhibits from the Gail
18 Miller murder investigation, and am I correct
19 that you were asked to review those exhibits for
20 purposes of identifying stains or samples that
21 potentially could be suitable for DNA testing?

22 MS. PATRICIA ALAIN: Yes.

23 MR. JORDAN HARDY: Okay. And I'm going to
24 get to the specifics of your involvement in that
25 respect in just a moment. I do want to set some



1 of the groundwork, though, leading up to your
2 work in that respect, and I'll refer to a couple
3 of documents. The first one is 002479, and I
4 believe that's behind tab 3 in your binder.

5 MS. PATRICIA ALAIN: Yes, it is.

6 MR. JORDAN HARDY: You'll see it's a memo
7 to file from Eugene Williams dated September 6th,
8 1989, and it refers to David Milgaard, Telecom
9 with Barry Gaudette, DNA Analysis, and are you
10 familiar with the name Barry Gaudette?

11 MS. PATRICIA ALAIN: Yes, I am.

12 MR. JORDAN HARDY: And who was that
13 individual?

14 MS. PATRICIA ALAIN: Barry Gaudette, at the
15 time, was the Chief Scientist, Molecular Biology.
16 I knew Barry from the time that he was -- he
17 joined the RCMP Forensic Laboratory in Edmonton,
18 Alberta in 1970 as a -- and I worked with him.
19 He was in the Hair and Fiber Section, and then he
20 transferred to Ottawa, I believe it was around
21 1984-85, to become the Chief Scientist, Hair and
22 Fiber Section. And in '91 or '92, when the Hair
23 and Fiber and Serology Sections were combined
24 into what was called Molecular Genetics, he was
25 the Chief Scientist of the Molecular Genetics



1 Section.

2 MR. JORDAN HARDY: Was he an individual
3 that you reported to at the time? And I guess
4 we'll focus on the time period that we have been
5 discussing thus far, 1989 to 1992?

6 MS. PATRICIA ALAIN: I did not report to
7 him, He and I were equivalent colleagues.

8 MR. JORDAN HARDY: Okay. I'll refer to
9 just a portion of the memo. The first paragraph:

10 "Today I spoke with Barry
11 Gaudette concerning the performance of
12 D.N.A. Testing on certain exhibits
13 tendered at Mr. Milgaard's trial. Mr.
14 Gaudette advised me that he had reviewed
15 the material sent over to Pat Alain, and
16 was of the view that the current
17 technology would not enable him to test
18 the material."

19 And I'm assuming the 'material' he is referring
20 to is the same material that was mentioned in
21 that previous memo that we were looking at, and
22 that we've learned that Mr. Gaudette is deceased,
23 and I think, though, that that's probably a safe
24 assumption.

25 Am I correct that by this



1 time, and again we are looking at September of
2 1989, that you would not have yet received the
3 physical exhibits for purposes of examination?

4 MS. PATRICIA ALAIN: That is correct.

5 MR. JORDAN HARDY: Okay. And we'll re --
6 I'll refer to you a further document, 002480.
7 And you'll see it's a letter to Mr. Williams from
8 Mr. Gaudette dated September 8th, 1989. Just in
9 the very first paragraph:

10 "As per our telephone
11 conversation of Sept. 6th concerning
12 your inquiry as to the possibility of
13 DNA analysis in the Milgaard case,
14 please be advised of the following:
15 1. On the basis of information I was
16 given concerning the age, history and
17 previous examination results of the
18 stains in this case, it appears unlikely
19 that there would be sufficient sample
20 for conventional DNA Typing (RFLP
21 analysis)."

22 I'll turn to page 2 of that letter, point number
23 5:

24 "Since any attempt to apply conventional
25 DNA analysis methodologies at the



1 present time would likely preclude any
2 subsequent analysis attempts, I feel it
3 would be best to delay any request for
4 DNA analysis in the Milgaard case until
5 such time as the new technology is
6 available".

7 And do you have any recollection of having an
8 awareness of this recommendation from Mr.
9 Gaudette in 1989 or having any involvement in
10 this communication with Mr. Williams?

11 MS. PATRICIA ALAIN: I didn't have an
12 actual hand in the preparation of the document,
13 but Mr. Gaudette and I had discussed it and I was
14 aware of what his comments were, mainly because
15 when I had put together my original letter to Mr.
16 Williams I had shown him, at the same time, the
17 documentation that I was working from, and based
18 on the fact that there didn't appear to be much
19 of any stains that had been identified that were
20 still left, that -- and the age of the stain at
21 that time, it would be unlikely that, on the
22 techniques that were available in 1989, that DNA
23 would be successful.

24 MR. JORDAN HARDY: Okay. And I hope --
25 perhaps this is an unfair question cause I'm



1 asking you to think back quite a ways -- but,
2 just at this time, you mentioned sort of what
3 your initial impressions of this staining were
4 from a review of the materials that we see that
5 you initially received. Do you recall some of
6 what stuck out to you, Do you recall some of the
7 items or what your understanding was of the
8 staining, at least at this point in time?

9 MS. PATRICIA ALAIN: At this point in time
10 my impressions basically were that there would be
11 very limited amounts of staining, and that
12 certainly some of the stains might be available
13 for doing serological testing on, however the age
14 of the stains would limit what serological
15 testing could be done. And certainly, on the
16 basis of looking at secretor status of the stains
17 at that time, after 25 or more years it would be
18 impossible to do secretor status testing on any
19 of these stains if it was found.

20 MR. JORDAN HARDY: Okay. And in terms
21 that -- and we'll talk about the actual exhibits
22 shortly, but again at this point in time, do you
23 recall having an understanding of what clothing
24 items, for example, might be of interest for
25 purposes of staining?



1 MS. PATRICIA ALAIN: To be honest, I really
2 don't remember any particular discussions, or
3 anything along that line, as to what, you know,
4 exhibits would be. All I really remember is the
5 fact that I'd been asked to make a comment on the
6 documents, and I wrote the letter that I did
7 based on the documentation that I received.

8 MR. JORDAN HARDY: Okay. I'll continue
9 referring to some documents. The next document
10 is 334337. And this is a memo to file from Mr.
11 Williams, we've moved ahead a couple of years in
12 time, or just over two years in time, from the
13 last document that we referred to, the date is
14 December 30, 1991. You'll see the reference is
15 David Milgaard - Section 690 Application for the
16 Mercy of the Crown, And in the first paragraph
17 beginning in the second sentence, I'll read that
18 portion:

19 "Dr. Emmerson ...",
20 he's referred to a Dr. Vivian Emmerson in the
21 first sentence:

22 "Dr. Emmerson is the head of the Home
23 Office's Central Research Laboratory at
24 Aldermaston, England. The laboratory
25 has conducted DNA research which may be



1 suitable for retrieving DNA that may
2 exist on the physical exhibits in
3 Court."

4 And, again, I don't know if you can recall, but I
5 assume at this point, and I think the documents
6 would reflect, that the physical exhibits from
7 the Gail Miller murder investigation had not yet
8 been received by this point in time by Ottawa?

9 MS. PATRICIA ALAIN: No, they hadn't.

10 MR. JORDAN HARDY: Okay. I will refer you
11 next to 334382, again these documents just to
12 give us context to your involvement. You'll see
13 this is a letter directed to Dr. Emmerson from
14 Eugene Williams dated January 6, 1992. I'll
15 refer you to the second page of this letter and
16 the first full paragraph, it's the paragraph in
17 the middle of the page, I'm going to read that
18 paragraph to you and then just a portion of the
19 second full paragraph. It states:

20 "We understand that advances
21 in DNA testing technology has expanded
22 the scope of materials that may be
23 tested. We have identified five known
24 samples from four individuals to be
25 compared with five unknown samples. The



1 unknown samples are blood and semen
2 stains that were found on the victim's
3 underwear. There were semen stains on
4 the victim's panties, girdle with
5 attached stockings, dress and slip. In
6 addition, there was an attempt to test
7 the residue ...",

8 I believe that's supposed to be 'residue':

9 "... of a semen sample collected from
10 the frozen snow where the body was
11 found. The known samples include hair
12 from the victim's head and pubic area
13 that are not mounted on microscopic
14 slides; blood from the convict; blood
15 from a third party whom the convict has
16 accused of the crime; and a blood stain
17 from a friend of the accused who was in
18 the area shortly after the offence
19 occurred.

20 We would like you to apply
21 any P.C.R. based technologies that you
22 deem appropriate including short tandem
23 repeat and mitochondrial testing to the
24 samples to determine whether there are
25 any matches or exclusions."



1 Again, I think as we've confirmed, I don't
2 believe the physical exhibits would have yet been
3 received, they're shortly to be received by Mr.
4 Williams and yourself for testing at this point
5 in time. Do you recall seeing this letter prior
6 to your work on the exhibits or having an
7 awareness of any of the information mentioned in
8 this letter?

9 MS. PATRICIA ALAIN: I was not aware of the
10 actual letter itself. I was aware that Mr.
11 Gaudette had been exploring the possibility of
12 DNA testing on various exhibit materials, not
13 necessarily just this particular case, but also
14 in other areas that may have been looked at for
15 DNA.

16 MR. JORDAN HARDY: Okay. And Mr. Williams
17 mentions that semen stains were found on the
18 victim's underwear, and he goes on to say there
19 were semen stains on the victim's panties, girdle
20 with attached stockings, dress and slip, and we
21 haven't yet asked Mr. Williams about where that
22 information came from or what the basis of that
23 information was. Do you recall having an
24 awareness of that sort of information prior to
25 your work on the exhibits, which we'll see



1 follows, I guess, just about a few weeks after
2 this letter?

3 MS. PATRICIA ALAIN: Basically, all of that
4 information was the kind of information that I
5 received when I wrote up my initial report, or
6 not really report but the memorandum that I wrote
7 up in regards to the review of the transcript,
8 comments and the laboratory reports, as well,
9 from a variety of people in 1989. That's where I
10 would really have learned what had been found and
11 what had been done with the exhibits at that
12 time.

13 MR. JORDAN HARDY: So the extent of your
14 knowledge would have come from the very sources
15 that we referred to earlier --

16 MS. PATRICIA ALAIN: Yes.

17 MR. JORDAN HARDY: -- in terms of the
18 documents you reviewed, and we will cover this
19 with Mr. Williams in terms of this particular
20 information.

21 I'm going to turn you next to
22 334413. Again, this is just for background,
23 you'll see it's a letter from Dr. Emerson,
24 directed to Mr. Williams, dated January 15th,
25 1992 respecting the review by the Supreme Court



1 of Canada of David Milgaard's conviction for the
2 1969 murder of Gail Miller. Dr. Emmerson says,
3 starting at the first paragraph:

4 "Thank you for your Fax on 6
5 January 1992. Currently we are only
6 using the DQa Amplitype system in
7 casework. We would be unable to offer
8 DNA sequencing or short tandem repeats
9 for casework analysis because we have
10 not completed our validation of these
11 new methods.

12 I would be grateful if you
13 could clarify the position regarding
14 control samples from the victim. It is
15 unlikely that a result would be
16 forthcoming from the hairs. We really
17 require a bloodstain. It would not be
18 possible to report the case without
19 suitable controls from the victim
20 because we need to eliminate the
21 possibility of cross-contamination."

22 And do you understand what Mr. -- or Dr. Emmerson
23 is saying there in terms of requiring suitable
24 controls from the victims, or can you help me
25 understand that a little bit better?



1 MS. PATRICIA ALAIN: Suitable controls from
2 the victim, and basically any other individuals
3 that would be, have been tested against, is a --
4 means that at that point in time a blood sample
5 of a minimum stain size of the stain of a
6 quarter, and that that stain would be used to
7 identify the entire pattern, DNA pattern of the
8 victim. And, unfortunately, at that time, when
9 the DQa Amplitype system, cross-contamination, if
10 there was the presence of other body fluids or
11 other contaminants present, then they could
12 interfere with the identification, and it was
13 very difficult to, at times, to be able to do
14 this.

15 We were also unaware of
16 whether or not the age of the stains would be
17 of -- affected or have an effect on the testing.

18 MR. JORDAN HARDY: So, and I hope I'm not
19 oversimplifying it, but in effect is he
20 suggesting that what is needed is a clear
21 indication of DNA, in this case from Gail Miller,
22 in order to have that as a standard for Gail
23 Miller for purposes of comparison?

24 MS. PATRICIA ALAIN: Yes.

25 MR. JORDAN HARDY: Okay. And it sounds



1 like he is suggesting, perhaps, that the hairs
2 that we saw were mentioned as potential testing
3 points might not be good enough, and that what he
4 had hoped for, was hoping for at this point was a
5 bloodstain; and would that make sense?

6 MS. PATRICIA ALAIN: Yes, it would.

7 MR. JORDAN HARDY: Okay. If we move
8 forward to the next document, the document id is
9 334423, and it is a letter directed to Mr.
10 Emmerson from Mr. Williams dated January 16,
11 1992, and I'll review this letter as well:

12 "Thank you for your letter of
13 January 15, 1992, which contained your
14 requests for clarification of the
15 control samples from the victim.

16 I wish to advise that we can
17 provide a control sample from the victim
18 that contains a blood stain.

19 I noted your comments
20 concerning the use of Dqa amplitype
21 system for casework. I wondered whether
22 DNA sequencing or short tandem repeats
23 could also be used, as a check on the
24 results obtained by the Dqa amplitype
25 system."



1 And I'll move forward to 334449. You'll see it's
2 a memo to Rob Frater, Counsel, Criminal Law, from
3 Mr. Williams, the date is January 21st, 1992, the
4 reference is Release of Exhibits in the Supreme
5 Court of Canada. Mr. Williams writes:

6 "The purpose of this memo is
7 to identify the exhibits which will be
8 required for DNA testing.

9 The following exhibits are
10 required:

- 11 1. Exhibit 6: Pair of pink panties
12 ...",
- 13 "2. Exhibit 7: Girdle with white mesh
14 stockings ...",
- 15 "3. Exhibit 8: Half slip ...",
- 16 "4. Exhibit 9: Brassiere ...",
- 17 "5. Exhibit 10: White uniform type
18 dress ...",
- 19 "6. Exhibit 13: Envelope containing
20 two vials;
- 21 7. Exhibit 15: Sample of head hair
22 from the body of Gail Miller;
- 23 8. Exhibit 35: Toque in brown
24 envelope;
- 25 9. Exhibit 41: Blood sample identified



1 as that of Ronald Dale Wilson."

2 If we move forward to 334429, you'll see it's a
3 letter to Mr. Williams from Mr. Emmerson dated
4 January 21st, 1992, and just in the first, or
5 second paragraph I guess of the letter Mr.
6 Emerson states:

7 "I regret that we can only
8 use the DQa Amplitype system for
9 casework because we have not yet
10 completed our validations using DNA
11 sequencing or short tandem repeats and
12 therefore are not prepared to use these
13 in casework until we have."

14 And then, moving to the last paragraph:

15 "I confirm that we are now
16 able to proceed with this case. If you
17 are prepared to proceed on the above
18 basis please forward the blood and semen
19 stains associated with the case,
20 including any bloodstains taken from the
21 victim."

22 If we move next to 334474. And you'll see it's
23 a, appears to be a memo of sorts, or a Request
24 For Analysis, I guess is the title of the
25 document, directed to the Officer in Charge, CFL,



1 Ottawa, Ontario from Mr. Williams. And the text
2 reads:

3 "The attached list of
4 exhibits is to be examined by forensic
5 specialists to determine the presence of
6 biological material suitable for
7 analysis by a DNA typing methodology."

8 And, unfortunately, we -- our version of this
9 document does not have the list attached that's
10 referred to. Do you recognize, first of all,
11 this form of document, Ms. Alain?

12 MS. PATRICIA ALAIN: Yes, I do.

13 MR. JORDAN HARDY: And who would the
14 Officer in Charge CFL be?

15 MS. PATRICIA ALAIN: The officer in charge
16 of the Central Forensic Laboratory is the
17 individual who basically was responsible for the
18 administration, administrative duties, and
19 assigning casework to the various disciplines
20 that would be required at the time.

21 MR. JORDAN HARDY: Okay. So this document
22 then, and the attached list which we don't have,
23 would have come to the attention of the
24 individual who was going to be assigned this
25 particular task; would that be correct?



1 MS. PATRICIA ALAIN: In most instances,
2 when a casework was coming into the laboratory,
3 it was always addressed to the officer in charge,
4 however, it was generally directed to the
5 individual or the discipline that was going to be
6 doing the casework, the actual typing -- or
7 actual examination of the exhibits.

8 In this instance it was
9 directed to myself because I was the one who had
10 been involved in the discussions previous to
11 this.

12 MR. JORDAN HARDY: Okay. So you recall you
13 received this particular assignment, then?

14 MS. PATRICIA ALAIN: I did.

15 MR. JORDAN HARDY: And what do you recall
16 of the instructions you received?

17 MS. PATRICIA ALAIN: The instructions that
18 I received actually were very limited in the
19 sense of "we're looking for DNA stains that would
20 be suitable for -- we're looking for stains that
21 would be suitable for DNA analysis, and looking
22 for semen stains as well as control blood
23 samples, and, well, can you help us?"

24 MR. JORDAN HARDY: Okay. And do you
25 recall; who did you receive the instructions



1 from?

2 MS. PATRICIA ALAIN: Eugene Williams.

3 MR. JORDAN HARDY: And do you remember what
4 form those instructions came?

5 MS. PATRICIA ALAIN: They were with --
6 basically they were verbal instructions at the
7 time that were with the list of the exhibits that
8 were attached -- on a Supreme Court order.

9 MR. JORDAN HARDY: Okay. And do you recall
10 any particulars about those discussions with Mr.
11 Williams?

12 MS. PATRICIA ALAIN: Not exact discussions.
13 I remember that we did discuss, you know, what we
14 could do but we didn't, until I had actually
15 looked at the exhibits themselves I was very
16 limited, really, in what I could say about what
17 could be done with the stains, because I was not
18 aware of what was present and what the exhibits
19 would look like and, therefore, also depending on
20 the age of the samples and how much of the stains
21 that were there, it was going to have a direct
22 influence as to what could be done with them.

23 MR. JORDAN HARDY: Okay. And if we assume
24 correctly that the list of exhibits that we've
25 already reviewed were the exhibits you were to



1 receive, and perhaps we've stated it already, but
2 just to be certain; what is your recollection of
3 what you had been asked to do with those exhibits
4 that we've mentioned?

5 MS. PATRICIA ALAIN: I was asked to look at
6 the exhibits, certainly certain items of the
7 exhibits such as the panties, the girdle, the
8 half-slip I believe, and in particular for semen
9 stains; and to look at the dress and the bra and
10 any other items from Gail Miller, to determine
11 whether or not there were -- there was a
12 bloodstain that would be sufficient, of
13 sufficient quality, to submit for DNA typing
14 analysis.

15 As well, the samples that
16 were looked at, or that I had also received, were
17 to -- excuse me again -- I was to look at to see
18 whether or not they would be suitable.

19 And I do remember that, in
20 regards to the hair samples, that it was Mr.
21 Gaudette who advised me that they were not
22 suitable for analysis, and I believe that was
23 based on the fact that there were not root --
24 roots attached, or attached to the hairs, at
25 that -- by that point in time.



1 MR. JORDAN HARDY: Okay. And we'll cover
2 this a little bit further, I know we'll have, for
3 reference here, testimony at the Larry Fisher
4 preliminary hearing, and we'll look at your
5 report in just a moment. And perhaps you've
6 answered this question already, but you had
7 mentioned that you were, in effect, in an
8 administrative position at this time. On that
9 basis, did you have any concerns about receiving
10 this particular assignment, which I take it would
11 be hands-on lab work?

12 MS. PATRICIA ALAIN: There was -- well,
13 because I'd been away from doing actual lab work
14 for about three years, there was a bit of a
15 concern. But also, because of the fact that I
16 had had over 21 years of experience in conducting
17 these analyses, and I had available, certainly,
18 all of the protocols that we would use, that it
19 came down to the fact that there really wasn't
20 anyone else available to do that because the
21 testing, what they -- Mr. Williams did ask that
22 the testing be done in Ottawa and there wasn't a
23 Serology Section in the Ottawa laboratory at that
24 time. The individuals that had been in Serology
25 and in the Hair and Fiber Section were now



1 combined into what was called the Molecular
2 Genetic Section, and they were learning and
3 reviewing how to work on DNA technology.

4 MR. JORDAN HARDY: Okay, I had meant to ask
5 you about that, in terms of what was happening
6 with the laboratory at the time. And so when
7 you -- when we refer to a 'Serology Section', was
8 that still in existence, and maybe you've covered
9 it as much as we can. Was there still, for
10 example, individuals working who were assigned
11 the task solely of identifying bodily fluids on
12 items of clothing or otherwise, or what was
13 happening in that respect?

14 MS. PATRICIA ALAIN: At that particular
15 time the Central Forensic Laboratory did not have
16 a Serology Section. Serology Sections existed in
17 our Vancouver, Edmonton, Regina, Halifax and the
18 Sackville, New Brunswick laboratories. As a
19 result of these laboratories I was aware of the
20 fact that individuals were being, they were
21 receiving casework on a daily basis for the
22 examination of bodily fluids, semen, blood,
23 saliva, etc., and as a result of that they were
24 then asked to conduct serological testing and
25 examination to determine possible sources of the



1 hair and blood.

2 MR. JORDAN HARDY: Okay. And do you recall
3 was there any consideration, at this time, to
4 having this task performed by one of these other
5 places that you've mentioned that had an active
6 Serology Section?

7 MS. PATRICIA ALAIN: I had asked Mr.
8 Williams about that, but he felt that he would
9 like -- he wanted to have the exhibits examined
10 in the Ottawa laboratory.

11 MR. JORDAN HARDY: Okay. And was there
12 anyone else in the Ottawa laboratory that was
13 conducting day-to-day work, whether it was a lab
14 technician or otherwise, that could have attended
15 to the task, besides yourself?

16 MS. PATRICIA ALAIN: There was Mrs.
17 Katherine Bowen, and she was -- she had been
18 conducting regular casework up until probably six
19 months prior to the receipt of these exhibits. I
20 had asked her if she would do the exhibits, but
21 she felt that she was not really comfortable in
22 doing something that would become -- that was a
23 high-profile type of case, and I can remember
24 saying "neither am I, but the buck stops here",
25 so basically it was me.



1 MR. JORDAN HARDY: Okay. Okay. And you
2 did have your previous experience to rely on, in
3 any event, the 15 years of working as Serology
4 Section Head and at the forensic laboratory in
5 Edmonton?

6 MS. PATRICIA ALAIN: Yes, I had, as I said,
7 I had over 21 years at that point in time in
8 examining exhibits for blood and semen.

9 MR. JORDAN HARDY: Okay. And we'll look at
10 the contents of your report in just a moment, but
11 just in very general terms, what do you recall
12 doing in relation to this assignment?

13 MS. PATRICIA ALAIN: I can remember getting
14 a call from Mr. Williams, and traveling to the
15 Supreme Court building in Ottawa, and I remember
16 that he had called, and that the exhibits had
17 arrived, and that we met in a small room on the
18 second floor of the Supreme Court building, and a
19 Ms. Ghislaine Bergiven was the -- brought all of
20 the boxes in. All of these boxes were sealed and
21 there was no indication as to exactly what was
22 contained in each box. We went from the -- I
23 went from the list of exhibit items that Mr.
24 Williams had asked for and, in the boxes that
25 were there, I believe that there was just about



1 every exhibit that had been involved in this
2 particular case at the trial.

3 As a result of this, I had to
4 go through the boxes looking for each of the
5 various items, and that's basically what I did.
6 I would go through it, and I would find an item
7 that would be listed, I would look at it, and
8 most of the items were packaged in plastic bags
9 and then in paper envelopes or paper bags, and
10 they were not sealed in the sense of being
11 actually heat-sealed or anything, they were just
12 closed item -- or the containers were basically
13 closed and, therefore, there was -- contamination
14 from one to another was, as far as I was
15 concerned, would be non-existent.

16 And certainly, so then I
17 collected all of the ones that I had been asked
18 to look at, and took those samples with me,
19 returning everything else back into the boxes
20 that they'd come in, and closing them up, and
21 giving them back to Mrs. Bergiven.

22 MR. JORDAN HARDY: Okay. And, just for
23 reference sake, that would have likely been by
24 way of the order of the Supreme Court respecting
25 the release of the exhibits, and we've previously



1 *looked at this document in the course of the*
2 *hearings, and just for reference the document is*
3 *268674?*

4 MS. PATRICIA ALAIN: *Yes.*

5 MR. JORDAN HARDY: *So I'll turn your*
6 *attention now, Ms. Alain, to your report of*
7 *February 17th, 1992, and you've had a chance to*
8 *look at this document?*

9 MS. PATRICIA ALAIN: *I have.*

10 MR. JORDAN HARDY: *And do you recognize*
11 *this document as your report arising from your*
12 *examination of the exhibits in this case?*

13 MS. PATRICIA ALAIN: *I do.*

14 MR. JORDAN HARDY: *And would this be the*
15 *only report that you completed in that respect?*

16 MS. PATRICIA ALAIN: *It was.*

17 MR. JORDAN HARDY: *Okay. And perhaps just*
18 *a couple of general questions to start off with;*
19 *do you recognize this as a standard form of*
20 *report, so to speak?*

21 MS. PATRICIA ALAIN: *This was the general*
22 *format of any laboratory report. However, in the*
23 *particular, in this particular instance there*
24 *were additional paragraphs or additional*
25 *information that was presented that was not*



1 normally presented in a usual -- in the average
2 laboratory report.

3 MR. JORDAN HARDY: And we'll touch on those
4 likely in a moment, but can you just give me a
5 sense of that, what those sections would be that
6 perhaps would not usually be included?

7 MS. PATRICIA ALAIN: In particular, most of
8 the sections, they were the comments that would
9 be in the Remarks section.

10 MR. JORDAN HARDY: Okay. And we'll see
11 that on page 4, it says page 4 at the bottom,
12 it's page 3 of our document, and we'll turn to
13 that in just a moment. But it would be those, it
14 would be the inclusion of those comments, that
15 perhaps would not be standard?

16 MS. PATRICIA ALAIN: Yes. There would
17 often be Remark, there would often be a Remarks
18 portion in the laboratory report but, in general,
19 that was usually the dis -- regarding the
20 disposition of exhibits, whether they were
21 transferred to another individual or returned
22 with the report.

23 MR. JORDAN HARDY: Okay. And in your
24 experience how were these reports usually used,
25 these types of reports?



1 MS. PATRICIA ALAIN: In many instances
2 these types of reports were actually submitted to
3 the Court and, therefore, it was not necessary
4 that the laboratory individual would be required
5 to go to court in -- particularly, in many
6 instances, for preliminary hearings.

7 MR. JORDAN HARDY: Okay. And I assume you
8 would attend in court on occasion with respect to
9 work that you had conducted?

10 MS. PATRICIA ALAIN: Yes, I have.

11 MR. JORDAN HARDY: And would reports of
12 this nature be used as a refreshing tool or as --

13 MS. PATRICIA ALAIN: Yes.

14 MR. JORDAN HARDY: -- the document by which
15 you could confirm what work was --

16 MS. PATRICIA ALAIN: Frequently.

17 MR. JORDAN HARDY: -- attended to? And
18 what did you know of David Milgaard's situation,
19 or case, at the time of your work?

20 MS. PATRICIA ALAIN: I really knew a very
21 limited amount other than the fact that what was
22 perhaps present in newspapers at the time that I
23 would read, because of course I was kinda
24 involved in it so I would read it, and the
25 information that I received. I really had no



1 *opinion, you know, regarding whether this*
2 *individual had been wrongfully convicted, or he*
3 *had been convicted rightfully, or I really had no*
4 *opinion because I hadn't been involved, to any*
5 *extent, in anything.*

6 MR. JORDAN HARDY: *Okay. You were aware,*
7 *generally, of the ongoing application to the*
8 *Supreme Court for a review of his conviction?*

9 MS. PATRICIA ALAIN: *Yes.*

10 MR. JORDAN HARDY: *Okay.*

11 MS. PATRICIA ALAIN: *I can remember that,*
12 *because part of it was that Mr. Williams advised*
13 *me that I could be testifying in front of the*
14 *Supreme Court of Canada, and if that happened*
15 *I -- it would have been a very unusual*
16 *circumstance.*

17 MR. JORDAN HARDY: *Okay. And maybe that*
18 *answers the next question I had for you, and it*
19 *was what your understanding was of how your work*
20 *might fit into those ongoing proceedings. But*
21 *you had an understanding that, obviously, this*
22 *work may lead to some important information for*
23 *purposes of those proceedings?*

24 MS. PATRICIA ALAIN: *Yes.*

25 MR. JORDAN HARDY: *Okay. So we'll just*



1 look at a -- at the report page by page. I see
2 the first page, the first subsection is titled
3 General, and what would this section be intended
4 to relay?

5 MS. PATRICIA ALAIN: The General section
6 would list the items that were received, it would
7 list where they were received, and who they were
8 received from.

9 MR. JORDAN HARDY: So would it be a matter
10 of confirming continuity?

11 MS. PATRICIA ALAIN: Mostly, continuity was
12 the purpose of the General section.

13 MR. JORDAN HARDY: Okay. And again we see,
14 it looks like you attended to obtaining some
15 samples from Mr. Milgaard himself, noted in point
16 one?

17 MS. PATRICIA ALAIN: Yes.

18 MR. JORDAN HARDY: And then, as we've
19 mentioned, you received a number of the exhibits
20 that we've been discussing in point two. I'll
21 move to the next page. The next subheading is
22 Purpose, at the top of page 2, and what would the
23 intent of this section be?

24 MS. PATRICIA ALAIN: The purpose was
25 generally to identify the pro -- not so much the



1 *procedures, but the intent of what the exhibits*
2 *were going to be examined for, so that the*
3 *various sections of the laboratory report, we're*
4 *trying to make it as complete as possible, so*
5 *that it could be submitted to court if required,*
6 *and not have to have the forensic scientist*
7 *present, and that's why you would have what you*
8 *were examining the exhibits for, as to each*
9 *purpose.*

10 MR. JORDAN HARDY: *Okay. And I'm going to*
11 *read through each of these. Perhaps we'll pause*
12 *for just a second.*

13 ***(Tape paused)***

14 ***(Tape resumed)***

15 MR. JORDAN HARDY: *Okay. We paused there*
16 *briefly just to change the tape.*

17 And we're dealing with the
18 *section titled Purpose, and under number 1, I'm*
19 *going to read some of this to you, Patricia.*
20 *Number 1:*

21 *"To examine exhibits 6 ...",*
22 *which we know are the panties:*

23 *"... 7 ...",*
24 *the girdle:*

25 *"... 13 ...",*



1 the vials:

2 "... and 35 ...",

3 the toque:

4 "... for stains or residue suitable for
5 DNA typing analysis."

6 And what would that mean, what would that
7 sentence mean?

8 MS. PATRICIA ALAIN: Basically, I was
9 looking at those items, in particular, for semen
10 or possibly blood that could be used for samples
11 for typing for DNA. They were not necessarily
12 samples of blood that would be suitable for
13 control purposes or standard sample purposes.

14 MR. JORDAN HARDY: And then number 2
15 states:

16 "To examine exhibits 8 ...",
17 which we know is the half slip:

18 "... 9 ...",

19 the brassiere:

20 "... 10 ...",

21 the dress:

22 "... and 15 ...",

23 which was the envelope with scalp hair:

24 "... for stains or samples suitable for
25 known standard purposes as sources of



1 'Gail Miller' "

2 And, similarly, what would that entry mean?

3 MS. PATRICIA ALAIN: Basically, those items
4 would be looked at to see if there was a
5 bloodstain that would be, a pure bloodstain that
6 would be suitable, then, for using as a standard
7 sample for Gail Miller. Because there was not
8 a -- it was not possible, at that time, to obtain
9 a liquid blood sample from the deceased, and
10 there was certainly not anything that could be
11 done at that time that would have been able to
12 obtain from the body.

13 MR. JORDAN HARDY: Okay. And, again, would
14 this tie back, then, to what Dr. Emmerson perhaps
15 was communicating with Eugene Williams about it
16 in terms of requiring a control sample?

17 MS. PATRICIA ALAIN: Yes, for comparison
18 purposes.

19 MR. JORDAN HARDY: Okay. And number 3:
20 "To examine exhibit 41 to determine
21 suitability for DNA typing analysis."
22 And I think that's fairly straightforward?

23 MS. PATRICIA ALAIN: That's the liquid
24 blood sample from Wilson, I think.

25 MR. JORDAN HARDY: Okay. Okay. And then



1 in terms of the next three sections, Methods,
2 Results, and Conclusions, what would the purpose
3 of these sections be in this report?

4 MS. PATRICIA ALAIN: Methods generally was
5 to provide a general description of the methods
6 that would be used, and the Results would be the
7 fact as to what the test results actually were
8 without providing any particular comments
9 regarding those particular results, and the
10 Conclusions would be the area of the report that
11 the discussion of what -- the identification of
12 that stain, or for comparison purposes, whether
13 in a general -- in another report, other than
14 this type of report, it would be -- excuse me --
15 it would provide the areas of where, for example,
16 stains had been -- bloodstains would be
17 identified and then compared to the known
18 standard sample and, therefore, could have come
19 from or could not come from a particular
20 individual.

21 MR. JORDAN HARDY: Okay. And we'll cover
22 this in a little bit more detail, but I see under
23 Methods that it speaks of a visual examination
24 for stains, and could you describe for us very
25 generally speaking -- and I think we'll get into



1 some more detail -- but what would have been your
2 methods with respect to carrying out the purposes
3 1, 2 and 3 as we've mentioned?

4 MS. PATRICIA ALAIN: With -- my visual
5 examination of all stains is, or of all exhibits,
6 is a normal practice, and in the -- in this
7 instance I would be, in order to look for
8 bloodstains, I would be looking at an exhibit for
9 blood that would be -- appear to have the
10 reddish-brown colour of blood, that would be
11 concentrated enough that could be used as a
12 standard sample. I would also be looking at
13 various items for semen stains that -- or I
14 shouldn't say for the semen stains themselves --
15 but for stains that could be semen stains, and
16 that -- then conducting preliminary or
17 presumptive testing on those stains to determine
18 whether or not they actually could be blood or
19 semen. And I would use, for blood I would use
20 visual techniques, that is actual direct looking
21 at the item, and conducting a presumptive test
22 for the presence of blood on the stain. Because
23 there are some non-biological stains that can
24 have the appearance of blood, for example some
25 rust stains or something.



1 read these to you beginning with number 1:
2 "A single stain (approx. 4-5 mm
3 diameter) was found on exhibit 6,
4 (panties). This stain appears to be an
5 uncontaminated semen stain. This stain
6 appears to be of sufficient quantity
7 that a PCR based DNA typing technology
8 could be attempted. No opinion
9 regarding the quality of the stain can
10 be given due to the age of the stain and
11 unknown storage conditions."

12 And would I be incorrect in reading this
13 conclusion as tying into purpose number 1 above?

14 MS. PATRICIA ALAIN: Yes.

15 MR. JORDAN HARDY: Okay. And you described
16 this at the Larry Fisher proceeding, but in terms
17 of identifying this stain, do you recall what
18 steps you had taken? Can you take us through
19 that, in terms of the identification of this
20 single stain that is mentioned?

21 MS. PATRICIA ALAIN: After my visual
22 examinations I found a very, very small stain,
23 which I measured as being 4 to 5 mm in diameter,
24 and after finding that stain I then conducted
25 what is called a fast blue test. That is a test



1 for the presence of acid phosphatase. Acid
2 phosphatase is an enzyme that is found in
3 extremely high quantities in semen, and the --
4 this, generally, is indicative of a semen stain.
5 If you get a positive test, it is generally
6 indicative of a semen stain. After that, the
7 normal method would be to remove some of the
8 stain and to examine it microscopically, or --
9 and then subsequently do blood group typing or
10 secretor testing on it, if it was sufficient to
11 do that, or -- but because the stain was so small
12 that it was felt that the entire stain should be
13 left for DNA testing, and, therefore, no
14 subsequent testing was done on it other than the
15 fact that identified it as being a positive
16 presumptive test on it.

17 I examined the panties in,
18 using the fast blue test, in a variety of the
19 other areas. And I guess, at this point in time,
20 I should also say that being aware of what -- the
21 fact that semen stains had not, other than in the
22 crotch area of the panties which was
23 non-existent, basically, at the time that I
24 examined them --

25 MR. JORDAN HARDY: It had been removed?



1 MS. PATRICIA ALAIN: It had been removed, I
2 know that some of that sample would have been
3 removed by Mr. Bruce Paynter when he did his
4 examinations, and perhaps he, because of the fact
5 that he did not identify any other semen stains
6 present, perhaps in the back of my mind
7 subconsciously it may have influenced how I
8 looked at some of these exhibits.

9 I do know that I did do
10 testing of many areas, and also when I conducted
11 the test, and basically using small pieces of
12 filter paper approximately 1 1/2 by 2 inches
13 long -- 1 1/2 inches wide, 2 inches long, which
14 would be moistened with distilled water, pressing
15 them against the suspected areas, and then adding
16 the fast blue reagent to it. And, once I'd done
17 that, then you would look for an immediate
18 turning of that stain, It would become a very
19 purple stain, a very intense purple stain. When
20 it didn't come up quickly, I would put it aside,
21 and I would leave it. Once those stains were
22 left -- pardon me -- once those papers were left
23 in line over a period of time, for example
24 within, you know, within 15 or 20 minutes, there
25 would be some, purple staining developing, but



1 generally that would not be of concern because
2 you're looking for this very intense visual type
3 of testing result.

4 MR. JORDAN HARDY: And I assume that you
5 received that intense result in relation to this
6 one small stain?

7 MS. PATRICIA ALAIN: Yes, I did.

8 MR. JORDAN HARDY: Okay. So if I've got --
9 and I'll just summarize, if I have got it down
10 correctly you would have, in terms of the panties
11 you would have visually looked at the panties for
12 staining, you would have tactilely examined the
13 panties, --

14 MS. PATRICIA ALAIN: Yes.

15 MR. JORDAN HARDY: -- you would have done a
16 random sampling of the panties -- but I should
17 step back.

18 Was it that you had
19 identified one area in this area particularly, in
20 particular visually, that caused you to conduct
21 the acid phosphatase test in respect to that one
22 area.

23 MS. PATRICIA ALAIN: Yes, it was.

24 MR. JORDAN HARDY: Okay. And it reacted
25 positively, but you had also done the random



1 *sampling that you've mentioned in various areas*
2 *of the panties material?*

3 MS. PATRICIA ALAIN: *Yes, I did.*

4 MR. JORDAN HARDY: *Okay. Number 2:*

5 *"Bloodstains present on exhibits 9 ...*
6 *and 10 ... are of sufficient quantity*
7 *suitable to be used as know samples for*
8 *'Gail Miller'. No opinion regarding the*
9 *quality of the stains can be given due*
10 *to the age of the stains and unknown*
11 *storage conditions."*

12 *And would I be correct that that conclusion*
13 *follows from Purpose number 2 above?*

14 MS. PATRICIA ALAIN: *Yes.*

15 MR. JORDAN HARDY: *Okay. But I think hat*
16 *we confirmed this, or it should be obvious from*
17 *number 1, obviously there were no other areas*
18 *that you suspected, on the panties, of having*
19 *semen present?*

20 MS. PATRICIA ALAIN: *No. From the random*
21 *testing that I did, plus from my visual and*
22 *tactile screening the item, I really didn't feel*
23 *that there was any other present.*

24 MR. JORDAN HARDY: *Turning to the next*
25 *page, number 3, conclusion number 3:*



1 *"Bloodstains present on exhibit*
2 *35(toque) are of sufficient quantity*
3 *that a forensic DNA analysis could be*
4 *attempted. No opinion regarding the*
5 *quality of the stains can be given due*
6 *to the age of the stains and unknown*
7 *storage conditions."*

8 *And would I be correct that that follows from*
9 *purpose number 1 on the pervious page?*

10 MS. PATRICIA ALAIN: *Yes.*

11 MR. JORDAN HARDY: *Okay. Conclusion number*
12 4:

13 *"Because it is not possible to determine*
14 *the source of the residue in exhibit*
15 *13(vial), no opinion can be given as to*
16 *suitability of the sample for forensic*
17 *DNA analysis."*

18 *And, again, would that follow from purpose number*
19 1 --

20 MS. PATRICIA ALAIN: *Yes.*

21 MR. JORDAN HARDY: *-- on the previous page?*
22 *Conclusion number 5:*

23 *"There are sufficient hair roots in*
24 *exhibit 15 that a forensic DNA analysis*
25 *could be attempted."*



1 And would I be correct that that would follow
2 from purpose number 2 on the previous page?

3 MS. PATRICIA ALAIN: Yes.

4 MR. JORDAN HARDY: Conclusion number 6:

5 "No potential semen stains were
6 identified on exhibit 7 ...",

7 the:

8 "(girdle)."

9 And would I be correct that that followed from
10 purpose number 1 on the previous page?

11 MS. PATRICIA ALAIN: Yes.

12 MR. JORDAN HARDY: And would you have
13 conducted a similar testing approach, with
14 respect to the girdle, that you have just
15 explained in terms of the panties?

16 MS. PATRICIA ALAIN: Yes, I did.

17 MR. JORDAN HARDY: Would that have
18 included, then, the visual/tactile methods?

19 MS. PATRICIA ALAIN: Yes.

20 MR. JORDAN HARDY: Would it have also
21 included the random sampling that you've
22 mentioned?

23 MS. PATRICIA ALAIN: Random sampling of
24 various areas using the fast blue --

25 MR. JORDAN HARDY: Okay.



1 MS. PATRICIA ALAIN: -- test for the
2 presence of acid phosphatase.

3 MR. JORDAN HARDY: Okay. Conclusion number
4 7:

5 "The blood in exhibit 41(Wilson) is
6 considered unsuitable for analysis."
7 I believe that would follow from purpose number 3
8 on the previous page; --

9 MS. PATRICIA ALAIN: Yes.

10 MR. JORDAN HARDY: -- would that be correct?
11 Okay. Then the next section of the report is the
12 Remarks section that you previously referenced
13 and I believe, to summarize, it sets out various
14 DNA testing options based on your findings in
15 relation to an examination of the exhibits.
16 Would the information with respect to these DNA
17 options have been drafted by yourself, or did you
18 include this information?

19 MS. PATRICIA ALAIN: I included the
20 information, and -- but the actual comments
21 themselves were probably drafted by myself and
22 Mr. Gaudette.

23 MR. JORDAN HARDY: Did you have DNA
24 expertise, so to speak, DNA testing expertise at
25 this time?



1 MS. PATRICIA ALAIN: No, I didn't.

2 MR. JORDAN HARDY: And who would you have
3 been relying upon then -- and I shouldn't say
4 "relying upon" -- but who, in effect, would have
5 had that expertise in terms of offering these
6 options forward?

7 MS. PATRICIA ALAIN: Basically, at that
8 particular time, Mr. Gaudette was in charge of
9 the Molecular Genetics Section, as it was called,
10 and a Mr. Ron Fourney was another individual in
11 the laboratory who actually did some DNA, was
12 conducting testing using -- for DNA samples using
13 the RFLP method, and also responsible for
14 introducing various other scientists to that
15 particular method.

16 MR. JORDAN HARDY: So would I be correct
17 then, Dr. Fourney, would he be the individual,
18 then, with the expertise, so to speak?

19 MS. PATRICIA ALAIN: With the actual
20 hands-on expertise.

21 MR. JORDAN HARDY: Okay. And I'm not going
22 to read all the remarks. I see on the last page,
23 number 2, it states, 'based on the suspect stains
24 and the available technologies AMP FLP
25 technology, as done by Roche Diagnostics, is



1 recommended as the best option.'

2 And do you recall that being
3 the recommendation at that time?

4 MS. PATRICIA ALAIN: That was the
5 recommendation based on the information that I --
6 that Mr. Gaudette felt would be the most
7 appropriate --

8 MR. JORDAN HARDY: Okay.

9 MS. PATRICIA ALAIN: -- at that time.

10 MR. JORDAN HARDY: Now was Dr. Fourney or
11 Mr. Gaudette present during your examination of
12 the exhibits?

13 MS. PATRICIA ALAIN: No.

14 MR. JORDAN HARDY: Okay. And was anyone
15 else present or did anyone else assist you?

16 MS. PATRICIA ALAIN: No -- excuse me --
17 there was no one that actually was present, and
18 no one assisted me in this particular matter.

19 MR. JORDAN HARDY: Okay. So I'd like to
20 talk with you a little bit about the dress now,
21 Ms. Alain, and this follows in large part from
22 your testimony at the Larry Fisher preliminary
23 hearing, and would I be correct in summarizing --
24 and we'll look at the passage in a moment -- that
25 you confirmed, during your testimony at the Larry



1 Fisher preliminary hearing, that you examined the
2 dress for semen?

3 MS. PATRICIA ALAIN: Yes, I did.

4 MR. JORDAN HARDY: Okay, and maybe let's
5 just refer to that briefly, you won't have the
6 document but I'll -- it's a short section that I
7 will read to you. And just for reference sake,
8 the document is 287452, and again -- oh, you do,
9 I see you do have a copy there? I can read it to
10 you, though, whatever you prefer. Again,
11 beginning at page 17, at the bottom of the page
12 beginning at question 84, and I am going to read
13 this:

14 "Q All right."
15 And this is an examination by Mr. Sinclair, I
16 should have mentioned, of the Crown beginning at
17 84:

18 "Q All right. Did you conduct an
19 examination of the dress that you
20 identified this morning?

21 A Yes, I did.

22 Q And can you describe that process,
23 please?

24 A Again, I used exactly the same
25 process. I examined it visually and



1 tactilely with my fingers, and then
2 conducted again probably close to a
3 dozen areas that I had tested, using
4 the acid fast blue test.

5 Q Again, this is filter paper that you're
6 talking about?

7 A Yes, it is.

8 Q And what size of filter paper are you
9 using then to --

10 A Again, filter paper was the same size,
11 approximately one inch by about two
12 and a half inches.

13 Q All right. And these -- the filter
14 paper test, if I can call it that, you
15 say that you would have applied that on
16 a random basis to the dress?

17 A Yes.

18 Q Do you have any notion where you
19 randomly selected, or was it on the
20 outside, the inside, or all over?

21 A I covered both the front and back,
22 inside.

23 Q Yeah.

24 A That is, the -- that part of the
25 garment that would be worn closest to



1 the body, and then on the outside as
2 well, looking for areas that I
3 would -- that I would suspect to be
4 seminal fluid. Again, either
5 visually, by the appearance, or by
6 feeling the item.

7 Q And did you find any areas that you
8 suspected were seminal staining?

9 A No, I did not. That's why I did a
10 random testing, using the acid fast
11 blue test.

12 Q Okay. Now, in that connection and if I
13 understand your testimony correctly, you
14 did not examine all of the area of the
15 panties or all of the area of the dress
16 with the filter paper and the acid
17 phosphatase?

18 A I did not cover the entire item using
19 the acid fast blue test.

20 Q All right. You did look at the entire
21 item though?

22 A Yes, I did.

23 Q Okay. At the time that you looked at
24 the dress was there any other apparent
25 staining on it that you could observe?



1 A Most of the items that I examined or
2 the clothing I examined there were
3 significant blood stains, as well as
4 stains that appeared to be blood that
5 had been diluted; that is, perhaps a
6 concentrated stain, the item may have
7 been wet and there was what I would
8 describe as being diluted blood stains
9 on some of the items -- on the items
10 as well."

11 Does that passage I just read to you fit with
12 your recollection, Ms. Alain?

13 MS. PATRICIA ALAIN: Yes, it does.

14 MR. JORDAN HARDY: And would you adopt that
15 testimony as accurate in terms of the steps you
16 took with the dress?

17 MS. PATRICIA ALAIN: Yes, it does.

18 MR. JORDAN HARDY: Okay. Now, in terms of
19 your examination of the dress for semen stains,
20 when I read your report -- and I'm hoping you can
21 help me through this, and perhaps I am giving it
22 too technical a reading -- but as we covered in
23 the Purpose section, you had listed four items
24 that I understand you had examined for stains or
25 residue suitable for DNA typing analysis, and



1 again you mentioned that would be for blood or
2 for semen, and those items were the panties, the
3 girdle, the vials, and the toque, and I note that
4 the dress isn't listed in that particular Purpose
5 but, instead, that the dress is listed in Purpose
6 2 for purposes of looking for a suitable for
7 known standard purposes as sources of Gail
8 Miller, which you had explained to us as likely
9 being blood. Can you help me understand that,
10 and I'll call it an apparent inconsistency -- I
11 may be wrong and maybe you can help me though
12 this -- but can you help me understand that
13 apparent inconsistency between the testimony that
14 indicates that you did examine the dress, and the
15 Purpose, which does not seem to indicate that you
16 examined the dress for seminal stains?

17 MS. PATRICIA ALAIN: One of the things that
18 I should mention, basically, is that when an item
19 is received, regardless of what the actual
20 purpose of my examination would be, that in cases
21 where it was, for example, a sexual assault case,
22 that it was a normal routine or habit not to
23 examine just, for example, the underwear, like
24 you would generally, like, examine the outer
25 clothing, everything that the -- that had been



1 submitted, all right, for -- from the victim, and
2 as a result it was just a common practice that
3 you did it out of habit. But in this particular
4 instance, I believe that part of it was because
5 it was a common practice and I was just so
6 accustomed to doing that that I would do that,
7 but in this instance, also, I would be looking at
8 the fact as to whether or not the stains that we
9 were looking at for blood to be used as a
10 standard sample, I would also want to know
11 whether or not those stains that I saw were, in
12 fact, pure stains, that is purely blood, and not
13 contaminated with semen or urine or other unknown
14 possible materials, and that's why I would have
15 done random testing on it. And after I'd done
16 the random testing, my -- of the particular
17 dress, on the inside of the back of the dress, on
18 the inside of the front at the top of the dress,
19 that is what would be work closest to the body,
20 and again on the outside in the front and in the
21 back, and again mostly at this point in time
22 probably from the waist down, because in the
23 front the stain was very, very concentrated in
24 what would be the bust area of the dress, and so
25 I just wanted to make sure that I didn't really



1 miss anything that would be of suitable forensic
2 value and so that would be why I would, you know,
3 I would look at it, and I can remember doing, you
4 know, like all those tests.

5 MR. JORDAN HARDY: Right. Okay. That's
6 helpful.

7 MS. PATRICIA ALAIN: But very randomly
8 and --

9 MR. JORDAN HARDY: And perhaps that answers
10 it, but does that help us understand why it
11 wouldn't have been itemized as one of the
12 exhibits that you had looked at for residue or
13 stains that would be suitable for DNA typing
14 analysis?

15 MS. PATRICIA ALAIN: Most likely, I
16 probably didn't enter it in because it wasn't one
17 that I had been asked to look at definitely, you
18 know, definitively for semen, because I was
19 supposed to be looking at it more for blood, for
20 blood as being -- to be used as a standard
21 sample, and that really is probably the best way
22 that I can reflect what it was. It was something
23 that I did because it was a normal practice for
24 me to do that type of thing, and -- but when I am
25 putting in my Purposes, that basically I would



1 list the exhibits that were used for that purpose
2 and put them in.

3 MR. JORDAN HARDY: Okay. So these would,
4 am I hearing that correctly, these would match
5 more particularly the instructions you had
6 received?

7 MS. PATRICIA ALAIN: Yes.

8 MR. JORDAN HARDY: Notwithstanding that,
9 you would have conducted the more general tests
10 for blood and semen on the dress?

11 MS. PATRICIA ALAIN: Yes.

12 MR. JORDAN HARDY: Okay. And that's --

13 MS. PATRICIA ALAIN: And all the other
14 exhibits as well.

15 MR. JORDAN HARDY: Okay. And maybe that
16 helps us understand the Conclusion as well. When
17 I looked at this report, if I turn to conclusion
18 6, it states, 'specifically, no potential semen
19 stains were identified on exhibit 7, the girdle'.

20 And I don't see a similar
21 entry which would confirm, for example, that no
22 potential semen stains were identified on the
23 dress, and perhaps you've described it already,
24 but can you help me understand why that
25 conclusion wouldn't be included similarly?



1 MS. PATRICIA ALAIN: I can almost, perhaps,
2 say that it should have been included there. And
3 again, more because of the fact that I really
4 hadn't been asked to look at it, but I did look
5 at it and it would -- I would say that I missed,
6 or I just didn't include it in there, but if
7 it -- that's probably where it should have been
8 included as well.

9 MR. JORDAN HARDY: Okay. Okay. And would
10 that go similarly with the other clothing items,
11 then, that -- I think what you are saying for us
12 is that you would have examined all of the
13 clothing items for blood and semen?

14 MS. PATRICIA ALAIN: Yes.

15 MR. JORDAN HARDY: Okay. So if we could go
16 back, and you were doing the report again, that
17 would be something that you would include in the
18 conclusions then?

19 MS. PATRICIA ALAIN: Yes, I would.

20 MR. JORDAN HARDY: Okay. So, again, you've
21 confirmed that you would have looked at all of
22 the clothing exhibits for seminal stains?

23 MS. PATRICIA ALAIN: Yes.

24 MR. JORDAN HARDY: Okay. And the methods
25 would have been the same as we've covered in --



1 MS. PATRICIA ALAIN: Yes.

2 MR. JORDAN HARDY: -- your testimony today
3 and as outlined in your -- in the transcript from
4 your testimony at the Larry Fisher preliminary
5 hearing?

6 MS. PATRICIA ALAIN: Yes.

7 MR. JORDAN HARDY: And those methods would
8 have been in line with the protocols of the day,
9 so to speak?

10 MS. PATRICIA ALAIN: Yes, they were.

11 MR. JORDAN HARDY: Okay. And I'll just
12 refer briefly, I don't think we need to turn to
13 it, but counsel for the RCMP has kindly provided
14 us with a document, the document id is 335730,
15 and the relevant page number is page 104 of that
16 document. And the, you won't have this in front
17 of you, Ms. Alain, but the date is October 16th,
18 1992, it refers to a Biology Section Methods
19 Guide, which I understand would have been a
20 document used by the RCMP in terms of setting out
21 protocols in this area, and page 104 talks about
22 the examination of exhibits for body fluids and
23 substances and semen in particular, and it's a
24 short section, I'll read it to you, '2, semen,
25 items other than swabs



1 (1) examine items visually for translucent to
2 whitish stains, artificially aged or older stains
3 will appear yellowish in colour.

4 (2) using fingertips lightly feel fabric items
5 for areas of stiffness. Seminal fluid
6 occasionally makes lightweight fabrics stiff.

7 (3) examine items using ultraviolet light looking
8 for white fluorescence.

9 (4) test each suspect stain using a fast blue
10 test for acid phosphatase. Record the size,
11 shape, location and results of test of all
12 stains.

13 (5) if positive remove sufficient stain by
14 excision or scraping and examine a small portion
15 for spermatozoa using phase contrast microscopy.

16 (i) record positive results by grading the number
17 of heads, complete sperm, epithelia cells, yeast,
18 and bacteria.'

19 And I think you've mentioned,
20 because of the size of the stain, you didn't
21 proceed with step five; correct?

22 MS. PATRICIA ALAIN: Correct.

23 MR. JORDAN HARDY: Okay. Now I see, I
24 noted, one thing I did note; does that sound like
25 something you would have been familiar with at



1 the time, then, in terms of a standard protocol
2 for testing?

3 MS. PATRICIA ALAIN: Yes.

4 MR. JORDAN HARDY: This is a little bit
5 after the time of your examination but I assume,
6 and I think that your -- counsel for the RCMP has
7 assumed as well, that it would likely be very
8 similar to this in terms of the protocol that
9 would be in place in February of 1992.

10 I notice that it doesn't
11 mention the random sampling process that you
12 indicated you had proceeded with, and would that,
13 would the random sampling approach, though, be,
14 similarly, something that was standard, or done
15 by standard at the time?

16 MS. PATRICIA ALAIN: Yes. Basically it
17 says to examine the item using the fast blue
18 test, and that's really how we did the fast blue
19 test, we would randomly sample various areas of
20 the garment, and then -- and particularly the
21 first ones that we would go to would be the
22 stains that we had identified as a visual type of
23 stain. Either because of its colour or its feel,
24 those would be the first ones to be looked at,
25 and then after that we would use it to check out



1 other areas, and it's just in a general pattern,
2 to see if there was anything else that might be
3 present.

4 MR. JORDAN HARDY: And had you considered
5 at time, or was it considered at the time, an
6 approach which I've had referred to me as full
7 mapping of a garment, in other words what I
8 understand is covering the entire garment with
9 filter paper and conducting the acid phosphatase
10 test?

11 MS. PATRICIA ALAIN: Yes.

12 MR. JORDAN HARDY: Was that an approach
13 that was considered in 1992, OR that you are
14 aware of?

15 MS. PATRICIA ALAIN: I was aware of the
16 technique, certainly, but one of the -- the -- I
17 guess in our laboratories, really, the reason why
18 we didn't really use it was that we didn't really
19 have the facilities for the spraying of the
20 paper. Because you would need to have it, an
21 area that would be large enough to put up the
22 piece of paper, and that you could spray it, and
23 there were -- there was obviously health concerns
24 because some of the -- because -- because some of
25 the chemicals that were used, you know, were not



1 necessarily the best if you were exposed to them
2 on a -- you know, like in a spray format, because
3 you would be breathing them, and so that was
4 probably the most likely reason why.

5 I have to admit that, you
6 know, hindsight being best, that yes, if I'd have
7 really considered it and -- that would have been
8 the way to go would have been to have used the
9 full mapping procedure on that, and -- and I
10 admit that that was something that may have
11 cost -- it may have sort of crossed my mind. But
12 again, if I am sort of subconsciously aware of
13 the fact that these other individuals had
14 examined it, and, you know, and as a result of
15 that what are my chances of finding something, so
16 I would just do a random method or a mat.

17 MR. JORDAN HARDY: And, again, it doesn't
18 indicate as well, in the protocol that we've just
19 read, that full mapping should be done?

20 MS. PATRICIA ALAIN: No. It does now.

21 MR. JORDAN HARDY: Okay.

22 MS. PATRICIA ALAIN: As a result of this
23 particular test the biology -- the procedures
24 manual was rewritten so that -- and all the
25 required areas and requirements in order to do



1 the testing of, or the full testing, were made
2 available, and it was then forwarded to every
3 laboratory, every foren -- RCMP Forensic
4 Laboratory, at that time, were advised to conduct
5 full mapping for the presence of semen.

6 MR. JORDAN HARDY: Okay. We talked about
7 the panties and the dress. Just covering some of
8 the other items, the half-slip, I think you've
9 have confirmed for us, then, that you would have
10 also checked that item for seminal stains?

11 MS. PATRICIA ALAIN: Yes.

12 MR. JORDAN HARDY: Using the same methods
13 that we've talked about?

14 MS. PATRICIA ALAIN: Yes.

15 MR. JORDAN HARDY: And do you have a
16 recollection of that or can you remember that?

17 MS. PATRICIA ALAIN: I have to admit,
18 that's one of the few exhibits that I -- that and
19 the girdle in particular, I have very vague
20 memories on those two. I remember specifically
21 the panties and the dress and the bra, but I'm
22 really sorry, for some reason or other those
23 don't seem to be highlighted in my memory.

24 MR. JORDAN HARDY: Okay, and we know that
25 you checked the brassiere for blood, but you also



1 would have checked the brassiere for semen stains
2 as well?

3 MS. PATRICIA ALAIN: Yes, I would do a fast
4 blue test on the bloodstain to try and make sure
5 that there wasn't any semen present there.

6 MR. JORDAN HARDY: Okay. And that would be
7 a similar process that you've been describing for
8 us, then, for example would you do the random
9 sampling or would you have done the random
10 sampling on the brassiere?

11 MS. PATRICIA ALAIN: Most likely, I would
12 only have tested the actual bloodstain for that,
13 because of the fact that we were -- I was looking
14 for a concentrated stain that would be used
15 suitable for a standard stain.

16 MR. JORDAN HARDY: Okay. And sorry if I
17 missed it, but just going back to the half-slip,
18 you would have conducted the random sampling,
19 though --

20 MS. PATRICIA ALAIN: Yes.

21 MR. JORDAN HARDY: -- on the half-slip for
22 seminal stains?

23 MS. PATRICIA ALAIN: Yes.

24 MR. JORDAN HARDY: Okay. And the girdle
25 we've mentioned, and your report refers to it as



1 well, I think we have covered that. So I, and I
2 just, I have to ask you the question, Ms. Alain,
3 you have been helpful in explaining all of that
4 to me. Is there any possibility at all that
5 you're mistaken or confused in your recollection
6 and that you only looked at the dress, the
7 brassiere, and the half slip for blood and not
8 for semen?

9 MS. PATRICIA ALAIN: I have to admit that,
10 because this was the last actual laboratory
11 testing exhibits that I conducted at the time,
12 that for some reason or other the memory of
13 examining the panties and the dress are so clear
14 that I could actually describe to you the table,
15 the -- what was on the table, everything about
16 that, and for some reason or other that's been in
17 my memory since the time that I examined them,
18 and I fully believe that what I can remember is
19 what I did and what results I obtained at that
20 time.

21 MR. JORDAN HARDY: And that includes an
22 examination of the dress, as you've mentioned,
23 for seminal stains?

24 MS. PATRICIA ALAIN: Yes.

25 MR. JORDAN HARDY: Okay. And I take it you



1 would have -- and I think you confirmed at the
2 Larry Fisher preliminary hearing -- you would
3 have had notes in relation to your work, and we
4 don't need to cover that, I think it was
5 confirmed that by that time those notes were no
6 longer available; is that right?

7 MS. PATRICIA ALAIN: Yes, it is.

8 MR. JORDAN HARDY: Okay. And that's fully
9 set out in document 075178, and again, I don't
10 think we need to turn to that.

11 I don't know if you can
12 recall this, I'll ask the question, but would you
13 have reported -- or provided a more complete
14 report to anyone at the time of your work? And
15 when I say "more complete", I don't know if
16 that's the right word, but in terms of you
17 explaining to me that you perhaps now wish you
18 would have included in the conclusion an
19 indication that no seminal stains had been
20 located on the dress or some of these other
21 items; would that be information that you had
22 provided to anybody at the time in some other
23 form, or can you recall?

24 MS. PATRICIA ALAIN: No, not likely.

25 MR. JORDAN HARDY: Okay.



1 MS. PATRICIA ALAIN: Well, perhaps what I
2 should say is 'not likely', but perhaps in a
3 verbal question/answer session with other
4 individuals that might have been involved, there
5 is a possibility they might have asked me did I
6 look at these things, and is what did look at
7 doing, but I do not remember specifically
8 providing that information to any individual,
9 particularly in a written form, or anything other
10 than verbal comments that may have been made.

11 MR. JORDAN HARDY: Okay. And we'll see as
12 we, and we're going to move forward in time
13 through a few other occurrences that you weren't
14 directly involved in, but they source back to
15 your work in terms of indicating that the key
16 stain for study is that small semen stain on the
17 panties that you had located, and I don't know if
18 you can recall for us Ms. Alain, or not, but
19 whether any of these individuals, whether it be
20 Dr. Fourney or anyone else, had ever come back to
21 you and said "Ms. Alain, did you check all of
22 these exhibits for seminal stains?", and if you
23 recall any sort of conversation of that nature?

24 MS. PATRICIA ALAIN: No, I don't remember.

25 MR. JORDAN HARDY: Okay. So move forward.



1 *Shortly following your report we come to another*
2 *document, which is 231497, and you'll see it's a*
3 *letter directed to yourself from Mr. Williams,*
4 *Mr. Gaudette is copied on it, dated February*
5 *24th, 1992, and in the first paragraph Mr.*
6 *Williams states:*

7 *"Thank you for your recent*
8 *letter which outlined the results of*
9 *your examination of the trial exhibits*
10 *that were obtained from the Supreme*
11 *Court of Canada, concerning the*
12 *reference to the Court of the*
13 *application by David Milgaard for the*
14 *mercy of the Crown."*

15 *And I noticed he mentions:*

16 *"Thank you for your recent*
17 *letter ...";*

18 *do you recall providing Mr. Williams a letter*
19 *than outlined your results?*

20 *MS. PATRICIA ALAIN: Umm, I -- he would --*
21 *there was not a particular letter. Basically*
22 *what he was referring to as a letter would be the*
23 *laboratory report.*

24 *MR. JORDAN HARDY: That we just reviewed?*

25 *MS. PATRICIA ALAIN: Yes.*



1 MR. JORDAN HARDY: Okay. Then, in the
2 third paragraph, Mr. Williams states:

3 "In view of your remarks
4 concerning the suspect stain on Exhibit
5 6, and your analysis of the suitability
6 of available DNA techniques on pages 3,
7 and 4, of your letter, the Department of
8 Justice will follow the recommendation
9 that Roche Diagnostics be approached to
10 perform AMPFLP DNA analysis on the
11 sample from Mr. Milgaard and the Court
12 exhibits. Accordingly, I will
13 correspond with Mr. Barry Gaudette,
14 Chief Scientist, DNA Laboratory, Central
15 Forensic Laboratory to finalize
16 arrangements to secure the testing of
17 the sample and the exhibits."

18 And does this correspondence and plan of action
19 match with your recollection of what happened
20 following your work?

21 MS. PATRICIA ALAIN: Yes, it does.

22 MR. JORDAN HARDY: Okay. One other
23 document for reference sake, 010283. This
24 shortly follows, in fact the day after the
25 document that we just referred to, dated February



1 25, 1992, a letter to Mr. Williams from Mr.
2 Gaudette. You'll see, in the first paragraph, he
3 states:

4 "This letter is further to
5 the laboratory report of February 17
6 from Patricia Alain, in which we
7 recommended that AmpFLP technology as
8 conducted by Roche Diagnostics was the
9 best remaining option for immediate
10 forensic DNA analysis of exhibits in the
11 David Milgaard case."

12 Mr. Gaudette goes on, and I won't read it, to
13 discuss Roche Diagnostics' position on performing
14 AmpFLP testing and, as a result of Roche
15 Diagnostics' position, a list of options for Mr.
16 Williams to consider, at least from Mr.
17 Gaudette's perspective. And if we move to the
18 next page, at the top of the page, it indicates:

19 "Since all of these options
20 have serious drawbacks, the
21 recommendation of the RCMP is that none
22 of them should be taken at this time.
23 Rather, analysis of these exhibits
24 should be delayed until such time as one
25 or more of the recommended PCR



1 technology options (Short Tandem
2 Repeats, AmpFLPs, or Mitochondrial DNA
3 analysis) is ready for casework
4 application."

5 Do you recall this recommendation following from
6 your work on the exhibits, Ms. Alain?

7 MS. PATRICIA ALAIN: I don't recall the
8 actual making of that recommendation, but I was
9 aware of the fact that Mr. Gaudette had made that
10 recommendation.

11 MR. JORDAN HARDY: You would not have then,
12 necessarily, been involved directly in these
13 types of considerations?

14 MS. PATRICIA ALAIN: No. I basically was
15 informed by Mr. Gaudette, more or less on a "by
16 the way, I did this", type of a thing.

17 MR. JORDAN HARDY: Okay. And just to
18 continue forward -- and we're almost through --
19 would I be correct that your next direct
20 involvement in this matter would have been the
21 release of the exhibits to be transported to
22 North Carolina for DNA testing at Roche
23 Diagnostics?

24 MS. PATRICIA ALAIN: Yes.

25 MR. JORDAN HARDY: And I think the return



1 of those exhibits to you afterwards?

2 MS. PATRICIA ALAIN: Yes.

3 MR. JORDAN HARDY: And I'm not going to
4 turn to the document, but for reference sake,
5 there is a document outlining that matter at
6 245562.

7 I'll turn next to 334822.

8 And you'll see it's a memo dated September 9th,
9 1992 from the -- or to the file from Mr.
10 Williams, Subject: Milgaard Exhibits, Pat Alain,
11 and the first paragraph indicates:

12 "Today Pat Alain called to
13 find out whether she should keep the
14 court exhibits from the Milgaard
15 trial.",
16 indicates that you had retained those exhibits,
17 and notes that you have assumed new
18 responsibilities and are no longer connected
19 directly to the day-to-day operations of the lab.
20 Mr. Williams states:

21 "After consulting with Mr.
22 Fainstein, I asked her to retain
23 possession of all exhibits until further
24 notice."

25 So you had, again, been left with the exhibits at



1 meeting on 95 February 28 at the Central
2 Forensic Laboratory ... I am providing a
3 letter covering all actions and memories
4 of my attendance at the Supreme Court of
5 Canada Building when I received exhibits
6 related to this matter."

7 And do you recall the context of this
8 correspondence or your understanding in terms of
9 why this information was required from you at the
10 time?

11 **(Tape paused)**

12 COMMISSIONER MacCALLUM: And if we could
13 just back up to the 231473 discussion, for -- to
14 resume there, please. 15 minutes.

15 (Adjourned at 10:34 a.m.)

16 (Reconvened at 10:54 a.m.)

17 **(Tape resumed)**

18 MR. JORDAN HARDY: Okay. As I mentioned,
19 we'll move ahead a few years now, Ms. Alain, and
20 turn next to document 231473. You'll see it's a
21 letter dated March 1st, 1995 to Mr. Ron Fainstein
22 from yourself, and just the first paragraph
23 states:

24 "As requested from our
25 meeting on 95 February 28 at the Central



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Fourney states:

"After reviewing the current status of the remaining Miller case exhibits and in regard to the letter of Feb. 21, 1995 from Mr. Milgaard's lawyers ... my suggestions concerning further DNA testing are noted below."

And if we just move down to the third paragraph, in the first sentence of that paragraph:

"After Mrs. Pat Alain of the RCMP CFL examined the exhibits in 1992, it was apparent that one semen stain of approximately 1 cm x 1 cm was still present on Gail Miller's panties."

And I think perhaps you've confirmed this for us, but do you recall having any direct involvement in these DNA considerations during the mid-1990's?

MS. PATRICIA ALAIN: No.

MR. JORDAN HARDY: Okay. Turn next to 230919. You'll see it's a letter directed to Inspector Orem from Katherine Bowen dated September 3rd, 1997, just in the first sentence of the letter:

"The following exhibits were



1 received personally from C/M P. Alain at
2 the Central Forensic Laboratory ...",
3 then a number of the exhibits are mentioned, and
4 again it appears you had maintained possession of
5 these items at least until this time, and at this
6 point they were handed over to Katherine Bowen or
7 Kathy Bowen; and does that fit with your
8 recollection?

9 MS. PATRICIA ALAIN: Yes, it does.

10 MR. JORDAN HARDY: And I assume that's,
11 perhaps, the last time that you would have been
12 in possession of the exhibits?

13 MS. PATRICIA ALAIN: Um, I believe there
14 were still some packaging materials that I
15 returned, again I gave to Mrs. Bowen on a
16 subsequent date, but they were basically just
17 packaging materials.

18 MR. JORDAN HARDY: Okay. Just one question
19 I had thought of going back to our discussion
20 relating to the panties. You had confirmed that
21 a portion of the crotch of the panties was
22 missing when you had received the panties?

23 MS. PATRICIA ALAIN: The entire crotch area
24 was missing from the front seam to the back seam,
25 there was no fabric in between other than the



1 elastic along the sides.

2 MR. JORDAN HARDY: Okay. And did you
3 receive the cut-out portion?

4 MS. PATRICIA ALAIN: No, I did not.

5 MR. JORDAN HARDY: And that wasn't
6 available, then, for your analysis, obviously?

7 MS. PATRICIA ALAIN: Not being fully aware
8 of the amount of stain that Mr. Paynter may have
9 been -- may have removed at that time. He would
10 not have retained the stained portion that he had
11 removed, that because the practice in 1969 was
12 that it would be discarded at the end of the
13 testing. However, by the mid-80's we were
14 retaining the stains, and would have returned the
15 portions back with the exhibit when the exhibits
16 were returned to the initial submitter.

17 MR. JORDAN HARDY: Okay. And it's been
18 confirmed for us through other witnesses that Dr.
19 Ferris, of course, also had dealings with the
20 panties in the later 1980's, and I believe had
21 removed the portion of the crotch, and I'm not
22 certain exactly what the evidence was, but in any
23 event, it was no longer available when someone
24 had gone back to Dr. Ferris to ask for it.

25 In -- at the time you were



1 dealing with this in the early 1990's, would that
2 have been -- what would have been the protocol in
3 terms of keeping a portion of material that had
4 been excised or cut away from the exhibit?

5 MS. PATRICIA ALAIN: At that point in time
6 any forensic scientist that examined an item and
7 removed a portion of it, it was then stapled to a
8 3 x 5 index card, it would be written on what
9 this -- what item it was from, and after the
10 forensic tests had been conducted it would be
11 returned to the submitter with the other exhibit
12 material.

13 Most likely what we were
14 doing as a practice at that point in time, the
15 index card would be placed in the bag with the
16 original item, so that it was returned to the
17 original submitter.

18 MR. JORDAN HARDY: Okay. And I think
19 you've mentioned for us, that was the approach
20 taken even extending back in time to the
21 mid-1980's, or beginning thereabouts?

22 MS. PATRICIA ALAIN: Prior to, actually
23 up -- that would be about the mid-1980's we were
24 using that approach. Prior to that, around the
25 mid-70's, we would be retaining, each scientist



1 would retain the samples that they had collected,
2 and then we decided that it would be appropriate
3 to return them with the exhibits.

4 MR. JORDAN HARDY: Okay. And, again, we've
5 confirmed you've had an opportunity to review the
6 complete transcript of your testimony at the
7 preliminary hearing?

8 MS. PATRICIA ALAIN: Yes I have.

9 MR. JORDAN HARDY: And if I didn't cover it
10 earlier, do you adopt that complete transcript as
11 accurate, or can you confirm the accuracy of that
12 information for us?

13 MS. PATRICIA ALAIN: To the best of my
14 recollection, at that particular time, that was
15 as accurate as I could remember.

16 MR. JORDAN HARDY: Okay. And just one last
17 question arising from document 231387. If we
18 turn to page 3 of that document I see your name
19 is mentioned, and it appears that you had done
20 some further work with respect to at least the
21 coat and the dress, and it mentions in the first
22 line of this document that is a fax to Inspector
23 Orem:

24 "Black coat ... and uniform
25 dress ... were examined by K.L. Bowen



1 and myself to determine button sizes and
2 placement."

3 MS. PATRICIA ALAIN: Yes.

4 MR. JORDAN HARDY: Does that fit with your
5 recollection?

6 MS. PATRICIA ALAIN: Yes, it does.

7 MR. JORDAN HARDY: And there would be no
8 chance that your examination of the dress on this
9 occasion is being confused with your examination
10 of the dress from an earlier point in time?

11 MS. PATRICIA ALAIN: No.

12 MR. JORDAN HARDY: Okay. Thank you. I am
13 just going to pause the tape for a moment to
14 check my notes, Ms. Alain, to make sure I've
15 covered everything.

16 **(Tape paused)**

17 **(Tape resumed)**

18 MR. JORDAN HARDY: To conclude, I have no
19 further questions for you, Ms. Alain, and I want
20 to thank you for attending today from Ottawa and
21 providing video tape testimony. Thank you.

22 MS. PATRICIA ALAIN: You're welcome.

23 **(Tape ends)**

24 MR. HODSON: Mr. Commissioner, I can
11:03 25 indicate that you noted one error in the



1 transcript and there are a few others. That
2 transcript was put together just to facilitate
3 the showing of the video today, it was done on
4 fairly short notice because we didn't think we
11:03 5 would be playing it. The court reporters will
6 have the official transcript of the tape that
7 will be the record.

8 COMMISSIONER MacCALLUM: Thank you very
9 much.

11:03 10 MR. HODSON: And just a couple of matters
11 to finish up here by way of reports, and just to
12 identify a couple of documents for the benefit of
13 counsel and on the public record.

14 There is a DNA chronology, if
11:03 15 I can call up 340380, and there is a document
16 that we prepared that provides a chronology of
17 those events relating to the DNA issues and a
18 doc. ID. I will not be going through it, but it
19 will be posted on our web site and is available
11:04 20 for the parties, and as well I think the DNA
21 documents are sorted in a folder on CaseVault for
22 the benefit of the parties.

23 If we can just go through a
24 couple of other documents relating to the DNA
11:04 25 issue and some reports from some scientists.



1 he mapped the entire dress as well as the
2 underpants, screened for that process, and then
3 if we can go to page 085 and it talks about the
4 findings that he found on the panties and the
5 dress and the semen.

6 If we can then go to, and
7 again I'll just identify this document for the
8 record, 340176, this is our letter to Mr. Barber,
9 Mr. Barber resides in England, and we sent him a
10 letter asking him to confirm some information
11 with respect to DNA and I'll briefly go through
12 that. We chose not to have Mr. Barber attend in
13 person. This report, or his report, which I'll
14 go through, was circulated to all parties and no
15 parties identified that they had questions for
16 him, but essentially we asked him to confirm his
17 two reports from 1997 and then posed the
18 question:

19 "If you had been asked to conduct DNA
20 testing on the exhibits and samples in
21 this case in 1988 or later in 1992,
22 please describe for us what you would
23 have done, what testing technique(s)
24 would have been applied ... and your
25 opinion on the likelihood of effective



1 DNA results in 1988 and 1992
2 respectively?"

3 And the significance of those dates,
4 Mr. Commissioner, 1988 is when Dr. Ferris
11:07 5 attempted some DNA testing and 1992 is when
6 Federal Justice officials at the lab in North
7 Carolina did some DNA testing, and then go, we
8 went on to ask him to provide his opinion that
9 based on his:

11:07 10 "...examination of the exhibits in 1997,
11 what is your opinion as to the earliest
12 point in time when effective DNA testing
13 could have been conducted on the
14 exhibits, and by what methods and
11:08 15 procedures?"

16 And if I can call up 340172, and this is
17 Mr. Barber's September 26, 2006 letter to the
18 Commission and he confirms that his earlier
19 reports are accurate and then he answered this
11:08 20 question essentially as to:

21 "If you had been asked to conduct DNA
22 testing ... in 1988 or later in 1992 ...
23 what would you have done..."

24 And what would be the likelihood, and if we can
11:08 25 go to the next page, I will go through this, he



1 says :

2 "In 1988 we had available one DNA
3 analysis technique, an RFLP based method
4 known as multilocus profiling. It was
5 powerful in terms of its ability to
6 discriminate between individuals but,
7 like all RFLP techniques, MLP required a
8 significantly greater quantity of sample
9 in order for a profile to be produced
10 relative to the later PCR based
11 technology. The quantity of semen I
12 identified both on Gail Miller's panties
13 and dress was considerable and had this
14 sample been fresh and in good condition
15 there would have been a very good chance
16 that MLP results would have been
17 successfully obtained. However due to
18 the time that had elapsed between 1969
19 when the semen was deposited and 1988 I
20 cannot say one way or the other if DNA
21 degradation within these samples would
22 have progressed to a point in 1988 that
23 precluded the production of an MLP
24 profile or part of an MLP profile. RFLP
25 technology was more susceptible to

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1 degradation effects when compared with
2 PCR technology partly because it targets
3 much longer sections of the DNA molecule
4 and partly because of the difference in
11:09 5 the amount of sample required to produce
6 a result. The result that I obtained in
7 July 1997 using the PCR based STR
8 technology was a complete result but did
9 reveal that a significant amount of the
11:10 10 DNA present within the semen staining
11 had degraded.

12 In 1992 the methods we had
13 available within our organization for
14 casework samples were an RFLP method
11:10 15 known a single locus profiling and an
16 PCR based method known as DQ-alpha. As
17 with MLP I am unable to see whether or
18 not the level of DNA degradation reached
19 in 1992 within the semen staining would
11:10 20 have precluded the production of an SLP
21 profile. The issues with SLP are
22 similar to those described for MLP,
23 DQ-alpha however is a more sensitive PCR
24 based method and targets much shorter
11:10 25 sections of the DNA molecule. DQ-alpha



1 has a similar success rate as the STR
2 test carried out in 1997 and so had
3 DQ-alpha tests been performed in 1992 on
4 the same material that produced STR
11:10 5 results in 1997 then it is likely that
6 DQ-alpha results would have been
7 obtained successfully both from the
8 panties and dress."

9 And scroll down, the next question dealt, asked
11:11 10 him to describe the methods that Mr. Barber used,
11 that he would have used:

12 "...in 1988 and 1992 to identify
13 potentially relevant staining on the
14 physical exhibits?"

11:11 15 In other words, what he would have done in
16 checking for semen on the panties, dress and
17 coat, and he refers to the report of September
18 18th and he says:

19 "It is standard practice within my
11:11 20 organisation to conduct this process..."

21 And that's the acid phosphatase test,

22 "...over the whole surface of the items
23 being tested. This method of semen
24 location is the most sensitive and
11:11 25 reliable method available. This



1 procedure has been standard practice
2 within the FSS for many years and was
3 well established prior to 1988."

4 And then on the next page, the question:

11:11 5 "Given your examination of the exhibits
6 in 1997, what is your opinion as to the
7 earliest point in time when effective
8 DNA testing could have been conducted on
9 the exhibits, and by what methods and
11:12 10 procedures?"

11 Mr. Barber responds:

12 "The earliest DNA method available to us
13 within the FSS that had a good chance of
14 success, given our actual results in
11:12 15 1997, is DQ-alpha and this was
16 introduced in early 1992. DQ-alpha is
17 considerably less discriminating than
18 either the MLP, SLP or STR methods but
19 it is quite likely that it would have
11:12 20 produced results suitable to show that
21 the semen I found on the dress and
22 panties was not David Milgaard's.
23 Whilst it is quite likely that the
24 DQ-alpha test would have unequivocally
11:12 25 eliminated David Milgaard as the source



1 of the semen, its power to provide
2 positive evidence of association with
3 Larry Fisher was limited. The chance
4 that DQ-alpha would produce a
5 coincidental match between unrelated
6 samples is between 1 in 5 and 1 in 50."

7 And:

8 "I am unable with any confidence to
9 assess the likelihood that either of the
10 RFLP methods ... would have produced
11 either part of a profile or a complete
12 profile."

13 And then just down to the next paragraph:

14 "Within the FSS the earliest example of
15 a highly discriminating PCR based method
16 was an STR method known as Quad that
17 became available for use in casework in
18 August of 1994. Had the Quad test been
19 conducted in 1994 it is very likely that
20 results would have been obtained from
21 both the semen on the panties and on the
22 dress. Typically, with Quad, the chance
23 of a coincidental match is around 1 in
24 10,000, hence, it was powerful enough to
25 produce very strong evidence of



1 association."

2 So those are the reports, Mr. Commissioner, on
3 the DNA.

4 There's one other report that

11:13 5 I want to simply identify for the record and that
6 is 339765. Actually, sorry, 339762 first, and
7 this relates to the evidence of Anne-Elizabeth
8 Charland who was an RCMP, or I think is an RCMP
9 scientist. She examined the garments, the Gail
11:14 10 Miller garments in 1997 as part of the Larry
11 Fisher prosecution. She did some DNA work I
12 believe as well as looked at Gail Miller's glove,
13 and that glove had not been examined by anybody
14 prior to 1997, and identified a substance on the
11:14 15 glove and did some testing. We followed up
16 through counsel for the RCMP, Mr. Gibson, and
17 posed a number of questions to Ms. Charland about
18 the work she did, and if we can go to 339765,
19 this is her response, and I'll only go through
11:14 20 parts of it.

21 Go to the next page. And the
22 question here relates to the glove that was
23 reviewed in 1997 and the questions that we posed
24 to Ms. Charland was to try and identify whether
11:15 25 testing could have been done on this glove back



1 in 1969 relating to the substance that was found
2 on the glove, and she responds under part (a)
3 that:

4 "The material found on the glove was not
11:15 5 identified as blood. As the stain in
6 question was limited in both quality and
7 quantity, only the presumptive test was
8 performed. This test indicates the
9 presence of blood but it is not
11:15 10 considered a positive test as false
11 positive results may be obtained under
12 certain conditions."

13 And then goes on to talk about the DNA and says:

14 "...I cannot positively identify what
11:15 15 biological material yielded the DNA that
16 produced the typing profile for P28."

17 That's the glove.

18 "However, the possibility that blood did
19 in fact contribute DNA to the sample
11:15 20 removed from the glove cannot be
21 excluded."

22 And then onto the next page -- actually, go to
23 page 768, the question was asked that assuming
24 that the substance on the glove was blood, could
11:16 25 it have been typed in 1969 using the ABO system,



1 and:

2 "Assuming the stain was typed as "A",
3 could scientists in 1969 have gone
4 further and sub-typed or sub-grouped
11:16 5 this stain in such a way that one could
6 eliminate other type "A" persons as
7 donors based upon the fact that their
8 blood showed a different sub-type or
9 sub-grouping?"

11:16 10 And the answer provided that:

11 "Item P28 ... was not submitted to the
12 RCMP forensic laboratories for analysis
13 until November 1997."

14 And it wasn't examined.

11:16 15 "The area of staining identified on the
16 glove was limited in quantity and
17 quality. The condition of the sample
18 would therefore have seriously hampered
19 any typing efforts using the techniques
11:16 20 in use at the time (ABO typing). It is
21 my opinion that based on the poor
22 quality of the sample as well as the
23 limitations of the ABO typing techniques
24 available at the time, the material
11:16 25 found on the glove would not have been



1 typed had it been found in 1969. Other
2 typing techniques such as enzyme typing
3 did not become routine in the RCMP
4 forensic laboratories until the mid to
11:17 5 late 1970's but considering the quality
6 of the sample, it is doubtful that any
7 testing would have been attempted."

8 And then goes on to talk about the sub-grouping
9 techniques and indicates that -- yeah,
11:17 10 sub-grouping techniques:

11 "...were not in use in the RCMP forensic
12 laboratories at the time and were never
13 implemented into routine casework to
14 process forensic samples. Please keep
11:17 15 in mind that clinical laboratories
16 usually work with liquid blood samples
17 where the quantity and quality are not
18 in issue. As such, techniques that are
19 routinely used in a medical laboratory
11:17 20 setting may not be appropriate for
21 forensic use."

22 Again, the balance of the report,
23 Mr. Commissioner, I don't propose to go through,
24 but that is filed. There may be one area of
11:17 25 further follow-up with Ms. Charland with a



1 question or two from counsel for one of the
2 parties that I'll follow up with Mr. Gibson and
3 if anything further comes of that I'll certainly
4 file it.

11:17 5 One final matter to address,
6 on June 28th, Mr. Commissioner, you advised the
7 parties that any party who wished to have
8 additional witnesses called that I did not call
9 could apply to you in writing to have witnesses
11:18 10 called. You provided a deadline of July 15th.
11 On July 14th the Commission did receive a request
12 from counsel for Mr. Caldwell, Mr. Karst, Mr.
13 Kujawa and the Saskatoon Police Service to have
14 the Commission call five individuals. They were
11:18 15 Jim McCloskey, Dan Lett, David Roberts, Cam
16 Fuller and Timothy Appleby. I had had earlier
17 contact with counsel for Mr. Lett and Mr. Roberts
18 and had tried to make arrangements with Mr.
19 McCloskey. Counsel for Mr. Lett and Mr. Roberts
11:18 20 advised me that their clients objected to being
21 called as witnesses on the basis that they did
22 not believe the proposed evidence of their
23 clients was relevant to the Commission's Terms of
24 Reference and as well they had other
11:19 25 constitutional objections to the compellability



1 of their evidence.

2 In response to the July 14th
3 application, the position on behalf of Mr. Lett
4 was confirmed and as well I had discussions with
11:19 5 counsel on behalf of Mr. McCloskey who advised us
6 that it was not possible for him to attend, and
7 as I've informed the parties today, you have
8 ruled that the five witnesses will not be called
9 as witnesses, so I simply state that for the
11:19 10 record.

11 And on one related matter to
12 Mr. McCloskey, you will recall that when Mr.
13 Henderson testified, there were two document
14 issues outstanding, one I think at the conclusion
11:19 15 of his evidence through his counsel Mr. Killeen,
16 efforts were made to have Mr. McCloskey send us
17 the box of documents from Centurion Ministries
18 which arrived after, or at the time Mr.
19 Henderson's evidence was done. We were allowed
11:19 20 to review the documents, we were not allowed to
21 use them in any other way, we were allowed to
22 hold them, and so I've had extensive
23 correspondence with Mr. Killeen on that and I was
24 advised I think yesterday that I am now allowed
11:20 25 to have his documents included in our database,



1 and so there's a box, we've reviewed them and
2 identified a small number of documents that we do
3 not already have. They will be scanned and put
4 in the database for the parties, Mr. McCloskey
11:20 5 won't be here, and as well Mr. Henderson, I think
6 when he finished his evidence, or in the course
7 of it indicated that he would continue to look
8 for his documents and Mr. Killeen advises that we
9 should not expect to get anything from Mr.
11:20 10 Henderson on that front.

11 Lastly, Dr. Butt is a
12 forensic pathologist that we had asked to prepare
13 a report on a couple of issues relating to
14 retention of exhibits and some systemic issues
11:21 15 and we expect to receive that report sometime
16 this month and I'll provide it to the parties.

17 Lastly, just for the record,
18 the submissions, counsel had been advised that
19 oral submissions will be made on December 11th
11:21 20 and December 12th in Saskatoon, that's a Monday
21 and Tuesday. Written submissions are to be filed
22 with the Commission by November 13th. I will
23 then distribute all those submissions to the
24 parties. It's not my intent to make those
11:21 25 submissions public at that time, but rather, they



1 will become public at the time of oral
2 submissions. Parties will have until November
3 30th to file rebuttal submissions and again those
4 will be distributed.

11:21 5 So that is it for me. I'm
6 not sure if I'm supposed to ring a bell and say
7 we're done. I will have more formal concluding
8 remarks in December, but if I could just at this
9 time express my thanks to the staff, all of the
11:22 10 staff and to counsel for the last six weeks, we
11 have got a lot accomplished by way of witnesses
12 to get the hearing finished, so I would like to
13 express my appreciation to counsel and the staff
14 for allowing us to proceed in the fashion we did,
11:22 15 and I think with that, Mr. Commissioner, we're
16 probably set to adjourn to December 11th.

17 COMMISSIONER MacCALLUM: Thanks, Mr.
18 Hodson.

19 Ladies and gentlemen, this
11:22 20 is, there remains much work to be done in this
21 matter, so this is really not the time for
22 speeches, but it will probably be the case that
23 not everyone present will be here for oral
24 submissions, so I don't want to let the occasion
11:22 25 pass without publicly expressing my thanks to the



1 document management staff, in case they, or some
2 of them, will not be present for the oral
3 submissions. Without their devotion and skill
4 this huge task could not have been completed as
11:22 5 efficiently, or perhaps not as all, as was the
6 case.

7 The reporters, of course,
8 deserve special mention for their unerring
9 accuracy and patience with all of us.

11:23 10 I don't know if Irene and Ed
11 Beitel will be back, our clerk, and Ed has
12 performed yeoman, and I might say pro bono
13 service for us all this time, and is an example
14 to us all in that respect.

11:23 15 Messrs. Wilde and Esson, my
16 security people, have become good friends and
17 have been unfailing in their devotion to their
18 duty.

19 To the media, not all of you
11:23 20 have been back, I'm sure. Some of you have been
21 here practically every day. You are to be
22 congratulated. Anyone who covers Court
23 proceedings, and this is quite a lot like a Court
24 proceeding, will realize the powerful anaesthetic
11:24 25 effect of sitting there for any length of time



1 listening, so congratulations for having survived
2 the experience, and your contributions are not
3 only essential to a public inquiry, but very much
4 appreciated by everybody involved.

11:24 5 So we will have the occasion,
6 following oral submissions on the 11th and 12th,
7 to say, perhaps, a few more words of thanks to
8 individuals and, of course, I hope that I don't
9 forget to make the necessary acknowledgements in
11:24 10 my report which will come out, God willing,
11 before too long.

12 MR. HODSON: Thank you.

13 COMMISSIONER MacCALLUM: To the 11th and
14 12th, Irene, is it, and do we know the place and
11:24 15 time?

16 MR. HODSON: Bessborough.

17 COMMISSIONER MacCALLUM: Bessborough Hotel?

18 MR. HODSON: Yes. I think at 1:00 on the
19 Monday.

11:24 20 COMMISSIONER MacCALLUM: 1:00 on the 11th
21 at the Bessborough? Thank you.

22 (Adjourned at 11:25 a.m.)
23
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