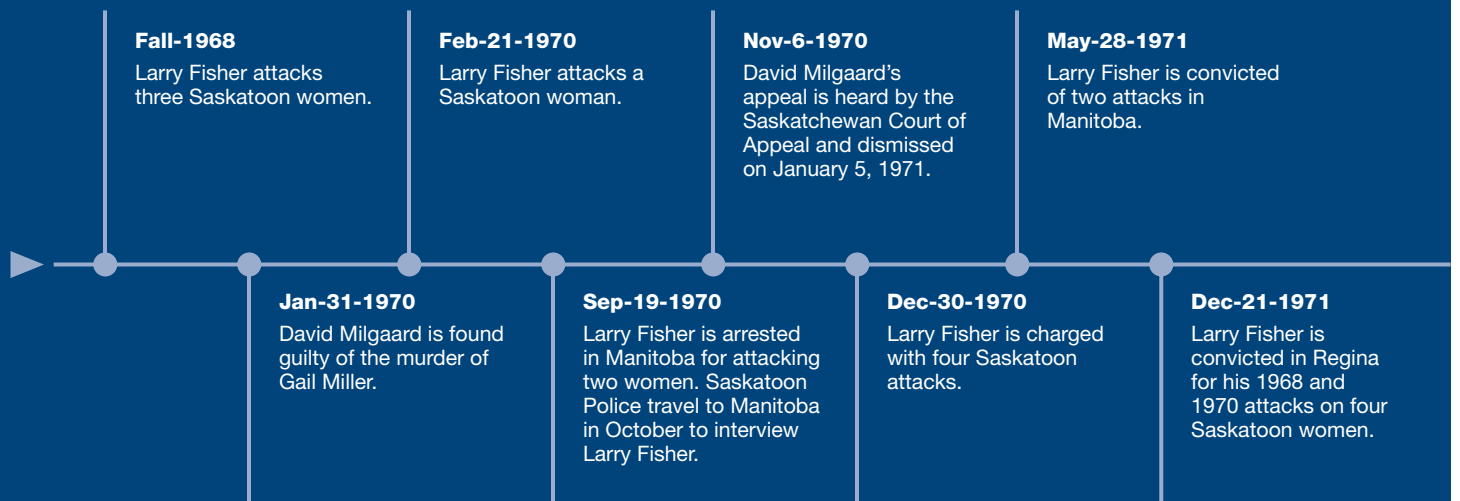


Chapter 10

Larry Fisher Arrest and Conviction



1. Introduction

Three sexual assaults, later attributed to Fisher, were committed in Saskatoon in the fall of 1968. He committed a further rape in 1970 in Saskatoon, after David Milgaard was convicted for the murder of Gail Miller.

During the Miller murder investigation, some policemen thought that the perpetrator of the 1968 sexual assaults might also be the murderer of Miller, but the rapist was unknown to them. They finally settled on Milgaard as the prime murder suspect and put aside the rape files. These remained unsolved until Fisher was apprehended for rape in Winnipeg, and stated that he wanted to clear up matters from Saskatoon. Two Saskatoon Police officers went to Winnipeg in October 1970 to take statements from Fisher. One of them, Eddie Karst, had worked on the Miller murder investigation. Karst testified that he drew no connection between the rapist Fisher and the murderer of Gail Miller. Karst reported to his superiors in Saskatoon, and Informations charging Fisher with the Saskatoon sexual assaults were drawn. About a year later, in 1971, Fisher, having pled guilty to the Winnipeg rapes, came to Regina and pled guilty to the Saskatoon offences, receiving concurrent jail sentences to the ones imposed by the Manitoba court for his offences there.

As a background to the reopening of the investigation into the death of Gail Miller, the Inquiry heard witnesses on the subject of significant events which occurred between the conviction of David Milgaard for murder and the guilty pleas of Larry Fisher in Regina.

Within a month of Milgaard's conviction on January 31, 1970, Fisher sexually assaulted another victim in Saskatoon.¹ In July 1970, he moved to Fort Garry, Manitoba to work, and committed sexual assaults in August and September 1970, being caught in the act for the latter offence.

2. Allegations of Cover-up

More than 20 years later, when Joyce Milgaard and her supporters tried to have Milgaard's case reopened, Fisher came to their attention, and some of the Saskatoon rape files could not be found. Thus arose the allegation by the Milgaard group of a cover-up – that Saskatoon Police and Saskatchewan Justice officials concealed Fisher's conviction in Saskatchewan for the Saskatoon rapes, so as to avoid the embarrassment of having convicted the wrong man for Miller's murder.

3. Larry Fisher's Attacks in Saskatoon and Fort Garry

The Milgaard campaign, to demonstrate a cover-up of evidence showing a connection between Fisher's sexual assaults and the Gail Miller murder, began in earnest after the Supreme Court handed down its opinion in the Reference Case in 1992. It had three main bases: the Michael Breckenridge allegations, the missing sexual assault files, and the Regina guilty pleas. The first was preposterous on its face and was advanced, I find, simply as an attention getter. It resulted in the major RCMP/Alberta Justice investigation, Project Flicker. The missing files and the Regina guilty pleas were worthier of investigation. As it turned out, there were innocent explanations for both. However, the fact that Eddie Karst, one of the main Miller murder investigators, was sent to Winnipeg with a morality officer to take Fisher's statement, coupled with Fisher's guilty pleas having been heard in Regina instead of Saskatoon where the offences were perpetrated, gave the Milgaard group, legitimately, I think, something to look into, as did the fact that most of the Fisher Saskatoon sexual assault files could not be found.

In my view, the Milgaard group was right to raise their concerns about the missing files and the Regina guilty pleas, and the authorities were right to make the major investigative efforts that they did to discover the reasons for these issues. But the publicity campaign which the Milgaard group mounted around these issues, including the Breckenridge allegations, were seen by authorities as so inflammatory, exaggerated, and inaccurate, that it had a counter-productive effect in terms of information which should have caused the authorities to reopen the investigation into the death of Gail Miller. Arguably, the campaign got Milgaard out of jail because the reference to the Supreme Court of Canada was made by the Minister, not because a cover-up was shown, but rather because such a public outcry had been generated that public confidence in the administration of justice was at risk.

Caldwell was asked at the Inquiry about a possible cover-up of the Fisher sexual assault files. He said that the name Fisher meant nothing to him in 1971. I accept his assurance that he was never involved in a cover-up.

Caldwell did not find it surprising that the rape victims were not notified of Fisher's convictions. There was no system in place for notification. To me this is a matter for regret, to be sure, but however much it offends our present standards of dealing with victims, we cannot judge the authorities of the day by

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Docid 105212.

appealing to today's lively interest in closure, healing and victim impact statements. If I might be permitted personal recollection, at that time a complainant in a criminal case was just another witness, albeit an important one. The crime was an offence against the state, against public order. Victims seeking personal redress were expected to do so in civil court – a callous attitude, some might say, but one which existed for years after Fisher committed his crimes.

(a) Saskatoon Assaults

A few months before Gail Miller's murder, Fisher Victim 1 and Fisher Victim 2 were raped by Fisher in the general neighbourhood of the murder. He also assaulted Fisher Victim 3 near the University. On the day of the murder, Victim 12 was assaulted about seven blocks from the murder scene at about the time of the murder. Fisher did not take responsibility for the attack on V12, and nobody was prosecuted. In February of 1970, within a month of the Milgaard trial, Fisher raped Fisher Victim 4 in the same general area of Saskatoon where he committed his earlier rapes.

As noted earlier, the Milgaard group has always maintained that Fisher's 1968 and 1970 sexual assaults were so similar to the circumstances of the Gail Miller murder that the police should have concluded there was a common perpetrator. They maintain that the Crown, in fact, concluded this in 1970, but covered it up.

The Commission therefore thought it necessary to once again trouble the victims of the sexual assaults for their testimony to identify, if possible, whether the obvious had been overlooked, ignored, or covered up. The relevance is not what Fisher did to them, but rather what they reported at the time, and what use was made of their reports by the authorities for the Milgaard prosecution. The Milgaards have alleged that the similarity of the Fisher attacks and the attack on Gail Miller was recognized both before and after the Milgaard trial. However, they allege that appropriate action was not taken before the trial, and once Fisher's identity came to light after the trial his rapes and convictions were concealed by the authorities. Were it not for these serious allegations, the victims would not have been called to be put through, once more, the trauma of testifying. Steps were taken, however, to minimize their public exposure and to preserve anonymity through publication bans. Details of Fisher's assaults were read in from documents as opposed to being recited by the victims. Except in the case of Victim 12, who was indecently assaulted in the general vicinity of the murder around the same time, the victims were not cross-examined by counsel extensively.

Fisher Victim 1 was raped by Fisher on October 22, 1968. Relevant documents were read in prior to her testimony. In them, she described her attacker as 5'2" to 5'4" tall, around 18 years old, with dark hair hanging over his face. He used a knife in the attack.

Fisher Victim 2 described her attacker, who raped her on November 13, 1968, as a man 18 to 25 years old, 5'5" tall with dark hair which hung over his forehead, wearing a white hard hat and smelling of oil and gas. He used a knife.

Fisher Victim 3 was attacked on November 29, 1968, according to her statement,² by a man with a knife, about 20 years old, 5'6" tall with long dark hair. He was frightened off by an approaching vehicle before he could complete the rape.

Victim 12 was indecently assaulted on her way to the bus stop at around 7:00 a.m. on January 31, 1969. She fixes the time at 7:07 a.m. because she looked at her watch, but she always kept it a few minutes fast. It took 10 to 12 minutes to walk from her house at Avenue H and 19th Street to the bus stop at Avenue H and 22nd Street. She described her attacker as 5'5" or 5'6" tall wearing a three-quarter length dark suede or leather jacket with a fur collar. He wore only one glove on his left hand. He had a darker complexion – possibly Métis. When Victim 12 heard of the murder she reported her own attack assuming the murderer had also attacked her. She was shown a photo line-up but made no identification. Her report³ was recorded on the Miller murder file because she was not making the complaint on her own account.

A map⁴ shows the site of the attack, just south of the tracks at 22nd Street and Avenue H, which would be about seven blocks from the Miller murder scene.

Fisher Victim 4 was raped by Larry Fisher on February 21, 1970, less than a month after Milgaard's conviction for murder.⁵ She told police that she would recognize her attacker and she did when later shown a photo of Fisher after his arrest in Winnipeg.

Two former Saskatoon Police officers testified about the Fisher Victim 4 rape complaint in February 1970.

One of them was Harry Valila who was aware of the Fisher Victim 4 matter, but not of the two 1968 rapes and one attempt. Here, again, we have an example of an officer in the Saskatoon Police who was unaware of what the Milgaard counsel in this Inquiry have described as the activities of a notorious, serial rapist.

Valila helped in the Miller investigation and answered a complaint of David Milgaard being a nuisance in April 1969.⁶ He made no comparison between the Fisher Victim 4 and the Miller matters. He found nothing unusual about Karst being sent to Winnipeg with Nordstrom, and described Karst as a good investigator.

Another officer, Stanley (Gus) Weir, was a morality officer in 1969 and 1970, and was in charge of the Fisher Victim 4 rape investigation. He dictated his reports to be typed by Central Records in three copies; one for Central Records, a working copy for the investigator, and another for a purpose unknown to him. When a file was concluded, a report to that effect would be left on file for review by his superior. Weir could not tell us where the file went after that. Nor was he clear on how files were managed when active investigation had ceased because no suspect was found.

He thinks that the general practice was to inform victims of rape when their files were concluded, but the process was hit and miss. He told one of the Fisher rape victims, Fisher Victim 4, about the disposition of her case on February 5, 1971.⁷

I conclude from Weir's evidence that there simply was no system in place which ensured that investigating morality officers would follow their files once they stopped working on them.

3	Docid 106110.
4	Docid 164351.
5	Docid 261590.
6	Docid 106115, 106179, 106534 and 048933.
7	Docid 105246.

Weir said that there was a good working relationship between morality officers and detectives. For example, Raymond Mackie helped Weir and his partner, Ivan Lindgren, with the Fisher Victim 4 complaint. Weir recalls comparing the other rape complaints for links to his file, but finding no similarities.

The Weir and Lindgren occurrence report of the Fisher Victim 4 complaint records a thorough investigation.⁸ Many leads were followed and many photos were shown to the complainant to no avail. Fisher was simply unknown to the police, until his arrest in Winnipeg.

The Inquiry heard commentary from many witnesses, which confirmed the Saskatoon Police assessment at the time that these attacks were probably the work of one man. However, they did not bear a striking resemblance to the attack on Gail Miller, the chief difference being the level of violence involved. They did not ignore the possibility that the rapist was also the killer of Gail Miller, but they simply could not identify a suspect for the rapes, and it was obvious from the description of the rapist that it was not Milgaard. I am satisfied that they did not overlook or ignore any evidence then available to them which would have linked Fisher to the murder.

Former Morality Officer, Beverly Cressman, testified that his division had conducted decoy and surveillance operations in the area in late 1968, in pursuit of the rapist. After the murder, he briefly considered whether it was connected to the rapes but was persuaded by another officer that it was not, because of the dissimilarity in the level of violence. He could not recall any connection having been drawn between the Fisher Victim 4 rape and the 1968 rapes until after Fisher's apprehension. At about this time, he was asked to check on Fisher's addresses at the time of the offences. He made no connection between Fisher and the Miller murder at this time, and the fact that he was asked to do this tends to negate any suggestion that his superior officers were trying to deal with the Fisher matters quietly. He had no concerns about Eddie Karst going to Winnipeg to interview Fisher about the rapes because, of the two of them, Karst was the more experienced.

(b) Fort Garry Assaults

Lorne Huff was with the Fort Garry police from 1961 to 1974 before serving, after amalgamation, with the Winnipeg City Police until 1987. Huff dealt with the rapes of Fisher Victim 5 and Fisher Victim 6 in Fort Garry in 1970.⁹ He was able to give valuable background information concerning Fisher's activities in Winnipeg and his guilty pleas there.

Fisher was arrested at the scene of Fisher Victim 6's rape. He had not been known to police. He was held, pending conclusion of court proceedings, at Headingly Jail while on remand, and at the Vaughn Street Court Detention Centre.

Fisher at first declined to give a statement,¹⁰ but then provided information about Fisher Victim 6,¹¹ then Fisher Victim 5,¹² the last was prompted when Huff asked him how he would feel if his daughter had been raped.¹³ Huff told the Inquiry, and I accept, that Fisher had bruises which, he told him, resulted from a beating he received at Headingly which involved the guards there.

8	Docid 261590.
9	Docid 321248, 002043, 071223, 321222 and 261217.
10	Docid 261231.
11	Docid 255034.
12	Docid 002032.
13	Docid 093325.

In his interview on October 21, 1970, Fisher told Huff of two incidents in Saskatoon, one rape and one attempt. Huff recalled one of the two Saskatoon officers who came to interview Fisher as being very big – a description which would fit Eddie Karst. Huff said that he and his partner were not present when the Saskatoon police officers interviewed Fisher.

Huff seemed to have a clear memory of events, and I accept his evidence.

4. Involvement of Saskatoon City Police

Fort Garry police wrote to the Saskatoon Police on September 25, 1970¹⁴ seeking any help they might be able to provide in view of Fisher's recent residence in Saskatoon. Fisher had apparently been interviewed about the Saskatoon offences, but denied being involved. In a further interview with Huff, however, on October 21, 1970, Fisher confessed to a rape and an attempted rape in Saskatoon.¹⁵ This prompted Saskatoon Police to send Eddie Karst and Hilmer Nordstrum to Winnipeg, to interview Fisher on October 22, 1970.¹⁶

The Saskatoon Police had morality and detective divisions. The latter did not normally involve itself in the investigation of sexual assaults. Thus, the Milgaard group concluded that Karst, who had worked on the Miller murder investigation, was sent to Winnipeg to investigate a sexual assault suspect precisely because a link between the murder and rapes was suspected. Karst has consistently denied this. Other officers said that Karst was sent to Winnipeg simply because he was a highly capable investigator. When asked about it years later, Karst could not even remember going to Winnipeg at first, but when shown a copy of a report he had apparently authored, he conceded that he must have gone.

Joseph Penkala testified that he was not aware of Fisher's arrest in Winnipeg, or of his confession to the Saskatoon sexual assaults, and I accept that. Nor was there anything unusual, in his view, about Karst being sent to Winnipeg with Nordstrum to take Fisher's statement. It did not surprise him that, although Fisher was charged with the rapes and pled guilty in Regina, police did not follow up on a possible connection with the Miller murder. They had a conviction for the latter and were busy with new challenges. Coming from an officer who was involved in the Miller murder investigation, and who later became Chief of Police in Saskatoon, and served with distinction in that post, the evidence is of significant weight. Penkala testified at length at the Inquiry and I found him to be frank, credible and helpful.

In Fisher's statement of October 22, 1970,¹⁷ given to Karst in Winnipeg, he gave his address as 1824 Avenue D North in Saskatoon. This was not Cadrain's address; so Karst would not have been alerted. It appears that Karst had with him the Fisher Victim 3 and Fisher Victim 4 files, but probably not the Fisher Victim 1 and Fisher Victim 2 files, because he was not expecting a statement from Fisher about them. He thinks from the lack of detail in the statements he took, that he had no inkling of Fisher being involved in other rapes. Had he suspected that, he would have gone into detail about the method of operation.

One must be careful to distinguish between what Karst knew during the investigative stage of the Miller murder file and what he later knew. As his April 18, 1969 report¹⁸ shows, he was aware of the connection being made between the rapes and the murder. But he says that whatever the motivation of his superiors

14	Docid 002021.
15	Docid 002032.
16	Docid 012639, 012656.
17	Docid 012656.
18	Docid 106664.

in sending him to Winnipeg a year and a half later to take Fisher's guilty pleas, his mind must have been closed to the connection, or he would have asked appropriate questions of Fisher.

5. Prosecution of Fisher for Saskatchewan Assaults

(a) Introduction

Fisher had to be dealt with in Manitoba for the Fort Garry offences, and in Saskatchewan for the Saskatoon offences.

He pled guilty in Winnipeg for the Fort Garry offences and received a sentence of 13 years.

The disposition of the Saskatoon charges required his removal to Saskatchewan. The manner in which that was done gave rise later to charges by the Milgaard group of a cover-up of the Saskatoon offences, so as to conceal their connection with the murder of Gail Miller, specifically:

- The Saskatchewan Crown Prosecutor handling the Fisher charges, Serge Kujawa, was the same prosecutor handling Milgaard's appeals during the same time period. It would later be alleged that Kujawa had both files, that anyone in possession of this material would have concluded Fisher had raped and murdered Gail Miller, and that Kujawa in fact had drawn this conclusion, but had decided to cover it up.
- Fisher's Saskatoon offences were charged by way of direct indictment, a seldom used process which obviates the need for a preliminary inquiry and appearances by the accused both in the provincial court and in the Court of Queen's Bench. The Attorney General of Saskatchewan was a necessary signatory to the direct indictment, and it would later be argued that authorities chose the process so that the charges could be handled quickly and inconspicuously.
- Fisher entered his guilty pleas in Regina as opposed to Saskatoon where the public would be more likely to draw a connection with the Miller murder. He was taken from Prince Albert Penitentiary to Regina instead of Saskatoon, which would have been closer. Milgaard's prosecutor, Caldwell, was implicated in the arrangement.
- He pled guilty just before Christmas in 1971, on a date chosen to avoid publicity, and after the Supreme Court of Canada had rejected Milgaard's application for leave to appeal on November 15, 1971.
- Notwithstanding the severity of the Saskatoon offences, Kujawa agreed to terms of imprisonment to be served concurrently with the time received in Manitoba, so in the result Fisher received no extra prison time for his Saskatoon offences – clearly a favor extended to Fisher for his agreement to quietly plead guilty in Regina.
- The Regina media did not report the guilty pleas.
- Some of the Saskatoon rape victims were not told of the disposition of their cases, nor were some of the investigators involved.
- After Fisher came to the attention of the Milgaard group in the early 1990s, some of the original Saskatoon rape files could not be found, and must have been concealed or destroyed in furtherance of a cover-up.

- Kujawa, the Minister of Justice and other officials realized that the Milgaard conviction was a mistake and held closed door meetings involving the Miller murder file and the Fisher rape files.

The Saskatoon Crown office had no substantial involvement in the matter of Fisher's guilty pleas in Regina. Information about the sexual assaults in Saskatoon was requested by the Regina Crown office so that Kujawa, Director of Public Prosecutions, could inform himself for the purpose of speaking to the guilty pleas. The request went to Caldwell in the Saskatoon Crown office, who passed it along to the Saskatoon Police, who replied directly to Regina with the information needed. I accept Caldwell's testimony that he had no interest in the matter beyond passing on the request for information and evidence to the Saskatoon Police. I am satisfied that the police handled the request without reference to the Miller murder file – in fact without even thinking about that file.

The Saskatoon rape files were concluded in Regina with no official report having been made to the Saskatoon Crown office or to the police there.

It is uncertain what became of the Saskatoon sexual assault files. The Milgaard group was to allege that the files were destroyed by Saskatoon Police as part of a cover-up. This became the subject of a Saskatchewan Police Commission investigation which found that the files had probably been lost in the course of a move of police headquarters in Saskatoon. But the possibility also exists that the files remained in the office of the City Prosecutor, Ben Wolff.¹⁹

(b) Key Witnesses and the Documentary Record

(i) Lawrence Greenberg

Greenberg was an important witness on the subject of Fisher's guilty pleas in Regina. He was Fisher's Winnipeg lawyer. He no longer has his file but was able to reconstruct a comprehensive narrative from Commission documents, including the initial crime report on the Fisher Victim 5 assault,²⁰ the supplementary report,²¹ and the report on the Fisher Victim 6 assault.²²

Within days of these two rapes, Fisher told Greenberg of his involvement in them, instructing him to have guilty pleas entered as quickly as possible. Greenberg was not present when the Fisher statements were taken. Fisher had no criminal record and there was no discussion of the Miller murder. Greenberg was unaware of it, or of Milgaard's conviction.

Learning of the Saskatoon matters, Greenberg testified that he hoped to dispose of everything at once or at least avoid separate sentencing and consecutive penalties.

The offences were indictable, and were within the exclusive jurisdiction of the Superior Court, namely the Court of Queen's Bench in Saskatchewan.

A preliminary hearing before the Saskatchewan provincial court was required unless waived. Alternatively, the matter could proceed by way of direct indictment, preferred by the Saskatchewan Attorney General, directly to the Saskatchewan Court of Queen's Bench. The accused wanted to plead guilty and not go to trial, so a preliminary inquiry was not needed. Greenberg's choices therefore were a consent committal, which needed an appearance in provincial court, or a direct indictment bypassing that court altogether.

19	T13797-T13820.
20	Docid 321248.
21	Docid 002043.
22	Docid 261217.

As well, the accused had to dispose of the Manitoba and Saskatchewan charges in those respective provinces. So Greenberg's aim was to have his client sentenced on the Manitoba matters, and then go to Saskatchewan to be sentenced there, with assurance that Fisher's time for the Saskatchewan offences would be concurrent with the sentences imposed in Manitoba. He said that he received such assurance, although he has no supporting documentation. I accept his evidence.

Greenberg wrote to the federal Minister of Justice asking for his cooperation in ensuring that Fisher plead to the Manitoba charges, and then the Saskatchewan charges in special sittings as close together as possible, so that he could begin serving his time without delay.²³ Greenberg was anxious to conclude matters because his client had been beaten in prison and his mental condition was deteriorating.

Greenberg consented to committal in Manitoba on February 12, 1971.²⁴ He wrote to Saskatchewan on March 12, 1971,²⁵ demanding attention to Fisher's case. The Saskatchewan Attorney General replied March 18, 1971,²⁶ saying that inquiries were being made.

Correspondence passed between Greenberg, Correctional Services Canada and Saskatchewan.²⁷ Greenberg wanted assurance that Fisher would serve his sentence in Saskatchewan before disposition of the Manitoba matters. He said that it made no difference to him as to where his client pled in Saskatchewan. He left that up to the Saskatchewan Attorney General,²⁸ and would have sought their agreement to concurrent sentences in the 10 - 15 year range.

According to Greenberg, the 13 year sentence Fisher received in Manitoba was not low. The media reported that "Fisher will face similar charges in Saskatoon".²⁹ The matter was reported in Saskatoon. On June 2, 1971, Greenberg wrote to Saskatchewan asking for a hearing date,³⁰ reporting the results of the Manitoba pleas, and offering to send the pre-sentence report for the use of the Court and the Attorney General. There is no mention of a deal for concurrent time, or of a venue for the guilty pleas. Obviously, Greenberg was relying on verbal arrangements for sentence, and Fisher was willing to take his chances.³¹

Greenberg pressed for a hearing date by letter on June 11, 1971.³² Action was taken by Kujawa, the Saskatchewan Director of Public Prosecutions.³³ His letter of June 25, 1971, makes the case for a direct indictment, and explains that without Fisher's confession there was no evidence against him.

A change in government in Saskatchewan ensued, and on December 8, 1971, Kujawa wrote to the new acting Attorney General, Allan Blakeney,³⁴ repeating his request for a direct indictment. In the meantime, Fisher was incarcerated in Prince Albert, his penitentiary of choice, so the sense of urgency, I conclude, had largely passed.³⁵

23	Docid 331515.
24	Docid 331519.
25	Docid 033361.
26	Docid 039593.
27	Docid 331530, 010714 and 010727.
28	Docid 010710.
29	Docid 159726.
30	Docid 039581.
31	Docid 020185.
32	Docid 039579.
33	Docid 010690 and 019369.
34	Docid 301073.
35	Docid 042968.

Greenberg could not say whether he suggested the direct indictment. All he wanted was the most expeditious choice. I am satisfied that Greenberg did not specify a venue, nor did he discuss with anyone a possible connection between Fisher and the Miller murder. It has been suggested that authorities were awaiting the expiration of the Milgaard appeal period before taking Fisher's guilty pleas for the Saskatchewan offences. But it was Greenberg's evidence, which I accept, that he had no sense that the Saskatchewan Attorney General's Department was taking unusual steps or trying to delay disposition of the Fisher matters. He did not see, observe, or think of anything suggesting a conspiracy or cover-up in the handling of the charges.

The arrangement needed to accomplish Greenberg's strategy was not simple to organize, involving two separate provincial courts, the Federal and Provincial Justice Departments, Corrections Canada, and a change in Saskatchewan's Government.

Once Fisher had pled guilty in Manitoba, Greenberg had assurance of concurrent time in Saskatchewan and his client was soon sent to Prince Albert where he wanted to be, so there was no more urgency, aside from a desire to close the file.³⁶

Twenty years later, commentators like Timothy Appleby and David Roberts with the *Globe and Mail*,³⁷ purported to find something sinister in the arrangement described in the Kujawa memo of December 8, 1971³⁸. Greenberg begged to differ. He emphatically stated that there was no intent to have Fisher "quietly plead guilty"³⁹. As for waiting for conclusion of the Milgaard appeals, Greenberg had never heard the name. Regina was chosen as venue for the guilty pleas because the direct indictment had to be arranged through Kujawa and the Attorney General, who were both located in Regina.

Fisher was indicted in Regina on December 8, 1971,⁴⁰ and pled guilty to the rapes of Fisher Victim 1, Fisher Victim 2, Fisher Victim 4, and the indecent assault of Fisher Victim 3 on December 21, 1971. He received four years on each rape, and six months on the indecent assault, all concurrent to the sentences imposed for his Winnipeg offences. In his memorandum to file dated December 24, 1971,⁴¹ Kujawa remarked that Fisher's confession, not likely admissible, was the only evidence against him.

(ii) Larry Fisher

Fisher's responsibility for the rape and murder of Gail Miller was not an issue in this Inquiry. His conviction is final. Potentially, of course, he had much to offer in terms of clearing up the circumstances surrounding Gail Miller's death, and its investigation and prosecution. He was not a helpful witness, but certain things he said could be verified by reference to other evidence.

Fisher readily admitted the Fort Garry rapes. He says that his confessions were prompted by a desire to get out of Headingley where he had been assaulted by guards. That led to his confession to the Saskatchewan matters.⁴² Although he recalls being interviewed by Saskatoon officers, he could not remember by how many, or what they looked like. He does not recall the name Eddie Karst. He agrees that his instructions to Greenberg were to dispose of all charges by guilty pleas as quickly as possible.

36	Docid 043020.
37	Docid 219266 at 219270 and 219271.
38	Docid 301073.
39	T13961.
40	Docid 039601.
41	Docid 042960.
42	Docid 002032.

He left the place of pleas to Greenberg. He did not care what time he got. He was never told that the pleas would take place in Regina to avoid publicity in Saskatoon. He said that his abusive treatment in Headingley led him to make a statement. Whether that is true or not, the mistreatment appears to have happened, according to Huff, a former Fort Garry policeman, so the admissibility of the statement might well have been affected as Kujawa remarked in his letter to the Acting Attorney General.

Although arrested only in 1997 for the rape and murder of Miller, Fisher has been incarcerated, except for a few years, since 1971 for various crimes.⁴³ His first involvement with the courts was in 1971 and, he says, he relied on his lawyer. Consecutive and concurrent sentences were terms unknown to him. His only concern was total time. He agreed with Kujawa's views of June 25, 1971,⁴⁴ that he wanted to clear his record for a fresh start. He said that he did not know the name David Milgaard.

As mentioned, the Milgaard group's suspicions of a cover-up were excited by the fact that Fisher pled guilty to Saskatoon offences in Regina, when the usual practice was to have guilty pleas heard as near as possible to the place where the offences occurred. Also, Fisher received sentences for the very serious Saskatoon offences concurrent to the sentences he had received in Manitoba. The fact that the sentences were not consecutive told the group that authorities had made a deal with Fisher to plead guilty in Regina, where there would be no publicity in exchange for concurrent time.

(iii) Kenneth MacKay

MacKay, formerly of the Saskatchewan Attorney General's Department, was a reliable and informative witness on the workings of the department at relevant times.

From 1969 to 1973, MacKay was a junior lawyer in the Regina office under Serge Kujawa, the Director of Public Prosecutions. Kujawa did all the appeal work for both the Saskatchewan Court of Appeal and the Supreme Court of Canada, leaving little time for administrative duties which were performed by a junior in the department, Elizabeth McFadyen. MacKay began working for the Attorney General in Regina only after the Miller murder, of which he was unaware.

MacKay was able to explain what information relating to the Milgaard and Fisher cases came to the Regina office of the Attorney General and how it was handled, a subject of interest to us because of the allegation that Kujawa made the connection between the murder and the Fisher sexual assaults, and covered it up.

Commission Counsel prepared an index⁴⁵ listing 137 documents related to the Milgaard file that were apparently in the possession of the Attorney General's office in Regina. Included are reports authored by J.A.B. Riddell and Edwin Rasmussen, and some substantive material such as witness statements, as well as administrative material. The original Milgaard prosecution file, however, remained in Saskatoon.

A large number of RCMP reports came to the office as a matter of course because that force policed the province under contract with the Attorney General. Although Kujawa's name appears on some of the reports, it is doubtful that he read any of them. Some are marked with the initials of his assistant, McFayden. MacKay says that McFayden probably read the letters and reports. If something was marked as needing action, Kujawa might read it, but it would receive attention in any case. The flow of material did not have a functional purpose beyond general information for contractual purposes, or for briefing

43 Docid 331771, 067059.

44 Docid 010690.

45 Docid 335498.

the Minister if the case were notorious. Kujawa, not an “enthusiastic manager”,⁴⁶ did not prepare briefing notes said MacKay, his interest being in the court room. When he himself became appellate counsel, MacKay never looked at police reports. His interest was the record.

Caldwell reported on the Milgaard preliminary inquiry,⁴⁷ (a report likely read by McFadyen), and on the trial.⁴⁸ Kujawa argued the appeal on November 6, 1970, and reasons for dismissal were given on January 5, 1971. No factums were filed, and MacKay does not recall receiving the trial prosecutor’s file for purpose of the appeal. A transcript of the evidence was received.⁴⁹

MacKay thought that in view of the 13 year Manitoba sentence, asking for more time in Saskatchewan would have been futile. Concurrent sentences in such situations were not unusual in Saskatchewan. I accept this.

MacKay passed the Manitoba report⁵⁰ of June 7, 1971, onto Kujawa who required the information to speak to the guilty pleas.

The clearest proof of the reason for the direct indictment procedure is to be found in Kujawa’s letter to the Attorney General on June 25, 1971.⁵¹ I find from this, and from Kujawa and other evidence, that without Fisher’s Manitoba confessions Saskatchewan had no proof against him for the Saskatoon offences. Thus, Fisher’s willingness to plead guilty to the Saskatoon offences would be reason enough to accommodate him for speedy disposition by way of direct indictment. Fisher could start anew, and Saskatchewan could clear the charges from its books. Incidentally, the guilty pleas, I find, would be of significant weight in mitigation. Without them, Saskatchewan would be left with four unresolved, serious cases.

As to the difficulty of proving the Fisher crimes in Saskatchewan, notwithstanding the confessions in Manitoba, MacKay recalled some issue with Fisher having been beaten and wanting to get out of the situation he was in. This would affect admissibility.

Arrangements were finally made to have Fisher’s guilty pleas heard in Regina on December 21, 1971.⁵² The location was chosen as a matter of convenience. MacKay saw nothing unusual in the December 21st date, which the Milgaard group had alleged was chosen in furtherance of a cover-up. A judge was available and everyone wanted to dispose of the matter before Christmas.⁵³ MacKay wrote to Fisher confirming the arrangements, and confirming that the Crown would be consenting to concurrent sentences. This letter was sent to Fisher in the penitentiary on December 10, 1971. If the authorities were trying to keep the guilty pleas out of the public eye, as alleged by the Milgaard group, this letter would have sabotaged their efforts. Larry Fisher could tell anyone, as could Greenberg⁵⁴ or the RCMP.

The disposition is recorded in Kujawa’s memorandum to file dated December 24, 1971.⁵⁵ That would end Kujawa’s formal reporting duties. MacKay says that it would never occur to him to report to the police, and in those days victims were left out of the loop. Between February 1971 and November 1971, both the

46	T25815.
47	Docid 065481.
48	Docid 066620 and 066621.
49	Docid 066606.
50	Docid 010691.
51	Docid 010690.
52	Docid 010662, 010667.
53	Docid 010682.
54	Docid 010680.
55	Docid 010685.

Milgaard and Fisher files were open in the Attorney General's system, but MacKay recalls no connection being made between the two matters in his Regina office. He discussed neither one with Kujawa.

MacKay does not accept that there was a desire to distance the Milgaard appeal and the Fisher pleas. He says the suggestion that Kujawa covered up anything would be antithetical to all Kujawa stood for. He further questioned, from a utilitarian point of view, why would anyone do it. It would only enhance the reputation of the prosecution service to do something about a wrongful conviction. I accept this.

He commented on the allegation of cover-up. It would be an elaborate process to hide the Fisher pleas. And for what? To make sure that Milgaard remained in jail in the face of evidence of innocence? It would be much simpler to face the facts. As to the suggestion that people were convinced of Milgaard's guilt and wanted to hide evidence which might get him out, Mackay said that he had never met a prosecutor who would do that.

Asked to estimate the number of files passing through head office in the 1970-1971 period, MacKay said that there would be a maximum of 36 sentence appeals and six to seven conviction appeals per month. Kujawa handled them all, as well as complex, serious cases. He also dealt with guilty pleas from other provinces, law reform and uniform law issues, and Supreme Court of Canada matters.

Sexual assault work was a large part of the work in both Regina and Saskatoon. Media coverage was not uniform. It depended upon the diligence of reporters. Had the Fisher pleas been made in Saskatoon, there was no assurance of media coverage. The Crown did not alert media of pleas, and because the Regina Leader-Post and the Saskatoon StarPhoenix had a single owner, there is no assurance that pleas in one city would not be covered in the other.

As to the Michael Breckenridge allegations, MacKay said that he never worked for an attorney general who intervened in a criminal matter. Romanow was no exception.

(iv) Serge Kujawa

Kujawa began his employment with the Saskatchewan Attorney General in 1960.⁵⁶ He spent about 30 years in Criminal Prosecutions. He was the Director of Public Prosecutions in 1970 and 1971 – the top prosecutor in the province – and reported directly to the Deputy Attorney General.

Kujawa estimates handling 400 sentence appeals in a year, and so was familiar with the Court of Appeal attitudes on sentencing. He had a comparable workload with conviction appeals, although fewer cases, perhaps 40 - 50 per year, for which he consulted the transcript and the judge's direction to the jury.

He handled high profile cases from rural centers as well. He estimates that in 1969 - 1970 he was counsel of record on about 1,200 – 1,400 cases.

He said that most reporting to the department by police forces was for administrative purposes. He did not read the letters, but someone did to see if they required action. That is significant, I think. It follows that however interesting a report, or notorious the case, the reader in the Regina Attorney General's office would simply look for signs of action to be taken. If none was called for, the report would simply be filed, which is apparently what happened to RCMP reports on the Milgaard case such as the Rasmussen

report.⁵⁷ Even in the latter case, where the report relates the possible rape/murder connection, Kujawa said that it would have no relevance to anything he was doing.

According to Kujawa, his initial on a report meant only that he received it, not that he read it.⁵⁸ When Milgaard was charged, in May 1969, he was not involved and did not provide advice. Later Caldwell consulted him only on s. 9(2) of the *Canada Evidence Act*. His relationship with Tallis was always good and one which he was anxious to maintain.⁵⁹

The Milgaard appeal was argued before a five judge panel – quite standard for serious cases.⁶⁰ Although Kujawa argued it he recalls little about it. I accept his denial in relation to allegations that he decided in 1971 to withhold information about Fisher.

Kujawa's brief oral presentation on the leave to appeal application to the Supreme Court of Canada marked the end of his involvement on the Milgaard file.

6. Conclusions

I find that the sentences imposed in Manitoba and Saskatchewan are sufficiently explained in the documents to negate the Milgaard suggestion of a conspiracy, which is twofold:

1. The authorities conspired to get Fisher's agreement to plead guilty in Regina to avoid publicity. In consideration, Fisher would receive concurrent time in Saskatchewan for offences which should have merited an even lengthier consecutive sentence than the 13 years he received in Manitoba. The evidence of Greenberg and the documents he was shown refute that allegation. The chain of events is shown to have been motivated by Fisher's desire to wipe the slate clean. Perhaps, as has been suggested, he hoped that in so doing he could divert attention from his involvement in the Miller attack, but if that was his intention, there is no evidence that his lawyer Greenberg or the Justice officials or police in either Manitoba or Saskatchewan had any inkling of it. Greenberg was cautious and effective in the way in which he handled the case. The result, from the Saskatchewan side, was certainly favorable to his client, but the Manitoba court could hardly be described as lenient in imposing a 13 year sentence on an accused without a criminal record.
2. The Milgaards further contend that Regina was chosen as a venue for the guilty pleas because of a desire on the part of the Saskatchewan authorities to avoid public scrutiny which might reveal Fisher as the real culprit in the Miller murder. The suggestion, on its face, is debatable because:
 - a) It assumes grave misconduct on the part of both Saskatchewan Police and the Saskatchewan Attorney General's Department.
 - b) It assumes that those bodies would suffer great loss of face by admitting that they had missed Fisher in prosecuting Milgaard. I fail to see why this would be so. Fisher as a suspect was simply unknown to Saskatchewan until he, in Manitoba, revealed his own involvement. Even conceding the similarities between the rapes and the Miller attack, the fact of Fisher coming forward in 1970 gave authorities their rapist, but by no means their murderer. They had Milgaard for that, and in good faith, I find.

57 Examples of this in the Milgaard case are 065398, 065399 and 065346.
58 Docid 065349.
59 Docid 065484.
60 Docid 066505.

- c) The fact of the Fisher guilty pleas following the expiration of the appeal period for Milgaard was, I find, coincidental.

Having heard testimony from Greenberg and Fisher, I can conclude that neither was party to an agreement or arrangement to assist in the concealment of Fisher's guilty pleas to the Saskatoon rapes. That would leave, as possible participants in such a scheme, only the Saskatoon Police and Saskatchewan Justice. But if the cover-up of Fisher's Saskatoon rapes was intended, why would the Saskatoon Police bother to send officers to Winnipeg to interview Fisher? Why would they charge him and take his guilty pleas after he had already received 13 years for rape in Manitoba. Surely the easiest way to hide the Saskatoon rapes would be to do nothing about them, to leave them unsolved.

The disappearance of the files following the guilty pleas at Regina, instead of Saskatoon, the focus of the offences, and the failure to publicize them, even to the victims, strongly suggested a cover-up to the Milgaards. But I find that the pleas were entered in Regina as a matter of convenience, the files were lost accidentally, and the victims were not notified for lack of a policy to do so, and because of simple oversight or insensitivity on the part of the investigating officers.

Again, I find it necessary to remind myself that one must not judge with the benefit of hindsight. The Fisher rapes have gained tremendous notoriety over the years, but in 1970, as the evidence shows, they were not much in the public eye, and indeed were a matter mainly for the attention of the morality department within the Saskatoon Police. Given the passage of time, it is not surprising that Karst did not remember the trip to Winnipeg to interview Fisher. He denies having made any connection between the rapes and the murder, and I believe him.

I am satisfied that Kujawa did nothing wrong in his official duties relating to either the Milgaard or the Fisher cases. In particular I am satisfied from all the evidence that there was no attempt to delay resolution of the Fisher rape files in Saskatchewan or to conceal them from the public.