

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
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Saskatoon, Saskatchewan

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Volume 134

Inquiry Proceedings



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Transcript of Proceedings

(Reconvened at 9:01 a.m.)

DAVID ALLAN ASPER, continued:

BY MR. HODSON:

Q Mr. Asper, when we finished off yesterday we were in June of 1990 and discussing right around the time of the Ron Wilson interviews, we'll pick up there, 334955, and I think this tape is a conversation between Mrs. Milgaard and Paul Henderson. I believe the date is June the 5th and the statement was taken June the 4th and then you are brought into the call a bit later. If we can just go to the next page, and this is Mr. Henderson and Mrs. Milgaard talking about -- I think at this time he was also trying, right after Ron Wilson, Mr. Henderson then tried to reach Nichol John in Kelowna and had some discussions with her parents and was not able to interview her. Do you recall being informed about that by Mr. Henderson?

A At some point, yes.

Q And so here just on the point, Mr. Henderson says, 'She should talk to us at this point. Number 1, did Dan have his talk with Larry or Ron?' 'Yes, he did.' 'With Ron?' 'Yeah.' 'And how did Ron



1 come across?' Real good, real good, no problems
2 at all, he got stuff out of him over and above
3 what you got.'

4 And I take it that would be what
5 we talked about yesterday, Dan Lett's interview
6 with Ron Wilson after he gave the statement; is
7 that correct?

8 A I assume so. This is a conversation -- I wasn't
9 in this conversation. I don't know.

10 Q Was it your understanding though that after Paul
11 Henderson received the statement from Ron Wilson,
12 that Dan Lett conducted an interview?

13 A Yes.

14 Q With Ron Wilson?

15 A Yes.

16 Q Then if we can go to 334961 and this is where you
17 then come into the conversation. If we can go to
18 334963 -- if we go back to 334961, I think, yeah,
19 the call between Mrs. Milgaard and Paul Henderson
20 ended and then a new conversation between you and
21 Mrs. Milgaard; correct? And so then if we can
22 go -- and I think that's this conversation,
23 presumably it's around the time of June 5. If we
24 can go to page 963 and there's just an exchange
25 here that I'm wondering if you might be able to



1 comment on, and you indicate to Mrs. Milgaard that
2 Hersh talked to Williams today, presumably Eugene
3 Williams, and you say, 'And of course Williams now
4 has to see Wilson right away. I haven't been able
5 to get ahold of Wilson.' 'Oh, you're kidding,
6 we've got to get to him before Justice does.' You
7 say, 'Oh, we will, don't worry, they want his
8 address, they want his address, listen to this
9 exchange, this is beautiful, and by the way, I've
10 got to get back to Saskatchewan and you'll hear
11 why.'

12 Hersh and Williams have an
13 exchange which says, Williams, who says, 'Give me
14 his address.' Hersh says, 'I don't know if I want
15 to do that.' Williams says, 'Well, I'll tell you,
16 you know, the witnesses that you've provided us so
17 far haven't been so good for you,' and Hersh said,
18 'Who do you mean?' 'Linda Fisher.' And Williams
19 says, 'Yeah.' And Hersh says, 'That's because you
20 go in and intimidate her and belittle her and make
21 her feel like a liar.' And he says, 'Williams
22 took a giant step backwards and said I'm
23 interested, but that's what their impression was.
24 The bottom line is I'm going to see both Deborah
25 and Linda because they both felt like dirt after



1 Justice was through there. I mean, you talked to
2 Linda right afterwards didn't you?' 'Right,
3 right, she felt terrible.'

4 Next page. 'And I'm going to
5 get them to give me statements describing the
6 treatment that they got at the hands of the
7 Justice investigators.' Joyce, 'Well, don't
8 forget Dan has talked to Linda.' 'Well, okay
9 then,' 'And I'm sure she's told them.' And you
10 say, 'Well, that's fine, I want to get it in
11 writing, I want to get, and Deborah was the same
12 way. Deborah was in tears when she called me.'
13 And Joyce, 'Well, I think that it's important that
14 we get statements just showing what the Justice
15 Department is doing to them.' And, 'Yeah, and
16 I'll have to factor that in somewhere over the
17 next little while.' And then Joyce, 'What about
18 the lawyer, what about Wilson? We've got to get,
19 like, I can't phone him for you, we've got to get
20 him.' 'No, no, we'll -- don't sweat, we have not
21 told Justice where he is. There's two hours
22 difference there.' 'Yeah, oh, yeah, I'll keep
23 calling him and you can try to get him tonight.
24 I'll keep calling. I mean, they are not jumping
25 immediately.' 'Oh, I wouldn't doubt it.' And,



1 'They were, listen, they were calling his address
2 today, and you weren't giving it to them and
3 that's going to twig them right away.'

4 And then the next page, 'I
5 wouldn't put it past them, don't forget the minute
6 they got the Markesteyn report they did call
7 Ferris.'

8 So that's a fairly lengthy
9 exchange there. If we can just go back, Mr.
10 Asper, just a couple of questions, back to page
11 963, this exchange. Do you recall being informed,
12 and I appreciate this is what you got from Mr.
13 Wolch about his exchange with Mr. Williams, is
14 that accurate what you told Mrs. Milgaard in this
15 transcript as to what Mr. Wolch told you about his
16 exchange with Mr. Williams?

17 A I would assume, yes.

18 Q You don't have any recollection other than what's
19 here?

20 A No.

21 Q And at this stage, the next topic is the comment
22 about the treatment by Linda, the treatment of
23 Linda Fisher and Deborah Hall by Eugene Williams.
24 Can you tell us what -- let's talk about Deborah
25 Hall and you've touched on this a bit. Did you



1 have a further discussion with her then around
2 this time about her concerns about how Eugene
3 Williams treated her? You've already testified
4 about what she told you earlier.

5 A Right. I don't recall if there was any further
6 discussion with her.

7 Q And you talk here about getting it in writing or
8 getting a statement and I don't recall seeing
9 anything. There is a letter that you sent to Mr.
10 Williams that I'll take you to, but I don't recall
11 seeing anything in writing from them. Do you
12 recall whether you asked Deborah Hall and Linda
13 Fisher to put in writing their concerns about
14 their treatment by Mr. Williams?

15 A I don't recall that.

16 Q And what about Linda Fisher, what direct knowledge
17 did you have about Linda Fisher's concerns with
18 how Eugene Williams treated her in the interview?

19 A I believe I had a telephone conversation with her,
20 one or two, maybe more, I don't recall, but I
21 certainly spoke with her.

22 Q And what --

23 A And listened to her describe what had happened in
24 the interview.

25 Q And what -- are you able to give any particulars



1 as to what she told you, what her concerns were?

2 A It would -- I can't recall the details. She was
3 frustrated, she felt that she had been, that she
4 wasn't being treated as though she was credible is
5 the general sense.

6 Q And that was based on her perception of how Mr.
7 Williams questioned her and treated her; is that
8 --

9 A Right.

10 Q And did you get other information from others such
11 as Mrs. Milgaard and others who may have talked to
12 Linda Fisher about concerns she had?

13 A I may have.

14 Q Do you recall anything else about what, any other
15 information that you had to suggest that Linda
16 Fisher was mistreated in any way by Eugene
17 Williams?

18 A No.

19 Q And then there's talk here about getting a lawyer
20 for Ron Wilson and I think we touched on this
21 yesterday. Was there -- am I correct that at this
22 time there's a bit of concern that Eugene Williams
23 not get in touch with Ron Wilson until such time
24 as you could get him a lawyer; is that a fair read
25 of this?



1 A Yes.

2 Q And that there may have been a point where you
3 delayed giving contact information to Mr. Williams
4 so that you could get a lawyer in place for
5 Mr. Wilson; is that right?

6 A It would appear so, yes.

7 Q And would that be because of the concerns you told
8 us about yesterday? I think you explained why you
9 felt Ron Wilson should have a lawyer.

10 A Yes.

11 Q And those would be the reasons?

12 A Yes.

13 Q If we can then go to 157077. This is a letter
14 from, actually both Mr. Wolch and you to Mr.
15 Williams and talks about June 5 sending the
16 Markesteyn reports and then you send the
17 statements of Ron Wilson and Dennis Cadrain and
18 you go through sort of outlining what's in the
19 statements, and then you say:

20 "Obviously, we take the view that the
21 enclosed statements provide further
22 dramatic proof of the wrongful
23 conviction of David Milgaard. It is
24 unfortunate that your office did not
25 speak with these people at the outset



1 even if only to confirm their evidence.
2 The fact is, however, that the truth of
3 what happened in this case is of great
4 concern to us. That David Milgaard
5 remains imprisoned is of greater
6 concern."

7 And so again just, and I know we've touched on
8 this before, I think your position at this time
9 was lookit, you should have talked to these
10 people even if it was simply to say what you said
11 at trial was right; is that correct?

12 A Yes.

13 Q And then just the next page, I see that Mr. Doug
14 Rutherford was copied on this letter and my
15 understanding is he was, I can't recall his
16 official title, but he was senior to Eugene
17 Williams in the Department of Justice at the time;
18 is that correct?

19 A Yes.

20 Q And were you starting to communicate to other
21 officials other than Eugene Williams for a
22 specific purpose?

23 A Yes.

24 Q And what was that?

25 A We were not -- we were not convinced that what we



1 were communicating to Mr. Williams was being
2 communicated either accurately or entirely to
3 other people in the Department of Justice.

4 Q And were you and/or Mr. Wolch having discussions
5 with Mr. Rutherford and others from time to time
6 then?

7 A Absolutely, yes.

8 Q And do you have any recollection of was this
9 frequently or weekly as far as you yourself were
10 concerned?

11 A Well, I can only speak for myself. Mr. Wolch did
12 have conversations, I can't tell you the frequency
13 of that. Mine were very infrequent.

14 Q Infrequent?

15 A Infrequent, yes.

16 Q And again, maybe this isn't a fair question, but
17 is there anything that stands out in your mind or
18 recollection from those discussions, and to the
19 extent that we find documents as we go through the
20 chronology that talk about things, I can use that
21 to assist you, but just without the benefit of any
22 document, is there anything that stands out in
23 your mind as being significant in the discussions
24 you had either with Corbett, Mr. Corbett,
25 Mr. Rutherford or Mr. MacFarlane?



1 A No. I can't recall.

2 Q If we can go to 004759, so this is now June 7th
3 and we know Ron Wilson's statement is June 4th,
4 the Markesteyn report was June 4th, those were
5 sent to Justice as well with Dennis Cadrain's
6 statement on June the 5th, and here's an article
7 June 7th and:

8 "Winnipeg lawyer David Asper said he was
9 shocked to learn federal investigators
10 had not bothered to contact any of the
11 original witnesses in the case,
12 especially since one has already
13 recanted his original testimony.

14 "How do you explain where 18
15 months went?" Asper said. We are
16 insisting that the minister react
17 immediately to this latest evidence. I
18 can only hope they don't use this as an
19 excuse to prolong the whole thing."

20 And I take it that's along the same lines as what
21 was in your letter that you expressed to Mr.
22 Williams, your concern that these people had not
23 been talked to?

24 A Yes.

25 Q Earlier?



1 A Yes.

2 Q And again this article or your comments here, is
3 it fair to say they take issue with the manner in
4 which Federal Justice is, the process that they
5 are employing in reviewing these matters, and
6 would this be part of your informing the public or
7 informing the public to put pressure on Justice
8 officials not only here are the merits of our
9 application, but secondly, there's something wrong
10 with the way they are dealing with it?

11 A Yes.

12 Q Sort of some procedural issues, and we'll see this
13 I think coming out in some later articles that you
14 started to take issue with the process; is that
15 fair?

16 A Yes.

17 Q How they were handling it?

18 A Yes.

19 Q If we can go to 039140. And this is an article
20 June 7th, *Milgaard witness says police forced him*
21 *to lie*, and this is where Dan Lett says:

22 "In an interview from his home ... Ron
23 Wilson ...",

24 and then it goes on to discuss that. So I take
25 it this would have been Mr. Lett's article based



1 on his, his interview. You had mentioned
2 yesterday that one of the strategies in getting,
3 or sort of in pursuing the three main witnesses
4 to get a statement, that one of the planned
5 strategies was if you have got a recantation, or
6 if you got something, that you would publicize
7 it; correct?

8 A Yes.

9 Q And so would this be a case of, "okay, we now have
10 Ron Wilson's recantation", and I think you told us
11 you had gone past the stage of giving it to
12 Federal Justice to let them look at it, you were
13 now gonna publicize it, and would this be an
14 example of where here's major news, witness has
15 recanted, put it in the public domain, give it to
16 the media with the view that the media and/or
17 public might put pressure on the decision-makers?

18 A Yes.

19 Q And then 048850. And this is an article June 8th,
20 the *StarPhoenix*, of Cam Fuller, talks about it
21 again. And it would appear, Mr. Asper, that Ron
22 Wilson's statement, would it be fair to say that
23 it would have been circulated to other media
24 people as well?

25 A I believe so, yes.



1 Q And if we can go to 182116, and this document came
2 up earlier, it's a June 12th, 1990 memo from you
3 to whom it may concern and just talks about the
4 Crown's case and new evidence, and my only
5 question there is what -- do you know what this
6 was, where this fit in, or was this just an
7 internal memo?

8 A I have no idea.

9 Q 334970. And this is a conversation, another one
10 between you and Mrs. Milgaard, this talks about,
11 you say, 'Not particularly. First of all, I spoke
12 with Debbie Hall on Friday' -- and I think this is
13 around June the 12th, 1990 is -- maybe in the few
14 days prior -- 'And I basically wrote down what she
15 was saying, I don't have it with me, but she gives
16 a very vivid description of her interview with the
17 Justice investigator, who we know is Williams but
18 we're only going to refer to him as the Justice
19 investigator, she said that, you know, he was
20 condescending, made her feel like a liar and she
21 felt like dirt, and you know he was, here she was
22 trying to help but he was asking her questions
23 like what was David wearing on his feet, you know,
24 and really sort of specific, stupid kinds of
25 questions, and she gave me about 15 different



1 variations on that scene about how she felt after
2 the interview, and she was very mad and whatever
3 else'. Next page, 'And I've got the first draft
4 of this big letter that I'm sending and I'm going
5 to put that stuff in. I think what I'll do is
6 I'll try to call Linda tonight, but I think maybe
7 I don't have to, I'll sort of generalize in her
8 case and say that she felt the same way, you know,
9 which I think she did, although she wasn't as sort
10 of vocal as Debbie about how she felt'. And then
11 Joyce, 'Well she was pretty vocal with Dan and I',
12 'Well, I don't think I have to specifically speak
13 with her'.

14 So, again, would that -- I -- we
15 have not seen any document, Mr. Asper, that would
16 be -- that would be notes of your conversation
17 with Deborah Hall. Do you know if you -- it
18 appears here that you would have prepared a note;
19 is that right?

20 A It would seem so, yes.

21 Q And would that have been on a handwritten note
22 somewhere on your file?

23 A I have no idea.

24 Q And would it be fair to say, what you describe in
25 this call about what Deborah Hall told you, would



1 that be fairly accurate as to what she would have
2 informed you at that time?

3 A Yes.

4 Q 010035. This is your June 12th, 1990 letter to
5 Eugene Williams. Just quickly, there's one
6 subject here on the Dr. Merry, and I -- we saw
7 this in some of the documents and I can maybe just
8 paraphrase here. I think this is a letter where
9 you ask for some detailed information, umm, on the
10 blood, and actually if you can just scroll down,
11 you know, the haemoglobin concentration in the
12 blood specimen, etcetera. It appears from the
13 documents that Dr. Merry said, "here's some
14 information I want you to get", and I think there
15 is a letter, we don't have to call it up but it's
16 155514, where you send him a draft letter, and
17 then it looks like he got back to you and said
18 "here's exactly what I want", and then you
19 incorporate it into this letter; is that fair?

20 A Yes. I recall he was asking for a test, I had no
21 idea what he was talking about, and so I think I
22 sent him the letter to just make sure that I had
23 worded his request properly.

24 Q So just, if we can go back to the main page, so
25 under item 2) this information, request for



1 information regarding the blood; is it fair to say
2 that you would be basically reiterating what Dr.
3 Merry asked you to get as opposed to you sitting
4 down and saying, "this is what I think we need"?

5 A This was not an original thought.

6 Q Okay. Okay. So you don't want me to ask you to
7 explain it then?

8 A Please don't.

9 Q Then if we can go to item number 3, and:

10 "Finally, further to our conversation
11 with respect to the witnesses whom your
12 investigator has interviewed, ...",
13 now the letter is to Mr. Williams, and I know I
14 asked this question of Sergeant Pearson, I take
15 it when you say "your investigator" you are
16 referring to Eugene Williams and not Sergeant
17 Pearson; is that correct? And I can -- this is
18 talking about the treatment of Deborah Hall and
19 Linda Fisher.

20 A Yes, then it refers to Williams, Mr. Williams.

21 Q And then the next page:

22 "... we can advise that these witnesses
23 were left with a very negative
24 impression about your investigator.
25 Specifically, Debra Hall tells us that



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

18 And:

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

22 And, again, that would be an accurate portrayal
23 of what both Deborah Hall and Linda Fisher
24 provided to you?

25 A I would say so, yes.



1 Q Do you recall whether you had any discussions with
2 Eugene Williams about this topic?

3 A I don't recall if I had that conversation with him
4 or not.

5 Q And did you, did you at some point get the
6 transcripts of his interviews of Linda Fisher and
7 Deborah Hall?

8 A At some point we did, yes. I don't recall when.

9 Q And did you have an opportunity to review those
10 transcripts or did you ever review those
11 transcripts with a view to following up on Deborah
12 Hall and Linda Fisher's concerns?

13 A I, as I say, I can't recall when we got the
14 transcripts. My -- my recollection was it was
15 around the time of the Supreme Court hearing.

16 Q The October 1, 1990 meeting with Justice, is it
17 possible that it was shared with you at that time?

18 A It's possible.

19 Q Okay.

20 A I don't recall.

21 Q But, regardless of when you got it, do you ever --
22 do you remember going and looking at the
23 transcripts and going through to follow up on
24 these concerns?

25 A Umm, no, I don't recall being able to follow up on



1 these concerns.

2 Q And then you say, and:

3 "From these reports, it would appear
4 that your investigator in essence
5 cross-examined these people in what we
6 understand to be a non-adversarial
7 process, at least for the time being.
8 None of these people had counsel
9 present, and they had no idea that they
10 were going to be subject to what
11 ultimately occurred."

12 And:

13 "If your Department is taking the view
14 that credibility is in issue and that
15 your Department is in the process of
16 weighing evidence, then we would
17 respectfully suggest that your
18 Department's activities are beyond the
19 purview contemplated within Section 690.
20 Fundamental justice requires that if you
21 are going about the process of having an
22 informal hearing, that the 'hearing' be
23 one where both sides are fairly
24 represented. As we have said from the
25 outset, this should occur in the



1 Courtroom and not by virtue of in camera
2 interviews."

3 And I think, Mr. Asper, we see this in some of
4 your subsequent correspondence, and in fact I
5 think when the Minister rejected the application
6 in February this was one of the concerns raised,
7 and I'm wondering if you can just elaborate on
8 this point a little bit about your concerns. I
9 think this is probably the first point where this
10 issue is raised about the fact that some
11 witnesses are being examined under oath and I
12 think, as you say, cross-examined in an
13 adversarial fashion, was your view, but can you
14 just elaborate on what your concerns were then
15 and later?

16 A Well we were concerned that we were applying for
17 relief, judicial relief -- sorry -- we were
18 applying for extraordinary relief from the
19 Minister that would have called upon the courts,
20 we thought, to evaluate new information that had
21 been raised by the applicant.

22 What we were, and what it seemed
23 to us we were encountering, was that the
24 Department of Justice was investigating, testing,
25 and judging, basically playing investigator and



1 judge with the evidence, without us being present
2 and without what we felt were the basic tenets of
3 a fair hearing.

4 Q And so let's just go back for a moment and take
5 Deb Hall as an example. Did you, when you filed
6 your application did you expect that, whether it
7 be the Department of Justice or the Minister, but
8 that there would be some testing of the
9 reliability or credibility of that information?

10 A Umm, I can't say what we expected. We certainly
11 expected that there would be some sort of dialogue
12 at the outset as to how the new information would
13 be treated.

14 Q And so if there, if there was to be some testing,
15 is your concern here that, lookit, we should be
16 there, we should be present?

17 A I think, yes, our view was that if it was going --
18 if Justice was going -- if the Department of
19 Justice was going to take the position that these
20 were -- that there was an adversarial process,
21 then yes, we would have wanted to be present.

22 Q And I guess, would you agree with this, that it
23 was almost implicit, maybe even explicit in your
24 application, which was basically saying the
25 Deborah Hall -- is that Melnyk and Lapchuk lied at



1 trial and so Deborah Hall says they lied? I'm
2 trying to get your views on how, in this process,
3 the Federal Minister or the Department would deal
4 with that type of contention without some type of
5 weighing the evidence, and whether your concern is
6 "go ahead and weigh it" --

7 A Well --

8 Q -- "but just do it in a fair way?"

9 A Well you are raising another level of conflict
10 that I ultimately raised at some point, which is
11 the inherent conflict within the Department of
12 Justice in evaluating these applications for
13 extraordinary remedies.

14 Q And so was it your view, either at this point or
15 at some later point, that, lookit, to the extent
16 that Deborah Hall's evidence needs to be weighed
17 against Melnyk and Lapchuk's evidence, that ought
18 to be done by a Court as opposed --

19 A Or by some neutral party, yes.

20 Q Or by -- okay. So again, at this point you're,
21 would it be fair to say that you're raising the
22 issue that, lookit, I don't think this is fair
23 that evidence we put forward is being examined in
24 an adversarial fashion without us being present,
25 okay; is that fair?



1 A That's true.

2 Q And I think we'll see when you, I think you write
3 a letter back to the Minister after her
4 application, where you expand upon that. But just
5 so that I am clear on that, though, did you have
6 any issue with -- with Mr. Williams, let's say,
7 interviewing or having some contact? I think you
8 said earlier that you expected that he would go
9 talk to the witnesses, and I'm trying to just
10 identify where you thought the line was, was it
11 okay for him to go talk to the witnesses and get
12 information from them, but not to examine them?

13 A I -- that, that would be my view. But -- but it
14 goes beyond that, because Mr. Williams' role was
15 also to interpret and provide advice to the
16 Minister on the credibility of that information,
17 so he was not only doing the interviews or the
18 examinations, he was judging it.

19 Q Okay. And I guess I'm trying to understand, Mr.
20 Asper, whether you are saying, "lookit, the way
21 the system worked was flawed", or, "the system was
22 fine but those who were operating under it were
23 flawed in the way they handled themselves"?

24 A Well, as I say, I -- my view philosophically is
25 that the system, as currently constituted, sets up



1 an internal conflict of interest, and I have been
2 an advocate for reform of the 690 process, you've
3 heard me --

4 Q Yes.

5 A -- advocate for reform. As to the individuals, if
6 your question is do I believe that Section 690, as
7 it was set up then -- and, frankly, as it is
8 now -- can function with the right people? I
9 think it's functioning a lot better now than it
10 was.

11 Q Let me put it this way. If Mr. Williams had gone
12 out and interviewed Deborah Hall and the evidence
13 -- I'm trying to identify whether it was the fact
14 that he interviewed her or examined her under
15 oath, pardon me, or what he got from her; what is
16 it that you objected to in that? Because I think
17 what you are saying is there had to be some
18 contact between Williams and Hall?

19 A Yes.

20 Q And so what type of contact were you anticipating?

21 A I would have anticipated a less-formal form of
22 contact.

23 Q And did you, did you expect that he would, in some
24 way, at least test in some way her evidence, or
25 consider it in some way?



1 A I, yes, I would not have had a problem with that.
2 And what I would have expected, even as a basic
3 courtesy, would have been if Mr. Williams
4 suspected that there may have been some problems
5 with what she was saying, or some differences, to
6 have contacted us and said, "look, I'm not sure,
7 I'm not sure this is headed where you think it's
8 headed".

9 Q So that you may be all right with some testing,
10 you may have some issues with how he tested?

11 A Yes.

12 Q But the fact of testing you're okay with, but your
13 fairness concern is that if there are some issues
14 there about credibility, as the applicant you wish
15 to be involved?

16 A Yes.

17 Q Is that --

18 A Yes.

19 Q Okay. And I think that's, you know, you are
20 saying here that the hearing be one where both
21 sides are fairly represented, and I take it, is
22 it --

23 A Well I pointed out to you, when you showed me the
24 transcript the other day, there are words and
25 long -- there are comments that Ms. Hall says,



1 following her vivid description, where she
2 actually qualifies what she has just said that
3 isn't pursued.

4 Q And so what you are saying is David Milgaard has
5 an interest in the Deborah Hall interview by
6 Eugene Williams, and that he ought to have a right
7 to be heard, or to participate in that to protect
8 his interests?

9 A Yes.

10 Q If we could go to 002483. So now I'm just going
11 to go back, Mr. Asper, we've covered the Wilson
12 interviews, the Cadrain interviews, and I had
13 earlier discussed Markesteyn. I just want to go
14 through some of the later events in June.

15 And this is a memorandum June
16 12th, 1990 from Mr. Williams to his file, and it
17 shows that on June 11th he contacted Dr. Ferris,
18 and we have seen either letters or reports from
19 you and others saying that it wasn't until you got
20 the Markesteyn report that Mr. Williams contacted
21 Dr. Ferris. Dr. Ferris testified here at the
22 Commission and said he was not contacted at all
23 until, I think, June 11th of 1990, and that he had
24 expected to be contacted much earlier. And can
25 you just elaborate on your -- your concerns at



1 this time about -- about the time it took before
2 Mr. Fisher was contacted by Mr. Williams?

3 A It was unbelievable.

4 Q And can you, can you, umm, elaborate on where that
5 fit in with your thinking at the time or how you
6 were dealing with the application?

7 A It, umm, proved to us every suspicion that we had
8 about how the application was being treated by the
9 Department of Justice or by Mr. Williams.

10 Q And maybe this is a better question; what did you
11 read into the fact or perceive from the fact that
12 Dr. Ferris wasn't contacted until June of 1990?

13 A Umm, I'm not sure what we read into it. It made
14 us angry.

15 Q And did you ever have a discussion with Mr.
16 Williams, or anybody else at Federal Justice,
17 saying "why haven't you" -- or "why did it take so
18 long"?

19 A I don't recall that.

20 Q And there was just a comment here, if you can just
21 scroll down a little bit, the -- and I take it,
22 would you have had discussions with Dr. Ferris as
23 well, from time to time, in addition to his
24 report?

25 A I don't recall specific discussion, I don't recall



1 specifically having conversations with him, no.

2 Q Did you, were you the primary contact with him, or
3 was Mr. Wolch, --

4 A Umm, --

5 Q -- or Mrs. Milgaard?

6 A -- I think all three of us did.

7 Q And there is a comment here where -- and, again,
8 appreciate this is Mr. Williams' notes of his
9 discussion, and he writes that after talking to
10 Ferris, Ferris admitted he had not seen the
11 autopsy report, the photographs, and:

12 "Apparently, he had not read the
13 evidence of the Crown's key witnesses,
14 the prosecutor's address to the jury and
15 the judge's charge to the jury."

16 Do you have any recollection of Dr. Ferris asking
17 for this information, or this issue coming up,
18 that he needed to look at more information?

19 A I don't recall that.

20 Q And then the next page, what Mr. Williams says Dr.
21 Ferris told him is that:

22 "... he was asked to review the trial
23 evidence on the basis of the facts
24 established at trial. To do so, he put
25 himself in the position of a juror



1 hearing the evidence in 1969. His
2 opinion, which ignored the contamination
3 of the semen, proceeded on the
4 assumption that the evidence only
5 established the following facts:",
6 and then the semen was human, not contaminated,
7 David was an A non-secretor, and there was no
8 evidence that David Milgaard bled.

9 Would you agree with that, is
10 that a fair statement of what you asked Dr.
11 Ferris to look at? I mean you asked him to look
12 at some other things, but on the secretor issue?

13 A I think so, yes.

14 Q And then:

15 "Taking only these facts into account,
16 Dr. Ferris concluded that the evidence
17 could be reasonably considered to
18 exclude him ...".

19 And I should point out I think what Mr. Tallis
20 said is, "yes", that was the position he was
21 taking at trial. Then:

22 "Dr. Ferris noted that the serological
23 evidence should not have been admitted
24 because the continuity of the sample had
25 not been satisfactorily established. He



1 readily admitted that the semen was
2 probably contaminated as a result of
3 being piled up with the blood-stained
4 snow outdoors for four days."

5 Let me just pause there. Did you, and we've
6 touched on this before about this contamination
7 issue, did you ever talk to Dr. Ferris and say
8 "lookit, can you, if need be, here's your written
9 opinion but can you, in a judicial proceeding or
10 some hearing, stand up and say, "in my opinion
11 this semen exonerates or this evidence would
12 exonerate David", or would the contamination
13 issue preclude him from doing so?

14 A I can't say. I'm not sure I understand your
15 question.

16 Q Okay. When Dr. Ferris was here I asked him the
17 question to the following effect, that his report
18 was September 13, 1988, I said "okay, if the next
19 day", I said, "you are under oath", or words to
20 this effect, "Dr. Ferris, based on what you have
21 looked at, in your opinion can you say, based on
22 your reviewed, can you give us an opinion on David
23 Milgaard's, or whether this frozen semen
24 exculpates him", and his answer was "no, I can
25 give you nothing of value because it's



1 contaminated"?

2 A Yes, I -- yes, I think in hindsight I can answer
3 that question. In hindsight I would have, I think
4 we should have used the fact that the set -- the
5 contamination -- the integrity and continuity of
6 the sample to knock the sample out entirely, is
7 where I would have headed in our application, as
8 opposed to where we did head.

9 Q And you say "in hindsight", and can you just
10 elaborate on what, what it is that causes you to
11 look back and say, "that is what we could have or
12 should have done"?

13 A Because the record of the trial and the Court of
14 Appeal suggests that this was a piece of evidence
15 that was relevant and considered, whether
16 misconstrued or not, and if experts say that it
17 should never have been admitted -- and I
18 appreciate what Mr. Tallis said, and I appreciate
19 how he attempted to use it, it didn't work -- and
20 in my opinion could have had a prejudicial effect
21 on the jury.

22 Q Now, in fairness, I think what Dr. Ferris said is,
23 "number 1, the semen is of no value and certainly
24 doesn't link David Milgaard, it shouldn't prove or
25 disprove anything; secondly, however, if you are



1 going to use it as evidence it exculpates David
2 Milgaard"?

3 A I understand that.

4 Q And I think, would you agree, that -- that from
5 time to time the Dr. Ferris evidence, the second
6 half maybe had more prominence than the first half
7 of his opinion?

8 A Yes.

9 Q But both of which helped?

10 A They --

11 Q I think you are saying both of which helped
12 David's position?

13 A Yes, yes.

14 Q And here Dr. Ferris says:

15 "He also acknowledged that the testing
16 performed on David Milgaard's saliva may
17 have been wrong. Therefore, the
18 non-secretor status attributed to David
19 Milgaard may be wrong."

20 And, again, this is Mr. Williams' note of what
21 Dr. Ferris told him; do you recall whether Dr.
22 Ferris told you similar information?

23 A He may have. I don't recall though.

24 Q And then, on the next page, he talks to, he says
25 Dr. Terry but I think it's Dr. Merry, and Dr.



1 Merry tells Eugene Williams that the testing that
2 was done could only -- yeah, he says that the:

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

12 And my understanding of what he said there, and
13 what we've heard here, is that you get the
14 saliva, you then test it to see if there is
15 antigens in the saliva, but the manner in which
16 they did the tests, by the time they went to look
17 for the antigens, because of the process they had
18 used, if there had been antigens they had been
19 destroyed. So Dr. Merry is saying, "lookit, the
20 test would always be negative because, by the
21 time you tested it, any antigens would be
22 destroyed". Did you un -- did you get that
23 information from Dr. Merry; do you recall getting
24 that type of thing back in 1990?

25 A I don't recall that, no.



1 Q And then the conclusion down at the bottom, this
2 is again Mr. Williams saying:

3 "Very little, if any weight can be given
4 to a conclusion that blindly ignored the
5 obvious contamination of the samples
6 that were collected. The conclusion is
7 also wrong because an essential fact
8 upon which it is based, namely, David
9 Milgaard's status as a non-secretor, has
10 not been established.

11 The procedures used to collect
12 the saliva sample tested to determine
13 David Milgaard's secretor status
14 resulted in the destruction of the very
15 matter that would signal his status as a
16 secretor. The resulting finding that he
17 was a non-secretor was ensured as a
18 result of the failure to properly
19 preserve the sample."

20 And I'm wondering, this is Mr. Williams in June
21 of 1990 talking to the three, actually two of the
22 three -- I don't think there was another memo
23 with Markesteyn -- the experts that you put
24 forward in your application. Do you take issue
25 with what he says here about the weight of that



1 evidence? In other words his conclusion is
2 "here's, here's what this means with respect to
3 the issues before the Minister"?

4 A Mr. Hodson, I read this conclusion to be
5 actually -- I'm very dismayed when I read this
6 conclusion, because this is the kind of conclusion
7 that I would think would lead Mr. Williams to
8 wonder whether a miscarriage of justice -- to
9 support the assertion that a miscarriage of
10 justice may have occurred in the sense that the
11 serological evidence was tendered, it clearly
12 played a -- some substantial role at the trial,
13 and what he is now concluding is that it may all
14 have not been accurate.

15 Q Okay. And so --

16 A With -- irrespective of what side you are on.

17 Q And so is what you are saying -- and please
18 correct me if I'm wrong -- is that it may address
19 what you put forward in your application
20 initially, it may -- and I'll come back to that --
21 it may answer that, but it raises another issue?
22 Or I'm just not sure --

23 A Yes, yes. As I said to you, notwithstanding my
24 own view that David was innocent/is innocent, we
25 were only asking for a hearing. During the course



1 of a hearing you don't know necessarily what's
2 gonna happen, and information such as this
3 conclusion may be the result of a hearing, --

4 Q And --

5 A -- and it may lead to a different conclusion that
6 where you intended.

7 Q And I think what we will see in the Minister's
8 letter, I think she ended up conceding that -- I
9 can't recall her words -- but in hindsight maybe
10 the evidence should not have gone in, or words to
11 that effect, because it had no value. And I think
12 you later took issue with that, saying, "well it
13 was in and it may have adversely influenced the
14 jury".

15 A Well I think the history -- and, again, we're
16 looking in hindsight -- but the history of
17 influence on juries of experts and scientific
18 evidence is disproportionally high, and it's
19 dangerous.

20 Q Yes. And Dr. Ferris did give some evidence to the
21 Commission about, again, his views on what a jury
22 may or may not take from the evidence.

23 But just back on the question of
24 what Mr. Williams writes here about -- and let's
25 just go back to the specific application, and I



1 think your initial application -- and I'll come
2 back and allow you to expand upon how the answer
3 might give other grounds -- but just as far as
4 what you put forward in your December 28th
5 application was that "Dr. Ferris, in his opinion,
6 says that this evidence is exculpatory and proves
7 his innocence", and I'm wondering, it appears here
8 Mr. Williams is saying, "well I've talked to Dr.
9 Ferris and I've talked to Dr. Merry and it doesn't
10 say that, at best it says -- it doesn't say it
11 proves his innocence because it's contaminated,
12 number 1, so it's of no value, and even if it were
13 of value you can't rely upon the secretor test
14 because it was flawed from the outset, so we can't
15 accept the evidence at trial that David was a
16 non-secretor because we know the test was -- your
17 own experts say the test wasn't done right".

18 A Uh-huh.

19 Q Is what he is saying here?

20 A Right.

21 Q So, therefore, it's sort of -- I think, if I can
22 read that memo, it sort of knocks down both pegs,
23 if I can say, of Dr. Ferris; number 1, it doesn't
24 prove innocence because of the contamination; and
25 number 2, even if it's not contaminated the



1 premise that David is a non-secretor isn't there.
2 And so, just addressing the two points in your
3 application, do you take issue with those points,
4 with what your ex -- with what Mr. Williams says
5 your experts told him?

6 A No.

7 Q And so would you agree, then, that at least on
8 those two points, at least on June 12th, 1990, it
9 appears that Ferris and Dr. Merry may have -- and
10 let me rephrase that. If you would have had this
11 information on June 12th, 1990, I mean what would
12 your view be, at that time, of the value or the
13 weight of what you put forward in your initial
14 application?

15 A I suspect we would have amended the application to
16 state that, in light of the evolution of the
17 experts and the further discussion of the experts,
18 the evidence tendered at the trial was prejudicial
19 but, in fact, had no probative value according to
20 current experts.

21 Q And so the fact that it was there, that the jury
22 may have been confused?

23 A Yes.

24 Q Now, what about --

25 A Well, not confused. Potentially misled.



1 Q Okay. And on the basis that the jury was led to
2 believe that notwithstanding the evidence and
3 Dr. Paynter, that the jury may somehow have
4 believed that this was David Milgaard's semen?

5 A Yes.

6 Q And I think we touched on that in a fair bit of
7 detail yesterday, so that the miscarriage of
8 justice is that the jury may have been misled or
9 confused about the value of evidence, which on its
10 face, when you go through it all, doesn't link
11 David Milgaard to the crime?

12 A Right.

13 Q Now, what about, at some point did you learn that
14 Mr. Tallis at the trial actually put this forward
15 as a positive defence; in other words, that -- and
16 I think his evidence is look, I wanted that to go
17 in because I argued to the jury that it exculpated
18 David, how did that fit in with your -- if we go
19 saying, okay, we're now moving to the point that
20 this evidence was confusing, how do you -- how did
21 you take into account and when did you take into
22 account the fact that at the trial Mr. Milgaard's
23 then counsel put forward a position saying lookit,
24 this exonerates?

25 A I don't know when we learned that, I don't have



1 any recollection of that.

2 Q Okay. If we can could go onto 003558, this is a
3 letter from Ken Watson to Eugene Williams. I'm
4 not sure, Mr. Asper, whether you would have been
5 aware of this, and so this is June 19th and they
6 talk about, I think there was a, I hesitate to use
7 the word mix-up, but I think the RCMP and Mr.
8 Williams went out to interview Mr. Wilson and he
9 didn't think he was being interviewed. Do you
10 recall anything about that?

11 A My recollection is shaky on it. I think that
12 there was potentially a mix-up on the dates and
13 they showed up on the wrong date and surprised
14 Mr. Wilson.

15 Q Right. And he would not talk to them at that
16 time?

17 A Right, I think that's what happened.

18 Q And I think what Mr. Watson is saying is he wasn't
19 there, so -- okay. Were you involved in any of
20 that directly?

21 A I don't think so.

22 Q Okay. And in this letter though, you know,
23 Mr. Watson I think goes over what's happened, then
24 it says:

25 "Mr. Wilson's position is that he will



1 be making no statements to you. I
2 understand that you are in possession of
3 a copy of his June 4th statement. Any
4 further evidence that he gives will be
5 before a Court.

6 I would confirm my advice to
7 you that my client was aware from Mr.
8 Asper that some of the witnesses
9 interviewed by your Department were
10 dissatisfied with their treatment. I
11 understand from you and Mr. Asper that
12 Mr. Asper has written to your Department
13 expressing his position with respect to
14 that treatment."

15 We touched on this a bit yesterday. It looks at
16 this point that they are saying no, you can't
17 talk to him. What was your position at this
18 time, do you recall, about whether or not he
19 should submit to an interview?

20 A I think we wanted Mr. Williams to talk to Wilson.
21 My recollection is that we wanted him to.

22 Q And I think there are some transcripts that
23 reflect that, that you were trying to reach him
24 and that Mr. Watson wasn't returning your calls;
25 is that right?



1 A Yes.

2 Q Can you tell us what was happening at this time
3 with Mr. Watson and Mr. Wilson? Do you remember?

4 A No. Everybody was very nervous and, as I say, as
5 I said yesterday, you know, the risk with the
6 media strategy is that you don't make life much
7 easier for your witnesses and it became a problem,
8 TV cameras started showing up in Nakusp, British
9 Columbia.

10 Q I see. And I think Mr. Wilson may have, and I
11 stand to be corrected, may have commented on,
12 either before the Commission or in other
13 interviews, so that after the story broke I think
14 on June 7th, did media people then, I think you
15 are telling us, then tried to contact him and
16 attended in Nakusp?

17 A Yes.

18 Q And in fact I think Mr. Wilson ended up losing his
19 job shortly after didn't he?

20 A Yes.

21 Q Arising out of, I'm not sure what, but I think it
22 was --

23 A It was a circus, it turned into a circus.

24 Q And that may have scared Mr. Wilson a bit into
25 talking to anybody?



1 A Yes.

2 Q Just 169912, just go back to a document here that
3 was May 30th, and this deals with a call you got
4 from Lorne Huff, and May 29, '90 Lorne had been
5 reading about the Milgaard case and called to
6 enquire as to whether the new suspect was Larry
7 Fisher, and then goes on to talk about his
8 involvement back in 1970. Do you recall getting
9 the call from Lorne Huff?

10 A Yes, I do.

11 Q And can you just tell us a bit about that other
12 than what's in the memo, if there is anything in
13 addition?

14 A Well, Mr. Huff was a former senior officer in the
15 Winnipeg Police Department with whom I had had
16 dealings in my capacity as a defence counsel. Our
17 firm also used him as an investigator after his
18 retirement, so we had a pre-existing relationship
19 with Mr. Huff, and he called and knew who we were,
20 he knew what was going on. It was quite
21 remarkable.

22 Q And so did he, did he bring up the name Larry
23 Fisher then before you did?

24 A Yes, he did.

25 Q And I think Mr. Huff testified before the



1 Commission, that was his evidence, and I think the
2 record of media shows that it wasn't until June 21
3 of 1990 that the name was in the media. Do you
4 recall anything else of your discussion with
5 Mr. Huff of significance?

6 A No.

7 Q And did you then, I should say you or the Milgaard
8 group, then utilize Mr. Huff a bit later to assist
9 on some matters?

10 A I believe we did, yes.

11 Q And I think there's a note where you offered him
12 to Federal Justice or to the RCMP as someone who
13 might be able to interrogate or interview Larry
14 Fisher; is that right?

15 A Yes. Well, I see from my note that we suggest
16 that he contact Sergeant Pearson.

17 Q Oh, I see. And I take it that didn't come to be?

18 A I don't think so, no.

19 Q Go to 009487, and this is June 22nd, 1990, this is
20 the time about the CBC, and I think it was June 21
21 and it's to Bruce MacFarlane:

22 "Further to your telephone conversation
23 with Mr. Wolch on June 21, 1990, I am
24 enclosing herein a copy of the news
25 story that ran on CBC television in



1 Winnipeg and Saskatoon during their
2 newscast on June 21, 1990. In addition,
3 I am providing you with a copy of an
4 article what appeared in the Winnipeg
5 Free Press on June 22, 1990.

6 Unfortunately, the rules seem
7 to have changed somewhat with the
8 broadcast by the CBC and its story
9 relating to and naming Larry Fisher.
10 Many people in the media have assisted
11 us in our investigation at various
12 stages along the way. They became privy
13 to confidential information which we
14 have successfully dissuaded them from
15 publishing up until this point.
16 However, the problem of competition has
17 crept into the picture and I am advised
18 that the media is now taking the
19 position that all deals are off. I
20 expect that over the next couple of days
21 a variety of stories will be published
22 and/or broadcast with respect to --"

23 I'm sorry, I can't read that,

24 "-- both currently and at the time of
25 the trial. I cannot speculate what else



1 might be published, but as I say, we
2 unfortunately cannot exercise any
3 further control in this situation.

4 We are being inundated by the
5 media to respond to all of these
6 matters, and I can assure you that we
7 will not be taking positions adverse to
8 the Department of Justice."

9 I'm wondering if you can just elaborate what was
10 going on at this time. We talked about it a bit
11 yesterday, but what happened and why did you
12 write to Mr. MacFarlane?

13 A We were very unhappy with what happened in terms
14 of the publication of the information that we had
15 provided, some of the information that we had
16 provided to the media that had then been
17 investigated and expanded upon, and as I say, I
18 don't recall exactly, I can't recall how this came
19 to be. There were a number of media outlets who
20 were informed who were working quietly off the
21 record, background, and it created sort of a
22 stalemate among that group and nobody was going to
23 break the deal, except one link in the chain broke
24 and then the chain broke and it put us in a very
25 difficult position.



1 Q And the link was the CBC?

2 A Yes.

3 Q And what happened there?

4 A They had done a fantastic investigation and
5 weren't going to sit on it any more.

6 Q And so is it fair to say that they -- we had
7 talked earlier, or you did, Mr. Asper, your
8 concern about publicly naming Larry Fisher and the
9 concerns you had. Is it fair to say that June 21,
10 1990, the CBC concluded on its own that it could
11 and would publish his name in connection with
12 whatever they were writing?

13 A Yes.

14 Q And did that cause you some -- I think you said
15 that caused you concern, that the name would be
16 out there?

17 A Yes.

18 Q And when you say the link was broken, and I think
19 this letter alludes to the fact that now
20 everybody, one media outlet ran with it, everybody
21 would because of competition; is that correct?

22 A Yes.

23 Q And I think that's what we see in the weeks
24 following, a number of news stories. Your letter
25 talks about the media now taking the position that



1 all deals are off. What did you mean by that?

2 A I think I was just simply referring to the fact
3 that we had been able to keep these off-the-record
4 and background deals intact and that whatever had
5 existed up to that point with regard to Fisher no
6 longer existed.

7 Q And were you aware of what it was that the CBC got
8 or had or prompted them to go public with this on
9 June 21?

10 A I may be fantasizing here, but I think -- my
11 recollection is I didn't know and I was called by
12 Mr. Karp and just said watch the news.

13 Q Was that Carl or Morris Karp?

14 A Carl.

15 Q Carl?

16 A And I just remember him saying watch the news.

17 Q And it's my understanding, we've gone through our
18 video library of the Commission to try and
19 identify this, and it's my understanding that on
20 June 21 they may have run an excerpt from a longer
21 story that ran under the *24 Hours* program a little
22 bit later, a couple of weeks later. Does that
23 sound right or am I mistaken on that?

24 A I don't recall.

25 Q And the news --



1 A There were longer pieces done. The *Fifth Estate*
2 did a piece, there was I think a local CBC
3 documentary as part of their newscast.

4 Q I'm going to ask, I'm going to try and test your
5 recollection of what you watched on television on
6 June 21. Was it -- was it in the newscast, like,
7 the regular newscast and a story within a newscast
8 that was published on the 21st?

9 A I don't recall.

10 Q And the reason I ask is we haven't been able to
11 find exactly what it was that was aired that day
12 other than reports the next day that talk about it
13 and it seems that it may have been just in the
14 news, a shorter story, but that later on there was
15 a much lengthier story, but are you able to shed
16 any light on that?

17 A My recollection is that there was a graphic, that
18 when the news came on there was a graphic with a
19 list of Fisher's record and where the offences had
20 occurred. Now, that may have been later, I don't
21 recall.

22 Q I think that was part of the newscast, at least
23 according to some other documents. That's fine.
24 Now let's talk about why -- were there concerns at
25 this time with your relationship with Federal



1 Justice and Sergeant Pearson?

2 A Yes.

3 Q And can you elaborate on that, please?

4 A Well, we had said that we would not publicize what
5 was going on in terms of the investigation that
6 Sergeant Pearson was conducting and it was going
7 to become public, or some parts of it were going
8 to become public, or parts of the information were
9 going to become public.

10 Q And you expressed yesterday that at least in March
11 of 1990 you had concerns that publicizing Fisher's
12 name might impede the RCMP and Federal Justice
13 investigation?

14 A Yes.

15 Q Was that a consideration on June 22nd of 1990 as
16 well?

17 A Yes. Now, you know, to be fair, at some point we
18 also started to get frustrated again that things
19 weren't moving along, you know. By this point we
20 were of the view that we had destroyed pretty much
21 the entire Crown's case and provided an alternate
22 suspect and it may have been on June 21, it may
23 have been on the day previous or a week previous,
24 we started to get fed up again, and so I have to
25 say that while we were concerned with the



1 publicity and the possibility of undermining what
2 Sergeant Pearson was doing, on the other hand, I
3 think it's fair to say we were starting to get
4 revved up again about the lack of progress.

5 Q You talked yesterday about how once the Fisher
6 information came along, that, and I think it was
7 the Ferris information, or it may even have been
8 the Deb Hall information, became, and I can't --
9 less important I think was what you were saying,
10 or you weren't as concerned about the weight or
11 value of that information. Not to say you
12 disregarded it, but because of the Fisher
13 information, that information became less
14 important. Is that a fair characterization of
15 what you said?

16 A Yes.

17 Q And I think you said in March you were really
18 focusing on the Fisher information because that
19 was the most important and it was sort of if you
20 could find the real killer, then that solved your
21 problem; correct?

22 A Yes.

23 Q In June of 1990 at the time of this letter, what's
24 changed here is you've now got Dennis Cadrain, his
25 information on Albert Cadrain. You don't have



1 Albert Cadrain's statement yet, but you have
2 information that you didn't have before that he
3 had some mental illness problems; correct?

4 A Yes.

5 Q And you had Ron Wilson's June 4th, 1990
6 recantation; correct?

7 A Yes.

8 Q So again at this time did the Cadrain/Wilson
9 information, the fact that you had that, did that
10 somehow change your view about, okay, well, I
11 think you said in March getting Fisher to confess
12 was the most important thing or to get something.
13 Did the fact that you got the Cadrain and Wilson
14 information say okay, well -- and the fact that
15 nothing had happened -- I shouldn't say nothing
16 had happened, but Fisher hadn't confessed and I
17 think you said things were not moving as quickly
18 as you thought, did that sort of factor in and
19 say, okay, well, at this point, you know what,
20 maybe we don't have as much to lose?

21 A Yes.

22 Q And so then let's talk a bit about what, the
23 publicizing of Larry Fisher by the media. Can you
24 tell us what if anything that did to assist you or
25 the Milgaard group in their efforts to convince



1 the authorities to re-open the investigation?

2 A I don't know that the publication of his name in
3 and of itself was of any great moment. What
4 became of greater interest was the details
5 relating to his activities and his previous record
6 and --

7 Q And the fact that they were in Saskatoon and in
8 the area, at least three of them in the area where
9 the murder took place; is that --

10 A Yes, yes.

11 Q Just --

12 A I mean, we got to the point where, you know --
13 well, yes, sorry. Yes, that information was
14 extraordinarily helpful to us from a public
15 relations perspective.

16 Q And the fact that it was in the public domain and
17 I think media people did some further work, they
18 interviewed Larry Fisher, I think there was in the
19 fall a *Fifth Estate* piece where he was
20 interviewed. Do you recall that?

21 A Yes.

22 Q Sergeant Pearson, when he testified, and as a law
23 enforcement officer at the time said that they
24 would never, being the police, would never publish
25 a suspect's name or someone they are investigating



1 because, as he said, we don't know that he's the
2 person who committed the crime, and secondly, we
3 would never say he's the killer because he hadn't
4 been charged and hadn't been tried. You talked
5 yesterday about David Milgaard's concerns about, I
6 think what you said, is doing to Larry Fisher what
7 was done to him. Can you tell us whether that was
8 a concern for you at the time in your group once
9 the name was out there, how do you -- what do you
10 say publicly about whether -- or can you go out
11 and say lookit, he's the killer when he hasn't
12 been charged?

13 A I don't believe I ever said that Larry Fisher was
14 the killer.

15 Q And, I'm sorry, or talking about that fact, and I
16 think there's a couple of interviews where you are
17 asked that question and I think my recollection is
18 you answered to the effect that lookit, his
19 importance is that allows David to raise a
20 reasonable doubt and that's our focus, whether he
21 is or isn't is for someone else to pursue, but the
22 fact that, and I guess what Sergeant Pearson said
23 was the concern about publicly naming someone, and
24 I think what Mr. Beresh, the position he took
25 before the Supreme Court in 1992 to get standing



1 was my client has already been tried and convicted
2 in the media, sort of that concern, and I'm not
3 saying by you, Mr. Asper, I'm just saying that
4 that was his position, the result, and I'm just
5 wondering if that was how you handled that issue
6 or how that influenced what you did?

7 A I had to -- look, I was very concerned about
8 accusing Fisher. We raised Fisher as a suspect.
9 We wanted Sergeant Pearson to succeed. I also had
10 to act in the best interest of my client and the
11 interests of my client started to diverge in my
12 view as I recall a little bit in the sense that
13 Justice wasn't acting, the Federal Department of
14 Justice was not acting on our application, and so
15 once the Fisher information was out, it was out,
16 and so we had to deal with those facts as they
17 were and I couldn't help that it was out, it was
18 out, and so then we had to take those facts and
19 use them as we could to advance the case of David
20 Milgaard and that's what we did with full vigour.

21 Q And so is it fair to say that to the extent that
22 Fisher as the culprit, whether it's a suspicion or
23 he did it, to the extent that it assisted David's
24 case saying, and obviously if someone else
25 committed the crime or might have committed the



1 crime is relevant to David's case; is that --
2 that's what you are saying?

3 A Yes.

4 Q And we'll see that a bit later about --

5 A And the fact that we raised this with, certainly I
6 recall a conversation with Justice, that we didn't
7 have to prove that Fisher did it in order for the
8 Department of Justice to recognize that there had
9 been a miscarriage of justice in the Milgaard
10 case.

11 Q I'm sorry, that came from Justice?

12 A We, in conversations with Mr. Wolch and I, I
13 recall this on a number of occasions because the
14 Department of Justice was relying on, you know,
15 Sergeant Pearson is doing his investigation, he's
16 doing his investigation and we have to wait until
17 that's completed and our position was we don't
18 need to convict Larry Fisher to know that a
19 miscarriage occurred in the Milgaard case.

20 Q And what --

21 A Because what if Larry Fisher never got convicted.

22 Q And what was your response from -- were these
23 discussions between you and Mr. Wolch and with the
24 Department of Justice?

25 A Yes.



1 Q And what was the Justice position back to you on
2 that point?

3 A They wanted to pursue the Pearson investigation.

4 Q Okay. Did they -- I'm sorry, did they say to you
5 you do have to prove that he did it or you don't
6 have to or did they even comment on that?

7 A No, they didn't, they just wanted to continue
8 letting the Pearson investigation play out.

9 Q And I think we saw in some of the documents, we
10 don't need to bring them up, but I think your
11 position at this time was lookit, whether he did
12 or didn't do it is for another day and that's not
13 our job, I mean, police can investigate and the
14 Court can deal with Mr. Fisher, but there's enough
15 here to say that a remedy ought to be granted?

16 A Yes.

17 Q So don't, you know, I think what your position was
18 don't wait until that investigation is done and
19 all that's done, there's enough here to satisfy
20 that there's been a miscarriage of justice?

21 A Yes, an innocent person was in prison. It
22 bothered us.

23 Q If we can go to 003570. This is a memo from Mr.
24 Corbett to his file June 25, and again it's a
25 discussion he had with Hersh Wolch on June 22nd



1 about the interview, and it appears at this point
2 that Ron Wilson, or Mr. Wolch told Mr. Corbett
3 that Ron Wilson would agree to an interview on the
4 terms that there would be court reporter, that
5 Mr. Watson be there and that Hersh Wolch be
6 allowed to attend the interview and that
7 Mr. Williams not be the counsel assigned to
8 interview Mr. Wilson. Do you recall these events,
9 Mr. Asper?

10 A In general, yes, in a general sense.

11 Q Was this something that Ron Wilson was putting
12 forward or was this something that your group was
13 putting forward saying lookit, if Ron Wilson is
14 going to be interviewed, we don't want Eugene
15 Williams and we want Hersh to be present?

16 A I think we were -- I seem to recall these were
17 discussions with Mr. Watson trying to get them,
18 trying to find a way for Mr. Watson and Mr. Wilson
19 to agree to be interviewed and just to find a
20 format that would be satisfactory to them, but I
21 don't recall specifically how this came to pass.

22 Q Okay. If we can go to 052967, June 24th, 1990,
23 this is the date of Albert Cadrain's statement
24 that he provided to Paul Henderson, and we've
25 touched on this a bit yesterday. You are familiar



1 with, generally with this statement and what he
2 said?

3 A Yes.

4 Q And what he said, and we've been through this on a
5 number of occasions so I won't go through it all,
6 but this is where Mr. Cadrain talks about his
7 treatment by the police and:

8 "They asked me the same questions
9 repeatedly, time after time after time,
10 until I was exhausted and couldn't take
11 it anymore. This went on for months,
12 continuing through the preliminary
13 hearing. They put me through hell and
14 mental torture. It finally reached the
15 point where I couldn't stand the
16 constant pressure, threats and bullying
17 any more."

18 And I think -- now, in this statement he does not
19 recant anything about his witnessing blood and I
20 think this statement is silent on that. Let me
21 just check. Yeah, the statement is silent, it
22 doesn't recant his evidence about observing
23 blood, but it simply says lookit, I went through
24 this treatment by the police, and then just
25 actually down a bit he talks about his paranoia



1 and his checking into the hospital. Do you
2 recall how this statement came about, how it was
3 that Paul Henderson went back out and got this
4 statement, what prompted it?

5 A I don't recall exactly, but I think Dennis Cadrain
6 facilitated it. I suspect that we -- my
7 recollection is that we decided to attempt to
8 square the circle by obtaining statements from
9 Cadrain and Wilson -- Cadrain and John.

10 Q I think Mr. Henderson's evidence on this point was
11 he wasn't, I don't think he was exactly sure, I
12 mean, he testified about how he met with Albert,
13 he met with Dennis and that Albert really wasn't
14 providing much other than commenting about his
15 mental illness and then later on he then gets this
16 statement, and I think, I stand to be corrected, I
17 think Mr. Henderson said he thought Dennis may
18 have been involved, but you don't have any
19 recollection about what prompted Albert Cadrain to
20 give the statement?

21 A No.

22 Q The two -- let me put to you two concerns that
23 authorities raised with respect to the statement
24 or issues that were raised and some of which have
25 come up in the inquiry about the statement. The



1 first one is that Albert Cadrain at the time he
2 gave the statement, I think Mr. Henderson, and I
3 think you agreed, at the end of May, 1990
4 concluded that he, Albert, was having mental
5 issues at the time; in other words, that he wasn't
6 very reliable, and in fact what Mr. Henderson told
7 us, that his statement that I saw blood on David
8 Milgaard was not reliable and what he was saying
9 in 1990 was not reliable because of his condition,
10 and I think yesterday you said yeah, that you
11 would -- is that fair, would you have agreed with
12 that?

13 A Yes.

14 Q And that therefore when Albert Cadrain talks
15 about, you know, mental hell and torture and
16 etcetera, going through some of this treatment,
17 the concern has been raised as okay, well, is that
18 reliable based on what he said in his statement,
19 if I recall seeing blood isn't reliable, is this
20 any more reliable. I wouldn't mind your comment
21 on whether that was something that was considered
22 and if so how you dealt with that.

23 A I don't recall specifically other than an
24 exchange, and I honestly don't recall where or
25 when it was, but it was an exchange that occurred



1 after we had Wilson and Cadrain that occurred a
2 couple, a few times, with -- between Mr. Wolch and
3 I and Justice officials -- it may have occurred in
4 the October meeting -- where we made the point
5 that Mr. Cadrain, when he implicated Milgaard in
6 probably an unsafe state of mind, that evidence
7 was okay, but the evidence of anything that he
8 said for the purpose of our application was not
9 okay in potentially the same or possibly a worse
10 state of mind, and that the approach was typical
11 and unfair to Milgaard and examples of not just
12 the unsafeness of the original conviction but of
13 the miscarriage of justice that had occurred, and
14 this exchange occurred with Justice about Wilson
15 and about Cadrain.

16 Q And so am I right that your position was, lookit,
17 his, what he said in '69-'70 is unsafe and what he
18 says in 1990 may also be unsafe, treat them both
19 similar, with the same, with the same eye?

20 A Yes. And coupled with the revelation, of course,
21 that there was -- there were state-of-mind issues,
22 let's say, in '69, in 1969 or -- and certainly
23 demonstrably so by, you know, a couple, three
24 years later, that were unknown, that were not
25 known or disclosed, maybe not known by the police



1 either.

2 **Q** And so, just on this exchange with Justice, I
3 think what you were saying is, lookit, you can't
4 have it where it's reliable in '69 but not in '90,
5 what about the flip side, that -- your position
6 being it's not reliable in '69, if it's not
7 reliable in '69, is it reliable in '90?

8 **A** Well, this is what I was trying to explain
9 yesterday.

10 **Q** Yeah.

11 **A** When we had statements from witnesses where -- and
12 specifically with Cadrain because there had been
13 evidence that Cadrain had been interrogated to
14 some degree in oppressive, let's call it,
15 circumstances in Regina when he got picked up on
16 the vagrancy. So when he describes the mental
17 hell and torture, whatever he said, you -- we may
18 have been able to connect it to what we actually
19 had heard and read in the transcripts, but we have
20 no idea, we have no idea of knowing whether the
21 evidence is reliable or not. Is it the truth, is
22 the whole truth and nothing but the truth? It has
23 to be ultimately weighed against other factors,
24 and I guess what we were saying is he may not be
25 telling the truth in the 1990 statement, just as



1 he may not have been telling the truth in 1969.

2 Q Okay. And so, "here's what he's told us, here's
3 what he's said, put it into the hopper and sort it
4 out with everything else"?

5 A Yes.

6 Q And so just on the second, then, so the first
7 concern was the reliability of his state of mind.

8 The second concern that I think
9 was raised by authorities after the statement was
10 obtained was the, and we touch on this a bit
11 yesterday, was the fit between -- and I think
12 where he talks, if we could just go up a bit to
13 this paragraph where he is talking about they,
14 he's talking about the Saskatoon Police in the
15 questioning:

16 "They put me through hell and mental
17 torture."

18 Umm, in fact actually just to the paragraph up,
19 he talks about being picked up by Karst and
20 Short, etcetera, questioned 15 to 20 times, and I
21 put this to you yesterday; that one concern that
22 was raised is okay, from the Saskatoon City
23 Police perspective, was -- and we see this in
24 some of the reports and we've heard this from
25 some of the officers -- that, lookit, this guy



1 came in voluntarily, came in one Sunday morning
2 and said "I think my friend killed Gail Miller,
3 there was blood on his clothes", and a few other
4 pieces of information, and that over the
5 following months he I think added a few pieces,
6 but that essentially, when he testified at trial,
7 it was similar evidence or the same evidence, and
8 the question is, okay, between point A, March
9 2nd, '69, and point B, when he testified, if he
10 says he was put through mental hell and torture
11 by the police, what were they torturing him to
12 say and do when --

13 A I --

14 Q And so that's just the position that's been put
15 forward. And, again, was that something -- and I
16 appreciate yesterday you said well lookit, the
17 Regina police treatment has to be factored in, and
18 so let's add that, that he talks to the Regina
19 police I think in February of '69, and then again
20 let's add that to the piece; was that something
21 that concerned you at the time or that you
22 considered at the time?

23 A I'm not sure --

24 Q And I guess --

25 A -- what you are asking.



1 Q -- the question is I think one, when the
2 authorities looked at the statement, one of the
3 concerns they raised is, well -- and I'm
4 paraphrasing -- but "that's not very credible to
5 say you went through mental hell and torture when
6 your evidence didn't change."

7 And let's say, for example, if
8 Ron Wilson had said it when he said David Milgaard
9 did nothing and then later says he did, that there
10 was something that the police were trying to
11 change?

12 A Okay. I -- the point here, I think, is that
13 nothing that Albert Cadrain was saying would be
14 worth -- could be worth anything, potentially, and
15 that the whole thing was part of a delusional
16 fantasy, and it's subjective, you know, it's
17 what's in his mind.

18 Q Right.

19 A He is describing what's in his mind, and if he
20 believes that he's going through mental torture,
21 that's in his mind.

22 Q And so are you saying that the fact that he would
23 say that, and that it might be unreliable and
24 might be wrong, might actually assist you in the
25 sense that lookit, he can't be relied upon,



1 nothing can be relied upon?

2 A Or it might be, or it might be true, in which case
3 it creates an environment of oppression in which
4 other information was obtained from witnesses.

5 Q Yeah. I guess that's my --

6 A I mean it cuts all kinds of different ways.

7 Q And that was my next question, the fact if it is
8 true that he was put through mental hell and
9 torture by the police, I think that was something
10 that, again, you had put forward and was part of
11 the grounds, at least by this time, saying lookit,
12 these witnesses were put through improper police
13 techniques, if I can put it that way?

14 A Right.

15 Q And so, okay, I think I understand. So that the
16 statement --

17 A And you have to bear in mind that the whole case
18 started, as you've said, when Cadrain walked in
19 and said "I saw blood on Milgaard's pants", this
20 was the source of it.

21 Q Now, again, when this statement was obtained I
22 think it was sent in to the Federal Minister. I
23 think we've covered from, if we can call it, the
24 legal avenue how this statement would be utilized
25 to assist your case. Is there anything else you



1 want to add on that front?

2 A No.

3 Q I think we've covered that. On the, if I can call
4 it the publicity side, I think you've said lookit,
5 by this time it was not only important to put
6 information to the Minister, but to get it in the
7 public domain to get the public to influence the
8 authorities and as well to, I think you said,
9 don't lose sight of the fact that publicity causes
10 other people to come forward?

11 A Yes.

12 Q Okay. But again, just on that, would it be fair
13 to say that Albert Cadrain's statement that he was
14 put through mental hell and torture would again
15 have some appeal to the public in the sense of at
16 least raising the issue in the public's eye that
17 that was the sort of thing, similar to the dog
18 urine, that --

19 A It's was sensational, yes.

20 Q -- was sensational? Okay. And if we can call up
21 039118. This is an article June 26th, 1990 by Dan
22 Lett, *Milgaard witness says detectives 'tortured'*
23 *him*. And, again, would that be the type of thing,
24 when you say 'sensational', that would get the
25 public's attention when the public reads that



1 witnesses were tortured by the police? Now it's
2 got quotes around it, but --

3 A Well I have to say -- and you can explore this in
4 your media phase -- how the Cadrain statement gets
5 played. Umm, of course as counsel and as part of
6 the team you -- there is a risk in providing it to
7 the media because you don't know how the media is
8 going to play it, and the journalist himself did
9 not write that headline and had no role in writing
10 that headline.

11 Q Let me just back up.

12 A So how the treatment, how the treatment, you know,
13 you could write that -- and believe me, in my own
14 business right now I'm intimately involved in this
15 problem, the question of headlines.

16 Q And in fairness let's maybe just ignore the
17 headline for a moment, then, and go back to the
18 content where they repeat what's in the statement.

19 A Well, except that the headline creates the
20 sensationalism. If the headline had said *Milgaard*
21 *team submits new statement from Albert Cadrain,*
22 which is a factual, non-editorialised, non-torqued
23 headline, I'm not sure that you get the same media
24 result.

25 Q Okay. Let's just go back --



1 A Even with the same body of the story.

2 Q And I think what you are saying is, lookit, ask
3 other people how they dealt with the information.
4 Let's just talk about what you had and what -- and
5 I think what the documents show is that the
6 Cadrain statement was sent by you, or by your
7 group, to the media, including Dan Lett; is that
8 fair, --

9 A Yes.

10 Q -- at the same time it was sent to Federal
11 Justice?

12 A Yes.

13 Q So in getting the statement that has the words
14 "mental hell and torture", and sending it to the
15 media, did you expect that you would get some
16 sensational media stories? Forget the headlines.

17 A Yes, I -- look, yes, no question.

18 Q And that, regardless of newspaper practices, you
19 expected that "mental hell and torture" would get
20 some play in the media and would cause people to
21 take a look at this issue and --

22 A To be honest with you, I thought that the mental
23 instability would be the story, I did not think
24 that "mental hell and torture" would be the story
25 at all. I thought, from a media perspective, the



1 visions and halos and the serpents was the story,
2 and my recollection is -- and it's, you know, it's
3 an unfortunate, umm, ah, part of it -- but someone
4 was not going to come out looking good, and it
5 could have been a crazy Albert Cadrain or it could
6 have been police officers.

7 Q And did it matter to you which one it was?

8 A Frankly, no.

9 Q And why not?

10 A I was acting in what I thought was the best
11 interests of my client in order to try to get the
12 Department of Justice to do something.

13 Q And so just back, when you say "the mental
14 instability", the story might have been that the
15 key witness at trial was suffering mental problems
16 at the time he testified and, therefore, his
17 evidence may not have been reliable?

18 A Right.

19 Q If you can go to 15835 --

20 A That's what I thought the story was going to be.

21 Q Yeah, okay. 15835 -- well just, sorry, on that,
22 when you say someone was going to get hurt, umm,
23 and you said it may have been Albert Cadrain, in a
24 case of this 'the detectives tortured him', would
25 that be, then, the police who were getting hurt?



1 A Yes.

2 Q Because the public is being told that the police
3 tortured this witness?

4 A Yes.

5 Q Okay. And, again, that was something that was --

6 A Well, and if it's not true, obviously.

7 Q Right. If it's true then --

8 A Cadrain is hurt.

9 Q Okay, and if it's not true, then the police are
10 hurt?

11 A Right.

12 Q Okay. If we could go to 158351. And, again, this
13 is just a letter to Mr. McCloskey with the media
14 clippings, I don't know which news reports you
15 sent, I'm not sure it matters. And you say:

16 "As you can see from the recent set of
17 clippings, we are attracting a fair
18 amount of media attention, and hopefully
19 that will translate into some pressure
20 on the Department of Justice."

21 And so that's what you have been telling us on a
22 number of occasions, that was the plan, correct?

23 A Yes.

24 Q 163079. June 27th, '90, and this is George Oake,
25 I don't think -- and this is the *Toronto Star*,



1 there's just one point in here. So this is June
2 27th, you say:

3 "We are starting to have some high level
4 discussions with the Department of
5 Justice which at this stage focus
6 principally on the recanting statement
7 of Wilson."

8 Can you tell us what, do you remember what those
9 would have been at this time?

10 A No.

11 Q And when you say "high level discussions with the
12 Department of Justice", would that be -- do I
13 interpret "high level" to be someone higher than
14 Eugene Williams, or are you describing the people
15 you are talking with or the nature of your
16 discussions?

17 A I don't know, I -- I don't know.

18 Q Would --

19 A I -- we clearly got their attention with Wilson
20 though.

21 Q And, what, maybe just tell us what, what happened
22 or why do you say you got their attention?

23 A There was a lot more dialogue between Mr. Wolch
24 and I and the Justice officials.

25 Q And so that would be telephone calls back and



1 forth?

2 A Yes.

3 Q And again, I appreciate that it's a while ago and
4 it's maybe hard to place calls in the sequence,
5 but are you able to tell us anything about what,
6 generally, was discussed in those calls or what --
7 the position Justice was taking?

8 A No, I can't. And you can see from here, we're
9 starting to -- where you have the *Toronto Star*
10 involved, nothing that we had done up to that
11 point in terms of trying to generate pressure on
12 the Department of Justice meant anything, umm,
13 until the national desk of *The Globe and Mail* or
14 the *Toronto Star* called the Department of Justice,
15 and you can see where the -- where it was starting
16 to get them engaged.

17 Q And you've talked about that before, and I think
18 we see that at some point the national press and
19 the Toronto press start to become involved, is
20 that right?

21 A Yes.

22 Q And I think you told us that initially, although
23 the publicity in Winnipeg and area was good, you
24 had to get it beyond, and efforts were made, and I
25 think some of the documents and transcripts



1 suggest that you made deliberate efforts to try
2 and get this story to play nationally; is that
3 correct?

4 A Yes.

5 Q And to get the attention of the national
6 reporters?

7 A Yes.

8 Q And I think you said the Ron Wilson statement; did
9 the Ron Wilson statement help in that effort?

10 A Yes.

11 Q And what about Albert Cadrain's statement of June
12 24th?

13 A I don't recall. I don't recall how that played.

14 Q Okay. Probably an appropriate spot to break.

15 (Adjourned at 10:30 a.m.)

16 (Reconvened at 10:53 a.m.)

17 BY MR. HODSON:

18 Q If we can go to 157092.

19 Just before I forget, Mr. Asper,
20 you talked about the media, when we were talking
21 about headlines and things of that nature you had
22 also mentioned on another occasion about the fact
23 that there was competition when you talked about
24 the CBC and the like. Would it also be fair to
25 say that once this story started to get



1 significant attention in the media, that the media
2 themselves were competing amongst each other as
3 far as what they were reporting on, and that
4 that -- I think your comment was once it's in the
5 media it's out of your hands, but was the
6 competition something, as well, that was in play?

7 A Yes.

8 Q And that maybe one was trying to outdo the other
9 but maybe keep up to the other and that type of
10 thing, that created more interest as well?

11 A Yes.

12 Q So 157092 is a letter from Mr. Corbett to you, I
13 had showed you the June 12th letter regarding your
14 concerns about Mr. Williams, and Mr. Corbett is
15 saying:

16 "I have reviewed the record made of the
17 interviews of Debra Hall and Linda
18 Fisher. In can find nothing untoward in
19 the manner in which these interviews
20 were conducted."

21 Do you recall whether you had any further
22 discussion or follow-up on this with Mr. Corbett?

23 A No.

24 Q 043139.

25 A Mr. Corbett later showed, I believe, his degree of



1 impartiality, however, and his true colours.

2 Q And what, in reference to --

3 A Referring to those of us who believed in David
4 Milgaard's innocence as similar to those who
5 believed that Elvis Presley was alive.

6 Q And that's, I think, the newspaper article of
7 Mr. Roberts, I think, that's been referred to; is
8 that what you are referring to?

9 A Yes.

10 Q And were you relying on -- are you relying on
11 what's -- I'm sorry, is that a discussion you had
12 with Mr. Corbett, or just what?

13 A No, that he public -- that he stated to the media.

14 Q Oh, okay. This document, July 3rd, 1990, is your
15 memorandum to file about a call. It says:

16 "I spoke with Carl Karp at the CBC
17 during the weekend of July 1st, 1990,
18 and obtained the names and some of the
19 addresses of Larry Fisher's victims.",
20 and then goes to list them all, and the dates and
21 the names and some addresses.

22 "The latter two victims were the subject
23 of the Lorne Huff investigation ...",
24 and:

25 "Huff indicates that he has no access to



1 the incident reports but suggests that
2 perhaps we might communicate with the
3 Chief ...",
4 and then talks about these other rapes, or the:
5 "... three of the rapes within ...
6 months preceding the death of Gail
7 Miller ..."

8 Now I think we saw, in your March 15th, 1990
9 letter to Eugene Williams, you went through the
10 CPIC information that had his record that listed
11 Regina as the place of the offence, or the
12 assumed place of the offence, as well the dates
13 of the offences. This memo appears to be the
14 first record that people became aware, at least
15 in 1990, that the rapes had taken place in
16 Saskatoon and not Regina; is that, is that
17 correct, is it this call?

18 A I believe so, yes.

19 Q So it's Carl Karp phoning you saying "lookit, the
20 rapes were in Saskatoon, and here's the names of
21 the victims"; --

22 A Yes.

23 Q -- is that right?

24 A Yes.

25 Q Do you know where Carl Karp got this information



1 from?

2 A No.

3 Q Do you have any -- did he share that with you when
4 he told you, was it a source, was it the Court
5 file; do you know what?

6 A I -- my recollection, I think he said Court files,
7 but I can't be certain of that.

8 Q And so the addresses, and it may well have been
9 that he looked those up in some other source to
10 try and find these people, but you are not aware,
11 you can't shed any light on where the source of
12 this information is?

13 A No.

14 Q And I think Carl Karp, was he one of the CBC
15 investigative journalists that was undertaking the
16 work in March, April, May, June that you talked
17 about earlier?

18 A Yes.

19 Q And so is it fair for us to conclude that this was
20 one of the products of his investigative work?

21 A Yes.

22 Q Did -- can you tell us just generally, and I'll go
23 through some documents, but did this change the
24 way you looked at the Fisher information, finding
25 out that the rapes were in Saskatoon, not Regina?



1 A Yes.

2 Q And in what way?

3 A Umm, it, in our mind, increased the probability
4 that he was the true perpetrator, and it vastly
5 exacerbated our frustration and, call it, rage
6 with the Department of Justice and how it had been
7 conducting the investigation into Fisher.

8 Q And you may have touched on this yesterday, I
9 think you said something to the effect that you
10 had expected that they would have found out this
11 information?

12 A Well they certainly would have had easier access
13 to it than we would.

14 Q Okay. So if we can go to 010019, and this is a
15 July 5, 1990 memo from Eugene Williams to his file
16 regarding a call with Wolch and Pearson, and he
17 says he learned from Bruce MacFarlane that Hersh
18 Wolch had the names of four Saskatoon rape
19 victims. Can we take it, from that, that Carl
20 Karp phones you, you tell Hersh Wolch, Hersh Wolch
21 phones Bruce MacFarlane; is that likely what
22 happened?

23 A Yes.

24 Q And any reason to MacFarlane rather than to
25 Williams?



1 A We were trying to deal with a superior officer in
2 whom -- superior official in whom we had a greater
3 sense of trust.

4 Q And that would be Mr. MacFarlane?

5 A Yes.

6 Q And then the memo says:

7 "This information did not accord with
8 the information we had earlier received
9 from the R.C.M.P. and the Saskatoon City
10 Police, who advised us that there were
11 not any incidents of rape attributed to.
12 ... Fisher."

13 And then it goes on to cite the names. What
14 Sergeant Pearson told us is that he, I think in
15 March of 1990, contacted the Regina police to get
16 police records and found nothing, thinking that
17 they were Regina rapes; were you aware of that at
18 that time?

19 A I may have been. I don't recall it now.

20 Q And then here:

21 "Mr. Wolch requested copies of the
22 occurrence reports and the witness
23 statements relating to these offences."

24 And that would be the four Saskatoon rapes.

25 "He noted that the information about



1 these victims came from a C. B. C.

2 documentary which was recently aired."

3 And is that accurate, is that where --

4 A I'm not sure if it was a documentary or a newscast
5 but it was --

6 Q But from the CBC?

7 A Yes.

8 Q And:

9 "He also wanted to know when the
10 investigation would be completed ..."

11 Now just on the issue of the occurrence reports
12 and the witness statements for these offences
13 that he asked for, do you recall -- and I'll show
14 you some documents a bit later that where Mr.
15 Williams says he got back to Mr. Wolch saying,
16 other than one partial, there were no records for
17 these four rapes; do you recall learning of that
18 in 1990?

19 A I've, umm, I've tried to recall the whole issue of
20 the occurrence reports and the files because I
21 suspect you are going to ask me about that as
22 well. I really don't have any recollection.

23 Q Okay. I will take you through with the benefit of
24 some documents, later, that might assist you, but
25 just on this point, it looks as though, at this



1 time, the request was made --

2 A Yes.

3 Q -- and as well:

4 "... wanted to know when the
5 investigation would be completed and
6 whether we had interviewed ... Fisher.
7 He repeated his beliefs that his client
8 was innocent, and indicated that he
9 wanted to use the occurrence reports to
10 establish a pattern of similar act, to
11 identify Larry Fisher as Gail Miller's
12 assailant."

13 Let me just pause there, and you touched on this
14 yesterday, okay. Was that the, once you learned
15 about this information about Larry Fisher, did
16 you change your approach at all as to how the
17 Larry Fisher information fit in with what you
18 were putting forward?

19 A Absolutely.

20 Q And --

21 A The -- the -- umm, umm, it was, it was one thing
22 for David Milgaard to have visited a home where,
23 in the basement, a serial rapist resided. That
24 was one thing, that was the information that we
25 had in March. It became quite another thing where



1 we determined or found out that not only the
2 person who lived in the basement was a rapist,
3 umm, but had committed a series of crimes within
4 the vicinity of where Gail Miller had been
5 murdered. It added a very important, umm, series
6 of facts to the -- to just the probability
7 equation of who is a more likely killer and
8 rapist.

9 Q Now at this point are you able to tell us, at this
10 point in time, whether you would have been aware
11 of the connection that the Saskatoon City Police
12 had apparently drawn between the, at that time,
13 unsolved rapes, the three prior to Gail Miller's
14 death, and the Gail Miller murder? I --

15 A I -- I can't, I can't say when, when that factored
16 in.

17 Q At some point you became aware of that; is that
18 right?

19 A Yes.

20 Q It would appear at this time, from the documents,
21 that you may not have been aware of that; is that
22 --

23 A That seems to be the case, yes.

24 Q And then, just, can you elaborate a bit on this
25 idea about:



1 "... establish a pattern of similar act,
2 to identify Larry Fisher as Gail
3 Miller's assailant."

4 A We wanted, we wanted to know what had happened in
5 the previous attacks to find out if there was a
6 pattern --

7 Q And --

8 A -- that we could attach to the Gail Miller, the
9 facts of the Gail Miller murder.

10 Q And would it be, the objective there would be to
11 say lookit, this would help us in providing more
12 proof that Larry Fisher might be the killer of
13 Gail Miller?

14 A Well, yes. We had accepted the fact or we seemed
15 to -- we were resigned -- and you can see from, I
16 think, from the tone of this memorandum you are
17 showing me now, whatever work was gonna get done
18 we were gonna do it, and so what would you do with
19 the information. Well the next step would be to
20 find out what actually happened in those crimes to
21 find out if it looked like what happened to Gail
22 Miller.

23 Q Now we know from the second application in August
24 of '91 that that was the basis, more specific
25 there, saying "okay, now this" -- once the first



1 application was dismissed the second one was
2 really based upon the similar act evidence, wasn't
3 it, saying "as a result of analysing all these
4 rapes and the Centurion report we think this
5 establishes Fisher as the assailant"?

6 A Yes.

7 Q And what was the difference between what you are
8 getting at here, in July of '90, versus what you
9 put forward in the second application, if any?

10 A You know, you are going to get me started. There
11 was essentially no difference.

12 Q And, by that, you --

13 A Everything that was of -- everything, everything
14 that was in the second application was available
15 in the first application, or could have been
16 available.

17 Q And let's just go back, look at this in two
18 phases, first your position and, second, the
19 department's position. From your position put
20 forward in the first application are you telling
21 us that the ground, if I can call it that, that
22 you put forward in the second application was also
23 put forward in the first application? In other
24 words --

25 A In its nascent form, yes.



1 Q And so that, as far as "here's the miscarriage of
2 justice" in the first application, in your opinion
3 that was a ground squarely put forward to the
4 Minister of Justice?

5 A Well, let's just pause for a second, because
6 without the similar act evidence we have a man who
7 lives in the basement of the home that Milgaard
8 visited who had committed several rapes for which
9 he was convicted within the vicinity of where Gail
10 Miller was murdered, Wilson had recanted. We had
11 called into question at the very least the
12 veracity or the reliability of the forensic
13 evidence, and at that point -- at this point we
14 didn't, I don't think we knew exactly where
15 Deborah Hall was. But surely, on the three main
16 points, we would have established a miscarriage of
17 justice, leaving aside whether there was similar
18 act evidence.

19 Q So tell me if this --

20 A So, sorry --

21 Q Yeah.

22 A So we believed that in the first application
23 without the first, without the similar act
24 evidence, it was, a miscarriage of justice had
25 occurred and there was more than enough evidence



1 submitted to the Department of Justice to justify
2 re-opening the case.

3 Q And so then as far as the first application, are
4 you saying, and please correct me if I'm wrong,
5 that the similar act issue was there, but not
6 really as developed as much as you could have
7 because you didn't think you needed to develop it
8 because of all the other evidence; is that what
9 you are saying?

10 A No, no. We assumed that as we provided this
11 information, most of the -- most of the definitive
12 information regarding Fisher was information that
13 was more properly in the realm of the police
14 because if we were correct, then the wrong
15 person -- not only had the wrong person been
16 convicted, but the true killer, and I believe he
17 was scheduled for release from prison at the time,
18 would be at large, and we frankly assumed that
19 this might be of some interest to investigative
20 authorities.

21 Q And maybe let me ask the question this way.
22 Why -- and maybe you did, but why didn't you
23 include in the first application everything you
24 put in the second application? I think that's --

25 A We didn't have the information.



1 Q Okay. So that as far as putting forward in the
2 first application this notion of establishing a
3 pattern of similar act, we know that that was the
4 primary or maybe even the sole focus of the second
5 application. On the first one I think you are
6 saying lookit, it was put forward, but we didn't
7 have as much information as we had in the second
8 application?

9 A Right.

10 Q Number 1, right, and number 2, was there an
11 expectation that work may have been done by
12 justice?

13 A Or the RCMP.

14 Q Or the RCMP?

15 A Or the Saskatoon police or someone. Someone who
16 was a police officer.

17 Q And so was it your expectation then that by
18 raising Fisher as a suspect, that if similar act
19 evidence could have been used to point the finger
20 at him, that they would do that work?

21 A Yes.

22 Q And so then when the first application was
23 rejected --

24 A -- Mrs. Milgaard went out and did the work.

25 Q And that was interviewing the victims and then



1 putting forward the second --

2 A And then we had a conference, took all the facts,
3 created a chart and sent it back to Ottawa.

4 Q Was it -- and so again just as far as the
5 difference between the first and the second
6 application on the similar fact issue, the first
7 one, would you agree -- what was put forward, at
8 least from your side, and it may have been because
9 you didn't have the information, but what was put
10 forward was similar fact as an issue, but not the
11 background information?

12 A No. What we put forward is -- I mean, I guess by
13 implication, yes, we did raise the question of
14 similar act evidence. What we had done was, we
15 felt, was establish beyond any conceivable
16 threshold that the conviction of David Milgaard
17 was a miscarriage of justice.

18 Q Is it, is what you are saying, and I'm sorry if
19 I'm not getting it, but is what you are saying is
20 lookit, we did not think in mid 1990 with
21 everything that we had, we had enough there on
22 Fisher, we did not think we needed to go and
23 develop it to the fullest extent that we did in
24 the second application?

25 A That's true.



1 Q Okay. So that Fisher is still there, Fisher is an
2 issue, and based -- I think earlier on you said
3 because of Wilson and Cadrain and everything else,
4 that you thought you had enough on Fisher that
5 suggested a miscarriage of justice?

6 A Yes.

7 Q Your application is dismissed, it appears the
8 minister disagrees with your view about whether
9 you had enough, the second application you then go
10 and get some additional information from the
11 victims and put forward another argument to say
12 okay, here is some more information that points to
13 Fisher that buttresses what we gave you before,
14 now give us a remedy; is that a fair summary?

15 A Yes.

16 Q If we can go to 010033, this is a July 5 letter
17 from Mr. Wolch and it covers the same thing. Just
18 for the record, asked to receive all the details
19 regarding the seven other serious sexual assaults.
20 We have the names, rather interested in looking at
21 patterns and similar acts, etcetera. Do you have
22 any memory, Mr. Asper, of what you would have
23 received back from Justice in response to this
24 request?

25 A I don't recall.



1 Q And then if we can just go down, at the bottom he
2 says:

3 "All the information which exonerates
4 David has come from our sources.
5 Keeping in mind that we have no
6 financial support at all we cannot help
7 but wonder what we would achieve if we
8 had the same resources that you have.
9 It was somewhat disturbing to learn that
10 as of this date you are not totally
11 familiar with the nature and substance
12 of the record of Larry Fisher. Clearly
13 you would have better access to the
14 record and the police reports than we
15 would, and yet in spite of the fact that
16 we furnished the information some time
17 ago, it appears that you either did not
18 receive the information or received
19 wrong information in this regard."

20 And that's I think the point you made earlier;
21 correct?

22 A Yes.

23 Q 337482, and this is tape 155, this is one of the
24 new tapes, I think it's a conversation July 5,
25 1990 and it's a conversation between Joyce and



1 Hersh Wolch, and if you can go to page 337489,
2 just a point here I wanted to ask you about. I
3 appreciate you are not involved in this call, but
4 it's a discussion, it talks about the July 5
5 letter and it talks about Mrs. Milgaard, 'So when
6 are you meeting? On the 6th you were supposed to
7 meet.' Hersh, 'Well we were supposed to meet but
8 it was supposedly on the premise that they will
9 meet with Wilson first, so I think Wilson is the
10 key right now.' 'So you are not going to have
11 this meeting. How am I going to get to Ottawa
12 tomorrow.'

13 And when I read that, I wondered
14 whether there had been a meeting planned on July 6
15 with Justice similar to the type of meeting you
16 had later in October, but that ended up getting
17 put off because of the Wilson information, Fisher
18 information. Do you have any recollection of
19 that?

20 A No. I have a feeling that the Wilson interview
21 might have been scheduled for Ottawa as well.

22 Q Okay.

23 A But it's fuzzy.

24 Q And when I read that, I wondered whether or not a
25 meeting had been set up on July 6 where the



1 department was going to say okay, here's what we
2 have.

3 A I don't recall that.

4 Q And then it got delayed because of other
5 information. No?

6 A I was at a disadvantage, my wife was in labour
7 actually that day with our first child.

8 Q On July the 5th?

9 A Sixth.

10 Q If we could go to 337507, and this is a
11 conversation, I think this is part of the same doc
12 ID, the same tape, a conversation between you and
13 Mrs. Milgaard, and this is talking about your
14 discussions with Ron Wilson and this talks about
15 Wilson's involvement sort of gives him an accuse
16 to get rid of him and now he's on holidays and
17 this is, you are relating, I think, if we can go
18 to the next page, a discussion where you found out
19 Wilson lost his job, and then, 'No, interestingly
20 enough he told me Ken Watson his lawyer has told
21 him essentially to tell me nothing, but he said
22 look, I'm going to tell you this. He says Justice
23 sent him his two original statements. The first
24 one is exactly the same as the statement he gave
25 us, nothing happened, I don't know anything, and



1 we had nothing to do with this crime.' 'Right.'

2 'The second statement, however is one where he
3 was, you know, coerced.'

4 And it looks like here, Mr.
5 Asper, that you had talked to Ron Wilson around
6 this time and he had told you that his lawyer, or
7 Justice had sent to him his two original
8 statements; is that right?

9 A Yes.

10 Q And then the next page, and I think Mr. Wilson
11 ended up, or Mr. Watson ended up sending you the
12 first statement; is that right?

13 A I guess so.

14 Q And is it fair to conclude that you wouldn't have
15 seen that statement up until this point, or aware
16 of it?

17 A I think that's fair, yes.

18 Q Had you considered asking Justice for that at all,
19 back before the interview of Ron Wilson, to get
20 from Federal Justice copies of any statements Ron
21 Wilson might have made?

22 A We may have had that conversation with them. I
23 don't think we did it, made the formal requests in
24 writing.

25 Q Pardon me?



1 A We didn't make the request formally in writing,
2 but we may have discussed it with them. I'm not
3 sure though.

4 Q Okay. Do you have a recollection of asking for
5 his statement before the interview?

6 A I don't recall specifically asking for that
7 statement. We were -- we had been asking for
8 disclosure though.

9 Q Okay.

10 A Generally, in a general sense.

11 Q In telephone discussions --

12 A Yes.

13 Q -- or in writing?

14 A Yes.

15 Q And that would be to Eugene Williams?

16 A Probably -- no, I think they were with Mr.
17 MacFarlane.

18 Q And then there's a discussion here where you say,
19 'One wonders though whether Tallis had his first
20 statement, whether that was disclosed.' Joyce,
21 'Well we always knew that they'd all given first
22 statements.' 'Yeah, but did the defence have a
23 copy of that statement because nowhere in the
24 cross-examination of Wilson does Tallis put his
25 first statement to him.' 'Oh David, I'm sure



1 there must have been. Hold on.' Someone at the
2 door. 'Well Disbery or Tallis would certainly
3 know that wouldn't they.' You say, 'Well not
4 necessarily because when I talked to Disbery you
5 know I asked him if he had any, any recollection
6 and he had none. But you know I mean the proof is
7 in the pudding because I don't know that trial
8 technique has changed to any great degree in the
9 extent that when you have someone testifying in a
10 manner inconsistent with his statement previously
11 given that you cross-examine that person.' Joyce,
12 'So you're thinking that he really didn't have
13 it?' 'Well I think that, I mean my recollection,
14 and I can review it, but my recollection of
15 Wilson's cross-examination does not, I mean I know
16 for a fact that it contains no specific reference
17 to a statement and a date when the statement was
18 given you know like, a cross-examination would
19 typically go sort of like this, Wilson on such and
20 such a date ...'

21 And let me just pause there. It
22 looks as though at this point you've got Ron
23 Wilson's first statement and you are discussing
24 whether or not Mr. Tallis would have had it at the
25 time of trial; correct?



1 A Right.

2 Q And you make reference to talking to Disbery who I
3 think was Mr. Tallis' junior counsel?

4 A Yes.

5 Q Would you have called him to ask him that question
6 do you remember?

7 A I don't recall.

8 Q And is there any reason you would have called him
9 rather than Mr. Tallis?

10 A I can't recall. I don't recall even speaking with
11 Mr. Disbery.

12 Q Okay. And then the next page there's a discussion
13 again and Mrs. Milgaard says, 'I think it's, I
14 don't think it's in the prelim.' She says, 'I'll
15 go back and look, I've got the prelim downstairs.
16 I'll check that.' And then scroll down, you say,
17 'Okay, so what, but that, those are, those are
18 sort of things that we can look at, but the point
19 is this, Wilson now sees himself as being
20 desperate, and I said to Wilson please talk to
21 Justice.' Joyce, 'And what does Watson, what's
22 Watson not wanting him to tell you?' And you say,
23 'Well he didn't want Watson,' and then the tape
24 cuts out, 'Now I was with you when I left the
25 urgent message for Watson.'



1 So it appears here you told
2 Wilson go talk to Justice?

3 A Right.

4 Q And then down at the bottom you say, 'But Wilson
5 wants to sell his story, he sees himself as having
6 no money and no future and no hope.' And then the
7 next page, 'And I mean I talked to him for a fair
8 length of time. And sort of kind of pumped him up
9 a little bit to feel good about himself. I think
10 essentially to no avail but at least we had a
11 conversation.' Joyce, 'And do you think someone
12 would buy his story?' You say, 'Well I don't
13 know. I highly doubt that media would buy his
14 story because the general policy of the media is
15 that they don't pay for news. They don't buy
16 stories.' Joyce, 'And Dan's already got it.' And
17 then you say, 'You know, I don't know what else he
18 can add to it other than to embellish, you know,
19 his personal anguish, but you know, I think if CBC
20 were to pay him, he'd go on camera, but you know,
21 CBC ain't gonna pay him I don't think.' 'And what
22 about CTV,' and a further discussion, and then the
23 next page you say, 'What it leads me in my
24 cynicism these days to believe that perhaps this
25 is part of the design of Justice to let us sweat



1 it out for a while and see if, you know, if he
2 cracks.'

3 Do you recall discussions with
4 Wilson about -- was he trying to get, to sell his
5 story then to the media, do you recall anything
6 about that?

7 A I don't recall this conversation, no. I don't
8 recall that conversation with Wilson. I recall
9 generally having a conversation with him trying to
10 stabilize him, but I don't remember the substance
11 of the conversation.

12 Q Do you remember any discussions of anybody about
13 Ron Wilson selling his story to the media?

14 A No.

15 Q And this last comment about Justice, 'To let us
16 sweat it out for a while and see if he cracks,'
17 did you have concerns that Justice, Federal
18 Justice was delaying their interview of Ron Wilson
19 for a purpose?

20 A Apparently I did. I don't recall.

21 Q Don't recall?

22 A No.

23 Q If we can then go to 337528 and a conversation
24 again between you and Mrs. Milgaard, and it looks
25 as though the next page, this is Dan Lett, and you



1 say, 'Dan called there last night,' and I think
2 this is to Wilson, 'I mean I remember I told you
3 Wilson said that this was something that Watson
4 had told him not to tell me.' And you, 'So would
5 Dan, so I was talking to Dan yesterday, and you
6 know I sort of mentioned it looks like maybe there
7 might be a non-disclosure issue coming up here so
8 he of course, and bear this in mind, I phoned
9 Watson, remember from Mitch's office and left an
10 urgent message.' 'Right, right.' 'So I called
11 Watson. I didn't hear from him in the morning. I
12 called later during the day and he was out. Dan
13 had four conversations with Watson yesterday.'
14 Joyce, 'Why isn't he calling you?'

15 And so it looks at this point
16 that Watson is talking to Dan Lett, but he's
17 deliberately not talking to you; is that right?

18 A I guess so.

19 Q And then, 'Apparently, you know, Wilson's first
20 statement is even better than you know, than the
21 one he gave us.' 'Yeah.' 'I mean obviously from
22 the sounds of it, sounds like they, they
23 specifically asked him whether there was a point
24 in time that David was away from the car.' And he
25 says no.



1 Next page. 'But here's, here's
2 where it's coming down to, I mean there's no place
3 in the transcripts, right, where, where that first
4 statement was put to Wilson.' 'You've checked?'
5 'Yeah.' 'So, so.' And that's just in the trial
6 transcripts?' 'Right.' And you say, 'I'll go
7 through the prelim today. Got to run off to
8 Court, but check it out. It either means that the
9 Crown didn't disclose the existence of the first
10 statement and forgot about disclosing the
11 existence of it, they also gotta provide it to
12 defence counsel. Okay. Now they may have said to
13 Tallis oh by the way, when he first, you know, met
14 with the police he denied any involvement.
15 Without giving them anything more. In that case,
16 there's serious, serious problems. This is
17 Marshall, this is exactly what happened in
18 Marshall, but there's a flip side to that, what if
19 they did. I mean, what if Tallis had it. Then it
20 shows complete incompetence of counsel. So then
21 okay, so then I started to think all right I'm
22 Tallis.' Carries on. 'Does it leave open the
23 possibility that Wilson, I mean do I want to open
24 the argument that Wilson lied and they're all
25 trying to cover for Milgaard and in fact they knew



1 more, or know more because the Crown would say you
2 heard Wilson's first statement, you know what he
3 said in his second statement and you've heard his
4 evidence today which you know is reasonably
5 consistent with his second statement. Right. So
6 you can't, it's just as easy for you to conclude
7 that Wilson lied when he first spoke with the
8 police and is now telling the truth but even they
9 know more. And then I, you know, like I spend
10 most of the night tossing this through my mind and
11 I thought there's no way, there's no way that the
12 defence counsel would avoid putting that statement
13 to him. I mean, there's no rationale I can think
14 of that makes any sense for him to hold back
15 cross-examining Wilson on that statement unless
16 what David told us went around prison is true,
17 being that Tallis and Caldwell were in cahoots.
18 Yeah, but Mr. Tallis was up for a judgeship,' and
19 you say, 'Yeah, but it's starting to, I mean,
20 there's starting to become a paper trail which is
21 very unusual, of misconduct.'

22 And again it appears that
23 there's a discussion at this time around the
24 question of, based on Dan Lett telling you that
25 Ron Wilson said he had a first statement about



1 whether or not Caldwell gave it to Tallis, and if
2 he didn't, then the Crown had a problem. If he
3 did give it to Tallis, then Tallis had a problem
4 because you thought he should have used it. Is
5 that a fair --

6 A Yes.

7 Q Fair summary?

8 A Yes.

9 Q 010032, and here's just a note here on prison
10 files, it looks as though the feds, Federal
11 Justice had asked for David's prison file; is that
12 correct?

13 A Yes.

14 Q And again I take it there was no issues there
15 about -- I'm sorry, let me just go back up. Hersh
16 also sought an update on the occurrence reports
17 for Larry Fisher's Saskatoon rapes. Again, do you
18 have any -- I think you told us earlier you don't
19 remember what you got or when you got it?

20 A That's true.

21 Q If we can go to 027179. Actually, let me just --
22 before I get to this article, the transcript I
23 showed you talked about, between you and Mrs.
24 Milgaard, about Ron's first statement, saying that
25 David wasn't even away from the car and that was



1 sort of an issue that we've heard a fair bit of.
2 What is your recollection back at that time as to
3 what David Milgaard's position was as to
4 whether -- you'll recall Ron Wilson's evidence at
5 trial was that when he got stuck he and David left
6 the car to go look for help and that's when he
7 said, or the Crown said the murder must have
8 occurred, and I think it was up to 15 minutes was
9 the longest period of time that David was away.
10 In his -- what Mr. Tallis' evidence is is that
11 back in 1969 David told him that yes, they got
12 stuck somewhere, yes, that he and Ron left the
13 car, but only for a short while, and I don't think
14 Mr. Tallis was able to put it into minutes, but it
15 was I think in the range of a minute or two, but a
16 short while, and Ron Wilson, when he was examined,
17 or when he gave his recanting statement to Paul
18 Henderson, I don't think addressed the issue.
19 When he was examined by Eugene Williams in July of
20 1990 he said, oh, yes, we got stuck and David left
21 the car, but for no more than two minutes, maybe
22 three minutes, something like that. What is your
23 recollection, Mr. Asper, of what, on this issue of
24 whether David was away from the car and, if so,
25 for how long, and, if so, Ron Wilson and David



1 Milgaard were saying the same thing on that
2 subject.

3 A My recollection is David, from the outset, said
4 that they had actually been stuck many times, that
5 they had bald tires and they were constantly
6 getting stuck on the ice, they were able to rock
7 the car back and forth without getting out and
8 that there may have been one or two occasions
9 where they actually did have to get out and push.

10 Q And what about getting out and pushing and leaving
11 the vehicle to go look for help?

12 A I don't recall David ever saying that.

13 Q And what about as far as your -- when you were
14 looking at Wilson's evidence and his statement,
15 his recantation, do you recall whether you placed
16 any significance on that?

17 A On David leaving the car?

18 Q Yes.

19 A I'm sure we would have placed some significance on
20 it, yes. I don't recall it though.

21 Q And I think what Ron Wilson said in his interview
22 with Eugene Williams was yes, he left the car, but
23 only for two minutes and he didn't commit the
24 murder, and his first statement with the police of
25 March 3, '69 I think was silent or said they



1 weren't -- it doesn't talk about that and there
2 seemed to be a debate in the following 16 years,
3 because there may still be a debate today, about
4 whether they did or didn't get stuck and whether
5 David did leave for, you know, for up to two
6 minutes, and the reason I raise it is in the
7 discussion with Joyce Milgaard that I just showed
8 you, you seem to be, or there's a discussion about
9 lookit, in Ron Wilson's first statement he doesn't
10 even say David is away from the car and the first
11 statement is the truth, it's the same as what he
12 told us, and I'm just trying to find out whether
13 you have any recollection or can shed any light on
14 that issue and where it was at that time.

15 A I can't be specific about my recollection on that.

16 Q So here's a July 17th article, "Witness statement
17 withheld, lawyers say," and I think you are
18 familiar with this article, Mr. Asper?

19 A Yes.

20 Q And it talks about:

21 "A statement given by a star witness in
22 the David Milgaard case that could have
23 discredited his entire testimony appears
24 to have been withheld from defence
25 counsel during the 1969 trial, two



1 lawyers close to the case have charged."

2 And then if we can go over here:

3 "The revelation of the first statement
4 has created serious concerns about
5 whether Cal Tallis, Milgaard's lawyer in
6 1969 and now a Saskatchewan Court of
7 Appeal justice, was ever told of its
8 existence.

9 Tallis will not discuss the
10 case.

11 David Asper, Milgaard's
12 Winnipeg lawyer, noted Tallis made no
13 reference to the first statement in
14 questioning Wilson at either the
15 preliminary hearing or trial.

16 Asper said it is inconceivable
17 that Tallis, if he had known of the
18 original statement, would have ignored
19 it at the trial.

20 "It is painfully obvious from
21 the transcripts that Tallis did not
22 direct Wilson to the original
23 statement," Asper said. "It strikes me
24 that it would be serious misconduct for
25 the Crown not to provide that



1 information to the defence."

2 "It suggests to me that Tallis
3 may never have known about it."

4 And those are your comments. I'll go on to
5 Mr. Watson's in a moment. The evidence the
6 Commission has heard, Mr. Asper, is that the
7 statement was provided by Mr. Caldwell to
8 Mr. Tallis in, certainly in the summer of 1969
9 around the time of the prelim, but certainly
10 before the trial, and both Mr. Caldwell and
11 Mr. Tallis have confirmed that and Mr. Tallis
12 testified about the fact that he had the
13 statement. We've seen the transcript where he
14 put the contents of the statement or the fact of
15 the statement to Mr. Wilson and described for us
16 the reasons that he did not tender --

17 A I was here for that evidence, yes.

18 Q Okay. So I'm wondering at this time, can you tell
19 us, what were you basing your comments on in this
20 article, what information, or what was your
21 thinking at the time?

22 A Well, I think this was actually an extraordinarily
23 unfortunate media report and I will tell you what
24 I think, or what I think I intended here. I think
25 there were two parts to this. One was a criticism



1 of Mr. Tallis for not putting the statement to
2 Mr. Wilson and the quote, "It is painfully obvious
3 from the transcripts that Tallis did not direct
4 Wilson to the original statement," is a
5 stand-alone comment that was critical of
6 Mr. Tallis. It was conjoined with a second
7 general statement that it would be misconduct to
8 not provide the statement to the defence which
9 would be true, except put together it makes it
10 sound like I'm accusing the Crown of misconduct
11 and I don't believe that that's what I intended in
12 this interview.

13 Q What did you intend?

14 A I intended to criticize, it looks like, to
15 criticize Mr. Tallis for not, either not putting
16 the statement to Mr. Wilson or the Crown for not
17 disclosing the existence of the statement in the
18 first place, but not definitively either way.

19 Q At this point would it be fair to say, or you tell
20 me, what was your belief at this time as to
21 whether or not the statement had been disclosed?

22 A Didn't know, and now, as I say, I've heard the
23 evidence of Mr. Tallis' rationale and we now know
24 that the statement was disclosed, so --

25 Q And so were your comments more directed at



1 Mr. Tallis then for not using the statement in a
2 way you thought he should or was it directed at
3 Mr. Caldwell for not disclosing it?

4 A No, it was directed at Mr. Tallis, the criticism
5 was directed at Mr. Tallis. There was, as I say,
6 a separate comment that if in fact Mr. Tallis
7 didn't have the statement, it would have been
8 misconduct for the Crown not to disclose it, but
9 that wasn't what the point was.

10 Q If we could just go back up to the headline, and I
11 appreciate the comment you made earlier about
12 headlines, but the headline says, "Witness
13 statement withheld, lawyers say," and the lawyers
14 quoted are you and Mr. Watson, and so are you
15 telling us that lookit, this is not what --

16 A Well, I don't think if you -- if you -- as I say,
17 it's conjoining two points, it's conjoining the
18 fact that the statement wasn't put to Mr. Wilson
19 with a comment that I probably shouldn't have made
20 which is that if the reason he didn't put it to
21 Mr. Wilson was because he didn't have the
22 statement, then the Crown might have engaged in
23 misconduct. That led to putting the two together.

24 Q Okay. And --

25 A It was a very inexpert use of some very important



1 concepts in criminal law.

2 Q So are you saying that the headline, "Witness
3 statement withheld, lawyers say," does not reflect
4 what you as a lawyer said?

5 A Certainly not what I intended.

6 Q Okay. And then if we can go back here, it talks
7 about Watson, who is Mr. Wilson's counsel:

8 "Watson said not only does the first
9 statement lend credibility to his
10 client's recent recant of his testimony,
11 it suggests a serious omission in
12 information given to Tallis.

13 "I can see no reason (for the
14 statement to be withheld)," Watson said.
15 "Any lawyer would have questioned it and
16 it would have been quickly exposed in a
17 court."

18 And then down at the bottom, Wilson says:

19 "It's all a bunch of crap," Wilson said
20 of his testimony. "The first one was
21 the one that was supposed to be in
22 court. If they had used it then, it
23 would all have been over."

24 And so both Mr. Wilson and Mr. Watson are saying
25 lookit, I think, the Crown didn't give the



1 statement to Tallis and, if they had, all he had
2 to do was show it to Wilson and it would have
3 been over?

4 A I think that's --

5 Q Yeah.

6 A That's a bit naive, but --

7 Q Had you, at this time, contemplated contacting
8 Mr. Tallis to find out whether he had the
9 statement before this article, or before making
10 the comments?

11 A I can't recall. I can't recall.

12 Q Or in fact, and maybe not directly Mr. Caldwell,
13 but through Federal Justice, saying lookit, can
14 you tell us on the prosecutor's file was that
15 statement disclosed, had you considered that?

16 A Oh, I believe we had been asking for disclosure of
17 the entire file for quite some time.

18 Q If we can go to 336054, and this is tape number
19 30, July of 1990, if we can go to page 336107.
20 And this is a discussion between you and
21 Mrs. Milgaard I believe July 18th, the day after
22 the article, and I will show you in the transcript
23 why I think that in a moment.

24 You say, 'When I told Hersh
25 about the statements he gasped, he said I



1 shouldn't be surprised, but it's just amazing.
2 And then another thing', 'The only problem is
3 according' -- Mrs. Milgaard says, 'The only
4 problem is, according to the testimony, I think
5 Tallis knew about these statements', you say,
6 'Yes, except he never put them directly to him, he
7 does, there is a short passage where he talks
8 about when you first spoke to the police you told
9 them nothing happened', Mrs. Milgaard, 'But no,
10 there is a part there where he talked about the
11 statement to Riddell'. 'Yeah, Joyce, I've got
12 the, I've got page numbers for you, and I would
13 like you to look at what I give you, okay.' And
14 then scroll down. Mrs. Milgaard, 'Page 320 - page
15 291, police visits in March, Riddell is mentioned,
16 page 292, "At the time Riddell was there there was
17 no suggestion that you were a suspect in
18 connection with the case", "I don't believe, there
19 might have been, I'm not aware"', and you say,
20 'Correct'. Next page. And it goes on to make
21 some quotes. Down here Mrs. Milgaard cites from
22 the transcript, 'This is when the jury was out and
23 the Court said they had no recollection of any
24 specific statement', scroll down, and you say,
25 'This is what I am saying, when you have, you see,



1 I don't know that Tallis necessarily has a copy of
2 the actual statement. Very often the Crown will
3 write a letter saying that "he made a statement to
4 on such and such a date to such and such an
5 officer and provided no useful information", or
6 something like that, because let me tell you, and
7 I don't think you'll find a lawyer who will
8 disagree with me, that when you have in your hand
9 that statement, you put it to him word for word
10 and you show him the statement and you show it to
11 the jury'. And then Mrs. Milgaard, 'Well he
12 hasn't, he hasn't done that, but I know in the'.
13 And then the next page you talk about, 'To this
14 day, Joyce, I have trouble, I mean in this era of
15 the Charter and acute awareness of procedural
16 fairness, I still have trouble getting statements
17 from the Crown'. And then if we can skip ahead to
18 page 336113, there's some further discussions
19 about the transcript, at the bottom Mrs. Milgaard
20 says, '"Ken Walters in Regina", and that would
21 approximately be what date? Sometimes in March'.
22 And she's quoting from Ron Wilson's evidence being
23 examined by Mr. Tallis, '"In March, and I take it
24 during the trip up to Alberta there was never any
25 mention about the murder of a girl in Saskatoon,



1 no there wasn't, and so when you told Mr. Riddell
2 that all during this trip there was never any
3 mention about the murder of a girl in Saskatoon
4 "", and then to the next page, she says, '"Now
5 when you had this meeting or discussion with
6 Mr. Riddell"', and again quoting from the
7 transcript, '"on March the 3rd, I take it that
8 before you gave them any statement you told them
9 there was nothing to hide about what had
10 happened"'. And then down at the bottom you say,
11 'No, I listened, I say what could very well have
12 happened is that Tallis would, or Caldwell would
13 tell Tallis that Wilson was interviewed and gave a
14 statement in which he describes nothing
15 happening'. Next page, and I'm skipping parts
16 here, but there's further discussion between you
17 and Mrs. Milgaard, I think she's trying to
18 convince you that he did have this statement and
19 is going through the transcript, 'I dug them out
20 because I remembered that part of it'. Then down
21 at the bottom, 'So when I read that in the
22 paper' -- or sorry, yeah -- 'In there about
23 Riddell and his statement, so when I read that in
24 the paper yesterday I just about freaked right
25 out'. You say 'No, no, no, I don't think any of



1 that makes it any less clean'. The next page,
2 bottom, 'If he didn't have the statement then
3 there's very, very, very grave problems with the
4 prosecution, because a summary of the statement
5 does not suffice. And, I mean look, Tallis is in
6 there theoretically fighting for David's life'.
7 That's the end of that transcript.

8 COMMISSIONER MacCALLUM: What date was
9 that, Mr. Hodson?

10 MR. HODSON: I think it's July 18th, 1990,
11 and the reason I say that is because
12 Mrs. Milgaard says, 'When I read the article
13 yesterday I nearly freaked', so I'm assuming
14 that's the July 17th, 1990 statement.

15 BY MR. HODSON:

16 Q Do you recall that exchange with Mrs. Milgaard?

17 A Umm, I don't, no, I don't. I don't specifically.

18 Q Do you recall some questioning about whether or
19 not that article was accurate about saying that
20 Mr. Tallis didn't have the statement?

21 A Umm, I, you know, I want to be clear here that --
22 and I'd be curious to hear the entire interview,
23 because there may have been colloquialisms that I
24 used during the course of the interview, when I
25 say "put the statement "I may, I may have been



1 using shorthand for other things. But I don't
2 recall this discussion and I don't recall sort of
3 there being a reaction to the newspaper item.

4 Q Okay. There is also a transcript, which I won't
5 put to you, between Joyce Milgaard and Dan Lett
6 where I think she has a similar discussion with
7 him and going through parts of the transcript, and
8 would it be fair to say that on July 18th
9 Mrs. Milgaard told you, based on her read of the
10 transcript, she thought that Mr. Tallis had a copy
11 of the statement and you, I think, ended up not
12 agreeing with her, saying that he could have just
13 been aware of its contents as opposed to actually
14 having it?

15 A Yeah. I think I was trying to say that -- to
16 describe a technique of cross-examination to Dan
17 which involved the actual use of the physical
18 statement, and --

19 Q You say 'to Dan', I understood --

20 A To Dan Lett, and I may have been describing to him
21 a technique where you actually show the witness a
22 written statement --

23 Q Okay.

24 A -- and take them through it line by line.

25 Q This is an interview with Mrs. Milgaard?



1 A I understand that. I understand that.

2 Q And I guess, on the 18th --

3 A But I'm saying that what I have just described to
4 you may have been the genesis of the article.

5 Q Okay. I see. And again, on the 18th, it looks as
6 though, from this interview, that your position
7 with Mrs. Milgaard is that Mr. Tallis didn't get
8 the statement based on the exchange; is that a
9 fair reading?

10 A Yeah, the transcript itself didn't tell me that he
11 actually -- he had the actual statement.

12 Q And --

13 A He had some information that was in the statement
14 but not that he had the actual statement.

15 Q And so again you said the day earlier when you
16 talked to Dan Lett, or around the time of the Dan
17 Lett article, I think you said you didn't know
18 whether he had it but you were being more critical
19 of Mr. Tallis for not using it, which would be --

20 A In the manner that I have just described.

21 Q Yes, okay.

22 A Which is to present the witness physically with
23 the statement.

24 Q So on the 18th of July does this conversation with
25 Mrs. Milgaard assist you in telling us whether, on



1 that date, you either believed that Tallis did or
2 didn't have Ron Wilson's statement?

3 A On that date I'm pretty sure I believed he did not
4 have it.

5 Q That Mr. Tallis did not have it?

6 A Right, right.

7 Q And would that, if that were true, I think what
8 you have said is lookit, that would be serious
9 misconduct --

10 A Yes.

11 Q -- on the part of the Crown?

12 A Yes. And, as I've said, I've -- I sincerely
13 regret going down that path with Dan Lett.

14 Q If we could go to 336168. These are some further
15 discussions, I think this is around July 20th,
16 1990, Ron Wilson is interviewed I think July 25,
17 1990, and just to give you a bit of a prelude into
18 what I am getting into, there's some discussions
19 here between you and Mrs. Milgaard, and I think
20 you are discussing what Ken Watson, Ron Wilson's
21 lawyer, has told you Ron Wilson is gonna say when
22 he is interviewed by Eugene Williams. Do you
23 remember that, being given a bit of the heads-up,
24 "lookit, here is what my client is going to say
25 when he is questioned"?



1 A I don't recall that at all.

2 Q Okay. We'll go through that. And it says,
3 'Wilson is going to be interviewed probably Friday
4 or Monday' -- sorry, I think July 20th might have
5 been the day that he was interviewed, in any event
6 this would appear to be just prior -- and you say,
7 'Wilson is gonna to say as follows, that they
8 broke in along the way and that a flashlight was
9 taken', 'Right', and then you say, 'And as well a
10 bone-handled hunting knife was taken, and that
11 Wilson saw David with a bone-handled hunting
12 knife, not a paring knife. Now did they find that
13 bone-handled hunting knife when the snow melted?'
14 Mrs. Milgaard, 'It was on the stringer of the
15 fence, it was on the stringer of the fence at the
16 head of Gail Miller'. You say, 'When they found
17 the body or was it in the spring that they found
18 it?' Next page, and scroll down a bit, please.
19 You say, 'Well Watson, Watson asked me, he said,
20 quote, "what was the murder weapon here" and I
21 said, quote, "well I'm not sure, you know, the
22 Crown said it was this paring knife, but there was
23 also this bone-handled hunting knife that they
24 lost", at which point he went, quote, "oh shit",
25 and I said "what", and he says, "well here's what



1 Wilson is gonna say"". And Joyce Milgaard, 'Well
2 if Wilson is gonna say that, what's the
3 difference, David? Like I don't understand it.
4 He's also going to say that he was never separated
5 from David', and you say, 'Yes', and then the next
6 page you say, 'That's right, that's right, and his
7 position was gonna be if the police had done their
8 job properly they would have known that what was
9 taken from the break-in was a knife that didn't
10 match what they said is the murder weapon, and now
11 unfortunately for the police, fortunately for
12 David, the police are not only bound to that
13 theory but they have got, I mean he's going to
14 describe the knife with a blade substantially
15 bigger than 5/8's in width, which is what the
16 wounds were'.

17 Let me just stop there. Do you
18 recall this discussion, or learning about the fact
19 that Mr. Wilson was gonna say that he remembered
20 David Milgaard having a bone-handled hunting knife
21 from the elevator?

22 A No, I don't recall this conversation.

23 Q You don't --

24 A And I don't recall the conversation with
25 Mr. Watson.



1 Q Do you recall any discussion or any concern -- and
2 I think we'll see when Ron Wilson was interviewed
3 by Mr. Williams he corrected his June 4th, 1990
4 statement he gave to Mr. Henderson where he said
5 "David did not have a knife" to say "David did
6 have a bone-handled hunting knife that he got from
7 the elevator" I think; do you remember that
8 happening?

9 A No.

10 Q And it looks as though there was some concern here
11 because there had been another bone-handled
12 hunting knife found in the back alley, and I think
13 the discussion here related around "well what
14 is -- does -- what does that mean".

15 If we could go to 336054 and go
16 to 336181, this is around the same time, I think
17 this is a discussion after the one I just showed
18 you, and see if this assists your memory. You
19 say, 'Okay, now I started, I have a real pain in
20 my stomach about this bone-handled paring knife',
21 'Do you', 'Or the bone-handled hunting knife',
22 'Yeah', 'And I'm just a little concerned. I mean
23 Hersh thinks the less said about it the better
24 because nobody is going to even remember it except
25 that', and Joyce says, 'I made a big issue of it,



1 the missing bone-handled paring knife, we even got
2 it in our fact sheet'. You say, 'Well I'm just
3 looking at that, I don't think it is'.

4 Mrs. Milgaard, 'Two knives were found at the scene
5 of the crime', 'Oh yeah, yeah', 'And then one
6 disappeared, was never brought into', 'That's
7 right'.

8 And then down at the bottom,
9 actually if we could then go ahead to 336184, you
10 say, 'Now I'm concerned, apparently Wilson gets,
11 Wilson remembered this after reading Nichol's
12 evidence, and now I don't remember anything in
13 Nichol's evidence', Joyce Milgaard, 'Oh yeah, I
14 remember Nichol describing a bone-handled knife',
15 you say, 'Did she'. Next page, 'Yeah, she said,
16 she did describe a bone-handled knife in her
17 testimony and then, you see, that's why I wondered
18 if Tallis backed away from the bone-handled
19 knife'. And then down at the bottom, 'So I
20 started to think last night what if this knife
21 means anything', and then it goes on. If we can
22 go to the next page, and you say, 'I know, except
23 what's starting to happen now is that Wilson is
24 starting to sort of become open to
25 cross-examination, you know, because in his



1 statement -- hang on, I'll just pull it out
2 here -- he says that "I saw Milgaard with a
3 maroon-handled paring knife prior to our arrival
4 in Saskatoon from Regina the morning of the Gail
5 Miller Murder. This was not the truth. I saw no
6 knife prior to our arrival in Saskatoon. I recall
7 that David purchased a paring knife to cut our
8 meat and cheese on that trip but this was when we
9 stopped for groceries in Rosetown after we had
10 left Saskatoon". Mrs. Milgaard, 'Oh, I see what
11 you were saying, he said on that statement that he
12 gave -- that he saw no knife', 'That's right',
13 'And now he is turning around and saying he saw a
14 knife'. 'Now I'll tell you, it kills me, because
15 if he hadn't read Nichol's evidence he may never
16 have remembered it, and he may not remember it, he
17 thinks he remembers it'. And then down at the
18 bottom you said, 'Because when I talked to Watson
19 yesterday the first question he asked me was "what
20 was the murder weapon in this case"'. And then
21 again the next page, scroll down to the bottom,
22 Mrs. Milgaard says, 'The truth can't hurt us', and
23 you say, 'No, I know, it's just I'm just concerned
24 now that it's going to send Williams off on a
25 tangent to go and investigate that break-in', and



1 Mrs. Milgaard says, 'Well, if he does', 'Well it's
2 just another delay'. On the next page,
3 Mrs. Milgaard, 'Because the point is if he was
4 never separated from David it couldn't have been
5 David, now he's remaining firm in that, isn't he',
6 you say, 'That's right, that's right'. And down
7 at the bottom, 'And evidence comes out that there
8 is a bone-handled knife that was found at the
9 screen but it was lost, Wilson says David had a
10 bone-handled knife, and so the conclusion is
11 "Okay, well the police screwed up so they
12 shouldn't have convicted him, but we don't know if
13 he is innocent or not", that's all, I mean that's
14 the only, I suppose, theoretical problem that
15 could arise'. And, 'Except that Wilson says "like
16 we were never apart"'.
17

18 Does that, do you recall that
19 conversation, Mr. Asper, at all --

20 A No.

21 Q -- or that discussion?

22 A No. During this period, this is July of 1990 I
23 believe?

24 Q Yes, I think so.

25 A As I say, and I -- it's no excuse, I -- my wife
and I had just had a child, I wasn't really in the



1 office, --

2 Q Yeah.

3 A -- and I remember more about the child than I do
4 about these conversations, I'm sorry.

5 Q And that's fair, I'll leave it at that. The
6 statement or the examination that Wilson then does
7 provide to Mr. Williams does say two things, and
8 in fact this was his evidence at the Supreme
9 Court, at least at one stage at the Supreme Court,
10 was that they were apart for a couple of minutes
11 and that David did have a bone-handled hunting
12 knife, and the description of it was, I think,
13 different than the bone-handled -- the
14 bone-handled hunting knife that was found at the
15 scene I think had a compass on it, so I think
16 there were some differences there, but in this
17 transcript you seem to be saying that, "lookit,
18 this is going to lead Eugene Williams down a path
19 and further delay". I appreciate you don't recall
20 the conversation but would that be a fair reading
21 of it?

22 A Yes.

23 Q And, and was there, it looks as though from this
24 conversation that there was some significance on
25 Ron Wilson saying they weren't apart?



1 A I, yes, I -- you know, I mean that was good for
2 us.

3 Q Or apart for two minutes?

4 A Yes. Either way was good for us.

5 Q 336830. There is a discussion here -- no, sorry,
6 336852 is the doc. ID. And this is, there's not a
7 date on here, this is tape 107, but I think it is
8 around July of 1990. If we can go to 336880. And
9 there is a discussion here about, this is about --
10 I think around the time of Wilson, and you say,
11 'You know how the incredible thing is that', and I
12 think the prelude to this, there was a discussion,
13 I think at this time David Milgaard was having
14 some issues with you and Mr. Wolch as counsel and
15 whether he needed to have legal counsel, and I
16 think this -- that was the discussion that led in
17 to this point, and you say, 'You know, the
18 incredible thing is that it's all in reverse of
19 the way he sees it, you know. I mean I suppose
20 that up to this point, and I mean we nearly had it
21 in the bag in about '82 on your own, he was so
22 close, you know, with that, with what we know now,
23 he was so in '82 or '81 or '80 or whatever it
24 was', 'Oh yeah, it's all that wasted time', and,
25 'You know, where Wilson is teetering on the verge



1 of talking, coming clean, and then, you know,
2 shuts his mouth again, that you could, you could
3 have, if we'd have had an investigator at that
4 point to go and see Wilson', 'It would have been
5 done'.

6 Am I correct that this would
7 have been the 1981 interviews that Mrs. Milgaard
8 had with Ron Wilson that you are referring to?

9 A I'm assuming that, yes.

10 Q And the suggestion that, if you would have had an
11 investigator -- or not you -- that if she would
12 have an investigator, that Ron Wilson's
13 recantation may have come sooner?

14 A That's the suggestion, yes.

15 Q Yeah, and was that your thinking at the time then?

16 A Apparently, yes. It is now, actually.

17 Q Go to 157097. This is a letter July 25, 1990 from
18 Hersh Wolch, and this one is to John Maddigan, who
19 is the Executive Assistant for the Minister of
20 Justice, and Mr. Wolch writes:

21 "You may wonder why I am writing to you
22 at this time. We recognize that the
23 Minister must await full material,
24 disclosure and recommendations. On the
25 other hand, we are finding it impossible



1 to maintain patience.

2 At this point you may be
3 wondering what other purpose than merely
4 complaining there is to this letter.
5 The main purpose of this letter is to
6 bring to your attention that my clients
7 and myself all realize that the Minister
8 is not responsible for the delay. We
9 appreciate that the Minister relies on
10 her officials and can only make a
11 decision after she has an opportunity to
12 peruse the material. We are also aware
13 that the Minister has directed that her
14 officials move expeditiously."

15 We would simply -- or:

16 "We simply would appreciate the Minister
17 knowing that we understand her position
18 and at no time do we wish to embarrass
19 her or put her in an awkward position.
20 The frustration of being an innocent man
21 and being incarcerated for 21 years and
22 waiting anxiously for a favourable
23 decision is taking its toll. Our
24 position both privately and publicly is
25 that while the justice system has



1 horribly failed David Milgaard, we are
2 not in a confrontational position with
3 the Minister of Justice.

4 One of the greatest
5 frustrations had been the expectation
6 that the matter will be resolved within
7 a few days or weeks. This type of
8 expectation which has gone on now for
9 many months is very difficult. If there
10 is a date that we could feel confident
11 there will be a decision it would be of
12 great relief. To this date we have
13 resisted suggestions of marches and
14 demonstrations and it is only out of
15 loyalty to myself that David has not
16 begun a hunger strike."

17 Can you shed any light, or -- on what the purpose
18 of this was, other than what's stated, or how
19 this came about? Why would you be writing to,
20 directly to the Minister rather than to Justice
21 officials?

22 A Umm, it was part of an ongoing effort to try to
23 get the attention of the civilian authority,
24 umm --

25 Q I'm sorry?



1 A -- the Minister --

2 Q Oh, the Minister?

3 A -- over the officials who we believed were
4 stonewalling us, and I believe that this letter
5 was kind of a "watch out but let's get this thing
6 moving or all hell is gonna break loose".

7 Q And so part of it seems to be conciliatory, saying
8 lookit, we're not in confrontation with you, we
9 understand that it's your officials, but are you
10 saying that --

11 A Do the right thing.

12 Q Or else?

13 A Yes.

14 Q And "or else" being the marches and
15 demonstrations?

16 A And whatever else we -- yes.

17 Q And so this was a message sent to the Minister, as
18 you've described, to get things moving or things
19 may happen?

20 A Yes.

21 Q 162386. It's a memo of August 10th, 1990 from you
22 to Mr. Wolch. A couple points in here. It talks
23 about discussions with Watson and a polygraph, and
24 it says:

25 "Wilson is also taking the view that if



1 he takes a polygraph, Milgaard should
2 also take a polygraph. What do you
3 think?"

4 Can you shed any light on that? What was, what
5 was the discussion there, and did that ever
6 happen?

7 A I don't think that ever happened. I don't recall
8 that.

9 Q And do you know why Mr. Wilson was asking Mr.
10 Milgaard to take a polygraph if he did?

11 A No, I don't remember that.

12 Q And do you know if this was pursued at all?

13 A I don't think it was.

14 Q Then down at the bottom you say:

15 "The Dan Lett article burning Bob
16 Caldwell is going to appear sometime
17 over the weekend in the Free Press."

18 Are you able to tell us what that is about?

19 A I believe Mr. Lett had done an interview with Mr.
20 Caldwell, umm, that contained, umm, off-the-record
21 information that he was -- that Mr. Lett was going
22 to publish.

23 Q And do you know what that related to?

24 A No, I can't remember.

25 Q The -- and I'll show you, I think around August



1 29th -- or August 14th you wrote to the Minister
2 saying Mr. Caldwell was in a conflict, and then on
3 August 29th an article ran by Dan Lett saying that
4 Mr. Caldwell was assisting and quoting you about a
5 conflict, does it -- would that be the article, do
6 you think, or was there something else?

7 A I don't know. I don't know.

8 Q Probably an appropriate spot to break.

9 *(Adjourned at 12:00 noon)*

10 *(Reconvened at 1:33 p.m.)*

11 BY MR. HODSON:

12 Q Good afternoon. 157100. This is your letter, Mr.
13 Asper, to the minister, Kim Campbell, and with a
14 copy to Mr. Corbett and Mr. Williams, and I think
15 this is where you raise the conflict issue with
16 Mr. Caldwell and you say:

17 "This is shocking since it was Mr.
18 Caldwell who conducted the prosecution
19 against David Milgaard in 1969.
20 Apparently your officials have told the
21 media that unless Mr. Milgaard
22 specifically alleges prosecutorial
23 misconduct, in their view there is
24 nothing improper with the inclusion of
25 the original prosecutor in the present



1 investigation."

2 Did you get this position of Justice from someone
3 in the media; is that correct?

4 A I don't recall.

5 Q And does this letter then set forth your concerns
6 about what you touched on earlier, about the
7 manner in which Mr. Caldwell was involved in
8 providing information or communicating with Mr.
9 Williams?

10 A Yes, I would say it was the manner -- yes, or the
11 fact that contact was being had at all.

12 Q Yeah, and you talked about this yesterday. Is
13 there anything in addition in this letter than
14 what you told us yesterday about your concerns
15 about Mr. Caldwell being involved?

16 A I don't think so, no.

17 Q And again just for the record here as well, you
18 ask for, and again this is to the minister, but:

19 "We requested details regarding the
20 suspect's seven other serious sexual
21 assaults, and have not yet received
22 same. Moreover, in earlier
23 correspondence, we have made requests to
24 be advised as to the status of the
25 investigation, and have over the



1 telephone indicated that we have an
2 investigator who is prepared to help in
3 this regard."

4 And I think that would be Lorne Huff; is that
5 right?

6 A Yes.

7 Q And the next page, you say:

8 "With the greatest respect, we most
9 emphatically urge that you involve
10 yourself in this application since it is
11 clear that our view of what ought to be
12 happening is very different from that
13 held by your officials. Our client
14 takes no comfort in the fact that your
15 officials tell him to "trust us", when
16 he sees your officials working with the
17 man who may have some responsibility in
18 this wrongful conviction."

19 And I take it that you are referring to Mr.
20 Caldwell?

21 A Yes.

22 Q And at this point would it be fair to say, Mr.
23 Asper, that the relationship with Justice
24 officials, and in particular Mr. Williams, had --

25 A Deteriorated.



1 Q Deteriorated?

2 A Yes.

3 Q Go to 213052, again this is a fairly lengthy
4 letter, August 15th, 1990, to Mrs. Milgaard, and
5 setting forth the, sort of a chronology of what
6 was happening, and I take it this would have been
7 done as part of your file reporting work and would
8 be generally accurate; is that fair?

9 A Yes.

10 Q And to the last page, you talk here, just again
11 this is August 15th, '90, saying that the whole
12 investigation into Larry Fisher, in my respectful
13 view, has been inadequate. You talked earlier
14 about the fact that they did not identify the
15 rapes as being in Saskatoon. Is there anything in
16 addition to what you've already told us, Mr.
17 Asper, as far as what you felt at the time about
18 the investigation being inadequate?

19 A No.

20 Q 153512, this is a letter from Mr. Wolch to
21 Mr. Tallis, August 15th, 1990, and in this letter
22 I think this is where Mr. Wolch was following up
23 with Mr. Tallis about whether or not he had Ron
24 Wilson's statement or not. Do you recall that
25 happening or --



1 A Vaguely.

2 Q And do you ever remember hearing back from
3 Mr. Tallis confirming that he did receive the
4 statements?

5 A I don't recall that.

6 Q And just down at the bottom there's a question
7 here, or a point here, it says:

8 "During Mrs. Milgaard's early
9 investigation in 1980 she came upon some
10 notes in Mr. Caldwell's file which
11 indicated that Mr. Caldwell had enquired
12 of the police as to whether there were
13 any other reported incidents in that
14 area within the time frame preceding the
15 murder. Nothing was mentioned of any of
16 these rapes, and we wonder whether you
17 have any recollection of being informed
18 of these particular acts committed by
19 Mr. Fisher."

20 And I don't, I stand to be corrected, but I don't
21 think there was that type of letter on Mr.
22 Caldwell's file or that Mr. Tallis had made that
23 request. Do you have any recollection of this
24 matter?

25 A No.



1 Q Can you tell us, at some point did you or others
2 in your group make contact with Gail Miller's
3 family?

4 A Yes.

5 Q And do you remember when and how that came about
6 and what happened?

7 A I don't recall exactly the circumstances. I do
8 recall that at one point we thought that it would
9 be appropriate to brief them on what was happening
10 and I think even to solicit their support.

11 Q And then I think we'll see in August of 1991,
12 shortly before the second application, I think
13 they provided a statement; is that right?

14 A I think that's true, yes.

15 Q If we could call up 337105, and I think you've
16 confirmed this point, if we could just go to
17 337129, this may assist you on the timing, and I
18 think this is around September of 1990. You can
19 actually go to the next page, I think here you are
20 talking to Mrs. Milgaard and say:

21 "Well but you know what concerns me?"

22 "One of the things that Justice has been
23 saying all along is that the forensic
24 evidence you know really had no effect
25 on the trial and now here's the Fifth



1 Estate with no mention of the forensic
2 stuff."

3 And I think this is around the fall of '90 when
4 the Fifth Estate ran a story and didn't mention
5 anything about the forensic. And your comment
6 here, though, that Justice has been saying all
7 along that this forensic evidence had no effect
8 on the trial, where did that information come
9 from; do you remember?

10 A No, I don't recall.

11 Q Would it be fair to say that someone from Justice
12 would have told you information to that effect?

13 A Well, I apparently would have got it from
14 somewhere, yes.

15 Q And then down at the bottom, I think there's a
16 discussion about the matter, and Mrs. Milgaard
17 asks what about his closing, and --

18 A I'm not sure the date of -- what's the date of
19 this document?

20 Q I believe it's to be around September of 1990.

21 A Okay.

22 Q It was shortly after a Fifth Estate documentary,
23 and again that's just going by the content, the
24 tapes weren't dated when we received them, this is
25 one of the new ones.



1 A Okay.

2 Q But it looks like around that time and a
3 discussion about Mr. Caldwell's closing address,
4 and it looks at this time that you say you don't
5 have that. Is that correct?

6 A It looks like it, yes.

7 Q And then the next page, you say:

8 "Well, it doesn't really matter what he
9 said in the closing. What matters is
10 what he says in the opening. I mean he
11 may change his theory halfway through
12 the trial because of what he sees with
13 the evidence."

14 And:

15 "There's lots in the closing too if you
16 wanna look at it.":

17 "That might be valuable actually."

18 So I take it that was your view at the time
19 about, and I presume you are talking about Mr.
20 Caldwell's opening address and the forensic
21 evidence we talked about the other day?

22 A Yes.

23 Q 004394, September 10th, this letter says:

24 "We're writing to summarize our final
25 position with respect to the



1 application..."

2 And I think there had been another letter or some
3 communication saying we're about to finalize our
4 report. And again we talked earlier about the
5 miscarriage of justice versus innocence and in
6 this letter there seems to be some emphasis on
7 evidence that overwhelmingly establishes the
8 innocence of David Milgaard, and I think you told
9 us the other day that although you believed that
10 and thought you proved, you could prove that,
11 that that's not what you felt you had to
12 establish to get a hearing; is that right?

13 A That's true.

14 Q And then down at the bottom -- actually, go to the
15 next page, the comment under the Larry Fisher
16 evidence, you indicate:

17 "The jury was never given the
18 opportunity to consider that Milgaard
19 might not be guilty because another
20 person who had committed two rapes and
21 an indecent assault was on the loose in
22 Saskatoon and that this person might be
23 responsible."

24 And would that be part of the ground you put
25 forward on the Fisher information, that had Mr.



1 Milgaard had this information at the time of
2 trial, it might have had or would have had an
3 impact on the jury?

4 A Yes. It may have affected whether Mr. Caldwell
5 even prosecuted the case against Milgaard, it may
6 have affected how the police conducted their
7 investigation.

8 Q If we could go to 157117, September 21, 1990
9 letter from Mr. MacFarlane to Mr. Wolch talking
10 about discussions over the past several months,
11 and it says:

12 "... you have expressed an interest in
13 meeting to discuss Mr. Milgaard's
14 application once the Department had
15 completed its review, in order to
16 provide your perspective of the case
17 personally and fully.

18 The departmental review of the
19 case is now complete ... quite prepared
20 to meet with you ..."

21 And they set a time for October 1, 1990, and
22 we've talked a bit about this meeting. Am I
23 correct that through some discussions between Mr.
24 Wolch or you and Federal Justice, it was agreed
25 that once they were done their review, being the



1 Justice officials, they would meet with you and
2 hear you out to some extent; is that right?

3 A Yes.

4 Q And I understand that there was a meeting in
5 Ottawa with Bruce MacFarlane, Eugene Williams and
6 Douglas Rutherford; is that correct?

7 A Yes.

8 Q And I think I saw a report from Mr. Wolch that
9 indicated there was two hours where you were
10 allowed to look at some documents or given some
11 documents and then a four hour meeting. Does that
12 accord with your recollection?

13 A I think that's correct, yes.

14 Q What was your understanding of the purpose of this
15 meeting?

16 A My recollection is the purpose was for the
17 Department of Justice to essentially tell us what
18 they had concluded or where their analysis had
19 taken them and to give us an opportunity to
20 respond to it.

21 Q And did you expect then that they would have had
22 their assessment done and that would tell you
23 generally what that assessment was and perhaps
24 what they might be recommending to the minister?

25 A Yes.



1 Q And at the meeting did you -- tell us what you
2 remember about what happened?

3 A I don't remember very much about the meeting. I
4 remember that we had fairly divergent views on a
5 number of issues. I do recall some fairly lively
6 exchanges with Mr. Williams, but I don't really
7 recall much of the detail.

8 Q I don't think we have, other than one reporting
9 letter from Mr. Wolch, which I'll turn to in a
10 moment, I didn't see any other memos or documents
11 on at least the files we got from Mr. Wolch. Do
12 you recall if there was any summaries of this
13 meeting or notes?

14 A I don't recall any notes of the meeting.

15 Q Let's just go through a couple subject matters.
16 As far as the documents, do you recall what
17 generally was provided to you? Were you given
18 copies of documents or provided access?

19 A I don't recall.

20 Q Do you remember -- we talked earlier about you
21 finding out about Deborah Hall's examination by
22 Mr. Williams. Do you think that might have been
23 something that was provided to you?

24 A It may have been. I just don't recall.

25 Q Did you find out at this meeting information that



1 you had not known before, basically information
2 that Federal Justice had gathered with respect to
3 some of your application material that you had not
4 known prior to that?

5 A It's possible. I just don't recall.

6 Q You said you had some heated discussions with Mr.
7 Williams. Do you remember what they were about?

8 A I just recall that it was very obvious to us that
9 if there was an adverse position to David Milgaard
10 on any issue, that's the position Justice was
11 taking.

12 Q And so would it be fair to say -- we'll see Kim
13 Campbell's February letter where she goes through
14 each of the five grounds put forward. At this
15 meeting did the Justice officials similarly take
16 the position that with respect to each of the
17 grounds, that they had a different view, an
18 unfavourable view to David Milgaard?

19 A Yes.

20 Q And so on Dr. Ferris, would they have communicated
21 to you the fact that they didn't agree with
22 your --

23 A I don't recall the discussion about Dr. Ferris.
24 My only vague recollection is getting into the
25 discussion about the Wilson, John, Cadrain realm



1 of evidence and Mr. Williams finding a perspective
2 that was adverse to David about everything
3 regarding that realm of evidence.

4 Q And so that would be the recantation of Wilson?

5 A I think there was even dialogue about the
6 original -- interpretation of the original trial
7 evidence.

8 Q And do you recall learning about an interview that
9 they had conducted of Nichol John at this meeting?

10 A They probably told us about that. I just don't
11 recall.

12 Q And police files, there's some suggestion that
13 there may have been some police or prosecutor's
14 files either made available to you at this time or
15 provided to you. Are you able to shed any --

16 A That's possible.

17 Q Were you -- I think you said you agreed with it,
18 the two hours for you to review and four hours to
19 meet. Would it be a fairly extensive discussion
20 then on the issues?

21 A I would say so, yes.

22 Q And at the end of the meeting were you satisfied,
23 maybe not with their position, but the fact that
24 you knew where they were coming from at this
25 point?



1 A I think that's fair to say, yeah.

2 Q And it sounds like you didn't agree with any or
3 most of what they had to say?

4 A I think that's fair to say. Now, I wouldn't be
5 too general because I always felt that we were,
6 rightly or wrongly, I felt that Messrs. MacFarlane
7 and Rutherford, and certainly MacFarlane, were
8 giving us what I thought was a more open hearing,
9 so I can't say that it was everybody at the
10 meeting who was of one point of view.

11 Q Fair enough. What about the Larry Fisher
12 information, do you recall anything about what
13 concerns they might have raised about that or any
14 discussions about that subject?

15 A I don't. I don't know when -- I just recall sort
16 of an impression generally that the Justice
17 officials didn't really think Fisher was all that
18 important or ascribed the same degree of
19 importance to the information as we did.

20 Q And was that your impression or is there anything
21 specifically you can point to?

22 A No, but that was just generally my impression of
23 how they treated the information.

24 Q And when you left that meeting is it fair to say
25 that you did not think you were going to get a



1 favourable result?

2 A I wouldn't say that. I think we were not as -- we
3 were not enthusiastic. I don't know that we were
4 demoralized.

5 Q If you can call up 162374, and this might just
6 assist in some of your memory. This is a
7 reporting letter that Mr. Wolch wrote to David
8 Milgaard on October 3rd and talks about the
9 meeting and says:

10 "Prior to the meeting we were provided
11 with a number of reports contained in a
12 thick black binder, most of which we had
13 seen before. We will certainly make
14 available to you the binder, and in
15 particular those portions that were new
16 to us. After studying the material and
17 certain preliminary discussions lasting
18 over 2 hours, we then had a concentrated
19 four hour meeting without break."

20 And again, is that accurate, do you have any
21 reason to dispute what's stated there?

22 A I'll accept that.

23 Q And then the next paragraph:

24 "Mr. MacFarlane explained that he wished
25 to meet with us because he felt that



1 when one gets a submission on paper you
2 sometime miss the flavour and many
3 questions are not readily answered. He
4 felt that we could provide him with that
5 flavour. We indicated that we welcomed
6 the chance to address any area of the
7 case that might cause the reviewers to
8 have any negative thoughts. Also, we
9 wanted to be certain he was being
10 properly briefed by Mr. Williams."

11 And again, is that accurate?

12 A Yes.

13 Q And then the next paragraph, a lengthy discussion
14 regarding Mr. Wilson.

15 "From there we branched off to a
16 discussion on how it would have been
17 physically impossible for you to have
18 committed the crime based on the
19 accepted evidence, that is the times,
20 location, etc. We examined Nicole John,
21 and in particular her statement, at
22 length. It was quite easy to point out
23 the absurdity of her statement and the
24 impossibility of same. The forensic
25 evidence was reviewed at great length



1 and the evidence of Deborah Hall, Melnyk
2 and Labchuk was considered. The
3 situation regarding Larry Fisher was
4 examined fully."

5 And again, would you accept that as being
6 accurate?

7 A Yes.

8 Q And then the next paragraph:

9 "Given the length of the discussion I
10 clearly cannot possibly do it justice in
11 this letter, but on a positive note I
12 would indicate that it is remarkable how
13 many factors in your favour come up in a
14 discussion of that nature.

15 It was obvious in talking to
16 the Justice officials that the points we
17 were making were significant and they
18 took copious notes."

19 You agree with that?

20 A Yes.

21 Q And the last paragraph:

22 "There was even a discussion as to what
23 the test should be for the Minister to
24 apply and should the matter be referred
25 to a Court, which would be the



1 appropriate Court."

2 Do you recall any discussion of that nature?

3 A Yes, I'll accept it occurred. I remember talking
4 about it. I don't recall specifically where, but
5 apparently it was at this meeting.

6 Q And any recollection of what the test was, at
7 least in the application, to show a miscarriage of
8 justice? Do you remember if there was any
9 discussion about that?

10 A No.

11 Q Next page, Mr. Wolch says:

12 "We did have certain facts brought to
13 our attention. It is clear that Deborah
14 Hall in her examination by Mr. Williams
15 in some ways corroborated Melnyk and
16 Labchuk. But in reading her evidence
17 thoroughly, it became obvious that she
18 was not wavering and she was very clear
19 that there was no re-enactment and that
20 your comments, if made, were sarcastic
21 at best."

22 And again, would you agree with that as an
23 accurate description of what was discussed?

24 A I'll accept the report, yes.

25 Q You don't have any recollection?



1 A No, I don't, I don't.

2 Q And similarly some comment about unfair and untrue
3 police reports regarding yourself.

4 "For example, a reference to your
5 serious criminal record prior to your
6 arrival in Saskatoon was simply not
7 true, but yet was contained in the
8 police report. We were able to point
9 out that this showed an obvious bias."

10 So it would appear that some police reports were
11 being looked at at the time; is that -- would you
12 agree with that?

13 A Yes.

14 Q And then here, a comment about the reward and:

15 "I particularly want to know if Melnyk
16 and Labchuk were paid."

17 Do you recall any discussion about that at that
18 meeting?

19 A Not specifically, no.

20 Q And then there's a reference here:

21 "I believe that everything that can be
22 done ... with the possible exception of
23 the recent suggestion that we may have
24 more evidence regarding Fisher. Any
25 direction from you would be



1 appreciated."

2 Do you know what that's referring to?

3 A No.

4 Q Then 222477, this is a news release about eight
5 days later from I think the Milgaard family, and
6 it's from David, sent a letter to Eugene Williams
7 demanding that he meet personally with the family
8 within I think 72 hours, and the letter:

9 "Do you have the courage to face us and
10 the truth?"

11 And I'm just wondering, do you recall what the
12 circumstances were in connection with this? This
13 would be eight days after you met with Mr.
14 Williams.

15 A I can only surmise this was David, David's
16 impatience overflowing.

17 Q Go to 009456, and this is a letter from Joyce
18 Milgaard to all the members of parliament, and the
19 next page, we've gone through with Mr. Henderson,
20 it was a report prepared by, I think by Centurion
21 Ministries, that Mrs. Milgaard sent to all members
22 of parliament. Do you remember that?

23 A Yes. I think I may have advised Mrs. Milgaard to
24 send this letter.

25 Q And the attached report as well?



1 A Yes, I would think so.

2 Q And again was it Centurion Ministries then who
3 would have prepared the report?

4 A I don't recall. I assume we would all have
5 collaborated in its preparation.

6 Q If we can go to 213025, again this is a January
7 11th, '91 letter from David to Bruce MacFarlane
8 similar to the one that he sent to Mr. Williams,
9 and again at this point it says:

10 "Dr. Ferris made it clear in his report
11 that I never murdered anyone, and in
12 fact someone else did."

13 And wants to see him personally. Would this be
14 the same sort of thing you talked about on the
15 earlier letter, his impatience?

16 A Yes.

17 Q I now want to turn to 001529, and this is Kim
18 Campbell's February 27th, 1991 letter dismissing
19 the application, and I want to touch on parts of
20 this. We've covered some subject areas, but I
21 take it you are fairly familiar with this letter,
22 Mr. Asper?

23 A Yes.

24 Q And I think in the months and maybe even the years
25 that followed, from time to time you provided your



1 commentary or criticism on some of the matters; is
2 that correct?

3 A Yes.

4 Q If you could go to, I just want to go through
5 parts of this and get your response as to whether,
6 whether you took issue with some of the matters
7 put forward here. The Minister talks about:

8 "The purpose ...",

9 and again, of 690:

10 "... is to permit a review of cases
11 where new evidence or information
12 raising doubts concerning the
13 correctness of a conviction has arisen
14 after the full judicial process,
15 including appeals, has been exhausted.
16 I wish to emphasize that it is not the
17 function of the Minister of Justice to
18 retry the case."

19 And again just on, this letter talks about
20 requiring:

21 "... new evidence or information raising
22 doubts concerning the correctness of a
23 conviction ...";

24 was that consistent with what you thought you had
25 to establish, or the test, or one of the tests?



1 A Yes.

2 Q And would that be something that you would have
3 known either at the time of the application or
4 around that? Did this come as any surprise to you
5 that this was the test that they were applying?

6 A No. I don't think that was the test that they
7 applied. I mean they are -- I think -- my
8 understanding was that a separate test -- I would
9 have preferred this test -- I think the test they
10 ultimately applied was to show that there is a
11 substantial likelihood that a miscarriage of
12 justice occurred.

13 Q Okay. So your view was, or you believed that the
14 test they applied was that you had to show a, I'm
15 sorry, a substantial --

16 A There was a substantial likelihood that a
17 miscarriage of justice had occurred.

18 Q Okay. And on what do you base that?

19 A I believe that was ultimately what Mr. Rutherford
20 or one of the senior Justice officials talked
21 about with us.

22 Q And at what time frame?

23 A Prior to the decision. This may have been
24 October.

25 Q Okay.



1 A It may have been in the weeks leading up to it.

2 Q And so, at some point prior to the Minister's
3 letter, you were advised that you had to show a
4 substantial likelihood of a miscarriage of
5 justice?

6 A I don't know that it was that definitive, but that
7 concept --

8 Q That was your impression?

9 A -- was certainly raised.

10 Q Okay.

11 A I think that, if the purpose of the procedure is
12 to permit a review where:

13 "... new information or information
14 raising doubts concerning the
15 correctness of a conviction has arisen
16 ..."

17 is a standard lower than what I believe was
18 actually applied.

19 Q Okay. And then at the bottom, again, mentioned
20 at:

21 "... the courts where it can be
22 demonstrated that a reasonable basis
23 exists to conclude that a miscarriage of
24 justice has likely occurred."

25 And, I mean, that's just a different way of



1 restating the test. Again, what are your
2 comments on that, was that your understanding of
3 the test? Was this a lower test than what you
4 thought they applied?

5 A I don't know. I don't know.

6 Q If we can go to the next page. And again, you've
7 commented already on some of these points, but
8 here the Minister talks about the examination and:
9 "When conducting an investigation into
10 the matter, and later advising the
11 Minister of Justice, the Department of
12 Justice has as its duty an objective
13 discovery of the facts, including an
14 impartial examination of any new
15 evidence that may become available. The
16 approach taken during the investigation
17 is not adversarial in nature; rather, it
18 takes the form of an impartial inquiry
19 into the full circumstances of the case.
20 Upon conclusion of the investigation,
21 the Department of Justice equally has a
22 duty to consider fairly the arguments
23 put forward by counsel for the
24 applicant, and to measure the facts of
25 the case and counsel's submissions



1 against the provisions of Section 690 of
2 the *Criminal Code*."

3 Now I take it, Mr. Asper, that you took -- you
4 did certainly in subsequent articles,
5 correspondence, took issue with this; is that
6 right?

7 A Well we know, factually, that the Department of
8 Justice did not undertake a full or impartial --
9 sorry, I shouldn't say "impartial" because that's
10 subjective -- we know that, factually, they did
11 not undertake a full investigation of the case.

12 Q And what do you mean by that? Can you elaborate?

13 A Every piece of evidence that was ultimately used
14 to free David Milgaard was evidence that was
15 provided by the Milgaard camp, not by the
16 Department of Justice, and every step of the way
17 the Department of Justice had to be dragged,
18 kicking and screaming, to look into the new
19 evidence that was being provided.

20 Q And on the issue --

21 A And I would -- and I would just note, the Minister
22 says in her letter:

23 "... the Department of Justice has as
24 its duty an objective discovery of the
25 facts ...",



1 and it failed in its duty.

2 Q And, again, is there anything in addition to what
3 you have already told the Commission that you rely
4 upon to support what you are saying?

5 A No.

6 Q So the matters that you've talked about already
7 relating to, I think, the work that primarily Mr.
8 Williams had done on the case; is that fair?

9 A Yes, or hadn't done.

10 Q And then the Minister goes on to address public
11 comments:

12 "During the investigation of this
13 matter, a number of comments were made
14 publicly which tended to suggest that
15 officials within the Department were not
16 impartial in their approach to the
17 application."

18 And I think, Mr. Asper, we've already had a look
19 at some of those where you -- you, perhaps
20 amongst others, had indicated publicly that, yes,
21 you felt that certainly Mr. Williams was not
22 impartial in his approach; is that fair?

23 A Yes.

24 Q And the Minister says:

25 "That was simply not the case."



1 And goes on to say:

2 "In view of the allegations that were
3 made, senior officials concluded that,
4 in the particular circumstances of this
5 case, especially in view of the public
6 perceptions that could flow from these
7 unwarranted allegations, it would be
8 appropriate to seek the advice of
9 eminent counsel with considerable
10 experience in matters of criminal
11 litigation. The Honourable William R.
12 McIntyre, Q.C. who practices in
13 Vancouver, was retained for that
14 purpose."

15 It goes on to talk about his experience and:

16 "Mr. McIntyre has reviewed the case in
17 detail, and has provided his advice to
18 me as well."

19 When did you find out that Mr. McIntyre had given
20 advice to the Minister?

21 A I don't recall.

22 Q Would it have been prior to this letter?

23 A I'm not sure. I don't recall that.

24 Q And did you have --

25 A Yes, I think we did, I think we did find out



1 before this and asked to respond to the Justice
2 submission, to the submission provided to Justice
3 McIntyre.

4 Q And what was the response?

5 A We were not permitted to see what was being given
6 to McIntyre -- I think, yeah that's right, this
7 may have come out of the October meeting,
8 actually -- we were not permitted to participate
9 in the process.

10 Q So was it, are you saying that at the October
11 meeting you may have been informed that
12 Mr. McIntyre was --

13 A You know what, I may have been confusing, I may
14 have been thinking about how we responded to
15 learning of the McIntyre information.

16 Q Okay. I'm not sure much turns on that.
17 Obviously, at the date of this letter, you knew
18 that Mr. McIntyre was involved?

19 A Yes.

20 Q Did you --

21 A And that we were -- had not been invited to
22 participate.

23 Q Okay. Did you have any concerns with the fact
24 that the Minister had retained Mr. McIntyre to
25 give her advice?



1 A Yes.

2 Q And what were those concerns?

3 A That we had not been invited to participate, or to
4 provide submissions, or to see what was being
5 provided to Mr. McIntyre.

6 Q And how do you respond to -- and I think what the
7 Minister indicated saying in the subsequent point
8 was that "he gave me legal advice and it's
9 privileged and so he was my advisor and therefore
10 you're not entitled to know what I gave my legal
11 advisor and what my legal advisor gave me".

12 A Well I find it a little odd that the Minister is
13 prepared, in the first part of her paragraph, to
14 talk about public perception and in the latter
15 part of the paragraph to keep the correspondence
16 with her eminent counsel private --

17 Q And --

18 A -- and privileged.

19 Q And so the concern, then, would be --

20 A I mean public -- I mean just let me embellish
21 that.

22 Q Sure.

23 A I mean public perception, if the public knew that
24 the information provided to Mr. McIntyre was
25 tainted or biased or erroneous, and that the



1 opinion therefore was the product of that, I would
2 think that public perception would require that
3 information to be known.

4 Q And so as far as -- let's see if we can break this
5 down. As far as retaining Mr. McIntyre to advise,
6 if she would have disclosed to you, "here's what I
7 gave him and here's what he told me", so that you
8 could have an opportunity to challenge or review
9 both what was given to him and what was said, that
10 might have solved a bit of the concern; is that
11 fair?

12 A Yes.

13 Q And was that really the crux of the concern with
14 Mr. McIntyre, the fact that you didn't know what
15 he was given, you didn't know what he said?

16 A Right.

17 Q And weren't given an opportunity to challenge it?

18 A Right.

19 Q The fact that she's getting advice from someone
20 external, I mean apart from those other issues,
21 was that of a concern to you?

22 A Not, not in particular.

23 Q And go down at the bottom. The Minister indicates
24 that she looked at materials and, as well:

25 "... the submissions that you presented,



1 in person, to senior departmental
2 officials on October 1, 1990."

3 And presumably, when you met in October, one of
4 the purposes was for you to make submissions that
5 you would hope would get through to the Minister;
6 is that fair?

7 A Yes.

8 Q The next page. We have been through these, a few
9 witnesses Mr. Asper, and I think you are familiar
10 with this document. Do you -- she sets out the
11 five issues that they looked at; the motel room
12 re-enactment, the forensic evidence, the
13 Wilson/Cadrain recantations, the Fisher
14 information, and I think the fifth one is the
15 submission that, based on the evidence, it was
16 impossible for David to have committed the crime.
17 I think that's how the fifth ground was put
18 forward. Do you take -- have any issue that those
19 -- do you agree that those would have been,
20 although you may have stated them differently,
21 those would have been the grounds that you put
22 forward?

23 A I think so, yes.

24 Q So in other words your concern with her response
25 is not that she missed a particular round, it's



1 just how she dealt with them, is that fair?

2 A Yes.

3 Q If we can go to 001533. And, again, this -- we've
4 gone through this before and you are familiar with
5 the document, I don't propose to read through it,
6 but what I think the Minister says here on the
7 Deborah Hall and Ute Frank information is that,
8 based on Mr. Williams' examination of Deborah
9 Hall, that her evidence actually corroborated, at
10 least in the Minister's view, the evidence of
11 Melnyk and Lapchuk, and actually amplification of
12 the words attributed; is that what you understand
13 her -- you understood her position to be?

14 A Yes.

15 Q And, if we can go to the next page, I think she
16 indicated that:

17 "... Ms. Hall not only confirmed what
18 Milgaard had said but attributed to him
19 a further admission detailing a sexual
20 assault perpetrated by him upon the
21 victim at the time of the murder."

22 And I think what she said on the issue of the
23 fact that Deborah Hall thought it was a joke,
24 that that was something that the jury -- let me
25 just find that comment -- yeah. What she says



1 is:

2 "Whether her opinion of Milgaard's
3 sincerity would have been shared by the
4 jury is, at best, debatable.

5 Nonetheless, the interpretation to be
6 placed on their testimony ...",

7 being Melnyk and Lapchuk:

8 "... in the context of all the evidence
9 presented was certainly a matter for the
10 jury to consider."

11 Can you tell us, what was your -- did you take
12 issue with the Minister's response on the Deborah
13 Hall motel room re-enactment ground that you put
14 forward?

15 A I -- I don't -- personally, frankly, I don't
16 recall how I reacted to any of the issues other
17 than the Fisher issue. I don't recall
18 specifically how I reacted to how the Minister
19 dealt with Deborah Hall or any of the other
20 evidence, I only recall the fact that she didn't
21 take the Fisher information seriously, seriously
22 enough to re-open the case.

23 Q Okay. I think, in some later correspondence, I
24 think you take issue with the fact that you don't
25 see how the Minister could say that information



1 you put forward actually made it worse for your
2 application, because I think that's how you
3 interpreted it, at least as I read your letters;
4 do you recall?

5 A That's probable.

6 Q So as far as whether you took issue with the
7 response on that ground at the time, you are
8 unable to tell us?

9 A I'm certain I took issue with every ground --

10 Q Okay.

11 A -- of refusal, I just don't recall specifically.

12 Q And then the next page talks about, or this page
13 talks about the forensic evidence, and if we can
14 go to page 001536 concludes:

15 "In the final analysis, the forensic
16 evidence presented at trial proved
17 nothing. With the benefit of hindsight,
18 it may have been preferable had the
19 evidence simply not been tendered.
20 Nevertheless, the case against Milgaard
21 was a strong one. The suggestion that
22 the forensic evidence exonerates
23 Milgaard mis-states the value of that
24 evidence. The forensic evidence
25 tendered at trial, when elevated to its



1 highest probative value, is neutral,
2 establishing neither guilt nor
3 innocence. The recent opinions do not
4 establish that the evidence should now
5 be viewed any differently."

6 Do you remember if you took issue with that
7 response?

8 A I'm certain I did.

9 Q And do you know on what basis?

10 A I can est -- I can guess on what basis but I don't
11 recall specifically.

12 Q And what would that, that would be based on your
13 understanding of the issues, you are saying "this
14 is what I think I would have said"?

15 A Well I think if you go back to where you started,
16 when the Minister says in the middle of the
17 paragraph:

18 "... the case against Milgaard was a
19 strong one.",

20 there's an internal contradiction in as much as
21 the Minister begins, I think, the whole decision
22 by saying the case against Milgaard was
23 circumstantial, and so the Minister's conclusion
24 that the evidence against Milgaard absent the
25 forensic evidence was a strong case is simply



1 just a misstatement. Umm, and, umm, you know, I
2 take issue with the fact that if the forensic
3 evidence, elevated to its highest probative
4 value, is neutral, establishing neither guilt nor
5 innocence, again -- and we've talked about
6 this -- I believe it's a miscarriage of justice
7 if you tender evidence which has no probative
8 value but which may be construed by the jury to
9 be inculpatory.

10 Q Okay. If we can go to 001538, and I'm skipping
11 over, the previous page deals with the Ron Wilson
12 evidence, and I think I can summarize it here.
13 She says, she goes through in some detail his
14 evidence and what he said at the subsequent
15 interviews, and in particular talks about what --
16 when Ron Wilson was asked by Mr. Williams to
17 explain the police manipulation, coercion,
18 etcetera, and comments on that evidence. And she
19 says:

20 "On the whole of the evidence available
21 to me, I can find no basis for
22 confidence in Mr. Wilson's allegations
23 that his statement incriminating
24 Milgaard was obtained by the
25 manipulation or coercion of police



1 investigators. The current retraction
2 by Mr. Wilson of much of his trial
3 evidence is unconvincing."

4 And I think what she was saying, or at least one
5 interpretation of it, is that when the Minister
6 or Mr. Williams sought to test Mr. Wilson on the
7 reasons for his lying at trial and what he put
8 forward as why he lied, that when they looked at
9 the reasons they found that the reasons weren't
10 credible, or what he said as being the reasons
11 for lying, namely the police coercion, the
12 manipulation and bullying, and therefore if they
13 didn't find that to be credible, therefore the
14 recantation may not be credible or is
15 unconvincing. And did -- was that your
16 understanding, at least, of her position?

17 A Yes.

18 Q And what was your response to that; do you recall?

19 A It was a -- it was, in my opinion, troubling
20 evidence of the bias at the department, by the
21 Minister of Justice, that where there were lies
22 told that, umm, supported the conviction, that was
23 okay; but where they -- or potentially told that
24 supported the conviction, that was okay; but where
25 there was information provided that attacked the



1 conviction or the original evidence at trial, that
2 was a lie, if you follow me?

3 Q I think so.

4 A Umm, I haven't stated that as well as I could, but
5 if -- but Wilson -- the Minister concludes that
6 she doesn't believe Wilson's recantation,
7 therefore he wasn't speaking the truth in his
8 recantation, so long as that preserves the
9 conviction it's okay, without giving any thought
10 to the possibility that he might not have been
11 telling the truth, either, at the time of the
12 trial.

13 Q And, as far as the Minister needing --

14 A And I'm sorry, it raises, it raises a large
15 problem for the Minister. I mean I'm sympathetic,
16 somewhat, to the Minister of Justice, because if
17 you've got a bunch of people who are congenitally
18 incapable of telling the truth, whether at the
19 time of the original trial or then trying to get
20 themselves out of it, what do you do?

21 Q And I guess --

22 A I mean what --

23 Q And that was one of the questions, and I know you
24 had some comment about whether the Minister of
25 Justice should get into the position of weighing



1 the credibility of evidence?

2 A That's the problem.

3 Q Okay. And I take it you had concerns with that,
4 that she should -- she should not put herself in
5 the position of making determinations of
6 credibility?

7 A That's true. And we saw it at the Supreme Court,
8 I mean the Chief Justice's head was spinning, all
9 the Justices' heads were spinning when Wilson was
10 testifying.

11 Q And so again if we can just take a step back,
12 then, faced with that in a Section 690
13 application, if evidence in support of one of the
14 grounds of the miscarriage of justice, if there
15 may be an issue of credibility about the evidence
16 are you saying the Minister of Justice should do
17 what, not -- not deal with that, or how should it
18 --

19 A Well in my view you can't, you can't -- it's very
20 difficult to make findings of credibility, because
21 if you've got uncredible witnesses who were not
22 credible at the time of the trial and are not
23 credible at the time of trying to undo the wrong
24 that occurred at the trial, I don't know who --
25 who deals with that other than a judicial official



1 and not, not at the political level.

2 Q Go down to number 4, Larry Fisher, and I may read
3 this one because I think is it fair to say that
4 this would be one that caused you the most
5 concern, her dealings with the Fisher information?

6 A Yes, I mean, and look at the number of words given
7 to that point compared with the other points.

8 Q And what she said is:

9 "Inquiries were also made concerning the
10 submission that one Larry Earl Fisher
11 was Gail Miller's assailant."

12 It goes on to talk about the observations of
13 Linda Fisher, her paring knife, and:

14 "Neither Ms. Fisher's suspicions, which
15 were conveyed to the police in 1980, nor
16 other well publicized assertions by her,
17 provide any evidence to link Larry
18 Fisher to Gail Miller's death. Ms.
19 Fisher noted that the photo of a knife
20 similar to the murder weapon indicated a
21 different handle type, colour and blade
22 from her missing knife. However serious
23 Mr. Fisher's criminal record may be, the
24 entire record at trial and in this
25 application reveals no evidence to



1 connect him with the killing of Gail
2 Miller. Although it was, as you have
3 conceded, quite coincidental that Mr.
4 Fisher resided at the Cadrain residence
5 during Mr. Milgaard's visit, no guilt or
6 suspicion of guilt can be attributed to
7 Fisher in the absence of some form of
8 evidence linking him to the crime."

9 And let me just pause here. What Sergeant
10 Pearson testified when he was here, along similar
11 lines, what he told us is that notwithstanding
12 the fact that Larry Fisher was a very good
13 suspect, and in fact I think he said -- and I
14 stand to be corrected -- maybe even a better
15 suspect than David Milgaard at the time when he
16 was looking at it, he was not able to come up
17 with any evidence that would link Fisher to Gail
18 Miller's murder, and so that he couldn't elevate
19 it from suspicion to a connection. Can you tell
20 us, what issues or concerns did you have with
21 this response from the Minister on this ground?

22 A Umm, I think that -- well, in a general sense, I
23 guess it raises the question if there's an
24 alternate suspect theory what level of -- to what
25 degree do you have to establish that there may be



1 an alternate suspect that would have been
2 admissible evidence at the time of the trial, and
3 in this case evidence linking Fisher to the murder
4 of Gail Miller suggests that the Minister is
5 looking for something upon which a charge could be
6 laid.

7 Q And so was your concern that the -- I'm sorry?

8 A Well, and that, and my understanding is to advance
9 a theory of an alternate suspect, that is not the
10 test.

11 Q And so your concern was that the Minister was
12 putting too high a threshold on what you had to
13 establish with respect to Larry Fisher?

14 A I think that's one part of it. The second part of
15 it is that you can see, and we know now from the
16 ultimate outcome it was just an abject failure to
17 comprehensively investigate this matter and to
18 investigate it in the context of the *Milgaard*
19 case.

20 Q So, just picking up on that point, I think in the
21 second application would you agree that there was
22 more information -- and your point earlier was
23 there should have been more information I think
24 gathered by Federal Justice on the first
25 application -- but would you agree that there was



1 more information available to the Minister on the
2 second application relating to Fisher than there
3 was on the first?

4 A Yes.

5 Q And was your concern on the first application that
6 they failed, when I say "they", that the Minister
7 failed to gather all the information and
8 therefore, when she made her determination on the
9 Fisher issue, she did so without the benefit of
10 more information than her officials should have
11 gathered. Do you follow me?

12 A Yes, I'm -- yes. I think there is two points.
13 The first point we've discussed, which is that the
14 standard that she used as to whether the alternate
15 theory, alternate suspect theory standard had been
16 met, she applied too high a standard; and number
17 2, yes, there had been an inadequate
18 investigation, there was inadequate information
19 upon which -- the Minister to make this finding.

20 Q And so that I guess if you look at her response,
21 one approach I think you are saying is well, if
22 she would have had more information, which she
23 should have had, she would have reached a
24 different conclusion; is that fair?

25 A I can't say that. My, my -- if you would like my



1 personal view, my personal view is that the
2 Minister would have maintained a refusal to
3 re-open the case unless -- and would have
4 maintained that, and that the only reason,
5 ultimately, that this case got re-opened was
6 because the people of Canada and perhaps some of
7 her political colleagues prevailed upon
8 Ms. Campbell to re-open this case. I believe that
9 she -- I believe -- my view is that the subsequent
10 information, in and of itself, would not have
11 moved the Minister either.

12 Q Okay. And so then the concern here, then, is the
13 manner in which -- I think what you are saying is
14 the standard she put is too high and that's what
15 we're left with?

16 A I don't know what was in the Minister's mind.

17 Q Okay. The -- can you tell me, Mr. Asper, whether
18 -- and we have seen some reference to this --
19 whether at this time, under the Section 690
20 application, did you -- was it your view that it
21 was sufficient for Mr. Milgaard to put forward
22 evidence that said that lookit, if I had a trial
23 today I could raise a reasonable doubt, in other
24 words if we had a trial today I could raise a
25 reasonable doubt; did you think that was enough?



1 Was that your understanding, that that would be
2 enough to get a remedy under Section 690, or did
3 you think you needed more?

4 A No, I think the, I think we were thinking in terms
5 of if -- if things were different at the original
6 trial, based on what we now know, would --
7 essentially it's applying fresh evidence analysis
8 -- would -- could the verdict, could the outcome
9 have been different. I don't know that we were
10 thinking about a trial today or at that, you know,
11 in 1990. The only time we actually seriously
12 considered a trial, a modern-day trial, was when
13 we were looking at Fisher.

14 Q Yeah, no, and let me rephrase it a different way.
15 I think we see, in some of the materials,
16 reference to the fact that if we would have had
17 this information available at the time it would
18 have resulted in an acquittal, so namely today,
19 Minister, because of this information today we
20 could raise a reasonable doubt?

21 A Yes. Oh, I see what you are saying. Yes, that's
22 true.

23 Q And the reason I raise that, there's some
24 suggestion in some later documents where Federal
25 Justice may have taken a different view, that it



1 was not -- once a conviction had been had and
2 appeals exhausted, it wasn't enough to later say
3 "well I can now raise a reasonable doubt", that
4 you had to show a miscarriage of justice and it
5 wasn't enough to simply raise a reasonable doubt
6 later because then you would have had an
7 interminable number of proceedings?

8 A Yes, and I -- yes, I'm well aware of that
9 position, which is absurd to me but --

10 Q Okay. So I guess I just want to go back as to
11 what your understanding -- was it your belief
12 that -- or tell us where --

13 A You have to be, you have to be able,
14 post-conviction, to be able to raise new
15 information that would -- that may have the
16 ability to cast the original conviction in doubt,
17 because if you can't do it post-conviction, then
18 there is no point in having Section 690.

19 Q Yeah. No, let me try it a different way. I think
20 what the Minister's position at least at one point
21 was stated, that it is not enough to simply put
22 forward evidence to say that if I had a trial
23 today, if I were allowed another chance to have a
24 trial today I could raise a reasonable doubt
25 today, that that wasn't enough, in and of itself,



1 to get a re-opening. And I am wondering if you
2 agree with that as being (a) the test, and (b)
3 something that you understood at the time?

4 A Oh, well I don't agree with the Minister's
5 position, umm, and I think I did understand that
6 the Minister was applying a different and a higher
7 standard.

8 Q Okay.

9 A I'm pretty sure of that, as I've said.

10 Q And just on the last ground, about the submissions
11 that David Milgaard could not have killed Gail
12 Miller, I think -- and please correct me if I'm
13 wrong -- this was a ground that said lookit, if
14 you go through all the trial evidence it just
15 couldn't happen, and I think the Minister's
16 response was, "well, that was put before the jury
17 and I can't do anything about it"; is that a fair
18 --

19 A Yes.

20 Q -- fair summary of that? If we can go to 213387.

21 A I would point out, like just, the point number 5
22 was -- was -- we knew, in and of itself, that sort
23 of re-arguing the facts of the case wasn't going
24 to suffice, but to put -- but to take a different
25 view of the facts in the context of the



1 information that we had provided, the other
2 information we thought would be persuasive because
3 it illustrates that there were, there were other
4 factual pinnings to illustrate that the evidence
5 presented at the time of the trial may not be
6 true.

7 Q And so that would be a case of lookit, if we can
8 get in the door with some new evidence then once
9 you're in the door, Minister, you may take some
10 comfort that, when you look at the rest of the
11 evidence, that there are some real problems?

12 A Yes.

13 Q And I think that's what you said early on in your
14 evidence, that if you could get something, a hook
15 I think you said, in, then that might open up the
16 ability to argue about what was before the jury?

17 A Yes.

18 Q Is that correct?

19 A Yes.

20 Q 213387, I think, is a draft letter. I don't know
21 that this was sent, Mr. Asper. There is a letter
22 dated March 12th that's virtually identical from
23 the Milgaard family, and it looks as though you
24 drafted a letter and then it was revised, and then
25 it was sent by the Milgaard family; does that



1 sound right?

2 A I -- possibly, yes.

3 Q I take it, from this letter and from some other
4 comments, you were fairly upset with the
5 Minister's decision?

6 A To say the least.

7 Q And quite vocal about your displeasure and your
8 criticism of it?

9 A Yes.

10 Q And I'll just have you take a quick look at that.
11 Maybe if you want to just look at the first, I'm
12 not gonna read them, I just -- because I want to
13 show you the next letter, and that's why I say I
14 think this was just a draft that was not sent.

15 And then if we can call up
16 157818, please. And this I think is the March
17 12th letter and you'll see, I mean I haven't
18 compared it word for word but they're very
19 similar, and if you go to the last page it's The
20 Milgaard Family, and the typist, ln, is the same
21 typist on your letter, so I'm -- does that assist
22 you at all? Was this a collaborative effort,
23 maybe, to put forward your thoughts that you ended
24 up having the Milgaard family submit as opposed to
25 your letter, or are you able to shed any light on



1 that?

2 A Well, obviously I drafted, or did most of the
3 drafting here, but I don't remember why --

4 Q Okay.

5 A -- it was them versus me signing it.

6 Q We'll go through, if we can go back to the first
7 page, and you say here -- and when I say you, I'm
8 referring to the collective you, or maybe you
9 personally, but whoever is writing this:

10 "It would seem that your officials
11 either ignored or profoundly
12 misunderstood not only the substance of
13 our application, but also the evidence
14 at trial."

15 And I think that's consistent with what you've
16 told us a bit earlier; is that right?

17 A Yes.

18 Q There's a comment here, I won't go through -- the
19 letter itself is in evidence, Mr. Asper, I don't
20 propose to go through all of it because we've
21 touched on some of it. Here you talk about:

22 "Much of the information submitted with
23 respect to Larry Fisher even after his
24 name had been disclosed to your
25 officials came from the media. There



1 were numerous telephone conversations
2 between our counsel and your officials
3 wherein we were repeating what the media
4 had discovered, in some cases to the
5 amazement of your officials."

6 Can you tell us what that would have been and
7 which officials?

8 A I think I suspect that refers to -- we would get
9 calls. I mean, you have to appreciate that the
10 phone did not stop ringing from morning, noon and
11 night with media people and informants, people who
12 said they had information. When we got
13 information that we considered credible from
14 credible sources, we would pass it along, and we
15 would pass it along to Mr. Williams, to
16 Mr. Rutherford, to Mr. MacFarlane, to whoever we
17 could get a hold of, and many times when we would
18 tell them what we had heard, it was news to them,
19 including the whole exposé of Fisher's record and
20 where the crimes were committed and --

21 Q And so that would be one example where informing
22 them that the rapes had been committed in
23 Saskatoon, not Regina?

24 A Yes.

25 Q If we can go to the next page, and you talk about:



1 "At all stages in the course of this
2 application the conduct of a few of your
3 officials offered clear evidence that
4 they had set out to defeat the
5 application. This, of necessity,
6 rendered the process adversarial in
7 nature."

8 And is there anything in addition to what you've
9 already told us, Mr. Asper, that you relied upon
10 to support that contention?

11 A No.

12 Q Go to the next paragraph, and you raise a point
13 here that:

14 "Anyone who seeks a remedy under Section
15 690 ... must confront the quite natural
16 bias of your Department which, among
17 other things, is charged with the
18 prosecution of crimes. This bias exists
19 independent of any malice or
20 ill-motive."

21 And then you talk about actual bias. And on the
22 prosecution of crimes, I think you will have
23 heard the response to that from the Federal
24 Justices, well, they didn't prosecute this crime,
25 they only prosecute federal crimes, and was it



1 your position that lookit, it doesn't matter
2 because you are prosecutors, there is an
3 objective bias?

4 A Yes.

5 Q And the fact that it was the Attorney General of
6 Saskatchewan that prosecuted the matter doesn't
7 matter, you are still prosecutors by nature?

8 A Yes.

9 Q And then you talk about actual bias and you make
10 mention of the fact, of the comment attributed to
11 Mr. Corbett which you've talked about, and then as
12 well you talk about, in the next paragraph, and I
13 don't know if we spent much time on that, the --
14 you raised an issue that only certain witnesses
15 were examined under oath and I think you said only
16 your witnesses and not others. Can you elaborate
17 on that or what was your concern there?

18 A Well, as I think I indicated, we would have
19 expected every potential witness to have been
20 treated equally, and in the case of Mr. Caldwell
21 or any, and I believe ultimately members of the
22 Saskatoon Police Department, they were treated as
23 helpers rather than witnesses, and it was only the
24 people offered by our group and in support of our
25 application who were treated formally as witnesses



1 and I thought that was improper.

2 Q Okay. The next paragraph, there's a comment here
3 where you say:

4 "We were contacted and advised that Mr.
5 Williams in his preliminary
6 off-the-record discussions indicated his
7 personal feeling that he was simply
8 wasting his time."

9 And I think this related to the, an examination
10 of a witness. Are you able to tell us who said
11 that and what was said?

12 A I believe that was Deborah Hall and, you know, it
13 was, as I think I've tried to say, it was part of
14 the problem where a tape or a transcription of her
15 interview with Mr. Williams starts and finishes,
16 but we didn't know what happened before the
17 statement was taken or afterwards, and I think
18 this is where Deborah Hall indicated the
19 conversation leading up to the taking of the
20 statement.

21 Q And can you tell us what you recall her telling
22 you about any off-the-record discussion?

23 A No, other than she was not very happy, she was not
24 made to feel as though she was being taken
25 seriously.



1 Q Did she tell you that Mr. Williams told her that
2 his personal feeling was that he was simply
3 wasting his time?

4 A She may have. I don't recall that.

5 Q Okay. The next page, again I think this confirms
6 what you told us:

7 "After our counsel met with your
8 officials in Ottawa on October 1, 1990,
9 it became abundantly clear that there
10 were very different views with respect
11 to the facts of the case."

12 I think you would agree with that? That was the
13 October 1 meeting we talked about.

14 A Yes.

15 Q And then down at the bottom, or just actually
16 scroll down -- actually, go back to the full page.
17 You say:

18 "David Milgaard had his application
19 investigated, adjudicated and concluded
20 by all of the same people, and always in
21 our absence. The real decision in this
22 case was made when you referred the case
23 to Mr. Justice McIntyre, and it is
24 astonishing that you believe otherwise.
25 You referred this case to a retired



1 Judge for his opinion, and you excluded
2 counsel. We are confident that there is
3 no Court in this country which would
4 sanction this practice, either under the
5 Charter, or by virtue of the rules of
6 natural justice."

7 And again I think that's what you mentioned
8 earlier about your concerns about Mr. McIntyre?

9 A Yes.

10 Q What about the response from the minister, that
11 lookit, this is a discretionary matter and as the
12 minister I exercise my discretion and get my
13 advice as I see fit.

14 A I think the consequences are a little bit too
15 serious here for formalistic responses such as
16 that offered by the minister. Someone is in
17 prison and may be there wrongly and my view would
18 be that under those circumstances it is the
19 highest moment for all of the rules of natural
20 justice to apply.

21 Q If we can then go to the next page and you say
22 here:

23 "Perhaps the greatest example of the
24 unfair assessment given to the Milgaard
25 application is the interpretation of the



1 evidence given by Deborah Hall, both by
2 Affidavit and in her sworn evidence to
3 Mr. Williams."

4 And then go on to say:

5 "Deborah Hall, who was never interviewed
6 by the police, and who never testified
7 at the trial, gives a completely
8 different version of events."

9 And you then repeat the words that she said to
10 Mr. Williams and then say:

11 "This is not an issue of interpreting
12 the words used by Milgaard. Your
13 officials seem to insist that Debbie
14 Hall corroborates Melnyk and Lapchuk
15 when in fact she directly contradicts
16 them."

17 And goes on to talk about the differences. So at
18 this point, even with accepting what Deborah Hall
19 said to Eugene Williams, was it your view that
20 lookit, her evidence does not corroborate Melnyk
21 and Lapchuk?

22 A I think that was my view, yes.

23 Q 162441, and this is a news release March 12th and
24 the David Milgaard Support Group. I understand
25 that was a group of people that were supporting



1 David's efforts; is that correct?

2 A Yes.

3 Q And so here they declared war on the minister of
4 injustice, and then as well if we can go to
5 026541, and there's a number of these articles
6 around the time, I'll just refer to one or two,
7 Mr. Asper, where they, it sounds like there was a
8 press conference and there's some discussion here
9 about taking the matter to the Federal Court, and
10 then in the next column the Court of Appeal, and
11 then there's a comment here:

12 "Campbell set herself up as judge and
13 jury in the case, which is not her role,
14 Asper said.

15 "We never asked her to declare
16 his innocence. We've only asked for a
17 new trial," he said.

18 "Her decision is an outrage.
19 Either she got bad advice and didn't
20 exercise due diligence, or she was an
21 active co-conspirator in this
22 injustice."

23 And again, is that something you would have said
24 at the time?

25 A Yes.



1 Q And can you elaborate on what you meant by that?

2 A I'm not sure I can elaborate any more. I think
3 the words speak for themselves.

4 Q And that was your view at the time?

5 A Yes.

6 Q And now?

7 A Yes.

8 Q And so when you say an active co-conspirator in
9 this injustice, what do you mean by that?

10 A She joined in the others who participated and
11 contributed, or the systemic problems that
12 contributed to the wrongful conviction and
13 imprisonment of David Milgaard.

14 Q And is it fair to say that -- you use the word
15 co-conspirator. Are you saying that there was a
16 conspiracy or are you saying that she, amongst
17 others, participated in an injustice?

18 A Yes, that's --

19 Q The latter one?

20 A Yes, the latter one. I'm not saying they all got
21 together.

22 Q Right. So you are not suggesting that she was
23 part of a conspiracy?

24 A No.

25 Q But rather, she either didn't -- she got bad



1 advice and didn't exercise due diligence, so that
2 the people who advised her committed the injustice
3 and her mistake was --

4 A -- to join them.

5 Q She didn't catch it or, if she did, then she
6 joined in on it?

7 A Yes.

8 Q Is that a fair reading?

9 A Yes.

10 Q If we can go to 009443, I think this is a *CBC News*
11 *World* transcript March 15th, and go to 009445.
12 Sorry, the next page, you say:

13 "First of all, we don't know what
14 information he received --"
15 And this is talking about Mr. McIntyre,
16 "-- nor do we know what his opinion was.
17 But let's not kid ourselves why he got
18 involved in the first place which was
19 that the officials in the Department of
20 Justice were caught red-handed acting in
21 a biased and non impartial way."

22 And then you go on to talk about the Elvis
23 Presley comment. But what did you mean by saying
24 the -- or what were you referring to, "The
25 officials in the department were caught



1 red-handed acting in a biased and non impartial
2 way"?

3 A I think I'm referring there to, and I do refer to
4 the Corbett comments, that it was just obvious to
5 a lot of people that the Justice officials were
6 working to preserve and uphold the conviction, the
7 original conviction, and that the minister decided
8 that an easy way out would be to seek an outside
9 opinion.

10 Q If we can go to 212968, and this is a document,
11 it's got a fax, April 4, '91 at the top, Lloyd
12 Axworthy, it looks as though this was some
13 revisions to, or proposed amendments to the
14 Section 690. Do you remember that being an issue
15 you looked at?

16 A Yes. I believe I did some work with Mr. Axworthy
17 on this.

18 Q And then if we can go to 212966, this is your
19 letter and you comment on the one provision:

20 "In Subsection 5, I would suggest that
21 the duties of the special counsel should
22 include a requirement that he/she obtain
23 the entire prosecution and police file
24 from the relevant prosecuting authority,
25 and disclose its entire contents to the



1 applicant. The reason here is that
2 there may be matters unknown to the
3 applicant which would assist in the
4 investigation. This would be
5 particularly true in the case where a
6 Crown Attorney or police force has
7 failed to disclose material evidence
8 favourable to the accused."

9 And would this be something that arose out of
10 your experience in the Milgaard application?

11 A I'm not sure if I was referring to anything
12 specific there other than that just seemed to make
13 sense to me, and I would add now that, that it's
14 equally important to the accused as it is to the
15 prosecution authorities for there to be complete
16 disclosure because history has taught us that the
17 police aren't always disclosing everything to the
18 Crown either.

19 Q And in hindsight then, if back in December of 1988
20 the entire police file and prosecutor file had
21 been given to Mr. Williams and turned over to you,
22 would that have perhaps improved what happened
23 later?

24 A Well, I think all you need to do is look at how,
25 in large measure, wrongful convictions are dealt



1 with today. I think 99 percent of the turmoil
2 that was created through the course of the
3 Milgaard application would have been avoided if we
4 had done the first step and sat down, as I said at
5 the outset of my evidence, collaboratively. We
6 felt, though, that we got into a position of no
7 hope, backed into a corner and needing to resort
8 to, I think what I've called extraordinary
9 measures. I think the comprehensive disclosure of
10 all information could have resolved this case very
11 early on.

12 Q And as far as disclosure, are you talking about
13 disclosure both ways in the sense of they give
14 everything to you and you give everything to them?

15 A I think that would have been perfectly reasonable,
16 yes.

17 Q If we can now turn to the start-up of the second
18 application, and I think we've heard some evidence
19 or seen some documents that it looks as though in
20 or about April of 1991 a decision was made to go
21 out and have Mrs. Milgaard and Mr. Henderson
22 interview the Larry Fisher rape victims, gather
23 information with a view to presenting I think a
24 similar act analysis or presentation; is that
25 correct?



1 A Yes.

2 Q And to go back to the minister and say lookit,
3 here's more evidence that -- was it to say here's
4 a link, here's to link Larry Fisher to the murder,
5 or was it a reaction to her decision or was it
6 your own plan to go out and think that this might
7 help?

8 A It was a combination. We had looked at a Federal
9 Court review as the document suggests, we looked
10 at the possibility of initiating some action with
11 the Saskatchewan Court of Appeal, decided that
12 neither of those would be open to us, felt that we
13 were at a dead end and came up with something new,
14 which was to file a second application, and if we
15 were to file a second application, it would have
16 to have information that was different from the
17 first application and in order to develop that we
18 decided that the, that what made the most sense
19 was to try to dig deeper into the Fisher
20 information.

21 Q And in the second application was it genuinely
22 putting forth something that was new or was it
23 dressing it up a bit different?

24 A I think we dressed it up different, although I
25 have to say, I think the Fisher information was



1 presented far more comprehensively and in a more
2 persuasive manner. We felt that we could have,
3 certainly we felt that the information in the
4 second application gave reasonable grounds to
5 prosecute Fisher.

6 Q And so that if on the second application the
7 minister came back and said lookit, we've already
8 decided this, did you feel that your second
9 application was different enough that you could
10 survive that type of challenge by saying no, we
11 didn't put forward victim information, we didn't
12 put forward this analysis of the crimes and we
13 didn't put forward, you know, the similarities; is
14 that fair?

15 A That's right.

16 Q If we can go to 212782, this is a letter of Mr.
17 Wolch to the minister April 25 and it comments on
18 the fact that there was an earlier family letter
19 sent in. If we can go to the next page, talking
20 here about the new evidence from Deborah Hall and
21 Ute Frank and talking about Melnyk and Lapchuk and
22 then says:

23 "More important even to this day we do
24 not know what arrangement was made for
25 them to secure their evidence. A member



1 of your Department implied to us that
2 they were paid."

3 And then down here:

4 "I would defy your prosecutor to stand
5 before a tribunal and advance the
6 position that the evidence of Frank, and
7 in particular Miss Hall, does not bring
8 into doubt the evidence of the paid for
9 criminals."

10 Do you have any information, Mr. Asper, any
11 knowledge as to what's referred to here about any
12 Justice Department official implying that Melnyk
13 and Lapchuk were paid?

14 A I don't, I'm sorry.

15 Q And no recollection of that being --

16 A Well, I think it would have related to, I think it
17 was Melnyk's sentence on a robbery was the
18 lightest sentence in history or something, or in
19 Regina, and I think that's what the payment refers
20 to.

21 Q So that we're not talking -- well, again, this
22 isn't your letter, but as far as payment, was it
23 your understanding that -- did someone in Justice
24 suggest that Melnyk testified in exchange for a
25 lighter sentence?



1 A That would appear to be the case, but I don't
2 recall a payment being in the form other than the
3 sentence, that's what I mean.

4 Q Let me back up. Would it be fair to say lookit,
5 you understood that there was a suggestion or an
6 argument that Melnyk and Lapchuk maybe gave
7 evidence at the Milgaard trial and benefited in
8 their subsequent criminal proceedings?

9 A Yes.

10 Q That would have been a theory; in fact, Mr. Tallis
11 cross-examined on that point at the trial.
12 Correct?

13 A Yes.

14 Q And so on that point, did anybody with Federal
15 Justice ever tell you or imply to you that you
16 recall that that was in fact the case, that they
17 did in fact get a lighter sentence because of
18 testifying at the Milgaard trial?

19 A Not to me directly, no.

20 Q And did you ever hear, other than your suspicion
21 that that was the case, did anybody ever
22 corroborate that from Federal Justice?

23 A Not with me directly, no.

24 Q And are you aware that it was corroborated with
25 Mr. Wolch?



1 A Well, clearly somebody spoke with him about it.

2 Q Do you have any knowledge of that?

3 A No.

4 Q And that as far as payment is concerned, the only
5 thing, I think what you are saying is the only
6 thing you would have been aware of was your
7 suspicion that the payment may have been by a
8 lesser sentence as opposed to cash?

9 A That's my understanding, yes.

10 Q If we can go to 213827, this is a letter back from
11 the minister I think in response to the March 12th
12 letter that I showed you, and if we can go to the
13 next page, I think what the minister responds to
14 your suggestion that ministers were hearing facts
15 from the media before they found them out, and
16 what she says is:

17 "My Department received a copy of it --"

18 Referring to Wilson's statement,

19 "-- after the statement had been
20 released to the press. In those and
21 similar circumstances, it is not
22 surprising that factual elements were
23 discovered by others before they came to
24 my Department's attention. Although
25 events were publicized prior to the



1 Department's involvement with those who
2 reportedly witnessed them, the accuracy
3 and thorough documentation of the facts
4 which were investigated ..."

5 Etcetera. So I think their response there is,
6 well, we heard from the media because you gave it
7 to the media before you gave it to us. I'm
8 wondering about your response to that.

9 A I don't -- I can't -- I can't say it more or other
10 than if the minister, if the Department of Justice
11 had been doing its job in my opinion and
12 investigating the case and doing what the minister
13 outlined as their duty in her letter rejecting our
14 first application, they wouldn't have had to be
15 listening and receiving information in the media.

16 Q So you are saying Justice officials should have
17 got the information before you got it and
18 therefore it wouldn't be an issue?

19 A Yes.

20 Q Go to the next page.

21 A And it was only because we were concerned that
22 Justice was not acting on the information. As I
23 said, I think earlier this week, that we decided
24 to, when we provided new information to the
25 Department of Justice, to march it in under the



1 glare of public scrutiny so that everybody knew
2 that new information was being provided.

3 Q If we can go to the next -- sorry, this page, she
4 responds to the issue on Fisher saying:

5 "I wish to emphasize that mere suspicion
6 of guilt in the absence of some
7 information to link Mr. Fisher to the
8 offence is an insufficient basis to
9 grant the relief that was requested."

10 And we talked about that a bit before, and Mr.
11 Pearson talked about that as well, that elevating
12 it from suspicion to some link, and am I right,
13 that your view was that you didn't have to show a
14 link, you didn't have to -- you didn't have to
15 show a link between Mr. Fisher and Gail Miller's
16 murder; is that correct?

17 A That's true.

18 MR. HODSON: This is probably an
19 appropriate spot to break.

20 (Adjourned at 2:56 p.m.)

21 (Reconvened at 3:21 p.m.)

22 BY MR. HODSON:

23 Q When we left off, Mr. Asper, we were in April of
24 '91, and I think that's the time when you or your
25 group was about to embark on the interviews of the



1 sexual assault victims; is that correct?

2 A Yes.

3 Q Can you tell us, we've heard evidence from a
4 retired Saskatoon police officer, Tom Vanin --

5 A Sorry, I want to -- you keep referring to "our
6 group", and "our group" as though we were a
7 unitary entity, and it's not appropriate.

8 Q Okay.

9 A It doesn't accurately reflect what we were.

10 Q Okay. And I was, I was using it -- and perhaps I
11 will make that distinction --

12 A Thank you.

13 Q -- when I say "you"?

14 A Thank you.

15 Q And, well, when you say that it was a unit I'm not
16 sure what you mean by that, are you saying that
17 some people -- when I was talking about the group
18 I was talking about your client, and you and
19 Mr. Wolch and you and your clients Joyce and David
20 Milgaard?

21 A Yes, but we weren't always acting as one, and we
22 were -- we were individuals --

23 Q Okay.

24 A -- not always of the same view and not always
25 acting in the same way.



1 Q Okay.

2 A So I'm just saying, I -- and I know what you are
3 referring to, but just for the record purposes we
4 shouldn't be treated as though we were always --

5 Q Fair enough?

6 A -- a group moving around in synch at all times.

7 Q Who decided to go out and interview sexual assault
8 victims?

9 A I -- that was a, I think a decision that involved
10 all of us, including the Centurion Ministries
11 advisors.

12 Q Okay. And who decided to send Paul Henderson and
13 Joyce Milgaard to do that?

14 A I don't recall specifically.

15 Q And were you part of the group that decided, or
16 were you part of the decision-makers on that then?

17 A Yes.

18 Q And so can you --

19 COMMISSIONER MacCALLUM: Mr. Asper, we've
20 got to call you something.

21 A I know. I know.

22 COMMISSIONER MacCALLUM: I'm going to have
23 to call you something in my report. Why isn't
24 "group" appropriate? Members of a group don't
25 always have to agree.



1 A Well I -- as long as we understand that, that's
2 fine, I understand that. But I just don't want it
3 to be that -- I don't want the view to be that
4 there was this monolithic, homogeneous blob moving
5 around doing everything at the same time.

6 BY MR. HODSON:

7 Q I will try to afford you the opportunity, when I
8 ask questions, to indicate whether you were --

9 A This was a group decision though.

10 Q -- part of the group or out?

11 A Yes.

12 Q And maybe, Mr. Asper, if there are things that I
13 am asking you that you are answering that the
14 Milgaard group, for lack of a better term, are
15 doing that you didn't agree with or weren't part
16 of, maybe if you could tell me?

17 A Thank you.

18 Q Tom Vanin, as I said, was a retired Saskatoon
19 police officer who testified before the Commission
20 and gave evidence about his dealings with you; do
21 you recall dealing with Tom Vanin?

22 A Yes.

23 Q And can you tell us how that came about and what
24 your dealings were with him?

25 A Umm, I don't recall, I -- umm, I don't recall how



1 I got to Tom Vanin.

2 Q I think his evidence -- and I could be wrong on
3 this -- was to the effect that he may have been
4 contacted by media people and was giving
5 information to media people, it may have been Dave
6 Roberts, I stand to be corrected, and --

7 A I think that's, I think that's the link.

8 Q -- and that the media people either told him to
9 phone you or Mr. Wolch, or they told you to phone
10 him; does that sound right?

11 A Sounds plausible to me.

12 Q And did you ever meet Tom Vanin?

13 A I don't think so.

14 Q You talked to him on the phone?

15 A Yes.

16 Q Many occasions?

17 A Yes.

18 Q And what role did Tom Vanin play?

19 A He was a source inside the Saskatoon Police
20 Department.

21 Q And what type of information did he provide you?

22 A As I recall he was providing us with anecdotal
23 information about what was happening inside the
24 department with respect to the *Milgaard* case
25 reinvestigation and the Fisher reinvestigation.



1 Q What Mr. Vanin told this Inquiry is that when he
2 talked to you he was concerned about his own
3 exposure, for lack of a better word, and wanted
4 some comfort that what he told you was protected
5 and confidential, and he testified that you told
6 him that anything he said to you or, and I think
7 to Mr. Wolch, was protected by solicitor/client
8 privilege. Did you have that discussion with him?

9 A I don't recall that discussion and I don't recall
10 acting in capacity as counsel for Mr. Vanin.

11 Q Okay. Is it possible that might have happened,
12 are you saying you don't recall, or you don't
13 think it happened?

14 A Oh, I don't think it happened, I highly doubt that
15 happening.

16 Q And why do you say that?

17 A Because I was not in a position to act as counsel
18 for Mr. Vanin.

19 Q Mr. Vanin also said that he was told, I think by
20 you, that that privilege also extended to anything
21 and to any conversations that he had with people
22 that were working for you, and that you told him
23 Dave Roberts was working for you and therefore the
24 privilege would attach to what you said to Dave
25 Roberts, or words to that effect?



1 A I disagree with that.

2 Q And so when you say you disagree are you saying
3 you didn't tell him that?

4 A I did not tell him that.

5 Q Umm, do you recall any discussions with Mr. Vanin
6 about locating police files?

7 A Yes, at some point I recall that, yes.

8 Q And what do you recall about those discussions?

9 A I think we were trying to get hold of the original
10 police investigation files.

11 Q On the Larry Fisher matters?

12 A On Larry Fisher's crimes, yes.

13 Q And when you say "we" who are you referring to?

14 A Umm, Mr. Wolch and Mr. Henderson and
15 Mrs. Milgaard, I would surmise.

16 Q Okay. So you were trying to get him to get
17 access, within the city police station, to -- if
18 we call them "the Fisher files" we're agreed that
19 we're talking about the four, well, three rape one
20 attempted rape convictions from '68 to '70;
21 correct?

22 A Yes.

23 Q And what was your understanding, before you talked
24 to Tom Vanin, about what efforts had been made to
25 find those files and what, if anything, had



1 existed by way of police files on the Fisher
2 rapes?

3 A I don't know that I was aware of any efforts.

4 Q Okay. As far as your discussions with Mr. Vanin,
5 do you recall what he told you then, or what was
6 discussed between the two about his efforts to
7 locate the files?

8 A Umm, I -- I don't recall much, if any, of the
9 details of my conversations with Mr. Vanin. I
10 recall him telling me at one point that there
11 seemed to be a heightened level of activity and
12 chatter in the department, but I don't recall my
13 specific dealings with him.

14 Q Was that relating to files?

15 A Relating -- well, I don't know if it was relating
16 to files or relating to the fact that the *Milgaard*
17 case seemed to be picking up pace in terms of its
18 public attention.

19 Q Did Mr. Vanin provide you with any information
20 that you didn't already know or have?

21 A Umm, probably anecdotal information about what was
22 going on inside the department, yes, I would say
23 so.

24 Q And I'm sorry, what do you mean by "anecdotal"?

25 A Well just, just as I say, describing -- I think he



1 talked about a unit of -- I recall him talking to
2 me about a special unit of officers being assigned
3 to some specific task within the department, but I
4 can't recall precisely what that was about.

5 Q If we can call up 000108. And this is a incident
6 report prepared by Mr. Henderson regarding an
7 interview of one of the Fisher victims, and you'll
8 see at the bottom, he says here:

9 "We have read her police statement ...".
10 And then if you can go, flip over to page 000110,
11 and this is his report from April of '91, he
12 says:

13 "(This was one case in which I was given
14 access to police reports."

15 And then a redacted name:

16 "... and source for us on internal
17 police problems, somehow managed to get
18 into the department computer and obtain
19 the file. I reviewed it at his home but
20 was not allowed to keep the reports or
21 make copies of them."

22 And then blank:

23 "... claimed that people in the
24 department are aware that he pulled up
25 the reports and said he'd be fired if



1 the brass found out he'd given them to
2 anyone. The file is quite thick and
3 documents an extensive investigative
4 effort by police ..."

5 If you can then go to 061393, and this is the
6 same page I just read you, but the unredacted
7 version that has Tom Vanin's name. And the
8 evidence we've heard to date, Mr. Asper, is first
9 we heard from Tom Vanin, who said quite
10 emphatically that he did not get the (V5)--
11 (V5)--- file from the police department and he
12 did not show it to Mr. Henderson, what he said is
13 that you had asked him on a couple of occasions
14 to check for the Larry Fisher files, being the
15 four rape files, that he made a number of
16 inquiries with the file people and they weren't
17 there, and then on I think about the third
18 occasion, or at some later date they found two
19 pieces of paper, one an index card that had Larry
20 Fisher's name and some file numbers on it, and
21 then one part -- one page of an investigation
22 report -- and I couldn't remember for what
23 file -- and that he informed you of that. Does
24 that sound right, do you recall any of that, the
25 latter part?



1 A You know, Mr. -- I've really, I've really tried to
2 cast my mind back, I really don't recall these, --

3 Q Okay.

4 A -- all these dealings with Mr. Vanin, or the
5 files.

6 Q And then what we heard from Mr. Van -- or Mr.
7 Henderson is that no, he has stated in the
8 memorandum he actually did get a chance to review
9 the (V5)-- (V5)--- file, and he believes he
10 reviewed it at Tom Vanin's house in his basement
11 around this time, and from Mr. Henderson's report
12 and what's in there I think it's evident that he
13 did review the (V5)-- (V5)--- file --

14 A That's correct.

15 Q -- because of the contents. And let me ask you
16 this; do you have a recollection of reviewing that
17 file?

18 A No.

19 Q Were you aware that Mr. Henderson was reviewing
20 that file or had seen it?

21 A I may, I probably was at the time, but I just
22 don't -- I don't remember it now.

23 Q And are you able to shed any light on the subject,
24 and in particular were you aware that a copy of
25 the (V5)-- (V5)--- file may have been obtained



1 from some other source, either another police
2 officer, another reporter, or anywhere else?

3 A I don't -- I don't think we had any other sources.

4 Q So again as far as any, to shed any light on the
5 (V5)-- (V5)--- file, you have no recollection of
6 where it came from and when you got it?

7 A No.

8 Q If we can call up 054514. And there is a
9 publication ban on these victim names, Mr. Asper,
10 that I am using with you. This is an interview of
11 May 5, 1991 involving a lady by the name of (V14)-
12 (V14)-, and we've heard a fair bit of evidence
13 about this from Sergeant Pearson and from Paul
14 Henderson, and are you familiar with the name and
15 this incident?

16 A Yes, yes.

17 Q I think it's -- and I think the evidence we've
18 heard is that she contacted you at some time, I
19 think in the spring of 1991, and said that she had
20 been raped in 1968 in -- I -- near (V14)---- in
21 Saskatchewan, and that she thought David Milgaard
22 --

23 A Right.

24 Q -- was the perpetrator, and she wanted to see him;
25 do you recall that?



1 A Right, yes.

2 Q And tell us what you recall about your initial
3 discussion with her?

4 A I, I remember the incident, but I don't have any
5 specific recollection of how -- of these
6 discussions.

7 Q Do you recall that her initial contact to you as
8 David Milgaard's lawyer, was that because she
9 thought David Milgaard was the perpetrator of her
10 rape, do you remember that?

11 A Vaguely.

12 Q And then I think Mr. Henderson and Mrs. Milgaard
13 then interviewed her, and there are two reports,
14 one from Mr. Henderson, one from Mrs. Milgaard,
15 that differ somewhat as to whether or not -- I
16 think Mr. Henderson's evidence on -- that they met
17 her at a bus, at a bus depot, and Mrs. Milgaard
18 showed a picture of Larry Fisher, and I think Mr.
19 Henderson -- and I can't say precisely what his
20 evidence was, but it was something to the effect
21 that he didn't think -- his report said she might
22 have recognized him but I think he told us that he
23 didn't think she had, or something about the hair
24 being longer. Mrs. Milgaard, on the other hand,
25 her memo -- and we haven't heard her evidence



1 yet -- but her memo is a little stronger, saying
2 that she identified Fisher. Sergeant Pearson --
3 so then let me back up.

4 The (V14)- complaint, if I can
5 call it that, was included in the second
6 application to the Minister as one of the rapes
7 committed by Larry Fisher as being similar.
8 Sergeant Pearson then went out to investigate and
9 interview (V14)- (V14)-, who said "(a) no, I did
10 not identify Larry Fisher, I did not tell
11 Henderson and Joyce Milgaard that I identified
12 him, I think it's David Milgaard", and so then
13 they pursued a fairly lengthy investigation of
14 her.

15 And I'm wondering if you have
16 any recollection of how it was that the (V14)-
17 (V14)- complaint made its way into the second
18 application and why?

19 A I, no, I don't have. I mean we, I'm sure it went
20 in because it was potentially more evidence
21 pointing at Fisher, but I don't have any specific
22 recollection of that.

23 Q And I think, and I stand to be corrected on this,
24 I think Mr. Henderson was of the view that it
25 wasn't -- that from his perspective he didn't



1 think she had identified Mr. Fisher as the
2 assailant.

3 A I accept that.

4 Q And so, and do you know why, do you recall any
5 discussion with either Mrs. Milgaard or Mr.
6 Henderson about the inclusion of this in the
7 application?

8 A No, I don't.

9 Q Okay. I'll come back to this. There is also, I
10 think in the application that was filed Mr.
11 Henderson, one of the pages from his report was
12 taken out and replaced by another page, and his
13 evidence was he thought it would have been done at
14 your law firm office that it was prepared, and
15 I'll show you the document; do you have any
16 recollection of that happening at all?

17 A No.

18 Q And I'll -- okay. If we can go to 185851. If we
19 can go to page, this is Mr. Henderson's memo in
20 May, can we go to 185854 please. There is a
21 discussion here about, I think Mr. Henderson had
22 interviewed Tom Vanin and John McDonald, another
23 officer; does that name sound familiar at all?

24 A No.

25 Q And some information in -- regarding Mr. Penkala



1 and some matters unrelated to the Milgaard matter,
2 and then on the next page there is a reference
3 here about the *Fifth Estate* being interested in
4 this story; do you have any recollection of any of
5 that?

6 A I recall the CB -- the *Fifth Estate* being
7 interested in the story, yes.

8 Q The story about -- when I read this memo it looks
9 as though this had to do with Penkala and the
10 management of the police force at the time; do you
11 have a recollection of that?

12 A Oh no, sorry, I don't.

13 Q If we can go to 163551. This is a letter from
14 Mr. Watson July 23, 1991 looking for an update. I
15 -- did you keep in touch with Mr. Watson sort of
16 as part of the second application progressed, or
17 what, is there any background to this letter as to
18 why he would be writing you?

19 A No, not that I am aware of. I'm sure we, I'm sure
20 I briefed him prior to filing the second
21 application, but I -- other than that I don't
22 recall any contact with him.

23 Q 000084. This is a note from the Miller family
24 addressed to you August 6th, 1991 where they gave
25 a statement and said:



1 "IN LIGHT OF THE NEW EVIDENCE PRESENTED
2 TO US BY CENTURION MINISTRIES, INC., WE
3 FEEL THAT THERE IS REASONABLE DOUBT AS
4 TO THE GUILT OF DAVID EDGAR MILGAARD.
5 WE ARE MAKING THIS STATEMENT SIMPLY
6 BECAUSE WE WANT JUSTICE TO PREVAIL!"

7 Do you remember how this came about, did
8 Centurion -- was the Centurion Ministries' report
9 provided to them?

10 A I can't say for sure. It looks like it but I
11 can't -- I don't recall.

12 Q And this is addressed to you?

13 A Yes.

14 Q Were you involved in the discussions with them?

15 A Umm, I don't know if I ever spoke with the family
16 members directly, I may have.

17 Q Go to 010080. This is a letter August 8th, 1991
18 from Mr. Wolch to Ellen Gunn, Department of
19 Justice, Saskatchewan, and he says:

20 "It was only recently brought to my
21 attention that the Attorney-General for
22 Saskatchewan was not involved in our
23 application to the Minister of Justice
24 for Canada, with the exception of
25 receiving a copy of the ... reply.",



1 and then goes on to provide background
2 information. Do you know what prompted this, the
3 contact with the Attorney General of
4 Saskatchewan?

5 A No.

6 Q Would that have been Mr. Wolch's -- would he be
7 handling that?

8 A Yes.

9 Q Now in mid-August 1991 -- I think August 14th is
10 the date of the second application, is that right,
11 or thereabouts?

12 A I'll accept your --

13 Q Yeah.

14 A -- word on that.

15 Q And there is a number of documents, we'll only go
16 through a few of them, that surround that time.
17 And let me just run through what I think is in
18 evidence on the chronology; that Centurion
19 Ministries had prepared a report, being the
20 analysis of all the Fisher rapes, correct, and
21 prepared a document that compared the, umm, the
22 various similarities, etcetera, and then it
23 appears that there was a press conference, then,
24 that Mr. McCloskey attended where -- and others,
25 where this information was put forward, and either



1 at that time or shortly before or after the
2 application was filed; is that right?

3 A Yes.

4 Q And I think we'll see -- and I'll take you to
5 these documents -- I think Mr. McCloskey stated
6 that David Milgaard had been framed and there was
7 a coverup and words to that effect; do you recall
8 that being part of the process?

9 A If there is a record of it I'll accept that that's
10 what happened.

11 Q Well, I'll show you.

12 A I just -- I don't recall specifically what he
13 said.

14 Q Can you tell me what went into the decision about
15 filing the second application? And I mean we've
16 already talked about what -- I don't want you to
17 go back and go through what the basis of it was,
18 but as far as how it would be presented to the
19 Minister and how the media would be utilized, can
20 you tell us what -- who made those decisions and
21 how were they arrived at?

22 A Umm, I think Hersh had become quite heavily
23 engaged at this point on a daily basis and was
24 involved in the decision-making, as would I have
25 been, umm, umm, Joyce would have been involved,



1 Centurion Ministries probably to some degree, and
2 I think that we were probably also consulting with
3 the senior members of our firm as well.

4 Q And so was there a decision made by this group to,
5 in conjunction with the filing of the application
6 with the Minister, to also have some publicity
7 surrounding the application?

8 A Oh yes.

9 Q And what was the purpose of the publicity to
10 surround the application?

11 A Umm, we wanted to bring as much pressure to bear
12 on the Minister of Justice as conceivably
13 possible.

14 Q And so what you've told us previously about the
15 purpose in communicating information through the
16 media with a view to influencing the authorities
17 to make a favourable decision on the re-opening,
18 would the -- would that have applied in the second
19 application as well?

20 A Even more so, yes.

21 Q And we can start with 160026. The application was
22 actually filed on August 14th, or that was the
23 date, so I'm just going to go through some of the
24 article, so it appears this would be three days
25 prior. And the *Winnipeg Free Press*, Mr. Lett,



1 Saskatoon cops covered sex offender's tracks,
2 probe says. And if you can just highlight that
3 part.

4 "Saskatoon Police covered up
5 the 1970 conviction of a serial rapist
6 whose crimes were identical to the
7 murder for which David Milgaard was
8 convicted, for fear it would prompt a
9 review for wrongful conviction, a new
10 investigation has charged.

11 The investigation, conducted by
12 Centurion Ministries of New Jersey,
13 details seven rapes committed by
14 convicted sexual offender Larry Fisher
15 and concludes that he, and not Milgaard,
16 was the most likely person to have raped
17 and murdered Gail Miller ...",
18 and then he quotes McCloskey, if you can just
19 slide over to the right.

20 And at this point -- and I'll
21 show you some more articles in a moment about the
22 coverup -- at this point did you reach the
23 conclusion that there had been a coverup in
24 relation to the Larry Fisher convictions?

25 A I was certainly wondering but I can't say that I



1 reached the conclusion.

2 Q And we've heard a fair bit of evidence about what
3 happened with, umm, Mr. Fisher's convictions in
4 both Winnipeg and in Saskatchewan in 1970 and '71.
5 It appears, and please correct me if I'm wrong,
6 that on the second application, at least starting
7 at this point with some of the media information,
8 that in comparison to the first application which
9 was 'Larry Fisher is the killer or may be the
10 killer', or 'this information would allow us to
11 have been acquitted', etcetera, in the second
12 application there is more details about the
13 similarities and then an added component, and that
14 is an allegation of coverup, namely that the
15 Saskatoon City Police and Crown officials knew
16 about the Fisher rapes, obviously in 1970, but
17 also had connected them to the Gail Miller murder
18 and deliberately covered up the Fisher convictions
19 so that either Mr. Milgaard, the public, or
20 whoever, wouldn't connect Mr. Fisher to David
21 Milgaard. Do you recall that being the type of
22 allegation that was being put forward by some at
23 the time?

24 A Yes.

25 Q Yeah. And so that seemed to be an added component



1 in the second application; is that correct?

2 A Yes.

3 Q And you had indicated that you were wondering
4 about it, is that right, that you had a suspicion
5 that there might have been a coverup?

6 A Yes.

7 Q Were there others that had stronger views?

8 A Yes.

9 Q Who, and what were they?

10 A Well, certainly Centurion Ministries.

11 Q And what was their view?

12 A Well their view was that -- umm, umm, I guess it
13 flowed from the basic description that I gave you
14 I think a couple of days ago about Paul
15 Henderson's view of the world, which is that when
16 you are looking at human behaviour and trying to
17 figure out what happened in a certain set of
18 circumstances, umm, the most ob -- the most likely
19 explanation is what probably happened did, and
20 applying that sort of logic to the *Milgaard* case,
21 given all the circumstances, they reached the
22 conclusion that, I think as Jim McCloskey said at
23 one point, there was a big oops after the
24 discovery of Fisher's guilt and complicity in the
25 crimes in Saskatoon and, umm, and their view was



1 that rather than face the prospect of having to
2 re-open the Milgaard matter, that Fisher was put
3 to bed quietly.

4 Q And so the allegation would be that whoever,
5 whoever was doing the covering-up would have
6 believed that David Milgaard was innocent, and
7 then took steps to cover up the Fisher conviction?

8 A Yes.

9 Q And, apart from Centurion Ministries, did your
10 client or clients have that view as well?

11 A I -- they certain -- there was certainly the
12 suspicion, I don't recall at that point to what
13 degree.

14 Q If we can call up 160020, and this is the August
15 12th, '91, so the next day, two days before, *Mum*
16 *alleges cop coverup*, and I think goes on to talk
17 about -- I don't think we need to go through it
18 but I think there's --

19 A I guess there is the answer.

20 Q Yeah. So that would it be fair to say that some
21 in your group were alleging a coverup by
22 officials, by either police and/or Crown, with
23 respect to the Fisher convictions?

24 A Yes.

25 Q And would it be fair to say that that was being



1 put forward as a ground on the second application,
2 both in the legal arena as a grounds of the
3 miscarriage of justice, but also in the public
4 arena to say lookit, this should cause the
5 Minister to take action?

6 A I don't recall if it was a ground in our second
7 application.

8 Q Okay. I stand to be corrected on that. I mean it
9 was certain -- it was certainly the -- well let me
10 ask you why, if it was raised here publicly, was
11 there any reason that it was not put forward?

12 A Well certainly we, it was my view that we didn't
13 have enough evidence of it to advance it, we had
14 suspicion.

15 Q Okay. If we can go to 301866. And again, I'm
16 only showing you some of the articles predating
17 the August 14th application, is it fair to
18 conclude that there was a concerted effort to get
19 the upcoming application and the Centurion report
20 out through the media before the application was
21 filed?

22 A I don't know that there was an effort to get the
23 application itself out, --

24 Q But --

25 A -- but we were certainly ramping up the pressure



1 on the Department of Justice, yes.

2 Q So, sorry, the information -- the Centurion
3 report, would it be fair to say that you were --
4 the Centurion report and the views of Centurion
5 Ministries, you were trying to get that view out
6 into the public?

7 A Yes, no question. These were, you know, Centurion
8 Ministries at the time, and still are, very highly
9 experienced people in redressing wrongful
10 convictions, they had seen a lot, and even where
11 some of us were a little bit skittish about what
12 they were saying, these were people who had a
13 demonstrated track record of knowing what they
14 were doing. So, yes, we got it out there.

15 Q And so this is August 13th, 1991 and this is a *CBC*
16 *Midday*, it's a tape, and if we can go to 301863,
17 and actually, no, sorry, go to 301866, and this is
18 your comment and you are asking about the
19 Centurion report, you say:

20 "That's right. And their field
21 investigator in this particular case,
22 Paul Henderson, is a Pulitzer Prize
23 winning investigator, investigative
24 journalist, who's had plenty of
25 experience in this kind of case. And



1 they're able to look at what happened in
2 this particular case and relate it to
3 what they've seen occur in other cases,
4 particularly in the United States, and
5 have reached the conclusion that
6 everything points not only to a frame of
7 David Milgaard, but to a cover up."

8 And again, that would be, this would be the type
9 of message, if I can call it, that you and others
10 in the Milgaard group were putting out in the
11 media at this time?

12 A Yes.

13 Q Now 000901, and I think this is the actual
14 application, it's dated August 14th, it was
15 received on August 16th, I'll just go through a
16 couple of parts here, and Mr. Wolch says:

17 "In the interim we have not held back in
18 our efforts to firmly establish David
19 Milgaard's innocence and there have been
20 some startling revelations. When we
21 first made our application the
22 suggestion that Larry Fisher was the
23 perpetrator was not the main thrust and
24 we were at that time advised by your
25 Department that there were no police



1 reports available on past offences of
2 Mr. Fisher. Whereas we suggested there
3 was a distinct pattern and although the
4 similarities were never placed before
5 you, we accepted that we were at that
6 time at a dead end."

7 And again, this letter of August 14th says that
8 in the first application, and Mr. Wolch is using
9 the word "we" were at that time advised that
10 there were no police reports available on past
11 offences of Mr. Fisher, and again, would you
12 agree with that, is that something -- and I think
13 you said earlier you don't recall, but if Mr.
14 Wolch had been informed of that, do you think you
15 would have learned that from him?

16 A I'll accept that, yes.

17 Q Do you have any recollection?

18 A No, I don't.

19 Q And then the next paragraph:

20 "Once your decision was brought to our
21 attention we were determined to proceed
22 further in ascertaining Larry Fisher's
23 possible guilt and we were somewhat
24 surprised to learn that there was ample
25 material available, including at least



1 one police report concerning previous
2 victims of Fisher."

3 Am I right that that would have been the (V5)--
4 (V5)--- file that Paul Henderson saw in April of
5 1991; is that --

6 A I assume so, yes.

7 Q Do you have any knowledge of that or --

8 A No.

9 Q -- are you just assuming that based on the fact
10 that you know you had that one and --

11 A That's -- yes, that's correct.

12 Q If we can then go to 000903, and this is the
13 actual application, and I think it was a fairly
14 lengthy report with witness statements prepared
15 primarily by Centurion Ministries; is that
16 correct?

17 A I think so, yes.

18 Q And if we can go to 000920, this is what is in the
19 application regarding (V14)- (V14)- and this is
20 the first page. If you go to the second page,
21 next page, you'll see it's got page 3 and it's a
22 different font, and if we want to maybe put that
23 document on the right-hand side and call up 054514
24 on the left-hand side, please, and actually go --
25 so you'll see here page 1, if you can go on 514,



1 go to the second page, and then now go to the
2 third page, there you'll see that but for the
3 markings, they appear to be the same document. Do
4 you see that?

5 A Yes.

6 Q And the document on the right-hand side, 054514,
7 is Mr. Henderson's memorandum that he prepared.
8 The document on the left-hand side, if we can just
9 go back to the first page, just the page previous,
10 I think what Mr. Henderson told us is that someone
11 took his memo and took away, removed the first two
12 pages of his memo and added this page in and he
13 said that he wasn't sure who had done it, it
14 wasn't him, and he said he thought it would have
15 been done in your office, and are you able to tell
16 us who may have done this, why it may have been
17 done and who prepared this page, 000920?

18 A No, I can't say.

19 Q Now, 000861 is a letter, and I don't propose to go
20 through all of these, but this is one, August
21 15th, 1991 from a fellow named John Patterson and
22 I think what the file shows, Mr. Asper, that even
23 on this date, in fact maybe even a year earlier,
24 you received a number, at least two, maybe more,
25 contacts from jailhouse informants saying Larry



1 Fisher admitted to being involved in the murder or
2 here's some incriminating evidence. Is that
3 correct?

4 A Yes.

5 Q And I think that information was followed up and
6 passed on to the authorities and I think at the
7 Supreme Court reference some of them maybe even
8 testified; is that right?

9 A Yes. I think I visited one or more of them at
10 Prince Albert Penitentiary.

11 Q And again, was that, was it your understanding
12 that these people would be contacting you arising
13 out of the media reports about Larry Fisher's
14 potential involvement?

15 A And jailhouse chatter, yes.

16 Q If we can go to 004626, and again this is the
17 *StarPhoenix* on August 16th, 1991, "Milgaard
18 framed, group contends":

19 "Jim McCloskey, founder of the New
20 Jersey based Centurion Ministries, says
21 the Saskatoon Police Department coerced
22 testimony from witnesses to manufacture
23 a case against Milgaard.

24 The department needed a
25 scapegoat because the murder followed a



1 series of brutal rapes in the city and
2 they had no suspects, he said."

3 And then if we can go on and call out 077729, the
4 next date, "'Frame' Alleged", where McCloskey
5 concludes Saskatoon police framed Milgaard. Did
6 you have any concerns about these types of
7 allegations being made in the public, about frame
8 and cover-up by people who were associated with
9 your group?

10 A I don't recall. I don't recall having concerns.
11 I suspect by that time we were so thoroughly
12 disgusted with the system and the process that we
13 may have been, I may have had my guard down as to
14 the propriety of saying these kinds of things.

15 Q And what do you mean by that?

16 A That I didn't care any more probably about whether
17 this was the right thing to be saying or not.

18 Q And that was because of your experience in the
19 first application and the fact that it was
20 rejected or --

21 A Just the entire process up to that point.

22 Q And then here, 218798, I think this is again
23 August 16th, '91, this is Peter Edwards in the
24 *Toronto Star*:

25 "Saskatoon police fabricated evidence to



1 frame an innocent teenager for the 1969
2 rape and murder of nurse's aide and have
3 covered up their misconduct ever since,
4 charges a Christian organization
5 investigating David Milgaard's murder
6 conviction."

7 And again, this would be the type of information
8 consistent with the other information that was
9 being put out at the time surrounding the filing
10 of the first application?

11 A Yes.

12 Q I want to turn --

13 A Mr. Hodson, the reality is that for us to be
14 correct that David Milgaard was innocent, a case
15 was presented against him in which people
16 implicated him. Somehow that happened and this
17 was, the Centurion Ministries' report offered an
18 explanation, one explanation, so I'm just saying,
19 I think that that's probably why we were --

20 Q Did the, and again, I may have to look at it
21 again, did the Centurion Ministries' report go so
22 far as to say here is the cover-up and here is the
23 framing, and I stand to be corrected, I thought
24 the report simply outlined the similarities and
25 said this shows that Larry Fisher is the



1 perpetrator?

2 A Well, if Larry Fisher is the perpetrator, David
3 Milgaard isn't, that somebody put together a case
4 against him, and I'm just saying within the whole
5 context, that is the context in which all of this
6 is occurring.

7 Q I want to now turn to (V4)---- (V4)---. You
8 remember (V4)---- (V4)--- and her information?

9 A I do.

10 COMMISSIONER MacCALLUM: Just excuse me for
11 a second.

12 MR. HODSON: Sorry.

13 COMMISSIONER MacCALLUM: I understand by
14 your last remark, sir, that all of this, these
15 allegations in the press occurred in the context
16 of your belief in David Milgaard's innocence and
17 therefore to have built a case against him, to
18 have prosecuted him must have been the result of
19 cover-up and frame and misconduct on the part of
20 the authorities; is that right?

21 A I think could have been.

22 COMMISSIONER MacCALLUM: Could have been?

23 A Could have been. That's why -- I was not as far
24 along as some of the others, but certainly that
25 was the view being expressed by Mr. McCloskey and



1 others.

2 BY MR. HODSON:

3 Q Did you ever express the view publicly or state in
4 the media that you believed or alleged that there
5 was a cover-up or a framing?

6 A I don't think I ever did, and I'm still not
7 convinced of that to this day.

8 Q Not convinced that there was a framing or a
9 cover-up?

10 A Right.

11 Q And why is that?

12 A Well, I guess I don't want to be provocative with
13 the answer, but a good cover-up is one that you
14 would never find out about, but there's just,
15 there's just not enough evidence to satisfy me
16 that there was a cover-up. There's suspicion, I
17 have suspicion. I haven't changed my suspicion.
18 Police officers will tell you that they don't like
19 coincidences and there's a lot of coincidences in
20 this case, but that's a very serious allegation to
21 make and I'm just not comfortable going to that
22 degree.

23 Q And again, the fact that others were, did that
24 concern you at the time; for example, that others
25 associated with you, and I think you would agree



1 Centurion were certainly associated with you
2 because they were assisting Mr. Milgaard as were
3 you, did that concern you, that they were making
4 those allegations?

5 A As I say, I was probably -- I don't recall being
6 concerned about it and I think my mindset at the
7 time was one of such thorough disgust at the
8 process up to that point that I probably was less
9 concerned than I might normally have been.

10 Q And would it be fair to say that these types of
11 allegations of frame and cover-up would be
12 sensational in the media?

13 A Yes.

14 Q And it would put pressure on the minister to
15 provide a favourable response to your request to
16 re-open the investigation and to free your client?

17 A It could, yes.

18 Q Well, when you say it could, would that not be one
19 of the purposes of putting it forward?

20 A Oh, certainly, but I had no way of knowing whether
21 it would.

22 Q Actually, before I go to (V4)---- (V4)---, if we
23 could just call up 010002, and this is a memo,
24 August 20th, 1991, from Mr. Williams to Mr.
25 Corbett and reviewing the application, and I don't



1 know whether you've ever seen this, but just on
2 the next -- he talks about the application and I
3 think summarizes it in quotes that the basis of
4 the application is the "striking similar acts that
5 would be admissible in a trial against Larry
6 Fisher and would have been admissible in David
7 Milgaard's trial if the information had been
8 known." I think that's taken out of your
9 application; correct?

10 A Yes.

11 Q And then on the next page, and again this is his
12 memo, he says:

13 "The applicant has mistakenly assumed
14 that the similarities between the attack
15 on Gail Miller and the Fisher assaults
16 were not brought to the Minister's
17 attention or considered during the first
18 application. This assumption is based
19 on a mistaken recollection of a
20 conversation I had with Mr. Wolch.

21 I had told Mr. Wolch that the
22 occurrence reports for the 1968 assaults
23 in Saskatoon were not available, and
24 that the quality of the photocopy of the
25 1970 assault in Saskatoon was poor.



1 However, I had obtained a
2 sufficient information relating to the
3 October - November 1968 charges from
4 court documents and considered this
5 information during the assessment of the
6 first application. I had also obtained
7 and considered the occurrence reports
8 from the Winnipeg assaults."

9 I'm not asking you to go in and speak on behalf
10 of Mr. Williams, but just your understanding on
11 the first application and in particular perhaps
12 based on your discussion on October 1, 1990. Did
13 you think that the minister or the Department of
14 Justice had considered or looked at the
15 similarities between the attacks?

16 A I'm going to take a breath before I answer. In
17 rejecting our application, the minister referred
18 to the Fisher information as, I believe, "mere
19 suspicion".

20 Q Yes.

21 A If in fact Mr. Williams had the information that
22 we used to develop the second application and
23 provided that information to the minister, someone
24 needs to explain to me why the application was
25 re-opened the second time and not the first time.



1 Q Okay.

2 A And I -- I'm afraid I don't believe what Mr.
3 Williams says there.

4 Q Okay. So you don't think it was considered in the
5 first application, the similar act argument, and I
6 appreciate --

7 A I find it -- I find it staggering. I have not
8 seen this before and I find it staggering that
9 there would be some suggestion that the
10 information had been considered and that under
11 those circumstances the Minister of Justice could
12 conclude that there was "mere suspicion".

13 Q Okay. If we can go to 026000. This is an article
14 August 21, '91, so right around this time frame in
15 the *StarPhoenix*, and the headline is, "Two
16 Milgaard witnesses paid, lawyer suggests," and it
17 refers to:

18 "Wolch said it was important to know
19 what arrangements were negotiated
20 between the prosecutors and Melnyk and
21 Labchuk, adding, "A member of your
22 department implied to us that they were
23 paid."

24 And I think this is the same, it may have been
25 taken from the same letter, I'm assuming it is.



1 Do you have any other information about this
2 article?

3 A No, I don't. No, I don't.

4 Q Go to 012672, this is the (V4)---- (V4)--- matter.
5 Maybe you can just generally summarize your
6 recollection about how this came about and what
7 you did. I can certainly take you to some
8 documents if that assists.

9 A You may have to. I don't -- I can't recall
10 whether she contacted me directly or a journalist
11 or a lawyer, but somebody had seen a story I think
12 in Toronto I believe and she contacted us either
13 directly or through an intermediary to indicate
14 that she had been attacked on the morning of the
15 murder. That's my recollection.

16 Q And I think you then obtained a statement from
17 her?

18 A Yes, I did, but I think there was a lawyer
19 involved.

20 Q Earl Levy (ph)?

21 A Earl Levy was involved, yes. That's right, Earl
22 Levy called.

23 Q And do you have a recollection of how, and we've
24 heard some evidence, in fact we heard from
25 Ms. (V4)--- on this subject and her evidence is



1 that she was attacked at 7:07 a.m. that morning, I
2 think about seven blocks away on Avenue H, and she
3 had given a description to the police in 1969 and
4 in 1991 identified Larry Fisher as the person who
5 committed the crime and it appears that there was
6 a fair bit of debate after her information came
7 forward, debate, discussion amongst perhaps you
8 and Sergeant Pearson as well later with many
9 others, as to how does this fit into the Gail
10 Miller murder, could it have been the same person
11 who committed both, was it possible by distance,
12 by time, etcetera. What is your recollection of
13 that matter and those discussions?

14 A I don't recall anything specific other than being
15 a little bit shocked at hearing from a victim who
16 had been attacked the morning of the murder around
17 the time the murder would have had to occur in the
18 vicinity of where the murder had in fact occurred.
19 There was shock value to it and I don't remember
20 the details.

21 Q I want to now turn to the missing police file
22 issue, and I think you are generally familiar with
23 the matter that arose in August of 1991 regarding
24 the missing Fisher files, being the four sexual
25 assault files. You are familiar with that issue?



1 A Yes.

2 Q And I just want to go through some documents in a
3 bit of a chronology and get your comments, and the
4 first one is 056784 and this is part of Sergeant
5 Pearson's notes. Actually, let me back up,
6 056758, this is part of 056743, and this is
7 Sergeant Pearson, this is back in May of 1990 in
8 fact. It may have even been, it might be March,
9 but in any event, early on when Sergeant Pearson
10 became involved, he, and this was at a time when
11 he thought the rapes had been committed in Regina,
12 and he contacted Regina police to look for the
13 records and was told there was none, and I may
14 have asked you that yesterday, but were you aware
15 that he had made efforts with the Regina police to
16 find the files?

17 A Yes. I think you mentioned that.

18 Q And when he mentioned that, would that be at a
19 time that you thought they were in Regina as well?

20 A No, you mentioned that.

21 Q Oh, I'm sorry.

22 A You mentioned that yesterday.

23 Q Okay.

24 A I don't recall talking to Sergeant Pearson about
25 that.



1 Q And then 056784, and this is where Mr. Williams
2 asked Sergeant Pearson to -- and this was shortly
3 after you disclosed to Justice that they were
4 Saskatoon rapes and Williams asks Pearson to go
5 check the Saskatoon police for the files, and
6 again, maybe we can simplify this, I know you had
7 many discussions with Sergeant Pearson. Do you
8 recall any discussions with him during 1990 about
9 his efforts to locate the Larry Fisher files?

10 A I don't recall. I don't know.

11 Q And then if we can skip ahead, 010080, this is
12 August 8th, 1991, this is Mr. Wolch's letter, and
13 I showed you this earlier, this is to Saskatchewan
14 Justice. If you can go to the next page, he
15 states:

16 "When we made our application to the
17 Minister of Justice --"

18 This is the first application,

19 "-- we provided information as to
20 various offences committed by Larry
21 Fisher. We entrusted the Department to
22 investigate those offences with a view
23 to linking them in a similar manner to
24 Gail Miller. Subsequently, we were
25 advised that the police reports in those



1 cases were not available and it was only
2 later that we realized that the victims
3 were not interviewed or even approached.
4 We now have reason to believe that there
5 are police reports in existence and the
6 victims are most cooperative."

7 Again, would you have been aware of that
8 information at that time, that Mr. Wolch has in
9 the letter?

10 A Yes.

11 Q And 000901, and we've touched on this before, this
12 is the application where Mr. Wolch talks about the
13 fact that, again says they were told there was no
14 files, but now we know at least one police report
15 exists. So you would have known that at the time
16 of the application; is that correct?

17 A Yes.

18 Q And 010002, go to the next page, this is the
19 August 20th memo that I showed you earlier, and I
20 think here Eugene Williams says he told Mr. Wolch
21 the occurrence reports for the 1968 assaults in
22 Saskatoon were not available, the quality of the
23 photocopy of the 1970 assault in Saskatoon was
24 poor and I think you said you didn't have a
25 recollection of that, but is that something you



1 think you would have known at the time?

2 A What?

3 Q What Mr. Williams told Mr. Wolch? If he in fact
4 told Mr. Wolch what's stated here, is that
5 something you would have been aware of from Mr.
6 Wolch?

7 A Possibly.

8 Q No recollection?

9 A No recollection.

10 Q Then to 056796, this is Sergeant Pearson's, this
11 is August 21, '91, so this is now five days after
12 the second application, and he talks here that:

13 "Williams is also interested in securing
14 any old police reports on the Saskatoon
15 victims of Larry Fisher. It should be
16 noted that this had been pursued
17 previously and I have been told by the
18 City Police officials that these reports
19 no longer exist."

20 And as well, go to the next page -- actually,
21 sorry, if you can just go to the previous page,
22 here on August 19th Williams asks Pearson to
23 raise the issue with the Saskatoon police about
24 statistics concerning sex offences, or saying the
25 statistical report concerning sex offences should



1 be gathered to determine if there were other
2 weapon offences during rapes and sexual assaults
3 of women during 1968, 1969 and 1970. And then if
4 we can go to the next page, August 22nd, Pearson
5 phoned or called Inspector --

6 A I'm sorry, two documents ago, two screens ago, am
7 I correct there was a notation that Williams was
8 asking Pearson for incident reports?

9 Q Yes.

10 A But didn't you show me a screen earlier where
11 Williams said that they had already considered in
12 the first application the incidents of rape?

13 Q I we can just go back, if we can just go back to
14 the previous page, and I'm not sure which one you
15 are referring to here. This is August 21, '91 at
16 the bottom where Williams:

17 "... is ... interested in securing any
18 old police reports on the Saskatoon
19 victims of Larry Fisher."

20 And Pearson says:

21 "It should be noted this had been
22 pursued previously and I have been told
23 by the City Police officials that these
24 reports no longer exist."

25 And I showed you, as well, Mr. Williams' memo



1 where he said "I looked for them on the first
2 application and all I got was a 'they were not
3 available'", and the quality --

4 A But, no, didn't you show me a memorandum from Mr.
5 Williams --

6 Q 010003?

7 A -- where he says that Mr. Wolch is wrong, that the
8 Justice Department had not considered --

9 Q 010003, please, of doc. ID 002.

10 A I'm just wondering how -- well, okay.

11 Q No, no, and in fairness I'm just going through
12 what we have had, and he says here:

13 "I had told Mr. Wolch that the
14 occurrence reports for the 1968 assaults
15 in Saskatoon were not available, and
16 that the quality of the photocopy of the
17 1970 assault in Saskatoon was poor."

18 A Okay. Okay.

19 Q Yeah, no, no, but that's from Court documents.

20 A Okay.

21 Q Yeah, I'm talking about police files.

22 A Okay. I don't recall talking with Sergeant
23 Pearson about the Fisher Court or police files.

24 Q And then if we can go to 056797, it appears there
25 is a request here to have the city police:



1 "... to give the cases where weapons
2 were used in sex offences or if he could
3 give details of sex offences for the
4 years 1968, 1969 and 1970. Quinn will
5 initiate a search of their record system
6 and let me know what he can come up
7 with."

8 And then as well:

9 "I also provided him with the names of
10 victims (V5)---, (V2)-----, (V1)-, and
11 (V3)-----, with supporting data,
12 asking him to again search for any
13 possible file material on these
14 investigations."

15 So let me just pause there. Was there something,
16 Mr. Asper, in what I showed you that you wanted
17 clarified?

18 A I guess I'm, okay, I guess I'm confusing Court
19 versus police records. Okay.

20 Q Right.

21 A Okay.

22 Q And I'm just showing you what we've heard about
23 what, at least what the records suggest was in the
24 minds of Mr. Williams, Mr. Pearson, and what they
25 say, at least what Mr. Williams says he



1 communicated to Mr. Wolch about the existence of
2 the files.

3 A Okay.

4 Q And then we go to 220403 -- or actually, sorry,
5 012700. And this is the letter -- no 012700. And
6 this is the August 28th, 1991 letter to Inspector
7 Quinn, you'll recall that Pearson asked Quinn to
8 go do the check, and this is actually from
9 Constable Gelowitz saying:

10 "After having obtained the complete list
11 of occurrences relating to rape and/or
12 sexual assaults, I have examined each
13 file with regards to the parameters that
14 you provided to me ...",

15 and reports the following offences. And then
16 attached to this letter is a number of pages that
17 identify occurrence numbers for rape files, and I
18 think what this shows is that between August 21
19 and August 28th police officers looked through
20 the police records in order to prepare this
21 report, and I expect we will be hearing some
22 evidence on that a bit later, but it appears that
23 based on this document there was a review of
24 their files to prepare this report, and would you
25 have been aware of that?



1 A I, umm, I don't recall.

2 Q If we can then go to 057451. And this is an
3 article in the *Globe and Mail*, *Police can't find*
4 *rape files*, and this is the article that prompted
5 the Saskatchewan Police Commission to undertake
6 the investigation that it started on September
7 12th; do you recall that happening?

8 A It -- yes.

9 Q And so -- and this is a report by Timothy Appleby
10 and David Roberts and I want to go through parts
11 of this with you. And they quote a Saskatchewan
12 police source:

13 "'Something went on, it's
14 very bizarre, it's something that just
15 shouldn't happen, for every detail like
16 that to vanish,' a Saskatoon Police
17 source said. 'Somebody's tampered with
18 the system.'

19 For several days, Saskatoon
20 Police have been investigating the
21 apparent disappearance of at least four
22 files that involve convicted
23 Saskatchewan serial rapist Larry Fisher,
24 who has been increasingly linked to the
25 *Milgaard* case."



1 And then down at the bottom:

2 "The missing files involve
3 the four sexual assaults that occurred
4 in Saskatoon, and to which Mr. Fisher,
5 now 43, subsequently confessed."

6 The next page:

7 "There is no indication as to
8 how long the Saskatoon force's records
9 on Mr. Fisher's rape victims have been
10 incomplete. Normal department practice
11 is for the basic information on a case
12 to be retained indefinitely on computer,
13 with the details preserved on
14 microfiche.

15 Four Saskatoon police
16 inspectors are now involved in trying to
17 track down the missing files, the police
18 source said. A number of officers have
19 already been questioned, as have
20 civilians involved in the maintenance of
21 the computer system."

22 And let me just pause there. What Mr. Vanin
23 testified is that he was -- that he would have
24 talked to David Roberts, and I think although he
25 quibbled with a few of the words used here, that



1 he would have been the source of information to
2 Mr. Roberts, and his evidence was, umm, that he
3 recalled calling him, and you I think, at some
4 point saying, "there is a bunch of inspectors in
5 going through the files", and he was quite
6 alarmed or concerned because he had made previous
7 inquiries, and I think his evidence was that he
8 conveyed to Mr. Roberts, and perhaps to you, that
9 he thought they were looking for the Fisher files
10 because he had been looking for them previously.
11 Do you have any recollection of this, of this
12 issue of Mr. Vanin, or Mr. Roberts telling you
13 about this?

14 A I have a vague recollection at best.

15 Q What do you remember about the missing records?

16 A We wanted, I do recall that we wanted Vanin to try
17 to find the records for us, and to try to find
18 whatever else he could relating to either the
19 Milgaard or the Fisher investigation.

20 Q And do you -- what do you remember him telling
21 you?

22 A I -- he was always very nervous and he, I recall
23 him being, you know, very concerned about being
24 discovered and, umm, umm, I don't -- I don't even
25 recall his -- him meeting with Paul Henderson.



1 Q He -- what Mr. Vanin also said, that as far as the
2 timing of when the Fisher files were missing, he
3 said he believed they had been missing for some
4 time based on information he got from Mr. Roberts,
5 who he thought got it from Gus Weir -- or from Mr.
6 Roberts; do you recall that?

7 A Well, again, I -- it's -- I can tell you that
8 there was a point where we thought, I'm pretty
9 sure that we thought the files existed, and then
10 there came a point where we were told they didn't,
11 that they were gone, --

12 Q If we could --

13 A -- and that's how this all started.

14 Q If we can go to 004592, and this is an article the
15 next day, *Vanishing files 'unbelievable': lawyer,*
16 and:

17 "Within days of a private
18 investigator alleging the Saskatoon
19 Police Department framed David Milgaard
20 for the 1969 murder of Gail Miller,
21 police files on Larry Fisher's brutal
22 attacks on city women have apparently
23 disappeared from the police department.

24 'This is unbelievable,'
25 Milgaard's lawyer, David Asper, said



1 from Winnipeg. 'The files did exist
2 prior to Aug. 16.'

3 Sometime between Aug. 16 and
4 this past Tuesday, the files went
5 missing, Asper charged."

6 And it goes on to talk about that application.
7 What information did you have that the Larry
8 Fisher files existed on August 16, 1991 and went
9 missing after that date?

10 A Well I've looked through my -- umm, actually I've
11 gone through my mind, I've looked through whatever
12 documents you were able to give me, I don't have
13 an explanation for that other than to say it is
14 highly unlikely that I would go anywhere near this
15 territory unless somebody had told me, somebody
16 credible, that the files were there and then
17 weren't there.

18 Q Okay. And I guess --

19 A And that this was an attempt to ring an alarm
20 bell.

21 Q And, in trying to identify who that might be, I
22 did show you the August 8th and August 14th
23 letters that would have been right prior where
24 Mr. Wolch certainly seems to suggest, based on his
25 letter, that "we were told they were missing, we



1 have now found one which" -- being the (V5)---,
2 and in this article you appear to be saying that
3 "no, we know they existed on August 16th". And
4 Mr. Vanin has said he didn't tell you, because he
5 said he knew they weren't there and hadn't been
6 there for some time, who else might have told you?

7 A Well I was going to say I think Mr. Vanin was the
8 only person who I was dealing with who was on the
9 inside who could have provided me with that
10 information.

11 Q And if they had existed on August 16th do you
12 recall, if that was your understanding, had you
13 had you made any requests or did you tell
14 Mr. Wolch about that?

15 A I think, if they had existed, I would assume that
16 we were getting -- we were trying to get Mr. Vanin
17 to get them, and I believe he was concerned about
18 how to get them.

19 Q Now when the Police Commission did their
20 investigation and they reported in, I think,
21 November they ended up concluding that yes, they
22 were missing, three of the four were missing -- I
23 shouldn't say that, there was a partial of one, a
24 complete file of another, and two that were
25 completely missing -- and their report concluded



1 that they had been likely destroyed a number of
2 years ago. Do you recall that being, generally,
3 the result?

4 A Yes.

5 Q And so their report said that they didn't exist on
6 August 16th, --

7 A Right.

8 Q -- 1991; do you take issue with that or --

9 A I have no reason to dispute that.

10 Q Yeah. So again, as far as this comment, you are
11 saying you don't remember where you got it from
12 but someone would have told you that they existed?

13 A Yes, there is no question.

14 Q Okay. That's probably an appropriate spot to
15 break.

16 MR. SOROCHAN: Mr. Commissioner, I just
17 wonder if I could raise a matter?

18 COMMISSIONER MacCALLUM: Yes.

19 MR. SOROCHAN: It's taken some considerable
20 arrangements, with Mr. Asper's schedule, to have
21 him return here for this second week of
22 testimony, and I made it known to Commission
23 Counsel that this was -- this was all that we --
24 that is reasonably available under the -- Mr.
25 Asper's schedule, and I noticed there was some



1 discussions earlier that if we weren't finished
2 by this afternoon we might be, we might be having
3 trouble in that regard, so I'm merely, again,
4 pointing out to all that need to know that Mr.
5 Asper is not available beyond the end of this
6 week, and if there is a, perhaps a desire to have
7 -- extend the hours of sitting, and considering
8 the day after tomorrow is Friday, if we're going
9 to extend the hours of sitting it seems more
10 likely that we should do so tomorrow. As from
11 Mr. Asper's point of view and mine, we're
12 certainly prepared to start earlier. As much as
13 we like hanging around the lobby of the Ramada
14 hotel for an extended period at lunchtime, we
15 could abbreviate the lunch hour or sit late
16 tomorrow night, and I don't think that people are
17 going to be so anxious to do so on Friday given
18 the discussions I've overheard about catching
19 planes.

20 But I did want to make it clear
21 that business interests, requirements of Mr.
22 Asper, including requirements out of the country,
23 will make it so that he is not possible to be
24 here beyond the end of this week.

25 MR. HODSON: I might just respond from my



1 end, and I appreciate Mr. Asper's concern, as I
2 do with every witness, that they have other
3 commitments. I try and do my job as efficiently
4 as I can, and I have certainly tried to
5 accelerate some of the questioning with Mr.
6 Asper, however my simple response is I will do my
7 job and I will get done as soon as I reasonably
8 can.

9 I can also say that I can try
10 and estimate when I will be finished but no one
11 will believe me anyway. I can tell you where I'm
12 at, we're at. I mean the areas that I still have
13 to cover, which are very important areas, are the
14 Supreme Court reference and what, what went into
15 the order that required that, and some of the
16 issues around the Supreme Court reference. So I
17 still have some area to cover with Mr. Asper.
18 Umm, you know, will I be done tomorrow? I think
19 so. Can you rely on that? Probably not.

20 I have talked to other counsel,
21 and I will let other counsel speak to this, umm,
22 again on their estimates of time for
23 cross-examination, I have had that one issue
24 raised; and secondly, I've been advised by a
25 number of counsel of concerns with respect to



1 their ability to cross-examine Mr. Asper in light
2 of the fact that the transcripts of the recent
3 tapes they only received yesterday, and obviously
4 counsel can address that on their own, I'm simply
5 saying that I have been informed of that.

6 MR. SOROCHAN: I was in no way suggesting
7 that Mr. Hodson shouldn't do his duty as
8 Commission Counsel, I was merely suggesting if
9 there's any doubt that Mr. Asper is going to get
10 out of here on the end of Friday we should
11 perhaps work a little longer to try to
12 accommodate it, because it was not easy to
13 rearrange the schedule of Mr. Asper to free up
14 this week, so if we can -- I haven't heard you
15 respond to that, Mr. Hodson.

16 As Commission Counsel on other
17 inquiries I've kept people sitting until 10:00 at
18 night, but I'm evidently a harder taskmaster than
19 you are, so --

20 COMMISSIONER MacCALLUM: You perhaps have
21 an unrealistic assessment of my endurance.

22 MR. HODSON: I --

23 COMMISSIONER MacCALLUM: On the assumption,
24 which is a doubtful one, that I could sit any
25 longer than 9:00 to 4:30, I have no assurance



1 that that would accomplish anything in terms of
2 allowing sufficient time for cross-examination.

3 MR. HODSON: I might ask, I do know that
4 other counsel have -- and maybe they can -- I'm
5 simply advising what I have been informed, they
6 can address their position.

7 I do, my thumbnail sketch is I
8 think that the time required for
9 cross-examination, at least their estimates, that
10 even with extended hours is going to be tight.

11 MR. LORAN: That's the point I was going to
12 make, My Lord, I just --

13 COMMISSIONER MacCALLUM: Just for the
14 record, please identify you and your client.

15 MR. LORAN: I'm sorry. Pat Loran on behalf
16 of the Saskatoon Police Commission.

17 COMMISSIONER MacCALLUM: Right.

18 MR. LORAN: The point I was going to make
19 is that I think, if you look at the estimated
20 time required for cross-examination by various
21 counsel, it's just not going to be possible to
22 complete matters before Friday. Speaking for
23 myself, I think I'm looking at at least half a
24 day, and perhaps I'll let other counsel speak to
25 how long they will require.



1 In regard to the issue of the
2 tapes, we've only received those recently, I've
3 personally not had an opportunity to review them,
4 I've just today had them printed, and I would
5 like an opportunity to prepare properly for
6 cross-examination by reviewing them. There is a
7 substantial amount of material to cover there.
8 Thank you.

9 COMMISSIONER MacCALLUM: Thanks, Mr. Loran.

10 MS. KNOX: Mr. Commissioner, Catherine
11 Knox, and I'm counsel for T.D.R. Caldwell.

12 And I can indicate that there
13 is no possible way that I would contemplate,
14 first off, being prepared to proceed tomorrow
15 evening into an extended sitting, and frankly
16 even if we did there's absolutely no way, based
17 on the estimates that I and other counsel have of
18 the minimum amount of time we expect to be,
19 without having had an opportunity to even begin
20 to review the tapes that we received yesterday or
21 the day before, that sitting tomorrow night would
22 help.

23 I, personally, have a
24 commitment with a witness who is flying in from
25 Toronto tomorrow night, that I have to work on



1 another matter tomorrow night. Like all of us,
2 we have to fit our practices into the hours that
3 we're not sitting, and there is somebody flying
4 in to interview a client tomorrow that I have to
5 meet with tomorrow evening.

6 COMMISSIONER MacCALLUM: Well, thanks,
7 Ms. Knox. What's your estimate for the amount of
8 cross-examination time you need?

9 MS. KNOX: My estimate will be that I will
10 be at least a half day, and like Mr. Hodson, I
11 suspect nobody takes me at face value when I say
12 that. I would suspect my time would be anywhere
13 between a half to a full day.

14 COMMISSIONER MacCALLUM: Uh-huh. Anybody
15 else?

16 MR. FRAYER: Mr. Commissioner, David Frayer
17 on behalf of the Minister of Justice. I expect
18 that, by virtue of the evidence that we've heard
19 from Mr. Asper over the course of a considerable
20 number of hearing dates, that the Minister of
21 Justice is substantially affected by a lot of his
22 testimony and I expect that I will be probably a
23 day, if not more, in my cross-examination of Mr.
24 Asper.

25 I'm hamstrung to the degree



1 that I haven't had an opportunity to look through
2 the transcripts from the tapes that were provided
3 to us on Tuesday morning, so that I would think
4 that a day is probably a modest estimate, it will
5 take probably more than that. So, in the time
6 contemplated to finish his evidence, it would be
7 just an impossible task.

8 MR. WOLCH: Mr. Commissioner, Hersh Wolch
9 for David Milgaard. As of now I have no
10 cross-examination, but I likely will have after I
11 hear what the others cross-examine, so I
12 shouldn't be that long.

13 COMMISSIONER MacCALLUM: Say half a day?

14 MR. WOLCH: About half a day? I wouldn't
15 think --

16 COMMISSIONER MacCALLUM: Less than that?

17 MR. WOLCH: Less.

18 MR. HODSON: I think, as far as the order,
19 my understanding, obviously Mr. Sorochan would be
20 last, and I think the parties have agreed that
21 Mr. Wolch and Ms. McLean would be second last and
22 third last, and then Mr. Frayer will be there.
23 And the rest of the parties, I understand, aren't
24 too concerned about that.

25 Umm, you know, just as far as



1 timing -- and this is something I can discuss
2 with Mr. Asper and Mr. Sorochoan -- I know they
3 don't want to talk about other dates but I would
4 do my best to accommodate Mr. Asper's future
5 schedule. The Friday date this week was added at
6 Mr. Asper's request with the hope that that would
7 allow us to get done, if that's not to be the
8 case certainly we can use the Friday, or if Mr.
9 Asper doesn't want to use the Friday, I mean,
10 there is a whole bunch of options there. I don't
11 know what his current predicament is.

12 COMMISSIONER MacCALLUM: All right. Well
13 as to the extended hours, Mr. Sorochoan, I must
14 decline that suggestion. It's not only in my
15 interests not to sit the extended hours, we have
16 a big staff here all of whom have family
17 responsibilities, and their convenience must be
18 considered as well.

19 And as to completion, we will
20 simply forge ahead tomorrow and Friday and get
21 done what we can get done, and then arrangements
22 will have to be made, if necessary, for Mr.
23 Asper's return.

24 *(Adjourned at 4:41 p.m.)*
25



OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATES:

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

_____, CSR

Karen Hinz, CSR

Official Queen's Bench Court Reporter

_____, RPR, CSR

Donald G. Meyer, RPR, CSR

Official Queen's Bench Court Reporter



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