

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
Ramada Hotel at
Saskatoon, Saskatchewan

On Monday, May 1st, 2006

Volume 142

Inquiry Proceedings



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

Mr. Timothy J. Killeen, **for** *Paul Henderson*



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PAUL HENDERSON, RE-SWORN

- BY MR. HODSON

28842



Transcript of Proceedings

(Reconvened at 1:04 p.m.)

MR. HODSON: We welcome back Paul Henderson from January 26, 2006. I think our practice has been to re-swear the witness, if we can just maybe have --

COMMISSIONER MacCALLUM: What was the date?

MR. HODSON: January 26, 2006.

PAUL HENDERSON, re-sworn:

BY MR. HODSON:

Q I should also state for the record that Mr. Henderson is now represented by legal counsel, Tim Killeen, who is present, and Mr. Killeen has appeared before these proceedings and he will be here for Mr. Henderson's evidence.

I had covered a fair bit, I think when we left off, Mr. Henderson, back in January, chronologically we were just dealing with the (V14)- (V14)- matters and that's where we will pick up in a moment. I just want to go back and touch on a couple of things.

The first is if we could call up page 22795 of the transcript of January 26. This is January 26th, 2006 and I asked you the question, this just relates to the Ron Wilson



1 tape, and the question:

2 "Q Do you have any other information that
3 might assist the Commission in
4 determining where the Ron Wilson
5 interview tape might be?

6 A Well, you've resurrected an issue that
7 I had forgotten about and I have
8 several boxes of Milgaard files in my
9 storage at home in my office and I
10 intend to make another search for that
11 tape."

12 And in addition to that, Mr. Henderson, though
13 there may have been, based on the discussions you
14 and I had this morning, there may have been a
15 misunderstanding between us, I think the
16 Commission has asked for you to produce the tape
17 if you can find it, but as well any documents
18 which would be relevant, and in reference, and I
19 understand on the tape, that you did make some
20 effort to look for it; is that correct?

21 A I made it -- yes, I made an initial effort to
22 locate the tape and I couldn't find it in my box
23 or in any loose files stored near the box, but
24 when I returned after my initial testimony, I did
25 not make another search. Because we are presently



1 going through the sale of our house, all of my
2 investigating files from 22 years of work as a
3 private investigator for Centurion Ministries went
4 into storage.

5 Q And I understand from discussions that you and I
6 had with Mr. Killeen this morning, that you have
7 made some attempts to try to locate, will make
8 efforts to provide or to consider providing your
9 box of documents or what might be relevant in your
10 documents; correct?

11 A Any documents that you might identify to me as
12 being of use to the Commission or the Inquiry I
13 will attempt to locate and send to you.

14 Q And I think, just so we're clear, my question is
15 whatever you have, and so to the extent that it's
16 copies of documents we already have, I don't need
17 them, it would be anything that is in addition to
18 what's on the record.

19 A Well, I would have a hard time, frankly, figuring
20 out what I have that you don't have because you
21 have quite a bit of material and I'm not familiar
22 with all of it, but simply --

23 Q Subject to what your counsel says, my request
24 would be that you simply send the box either to
25 your counsel or to me and then we identify that



1 way.

2 A Okay. For the record, to my knowledge, this is
3 the first time that I have been, this morning was
4 the first time that there was a suggestion to me
5 that you wanted my entire files. I don't recall
6 ever getting a request like that from you. You
7 made it clear to me earlier that you wanted a copy
8 of the tape if one exists on my interview with Ron
9 Wilson and as I mentioned earlier, I looked for
10 that and couldn't find it.

11 Q And I appreciate there may have been a
12 misunderstanding between us, Mr. Henderson, and so
13 why don't we carry on and maybe Mr. Killeen and I
14 can further pursue this. I understand there's
15 also possibly some documents that Centurion has in
16 New Jersey that may or may not be accessible by
17 you and again Mr. Killeen, I think I'll follow up
18 with him on that, and before this witness is done
19 his evidence, Mr. Commissioner, we'll know where
20 he's at and his counsel is at on that; is that
21 fair?

22 A Yes. We had a discussion -- after we left your
23 office this morning we talked with Jim on the
24 phone, Mr. Killeen and I both did, and there is
25 one box of documents regarding our work on the



1 Milgaard case in archives in Princeton and
2 Mr. McCloskey, the founder/director of the
3 organization, is somewhat reluctant at this point
4 to turn that box over because of the enormous
5 amount of, the hassle of getting it out of
6 archives, and the point he's making is that even
7 if you did get a box, what does that prove. I
8 mean, counsel for the various parties could still
9 maintain that there were documents in that box
10 that were removed, so his position on that at this
11 point is that unless we come up with a better
12 reason for having Centurion ship that box, he
13 would prefer not to do that.

14 Q Again, I'll follow up with Mr. Killeen perhaps
15 later today on that point. If we can just go
16 back, before we get back into as to where I left
17 off, there are two areas that I want to go back on
18 a bit and the first one relates to Dennis Cadrain,
19 and since you last testified, Mr. Henderson, the
20 Commission received some tapes from Joyce Milgaard
21 and a couple of those tapes touch on interviews
22 you had with Dennis Cadrain that I did not have
23 when you testified before, I propose to go through
24 that, and then secondly, you recall we talked a
25 bit about the (V14)-, (V14)- (V14)- complaint and



1 your involvement on that file?

2 A Yes.

3 Q And we didn't quite finish up on that, so I'm just
4 going to go back and recap some of that for you.
5 Just on the Dennis Cadrain, am I correct that back
6 in 1990, 1991 in your dealings with Dennis and
7 Albert Cadrain, would it be fair to say that it
8 was your view, based on your knowledge of the case
9 and interviews with Dennis and Albert Cadrain,
10 that Albert Cadrain, that his evidence was wrongly
11 influenced by the police, whether it be
12 manipulation, coercion, but some wrong done by the
13 police to influence his evidence?

14 A Yes, that was my impression.

15 Q And why don't we just go through, and in order to
16 try and place this new transcript, Mr. Henderson,
17 I'm just going to quickly go through some
18 documents we touched on to see if that will assist
19 us. The first one is 154605, and I will try not
20 to cover ground that we covered before, but just
21 in fairness to you, to just touch on what you told
22 us before. This is May 28th, 1990 and it talks
23 about an interview on May 26th, 1990, and the
24 first paragraph you talk about on the evening of
25 May 24th, 1990, which is a Thursday, I called this



1 number from Saskatoon, and so it looks like you
2 called, I think you told us that, as to how the
3 call you had with Dennis Cadrain was taped, I
4 think you said you were likely in Saskatoon and it
5 may have been Mrs. Milgaard that was with you that
6 taped it. Do you remember that?

7 A Yes, I do.

8 Q Yeah. And so you called from Saskatoon and it was
9 Albert's brother Dennis who answered the phone and
10 that you agreed to meet in Port Coquitlam on
11 Saturday, and so Saturday is May 26th and that's
12 the date of the statement. And then if we can
13 skip ahead to 154607 --

14 A Can you roll the screen up just a little bit,
15 please?

16 Q Pardon me?

17 A Could you roll the screen up?

18 Q I'm sorry, did you want to look back at that --

19 A I would like to, yeah.

20 Q The previous page?

21 A Perhaps the --

22 Q Yes. Was there something there you wanted to look
23 at?

24 A Yes. Could you go to the next page, please?

25 Q Yes.



1 A Okay, that's fine.

2 Q And I went through this memo with you and I'm just
3 touching on the points that might assist in
4 identifying the new tapes. If we can go to the
5 next page, you've got taped interview and
6 statement, so Thursday, May 24 you talked to
7 Dennis on the telephone and Saturday, May 26th you
8 are interviewing him, spent an hour at the
9 restaurant, then went to Dennis Cadrain's house
10 nearby, and then scroll down, Dennis agreed to a
11 taped interview and politely asked his brother if
12 we could talk alone. Then if we can go to the
13 next page and then you have:

14 "I made it clear to Dennis that I wanted
15 to be sure the statement he signed
16 accurately expressed his feelings..."

17 And we went through this, and so on May 26th I
18 think what we established is after the phone call
19 on the 24th you went and interviewed him on the
20 26th and got Dennis' statements and then as well
21 you then took Albert out for dinner and talked to
22 Albert. Is that --

23 A Well, I'm not sure that there were -- that the
24 interview with Albert and Dennis were during the
25 same trip, I'd have to be -- see some other



1 documents.

2 Q Okay.

3 A I know that there were two trips to Port
4 Coquitlam.

5 Q Fine then. And I think, if I may assist, you then
6 went out June 24th, 1990 and took Albert's
7 statement; would that be the second time?

8 A That right, yes.

9 Q Yeah. So I think, and again I think from this
10 memorandum it appears that after the phone call
11 you went -- on May 24th, you went on May 26th,
12 interviewed Dennis, and I'm gonna suggest to you
13 that what the documents show is there is a tape
14 recording of the phone call on May 24th, and on
15 May 26th there is a, at least one or perhaps two
16 tape recordings of the interview with Dennis
17 Cadrain, and then the statement, and then you also
18 went out and interviewed Albert Cadrain; does that
19 sound right?

20 A Yes, the -- this memo apparently reflects two
21 separate interviews on two separate occasions,
22 that is on two different trips; is that correct?

23 Q Well, I don't think it does. If we can just go
24 back to the front page --

25 A I'm sorry, I take that back.



1 Q Don't --

2 A There were two different interviews, two different
3 occasions that I interviewed Albert, but I
4 interviewed Albert and Dennis, or Dennis and
5 Albert, both of them on the first trip, and then
6 returned later to interview Albert a second time.

7 Q Okay. So I think, if we go back, May 28th is the
8 date of the memo, it talks about Cadrain
9 interviews on the 26th, which is a Saturday, so
10 the phone call on the 24th, so it looks like --
11 please correct me if I'm wrong -- on May 26th you
12 interviewed Dennis Cadrain, took a statement from
13 Dennis Cadrain, and you interviewed Albert
14 Cadrain?

15 A Correct, that's correct.

16 Q And then if we go to 050412, and I went through
17 this document with you, and this is the one where
18 you phoned and you thought it was Albert Cadrain
19 and then, down here, Dennis says:

20 "... I didn't say I'm Albert, I'm his
21 brother ..."

22 Do you remember that, where I think this was the
23 original call:

24 "Ah' hang tough with me here kid cause
25 I've got something very important to



1 tell you.",

2 And I think you told us this would be your May
3 24th call; correct?

4 A Yes, yeah, that would be a taped telephone
5 conversation with Dennis Cadrain where I actually
6 thought I was talking with Albert.

7 Q Right. And then, if we can go to page 050420,
8 this is where it ends off and I'm not sure the --
9 who would have taped this? I think you told us
10 Mrs. Milgaard may have, is that right, --

11 A Yes.

12 Q -- from Saskatoon?

13 A That's right.

14 Q Do you know whether there's any more to this
15 interview or would you --

16 A Well the way -- is this the last page of the
17 transcript?

18 Q Yes.

19 A Well, that's not the way that a interview would
20 end, there would be some type of a parting
21 comment, I would think, and so I would think that
22 that's not the end of the interview.

23 Q And do you have any knowledge or information as to
24 where the rest of the interview might be?

25 A No, I don't.



1 Q Would you have been involved in the mechanics of
2 actually taping these interviews or was that done
3 by --

4 A Well as far as I know, as far as I know, this --
5 these were taped by Joyce Milgaard, these
6 conversations or this initial conversation, and as
7 far as I know I never even received a copy of the
8 transcript. I could be wrong about that, but I
9 don't recall seeing it, so --

10 Q Okay.

11 A -- I don't know how many pages that it was
12 initially, whether there was more to the recording
13 than appears here, or not.

14 Q I think based on this, though, you are indicating
15 there would be more of the conversation based on
16 where we end off; is that fair?

17 A Well I certainly would have said good-bye to
18 Dennis before hanging up, and that's not reflected
19 on this, this last -- if this is the last page,
20 it's not there.

21 Q Okay. And I'll show you the tape, the new tape,
22 if I can call it that, in a moment, and it may
23 well be that it's part of this same conversation,
24 so --

25 A Okay.



1 Q So just so that we know where we're at there. If
2 we could then go to 301838, please, 301838. And I
3 went through this with you and I think this was --
4 you described a phone call, I think, on May 26th,
5 1990, or thereabouts, after you met with Dennis
6 and Albert, and you phoned Joyce Milgaard to
7 report on your interviews; do you recall us going
8 through that?

9 A Not specifically, no.

10 Q You said you --

11 A But it will probably come to me when I take a look
12 at this.

13 Q And maybe to just help you out here:

14 "Did you see Albert?",

15 you said:

16 "Oh yes, I just bought Albert a steak
17 dinner."

18 "And spent a lot of time with him."

19 "Now I taped his brother, the ...
20 batteries ran out on me though."

21 "... you're kidding."

22 And so this would be Dennis, so it looks as
23 though this is a report on the 26th saying you
24 met with Dennis and Albert and you taped Dennis,
25 or is that correct?



1 A Yes, right.

2 Q And do you have a recollection of, when you
3 interviewed Dennis, of taping, taping the
4 interview with him before the statement?

5 A Not specifically, not independently, no I don't.

6 Q I think these documents suggest that that
7 happened, and I'll show you some more in a minute.
8 Then you go on to say:

9 "... I think most of it's there. But
10 this is a summary of the good stuff.

11 Statement of Dennis Cadrain ...",
12 and then you go on to read it over the phone to
13 Mrs. Milgaard. And if we can skip ahead to
14 301842, and we've covered this before, you say:

15 "... that's the good part, some of the
16 good part. But there's alot more. Did
17 you know ... right after the conviction
18 ... Dennis convinced Albert that he was
19 crazy and had him committed?"

20 And from this I think you told us that, in
21 addition to the statement from Dennis Cadrain,
22 you would have received some further information
23 from him, is that fair, that didn't find its way
24 in the statement?

25 A Umm, are you saying -- you are talking about



1 something that does not appear in my conversation
2 here?

3 Q Okay. Let me rephrase that. This is a
4 conversation with Mrs. Milgaard?

5 A Uh-huh.

6 Q You've reported on interviewing Albert and Dennis,
7 you indicate that you taped the interview, or some
8 of it, with Dennis?

9 A Yes.

10 Q You read the statement that you got from Dennis to
11 her over the phone, which is in the transcripts,
12 and it coincides with the actual statement. Then
13 you go on to say:

14 "... that's the good part, some of the
15 good part. But there's alot more. Did
16 you know that ...",

17 and you go on to give more information. And we
18 already went through this, but it appears that,
19 in addition to what was in Dennis Cadrain's
20 statement, in your interview with him he gave you
21 more information; is that a fair reading of that?

22 A Yes, it appears to be.

23 Q And then 016475. 016475, this is the statement of
24 Dennis Cadrain dated May 26th, 1990. If we can
25 just go to the last page, page 78, so dated May



1 26th, and we went through that.

2 So that if we can then go to
3 335929, which is the new tape, and this is
4 sometime in May 1990. And this is one of the
5 tapes, Mr. Henderson, that we provided to you a
6 few days ago, one of the tapes we recently
7 received, and let me just go to page 335935. And
8 I'm gonna suggest that part of this is after the
9 May 26th, 1990 statement from Dennis Cadrain, and
10 there are other parts that may be -- that may have
11 been before May 26th, so let's just walk through.
12 So you understand, Mr. Henderson, the significance
13 of May 26th and what happened on that date?

14 A Umm --

15 Q Okay.

16 A -- maybe I'm -- maybe I do. May 26th is when I
17 interviewed --

18 Q Right.

19 A -- both Cadrain brothers?

20 Q And my objective here, when we go through this
21 transcript, is to identify, if we can, whether
22 this is a discussion with Mrs. Milgaard, and I
23 think there is a discussion with David Asper, to
24 what extent those discussions would be before and
25 after -- before or after your in-person interview



1 with Dennis and Albert; okay?

2 A Okay.

3 Q So let's walk through it and see if you can assist
4 us. And then, down at the bottom, you say --

5 A Can you blow that up a little bit for me?

6 Q Yes, we can. And you say:

7 "Now I want you to keep in mind one
8 thing, that the ... interview with him,
9 we're talking about a reticent ...
10 witness in terms of he kept looking over
11 his shoulder, see we asked ... Shorty to
12 get lost."

13 And it would appear from the next page, you say:

14 "And ... just to let us just talk for a
15 while. He was very nervous so the
16 statement is much better than the
17 interview ."

18 And then you go on to say there now:

19 "[They are now listening to the taped
20 interview]",

21 and it appears that you are playing for
22 Mrs. Milgaard, on the phone, the start of the
23 interview that you had with Dennis Cadrain. Your
24 words are:

25 "Speaking with Dennis Cadrain, who is



1 the brother ... _____... May 26th

2 ...",

3 etcetera, and then trying to get the tape to
4 work; is that correct? Do you have any
5 recollection of that?

6 A Umm, well, no I don't. And it's obvious, though,
7 from the language that I am using that I was
8 not -- I didn't know this was being taped.

9 Q And why do you say that?

10 A Well, there are some four-letter words that I
11 wouldn't want on record, --

12 Q Okay.

13 A -- necessarily, I didn't -- assumed that this was
14 an informal private conversation between myself
15 and Joyce.

16 Q And would it be fair to say, Mr. Henderson,
17 though, that here you would have had a tape of
18 your interview with Dennis Cadrain, your in-person
19 interview with Dennis Cadrain?

20 A I would say so, yes.

21 Q And do you know what happened to that tape?

22 A No, I haven't -- you haven't brought that up
23 before, I didn't know that that was missing too.

24 Q I'm not sure if -- I mean I've got parts of it, I
25 think what I'm going to go through, what we've



1 discovered from Mrs. Milgaard's tape that we
2 recently received is it appears that she recorded,
3 and apparently without your knowledge, a telephone
4 call with you where you played for her the tape of
5 your interview with Dennis Cadrain?

6 A Right. There's been no prior mention, though, to
7 me, to my knowledge, of this tape --

8 Q All right.

9 A -- that is the tape that I generated.

10 Q Do you know if you have that tape?

11 A I don't know. No, I don't, I'm not sure. I
12 looked for the purported Ron Wilson tape, and I
13 didn't find it, but I didn't look for a tape --

14 Q Okay.

15 A -- on Cadrain.

16 Q Well, we'll maybe add that to our list then?

17 A Add that to our list? Okay.

18 Q And then if we can just scroll down, and I won't
19 go through all of this but this is new
20 information, what's in this tape, Mr. Henderson,
21 appears to be a discussion that you had with
22 Dennis Cadrain that we have not heard before, so
23 that's why I want to go through parts of this.

24 A Sure.

25 Q And I think it would appear to be May 26th, 1990



1 as part of the statement, okay, and if you go down
2 to the bottom you say:

3 "... let's pick up on this from ... the
4 day that ... you recall your brother
5 returning from ... Regina following a
6 trip that he took with David Milgaard,
7 Ron Wilson and Nichol John. Can you ...
8 pick it up from there please?"

9 And then Dennis' voice on the tape:

10 "Okay I ... came home from school and I
11 ran into Albert on the side of the
12 house, and ... asked him how is trip was
13 and ... he told me a few things about
14 the trip and ... how he ended up in ...
15 Regina and ran into some guy there I
16 guess his name is Richard Bear and ...
17 he was hung out the window of a second
18 or third story window ... he told me how
19 scared he was to witness that and then
20 the conversation got around, ...",

21 and a break:

22 "... and ... I told him that on the
23 morning that he'd left I wondered if
24 he'd heard of this ... murder a block,
25 where they found the body, a block and a



1 half from where we lived, and he said,
2 no he didn't hear that, so I told him, I
3 told him that was the case and he said
4 to me well David, when David came to the
5 house that morning, he had blood on his
6 clothes."

7 And then you say:

8 "So he volunteered this to you
9 immediately?"

10 And Dennis says:

11 "Yes."

12 A Uh-huh.

13 Q And, again, would it would be fair to say that on
14 May 26th then, when you talked to Dennis Cadrain,
15 you would have learned from Dennis that it would
16 appear that Albert's first revelation to anybody
17 about seeing blood on David Milgaard --

18 A Was to his brother, yes.

19 Q -- went to Dennis Cadrain? And was that
20 consistent with what you had thought before you
21 interviewed Dennis Cadrain?

22 A Umm, I -- I can't say that I remember what my
23 perceptions were before I interviewed Dennis or
24 Albert.

25 Q Did this information from Dennis; do you recall



1 what effect, if any, it had on your thinking that
2 the police, whether it be the Regina Police or the
3 Saskatoon Police, had planted this evidence in
4 Albert's mind or somehow manipulated Albert to say
5 that he saw blood on David Milgaard?

6 A Well Dennis, when I initially talked with him by
7 phone he told me that the police had put a -- put
8 his brother through a ringer, and that his
9 brother's testimony was not reliable because of
10 his mental problems, and so I'm not sure what I
11 would have taken from this. But I think, as I
12 look back on it, that Dennis was telling me this,
13 and this was some of the information that he got
14 from his brother Albert that he did not consider
15 to be reliable, and that reflected his brother's
16 mental instability.

17 Q And again, just in the grand scheme of things, Mr.
18 Henderson, would it be important for you, in your
19 assessment of Albert's credibility, his statement,
20 and the police conduct in their dealings with him,
21 this fact that Dennis appears to be saying that
22 Albert told Dennis first about seeing blood on
23 David Milgaard before he told the police, before
24 he went to the police?

25 A Well, that's what this would indicate, yes.



1 Q And do you recall -- well, let me just --

2 A I don't -- I would have to, actually --

3 Q Sure.

4 A -- let me just amend that, because I'd have to go
5 back and read the context of this again.

6 Q Yes. Let me go on, there is a comment about the
7 Regina Police that might assist you, and then you
8 go on to say:

9 "Now when ... when you met him that
10 morning after his trip, did he say
11 anything to you about being arrested in
12 Regina for vagrancy ...",

13 and then a blank:

14 "... in jail for a week for vagrancy
15 being questioned by police in regards to
16 the Miller murder."

17 Dennis:

18 "... no ...",

19 or:

20 "Yeah, ah, no he told me about this
21 being in jail for vagrancy, but ... he
22 never did mention to me about being
23 questioned."

24 And you say:

25 "Would it surprise you to ... hear now



1 that he ... was in fact ... questioned
2 about this murder by Regina Police?"

3 And do you recall, where would you have that
4 information from, that Albert was questioned by
5 the Regina Police?

6 A No, I don't, I don't remember how I got that
7 information.

8 Q There is some -- in the transcript, the original
9 trial transcript, Mr. Tallis cross-examined Albert
10 Cadrain about his dealings with Regina Police on
11 vagrancy charges; is it possible that would have
12 been the source of the information?

13 A Sure, that is likely the source of the
14 information.

15 Q And then it goes on to say, if we can scroll down:
16 "You never heard that before?"

17 Dennis:

18 "No."

19 And then:

20 "Albert ... maintained to you or led you
21 to believe that ... the Saskatoon Police
22 where the first, where the first police
23 to question him about this?"

24 "Yeah, that's like ... he did, yeah."

25 And then the next page you say:



1 "Where you aware that at a later date
2 ... he was returned by Saskatoon Police
3 to Regina Police Department for further
4 questioning?"

5 Dennis:

6 "No, I wasn't aware of that no."

7 Now do you know where you got that information
8 from?

9 A No, I don't.

10 Q And then to go on and say:

11 "... let's pick it up from where ...
12 Albert mentioned to you ... volunteered
13 the information that he'd seen blood on
14 David's clothing that morning. What ...
15 was your response to this?"

16 Dennis:

17 "Well, I told him I wouldn't doubt what
18 you saw, and ... you better tell the
19 police."

20 And, again, what effect, if any, did this
21 information from Dennis, about the circumstances
22 leading up to Albert going to the police, did
23 that have any effect on your thinking about how
24 the police may have influenced Albert's evidence?

25 A Well, I'd have to, I'd have to break down that



1 question to answer it accurately. Number one, I
2 was highly -- because I believed firmly in the
3 innocence of David Milgaard it seemed most
4 unlikely to me that Albert actually had seen any
5 blood on David Milgaard, that's number one; and
6 number two, if in fact they had not seen any blood
7 on him my impression would be that he was
8 influenced by police into claiming that he had
9 seen blood. Now that would have been my first
10 impression.

11 Q And when you say your 'first impression'; would
12 that have been an assumption?

13 A That would have been, yes, an 'assumption' would
14 be the word for it, yes.

15 Q And so that since --

16 A Right or wrong, an assumption, yes.

17 Q And then maybe the best, the proper question then
18 is when you talked to Dennis and Dennis told you,
19 as I've just read to you, about how Dennis learned
20 about Albert saying he saw blood and how Albert
21 went to the Saskatoon Police, what effect, if any,
22 did that have on your assumption that the police
23 somehow were responsible for getting Albert to say
24 he saw blood on David Milgaard?

25 A Well, you had the element of the questioning in



1 Regina, and I think that it -- I mean the best I
2 can explain this, I -- it might have occurred to
3 me that the suggestion of -- about blood on
4 Milgaard's clothing had been planted in Albert's
5 mind by the police in Regina before he went to the
6 Saskatoon Police.

7 Q And would that be an assumption or did you have
8 any information about that?

9 A I -- it would have been purely an assumption or a
10 suspicion.

11 Q And so, just so that I have it correct, when you
12 learn about Albert's evidence of having seen blood
13 you have either an assumption or a suspicion that
14 somehow either the Regina Police or the Saskatoon
15 Police must have -- and it's an assumption or a
16 suspicion -- but must have been responsible in
17 some way for getting that idea in Albert's mind;
18 is that fair?

19 A Well, that was one explanation for what Albert
20 told me. The other would be that Shorty was
21 simply imagining this and that this was a product
22 of his sick mind, I mean, because by this time, of
23 course, I'd been -- I'd been -- Dennis Cadrain had
24 shared his concerns about his brother's mental
25 health at the time of his testimony, he'd shared



1 that with me.

2 Q Yeah. So, again, is it fair to say, Mr.
3 Henderson, that, because of your strong belief in
4 David Milgaard's innocence, when you are looking
5 at evidence that was incriminating against him you
6 are -- you have suspicions or are making
7 assumptions about how that evidence got to be the
8 way it was?

9 A I was highly skeptical --

10 Q Yes.

11 A -- of the validity of any -- of any witness
12 information that was provided to police.

13 Q But let me throw out, again I think what you are
14 saying is because you know David Milgaard didn't
15 do it, therefore try to explain away Albert's
16 incriminating evidence on blood; is that fair?

17 A Yes, I --

18 Q And --

19 A -- undoubtedly thought about where this, how this
20 could have come about, and considered the
21 possibilities, one being that it had been
22 suggested to him by the police in Regina, the
23 other being that he had simply imagined it.

24 Q Let me throw out two other possibilities, and I'm
25 going to ask you whether you considered these as



1 ex -- as possible explanations that would be
2 consistent with your belief about David Milgaard's
3 innocence; and the first is that Albert Cadrain
4 actually saw something on David Milgaard's clothes
5 that he thought looked like blood?

6 A That's --

7 Q Did you consider that?

8 A That's possible, but then again that would -- that
9 would probably involve his imagination as well.

10 Q Okay. Do you remember if you considered that, in
11 other words that --

12 A I don't -- I don't -- I can't say that I actually
13 remember that occurring to me.

14 Q And I guess another possibility, again consistent
15 with David Milgaard's innocence, is that Albert
16 Cadrain; did you ever consider that Albert Cadrain
17 maybe did see blood on David Milgaard's pants, but
18 that the blood on his pants had nothing whatsoever
19 to do with Gail Miller, did you consider that?

20 A I don't, I don't know if I did or not, it -- I
21 mean realistically, that's a possibility, though.

22 Q But would it be fair to say that at this time --
23 and I don't recall your words -- either strong
24 belief or suspicion was that somehow either the
25 Regina City Police and/or the Saskatoon City



1 Police had -- were in some way responsible for
2 wrongly causing Albert Cadrain to say he saw blood
3 on David Milgaard; is that fair?

4 A The blood was one of a number of elements of
5 Albert's testimony. I have a hard time breaking
6 the elements down and remembering what thought
7 occurred to me in regard to each one of the
8 elements, I --

9 Q Is it -- let me rephrase it. Albert Cadrain's
10 incriminating evidence against David Milgaard,
11 then, was it your view at the time that to the
12 extent that Albert Cadrain provided the Saskatoon
13 City Police, on March 2nd, '69 and afterwards,
14 with incriminating evidence against David
15 Milgaard, that it was as a result of conduct of
16 the Regina Police and/or the Saskatoon City Police
17 in wrongfully exerting some kind of influence on
18 him to cause him to say things that were both
19 incriminating against David Milgaard and false?

20 A Absolutely, that was my impression, that Albert
21 Cadrain had been coerced by police.

22 Q And then if we can just scroll down a bit here --
23 what page are we on here, is this 9 -- what page
24 is this on? If we can go to the next page. And
25 then it carries on here, Dennis says:



1 "... he might have went down, I'm not
2 sure which one and ... after that like I
3 didn't see Albert for a month to a month
4 and a half in that area, somewhere in
5 that area, it's hard to remember how
6 many days they had him down there, but
7 it was ... I don't even know the date he
8 went in there but I know it was well
9 into summer or late spring before they
10 finally let him go."

11 Q Was it your understanding that Dennis was telling
12 you that, after Albert went into the police
13 station, that Dennis actually didn't see him for a
14 month to a month and a half?

15 A I'm going to read this --

16 Q Sure.

17 A -- before I answer your question.

18 Q Actually, if you want to just go down, in fairness
19 you say that:

20 "... did Albert continue to live at home
21 or was he ..."

22 "Oh yeah, he lived at home but they took
23 him up first thing in the morning and
24 take him home 8, 9, 10 at night."

25 "How long did this go on?"



1 "... it's hard to say how many days but
2 I, I'd say between a month and a month
3 and a half, at least."

4 "... Was that every day?"

5 Next page:

6 "Yes. Every ... working day I'm sure."

7 A Okay. My impression from that was that Albert was
8 subjected to long days of interrogation over a
9 long period of time, however he was returned home
10 by the police, he wasn't incarcerated, wasn't in
11 jail, but was questioned by police over a period
12 of many hours, day after day after day for over a
13 period of a month or so, based on what I heard
14 from Albert.

15 Q And then what I --

16 A I mean from Dennis, pardon me.

17 Q Then:

18 "... what did Albert tell you about what
19 was happening at the police station?"

20 "Well I think ... he didn't tell me to
21 much about it, he told me a bit, I
22 couldn't even remember any of it if ...
23 he did tell but I ... think ... that
24 they told him not to discuss it or
25 something, I'm not sure about that, I



1 just can't remember. All he was saying
2 was that, you know that they were
3 constantly questioning him, the first
4 couple weeks he was down there, we got
5 the impression that they were ruling him
6 out as the suspect."

7 And, again, did you have any thoughts at the time
8 about that, the fact that the police were either
9 considering Albert to be a suspect, or trying to
10 rule him out?

11 A Well, from our experience, that's often what
12 happens to witnesses who ultimately end up giving
13 untruthful testimony. One of the factors is that
14 they are threatened with being targeted as a
15 suspect in the murder that's under investigation,
16 and when Dennis described to me what was
17 happening, what happened to his brother, the long
18 days of interrogation, and he told me that he got
19 the impression that they were treating him like a
20 suspect, it didn't surprise me.

21 Q If we could just scroll down, and you say:

22 "Did he ... complain about ... the way
23 the police were treating him at any
24 point?"

25 And Dennis:



1 "Yeah ... I shouldn't say because ... I
2 can't remember exactly but I know ...
3 like ... if I said so it would be just
4 you know, not real ...",

5 "Fine."

6 "Yeah."

7 "... now there was a point also when the
8 police came to your house, when was
9 that?"

10 And again, beyond this comment here, do you have
11 a recollection of -- and again, we'll go through
12 the rest of this tape or parts of it -- do you
13 have a recollection of anything beyond this about
14 what Dennis said about how -- what Albert related
15 to him about how the police treated him?

16 A My overall impression of what I heard from Dennis
17 about his brother, which was volunteered to me by
18 Dennis immediately, was that his brother was
19 subjected to an ordeal by the police, and that the
20 end result of that was information that was --
21 that Dennis, that is Albert's brother, did not
22 consider to be reliable.

23 Q Did Dennis ever comment to you, or do you recall
24 Dennis expressing an opinion upon the reliability
25 of what Albert said to Dennis on March 2nd, 1969,



1 the part I just read you where, when he got back
2 from Regina, where he told Dennis "I saw blood on
3 David Milgaard the morning of the murder"?

4 A I don't recall, again, whether I remember passing
5 judgement on specific elements of Albert Cadrain's
6 testimony, but certainly the blood would fall into
7 the same category with other allegations that he
8 made, it was -- in my opinion it was highly
9 suspect and the origin of it, of this information,
10 was suspect as well.

11 Q Okay. And if we can go just down to the bottom,
12 and they talk about -- Dennis says about the
13 police coming:

14 "... they searched ... got some clothes
15 or whatever they were looking for in the
16 house and ... they talked to ... my
17 older sister who was there when David
18 came to the house and Albert, oh I don't
19 know, I guess Albert would have been
20 there too, I'm not sure about that."

21 And then the next page there is a further
22 discussion about the sister Celine, and this goes
23 on for a number of pages, and I don't want to go
24 through it but do you have a recollection of
25 following up with information about the sister,



1 Celine, who was at the house that morning?

2 A I have a vague recollection of that but I can't, I
3 can't give you any details, and I -- I don't know,
4 if we did try to reach Celine, whether we were
5 successful or not. I don't think we were, I don't
6 recall ever meeting her, or actually I don't
7 actually have any actual real memory of talking
8 with her.

9 Q What this tape indicates, the next part -- and I
10 don't know that we need to read through it -- was
11 that Dennis said that his sister Celine was home
12 that morning that David Milgaard and his friends
13 arrived, that she had talked to the police and
14 that Celine had said she didn't see blood on David
15 Milgaard's clothing, and that Dennis I think said
16 he thought she would have been part of the trial,
17 etcetera. And then there's some discussions
18 between you and Mrs. Milgaard, we also saw some
19 discussions involving David Asper, about --

20 A Uh-huh.

21 Q -- following up on this, and I think what this
22 Commission has heard, and what the trial record
23 reflects, is that Celine Cadrain was home the
24 morning that David Milgaard attended at their
25 house, --



1 A Yes.

2 Q -- she was in bed, and that she only came down
3 stairs and observed David Milgaard after he had
4 changed clothes, and that I believe her evidence
5 was she did not observe David Milgaard in the
6 clothes he was wearing when he arrived at the
7 house; do you recall learning of that at some
8 point?

9 A No, I don't recall hearing that.

10 Q And did that assist you at all in recalling where
11 Celine fit into the efforts you were making
12 where --

13 A The only thing I can remember about the family was
14 that there were several siblings, the Cadrain --
15 Albert's mother, there were several brothers and
16 sisters and I don't remember how many of them were
17 at home at the time, but I remember I do recall
18 that there was a sister as well as Dennis and
19 Albert, that's about all I can recall.

20 Q Go to page 335944, and again this carries on with
21 the discussion of Dennis, and I think this is
22 again your discussion with Dennis that you are
23 playing for Mrs. Milgaard on the phone and you
24 ask:

25 "Okay, did Albert have a learning



1 disability?

2 Dennis:

3 "Ah, I guess, I guess he did oh, by
4 saying that I mean that he ah, he didn't
5 fit into the school, the way that ah,
6 the school was set up, he didn't fit
7 into their style."

8 And:

9 "... did he have a hard time learning?"
10 "Helping with ah, with studies?"

11 Next page:

12 "Well ... I guess you could say he
13 did..."

14 And you ask:

15 "Was Albert ever ah, evaluated by the
16 Saskatoon School District or by the
17 Catholic ... school there?"

18 Dennis:

19 "Not to my knowledge no. Well at that
20 time, they just ah, they just swept you
21 aside."

22 And then you say:

23 "Okay, continue on with your
24 observation, you comparison of Albert
25 before the, before the incident in his



1 life."

2 And Dennis says:

3 "Well, before he, you know he was
4 always, a little bit, I guess, off the
5 wall is what I'd call him. Just ... but
6 nothing, nothing too outlandish I guess
7 you could call it and afterwards, he
8 just talking different and thinking
9 differently and, uh, I guess that's
10 about all I can say."

11 And again this appears to be the question where
12 you are asking Dennis, and please correct me if
13 I'm wrong, is compare Albert's behaviour before
14 and after the trial, before and after the
15 incident; is that fair?

16 A Yes.

17 Q And again, does this accord with your recollection
18 of what Dennis told you about Albert's behaviour
19 before, during and after the Milgaard affair, if I
20 can call it that?

21 A Yes.

22 Q And then you say:

23 "We heard ah, some examples of speaking
24 with Albert a few minutes ago ... of
25 some examples of what would appear to be



1 a vivid imagination."

2 And let me pause there. I think we saw from the
3 earlier memo that Albert was present when you
4 first started talking to Dennis and then you
5 asked him to leave so you could interview him, so
6 would that be what you are referring to?

7 A That's correct, right.

8 Q And am I correct in assuming the vivid imagination
9 might be the Virgin Mary or the halo information
10 we've seen in other reports about what Albert was
11 saying at the time?

12 A Yes, but I don't recall whether -- whether Dennis
13 had told me about this vision of his brother, but
14 at this point apparently though, based on what I'm
15 reading here, there had been some indications from
16 Albert that he wasn't completely in his right
17 mind, or at least that was my impression.

18 Q And if we can just scroll down and you ask:

19 "Is that one of the --"

20 You talk about some examples of what would appear
21 be to a vivid imagination.

22 "... is that one of the outcomes of, of
23 his contact with police?"

24 And what Dennis says:

25 "Yeah well, I think that ah, that he



1 always, he always he sort of had like a
2 bit of an imagination before but ah, it
3 was more pronounced and -- "

4 And then a blank,

5 "-- I would say."

6 And:

7 "Do you think that your brother might
8 have a difficult time distinguishing uh,
9 fiction and reality?"

10 And Dennis says:

11 "In ah, my opinion, ah there're times
12 he's so very realistic and at times he's
13 not."

14 Again, would that be consistent with what you
15 understood Dennis to be telling you?

16 A Yes. Dennis had told me before I believe, before
17 I was even asking him these questions, he
18 indicated to me that this interrogation by
19 Saskatoon police of Albert pushed Albert over the
20 edge and that he wasn't quite the same after it
21 was over with.

22 Q And did he tell you that it was the interrogation
23 with the police and/or his experience of just
24 being involved in the matter?

25 A Well, he indicated to me and Albert confirmed to



1 me or concurred with me that the police department
2 had leaned on Albert to the point that he snapped,
3 that his -- in fact, negatively affected his
4 mental health in some manner.

5 Q Let me just -- just so that we're on the same page
6 here, and I think what you are telling us, that it
7 was Albert Cadrain, your understanding was that it
8 was Albert Cadrain's interaction with the police
9 and the treatment by the police that caused him,
10 and I think your words were to go over the edge or
11 to snap as opposed to simply being a witness and
12 being involved in a police investigation and a
13 trial where one of your friends was charged and
14 convicted of murder. Do you see the distinction
15 there?

16 A Yes, I do, and Albert made, Albert himself, first
17 of all his brother suggested to me that the
18 treatment Albert received at the hands of
19 Saskatoon police permanently affected his
20 brother's mental health. Albert himself told me,
21 as I recall, that he ended up in a mental hospital
22 as a result of the treatment, the heavy-handed
23 treatment that he received by these police
24 officers. His words were, I forget the name of
25 the hospital, but it was third floor, St. Francis



1 Hospital, nut ward, that's what he said to me, and
2 that's in the transcript of my interview with him.

3 Q And so again I think what you are saying, it was
4 not the fact that he was involved -- let me
5 rephrase. Just the fact that he happened to be a
6 participant in an investigation and proceeding,
7 but rather how he was treated by the police is
8 what had the detrimental effect?

9 A Yes. My impression -- that's correct. My
10 impression was that for whatever reason, the
11 elongated, that is, the lengthy questioning of
12 Albert Cadrain and the treatment that he received,
13 whatever it amounted to, caused him to have some
14 type of mental breakdown that led to him being
15 committed to a hospital. Now, I first heard about
16 this not from Albert, but from his brother Dennis
17 and Albert himself confirmed that he ended up in a
18 mental hospital and he attributed that to the
19 treatment that he received from, that he got from
20 these cops in Saskatoon.

21 Q Okay. If we can go to the next page, please, and
22 then again my mission when we started this
23 exercise, at least one of them, Mr. Henderson, was
24 to find out the extent to which the conversation
25 with Dennis Cadrain was taped and where it might



1 be, so this is the next page, and again this is
2 your conversation with Mrs. Milgaard, this is her
3 tape of her call with you and you say:

4 "Okay, I'm gonna to take a shower now
5 ... if I don't get back to you before
6 this ends, hang on for me and I'll be,
7 I'll be with you in just a few minutes
8 okay."

9 "Okay."

10 (Henderson turns taped interview back
11 on).

12 Then if you can just scroll down, it then cuts
13 off right there with a question from Dennis back
14 to you, so it appears that it's not complete. Is
15 that fair?

16 A I would say.

17 Q Now, is it a really short shower or is there more
18 to the tape?

19 A It must have been a short one or maybe the, maybe
20 I left Joyce hanging on the telephone while I was
21 drying, I don't know.

22 Q In fairness, Mr. Henderson, I believe that it
23 would be Mrs. Milgaard that would be controlling
24 how much she tapes at her end as opposed to you.

25 A I see.



1 Q I'm wondering if you can assist us at all in a
2 couple of questions. Would there be more to the
3 conversation between you and Dennis Cadrain than
4 what's shown here and, secondly, do you know where
5 it might be?

6 A Well, certainly there would be more because I'm
7 asking him a question, I'm asking Dennis a
8 question, Dennis asks me for more information, his
9 testimony, what part of it, he's asking me a
10 question and that's where the tape ends, so
11 obviously there would be more to this.

12 Q So the fact that Mrs. Milgaard only taped part of
13 it, I think you are saying lookit, there was more
14 to the conversation with Dennis Cadrain and it may
15 have been that you played it all for Ms. Milgaard
16 and she simply didn't tape it or it was taped and
17 it wasn't, it was taped over or something?

18 A The transcript would certainly indicate that.

19 Q And then here the questions are, and this is again
20 your question for Dennis, and I think there's,
21 there may be a typographical error there, you say:
22 "... ability that ah, his testimony for
23 the, let me back up, do you feel it's a
24 possibility that what he'd told Boyd and
25 what he later testified in court was ah,



1 less than truthful?"

2 A Excuse me, Mr. Hodson, where are you now?

3 Q Right here.

4 A Okay.

5 Q And I think this word Boyd, keeping in mind that
6 someone would transcribe the tape of a tape, I'm
7 assuming that what he told either the police or
8 Short or Karst or somebody, if you look at that,
9 would it be fair to say that what you are asking
10 is a possibility that what he had told somebody
11 and what he later testified in court was less than
12 truthful? The only Boyd we know about is Neil
13 Boyd who wasn't there in 1969 and so are you able
14 to help us out?

15 A On Boyd, no, I can't. Maybe I just got his name
16 mixed up with somebody else.

17 Q Yeah. But would it be fair to read this that the
18 question you are asking Dennis is do you feel it's
19 a possibility that what he had told the police --

20 A That's what I'm asking him, I'm asking him do you
21 think it's possible that your brother's testimony
22 was not the truth.

23 Q And Dennis says:

24 "I would say that's not a good word,
25 because as far as truthful is concerned,



1 I'm sure that he had every intention of
2 telling the truth, whether it was the
3 truth or not, that's the question."

4 And then you say:

5 "Okay, we're talking about the
6 difference between ... something that's
7 factual, factual and something that's
8 simply fictional. Do you think that
9 it's ah a possibility that the police
10 planted ideas in, in Albert's mind?"

11 Dennis says:

12 "I would say that yes this is, to me
13 that would be a definite possibility."

14 And then:

15 "Digressing from Albert for a moment ah,
16 do you think that ah, your brother's
17 testimony in ah, David Milgaard's trial,
18 do you think that that, ah, was there
19 quite --"

20 And then he says:

21 "Ah, his testimony, what part of it?"

22 And then it's cut off.

23 So again, this would be, I
24 think you've told us, your thinking at the time,
25 that the police had planted ideas in Albert's



1 mind. Is that why you were probing Dennis with
2 that?

3 A Well, I don't know if I had reached that
4 conclusion, whether they had planted ideas in his
5 mind or whether they had given him his testimony
6 or whether they had done nothing to influence
7 his -- I suspected that they had coerced his
8 testimony in some manner or another. I'm asking
9 in this section of the transcript, I asked his
10 brother if he thinks that's a possibility and he
11 says yes, it's a definite possibility.

12 Q Now I'm going to confuse you even further, Mr.
13 Henderson, because we then go on, the conversation
14 cuts off and it's got conversation between Joyce
15 and David Asper, and when we go through this, it
16 may be that this conversation was actually before
17 May 26th, and I'll tell you why in a moment, we'll
18 just go through that, I'm not sure that it follows
19 sequentially, but there's a couple of comments in
20 here. So again if we could skip ahead to page
21 335950. Mrs. Milgaard says to Mr. Asper:

22 "... I think we need to talk to Jim
23 maybe about Paul going there."

24 A Hang on a second here, please. Going where?

25 Q Let me just read that. I think it's to see the



1 Cadraings. Just hang on one second here. I'll
2 read it, it says:

3 "... I think we need to talk to Jim
4 maybe about Paul going there. And the
5 thing is, if we can get ah, if we could
6 mail him down something in light of
7 this, if we, he wants us to get a seat
8 for Donna Friesen about that Cadrain
9 thing, that Ron Wilson told her he's
10 been lying at the trial ... if you get
11 this statement from Dennis, that he was
12 mentally incompetent and he was worked
13 over by the police just a short concise
14 statement from that would be enough."

15 And so at this point it looks as though there's a
16 discussion between Mrs. Milgaard and David Asper
17 about getting a statement from Dennis stating
18 that Albert was mentally incompetent and he was
19 worked over by the police; is that correct?
20 Would that be --

21 A Oh, I tell you, I have no idea when this
22 conversation took place specifically because I
23 wasn't there, but I would guess, from what I'm
24 reading here, this may have been, probably was
25 after I had the initial conversation in the



1 presence of Joyce with Dennis Cadrain which was
2 tape recorded in which Dennis expressed his belief
3 that his brother was manipulated by the cops.

4 Q So this would be the May 24th phone call
5 before you went --

6 A Yes, right.

7 Q And I think --

8 A But before this conversation between Joyce and
9 David, but it would be before I actually showed up
10 or before I actually met Dennis and Albert on May
11 26th or 28th. What was it?

12 Q 26th.

13 A Yes.

14 Q And I'll show you another entry on this tape a bit
15 later that seems to support that, Mr. Henderson,
16 that this would be before May 26th.

17 A Uh-huh.

18 Q And so let's assume that to be the case. So after
19 your initial call with Dennis on the phone, and
20 this would be before you ever talk to Albert;
21 correct?

22 A Right.

23 Q Would it be fair to say the plan was to get a
24 statement from Dennis that Albert was mentally
25 incompetent and that he was worked over by the



1 police?

2 A Yes, and that would be based on what Dennis had
3 told me on the telephone.

4 Q If we can then go ahead to 335952, this is just
5 two pages later, and it says Joyce leaves phone,
6 Paul Henderson continues conversation with David
7 Asper, so it looks again this is all part -- this
8 I think is May 25, this is the day after you make
9 the phone call in Saskatoon to Dennis.

10 A Uh-huh, right.

11 Q And the day before you go to see him; is that
12 right?

13 A Sounds like it, yes.

14 Q And then if we can just -- so we're clear here,
15 you are now talking to David Asper. If we can go
16 to the next page, we have Mr. Asper saying, scroll
17 down, Mr. Asper saying:

18 "And similarly with Dennis, you know if
19 you could Dennis to say that Albert was
20 really messed up and the police really
21 did a number on him, um, and then ah,
22 you know ah, he believes that Albert was
23 saying just whatever the police wanted
24 him to say, um, that's something..."

25 And then you say:



1 "Well we have Dennis on tape, we taped
2 him last night"

3 David:

4 "Yeah."

5 "The tapes gonna have to be enhanced."

6 Is it fair to say, that that would be the May
7 24th tape of your phone call with him?

8 A Sounds like it, yes, it does. Yes. Dennis was a
9 working man, so our conversation, when I called
10 him it would have been at night.

11 Q And then this idea about getting him to say
12 that -- did Dennis tell you he believes that
13 Albert was saying just whatever the police wanted
14 him to say, was that something he told you in the
15 phone call?

16 A David -- let me see. I don't recall that Dennis
17 went that far with me on the telephone or at any
18 other point. In fact, to the contrary, the
19 impression by the time I was through with Albert
20 was that he actually believed what he was saying,
21 he believed that his testimony was truthful. I
22 don't know how he managed to reach that point
23 where he actually believed it, but, you know,
24 he -- as far as I know, Albert never told me
25 personally that he was coerced by the police, you



1 know. I could be wrong, but I don't think that
2 shows up anywhere where he actually told me that.

3 Q So then again here, it's clear that in the
4 discussion with Mr. Asper, the tape of the phone
5 call between you and Dennis Cadrain is being
6 discussed, the tape is going to have to be
7 enhanced, etcetera?

8 A Well, my position on this, based on my
9 conversation the prior night, the previous night
10 with Dennis Cadrain was that Dennis certainly
11 figured that his brother was mentally messed up,
12 the police did a number on him, that was his
13 perception.

14 Q Yeah, no, I'm just talking about it would seem
15 clear on May 25 that you and Mr. Asper -- Mr.
16 Asper is aware that you've taped the phone call
17 with Dennis Cadrain of May 24th?

18 A Yes, that's correct.

19 Q There's a discussion about it, and I guess that's
20 the one, and I had showed you earlier the first
21 nine pages of that one and we talked about that
22 last day, and again, I think you told us, you
23 don't know whether that tape still exists or who
24 may have it?

25 A Uh-huh.



1 Q Is that correct?

2 A Yes.

3 Q So down at the bottom:

4 "... But I'm hoping for ah, I told him
5 my last message to him before I hung up
6 --"

7 And this is Dennis,

8 "-- was we came a long way to see you
9 and ah I'm counting on you being there
10 he was ah adamant that he would be and
11 he'd do his best to get Albert there
12 too. I'd like to talk to him first,
13 tape him, get a statement from him ..."
14 "Yeah."

15 "... then bring Albert in."

16 And then David says:

17 "Yeah, yeah that would be wonderful, and
18 even if he could put to Albert I mean
19 even _____ in terms of, you know we
20 understand that your recollection of,
21 may as well be demented in your mind,
22 based on what you said at the trial, but
23 are you prepared to admit that, that it
24 might not have been what really
25 happened. Are you prepared to admit



1 that ..."

2 You say:

3 "He might have been influenced by the
4 police, in terms of ..."

5 And then David:

6 "That's right and what's now believed
7 happened might have been the product of
8 what you were told by the police, and
9 even if he says well that's possible, I
10 was so messed up at the time, you know,
11 that's something."

12 Again, would this have been, this appears to have
13 been a discussion between you and Mr. Asper
14 before you ever met Albert Cadrain; is that
15 right?

16 A That's correct.

17 Q And would this be strategizing on what you were
18 hoping to get from him or how to question him or
19 can you explain this discussion?

20 A Yes, this was a preliminary discussion on what we
21 were going to say when we had the opportunity to
22 meet -- what I was going to say to Albert, what I
23 was going to try and find out from him.

24 Q Well, does it not go a bit beyond what you are
25 going to say, but also what you hope he's going to



1 say?

2 A Well, we were, as advocates for David Milgaard, we
3 were hoping he would say that he was coerced by
4 the police and that nothing he said was the truth,
5 but we came up short of that.

6 Q And why would you hope that he would say that?

7 A Well, because first of all, I didn't believe what
8 he testified to was the truth because it was not
9 consistent with the innocence of David Milgaard
10 which I firmly, strongly believed in at the time.
11 I didn't believe that Albert Cadrain had seen
12 blood on David Milgaard's clothing and I didn't
13 believe that he witnessed anything that was
14 consistent with David Milgaard's involvement in a
15 murder that morning.

16 Q Were you concerned at all, Mr. Henderson, about
17 getting something from Albert Cadrain that was
18 favourable? I think you are candid in saying
19 look, we had hoped that he would say these things.
20 Did you have a concern that if you got that from
21 him, that it wouldn't be credible in the sense of
22 it might not be true or might not be believed?

23 A Well, yeah, sure, it must have occurred to me at
24 the time that here I was establishing at least
25 through his brother that Albert Cadrain was



1 mentally unstable, therefore not reliable at the
2 time of his testimony, and any statement that I
3 got from him would be subject to the same type of
4 potential interpretation.

5 Q Go to 335964, and again this is still part of the
6 same discussion, and we're talking about the
7 priest and then you make a comment here, and again
8 you are talking about Albert Cadrain and you say,
9 David says:

10 "Had contacted him immediately after he
11 got back from Saskatoon with ah, a
12 priest, and it was a priest I think, who
13 put him in custody of police."

14 And then you say:

15 "Right, well um, of course that's after
16 he's been worked over by Regina
17 police..."

18 And again, can you tell us where or what the
19 source of that information was?

20 A No, not specifically, but somewhere in the back of
21 my mind I recall something about heavy-handed
22 treatment of not just Albert, but all of these
23 kids by the Regina police. Correct me if I'm
24 wrong, but wasn't there, weren't one or more of
25 them picked up for vagrancy? No, I really can't



1 answer your question with any certainty. I'm not
2 sure where I heard it, but I thought there was
3 some heavy-handed tactics by police with these
4 kids.

5 Q By the Regina police though?

6 A Yes, right.

7 Q And apart from Albert Cadrain's stay in Regina for
8 vagrancy charges, was there anything else that you
9 recalled where the Regina police were involved
10 either with Albert Cadrain or other witnesses?

11 A No, no.

12 Q If we could then go to, there's a couple of other
13 tapes here, excerpts from discussions between
14 Joyce Milgaard and David Asper that were right
15 around the time of, right before the interviews of
16 Albert Cadrain, Ron Wilson and Nichol John, and
17 just for the record, Mr. Henderson, I provided
18 copies of these transcripts, they are the ones
19 that we recently received from Mrs. Milgaard and I
20 provided them to you and your counsel to review
21 and there's just a couple -- is that correct,
22 you've had a -- call up 336785 is the first one,
23 but it's the binder of transcripts that we
24 provided to you, Mr. Henderson?

25 A Yes.



1 Q And so again there's just a couple of these. For
2 the record, this is tape 102, it's May, 1990, and
3 if we can go to 336792, and I've been through
4 these with Mr. Asper and there's discussions about
5 who -- this is I think early May, Mr. Henderson,
6 and it's discussing between Asper and
7 Mrs. Milgaard about who they are going to get to
8 do the interviews and discussing about getting
9 someone local, etcetera, and as well getting
10 someone from Centurion, and then if we can go to
11 the next page and just by way of context -- go
12 back, full page, and Mr. Asper says, 'I mean, I
13 know exactly who I would love to get to do this --
14 they're two active police officers -- two of the
15 smoothest guys in the world -- they get blood from
16 a stone, and they can play the game and they are
17 smart,' and then the next page -- sorry, just at
18 the bottom, 'And they can play the game any way --
19 it has to be played.'

20 Next page:

21 "... And if you tell them what you want,
22 they'll get it."

23 And then Mr. Asper:

24 "Even if what they're getting is a lie,
25 they'll get it."



1 Mrs. Milgaard:

2 "Oh, well, we we don't want that."

3 Mr. Asper:

4 "Well listen, umm, we don't know that
5 it's a lie, first of all."

6 "No, but I mean --"

7 "But, I mean, if you Cadrain saying
8 "umm, of course I didn't say anything, I
9 was afraid that Fisher was gonna kill
10 me", --"

11 Mrs. Milgaard:

12 "Uh-huh."

13 "-- we take that down and we run with
14 it, whether it's true or not, because,
15 you know, how are we to know whether
16 it's true or not."

17 And Mrs. Milgaard:

18 "Hmm, well, I think the only way, we've
19 got to be very truthful in everything."

20 And then if we can scroll down, and he says down
21 here:

22 "-- We don't know whether they are
23 telling the truth or not."

24 "I mean, if they say, if they give us a
25 statement denying that there was any



1 impropriety how do we know it's the
2 truth."

3 "I see what you are saying."

4 "You know, so, you know, we're not
5 sitting as judge on these statements."

6 Just a couple of questions. Do you recall any
7 discussions with either David Asper or Joyce
8 Milgaard along these lines about approaches to
9 witnesses?

10 A No. I think that David Asper and Joyce both
11 realized if they were going to involve Centurion
12 Ministries, it would be totally inappropriate for
13 them to suggest to me that we practice any type of
14 dishonesty or deception with witnesses.

15 Q And so just again the comment about "Even if what
16 they are getting is a lie, they'll get it," what
17 is your comment about that as an investigator? I
18 mean, how do you --

19 A My feelings about that kind of strategy are that
20 it's ultimately self defeating. If you get -- if
21 I were to have gotten the statement from any of
22 these witnesses that was untruthful and -- or, for
23 that matter, if I had pressured them to say
24 something that wasn't truthful, ultimately it
25 could very well backfire on us. You know, we have



1 to have, number 1, information that stands up in
2 court and, number 2, that witnesses stick by.
3 It's one thing to, for a witness to tell me
4 something on May 28th and even put it in a
5 statement, but the bottom line is, the true test
6 is when they get on the witness stand in court we
7 have to have information that the witnesses
8 ultimately stand by and information from the
9 witnesses that is bullet proof that can't be
10 contradicted by information that emerges at a
11 later date. To answer your question -- well, what
12 was your question by the way.

13 Q It was actually just a comment, and you have. If
14 we could just scroll back up, this idea here, and
15 again, I think at this time, in May of 1990, Larry
16 Fisher is known by you and others as a suspect,
17 and in your mind a strong suspect, and that may
18 even be an understatement, and that he lived in
19 the Cadrain basement, and there's a discussion
20 here about, if you could get Cadrain saying of
21 course I didn't say anything, I was afraid that
22 Fisher was gonna kill me, and it would appear
23 here, Mr. Henderson, that there was some thought
24 or some theory or some hope that one of the outs
25 for Albert Cadrain would be that he was afraid of



1 Fisher and that's why he lied. Do you have any
2 recollection of that being --

3 A That was never brought up to me and if it had been
4 brought up to me I would have rejected it.

5 Q And why is that?

6 A Well, for the same reasons that I just mentioned.
7 Ultimately, you know, it -- Albert Cadrain, even
8 if he did go along with that at the time, he could
9 later say that, "I was pressured into saying that
10 by the investigator from Centurion, it's not true,
11 they planted it in my mind".

12 The way we operate is that the
13 feeling is that the truth, it is the truth that
14 will set our clients free, and there is no room
15 for any shenanigans in the way we operate.

16 Q Well, let me give you an example here, and maybe
17 contrast a couple of approaches. If you had gone
18 to see Albert Cadrain, as you did on May 26th, --

19 A Uh-huh.

20 Q -- and the first time you met with him you said
21 "okay, Albert, tell me what you remember about
22 1969-1970", and he volunteered to you, just as Mr.
23 Asper states here, that "lookit, I was afraid that
24 Fisher was going to kill me so I lied about
25 David", he gave you that information, what would



1 you do, as an investigator, with that?

2 A I would probably include it in my statement and
3 let -- unless it was obvious to me that he was
4 making this up, unless I was able to be sure in my
5 own mind at that time that this really didn't
6 happen and that he was making it up, I probably
7 would use it in my statement, because the way you
8 are presenting it right now it sounds like it's a
9 possibility, I mean you make it sound possible
10 that could have happened.

11 Q Let me contrast that with the scenario where, if
12 you went to him and he stuck to his original story
13 and then you said to him words to the effect, "you
14 know, come on Albert, weren't you afraid of
15 Fisher, didn't Fisher scare you, isn't that why
16 you lied", and Cadrain said, "yeah, okay
17 whatever", put it in the statement --

18 A Well, first of all, unless there was a good reason
19 for me to suspect that I wouldn't bring it up.

20 Q Okay.

21 A And the way it's being presented here in this
22 brainstorming session between Joyce Milgaard and
23 David Asper, it sounds to me like this is being
24 invented out of whole cloth, and that isn't
25 something that we would be a part of.



1 Q Okay.

2 A Primarily not that, I'm not trying to sound
3 sanctimonious, but these are the kind of things
4 that backfire on you.

5 Q Go to 337359. And this is -- 337359. And this is
6 again around the same time period, this is tape
7 176, and if we can go to page 360 with that. And
8 I think this is a follow-up conversation and this
9 is -- if we can enlarge the left -- and this is
10 right around the time that either they had talked
11 to you, I think, or were about to talk to you, you
12 see about the phone number for Centurion
13 Ministries, and then Mr. Asper says:

14 "... in my view it would be great, and I
15 don't know how open he is to this ...",
16 and the "he", I think, is either you or
17 Mr. McCloskey:

18 "... I don't know how open he is to
19 this, but it would be a very positive
20 starting point for them to have a chat
21 with Cadrain and get a statement from
22 Cadrain to the ex -- sort of saying, I
23 mean I was talking to Hersh about this,
24 and, you know, I mean it would be just
25 wonderful if we could get a statement



1 from Cadrain saying "yeah, I knew it was
2 Fisher, lived in the basement, umm, you
3 know, I didn't want to say anything
4 about it because I figured he'd kill
5 me", you know, something like that, and
6 then "I saw Fisher come home with blood
7 on him".

8 MRS. JOYCE MILGAARD: Oh yeah.

9 MR. DAVID ASPER: You know, something like
10 that."

11 And scroll down:

12 "... nice.

13 MR. DAVID ASPER: And then 'and that, you
14 know, when the cops came and asked me
15 about Milgaard, you know, it was easy
16 for me to get off the hook with Fisher
17 by just pointing it at Milgaard'.

18 MRS. JOYCE MILGAARD: Wouldn't that be
19 great.

20 MR. DAVID ASPER: Okay? So --

21 MRS. JOYCE MILGAARD: Afraid for his life.

22 MR. DAVID ASPER: -- I mean you can even
23 lead him to believe that, even if he's
24 lying, you know, you can, you can have a
25 chat with him to plant the story in his



1 mind, you know, to give him an easy out
2 from the questioning with McCloskey and,
3 you know, I'm gonna say that to Jim."

4 And, again, I showed you this this morning again
5 Mr. Henderson. Do you have any recollection of a
6 discussion with Mr. Asper, Mr. McCloskey,
7 Mrs. Milgaard, along the lines suggested in this?

8 A About this strategy that's --

9 Q Yes?

10 A -- being discussed here?

11 Q Yes?

12 A Absolutely not.

13 Q And would you have concerns about doing what Mr.
14 Asper said, that suggests here, or saying that he
15 was going to raise with Jim McCloskey?

16 A Can you ask the question again, please?

17 Q Sure. Would you have concerns about doing what is
18 suggested here or commented on here, talked about?

19 A I wouldn't do it. I mean you are talking, as I
20 understand you're talking about planting, making
21 up something and planting it in the mind of a
22 witness and trying to persuade him to go along
23 with it; is that correct?

24 Q Well, I'm just reading you what's on the
25 transcript.



1 A Well it sounds to me like that's what David Asper
2 was mulling over here, and we don't operate that
3 way, we wouldn't try something like that, because
4 number 1 it's wrong; number 2, it probably
5 wouldn't work, and if it worked it would only be a
6 temporary solution, and it would ultimately
7 probably backfire.

8 Q And would that be, when the credibility of the
9 statement you obtained was tested, that it would
10 become apparent that it wasn't credible; is that
11 what you mean?

12 A Sure, sure.

13 Q If we could go to 337378. And again, this is part
14 of the same conversation, you are now in the call
15 here, Mr. Henderson, and it's you and David Asper
16 and Mrs. Milgaard, and I think this is right
17 around the time of setting up these interviews,
18 and there is a discussion about -- there was an
19 earlier discussion about Joyce Milgaard going with
20 you to interview the witnesses, and I think either
21 Mr. Asper or you said "no, that's not a good
22 idea", then a discussion about -- and you will see
23 here about having either Mr. Asper or Dan Lett,
24 the newspaper reporter, attend with you?

25 A Uh-huh.



1 Q And do you remember -- do you remember that at
2 all?

3 A Umm, no, I don't.

4 Q And I think what this --

5 A Let me ask you a question if I may?

6 Q Sure.

7 A What time period are we talking about, here, and
8 what have we already done at this point?

9 Q I believe, if I can assist you in placing the time
10 frame of this tape, I believe this would be within
11 days or maybe a week prior to your first contact
12 with Dennis and Albert Cadrain, so right before
13 May 24, and it's right before the time when you go
14 out to Port Coquitlam to interview Dennis Cadrain,
15 and then later to Nakusp to see Ron Wilson, so
16 it's the planning stage of before you go out to
17 see these people. Does that assist you --

18 A It's before I --

19 Q Yes?

20 A It's after Linda Fisher --

21 Q Yes?

22 A -- but before any of the other witnesses?

23 Q That's my understanding of the timing, yes.

24 A Okay.

25 Q Does that assist you?



1 A Yes, it helps.

2 Q And I think what Mr. Asper told us is that, based
3 on this discussion, that either he wanted or you
4 wanted to have a second person along with you, and
5 I can't recall if he said the word "to
6 corroborate", but someone else along on the
7 statement-taking; do you recall that being
8 discussed?

9 A Not really, I don't, no.

10 Q And that -- did you have a concern with, for
11 example your interview with Ron Wilson, the fact
12 that there was no one else present to -- and
13 'corroborate' is maybe the wrong word -- but to
14 say "I was there and here's what happened" if, for
15 example, Mr. Wilson turned on you?

16 A Turned on me in what way?

17 Q Yes? Well, after giving an interview and saying
18 all these things, turned around and said "well I
19 never said that"?

20 A Oh, I see, my concern that a witness -- having a
21 witness for backup. Well it's, if you can have
22 all the tools it's nice, but sometimes you can't.
23 In this case Ron Wilson lived in the boonies, I
24 mean it -- I drove 500 miles to get to his place
25 over some very rugged, undeveloped mountain



1 passes, the Town of Nakusp is way up in the
2 province, and I mean it would have been a -- who
3 would I have taken with me? I'm --

4 Q No, and here it's a suggestion that Dan Lett would
5 go, and Mr. Asper's evidence was that Lett was
6 gonna go and then either he or his superiors said
7 no, he couldn't, because that might put him in the
8 position of being a witness --

9 A Sure.

10 Q -- and, therefore, he couldn't report any more; do
11 you recall any of that?

12 A No, I don't remember Dan being a possible
13 companion on that trip, it would have been fine
14 with me though.

15 Q So again, on the issue of having someone there,
16 did -- what was your practice; did you usually
17 have someone else present on -- in significant
18 interviews?

19 A No, usually I work alone, unless I'm working with
20 Jim McCloskey, and then we go together for
21 important -- on important witness interviews or
22 contacts we work together, but normally I'm
23 working alone.

24 Q And would it be your practice to record the
25 interviews, then, for the backup?



1 A Umm, I would -- I would say not necessarily so.
2 You know, a tape recorder can be an intimidating
3 factor in a -- to a witness. Sometimes we -- it
4 depends how we get along with them and how they
5 react to our approach and our questions.

6 Q If we could go to 379, please. And here is,
7 again, a further discussion. You are part of the
8 call here, Mr. Henderson, Mr. Asper says:

9 "I think, you know, and -- and, Paul, I
10 think that the first person that we
11 should go to is Cadrain. I think that
12 he's probably the most likely to
13 respond, umm, to the new scenario, that
14 being, umm, "we understand that you were
15 scared of Fisher, we know that Fisher
16 did it, and you can be a hero or a bum"
17 --

18 MR. PAUL HENDERSON: Uh-huh.

19 MR. DAVID ASPER: -- sort of thing.

20 Because he's not, umm, all there I don't
21 think."

22 Let me just pause there. Do you have a
23 recollection of discussions about this --

24 A Well --

25 Q -- new scenario being that -- and I take it from



1 that that it is "lookit, Fisher did it, and Fisher
2 scared Cadrain"?

3 A Yeah, let me go -- let me explain this now. There
4 was one approach that we, I think we agreed upon
5 with Albert Cadrain, and that was to point out to
6 him that if this, if the truth emerged, which we
7 thought it eventually would, and Larry Fisher was
8 identified as the killer, that would put all of
9 the witnesses who testified against David Milgaard
10 in a very bad light, it would expose them as liars
11 who committed perjury and sent an innocent man to
12 prison, not only an innocent man but a friend to
13 prison. So the approach that I used with Albert
14 Cadrain was to tell him that it was our
15 understanding, we had heard that the police were
16 going to go to Larry Fisher and put pressure on
17 him to confess and that there was speculation that
18 he probably would admit to the Miller murder, and
19 that Shorty would -- in view of this, Shorty would
20 -- Albert would be wise, he would be smart to come
21 forward with the truth and avoid this type of
22 exposure, embarrassment. And that, as I recall,
23 is one of the approaches that I used with Albert
24 to get him to tell me the truth.

25 Q Okay. And just a couple of questions on that. I



1 think you told us back in January, though, that
2 this information about Fisher confessing, where
3 did that come from, was that something someone was
4 told to you by --

5 A Well, at least I can tell you this, it had to have
6 come from David Asper or Joyce Milgaard, and based
7 on, I assume was based on their intelligence at
8 the time. Ultimately, of course, it turned out to
9 be false, Fisher ten years later was still denying
10 that he was involved.

11 Q But was it a case of stretching an anticipation
12 that he might confess, or did you have
13 information -- and thereby being able to use it
14 with Albert, and I understand what you are saying
15 is that if Albert thought that Fisher was going to
16 confess right away, that that might put some
17 pressure on him; right?

18 A Yeah.

19 Q And is it a case of you had information or you
20 were taking what you had and maybe stretching it a
21 little bit?

22 A I may have been stretching it. I didn't know for
23 sure that he was going to confess and if I thought
24 I knew for sure, I was wrong, dead wrong. Yeah,
25 we were -- I was probably stretching that. I



1 don't know exactly what I told him, I'm -- I'm --
2 I don't think I told him that I knew for sure that
3 a confession was forthcoming from Larry Fisher,
4 but I know that I suggested to either him or to
5 his brother that we had heard that Larry Fisher
6 probably would admit to having murdered Gail
7 Miller and then it was all over with.

8 Q And we had talked about this a bit in January,
9 would that be one of the -- I can't recall your
10 words -- whether it was a lever or an out or some
11 incentive to cause Mr. Cadrain and other witnesses
12 to change their evidence, change their testimony;
13 is that fair?

14 A Not to change their testimony, to tell me the
15 truth.

16 Q But to change, to change what they had said
17 before?

18 A Yes, to recant their inculpatory, incriminating
19 testimony.

20 Q Let me rephrase it. You are saying, I think what
21 you are saying is you believed the truth to be
22 that they were lying at trial on the incriminating
23 information?

24 A Well most of the, most of the state's or the
25 Crown's witness testimony against David Milgaard



1 ultimately was proven to be false with the
2 vindication of David and the DNA evidence of Larry
3 Fisher's guilt.

4 Q Yeah, no, and I guess my question, sorry, was just
5 back to your approach with Cadrain, Wilson, and
6 John, was that news that Fisher might confess and
7 thereby "you can be a hero or a bum" was in part
8 an effort to give them a reason to, I think in
9 your view, give them what you thought to be the
10 truth at the time?

11 A I don't recall whether I, whether I used that,
12 that particular strategy with Nichol John. I do
13 know -- I mean I never even spoke to Nichol John,
14 I never got past her strident father, but I did
15 tell, when I -- after leaving Ron Wilson on
16 whatever date it was I spent with him I drove down
17 the mountain to Kelowna, and I contacted Nichol
18 John's mother, and I told her that -- advised her
19 that Ron Wilson had recanted, --

20 Q Let me --

21 A -- suggesting to her that this certainly would --
22 should be an incentive for Nichol to come forward
23 and tell the truth.

24 Q And so is what you are telling us, Mr. Henderson,
25 that if you could get one to recant or one to



1 recant, I guess, then that might be used to get
2 the others to recant?

3 A Of course.

4 Q And so, here, we see Mr. Asper saying:

5 "You know ...",

6 I think we're talking about Albert:

7 "He's not real bright."

8 And then:

9 "You know, I think he can be shaped
10 reasonably easily throughout the course
11 of an interview with him, and once we
12 get that, I mean, that's our ace in the
13 hole. Then we go to the other two, who
14 are tougher to crack a little bit I
15 think, and say 'not only do we know who
16 did it but Cadrain now agrees'.

17 MR. PAUL HENDERSON: Okay. McCloskey
18 insists that if we, if I do this, ..."

19 I'm:

20 "... including the two eleventh-hour
21 witnesses ..."

22 I think you are talking about another subject.
23 But what Mr. Asper says, is that consistent with
24 what your approach was, if you can get Cadrain,
25 Cadrain to recant -- and let me go back. I want



1 to ask you about the words, if we can go to the
2 bottom left, please:

3 "... I think he can be shaped reasonably
4 easily throughout the course of an
5 interview ..."?

6 A Well if that was David's opinion, David Asper
7 thought that Albert Cadrain could be shaped, he
8 was wrong about it because nobody -- Albert
9 Cadrain was not about to be shaped by anybody. I
10 mean he had his, he was very strong in his
11 opinions that he believed that his testimony was
12 the truth, and when we realized that he honestly
13 believed this -- his brother said, told me, in
14 addition to my own perceptions of Albert's belief
15 in his testimony his brother told me that --

16 Q And --

17 A -- he really thinks what he told is the truth, and
18 so I made it clear to Mr. Asper's office, to Asper
19 and to Joyce, that we weren't going to mess with
20 him, we weren't going to try to get him to back
21 off on it, because --

22 Q Now keep in mind, Mr. Henderson, this is before
23 you've talked to them.

24 A Right. Oh.

25 Q And just back to the strategy, is it -- you tell



1 me if this is correct; was the strategy, or at
2 least one of them that was being discussed or
3 perhaps implemented, was to start with Albert
4 Cadrain, because he wasn't the brightest and he
5 might be the easiest one to get a recantation
6 from, and that that recantation could be used to
7 persuade Wilson and/or John to recant, who were
8 tougher to get to recant?

9 A Well, this strategy was proposed by David Asper,
10 not by me.

11 Q No, I appreciate that, but I'm asking you; was
12 that something, did you implement, was that the
13 strategy or --

14 A Umm, you know, I think we needed to -- we need to
15 define the word "shaped".

16 Q Well --

17 A To me it has a negative connotation and, you know,
18 and in the business of freeing the innocent you
19 don't go out and shape witnesses, you go out and
20 you get the truth from them.

21 Q And, with that clarification on his wording, if we
22 say okay, putting aside, let's ignore the word
23 "shaping" for a moment -- and I'll come back to
24 that -- is it fair to say that as far as
25 approaching these three witnesses, Cadrain, Wilson



1 and John, and I think you've told us you believed
2 that they were not telling the truth before and
3 you were hoping to get them to tell the truth,
4 which was that they had lied at trial; that was
5 your objective?

6 A Well, with Cadrain and Wilson, sure. Nichol John,
7 of course, --

8 Q With her statement, I'm sorry, with her
9 incriminating statement as opposed to her
10 evidence?

11 A Yeah. Are -- would you repeat the question,
12 please?

13 Q No, no, just your objective when you went out. I
14 think, at this time, you went out with the idea of
15 interviewing Cadrain, John, and Wilson?

16 A Yes, correct.

17 Q And, actually, Melnyk and Lapchuk were in there as
18 well but I think they were left until later?

19 A Yeah.

20 Q I think you told us your objective was to go out
21 and try and get favourable statements for David
22 Milgaard's cause?

23 A Absolutely.

24 Q And so ignore the comment "shaping" for a moment,
25 but was it part of your strategy to start with



1 Albert Cadrain on the basis that, due to his
2 circumstances, that he might be the easiest one to
3 get a favourable statement from, and I'm not
4 suggesting anything sinister about that, but to
5 get a statement that you believed to be true that
6 would help David's cause?

7 A But I don't believe we started with Albert, did
8 we?

9 Q I believe you did, you contacted Dennis first.

10 A I mean --

11 Q Albert was the first -- Dennis -- well let me back
12 up. You met Albert Cadrain first on May 26th,
13 1990 when he said he continued to believe he saw
14 blood, you then got a statement from Ron Wilson on
15 June 4th, so Albert --

16 A Oh, I see, all right. So I went to Port Coquitlam
17 first and interviewed Dennis and Albert, then went
18 to --

19 Q Nakusp.

20 A -- Nakusp, and then had a subsequent return to
21 Port Coquitlam and got a subsequent statement from
22 Albert? I got it now.

23 Q And so that goes back to the question, and I think
24 you've told us your objective in going to see
25 Albert, you had hoped that Albert would have



1 recanted when you went to see him?

2 A Yes, right.

3 Q So go back to my question. Was your strategy to
4 start with Albert because you thought he would be
5 the most likely to recant, the easiest one to
6 recant, or the easiest one to get to to recant?

7 A I can't say that that was the strategy, it's
8 possible it was.

9 Q And, again, this comment about:

10 "...he can be shaped reasonably easily
11 throughout the course of an interview
12 ...",

13 what are your concerns about that type of
14 language?

15 A Well, it's unrealistic, it's unrealistic strategy
16 to use with a witness, and it's also -- well, you
17 can interpret it any way you want to but, you
18 know, I think they're talking about coercing. I
19 mean it has that ring to it to me, and it's not
20 a strategy, it's not the way we operate. So we
21 don't shape witnesses, we -- we try to influence
22 them to tell us the truth.

23 Q If we --

24 A So, to answer your question, I would not have
25 agreed with that approach and I did not employ



1 that type of strategy when I met with Albert.

2 Q And what about in a situation, Mr. Henderson,
3 where -- and let's just talk about re-opening --
4 your desire is the influence to tell them the
5 truth; what about the conflicting side, being the
6 authorities who have a different belief in what
7 the truth might be than you do, who also try to
8 influence the witness to tell them their version
9 of the truth; how do you -- when you have one
10 witness with two people approaching that witness,
11 you have one view as to what the truth is, the
12 police and authorities may have a different view
13 as to what the truth is, --

14 A Yes.

15 Q -- so where -- how do you resolve that?

16 A Well, let me put it this way. For Centurion
17 Ministries to commit its resources, its time and
18 resources to a case to go to bat for someone in
19 prison, we have to be strongly convinced of the
20 probability of a miscarriage of justice. And if
21 you are asking me how I felt about the witnesses
22 who put David Milgaard in prison, based on what I
23 knew about Larry Fisher and the improbability of
24 him having committed all these rapes yet not been
25 involved in the murder, it was apparent to me that



1 the witnesses who testified against David Milgaard
2 were not telling the truth, so my job was to go
3 out there to persuade them to admit that they had
4 lied at trial and to tell me the truth.

5 Q And, again, I think we've heard from some police
6 officers, certainly in the original investigation,
7 who believed the truth was that David Milgaard had
8 been involved in the crime, now acknowledge that
9 they were wrong, but again to contrast what you're
10 doing with witnesses to influence them to tell
11 what you believed to be the truth versus what
12 others who believed the truth to be different,
13 again an honestly-held belief about what the truth
14 is, again I guess the question is what -- how
15 that -- who determines the truth?

16 A Well, the courts ultimately determine the truth,
17 and -- but we follow our convictions and we go out
18 and we contact witnesses, and once we've become
19 convinced that the truth did not emerge in trial,
20 we go out and try and find it.

21 And, you know, I'm not -- I'm
22 not gonna sit here and tell you that the police
23 set out, the Saskatoon Police set out to knowingly
24 build a case against an innocent person, they may
25 have thought he was, they may have thought that he



1 was involved. There came a point, though, when
2 the picture changed considerably, you haven't
3 asked me about that and we can cover that later,
4 if you like.

5 Q We'll get there. If I can turn now, just before
6 we break here for the afternoon, we had touched on
7 (V14)- (V14)- in great detail back on January
8 26th; you will recall I went through your
9 interview with (V14)- (V14)-?

10 A Right.

11 Q And I think where we ended up is that it was
12 included in the Centurion -- it was included in
13 the application to the Federal Justice Minister --

14 A Uh-huh.

15 Q -- in the second application, correct, and I think
16 you had some concerns about it being included; is
17 that correct?

18 A Well, I didn't think that (V14)- (V14)- was a
19 reliable witness for anybody, and of course I
20 didn't know that until I met her.

21 Q And, after having met her, did you believe that
22 she was -- and again, we went through this, and I
23 can go through some of your evidence if it will
24 assist you -- but at the end of the day was it
25 your view that the (V14)- (V14)- complaint should



1 have been included as one of the similar-fact
2 Larry Fisher assaults in the application to the
3 Minister?

4 A Well, you know, I don't -- you're asking me now, I
5 don't know how I felt about it back then or what I
6 might have said about it back then, but I don't
7 think that there was enough, enough evidence to
8 include (V14)- in the Larry Fisher package, and I
9 don't -- I -- and, plus, she wasn't necessary.

10 Q Okay. It's probably an appropriate spot to break,
11 Mr. Commissioner.

12 *(Adjourned at 2:42 p.m.)*

13 *(Reconvened at 3:01 p.m.)*

14 BY MR. HODSON:

15 Q I now call up 054412 -- oh, would anybody like to
16 be a witness? Sorry, Mr. Henderson.

17 If we could call up 054412,
18 we've now I think covered -- where we left off
19 back in January, we finished the (V14)-
20 information which was around June of 1991 and
21 let's just go ahead chronologically, and this is
22 an August 8th, 1991 memorandum, an interview of a
23 fellow by the name of George Lapchuk who has since
24 passed away, and I'll go through parts of this, if
25 we can maybe just call out the top part. It looks



1 as though you interviewed him in Vancouver in
2 August of 1991; is that correct?

3 A I interviewed him in Vancouver. I'm not aware of
4 the date though, I don't remember the date.

5 Q And when we looked at the last transcript, it
6 talked about Mr. McCloskey's desire to not only
7 interview Wilson, John and Cadrain, but as well
8 Melnyk and Lapchuk; is that right? They would be
9 viewed as the five people who gave incriminating
10 evidence against David?

11 A Yes. They were secondary level witnesses.

12 Q Do you recall Craig Melnyk, did you ever interview
13 Craig Melnyk?

14 A No, we did not.

15 Q And did you try or was there a reason you didn't?

16 A I can't recall why we didn't try and track him
17 down. I think he might have lived in -- by this
18 time we were pretty much wrapping up the
19 investigation and as I recall, he lived some
20 distance away from Seattle.

21 Q Now, this interview is August 8th, 1991, and just
22 to help you out on dates, in late May, early June,
23 '91 is when you would have interviewed the sexual
24 assault victims and August 14th is when the second
25 application was filed to the minister, so this is



1 about a week before the second application was
2 being filed, okay, and that would be about a month
3 or two after you interviewed Cadrain and Ron
4 Wilson. Does that accord with your recollection?

5 A Yes.

6 Q And I'll go through parts of this memorandum, but
7 I'm wondering, is there anything that sticks out
8 in your mind that you recall about how the
9 interview with Mr. Lapchuk was set up and what
10 happened there, and I can go through the memo to
11 assist you, but is there anything that comes to
12 mind?

13 A Well, actually, yeah, this was quite a memorable
14 experience. I had a lot of details that I have
15 retained, but I don't know how much detail you
16 want me to go.

17 Q Sure, why don't you just tell us what you remember
18 and I will take you through the statement on
19 points of it to assist you, but if you can just go
20 by what you recall.

21 A Well, okay, Joyce and I went to see George Lapchuk
22 in a high-rise apartment building in Vancouver and
23 we knocked on his door and he answered, he came to
24 the door and we exchanged some -- Joyce was very
25 cordial with him and she said that we would like



1 the opportunity to talk with him about his
2 testimony, his evidence, and he advised Joyce and
3 me that he had been advised by the Mounties, the
4 RCMP, not to talk with us, and then he said
5 good-bye and closed the door. Joyce decided that,
6 to try to get Lapchuk to say that in the presence
7 of the press, so we went to a television station,
8 I understand the affiliate of David Asper's
9 father's company, channel whatever it was, and
10 rounded up a crew and went back to see Mr. Lapchuk
11 with a crew of -- that is, a reporter and a camera
12 man that were actually hiding around the corner
13 apparently with their microphones on, and knocked
14 on the door again, George came to the door and we
15 were hoping -- I mean, the expectation was that he
16 would turn us away again, possibly with the same
17 explanation, but instead he surprised us and
18 invited us in, so we went in and we had a lengthy
19 talk with him and he stuck with his story, his
20 testimony about witnessing the reenactment of the
21 murder in the motel room, seeing David stab a
22 pillow. When something about the murder came up
23 on the television David -- I don't remember
24 exactly how it unfolded -- but his testimony was
25 that David grabbed a pillow and began stabbing it



1 saying this is how he did it. Well, anyway,
2 George conceded, stuck with his account of
3 witnessing this, but he conceded that it may have
4 all been, that David may have just been kidding
5 and we had actually a very civil conversation with
6 him and it probably lasted 20 minutes, we left and
7 when I got downstairs I remembered, suddenly
8 realized to my horror that I had left my notebook
9 in his apartment, so I went back up and George in
10 the meantime had, somebody had knocked on his door
11 and told him that there had been a television crew
12 lurking around the corner while we were
13 interviewing him in his apartment and he was
14 furious and red in the face, livid and he chased
15 me actually down to the elevator and I got on the
16 elevator and got out of there.

17 Q Did you --

18 A I never did get my notebook back.

19 Q Just if we can back up. What was your
20 understanding, Mr. Henderson, again before you
21 went to see Mr. Lapchuk, of the motel room
22 reenactment evidence, and on two questions, number
23 1, and just to assist you, I think the motel room
24 evidence, as we've called it, is evidence that in
25 a motel room after the murder, after David



1 Milgaard had been questioned, that a group of
2 friends -- the Gail Miller story came on the news
3 and someone bugged David about it at which point
4 two things allegedly happened, one is he grabbed a
5 pillow and stabbed it and, two, uttered words that
6 would be "yes, I killed her, I stabbed her," there
7 was different versions, but basically an admission
8 of having committed the crime, and two questions
9 for you, what was your understanding at this time
10 as to whether or not those events happened and,
11 second of all, whether it was viewed as a joke.
12 What was your understanding of David Milgaard's
13 position at the time?

14 A I had never met David Milgaard, in fact, I didn't
15 meet David Milgaard until the day he was released
16 from prison, so I never asked him whether this
17 took place. His mother and his lawyer led me to
18 believe that this was fabricated evidence and that
19 Lapchuk, for whatever reason, had made all this
20 up, so that was -- I don't know whether I had
21 formed an opinion on whether -- but certainly, I
22 certainly did not suspect that David had actually
23 gotten up and reenacted a murder that he committed
24 or that he admitted to a murder in that motel
25 room.



1 Q Let me just back up. Is it -- I take it when you
2 went to interview George Lapchuk you would have
3 been aware of the significance of his evidence at
4 trial; is that fair?

5 A Yes.

6 Q And I think we saw earlier there's a document
7 where Mr. Asper sent you the transcripts of
8 Lapchuk and Melnyk back in 1990, and so you are
9 telling us your understanding of the position, at
10 least of David Asper and Joyce Milgaard, is that
11 the motel room incident didn't happen, there was
12 no stabbing of a pillow and there was no words
13 uttered by David Milgaard akin to an admission; is
14 that fair?

15 A That was my understanding. I don't know, however,
16 whether David had, what he might have said to his
17 mother or his lawyer about this. I mean, it's
18 possible that he said, that he recalled some
19 acting out and had explained to them that it was a
20 joke. I didn't know what was going on except I
21 was certain that there was no righteous
22 reenactment of the murder and murder confession in
23 that motel room.

24 Q What do you mean by no righteous?

25 A Truthful, I mean, serious.



1 Q So let's just go back though. When you went to
2 see George Lapchuk, is it fair to say that -- your
3 objective was what? Tell me what you had hoped to
4 get from George Lapchuk by way of a favourable
5 statement?

6 A Well, wishful thinking, the objective was to see
7 if George might have found it in his heart to
8 admit to us that he had either made this up or
9 embellished on it. As it turned out, he did not,
10 didn't admit to either of those possibilities.

11 Q And again just so that I'm clear, your
12 understanding, based upon discussions with Mrs.
13 Milgaard and Mr. Asper, was at least the position
14 they were taking is the motel room incident did
15 not happen and that Melnyk and Lapchuk lied in
16 court when they described the conduct and words of
17 David Milgaard?

18 A Well, you know what, again, I'm not sure what
19 feedback David Asper and David's mother, David
20 Milgaard's mother had gotten from David about
21 whether -- whether he was even ever in a motel
22 room with George Lapchuk.

23 Q No, I'm asking what was your understanding, what
24 did they tell you, what was the thinking that you
25 were operating under, what did you -- because you



1 went to interview this fellow. What were you
2 trying to get from him, what was the truth you
3 were seeking to get from him?

4 A We were trying to get him to tell us the truth
5 about what happened or what didn't happen in that
6 motel room, whether there had been an incident
7 like that or whether there had not been an
8 incident, whether -- if an incident had occurred
9 with a pillow and some acting out by David,
10 whether it was serious or obviously a joke. We
11 were hoping to get George Lapchuk to back off of
12 his damaging testimony.

13 Q And what did you understand his evidence to be at
14 trial that was damaging?

15 A That he had described a display by David Milgaard
16 with a pillow of how he murdered Gail Miller and
17 that this display was accompanied by an admission
18 that he had stabbed Gail Miller. That was my
19 understanding of the testimony.

20 Q And when you went in to interview George Lapchuk,
21 you told us what you believed the truth to be when
22 you went to see Albert Cadrain and Ron Wilson.
23 When you went to see George Lapchuk, what did you
24 believe the truth to be about what if anything
25 happened in the motel room, specifically conduct



1 with the pillow and words spoken by David
2 Milgaard?

3 A I didn't know whether there had actually been
4 any -- there had been a display or whether this
5 was fabricated by Lapchuk. If there had been some
6 type of an enactment by David, I believed that it
7 was innocuous, that it didn't mean a damn thing in
8 terms of -- I believe if there had been an
9 enactment, the significance of it was grossly
10 exaggerated by Lapchuk in his testimony at trial.

11 Q So you are saying either you are lying about it
12 because nothing happened --

13 A Right.

14 Q -- or if you are not lying about that part of it
15 and it did happen, you are lying about how you
16 embellished upon it or portrayed it?

17 A Yes, that's correct, and he did not admit to
18 either of those possibilities.

19 Q If we can just scroll down here, just back on the
20 television cameras, was the objective there to try
21 and get him to say on the news that the Mounties
22 told him not to talk to you and Mrs. Milgaard?

23 A Right. Joyce pointed out when we left there the
24 first time that they had no right to tell any
25 witnesses not to talk to the defence and he was



1 telling us that he had been advised not to talk to
2 us and for that reason he had nothing more to say
3 to us.

4 Q And so was the purpose of getting him to repeat
5 that on the news surreptitiously to be able to use
6 that for some purpose?

7 A I assume so.

8 Q And for what purpose?

9 A Ostensibly the purpose of getting Lapchuk to shut
10 us out and tell us that he, again, that he been
11 advised not to talk to us by authorities was to
12 show that if in fact he was to repeat that to us,
13 that would imply that the RCMP was trying to
14 impede justice in the David Milgaard case.

15 Q And so is what you are saying, then, the objective
16 of getting that repeated on tape would be to use
17 it to publicize the fact that the authorities were
18 impeding your ability to interview witnesses?

19 A I assume that that was the strategy. I may add
20 that I did not concur with bringing the television
21 station, or with the television reporter.

22 Q And why not?

23 A Well, I thought it was -- well, it was sneaky and
24 it was what we refer to in journalism as an ambush
25 interview and, you know, I don't subscribe to



1 those kind of tactics in journalism or in
2 investigation.

3 Q So when you were inside Mr. Lapchuk's apartment,
4 was the media sitting outside then listening or
5 trying to listen in?

6 A I don't know whether they were or not. I know
7 that they were discovered by another tenant who
8 alerted Lapchuk to the presence of these newsmen
9 outside his apartment after we left.

10 Q Do you recall asking Mr. Lapchuk why the sudden
11 change of heart, why he would now talk to you?

12 A I don't recall. That's a good question. I'm not
13 sure whether we did. We suspected, I suspected at
14 least that immediately after he left, that Lapchuk
15 was in communication with RCMP somewhere and that
16 they told him, whoa, don't say that. I mean, if
17 they come back, go ahead and talk to them.

18 Q And is that --

19 A That was just supposition on my part.

20 Q And do you recall any discussion with him where
21 you probed why are you now prepared to talk with
22 us or anything of that nature?

23 A I do not.

24 Q In your memo you talk, you say lying seems to be
25 second nature to Lapchuk. Is that a view you



1 formed on the interview with him?

2 A I'm sorry.

3 Q You say here lying seems to be second nature to
4 Lapchuk.

5 A That was my impression of the guy, yeah.

6 Q And why did you say that?

7 A George Lapchuk was, for lack of a better word,
8 George Lapchuk struck me as a chronic bullshitter.
9 I had had a conversation with him, a very
10 unpleasant conversation with him on the phone, I
11 don't know how long before the meeting with him
12 this occurred, but I phoned him from Seattle and
13 found him to be extremely, extremely crude,
14 insulting, arrogant, dismissive and, frankly, when
15 he refused to talk with us, when we actually
16 showed up at his doorstep it didn't surprise me a
17 bit. What surprised me was the second time when
18 we went he turned out to be a fairly gracious
19 person, but nevertheless, that doesn't mean that I
20 believed what he was telling us.

21 Q And what was it that caused you to brand him as a
22 liar, to believe that he wasn't telling you the
23 truth, and what did you think he was lying to you
24 about?

25 A Well, first of all, I didn't believe his account



1 of having witnessed what he perceived to actually,
2 honestly perceived to be a reenactment of a murder
3 and I didn't believe him when he -- I didn't
4 believe his account of hearing David Milgaard
5 confess to the murder, I didn't believe it.

6 Q And why is that?

7 A Well, because innocent people don't go around
8 demonstrating how they committed a murder that
9 they had nothing to do with and they don't confess
10 to having committed a murder that they had nothing
11 to do with, it just didn't make sense.

12 Q If it was said in a joking manner would it make
13 sense?

14 A I suppose it's possible. An impulsive 17-year-old
15 might make a joke over something like that. I
16 didn't know David Milgaard, I knew nothing about
17 his personality and I suppose it's possible that
18 somebody might have made light of the Miller
19 murder in that manner, but even if that was the
20 case, George Lapchuk would, undoubtedly would have
21 known that David wasn't serious about it, that he
22 was only pretending or acting out.

23 Q Was it a case, Mr. Henderson, of, I think you told
24 us earlier you had a strong belief in David's
25 Milgaard's innocence and I think you told us when



1 you looked at the Cadrain, Wilson and John
2 evidence, you said well lookit, that's
3 inconsistent with David's innocence, therefore
4 it's not true.

5 A Right.

6 Q Is it fair to say that when you got to the motel
7 room reenactment evidence of Melnyk and Lapchuk,
8 that their versions of what they saw and heard
9 was, in your view, inconsistent with David
10 Milgaard's innocence and therefore in your view
11 you felt it to be false?

12 A That's another way of putting it, yeah, it did not
13 fit with David's innocence.

14 Q And so you believed it to be, their evidence to be
15 false?

16 A I believed it to be fabricated or embellished.

17 Q So if we can just go down in this interview --

18 A By the way, I just noticed here, if I may add,
19 there's further explanation in my memo as to why I
20 referred to Lapchuk as a chronic liar.

21 Q Okay, if you want to go back -- I'm sorry, where
22 is that, if you can --

23 A "A half dozen claims he made to us
24 (primarily relating to his criminal
25 background and relationship with Ron



1 Wilson) are directly contradicted by his
2 own testimony in the Milgaard trial."

3 Q Okay. So it's that information that you gleaned
4 that caused you to doubt his credibility; is
5 that --

6 A It was one of the factors, yes.

7 Q And do you remember what it was about what he was
8 saying -- do you remember any particulars of
9 what's noted there?

10 A No, I don't.

11 Q If we can just scroll down to the bottom here, you
12 say:

13 "In a 40-minute interview, Lapchuck:
14 - Complained of being haunted and
15 harassed through the years by Joyce
16 Milgaard."

17 What do you recall about that in addition to
18 what's stated?

19 A Well, keep in mind Joyce Milgaard was sitting
20 right there and so -- yeah, I remember him -- he
21 wasn't angry about it, but he did accuse her of
22 unfairly putting pressure on him and pestering him
23 to change his story.

24 Q Were you aware that in 1980 or '81 that Mrs.
25 Milgaard had talked to George Lapchuk by telephone



1 I believe about this subject matter?

2 A I may have been aware. I probably was aware of it
3 at the time. I don't recall it now.

4 Q And the next page:

5 "- Threatened to take legal action
6 against Joyce Milgaard if she pushes him
7 too far."

8 What did he say about that?

9 A I don't recall. It would not have -- since George
10 was acting fairly civil during this conversation,
11 it would have been, would not have been a strident
12 threat or -- but if it's in the report, I heard
13 him threaten her.

14 Q And then it says:

15 "- Insisted that he did not lie about
16 seeing David Milgaard confess to killing
17 Gail Miller and reenact the murder."

18 A Right.

19 Q And did you believe him when he said that?

20 A No, I didn't.

21 Q And:

22 "- Stated that he will go to court and
23 repeat his 1970 testimony if called up
24 to do so."

25 Again, would that be accurate?



1 A Yes.

2 Q And then down at the bottom here:

3 "- Labeled Ron Wilson a liar and
4 weakling who can be "talked into saying
5 anything you want him to say." (This
6 comment was made in reference to
7 Wilson's 1990 recantation.)"

8 Do you recall anything else about that
9 discussion?

10 A No, I don't. Obviously I told him, I had told him
11 about my interview with Ron and his recantation,
12 so that was his comment.

13 Q And then the next page, it says:

14 "- Admitted that he'd lied to us in
15 claiming that the previous night that
16 the Justice Department had told him not
17 to talk to Joyce and to alert Ottawa if
18 she tried to contact him. He amended
19 this by saying that Ottawa told him he
20 didn't have to talk to Joyce.

21 (NOTE: David Asper's theory is
22 that Lapchuck called Ottawa after
23 slamming the door on us Wednesday night
24 and that Ottawa advised him to be more
25 receptive to Joyce if she showed up



1 again.)"

2 A Yeah.

3 Q And again, it looks as though you went to see him
4 the next day after initially being advised not to?

5 A Yes, it appears. I thought it was the same day,
6 but apparently not, apparently it was the next
7 day.

8 Q So he said that he lied to you when he claimed the
9 first time that, it says here the Justice
10 Department had told him not to talk to Joyce?

11 A Yes, he claimed to us that he misrepresented what
12 he had been told by the Mounties.

13 Q You've got Justice Department here. Are you using
14 that interchangeable with the Mounties?

15 A I must be, but I don't remember. My recollection
16 was that we suspected that he picked up the phone
17 and called the Mounties somewhere.

18 Q But when he told you on the first occasion about
19 not talking to you, did he say the Mounties told
20 me not to talk to you or that the Justice
21 Department told me not to talk to you?

22 A I don't recall.

23 Q Just for the record, I had mentioned -- sorry, if
24 we can bring up 158355. 158355, the next page,
25 this is a June 19th, 1990 letter from Mr. Asper to



1 you just enclosing copies of the transcript of
2 Melnik and Lapchuk's evidence, so I take it you
3 would have had their evidence at least a year
4 earlier to review; is that correct?

5 A Yes, right.

6 Q Now, I want to go ahead to August 14th, 1991, and
7 that is the date that David Milgaard's counsel
8 filed their second application with the Federal
9 Minister of Justice, and you recall that happening
10 around that time?

11 A No.

12 Q Okay.

13 A I don't.

14 Q Let me just help you out and I'll show you a few
15 articles. On August 16th Jim McCloskey had a
16 press conference and made some statements about
17 David Milgaard being framed and a cover-up and
18 some media articles as well about Centurion
19 Ministries and the analysis of Larry Fisher's
20 attacks and that that was the basis of the
21 application to the minister. Do you remember that
22 happening?

23 A I do remember. I just don't have immediate recall
24 of the dates.

25 Q Fair enough, and so I think you can take it as a



1 given that it happened in mid August of 1991?

2 A Uh-huh.

3 Q Do you -- you would have talked to (V14)- (V14)- I
4 think in early June of 1991 and had the interview
5 with her. Would you have had any further
6 discussions with her from that time you met her at
7 the bus depot until the time the application was
8 filed?

9 A I don't recall any further contacts with her.

10 Q Are you aware as to whether Jim McCloskey would
11 have talked to her at all?

12 A No.

13 Q Would it be unlikely that he would have followed
14 up with a witness that you had talked to?

15 A I would think that would be highly unlikely,
16 particularly in view of the, of her relative
17 insignificance.

18 Q Okay. If we can go to 160020, and this is in the
19 *Winnipeg Sun*, August 12th, 1991, and just go to
20 the bottom, and there's some comments attributed
21 to you.

22 A Can you blow that up, please?

23 Q Yes. You say:

24 "If David was an American, his
25 conviction would have been overturned a



1 long time ago, says a man who's been
2 probing the case for the past six
3 months."

4 He goes on to talk about you. Can you tell us
5 what you would have been referring to there?

6 A I was undoubtedly referring to the overwhelming
7 circumstantial evidence pointing to Larry Fisher
8 as the actual killer.

9 Q In your earlier evidence -- and please help me out
10 here -- you talked about in the United States, in
11 bringing an application for a person who claims to
12 be wrongfully convicted, I thought you told us --
13 and correct me if I'm wrong -- that you had to
14 establish probable innocence, was that right, when
15 you went to Court?

16 A Yes, that's correct.

17 Q And so --

18 A You have to be granted an evidentiary hearing.

19 Q Right. But I -- and I thought -- and please
20 correct me if I'm wrong -- was the test in order
21 to get a remedy in United States, what was -- what
22 does an accused person or a convicted person have
23 to establish to get a remedy as --

24 A Well this article, by the way, I assume appeared
25 after we had done all of our work, is that



1 correct, after we had gotten statements from --

2 Q The victims, yes.

3 A Yes, okay. Well what I was saying here was, what
4 I was basing this on was the fact that we had,
5 number one, first of all there was an overwhelming
6 circumstantial case pointing to Larry Fisher as
7 the probable killer -- and I won't go into detail
8 unless somebody wants me to -- but it was
9 certainly very, very compelling to me; we also had
10 recantations, a recantation from the state's most
11 important witness, Ron Miller (sic), where he said
12 that his, his story that he told in Court was not
13 the truth; we had a statement from Albert Cadrain
14 to the effect that he had been mistreated by the
15 police and that the treatment that he received
16 ultimately put him in a mental institution, the
17 point being that -- and we had a statement from
18 his brother saying that Albert, that Albert's --
19 saying in effect that Albert's testimony should
20 not be viewed as reliable because of his impaired
21 mental state.

22 That, in my opinion at the time,
23 would have been enough to persuade a judge to
24 grant an evidentiary hearing and, once all of the
25 evidence was heard at this hearing, I think the



1 conviction would have been overturned. That was
2 my feeling at the time.

3 Q Okay. And in the United States then, once you get
4 the evidentiary hearing, am I right that the onus
5 on the convicted person is to establish probable
6 innocence; is that right?

7 A The onus on the convicted person is to persuade,
8 that is the onus on the defence is to persuade a
9 judge that the -- that the person has been -- that
10 I -- the wrong person is in prison. And let me
11 add, though, that since -- since I made -- since
12 the -- since the Milgaard investigation we have
13 had a case or two where, where we did not prevail
14 in Court, and probably because recantations are
15 viewed nowadays with more skepticism than they
16 were in the past.

17 Q And so, again, at this point you talk about, it
18 says:

19 "Henderson ... says there is no doubt
20 Milgaard is innocent, and he has the
21 evidence - and a profile of the man he
22 believes is guilty of the crime - to
23 prove it."

24 And I think, you've just recounted the evidence
25 as that you had, and is it fair to say, at this



1 time, that you felt that you could establish,
2 with evidence, proof that David Milgaard was
3 innocent?

4 A At the time, yes, and I still feel that way.
5 Certainly, I think that a jury, hearing everything
6 we had, would have concurred with my belief in
7 David's innocence.

8 Q If we can go to the right-hand side of that
9 column, it says here -- and I believe this is
10 attributed to you -- it say s:

11 "One of the women he
12 confessed to raping worked with Miller,
13 and both women regularly travelled the
14 same bus route as Fisher."

15 Do you know who that was?

16 A No, I don't.

17 Q And then:

18 "Although Milgaard had been
19 in the area at the time the crime was
20 committed, it later became evident ...
21 police had the wrong man, Henderson
22 said."

23 And what were you referring to there, when and
24 who?

25 A "Although Milgaard had been in



1 the area at the time the crime was
2 committed, it later became evident
3 police had the wrong man ...",
4 that's a personal opinion.

5 Q Evident to you; is that --

6 A Evident to me, and I maintain that it was evident
7 to the police, they admitted it in their own -- in
8 a news article several days after the Miller
9 murder, that the strong possibility that the rapes
10 committed before the Miller murder and the murder
11 itself were likely committed by the same person.

12 Q And so again, when you say "the police admitted
13 it", I don't think you are saying the police
14 admitted it --

15 A They acknowledged that --

16 Q The crimes were connected?

17 A They acknowledged that it was quite possible they
18 were connected. If I misspeak, let me know.

19 Q And then, here, the quote is:

20 "'A year later this serial
21 rapist emerged, who has now confessed to
22 six rapes - three within a block of
23 where Miller was killed, and although
24 they had a trail of evidence leading
25 back to the house Milgaard was visiting,



1 Fisher was living in the basement.'"

2 The comment about the three rapes being within a
3 block of where Milgaard -- of where Miller was
4 killed; do you recall where that came from?

5 A Umm, no, I don't. I did a map showing the
6 locations of all the rapes and the -- I can't
7 picture, now, whether it -- whether these rapes
8 were within a block of that. Keep in mind that, I
9 don't know who wrote this story, but I don't
10 remember telling him, specifically saying this in
11 these exact same words. As I recall, now, I don't
12 think the -- I can't say for sure that I recall
13 that three of the rapes were within a block of
14 where the murder --

15 Q The evidence -- oh, sorry, the record --

16 A Is that an exaggeration? It could be, I'm not
17 sure.

18 Q The evidence suggests that they were five, six,
19 seven blocks away, a couple of them anyway.

20 A Well then I'm going to, I'm going to, to go so far
21 as to say that, since I would have known this
22 since I did the map, I was probably misquoted in
23 the story.

24 Q And may have said --

25 A If I knew better, I wouldn't have said that, --



1 Q Okay.

2 A -- and I would have known better because I had a
3 map.

4 Q And what about:

5 "... a trail of evidence leading back to
6 the house Milgaard was visiting... ",
7 the -- you've made mention of the wallet, I think
8 back in January, that was found a couple doors
9 down?

10 A Yeah, umm --

11 Q Was there anything else that was part of "a trail
12 of evidence that led to the house"?

13 A I don't recall. The only thing that comes to mind
14 is the wallet that was a door or two away from
15 Fisher's house. There may have been something
16 else but I can't recall what it was.

17 Q 025987. This is August 13th, 1991, the next day,
18 and there is a quote attributed to you here, it
19 says:

20 " 'One of the women said the
21 officer who interviewed her about the
22 rape at the time said: "This is just
23 like the Gail Miller case", ' said Paul
24 Henderson, a Seattle-based investigator
25 for Centurion."



1 Do you have any recollection of this at all?

2 A A vague memory of that, but I can't tell you which
3 one of the victims that might have been.

4 Q 325148. This is the Saskatoon *StarPhoenix* on
5 August 16, 1991, and the headline is *Milgaard*
6 *framed, group contends*, and the "group" is the
7 Centurion Ministries, and although they quote Jim
8 McCloskey in this article would it be fair to say
9 that you shared Mr. McCloskey's view at the time
10 as expressed in this article on behalf of
11 Centurion Ministries?

12 A Let me read this, if I may?

13 Q Just go back to the -- do you want to read the
14 whole article?

15 A Sure.

16 Q Just go back to the full, just enlarge this,
17 please.

18 A Okay. (*Witness reading*) I get -- I'm finished
19 now. And these are, the words used in this story,
20 which are not, some of them are not direct quotes
21 from Jim McCloskey, but those are his words. You
22 know, I don't like to use the word "framed". I
23 concur with, I share his opinion to this day that
24 the witnesses in the *Milgaard* case were coerced by
25 the police in one manner or another.



1 Q What about, what is your view, what does the word
2 "framed" mean to you, Mr. Henderson?

3 A Actually, I'm not sure what "framed" means, it
4 means -- it certainly means victimized, it means
5 that you are set up, that you are convicted of a
6 crime with evidence that has either been coerced
7 from witnesses or manufactured by witnesses, any
8 number of --

9 Q What would be the --

10 A -- any number of reasons can lead to a wrongful
11 conviction and some people refer to this as being
12 framed.

13 Q Well would you agree that a "frame" is some type
14 of dishonest or wrongful conduct to put together a
15 case to convict someone you know to be innocent?

16 A Yes, certainly.

17 Q And so that "framing", and "framing" by
18 definition -- and I can tell you I did look at
19 various dictionary meanings --

20 A Right, yeah.

21 Q -- talks about manufacturing something against an
22 innocent person, is that -- would that be your
23 understanding?

24 A Yes.

25 Q Someone that you know to be innocent, so in other



1 words --

2 A Oh, that you know, wittingly --

3 Q Yes.

4 A -- setting up somebody? Yes, I -- go ahead.

5 Q And I'm just wondering; is that when you use the
6 word "frame"?

7 A I can't say that I -- that Saskatoon -- I wouldn't
8 venture to say that Saskatoon Police knowingly set
9 up David Milgaard for -- I mean, I can't say that
10 they knew he was innocent and they went ahead and
11 proceeded with a dishonest investigation, I can't
12 say that. Maybe they thought that they had the
13 right guy. On the other hand, the evidence that
14 came from these witnesses against David Milgaard
15 is very suspicious, the origin of it, I -- people
16 don't just make up stories about somebody and --
17 without being influenced by police.

18 Q Was it your view, at this time, that the Saskatoon
19 City Police had framed David Milgaard?

20 A It was my feeling that they elicited -- they put
21 pressure on witnesses to come up with statements
22 that weren't true, --

23 Q And did they --

24 A -- and that they knowingly, that they realized
25 that they were obviously putting undue pressure on



1 these witnesses to come up with, with information
2 that they otherwise would, likely would not have
3 come up with.

4 Q And was it your view at the time, though, that
5 these police officers, in influencing the
6 witnesses, were getting evidence from these
7 witnesses that the police officers themselves knew
8 was not true?

9 A I can't say that. I don't know that for sure.
10 After all, the so-called trail of evidence pointed
11 to David Milgaard as well as Larry Fisher, it led
12 to a house where David Milgaard had been on the
13 morning of the murder, so it's possible that they
14 actually -- that the police who put this case
15 together actually believed they had the right
16 person. I don't know.

17 Q So again, as far as the headline, and well the
18 headline *Milgaard framed, group contends*, the
19 group is the Centurion Ministries; did the
20 Centurion Ministries, in August of 1991, contend
21 that David Milgaard was framed by the Saskatoon
22 City Police?

23 A Did what?

24 Q Did they --

25 A Yes, in the sense that Jim McCloskey and I both



1 believed that false testimony was elicited from
2 these witnesses and that undue pressure, whatever
3 it amounted to, was put on these witnesses to go
4 along with the police agenda.

5 Q I guess what I am still not clear on; are you in
6 Mr. McCloskey's camp or the Centurion Ministries'
7 camp in stating that the city police framed David
8 Milgaard? And when I say "framed" I think what we
9 both have said is to knowingly convict an innocent
10 person, or words to that effect, or to do
11 something --

12 A Well, you know, I don't know whether Jim shares,
13 has the same interpretation of "framed".
14 "Framed", to me, means simply that a dishonest
15 investigation took place and that witnesses were
16 under, under pressure of one form or another to
17 tell the police what the police wanted to hear,
18 and --

19 Q But if they did that and convicted the right
20 person would it still be a frame?

21 A Well --

22 Q Does "frame" not connote that you have convicted
23 the wrong person and that you --

24 A Oh, absolutely, of course it does.

25 Q -- and that you knew so?



1 A Yes, but it doesn't necessarily, in this case it
2 doesn't necessarily mean that police knew they
3 were building evidence against an innocent person,
4 I mean it's possible that they thought that David
5 Milgaard was a good suspect.

6 Q Okay. So that --

7 A That is -- that is when this was in the
8 investigative phase and went to trial. When Larry
9 Fisher emerged in 1970 the picture changed
10 dramatically.

11 Q Yeah, no, and I'm just trying to understand your
12 views at the time compared to what is in this
13 newspaper article and what is attributed to
14 Mr. McCloskey and Centurion Ministries, that the
15 police framed David Milgaard, and where we're
16 getting hung up is on two points; one is --

17 A We're talking about semantics here. The "frame"
18 is a word that it's just kind of hard for me to --
19 I don't use the word any more. I used to. I
20 think that the police were responsible for the
21 wrongful conviction of David Milgaard.

22 Q And are you stopping short of saying that, at this
23 time, your view was that they knowingly convicted
24 the -- an innocent person?

25 A I can't say that they knowingly set up an innocent



1 person for a conviction, --

2 Q Okay.

3 A -- in my present term I can't say that, they might
4 have believed in their case.

5 Q Okay. And then if we can go to 226849. What
6 about Mr. McCloskey's view, and again do you
7 recall whether he -- what he thought at the time
8 as far as the frame, would you have discussed this
9 with him at the time these press conferences were
10 going on?

11 A Oh, I hope, sure. I mean I was in constant
12 communication with Jim about this case, everything
13 that I did was immediately forwarded to him, and
14 when we wrapped it up he came down here and had --
15 held the press conferences, he went and talked to
16 the Miller family, and did a lot of things.

17 I would venture to say that Jim
18 would not insist, if he were sitting here today,
19 that police intentionally set up the conviction of
20 an innocent person. I think he would agree that
21 it's possible that one or more police officers
22 involved in this case actually believed that David
23 Milgaard was a good suspect and the person likely
24 to have committed the murder.

25 Q And I guess --



1 A Now --

2 Q -- my question though, Mr. Henderson, is this is
3 what is stated in the press and what is attributed
4 to both Centurion Ministries and to Mr. McCloskey
5 that a frame is alleged, and I'm trying to
6 understand through you, who was investigating on
7 behalf of Centurion Ministries, --

8 A Uh-huh.

9 Q -- what they meant by that?

10 A Well, I don't know whether McCloskey actually used
11 the word "framed". What he was saying, though, is
12 that police actually went out and they manipulated
13 witnesses into attesting to events that resulted
14 in the conviction of David Milgaard, who
15 ultimately turned out to be innocent.

16 Q Okay. If we can go to 226849, please.

17 MS. BOSWELL (Document Manager): We have
18 226817 here.

19 MR. HODSON: Except that's not the same
20 document.

21 MS. BOSWELL (Document Manager): No.

22 BY MR. HODSON:

23 Q Okay. Maybe we'll need to put it up on Elmo. I
24 must have given you the wrong number. If we can
25 just enlarge that, please. You will see there,



1 this is the next day:

2 "'Frame' alleged:",

3 and then it goes on to say:

4 "McCloskey concludes Saskatoon Police
5 framed Milgaard."

6 And, again, this is the next day; anything
7 different to add to what you've told us about the
8 use of the word "framed" there?

9 A Well I think that's a newspaper word, not
10 necessarily Jim McCloskey's word, and --

11 Q Okay. If we can go --

12 A -- I think he would find a better way of putting
13 it than that.

14 Q If we could go to 218798. And this is an article
15 written by Peter Edwards, I think, of the *Toronto*
16 *Star* on August 16th. Do you recall there being a
17 press conference of August 16th, 1991 in Toronto
18 where Mr. McCloskey gave his views on the matter?

19 A Vaguely.

20 Q Okay. And this is an article from that press
21 conference, and it's in this format, there is a
22 newspaper article that exists as well. But it
23 starts off, if we can call that out:

24 "Saskatoon Police fabricated
25 evidence to frame an innocent teenager



1 for the 1969 rape and murder of nurse's
2 aide and have covered up their
3 misconduct ever since, charges a
4 Christian organization investigating
5 David Milgaard's murder conviction.

6 'The Saskatoon police literally
7 manufactured a case against David
8 Milgaard out of thin air,', Rev. Jim
9 McCloskey of New Jersey based Centurion
10 Ministries said yesterday. '... This
11 Milgaard conviction is a classic
12 frame.'

13 Again, would that be something Mr. Henderson,
14 would you agree with the comments both attributed
15 to Centurion Ministries and to Mr. McCloskey;
16 were those your views at the time

17 A Well if this was an accurate quote, if Jim was
18 being accurately quoted in this I stand corrected,
19 he did use the word "frame".

20 What he is saying here though, I
21 believe, is simply that there was no evidence
22 whatsoever that Dave Milgaard was involved in this
23 murder until police got ahold of some teenagers,
24 put pressure on them to implicate Milgaard, and
25 that was the full extent of the case against --



1 Q Okay.

2 A -- a 16-year-old kid. He says that they
3 "manufactured a case against Milgaard out of thin
4 air", what he is saying is that they turned --
5 they put pressure on three teenagers to lie, and
6 --

7 Q It says here:

8 "Saskatoon Police fabricated
9 evidence to frame an innocent teenager
10 ...";

11 and is that something that, was that your view at
12 the time, did you share that view?

13 A Essentially, yes, I shared Jim's view that these
14 teenagers were coerced into lying in trial.

15 Q And so giving fabricated evidence to frame an
16 innocent teenager -- and I don't want to go back
17 to the word "framed" -- but when -- you tell me,
18 when you use the word "frame" or when you agree
19 with the use of the word "frame", what do you
20 understand the word to mean?

21 A Well, I don't use the word "frame" any more, a
22 better way of saying is "set up". I believe that
23 Milgaard was set up by zealous police who
24 undoubtedly had tunnel vision in terms of who they
25 thought was responsible for this crime. They



1 were, as they found out a year later, they were
2 wrong, and -- which is often, often what happens
3 when you set out -- when zealous police set out to
4 investigate somebody with tunnel vision. That's
5 how wrongful convictions occur or one of many ways
6 in which they occur.

7 Q If we can go to the next page, again the same
8 article, it says:

9 "Threats were used to get key
10 witnesses to eventually implicate
11 Milgaard for the murder, McCloskey said.

12 One witness, Albert Cadrain,
13 was stripped naked and browbeaten after
14 being picked up for vagrancy.

15 Another teenaged witness, Ron
16 Wilson, was in jail for fraud when
17 approached for testimony.

18 Cadrain and Wilson have since
19 recanted their courtroom testimony in
20 statements to Centurion Ministries.

21 A third witness, Nicole John,
22 originally gave police a statement
23 saying she didn't know about the case."

24 Scroll down:

25 "After what McCloskey called



1 sustained 'terrorism' by police, John
2 gave a version of events which
3 apparently conflicts with physical
4 evidence. She said she saw Milgaard
5 murder Miller before raping her.

6 However, an absence of any knife wounds
7 in her dress indicates she was sexually
8 assaulted first, McCloskey said."

9 And, again, would you have shared the views
10 expressed by Mr. McCloskey, or at least reported
11 here as being attributed to Mr. McCloskey; did
12 you share those views at the time?

13 A Well I may have been aware of some of this
14 information, I don't recall, I don't recall,
15 however I don't know. For example, I don't
16 remember hearing anything about Albert Cadrain
17 being stripped and browbeaten after picked up for
18 vagrancy in Regina, I didn't recall that Ron
19 Wilson -- don't recall at this point, years later,
20 that Ron Wilson was in jail when he was approached
21 by police. This stuff may have slipped my mind,
22 or my mind through the years.

23 Q And what about "sustained 'terrorism' by police",
24 I appreciate these are not your words, but is that
25 something you believed at the time or can you



1 elaborate on what this might have --

2 A Well based on, you know, I don't know how long
3 these witnesses were held and I can only -- I can
4 only rely on information, limited information to
5 have any idea what really happened to 'em, but
6 based on Dennis Cadrain's description to me of his
7 brother being held over a period of months and
8 detained by police for 12-14 hours a day over a
9 period of a long time, I'm not sure that that
10 would qualify as 'sustained terrorism' but, you
11 know, Shorty Cadrain, Albert Cadrain certainly
12 described it as an ordeal. I don't know, I don't
13 think anybody knows what happened to Nichol John,
14 but based on what we know the way she was handled
15 by police also had a, had a profound effect on her
16 as well.

17 Q And, Mr. Henderson -- oh, sorry?

18 A Well, and then Ron Wilson told me that he was
19 threatened by the police, so --

20 Q Threatened with what?

21 A Wilson told me that he was pressured by police
22 into coming up with false allegations about
23 Milgaard. You know, I don't know, --

24 Q I'm sorry --

25 A -- this was not my press conference and I don't



1 know, I can't say, I have no comment on whether
2 McCloskey was on the mark when he referred to
3 "sustained 'terrorism' by police", that was his
4 opinion, I don't know --

5 Q No, and I appreciate that, but it was -- the
6 article attributes it to Centurion Ministries,
7 which --

8 A Well, Jim McCloskey is Centurion Ministries.

9 Q And I'm just trying to get from you whether what
10 is reported there is similar to what you thought
11 or said at the time, that's all?

12 A I don't know. He had follow-up contact, after I
13 contacted the victims he came up here and he had
14 follow-up contact, perhaps -- I assume that he
15 learned a great deal more about --

16 Q Are you aware of Jim McCloskey talking to any of
17 the victims of the Larry Fisher assaults or any of
18 the witnesses involved in David Milgaard's case?

19 A No. I know that he talked with Gail Miller's
20 parents and family.

21 Q Okay.

22 A I don't know that he had any contact with any of
23 the victims.

24 Q And would it be -- I think you told me earlier
25 that it, certainly with (V14)- (V14)-, it would be



1 highly unlikely. You did the legwork with the
2 sexual assault victims; --

3 A Right.

4 Q -- do you think that Mr. McCloskey would have
5 followed up and talked with them?

6 A I -- to my knowledge he did not, no.

7 Q What about Ron Wilson; did he talk to Ron Wilson
8 after you talked to Ron Wilson?

9 A I don't believe that he did.

10 Q Albert Cadrain and Dennis Cadrain; did he talk to
11 them?

12 A No, not to my knowledge.

13 Q Nichol John?

14 A Not to my knowledge.

15 Q George Melnyk -- or George Lapchuk?

16 A No, I'm certain he didn't talk with George.

17 Q Craig Melnyk?

18 A The same thing.

19 Q Do you know if he talked to any police officers
20 who were involved in the original investigation?

21 A I'm not aware, offhand, of any contact with the
22 police.

23 Q And, sir, you had mentioned just that Ron Wilson
24 told you that the police had threatened him; was
25 that in relation to him being a suspect, was



1 that -- or what was the threat that he told you
2 about?

3 A I would have to review my -- the statement that I
4 took from -- that I wrote out for him to see what,
5 exactly what he told me, I don't remember offhand.

6 Q But was it a physical threat, that they were going
7 to cause him physical harm?

8 A I would have to see my statement.

9 Q Okay, I'll get that and we can --

10 A Okay, yeah, we'll take a look at it.

11 Q If we could then just -- at this time, this press
12 conference of August 16, 1991, and we certainly
13 heard from Mr. Asper that around the time David
14 Milgaard filed his second application with the
15 Minister of Justice, which was dated August 14th,
16 '91, that there was also a fair bit of media
17 coverage at the time to publicize David Milgaard's
18 case. Do you recall being part of that process or
19 the decision-making process on that?

20 A Do I recall being contacted by the press?

21 Q Well, no, but I'll get to that, but there seemed
22 to be at the time that the application was filed
23 with the minister, Mr. McCloskey went to Toronto
24 and had a press conference.

25 A Yes.



1 Q Were you there?

2 A No, I wasn't, no.

3 Q And did you play any part in making the decision
4 to have the press conference or what would be said
5 at the press conference?

6 A No, no, that was Jim's doing. I was -- by then I
7 was down in Los Angeles working on another murder
8 case.

9 Q If we can go to August, just carrying on
10 chronologically, the end of August, 1991, we've
11 heard a fair bit of evidence about the police
12 files at the Saskatoon City Police station
13 relating to Larry Fisher's assaults and we've
14 heard various evidence about whether they existed,
15 when they existed, etcetera. We touched on in
16 January your meeting with Tom Vanin and the one
17 file.

18 A Uh-huh.

19 Q But in late August, 1991 did you have any direct
20 involvement or dealings on this issue?

21 A On what issue?

22 Q On the issue of -- on August 29th there was a
23 newspaper article that said the police are looking
24 for missing Fisher files and then there was an
25 investigation by the Police Commission looking at



1 where these files went, etcetera, and I don't see
2 your name anywhere in there and I'm just wondering
3 --

4 A No, I don't -- all that was going on without my
5 knowledge.

6 Q And then we can go ahead to I think September. Do
7 you remember a fellow by the name of Neil Boyd and
8 Kim Rossmo being involved in this matter?

9 A Vaguely.

10 Q And what is your recollection of -- did you know
11 who these people were?

12 A Not until I was reminded after I arrived here last
13 night.

14 Q Neil Boyd was a professor of criminology at Simon
15 Fraser University and Kim Rossmo was a Vancouver
16 City Police detective who was doing his Ph.D. in
17 criminology and was developing expertise in
18 geographic profiling.

19 A Yes.

20 Q And they both testified last week that they, I
21 think, received an academic grant to look at a
22 wrongful conviction, chose David Milgaard's case
23 and studied it and went out and interviewed a
24 number of witnesses and produced a report in
25 October of 1991. Does that refresh your memory at



1 all?

2 A Only vaguely.

3 Q Okay. If we can go to 335020, and what was your
4 understanding, if any, of where they fit into the
5 piece?

6 A Where who fit in?

7 Q Rossmo and Boyd. Do you remember?

8 A I remember so little about these two people that I
9 can't tell you what I was thinking what their role
10 might be. I don't know. You know, my involvement
11 in this case was limited to specific missions,
12 specific witnesses, and once I left here, a lot of
13 things were going on without my knowledge, so I
14 may have talked to these guys, they may have
15 contacted me, I don't recall ever meeting with
16 them, so anyway, I'm having a hard time putting
17 them in perspective.

18 Q Sure. Here, this is a tape, September 17th, 1991
19 of the *Shirley Show*, which is a Canadian -- I'm
20 not going to play it, don't worry -- it's a
21 Canadian, or was a news, I'm not sure, it was a
22 program that was on.

23 A Right.

24 Q And this is a transcript, and I think we have
25 watched parts of it, but this is a show that



1 involved, I think in this episode it was David
2 Asper, Neil Boyd, Joyce Milgaard and David
3 Milgaard on the television monitor from prison.
4 Do you remember appearing in the studio and
5 participating in this?

6 A Yes. I was one of the panelists.

7 Q Panelists?

8 A I think I had, uttered about four words. They had
9 about 12 people on the panel.

10 Q And Neil Boyd was one of the people there at the
11 time. Do you recall that?

12 A I don't, no.

13 Q If we could go to 335029 and just a couple of
14 comments. This is, Shirley is talking to David
15 Asper about the motel room reenactment and just at
16 the bottom, this is what Mr. Asper says, and this
17 is September, 1991, he says:

18 "We located a lady named Deborah Hall
19 who was at that motel room and
20 participating and watching the events
21 unfold. She says that the people who
22 said that Milgaard reenacted the crime
23 were lyers. She said there was no
24 reenactment. We learned that the Crown
25 Attorney had in his possession the



1 statement of another girl who was in the
2 room who, when asked to, to tell the
3 police about what had happened that
4 night, makes absolutely no mention of
5 David Milgaard reenacting a murder.
6 None of these, or neither of these
7 people were called to testify at the
8 trial and that's the reenactment."

9 Do you remember the name Deb Hall, does that ring
10 a bell at all?

11 A No, I don't.

12 Q Then if we can go to the next page, I think this
13 is where you first become involved in the
14 discussions, Mr. Henderson.

15 A This is still the *Shirley Show*?

16 Q Yes, it is.

17 A And you say:

18 "Let me, let me make one point here I
19 think is very important. A great deal
20 of significance is being attached to
21 this, this motel scene. But keep in
22 mind that both of these witnesses came
23 in at the very last minute, the trial
24 was actually in, in progress when they
25 brought these people..."



1 Shirley:

2 "Which witnesses are you talking about
3 Paul."

4 You answer:

5 "Melnyk and Lapchuk, the two witnesses
6 attesting to the reenactment in the
7 motel room. Now, in the United States,
8 we see, see this same type of thing
9 happen quite frequently. At the last
10 minute the prosecution can put the icing
11 on the cake will bring in a jailhouse
12 informant. Now, jailhouse informants
13 have been proven to be notoriously
14 unreliable, a prosecution ploy, quite
15 often in the United States, I would
16 consider this thing, this motel
17 reenactment to be anything other than a
18 prosecution ploy to put the icing on, on
19 the cake, or the case."

20 And I'm wondering if you can explain what you
21 mean by a prosecution ploy or just elaborate on
22 this comment?

23 A Well, this was, this statement was based on my
24 experience of seeing last-minute witnesses being
25 brought in to testify for the prosecution when



1 things weren't going well for the prosecution. I
2 don't remember seeing this, but it's apparent to
3 me that I considered the appearance of Lapchuk and
4 Melnyk, I thought it was a very strong possibility
5 that these guys were brought in in the last minute
6 to bolster the State's case and that considering
7 the circumstances, the truthfulness of their
8 testimony was highly questionable.

9 Q And when you say prosecution ploy, are you
10 suggesting that the prosecutor somehow was
11 involved in a ploy to put evidence that ought not
12 to have been put?

13 A Well, that could have been a poor choice of words.
14 I don't remember how Lapchuk and Melnyk actually
15 surfaced. It could be that -- come to think of
16 it, I think it may be Ronald Wilson I later heard
17 suggested them as witnesses, I don't know if
18 there's any truth to that or not, but when I say
19 prosecution, I was probably, I probably misspoke.
20 If there were any culprits in this, it would more
21 likely be the police, not the prosecution.

22 Q Is it fair to read what you are saying here that
23 you did not view the evidence of Melnyk and
24 Lapchuk to be truthful at trial?

25 A I did not view it to be truthful.



1 Q And on what was that based?

2 A Primarily based on the improbability of an
3 innocent man reenacting a murder that he didn't
4 have anything to do with and confessing to a
5 murder that he didn't have anything to do with.
6 People just don't do that.

7 Q Okay. If we can go to page 335037, this is again
8 the *Shirley Show*, and you say:

9 "There's no evidence against him. Two
10 of the three witnesses who testified
11 against him in the 1970 trial have
12 recanted their testimony. I've spoken
13 with both of them at length and they
14 gave convincing recantations and no
15 reason in the world why these witnesses
16 should, could have, should have changed
17 their minds and told me that they, that
18 they lied in 1970 if it wasn't true."

19 Now, I'm presuming one of the witnesses who
20 recanted is Ron Wilson. Who is the other?

21 A It appears that I misspoke here because in truth I
22 had one recantation, that being Ron Wilson, and in
23 fact Shorty Cadrain insisted that his testimony,
24 that he testified truthfully at trial based on
25 what he believed at the time, so this would be



1 misleading.

2 Q Did you view Albert Cadrain's June 24th, 1990
3 statement, that's where he talked about his
4 treatment by the police and the mental hell and
5 torture, you know the statement I'm speaking of?

6 A Yes.

7 Q Did you view that as a recantation?

8 A I viewed it as a possible and maybe even likely
9 explanation for his incriminating testimony at
10 trial.

11 Q But would that be the same as a recantation?

12 A Not truly a recantation, an explanation for having
13 testified against -- for having contributed to the
14 wrongful conviction. It was an explanation to me,
15 it wasn't a recantation, no. It fell far short in
16 fact of a recantation.

17 Q If we can go to 154640, please. Now, on October
18 7th, 1991 Neil Boyd and Kim Rossmo interviewed Ron
19 Wilson as part of the work they were doing and
20 this is the transcript of that interview that they
21 had with Ron Wilson and this would be about 15
22 months after -- actually even longer, probably 16
23 or 17 months after he first gave the statement to
24 you on June 4th, 1990.

25 A Okay.



1 Q And I don't propose to go through this, I just
2 bring it up for the record, that they did
3 interview him, and then if we could bring up
4 000864 and this is the report they produced in
5 October, 1991 and these gentlemen testified last
6 week, Mr. Henderson, and I think I provided you
7 with at least excerpts of Dr. Rossmo's evidence
8 about his take on Ron Wilson. Do you recall
9 reading through that? You are generally aware of
10 that; is that fair?

11 A I got that late last night and I have not had a
12 chance to read it.

13 Q Okay. I'll just go through quickly parts of it.
14 This is a report that they produced in October,
15 1990, and go to 000882, and I just want to go
16 through -- they interviewed Ron Wilson after you
17 did and they reached, I think it's fair to say,
18 some different conclusions about what caused Ron
19 Wilson, or what they believed caused Ron Wilson to
20 lie at trial, and I think in the statement that
21 you took from Ron Wilson, I think Ron Wilson told
22 you or the statement says that the police
23 manipulated, coerced and bullied him and that's
24 why he lied, and I'm generally stating what Rossmo
25 and Boyd concluded, is that it wasn't police



1 conduct or improper police conduct, but rather Ron
2 Wilson's personality -- I'm not explaining it
3 well, but his frailties; in other words, that it
4 was his own doing as opposed to some wrongdoing by
5 the police, and that's very general, I mean, they
6 stated it far more specifically, but you are
7 generally aware that that was the position they
8 took here last week, or that they took in this
9 report? You are?

10 A I'm not even generally aware of what they had to
11 say last week.

12 Q Okay. Well, the reason I put it that way is
13 because I went over it with you this morning, Mr.
14 Henderson, I was hoping we could save a bit of
15 time, but I can quickly go through it and just go
16 over what they said.

17 A I do recall you saying that their conclusions were
18 that Ron Wilson was an easy mark, that he went
19 along with this because he was weak willed and
20 anxious to please and get himself out of, get
21 himself back in good graces with the police or
22 something like that.

23 Q No, I'll take you through just quickly a few short
24 excerpts here and you can see their words and then
25 I'll ask you to comment.



1 A Yeah.

2 Q Okay? And here's what they say, they talk about
3 the credibility of Ron Wilson's recantation, and
4 that's the one that you obtained, it says:

5 "The Minister of Justice did not believe
6 the recantation given by Ron Wilson to
7 private investigator Paul Henderson in
8 June of 1990, and later confirmed before
9 ... Eugene Williams ..."

10 Next page,

11 "-- the Minister said that Wilson
12 exaggerated the length of his polygraph
13 testing with police, and she rejected
14 his claim of undue police pressure."

15 And then it goes on here:

16 "Wilson's claims of manipulation and
17 pressure by the police are difficult to
18 assess. The police were persistent in
19 their pursuit of Wilson, John and
20 Cadrain, but this would not be
21 unexpected, given their perception that
22 David Milgaard was responsible for such
23 a serious crime."

24 Scroll down:

25 "On the other hand, Wilson, Cadrain, and



1 John were also unsophisticated, socially
2 and economically disadvantaged
3 teenagers, and some of the tactics
4 police employed may have inadvertently
5 helped to produce the inconsistency of
6 the statements that these three
7 witnesses provided between January and
8 May of 1969. Nichol John was kept in
9 police cells overnight before making her
10 statement, an event which has not been
11 adequately explained."

12 And then scroll down:

13 "Ron Wilson indicated to Eugene Williams
14 in 1990, and in a more recent interview,
15 that police treated him well, "They all
16 treated me nice. What I tried to get
17 across to Williams, which I never could,
18 was that, like when you're watching
19 TV...you've got that bad cop who wants
20 to beat this out of you and stuff - it
21 doesn't happen that way. Later on in my
22 dealings I had bad cops. But these guys
23 were nice. I think, now that I look
24 back on it, being nice gets them further
25 ahead than being nasty to you."



1 Then the next page, and if you go to the next
2 page, and then:

3 "After his recantation to Paul Henderson
4 in June of 1990, Ron Wilson lost his
5 job, began drinking heavily, and almost
6 lost his marriage. The self interest
7 that might have propelled his
8 recantation is difficult to find. His
9 motivation for his trial testimony was
10 explained in the following manner."

11 And then just scroll down, and this is taken from
12 that transcript of the interview that they had:

13 "Q When you were testifying in court, did
14 you feel you were lying?

15 A I felt I was and I felt I wasn't. I
16 figured, well, somehow it was getting
17 put together, so it's got to be
18 right."

19 "Q Did it not bother you ... let me back
20 just back up a second, here. So, at
21 trial you knew that what you were saying
22 wasn't correct, that you hadn't actually
23 seen that stuff, right?

24 A Exactly.

25 Q But at the time, did you think that



1 David Milgaard had done the murder?

2 A I was starting to think he had,
3 yeah...

4 Q Did it bother you that David was going
5 to be put away for life?

6 A Not really. At that point in time I
7 didn't give a shit."

8 Next page:

9 "Q Okay, now, did not give a shit because
10 you thought that he had done it, or did
11 you not give a shit because you didn't
12 like him, or didn't care for him, or did
13 you not give a shit because of your mind
14 being messed up on drugs, or...?

15 A I would say I did not give a shit
16 because it wasn't me, and y'know, I
17 was happy for that. I just wanted to
18 get the hell out of there and whatever
19 happened, happened. And I figured,
20 well, okay in two years he'll be out
21 on parole, no big deal. And then I
22 was kind of thinking if he gets out on
23 parole, he's going to come looking for
24 me, so I was paranoid about that."

25 And then the bottom, just scroll down:



1 "According to Ron --"

2 And these are the words of Rossmo and Boyd:

3 "According to Ron Wilson, he was simply
4 interested in getting free from police
5 questioning on May 24, 1969, going home,
6 and getting loaded. He was not forced
7 to implicate David Milgaard, but
8 implicating Milgaard was the easiest way
9 to remove himself from a persistently
10 stressful situation - two months of
11 questioning by police."

12 And then goes on to talk about his drug use.

13 And again, that is taken from
14 the report, and I'll go to Mr. Rossmo's evidence
15 in a minute, but I wouldn't mind your comment or
16 your reaction to that, Mr. Henderson. This is
17 their view 17 months later after having
18 interviewed him, which I think you would agree is
19 a bit different than your assessment of his
20 reasons for lying?

21 A Well, actually, this sheds a lot of light, I
22 think, on what happened to Ron Wilson. Unless you
23 are a hardened criminal who has been on the wrong
24 side of the law for a long time, being questioned
25 by police over a period of two months has to be



1 extremely stressful and also kind of scary, not to
2 mention monotonous. Now, I think that what he
3 was -- I mean, they weren't feeding this guy
4 milkshakes when he was being questioned for two
5 months, they were leaning on him for something,
6 and that's what he told me, that he was under
7 pressure to give the police what they wanted. It
8 took them two months to get him, to implicate
9 David Milgaard, that something untoward was going
10 on and he was under some kind of pressure, and
11 that's what he told me, he told me "I was
12 pressured by police to come up with something".

13 Q I just want to -- and I'll go to Dr. Rossmo's
14 evidence, and just the point here, this is their
15 conclusion about, and I want to come back and ask
16 you this after I read you an excerpt from his
17 evidence about where they say he was not forced to
18 implicate David Milgaard, but implicating Milgaard
19 was the easiest way to remove himself from a
20 persistently stressful situation, and if we can go
21 to page 28277 of the transcript, and this is Dr.
22 Rossmo being questioned by Mr. Elson who is the
23 lawyer for the police service, and I think Dr.
24 Rossmo said this in a number of different
25 occasions, but I think this succinctly outlines



1 what he said. The question was:

2 "Q Now, with respect to the nature of the
3 questioning, and you've already dealt
4 with it, and again I'm perhaps going
5 over tilled ground and forgive me if I'm
6 doing that, but with respect to the
7 questioning of Ron Wilson, there's a
8 conclusion I've drawn from your
9 testimony, and I would like to ask you
10 whether or not my conclusion is correct,
11 but the conclusion I've drawn from your
12 testimony in describing Mr. Wilson's
13 interaction with you is that the reason
14 for the difference between his evidence
15 or his answers to Mr. Henderson and the
16 answers he gave to you and Mr. Boyd is
17 that when he answered Mr. Henderson's
18 question and admitted for the first time
19 that he lied, he had to give an
20 explanation for his lie and he was faced
21 with two possible explanations; one, he
22 was weak and frail and irresponsible, or
23 secondly, that the police made him do
24 it. Those are the two explanations and
25 he chose the latter of those two



1 explanations?

2 A Correct, though I would like to stress
3 that part of that explanation may be
4 the larger part of it, is to himself.

5 Q And afterwards when he had an
6 opportunity to think about it and
7 perhaps accept responsibility for his
8 own conduct, he did not blame the police
9 when it came time to the interview with
10 you and Mr. Boyd?

11 A Correct.

12 Q Hence, your conclusion that the
13 information he gave to you and Mr. Boyd
14 was more believable than the story he
15 gave to Mr. Henderson?

16 A Yes. The story he gave us painted
17 himself in the worst possible light.

18 Q And that would appear to be an
19 acceptance by Mr. Wilson of his own
20 circumstance and his own
21 irresponsibility?

22 A Yes."

23 And I wouldn't mind just your comment on that.

24 Do you understand --

25 A I do understand that.



1 Q -- what Dr. Rossmo is saying? I wouldn't mind
2 your comment on that.

3 A I think he probably has concluded accurately,
4 figured out for the most part an explanation for
5 Ron Wilson's testimony. On the other hand, I
6 don't think that anybody can say that Ron Wilson
7 was on a picnic for two months when he was being
8 questioned by those police. Anybody who is
9 questioned over a period of two months day after
10 day after day after day is under pressure to come
11 up with something, so I don't think it's quite as
12 simple as the two experts are making it look like.
13 Ron Wilson may say that he was treated well by the
14 police. I tend to think that what he's saying is
15 they didn't beat him, that they didn't get in his
16 face and scream at him, but he wasn't on a holiday
17 in that jail.

18 Q And I think what -- and I have not brought it up,
19 I think what Dr. Rossmo said, he was asked
20 questions about your interviewing technique of Ron
21 Wilson, and specifically when you talked to Ron
22 Wilson in June of 1990, the idea of giving him an
23 out; in other words, he needed someone to blame
24 for lying, and that police -- and I think Dr.
25 Rossmo said he was quite comfortable with using



1 that approach to say lookit, that you need
2 something to give, you need to give an excuse to
3 Mr. Wilson to blame someone for his lie at trial,
4 and he said that was quite appropriate in his
5 view, but then later on after he had, I think his
6 words were, after Wilson started to reflect upon
7 it, he then owned up to his own responsibility.

8 A Sure, sure.

9 Q And I think Dr. Rossmo's view was that his later
10 statement to Ron Wilson was more reliable than the
11 very first time he recanted because when he first
12 recanted he needed to blame someone because it was
13 harder to blame yourself than to blame someone
14 else when you are first recanting a lie. Would
15 you agree with that logic?

16 A I do, I do; however, I suspected going in that Ron
17 Wilson was coerced by the police. I couldn't
18 think of any other reason why he would come up
19 with this stuff, particularly since he felt so
20 badly about having done it and, I mean, this man
21 was predisposed to telling the truth, to
22 recanting. When he put on his coat and walked
23 down that street to meet me at that hotel, I think
24 he made up his mind to recant and tell me the
25 truth and to express his sincere regret at having



1 sent, helped send David Milgaard to prison for
2 life.

3 Q But he did -- I'm sorry, when he did talk to you,
4 though, he blamed the police as the reason for him
5 lying at trial?

6 A Well, you know, they are right on here too because
7 I undoubtedly, since I had a notion that he was
8 leaned on by the police to give this information,
9 I asked him were you threatened by the police,
10 were you coerced by the police, did they make you
11 do this, and he said yes. Now --

12 Q And I think --

13 A Maybe it's true that I gave him an out or I helped
14 him misrepresent what actually happened, I don't
15 know, but I still believe that two months of
16 incarceration and questioning is a lot to put a
17 kid through and certainly it's going to loosen him
18 up. We know that the police wanted information
19 that incriminated David Milgaard and based on what
20 they got out of Nichol John initially, I'm
21 convinced that there was pressure on Ron Wilson to
22 implicate David Milgaard in this murder.

23 Q And so is it fair to say that you go, you can see
24 where Dr. Rossmo is coming from on his take of the
25 credibility of Ron's reasons for lying at trial,



1 but you maybe don't agree with him 100 percent?

2 A Well, I think it's a little bit of both, I think
3 that he was under a great deal of pressure to help
4 the police, but on the other hand, maybe he wasn't
5 treated all that badly.

6 MR. HODSON: Okay. It's 4:30. Just for
7 the benefit of parties, I have two very brief
8 areas to cover, one is the Supreme Court
9 decision, and I don't think Mr. Henderson had
10 much involvement in that, and then quickly to go
11 through his dealings with the RCMP in 1993, so
12 again, my guess is 10 to 15 minutes tomorrow
13 morning -- or Wednesday morning. Mr. Henderson,
14 my estimates of time lack credibility is why you
15 hear the --

16 COMMISSIONER MacCALLUM: Thank you.

17 (Adjourned at 4:28 p.m.)
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We, Karen Hinz, CSR, and Donald G. Meyer, RPR, CSR,
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Official Queen's Bench Court Reporter

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Donald G. Meyer, RPR, CSR

Official Queen's Bench Court Reporter



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<p>worry ^[1] - 28974:20 worst ^[1] - 28990:17 wounds ^[1] - 28967:6 wrapped ^[1] - 28961:14 wrapping ^[1] - 28928:18 written ^[1] - 28963:15 wrongdoing ^[1] - 28982:4 Wrongful ^[1] - 28838:3 wrongful ^[6] - 28956:10, 28956:14, 28960:21, 28966:5, 28973:22, 28980:14 wrongfully ^[2] - 28871:17, 28948:12 wrongly ^[2] - 28847:10, 28871:2 wrote ^[2] - 28953:9, 28971:4</p>
Y
<p>y'know ^[1] - 28986:16 year ^[3] - 28946:3, 28952:20, 28966:1 years ^[6] - 28844:2, 28915:9, 28942:15, 28967:19, 28967:22, 28986:20 yesterday ^[1] - 28964:10 yourself ^[1] - 28992:13</p>
Z
<p>zealous ^[2] - 28965:23, 28966:3</p>

