

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 Thursday, May 11th, 2006

Volume 148

Inquiry Proceedings



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<i>Ms. Lana Krogan-Stevely,</i>	for Government of Saskatchewan
<i>Ms. Catherine Knox,</i>	for Mr. T.D.R. (Bobs) Caldwell
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<i>Mr. Aaron Fox, Q.C.,</i>	for Mr. Eddie Karst
<i>Mr. Bruce Gibson, Esq.,</i>	for the RCMP
<i>Mr. Eamon O'Keefe, Esq.,</i>	for Mr. Larry Fisher
<i>Mr. David Frayer, Q.C.,</i>	for Minister of Justice (Canada), The Hon. Vic Toews
<i>Mr. Marshall Hopkins</i>	for Justice Calvin Tallis (Retired)



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JOYCE IOLA MILGAARD, CONTINUED

- BY MR. HODSON

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Transcript of Proceedings

(Reconvened at 9:02 a.m.)

COMMISSIONER MacCALLUM: Good morning.

JOYCE IOLA MILGAARD, continued:

BY MR. HODSON:

Q Good morning, Mrs. Milgaard. I think when we left off we had started in on, around the 1985 period and the engagement of Mr. Wolch and Mr. Asper, and for the purposes of going through -- is it fair to say that it was Mr. Wolch's firm, though I think it was the Wolch Pinx firm, and that both Mr. Wolch and Mr. Asper, one or the other and sometimes others in the firm assisted you; is that fair?

A Yes. Many of the lawyers in the firm helped.

Q So I will try and use either the Wolch Asper -- the firm name or one of those, but we're agreed that we're talking about Mr. Wolch and whoever he has assisting him at his firm?

A That's correct.

Q And then just on the timing, I think we, yesterday, tried to pinpoint when it was that you transitioned from Mr. Merchant to Mr. Wolch and I showed you a few letters and I think what you told us was that you thought it was in the fall of



1 1985; correct?

2 A That's correct.

3 Q And that -- I'll just call up a couple of letters
4 that might assist us in the time frame, 213802,
09:03 5 and we saw this yesterday, this was the *Fifth*
6 *Estate* letter to David that talks about gathering
7 information for the *Fifth Estate*, that's July 22.

8 A Uh-huh.

9 Q And then we also looked at 219247 and this was the
09:03 10 letter of September 23, 1985 from Sandra Bartlett
11 to you in England?

12 A Right.

13 Q And I think you told us yesterday that your
14 recollection is that before you went to England in
09:03 15 1985, that you had at least started the process of
16 getting Mr. Wolch engaged or had had that happen;
17 is that correct?

18 A Yes, that's correct.

19 Q And then if I can show you 213609, this is a
09:04 20 document that we didn't bring up yesterday, and
21 this is a letter November of '85 from David to
22 you, and if we can go to the next page -- sorry,
23 213611, this is the second page, and David says to
24 you:

09:04 25 "When I told him (Tony) that we were



1 thinking of letting him go, he got mad,
2 so I left it up in the air."

3 So it looks like at least in November David's
4 reporting to you about having previously talked
09:04 5 to Tony, and then on the next page, which is 609,
6 he says:

7 "I have talked with Hersh Wolch again
8 too as I have hoped that he will take
9 the final product from 5th Estate as
09:04 10 legal evidence to present to John
11 Grosby, the minister of justice."

12 So it would appear from these documents, and
13 please tell me if this accords with your
14 recollection, that sometime in September or the
09:05 15 fall of 1985 Mr. Wolch was contacted by you?

16 A That's correct.

17 Q And I think you told us as well that that was at
18 Mr. Carlyle-Gordge's --

19 A -- suggestion.

09:05 20 Q Right. And then if we can look at 213127, and
21 this was the January 16th, 1986 letter, this is
22 now when you are in Princeton?

23 A Yes. I've come back from England and started in
24 nursing in Princeton.

09:05 25 Q Right. And so again, and this is confirmation of



1 the retainer, and I think what you told us
2 yesterday, or maybe you were telling us this
3 morning, is that although this was the letter
4 with, talking about the \$2,000 and the
09:05 5 confirmation, a number of months prior you had
6 talked to Mr. Wolch; is that right?

7 A That's correct.

8 Q When in that time frame do you think you would
9 have given him -- I think you told us about taking
09:06 10 a box of documents in or --

11 A That was on the first visit. I did leave them
12 with him at that time.

13 Q So sometime in the fall of '85 is your
14 recollection?

09:06 15 A Yes, that they would have --

16 Q That you would have -- I'm sorry?

17 A That they would have received those things. No,
18 that's not correct. When I think back to it, it
19 was probably when I came back before I went to
09:06 20 Princeton that I would actually have physically
21 taken that stuff in because I think my
22 recollection was somewhere in March that the
23 physical stuff got to them, although I had given a
24 lot of the details and everything about it. I
09:06 25 think it was a process of gathering everything up



1 from Peter and getting it all together and getting
2 it to him and I believe that happened in March,
3 and what makes me think that, David Asper started
4 in the firm in March.

09:07 5 Q And I think Mr. Asper's evidence is that he
6 started in March and that's when he started to
7 look at the documents.

8 A Uh-huh.

9 Q And I don't -- he was not able to tell us what
09:07 10 happened prior to his arrival there, and so you
11 think that that's --

12 A That's probably around the time they got the big
13 box of the documents.

14 Q And so it took a bit of time for you to put
09:07 15 everything together?

16 A Yes.

17 Q Now, this would have been, and again when I talk
18 about Mr. Wolch and Mr. Asper, that this would
19 have been your third lawyer or set of lawyers that
09:07 20 you had been to on this file?

21 A Yes.

22 Q And so let's, if we can just go back and talk
23 again about what you asked them to do. What did
24 you hire Mr. Wolch to do, what did you ask him to
09:08 25 do?



1 A I asked him to look at what we had and tell me if
2 there was any sense in trying to continue to get
3 my son out of prison.

4 Q And so would it be fair to say here's my, here's
09:08 5 all the information I have gathered in the last
6 five years, please tell me if this is enough?

7 A Yeah. I felt, you know, that I was banging my
8 head against a cement wall and Hersh had done a
9 great job on the *Katie Harper* case and I
09:08 10 thought -- now, he was a well-known lawyer and I
11 felt that if he would tell me that there was no
12 hope and I could do nothing and I had gone as far
13 as I could go, I don't know that that would have
14 stopped me anyhow, but I felt that if he could
09:08 15 look at it, he would have the wisdom to see
16 through all the stuff that I had and see what was
17 relevant. He would know what was relevant and
18 what wasn't and he could head me in the right
19 direction.

09:09 20 Q Did Joyce Milgaard think she had enough
21 information?

22 A Oh, absolutely, and I know that when I first went
23 there I was going there and telling him about all
24 of the inconsistencies.

09:09 25 Q Right. And I'll get to that, we'll go through



1 some of the documents on that just to get some
2 more particulars, but -- so at this time, and you
3 told us a bit yesterday that you had lost, that
4 your relationship with Mr. Merchant had
09:09 5 deteriorated, you felt that you didn't -- you had
6 concerns about him because of Colin Thatcher?

7 A Yes.

8 Q And would it be fair to say that at least in the
9 year or two prior to engaging Mr. Wolch, you had
09:09 10 not gone to Mr. Merchant and asked him the same
11 types of questions, lookit, do I have enough,
12 should we file, things of that nature?

13 A No, because Anthony Merchant really had been
14 telling me all along you've got to have something
09:10 15 new, you've got to have something new, I think he
16 was very clear in his directions to me, and if it
17 hadn't been because of finding out about Thatcher
18 knowing Gail Miller and having dated her and
19 everything, I don't think I would probably have
09:10 20 left him, I would probably have kept him on and
21 kept working with him.

22 Q So again, just back to your engagement of Mr.
23 Wolch, here's everything I've gathered, I, Joyce
24 Milgaard, think I have more than enough, but you
09:10 25 tell me whether I do, and if I don't have enough,



1 tell me what more I need to get --

2 A -- and how to get it.

3 Q And how to get it?

4 A Yes.

09:10 5 Q And unlike when you first went to Gary Young in
6 1980, is it fair to say that you had five years of
7 information gathering under your belt by the time
8 you went to Mr. Wolch?

9 A Yes, I did.

09:11 10 Q And it would be fair to say that you knew
11 significantly more about the facts, the evidence,
12 the key witnesses and indeed some other
13 information than you did when you started in 1980?

14 A Yes.

09:11 15 Q And you described it as a, I think a tub or a box
16 full of documents; is that fair?

17 A Yes.

18 Q And in addition to what you could see and touch by
19 the paper and the tapes, would it be fair to say
09:11 20 as well that you had a great deal of knowledge
21 yourself?

22 A Oh, yes, and so we talked and I talked to him for
23 a long time and I know afterwards he said one of
24 the reasons that he really listened to me was
09:11 25 because I talked to him not so much as a mother,



1 but with the facts of the case and that he felt
2 that I had managed to separate myself emotionally
3 from it in that sense that I wasn't sort of there
4 crying asking him for help, but I was able to sit
09:12 5 down and factually go through all of these things
6 and explain it to him and I think that's one of
7 the reasons he decided to look into it.

8 Q And that's Mr. Wolch?

9 A Yes.

09:12 10 Q And so again, just in addition to what you read on
11 paper, you would have imparted to him your
12 dealings, your observations, your sense of each
13 witness that you had interviewed and what you
14 thought about their credibility or what further
09:12 15 avenues might need to be pursued?

16 A Yes, and I told him about all the blind alleys and
17 things that I had gone down as well so that he
18 would have an idea of where I had been going.

19 Q Right. And so to the extent -- for example, Lorne
09:12 20 Mahar, would that be something where you would
21 have said lookit, I thought we had someone and I
22 pursued it and concluded that it couldn't have
23 been him, so don't you bother going down that
24 path?

09:12 25 A Yes, I was giving him all that information.



1 Q And I think at some point shortly after the
2 engagement as well, I think Mr. Carlyle-Gordge was
3 involved in a similar process with Mr. Asper at
4 least; is that right?

09:13 5 A Yes, that's correct.

6 Q And so it would be to make sure that your lawyers
7 understood everything that you had done to date
8 and sort of where you were at; is that fair?

9 A That's fair.

09:13 10 Q And would it be fair to say that your, that
11 perhaps your expectation or at least maybe one of
12 your wishes would be that once you filed it, the
13 answer you get is yeah, there's enough, let's file
14 an application?

09:13 15 A Yes, it was.

16 Q And would it also be fair to say that unlike in
17 1980 when you went to Mr. Young, in 1985 when you
18 went to Mr. Wolch you would have had at least a
19 bit more of an understanding about how you would
09:13 20 get the remedy; in other words, I think Mr. Young
21 had told you lookit, there's a statute in the
22 *Criminal Code*, the Federal Justice Minister can
23 grant mercy if you give sort of significant
24 evidence showing towards David's innocence or
09:14 25 wrongful conviction or whatever language he used?



1 A Uh-huh.

2 Q I think different people used different language,
3 but would it be fair to say you knew when you went
4 to Mr. Wolch that the way to get David out of
09:14 5 jail, apart from parole, was to apply to the
6 Federal Justice Minister for a remedy?

7 A That's correct.

8 Q And that it was a question of a couple of things,
9 let me just outline it, number one, what do I need
09:14 10 to put before the minister, what type of
11 information do I need; correct?

12 A Correct.

13 Q And you would say here's everything I've gathered,
14 tell me if this is enough in your opinion as my
09:14 15 lawyer; correct?

16 A Right.

17 Q And secondly, tell me what I need to file, what
18 information I need to put in, what information I
19 don't need to put it, you tell me what should go
09:14 20 in; correct?

21 A Yes.

22 Q Three, when it should get in, like, at what point
23 do you file, do I have enough now, do I need to
24 get more, those types of things?

09:14 25 A These were the questions I was asking him.



1 Q Right. And would it be fair to say that that's
2 what you relied on Mr. Wolch and Mr. Asper to do,
3 to give you advice and help you make the decisions
4 or in fact make the decisions about what legal
09:15 5 steps you needed to take with the Federal Justice
6 Minister to get David out of jail?

7 A Right. However, I got more than that.

8 Q Okay.

9 A Because with David Asper, he went up to the prison
09:15 10 to see David and started right away investigating,
11 he went out to Saskatoon, he went to the scene of
12 the crime, he just became very gung-ho about it
13 all and was digging into every aspect of the
14 investigation.

09:13 15 Q And I take it that was something that, when you
16 went to the firm, that if it was felt by your
17 lawyers that further investigation needed to be
18 done then you were fine with them doing that?

19 A Oh, I, I was ecstatic to have someone as
09:15 20 enthusiastic as David Asper there because he, he
21 was getting excited, he said "there's really
22 something wrong here".

23 Q And again, as far as theories -- and we've talked
24 in the last couple of days about some of your
09:16 25 thinking at the time, some of Mr. Carlyle-Gordge's



1 thinking at the time -- but would you have had --
2 passed on those theories, as well, to Mr. Wolch
3 and to Mr. Asper?

4 A Oh yes.

09:16 5 Q And would you have the same brainstorming with Mr.
6 Asper and Mr. Wolch?

7 A At that time it was more with David than it was
8 with Mr. Wolch, but I know that David was
9 constantly back and forth with Hersh and speaking
09:16 10 with him. I didn't have a great deal of
11 involvement with Hersh at that time, he was in the
12 background, I think making sure we were going in
13 the right directions.

14 Q So again, if we can break this down, let's talk
09:16 15 about from the time you engage Mr. Wolch in 1985
16 through until December 28th, 1988 when the
17 application was filed. Over that three, three
18 years and a bit time period, would it be fair to
19 say that your primary contact would be with Mr.
09:17 20 Asper?

21 A Umm, the first year or so. Once we got into the
22 hot stuff, if you will, Hersh was there --

23 Q Okay.

24 A -- step by step.

09:17 25 Q Now what about -- we talked when you went to Mr.



1 Young you said, "lookit, Mr. Young, you look at
2 the legal stuff but I, Joyce Milgaard, will do the
3 interviewing, contacting the witnesses with Mr.
4 Carlyle-Gordge", etcetera; when you went to
09:17 5 Mr. Wolch what was the -- was there any
6 discussion, or what was the division of duties as
7 far as --

8 A We didn't really have one. We would decide what
9 was going to happen on a call-by-call situation.
09:17 10 I mean Hersh knew my financial situation, that by
11 this point I'm running out of money, and with all
12 the money I'd been paying out and investigating
13 and running, flying back and forth to Regina and
14 Saskatoon and everything, so I -- I just didn't
09:18 15 have a lot of funds.

16 Q And, just on that, we see in this letter there was
17 a \$2,000 retainer paid; is that correct?

18 A That's correct.

19 Q And then I think the evidence we heard, or have
09:18 20 heard, is that, after that, it was effectively
21 done on a *pro bono* basis?

22 A It was. They -- I paid for a lot of transcripts
23 and things like that in between, when we needed
24 them, but a lot of the stuff the firm just decided
09:18 25 to handle.



1 Q And then I think we've also heard that -- a couple
2 of things; one, at the Supreme Court reference I
3 think they got paid from the Federal Government
4 for --

09:18 5 A Yes, they were.

6 Q -- some of their work there, and there was a
7 contingency arrangement, I think, sometime in 1990
8 or thereabouts?

9 A Yes, I think we set something up at that time,
09:18 10 because, --

11 Q Right.

12 A -- I mean, I was so grateful that he would allow
13 his staff and everybody to work with me when there
14 was -- and they were putting money out as well as
09:19 15 time.

16 Q Right. So, apart from the \$2,000 retainer, I
17 think you are saying you may have paid a few
18 expenses here and there, I think what Mr. Asper
19 told us is that he paid for a number of things out
09:19 20 of his own pocket, --

21 A I know he did.

22 Q -- and the firm paid for a number of things. So
23 again, on the resources side, --

24 A And that's a, that's the thing with all the
09:19 25 wrongful convictions, they're usually people in



1 jail that have no money, and so there's got to be
2 a way to get resources for them where -- where
3 they can be -- the case can be investigated
4 properly. A mum should not have to go out and try
09:19 5 to be an investigator.

6 Q And as far as the, sort of the work that was done
7 by your lawyers, and I think what we heard from
8 Mr. Young and Mr. Merchant is that they -- well,
9 Mr. Young was only retained for a short time and
09:19 10 was paid for his work, Mr. Merchant I think was
11 paid for his work by Mr. Shannon, I think he said
12 he went beyond what the funds were there, but the
13 funds were certainly an issue?

14 A Yes.

09:20 15 Q And it appears with Mr. Wolch and Mr. Asper, at
16 that point your inability to pay them for their
17 legal work became less of an issue with them,
18 because they agreed to do it --

19 A Yes.

09:20 20 Q -- without having you pay them up front; is that
21 fair?

22 A That's correct.

23 Q Now, just on the interviews, what; was there any
24 discussion or, for example, once you went to
09:20 25 Mr. Wolch and said "okay, here's everything", I



1 take it at that time you had not been doing any
2 further interviews, you had interviewed pretty
3 much everyone, I think?

4 A Yes.

09:20 5 Q I shouldn't say "everybody", every -- a number of
6 significant witnesses?

7 A People. And it was at this time I was in
8 Princeton, New Jersey when I got a phone call from
9 my son telling about -- telling me about Jim
09:20 10 McCloskey that was helping to free innocent
11 people, and so I ended up going in and speaking to
12 Jim about the case and he explained to me that
13 there was no way he could help me because he had
14 so many current cases that he was on, he was
09:21 15 working in this little, small office, but I
16 offered, on my days off of the case -- at the
17 nursing school, to go in and work there, and I
18 did, and so I spent time in one of the worst jobs
19 I've ever had in my life. He asked me to write
09:21 20 letters of rejection to people that they weren't
21 going to help, and he -- the reason he got me to
22 do it was he said he felt I would know what it was
23 like to get a rejection letter, and I would be
24 very careful about what I wrote, but they were the
09:21 25 hardest letters that I ever wrote.



1 Q And so you spent some time working with Centurion
2 then?

3 A Oh, I did, and I got involved in other cases as
4 they came in, as well, and had developed quite a
09:22 5 close relationship with him. So when the time
6 came that we got this anonymous phone call, I was
7 keeping him abreast of everything that I was doing
8 with Hersh and David, and so when we got the
9 anonymous phone call and I said that I was heading
09:22 10 out there he said, "Joyce, you can't do that on
11 your own", and he said, "this is probably an
12 insane killer, you can't go out there on your
13 own", and he asked me if I had enough funds to pay
14 for Paul's travel, he would pay his wages if I
09:22 15 could pay for the travel expenses, and I said
16 "yes," I could do that, and so that's when we
17 embarked on the Henderson and I investigation.

18 Q And if we could just talk about, let's again just
19 go back and try and -- but would it be fair to say
09:23 20 that the engagement of Mr. Wolch's firm was a
21 significant point in your re-opening efforts? I
22 think you described, yesterday, the first --

23 A We went forward, from that point onward we went
24 forward, we still met walls everywhere we went but
09:23 25 we went forward.



1 Q Right. And if we can just take a moment just to
2 recap the steps that you had taken to that point
3 and what information you had gathered to that
4 point, and then what was imparted to Mr. Wolch and
09:23 5 Mr. Asper and what further steps were taken, and I
6 think in the last couple of days and previously we
7 heard evidence that Mr. Young had made a request
8 for the police files from the Saskatoon City
9 Police in early 1981 and was advised that he, or
09:24 10 you or he, should go to the Attorney General if
11 there was any specific information that was
12 required, and I think you told us yesterday that
13 there were no further requests made to the city
14 police after Mr. Young did. Would you have had
09:24 15 any concern if Mr. Wolch or Mr. Asper had made
16 contact with the city police, or made efforts to
17 get a copy of the police file, after you engaged
18 them?

19 A Well I think that, I believe that we discussed it,
09:24 20 but we felt that we were starting fresh and I was
21 going in, David Asper was going in as well, we
22 were going around and getting records. I remember
23 going with David to Regina -- I think it was
24 Regina -- to get the exhibits, to see the exhibits
09:24 25 and go through them, and we were doing hands-on



1 investigation of lots of things. But, let's face
2 it, the information that we had, I felt, was
3 sufficient, and I was presenting that to them, of
4 the fact that the time frame was impossible. I
09:25 5 was going over the Danchuks, I was going over
6 Rasmussen, I was going over all of those things
7 and saying, "look, the police must have known that
8 they -- when they had all these other things,
9 other options, that they have done something
09:25 10 wrong".

11 Q Okay. And I'll get to that in a moment, and we'll
12 go through what you had and what your thinking was
13 at the time, but as far as steps that had been
14 taken and steps that might be taken I think you
09:25 15 told us yesterday that having the Saskatoon City
16 Police file would have been of assistance to you?

17 A Yes, it would have.

18 Q And so in 1985, when Mr. Wolch was engaged, I take
19 it, at that time, having the Saskatoon City Police
09:26 20 file would have been of assistance to you in your
21 efforts at that time?

22 A Yes.

23 Q And my question was did you have any discussion,
24 or would you have had any concern if Mr. Wolch or
09:26 25 Mr. Asper took steps, whatever steps they deemed



1 appropriate, to get the police files, to get a
2 copy for you?

3 A No, I trusted them implicitly to do whatever was
4 required.

09:26 5 Q And would you have any reason to object to them
6 contacting the police, or to make arrangements to
7 get the police file, would you have had any
8 concerns about that?

9 A I don't think so.

09:26 10 Q And, about Mr. Caldwell's file, I think what we've
11 gone through is that your first lawyer, Mr. Young,
12 had made a request, and Mr. Caldwell said that
13 your first lawyer could look at the prosecutor's
14 file, and we've also heard that Mr.

09:26 15 Carlyle-Gordge, posing as a writer, got an
16 opportunity to look at Mr. Caldwell's file?

17 A And of course, in that file, there were police
18 reports and things, some items there that he had
19 received.

09:26 20 Q I'm sorry, Ms. McLean has -- I said Mr.
21 Carlyle-Gordge was "posing as a writer", he was a
22 writer.

23 A That's correct.

24 Q I didn't mean to -- Mr. Carlyle-Gordge went in
09:27 25 there as a writer, but I think, I think in



1 fairness, in part, he was seek to go get
2 information to help you?

3 A That's correct.

4 Q Okay. And thanks, Ms. McLean, for that.

09:27 5 So, again, we've heard that the
6 -- that some information was obtained, and there
7 -- and again, would you have had any objection or
8 concern if Mr. Wolch or Mr. Asper had contacted
9 Mr. Caldwell or taken appropriate, whatever steps
09:27 10 they felt appropriate, to get a copy of the
11 prosecutor's file?

12 A Essentially, I don't know that I would have asked
13 them to do that, because essentially we had that
14 with the stuff from Peter.

09:27 15 Q Okay. And I think Peter had -- and please correct
16 me if I'm wrong -- I think Peter had a chance to
17 look at it --

18 A But he made notes and everything on it.

19 Q -- and made notes?

09:27 20 A Yeah.

21 Q Okay.

22 A So we had that information there, and so that I
23 don't know that we would, you know, even be
24 thinking of going down that avenue.

09:28 25 Q And I stand to be corrected on this, I think Mr.



1 Carlyle-Gordge had said that he had spent some
2 time with the file but not, he didn't make copies
3 other than the opening and closing address, and
4 then dictated some notes, and so I had taken from
09:28 5 his evidence -- and I may be mistaken -- that
6 although he had a chance to look at all of it he
7 may not have sort of combed through front to back
8 and made notes of absolutely everything; or was
9 that your understanding?

09:28 10 A I think he made notes of anything he thought was
11 relevant.

12 Q But, again, if Mr. Wolch or Mr. Asper felt that it
13 was helpful to get a copy or to get access, again,
14 to Mr. Caldwell's file so that your lawyers, as
09:28 15 opposed to Mr. Carlyle-Gordge, could look at it,
16 did you have any concerns or objections if they
17 would have done that?

18 A No, I don't think I would have objected.

19 Q Now, with respect to Mr. Tallis, I think we heard
09:28 20 that your first lawyer, Mr. Young, obtained Mr.
21 Tallis' file, or at least a version that had some
22 internal memorandums taken off, and you made
23 copies of things that you felt important at the
24 time; is that correct?

09:29 25 A Yes.



1 Q Umm --

2 A And I would have given those to the lawyers so
3 that would be another avenue they wouldn't have to
4 pursue.

09:29 5 Q So that you would have given to Mr. Wolch and Mr.
6 Asper everything you got --

7 A That's right.

8 Q -- copied, and so that would have included the
9 statements from Ron Wilson, Albert Cadrain, Nichol
09:29 10 John, Melnyk, Lapchuk, Ute Frank, --

11 A Yes.

12 Q -- and that we talked about yesterday. And,
13 again, if your lawyers felt that they might find
14 something on Mr. Tallis' file that may have been
09:29 15 important to them, but not necessarily stand out
16 to you, would you have any concern with them
17 contacting Mr. Tallis to get his file?

18 A No, not at all.

19 Q And, similarly, Tony Merchant talked to Mr. Tallis
09:29 20 I think in 1982. Would you have had any concerns
21 with Mr. Wolch or Mr. Asper contacting Mr. Tallis
22 and saying "tell me everything you know about the
23 file and everything that David told you"; things
24 of that nature?

09:29 25 A No, I would not.



1 Q Now you, earlier you had talked about the, I think
2 you were starting to talk about the Danchuks and
3 the Rasmussens and all of the information you had,
4 and I think -- and please correct me if I'm wrong
09:30 5 -- what you were saying is, "lookit, although
6 there -- I was getting into the steps that could
7 be taken to gather more information", and I think
8 you were saying is, "lookit, I thought I already
9 had enough information"?

09:30 10 A I did.

11 Q And if we can just go through that, if we could
12 call up 337731.

13 And this is a new document, Mr.
14 Commissioner, that we've prepared yesterday that I
09:30 15 plan on using as well with Mr. Williams and with
16 others, and it might be a work in progress because
17 we may need to add to it, but what it is, it's a
18 collection of the Witnesses, Interviewer, Date of
19 Contact or Interview, and Was the Substance of the
09:31 20 Interview Disclosed Or Produced to Authorities
21 Prior to Or During the Supreme Court Reference, If
22 So When, and then doc. IDs, and it goes right
23 through. And as I say, it's not, I can't say that
24 it's complete, but by the time your evidence,
09:31 25 everybody's evidence, it will be, but I want to



1 use this just to go through to assist,
2 Mrs. Milgaard in sort of what existed as of 1985.

3 And so Bob Harris, if we can
4 just call out the top part -- and, again, we won't
09:31 5 go through these in much detail because we've
6 covered them all -- but I think Bob Harris, George
7 Lapchuk, we'd had two occasions, those were cases
8 where you interviewed both Mr. Harris and
9 Mr. Lapchuk about the motel room?

09:31 10 A That's correct.

11 Q We've got Nichol John, your first contact January
12 '81, although I think that was, you described,
13 brief --

14 A Yes.

09:31 15 Q -- and uninformative? And then if we can scroll
16 down, next we have Ron Wilson, we have the January
17 26, '81 interview, the telephone interview that
18 you had a tape and a transcript; --

19 A Yes.

09:32 20 Q -- correct? The Dennis Elliott interview, that is
21 an estimated date, the tape and the transcript.
22 Shirley Wilson, I think you talked to Ron Wilson's
23 mother, didn't you?

24 A Yes, I did.

09:32 25 Q And I don't think we touched on this; did you have



1 a discussion with her about washing David's jacket
2 and getting David's jacket after the trip, do you
3 remember that, or about acid on the pants, does
4 that ring a bell?

09:32 5 A Yes, I did.

6 Q And I think what the documents suggest is that --
7 and I'm not sure exactly when, it may have been in
8 1981 that you may have contacted her, that -- and
9 learned that after Ron and David and Nichol
09:32 10 returned from Alberta that David's coat that he
11 was wearing was left at the Wilson's, --

12 A Yes.

13 Q -- and that she had washed it and not observed
14 anything on it other than it was ripped?

09:33 15 A That's correct.

16 Q Do you remember that?

17 A I do remember that.

18 Q So you would have gathered information from her?

19 A Yes.

09:33 20 Q And then Deborah Hall, we have the interview with
21 Chris O'Brien, the tape and the transcript, and
22 that would be information you had in 1985;
23 correct?

24 A Correct.

09:33 25 Q And that was, I think you've told us that was



1 fairly significant, in that you had Deborah Hall
2 saying Melnyk and Lapchuk lied --

3 A Correct.

4 Q -- about the incident, it didn't happen. We then

09:33 5 list -- if we can just scroll down -- Howard

6 Shannon, Maurice Cerato were people that Peter

7 talked to, Adeline Nyczai was the roommate, again

8 tapes and transcripts. The next page we have

9 Roger Renaud -- and, again, this is

09:33 10 chronological -- Father Murphy on two occasions.

11 And then Estelle Cadrain, I think, March 21, '81,

12 the tapes and transcripts of your contact with her

13 trying to find Albert?

14 A Yes.

09:33 15 Q Your interview with the Danchuks in March of '81.

16 I think Peter then had a follow-up interview with

17 Roger Renaud, we heard from both of those

18 individuals on that. And then April 15th, '81 was

19 the second interview with Ron Wilson by telephone,

09:34 20 and we went through that in some detail, you will

21 recall?

22 A Yes I do.

23 Q And then you had the May 9th, 1981 meeting with

24 Nichol John and Tony Merchant where you had a tape

09:34 25 and transcript of that interview?



1 A Right.

2 Q And then we had a lengthy transcript and interview
3 of Albert Cadrain in February of 1983?

4 A Yes.

09:34 5 Q And Leonard Gorgchuck -- scroll down please -- we
6 touched on that briefly, that Peter had talked to
7 in February?

8 A Yes.

9 Q And then yesterday afternoon we went through, in
09:34 10 February and March of '83 Peter Carlyle-Gordge
11 interviewed Mr. Caldwell, that may have been on
12 the phone but there is a tape transcript there?

13 A Yes.

14 Q He then contacted Dennis Cadrain on February 21,
09:34 15 1983, and I think when we touched on this
16 yesterday it was this, one of these meetings with
17 Mr. Caldwell that Mr. Carlyle-Gordge discovered
18 the name Larry Fisher living at 334 Avenue O
19 South, and the transcript suggests that February
09:35 20 21, '83 is when he brought that up with Dennis
21 Cadrain; do you remember going through that?

22 A I remember going through that.

23 Q Yeah. And then again Father Murphy, this was the
24 third call where I think Father Murphy clarified
09:35 25 that Albert, --



1 A Yes.

2 Q -- that he talked to Albert after David was
3 convicted. We then have the next interview with
4 Mr. Caldwell in March, and I think that's the one
09:35 5 we touched on yesterday that may have had the
6 reference to him and Mr. Tallis working together,
7 remember us going through that?

8 A I do remember that.

9 Q And if we can scroll down, and we then had the
09:35 10 follow-up call where Mr. Carlyle-Gordge asked
11 Albert Cadrain about Larry Fisher. And then we
12 have the March 6th -- 26th, 27, advertisements and
13 letters back from Linda Fisher. Next page. We
14 then have the Audrey Boutin interview that Mr.
09:36 15 Carlyle-Gordge followed up on from reviewing Mr.
16 Caldwell's file. We have an attempted contact
17 with Mr. Karst in March of 1983, and I can't
18 remember whether -- I think there's some evidence
19 that Mr. Carlyle-Gordge may have talked to him at
09:36 20 that time, we don't have a transcript, but there
21 was at least an attempt at contact?

22 A Yes.

23 Q And, as well, Dr. Chorney, that related to Dr.
24 Emson?

09:36 25 A Correct.



1 Q The Lorne Mahar interview --

2 A Yes.

3 Q -- which we've talked a bit about. Ray Mackie was
4 interviewed by Peter Carlyle-Gordge?

09:36 5 A Yes.

6 Q And then Estelle Cadrain sometime in there, and
7 that was the information about Larry and Linda
8 Fisher and the daughter Tammy going to Pleasant
9 Hill School; --

09:36 10 A Correct.

11 Q -- correct? So if we pause right there, to 1983,
12 that would be -- and there may be some --
13 actually, let me pause there. In addition to what
14 I have just gone through, the tapes and
09:36 15 transcripts and information about those
16 interviews, is it fair to say that all of that
17 information would have been provided, or you had
18 in 1985 and would have been provided to Mr. Wolch
19 and Mr. Asper?

09:37 20 A I would have, yes.

21 Q And, in addition to what I have gone through, I
22 think you have told us, from time to time, that
23 there would be many, many other interviews, leads,
24 information-gathering, etcetera, that had gone on
09:37 25 that did -- maybe not -- that maybe didn't find



1 its way into a tape or a transcript?

2 A Yes, there was.

3 Q And so let's just talk about the physical

4 documents. So all of the tapes and the

09:37 5 transcripts of those interviews, then, that we've

6 gone through that either you conducted or Mr.

7 Carlyle-Gordge conducted, that would have been

8 part of the body of information that you would

9 have given to Mr. Wolch and Asper?

09:37 10 A Yes. I'm -- and, also, we would have given them

11 the film.

12 Q The video that your family did?

13 A Yes.

14 Q Right. And, as well, the newspaper clippings.

09:38 15 And it's difficult, from our records, to determine

16 which clippings were obtained at which point in

17 time, but would it be fair to say that in

18 1985-1986, by then, both you and Mr.

19 Carlyle-Gordge had scoured newspapers and cut out

09:38 20 clippings that you felt were important to the case

21 or may be important?

22 A Yes, I think we had, although I don't know that we

23 cut them out, in some cases we just got them from

24 the library and made notes and stuff about them.

09:38 25 Q I'm sorry, I should have -- actually, I think some



1 might even have been on microfiche, --

2 A Yeah.

3 Q -- but made copies of?

4 A Yeah.

09:38 5 Q And so would there -- you would have given them
6 some newspaper, some media reports --

7 A Yes.

8 Q -- that you had from the time frame around before
9 and after the murder, generally?

09:38 10 A I think we did, yes.

11 Q And yesterday and the day before we looked at a
12 couple that related to the Gail Miller murder and
13 the rapes, and I think you said that based on your
14 recollection you don't think you would have had
09:38 15 those?

16 A No, I don't think so.

17 Q And so, in addition to the physical documents and
18 tapes, I think you've told us as well that you
19 would have given your thinking, is it fair to say
09:39 20 you would have tried to convince Mr. Wolch and Mr.
21 Asper, "lookit, I think David is innocent and
22 here's why, I think the case can be re-opened and
23 here's why"?

24 A Yes.

09:39 25 Q And would it be fair to say that -- and, again, I



1 don't want to ask you to tell me everything you
2 told them because I'm sure these discussions were
3 evolved and were lengthy; is that fair?

4 A Very lengthy. We would sit and talk for hours at
5 a time because there was just so much that we had
6 done already that they had to know about.

7 Q Let's, if we could just talk maybe about the key
8 witnesses. And I'm gonna come back, gonna come
9 back and ask you this question in a few minutes,
10 that if I were the Justice Minister in 1986,
11 January of 1986, and I invited you into my office
12 for the day with your box of documents and asked
13 you to tell me why you think your son is innocent
14 and why you think I should grant you a remedy,
15 what would you tell me? And would it be fair to
16 say that what you would tell the Justice Minister
17 in 1986, January, would have been similar to what
18 you would have told Mr. Wolch and Mr. Asper as
19 "here's why I think he is innocent"; is that fair?

20 A Yes, I -- that's very fair.

21 Q And so if we talk -- let's start off with Albert
22 Cadrain. I think what you, what we talked about
23 yesterday with Albert Cadrain, and what you told
24 us is what you had was his brother Dennis saying
25 that -- or let me back up. I think you said that



1 you felt that Albert's evidence about seeing blood
2 on David was a lie, or possibly a mistake; is that
3 fair?

4 A That's fair.

09:40 5 Q And that if he did see blood -- I don't think, I
6 think you said you didn't think about this -- but
7 that, if he did see blood, the blood couldn't have
8 had anything to do with Gail Miller?

9 A That's correct.

09:41 10 Q Now is that something, do you remember ever
11 thinking about that as a possibility, that maybe
12 Albert saw blood on David but the blood had
13 nothing to do with Gail Miller?

14 A I thought maybe he'd seen the spots of battery
09:41 15 acid --

16 Q Battery acid?

17 A -- and that he had interpreted that as blood.

18 Q So either a lie or a mistake?

19 A Yes.

09:41 20 Q And so what you had uncovered in your
21 discussions -- and when I say "you" I'm talking
22 about you and Mr. Carlyle-Gordge --

23 A Yes.

24 Q -- understood --

09:41 25 A I understand that.



1 Q -- or you and whoever is helping you -- but what
2 you had uncovered was that Dennis Cadrain had
3 said, in 1983, that Albert was mentally unstable
4 and not believable; is that fair?

09:41 5 A That's fair.

6 Q And you talked to us about your theory about how
7 the police may have influenced Albert in Regina,
8 or somehow between the Regina jail for vagrancy
9 and his treatment by the Saskatoon City Police,
10 somewhere in there you felt that the police
11 improperly influenced him and that might explain
12 why he came up with his evidence about blood?

13 A Correct.

14 Q And for a while in there I think Father Murphy
09:42 15 played into that, at one point thinking that he
16 may have been involved in getting Albert to go to
17 the police and may have been part of the chain of
18 events that resulted in influence being exerted on
19 Albert?

09:42 20 A I felt that had happened, yes.

21 Q But again, January 1986, did you feel that you had
22 some information to say "lookit, authorities,
23 Albert's evidence should not be believable", --

24 A Yes.

09:42 25 Q -- "should not be believed, and here's some new



1 information, he's mentally unstable", and in fact
2 I think you talked about the new information you
3 gave to Peter Carlyle-Gordge about snapping off
4 the aerial, and remember when you said to Ron
09:42 5 Wilson that, "lookit, Albert has now given further
6 information that he didn't give at trial that we
7 know is false"?

8 A Yes.

9 Q And that that, you felt, was important to say,
09:42 10 "lookit, Albert is not believable"?

11 A Because of the lies that he is telling now that we
12 know are lies.

13 Q So you couldn't get him to say "I saw blood" was a
14 lie, but you were able to get some information
09:43 15 that you thought would cause the authorities to
16 say, "lookit, these" --

17 A I thought it should shatter his credibility.

18 Q Okay. Now Ron Wilson we went through again, and
19 keep in mind I can be either Hersh Wolch or the
09:43 20 Justice Minister in January of 1986, but asking
21 you to tell me, convince me, "what have you got by
22 way of information that you think warrants a
23 re-opening of this investigation of whatever kind,
24 whether it's a new hearing, a remedy, whatever,
09:43 25 give me something that causes me to think that



1 there is something wrong with David's conviction",
2 and so that's the path I'm going down. And, with
3 Ron Wilson, tell me what you would have told
4 Mr. Wolch and/or the Justice Minister in 1986
09:43 5 about where Ron Wilson fit into things and how you
6 could attack the evidence he gave at trial?

7 A I'd go back, I think that when I started out with
8 Hersh and David I went back to their original
9 statements and said, "look, this is what they
09:44 10 first said", and then "this is how they changed",
11 and then I remember going over the reports with
12 Roberts and the lie detector tests, and how,
13 suddenly, -- and I remember telling them about
14 Nichol and the treatment that she had had and how
09:44 15 we felt that these young people had been
16 influenced to testify erroneously.

17 Q Okay. And so the information, I think, that you
18 had at that time would be -- some of that would
19 have been garnered from Ron Wilson himself; is
20 that right?

21 A Yes, correct.

22 Q In fact when he explained to you -- and we went
23 through it in some detail -- but I think in that
24 interview he told you that, "lookit, he didn't
09:45 25 think that he saw blood on" --



1 A It could have been Kool-Aid.

2 Q Right.

3 A And I know I was quite excited about that when I
4 passed that information on.

09:45 5 Q And I think he also said, in one or both of the
6 interviews, that he didn't think -- (a) he
7 didn't -- he said "I don't think I said I saw the
8 murder", and --

9 A He was very unsure about everything.

09:45 10 Q Right. And then, as far as David making an
11 admission to him about having committed the
12 murder, I think you asked him that as well and he
13 said he didn't remember any of that?

14 A Correct.

09:45 15 Q That would have been a piece of information -- I
16 think he also told you that he didn't think David
17 had a knife on him on the trip?

18 A That's right.

19 Q And his evidence at trial was that when he
09:45 20 returned to the car on that morning, that Nichol
21 was hysterical and I think he told you she wasn't
22 hysterical, she was stoned, and again that would
23 be some --

24 A And that was something different again.

09:45 25 Q And as well I think when you asked him about David



1 being away from the car, and again we touched on
2 this, that part of Ron Wilson's evidence or one of
3 the significant parts is that it provided the
4 opportunity for David to have committed the crime?

09:46 5 A Because he kept stretching it --

6 Q Right.

7 A -- his separation time to David from being a very
8 short time to longer and longer.

9 Q And I think what he told you in one of the two
09:46 10 interviews in 1981 is that David could not have
11 been away from the car long enough to do what they
12 said he had done?

13 A Correct.

14 Q And as well I think you talked yesterday about,
09:46 15 again not only in your discussion with Ron Wilson,
16 but I think when you explained it to Nichol John
17 in May of 1981, that when you were talking about a
18 lie detector test with her lawyer and her lawyer
19 was saying lookit, I don't like them, I think what
09:46 20 you explained your understanding is that Ron
21 Wilson thought, or what Ron Wilson expressed to
22 you is that lookit, the lie detector caused him to
23 say things as true which he thought weren't true?

24 A That's right.

09:46 25 Q That he said were true because of the lie detector



1 process?

2 A Yes.

3 Q And again that gets back to what you said earlier,
4 that you felt I think at that time or at least in
09:47 5 1985 that somehow the lie detector process had got
6 Ron Wilson, or contributed to Ron Wilson giving
7 evidence that was not true; is that fair?

8 A Yes, and I remember the statement that Ron made
9 that they were left together and that Ron said to
09:47 10 Nicky we've got to give them -- 'We've got to give
11 them David'.

12 Q And that's -- and was that something you think you
13 had heard before, before 1985, before you went to
14 see Mr. Wolch and Mr. Asper?

09:47 15 A Yes, that was -- that was 'We've got to give them
16 David'.

17 Q Okay. And as far as Ron Wilson was concerned, if
18 I'm the justice minister in January of 1986, would
19 you be telling me lookit, I think Ron Wilson, I
09:48 20 think his evidence has unraveled or that --

21 A Yes, and that there's a potential here now to get
22 the truth.

23 Q And did you have any concerns in 1986 about -- I
24 think we saw the second interview with Ron Wilson
09:48 25 was he talked about having a chance to look at the



1 transcripts and I think said that he might be
2 moving to his parents', but that you had his phone
3 number. Do you remember any reluctance on the
4 part of Ron Wilson after your two interviews about
09:48 5 talking to you again or meeting with you again?

6 A No, I do not.

7 Q And we talked about Nichol John, and again if you
8 are trying to convince somebody in January of 1986
9 about Nichol John, you've already talked about her
09:49 10 discussions with Ron Wilson, you told us yesterday
11 about information you gathered from the matron in
12 jail?

13 A Yes.

14 Q And I think what you told us is lookit, that may
09:49 15 have influenced her --

16 A -- dramatically.

17 Q Dramatically.

18 A I don't think she could face going back to that
19 jail cell again, you know, that she would tell
09:49 20 them anything they wanted to hear at that point.

21 Q And so again, and please correct me if I'm wrong,
22 I think what you had was Nichol John's information
23 from the interview that she wasn't saying anything
24 worse than what she said at trial; is that fair?

09:49 25 A That's fair.



1 Q And she wasn't saying -- for example, at trial I
2 think you told us it was your impression and
3 Mr. Tallis said it was his impression that the
4 jury probably thought or could have thought that
09:49 5 Nichol was trying to help David, that she really
6 witnessed a murder and she was not remembering
7 because she wanted to help her friend?

8 A I think that's correct.

9 Q And so when you talked to Nichol John, is it fair
09:50 10 to say that you nixed that theory pretty quickly?

11 A I did.

12 Q And so that it wasn't a case, that wasn't the case
13 of her --

14 A No.

09:50 15 Q And so --

16 A It was to save themselves.

17 Q And I think secondly you also told us that you had
18 gone through Nichol John's statement, the
19 un-adopted part and the timing, and concluded that
09:50 20 what she said in her statement but didn't repeat
21 at trial was implausible?

22 A Right, and if we had had an opportunity to go
23 through that statement, if Mr. Tallis, if the
24 judge had allowed him to go through that
09:50 25 statement, he could have shown that to the jury,



1 but they never got that opportunity.

2 Q And again, would that be something, if I were the
3 justice minister at the time, you would tell me
4 that lookit, my lawyer didn't get a chance to
09:50 5 challenge the statement because it didn't go in as
6 evidence?

7 A That's right.

8 Q And --

9 A I certainly feel very strongly about that part of
09:51 10 it, that that -- and I know we applied on those
11 grounds at one point.

12 Q Now, let's just turn to the motel room incident.
13 I think you've told us that that was significant
14 evidence, or you felt it was significant evidence
09:51 15 against David?

16 A I did.

17 Q In January of 1986, I think what you've told us
18 over the last couple of days, you had sort of two
19 different theories to explain that incident, and
09:51 20 one would be that if Melnyk and Lapchuk, if the
21 conduct and words they described from David were
22 true, in other words, that he did stab a pillow
23 and did utter words to the effect that 'I stabbed
24 her, I killed her', that it would have been said
09:51 25 as a joke and that it was taken out of context,



1 that would be one theory?

2 A Yes, it would.

3 Q And I think as well you said plus you thought
4 Melnik and Lapchuk, you were suspicious about them
09:51 5 and, (a), suspicious for coming forward against a
6 friend, and (b), they maybe embellished it by
7 making it sound like it wasn't a joke?

8 A That's correct.

9 Q So that was one theory. The second one was when
09:52 10 Deborah Hall came forward to Chris O'Brien and
11 said lookit, those guys are lying?

12 A That's right.

13 Q And I think when we went through chronologically,
14 even after you got the information through Chris
09:52 15 O'Brien that Deb Hall said Melnik and Lapchuk were
16 lying about the incident, even after that, in your
17 discussion with Ron Wilson, I think you said, 'you
18 know what, but, I can see David doing that as a
19 joke'?

09:52 20 A Yes.

21 Q So is it fair to say that it was still, in your
22 mind it was one or the other, but in any event, it
23 was not a true reenactment and a true confession
24 by your son?

09:52 25 A That's correct.



1 Q And so you had one of two possible ways to explain
2 that incriminating evidence?

3 A That's right.

4 Q Now, the Larry Fisher information that we touched
09:52 5 on yesterday afternoon, and I appreciate your
6 evidence that you don't recall that, you don't
7 recall in 1983 the information that Mr.
8 Carlyle-Gordge had, but in 1985 or 1986, certainly
9 those transcripts or that information would have
09:53 10 been information that would have been provided to
11 Mr. Wolch and Mr. Asper; is that fair?

12 A It would have been provided -- whatever I had from
13 Peter would have been provided.

14 Q And again, and I think we touched on this
09:53 15 yesterday, do you have any reason to think that
16 the Dennis Cadrain and Estelle Cadrain interviews
17 would not have been in the information that he had
18 left with you?

19 A No, nothing that, you know, you can go back and
09:53 20 think about, but it troubles me that it wasn't
21 anything we saw.

22 Q Right. And again, if it were something in 19 --
23 let's again go back to January, 1986, whether I'm
24 Mr. Wolch or the justice minister, when you now
09:54 25 look back at what information you did have or Mr.



1 Carlyle-Gordge did have about Larry Fisher in
2 1983, I think what you told us yesterday, that
3 looking back with hindsight, if I would have
4 either known that or if I did know that, if I
09:54 5 would have appreciated it differently it would
6 have been something of significance; is that fair?

7 A It would have been and we would have done
8 something about it.

9 Q Right. Now, the secretor issue, if we can just
09:54 10 pause here, I don't think -- when we went through
11 these interviews, I think Mr. Carlyle-Gordge
12 brought it up with Mr. Caldwell and I think you
13 had the opening and closing address. Do you
14 remember, before you got into this issue with Mr.
09:54 15 Asper, because it's something that Mr. Asper spent
16 a fair bit of time with didn't he?

17 A Oh, he did.

18 Q Before that do you remember the secretor issue
19 figuring large in your review of the case or was
09:54 20 it something that became more significant once Mr.
21 Asper became involved?

22 A No, I always thought it was very significant
23 because I had found it totally confusing and I
24 felt that it had totally confused the jury.

09:55 25 Q And was it your thinking that somehow the jury



1 might have thought that this physical evidence was
2 linked to David?

3 A Yes.

4 Q And again, I think up until the time you went to
09:55 5 Mr. Wolch, other than some discussions that Mr.
6 Carlyle-Gordge had with Mr. Caldwell, I don't
7 think there had been any steps taken by you or Mr.
8 Carlyle-Gordge to pursue that; is that fair? I
9 mean, you thought about it, the secretor issue and
09:55 10 it was there, but had you --

11 A Yeah, we hadn't taken any steps, like, to go to
12 labs or anything like that. I think that's what
13 came up then with Hersh and David.

14 Q And the last point again just, you talked earlier
09:55 15 about the timing and the Danchuks and the
16 Rasmussens, if I'm Mr. Wolch or I'm the justice
17 minister, would it be fair to say that you would
18 have spent some time going through the facts of
19 the case to say lookit, here's why we don't think
09:56 20 David could have committed the offence?

21 A Yes.

22 Q And we've touched on the Danchuk and Rasmussen
23 observations and --

24 A And they were reliable witnesses and, you know,
09:56 25 you've got these others, these kids who have been



1 put through the ringer and their information is
2 all over the map in comparison and, I mean, Nichol
3 John is making a statement that she couldn't
4 possibly have seen when she said that she saw him
09:56 5 stab her because the wounds were not in the -- you
6 know, they were in the coat but they weren't in
7 the dress, so when we got to all of these things,
8 I mean, you suddenly realized the impossibility of
9 what she had been saying on the stand.

09:56 10 Q And again, just -- let's just try and get your
11 thinking at the time, January, 1986 or
12 thereabouts, you told us obviously from day one
13 you believed and knew in David's innocence;
14 correct?

09:57 15 A Yes.

16 Q In 1980 when you started you said the same thing,
17 and as did your family, but that as you started to
18 gather information, that I think your words were
19 from an intellectual perspective you now had
09:57 20 information that supported your view as a mother,
21 if I can put it that way?

22 A Yes, I had believed for years with my heart, but
23 then suddenly I knew it with my mind.

24 Q And so in January of 1986 did you feel that you
09:57 25 had enough information, at least in your view, to



1 say --

2 A Oh, in my view I had enough information for some
3 time that I felt should have freed David.

4 Q And so that if I'm the justice minister, based on,
09:57 5 in part on what we've just went through in the
6 last couple of days, you felt you had enough
7 information to convince somebody that, for
8 example, that David is probably innocent. I know
9 you felt -- I mean, you are saying he is innocent,
09:58 10 but you could at least in your view convince
11 somebody that he's innocent?

12 A Yes, and we never asked people to believe that
13 David was innocent, we asked our supporters and
14 everything, everyone we talked to, to believe that
09:58 15 he should have his case re-opened because there
16 was enough questions there and information that
17 should be reheard.

18 Q And so again let's go back to the 1986 scenario, I
19 think you are saying lookit, I'm convinced he's
09:58 20 innocent, I think I can prove to you, justice
21 minister or Hersh Wolch, he's innocent, but
22 putting that aside, there's enough information
23 here that should cause you to say something is not
24 right here?

09:59 25 A And he should have a new trial.



1 Q And to have some hearing to allow this evidence to
2 come forward; is that --

3 A That's correct.

4 Q That's fair, okay. Now, again, can we just talk a
09:59 5 bit about David's mindset and your mindset,
6 January, 1986, when you, or fall of '85 when you
7 leave Mr. Merchant and engage Mr. Wolch. You
8 would have been at it for five years; correct?

9 A Yes.

09:59 10 Q When you started -- when you started in December
11 of 1980, at that time where did you think you
12 would have been five years later?

13 A I would have thought that he would have been out
14 for some years at that point.

09:59 15 Q So '85, '86, you've been at it five years, you
16 thought you had enough information to get a remedy
17 for some time; correct?

18 A Correct.

19 Q And would it be fair to say that you and David
09:59 20 were frustrated that, for whatever reason, he was
21 still in jail and nothing had happened?

22 A And, you know, it just, new things kept happening,
23 like Centurion Ministries, Dr. Ferris and then you
24 just kept being pulled in day by day by day.

10:00 25 There was more coming out all the time.



1 Q I'm going to get there, but just in 1986, at that
2 time --

3 A Yes.

4 Q -- now, David had been in jail for 16 years by
10:00 5 then and as far as his happenings in jail, if I
6 can call it that, I take it they were not getting
7 any better as far as his --

8 A No, they weren't, they were getting worse, and it
9 was exceedingly difficult. I remember one time
10:00 10 going to the prison and they said that David
11 didn't want to see me and I said, 'What do you
12 mean he doesn't want to see me?' 'Well, he said
13 he doesn't want to see you,' he was in solitary,
14 and I was, I knew that something was radically
10:01 15 wrong at that point, and the warden wasn't there,
16 but the deputy warden was and I had some very bad
17 experiences in the prison system. It's very hard
18 on the families that go up to visit and, in
19 particular, this one time I remember I was trying
10:01 20 to get a tape recorder in for David and he had a
21 cassette player and they didn't allow the 8-track
22 in and I had sort of worked my way up to talking
23 to the warden, I had gone through all the others,
24 and they said no, and when I walked into the
10:01 25 warden's office he looked at me and he said, 'Do



1 you see this piece of paper, Mrs. Milgaard?' And
2 I said 'yes', and he said, 'Do you know that if I
3 sign my name on that piece of paper, David is back
4 in Dorchester, New Brunswick. Is that what you
10:02 5 want?' and I said 'no', and I felt like he had
6 kicked me in the stomach, I mean, I left the
7 office, I was physically sick, but that's the kind
8 of treatment you get in prisons, and this
9 particular day I rebelled and I said I will go out
10:02 10 and I will sit on the steps and I will call the
11 press, I'll do something, but I'm not going away
12 from this place until you let me see my son, and
13 this deputy warden allowed me to go down and I saw
14 David, he was like a little old man, his hair was
10:03 15 tattered and he was unshaved, he was dirty, he was
16 shuffling, he was like a little old man, and he
17 didn't know me and I said to him, 'David', and
18 he said, 'Mom? No, it can't be mom, it's a
19 vision,' and I said, 'It is mom, it is me,' and he
10:03 20 said 'No, it can't be,' and I took him in my arms
21 and I said, 'I love you and God loves you and
22 we're going to get you out of here.'

23 Now, I'm telling you this so
24 that you understand what my son went through and
10:04 25 that's just one incident of the kind of things



1 that he underwent during that period of
2 incarceration and it just changed his mind and it
3 caused us to have difficulty when working with
4 him, but that's what fuelled me, was knowing what
10:04 5 he was going through.

6 Q And again, do you recall when, and I'm not sure
7 that it matters, but that incident, where in the
8 time frame that would be, would that be in the
9 '80s? Do you remember where that --

10:04 10 A It would have been.

11 Q -- where that would have fit in on the --

12 A I would have to go back.

13 Q No, that's fine.

14 A But it's just one of many incidents where David
10:04 15 was fragile and he had, we would have our days of
16 ups and we would think everything was going well
17 and then suddenly it would come crashing down and
18 nothing would happen, and you can't have all these
19 ups and downs without it affecting you mentally
10:05 20 and it was affecting him.

21 Q And as far as you, would it be fair to say, and
22 again if we look at 1986, you would have five
23 years of investigation and, fair to say, some ups
24 and downs?

10:05 25 A Many ups and downs.



1 Q And would it be fair to say that your ability to
2 deal with the downs was becoming more of a
3 challenge, and with David; in other words, for --

4 A It was.

10:05 5 Q -- for people, for example, for not -- for people
6 perhaps rejecting positions or disputing
7 positions, that by this time in 1986 you may not
8 have been as willing to listen to, if I can call
9 it, the other side of the story because you didn't
10:05 10 think there was one?

11 A There wasn't another side as far as I was
12 concerned, there was our side and I had right on
13 my side and I was going to win.

14 Q Right. Now, again, just in 1986, I think it would
10:06 15 be fair to say that at that point, although you
16 had gone to Mr. Young and to Mr. Merchant and
17 started gathering information, at that point no
18 request had been made for any remedy from any
19 authority; is that fair?

10:06 20 A Yes.

21 Q And that's -- I mean, that's what you were trying
22 to do since --

23 A Yes.

24 Q Since at least --

10:06 25 A Day one.



1 Q 1980 or '81?

2 A Uh-huh.

3 Q So in 1986, just so that we have what you and
4 David are thinking at that time, he's been in jail
10:06 5 for 16 years, you've been investigating for five
6 years and at that point, and I'm not asking, I'm
7 not saying this in a critical way, but at that
8 point you had not yet asked the authorities to do
9 anything yet, but you were anxious to do so; is
10:06 10 that fair?

11 A Yes.

12 Q And you were relying on others to tell you when,
13 how, and how best to do that?

14 A And how to do it.

10:07 15 Q Now, do you recall, again in your discussions with
16 Mr. Wolch or Mr. Asper sort of early on, any
17 discussion about what you needed to prove, what
18 was the test, or did you leave that up to them?

19 A I think we discussed it, but basically that's
10:07 20 something I would leave up to them.

21 Q And as far as time frame expectation, when you
22 went there in the fall of '85 what was on your
23 mind and David's mind as far as --

24 A We figured he would be out the following year for
10:07 25 sure.



1 Q And that would have been David's as well?

2 A Oh, yes.

3 Q If we can go to 213127?

4 A And, I mean, David was writing to everybody, I
10:08 5 think you probably got a lot of the documents
6 where he was writing to just everybody to get him
7 out of there.

8 Q Yeah, we have touched on some of them and I'll go
9 through actually a couple with you during this
10:08 10 time frame to see if you can shed some light or
11 give, elaborate on what he was thinking at the
12 time.

13 A Okay.

14 Q This is the January 16th letter with Mr. Wolch,
10:08 15 and again we've probably touched this, but what
16 you are saying is:

17 "My understanding of this was \$2,000
18 would cover the visit with David, the
19 perusal of all transcripts, documents,
10:08 20 research data that Peter will provide,
21 and a final meeting providing us with
22 your conclusions & opinion on how to
23 proceed further."

24 And again, would that capture, at least in part,
10:08 25 what it was you were asking them to do?



1 A Yes, it was.

2 Q So go through everything we've got and give us
3 your opinion on how to proceed further?

4 A Yes.

10:09 5 Q And the "proceed further" would be a remedy from
6 the minister?

7 A Yes.

8 Q And if we can scroll down:

9 "I shall write to Peter and ask him to
10:09 10 bring everything with him & see that --"
11 The next page is going to be upside down. Are
12 you able to flip that around?

13 "-- it gets to you. Should you need to
14 reach me by phone ..."

10:09 15 Etcetera. So it appears that you had talked to
16 Mr. Carlyle-Gordge or were to get all of his
17 information --

18 A Yes.

19 Q -- to Mr. Asper and Wolch, and we'll see some
10:09 20 correspondence about that. If we can go to
21 162436, please, this is a January 22, 1986 letter
22 from David to Mr. Wolch, and I take it you would
23 have discussed this with David?

24 A Absolutely, uh-huh.

10:10 25 Q And we saw an earlier letter where he talks about



1 that, and he talks here about:

2 "The 5th Estate will be airing my case
3 on T.V. in February. I wish to use the
4 publicity to go on the offensive. I
10:10 5 want to take the position that I can
6 demonstrate beyond any reasonable doubt
7 that I did not commit the crime and I
8 can do so on the same evidence that
9 convicted me and never gave me the
10:10 10 benefit of the doubt."

11 And is it fair to say when I asked you the
12 questions earlier about January, '86, if I'm Mr.
13 Wolch or the justice minister, that everything
14 you went through or we talked about as to why you
10:10 15 thought you could establish that either David was
16 innocent or, at the very least, he should have a
17 hearing because there's something wrong with his
18 conviction, do you remember us going through
19 that?

10:11 20 A Yes.

21 Q Would it be fair to say that in addition to what
22 you and I discussed this morning, that there would
23 be more information as well that you had?

24 A Oh, yes.

10:11 25 Q And is it correct that your son David would also



1 have been aware, I mean, you would have gone
2 through the same things with him, he would have
3 had similar knowledge to you about the information
4 you were gathering?

10:11 5 A Yes, he did.

6 Q And so you were on the outside saying look at all
7 the information I have, David was on the inside
8 with the same information?

9 A Yes.

10:11 10 Q Saying I think I have enough here to prove, to
11 either prove my innocence or prove something was
12 wrong when I was convicted?

13 A Uh-huh.

14 Q Is that fair?

10:11 15 A That's fair.

16 Q And David here says:

17 "My immediate concerns are to meet you
18 and to make arrangements for Peter to
19 forward all his material to us (with his
10:11 20 explanation of it)."

21 And I take it in this letter, we'll see in a few
22 other letters, David makes mention of the fact
23 that Peter Carlyle-Gordge is pretty critical
24 because he has reviewed a bunch of things and he
10:12 25 can prove David's innocence?



1 A Yes.

2 Q If we can go to 182350, this is January 28, '86,
3 David writing a letter to the *Fifth Estate* crew,
4 and I think just the time frame, by this time Mr.
10:12 5 Wolch has been engaged, the *Fifth Estate* are doing
6 a program, and David says:

7 "I have decided not to eat or drink
8 anything until I am a free man. I have
9 looked at this from all angles and my
10:12 10 one concern is that I have not messed
11 things up for you people."

12 Etcetera. So it would appear at this point that
13 David is quite --

14 A Oh, he's really -- he's going to go on a hunger
10:13 15 strike. He did go on a hunger strike.

16 Q And would that be his frustration that things were
17 not happening?

18 A That's right.

19 Q Then if we can go to 333272, he also writes to
10:13 20 John Crosbie, the justice minister, and says:

21 "My family and I have fought so very
22 long for my freedom and I am impatient
23 now."

24 And goes on to talk about not eating or drinking.

10:13 25 And then:



1 "With this in mind and the evidence
2 available I ask you to simply look at it
3 and end this ordeal."

4 And I think, and I could be wrong on this, I
10:13 5 think this would have been the first contact
6 with, at least in writing, unless Mr. Wolch or
7 Mr. Asper phoned them before this, which Mr.
8 Asper wasn't able to tell us, but this would have
9 been the first --

10:13 10 A I think the first contact.

11 Q -- contact with the Federal Minister saying, from
12 David saying lookit, I want you to look at the
13 evidence and end this ordeal; is that fair?

14 A That's fair.

10:14 15 Q And then 212568, David also wrote to the prime
16 minister, I don't have a date, but I believe it to
17 be right around this time because it talks about
18 the same matters, and here, there's just one point
19 here that I'm wondering if you can shed some light
10:14 20 on, he's talking about the *Fifth Estate*, and:

21 "One segment is with a witness we had
22 looked for for a long time. She is now
23 married to a minister and in her part on
24 the show she tell how two crown
10:14 25 witnesses perjured themselves."



1 I'm assuming that's Deborah Hall; is that
2 correct?

3 A That's correct.

4 Q Okay.

10:15 5 A David and Hersch were trying to keep my David from
6 doing the letters that he was doing, but he just
7 felt so alone. I mean, at least with Peter and I
8 and Paul Henderson, we were out and we were doing
9 and we were, we've got our hands busy and our
10:15 10 minds busy, but he didn't, and it was very, very
11 difficult for him.

12 Q Do you recall in talking to Mr. Wolch and Mr.
13 Asper initially what sort of time frame they felt
14 might be in play or --

10:15 15 A I don't remember what they told me at that time.
16 I think we all had high hopes that the justice
17 system would respond quickly, efficiently, but it
18 never happened.

19 Q If we can go to 013017. And this is a March 6th,
10:15 20 '86 letter from David to the parole board members,
21 and I don't want to get into any of the parole
22 issues but here he says -- and, again, this is
23 March of '86:

24 "A legal presentation that will probably
10:16 25 see me unconditionally released with



1 compensation is also being done but it
2 could be up to 6 months or more before
3 I'm free."

4 And would this be, again based on your
5 discussions with David at the time, would that
6 have been his mindset, thinking, okay, --

7 A That would be his expectation of it, and so you
8 can see why, as each day went on and months and
9 months, that he became more unstable, if you will,
10 in the prison.

11 Q And then 182348. And this is a letter March 26th,
12 '86 to the *Fifth Estate*, and you will remember
13 yesterday we talked about the *Fifth Estate* and I
14 think you told us that that show was pretty
15 important to David, wasn't it?

16 A Oh, he was basing so much on it.

17 Q And was that because he thought that, once that
18 was aired, that people would listen?

19 A Yes, and he figured that it would force the
20 justice system, now, to do something.

21 Q Now at this time again -- and there had been no
22 formal application -- can you tell us what was on
23 your mind or what was discussed with David about
24 the justice -- you talked earlier about thinking
25 the justice system would fix the problem; at some



1 point were you advised or were you told that
2 "lookit, until you actually ask them to do
3 something, they may not do anything until you ask
4 them"?

10:17 5 A And, of course, he had asked them. He wrote to
6 the Justice Minister.

7 Q To John Crosbie?

8 A Yes.

9 Q Okay. But just to get your understanding -- and
10:17 10 maybe this isn't a fair question to you, maybe
11 it's to your lawyers -- but did you understand,
12 once you'd started in 1981 going down the path of
13 getting information to get a remedy for David, did
14 you understand that until you did something
10:18 15 formally and asked them to do something, that they
16 would not, or likely not, look at the case or do
17 anything about the case; or did you have an
18 expectation that, even though you hadn't applied,
19 that they might otherwise go and look at it? Do
10:18 20 you follow where I'm going?

21 A Well, I think that part of it I was leaving
22 entirely up to the lawyers, as soon as they felt
23 we had what we needed to present. But I think
24 that, when we started examining all the things
10:18 25 that you had to have and all of the things that



1 you had to get in, that puts a lot of time
2 constraints on you right there.

3 Q Okay. Let me just back up. I think, after
4 David's conviction and the appeals were exhausted
10:18 5 in the early '70s, --

6 A Yes.

7 Q -- I think you said that you had this thinking
8 that somehow the justice system would fix it or
9 would catch it; is that right?

10:19 10 A Uh-huh, yes.

11 Q And then in 1980 or '81, when you started to
12 gather information and you hired Mr. Young and Mr.
13 Young wrote to you and said, "lookit, in order to
14 get a remedy you need to apply to the Minister for
10:19 15 mercy", --

16 A Right.

17 Q -- what I am trying to understand is whether you
18 became aware, at that time, that, okay, the
19 justice system isn't going to fix David's
10:19 20 conviction until we apply?

21 A Yes.

22 Q And that there --

23 A And that's what we were doing --

24 Q Right, okay.

10:19 25 A -- through Hersh and David.



1 Q Right. And so that would it be fair to say that,
2 once you got into it in the early '80s, you became
3 aware that the Justice system wasn't, on their own
4 initiative, --

10:19 5 A Going to do anything.

6 Q -- going to do anything; is that fair?

7 A That's fair.

8 Q Okay. And so here, this --

9 COMMISSIONER MacCALLUM: When did you know
10:19 10 that, ma'am? Wasn't that the question?

11 BY MR. HODSON:

12 Q I think in the early '80's; is that fair?

13 A Probably --

14 Q Yeah.

10:20 15 A -- when I went to Hersh and David they would have
16 told me that.

17 Q But what about when Gary Young, remember I went
18 through the letter with --

19 A I know you did go through that letter, and I don't
10:20 20 know whether it really, whether I really
21 appreciated that at that time, what steps I'd have
22 to take or anything. I don't think we ever, that
23 I ever really got into it with Gary Young because
24 I moved from him to Merchant and then from
10:20 25 Merchant to Hersh and David, and it wasn't until I



1 got to Hersh and David that I really realized how
2 those steps would be taken and how to do them.

3 Q And I think, when we looked at the interaction
4 with Mr. Merchant, I think Mr. Merchant, in a
10:20 5 couple of those interviews, said "lookit" --

6 A You need something new.

7 Q -- yeah, "you need something, a bombshell"?

8 A A bombshell.

9 Q Yeah. And so is it fair to say, at that time,
10:20 10 that you weren't -- that it was your view that you
11 had to get the bombshell, you had to get
12 something, and you had to give it to the Federal
13 Minister before the Federal Minister would do
14 anything?

10:21 15 A Would do anything, yes.

16 Q Right. And, I mean, --

17 A But for David, being in the prison, I think he
18 felt the minute that he wrote to the Justice
19 Minister he was applying for help.

10:21 20 Q Okay.

21 A That's what I was trying to say.

22 Q Right.

23 A Sorry if I put you down the wrong path.

24 Q No, no, no, we're okay. So that was in March of
10:21 25 '86, I think David wrote to John Crosbie --



1 A Yes.

2 Q -- and said "lookit" -- and I'll go to his
3 response in a bit here, but just back on your
4 thinking, and please correct me if I'm wrong -- in
10:21 5 the early '80s you would have been aware that the
6 federal Justice Minister was not going to give you
7 a remedy or look into the matter until you asked
8 him or her to do so; is that fair?

9 A Yes, that's fair.

10:21 10 Q Yeah, and that you spent the time in the early
11 '80s to try and gather information that you felt
12 would --

13 A Assist in that.

14 Q -- assist? Okay. So here, with the *Fifth Estate*,
10:22 15 it looks like David is getting upset with the
16 *Fifth Estate* as well, because this program that he
17 has been wanting has not -- has not aired yet; is
18 that fair?

19 A That's fair.

10:22 20 Q And then 21 -- sorry -- 333268. This is a letter
21 back from the executive assistant for John Crosbie
22 to David responding to his letter, and they seem
23 to indicate:

24 "Though you give no particulars of the
10:22 25 alleged offence, I would guess that you



1 are the David ... Milgaard ... convicted
2 ...",

10:22 3 of this offence. And then, scroll down, actually
4 go to the full paragraph, please. The letter
5 states:

6 "On receipt of an application ...",
7 go back to the full document, yeah, just this
8 part:

10:23 9 "On receipt of an application for mercy,
10 the Minister of Justice has the power to
11 order a new trial or appeal proceeding.
12 ... he can also recommend ... the
13 granting of a pardon ... granted only
14 rarely, in the most compelling
10:23 15 circumstances which suggest that there
16 had been a miscarriage of Justice."

17 And so, again, is it fair, at this time, that
18 David -- would David have shared this letter with
19 you, do you think, and Mr. Wolch and Mr. Asper,
10:23 20 or how did the flow of information go between
21 David and people outside?

22 A Often we weren't aware of what he was doing.

23 Q Okay. And then, again, they talk about what needs
24 to be filed, a brief, transcripts, and materials;
10:23 25 is that fair?



1 A Yes, a lot of things that have to be handed in.

2 COMMISSIONER MacCALLUM: Did he tell you
3 this, though, did David tell you --

4 A I don't know that David -- I don't recall David
10:23 5 ever sharing this with me.

6 BY MR. HODSON:

7 Q Okay. If David had not shared this with you, is
8 this something you would have learned from Mr.
9 Wolch and Mr. Asper about what -- or is that
10:24 10 something you left to them to say, "lookit, you
11 are the lawyers, you figure out what needs to be
12 filed", or did you talk to them about that?

13 A Well Hersh was telling me, you know, "we've got --
14 there are -- there's the paperwork, the things
10:24 15 that we have to do, we have to get", and I believe
16 we had to get transcripts and we had to get a lot
17 of things to go in there, and I know they were
18 preparing and doing those, but yes, that was
19 something -- I was still investigating, not sort
10:24 20 of in the, that part of the situation or the
21 application.

22 Q Okay. If we can go to 213429. This is David's
23 letter, and I think it's back to John Crosbie, and
24 he says:

10:24 25 "I'm aware of how to proceed legally and



1 have a reputable solicitor, Mr. Hersh
2 Wolch presently retained.",
3 and goes on to talk about it, and then at the
4 bottom of that letter we see:

10:25 5 "c.c. legal
6 5th Estate",

7 And:

8 "mom".

9 Are you able to tell us, what did the 'legal'
10:25 10 mean, did that go in a file or did that go to the
11 lawyers or --

12 A I think that went to the lawyers, and I remember
13 getting this, a copy of this letter as well.

14 Q Okay. 156666. And this is April 14th, 1986, and
10:25 15 here Mr. Carlyle-Gordge is in England, and
16 Mr. Wolch writes:

17 "As you are probably aware I am
18 attempting to help David Milgaard.
19 David has requested that I contact you
10:25 20 to obtain the relevant transcripts etc.
21 that might be of some assistance."

22 And presumably those would be the witness
23 interview transcripts?

24 A Yes.

10:26 25 Q "Other than some conversations with David



1 and reading the case as reported I have
2 very little to work with and am not
3 really sure in what direction I am
4 going.

10:26 5 Any comments you might have and
6 transcripts would be greatly
7 appreciated."

8 COMMISSIONER MacCALLUM: What's the date,
9 please?

10:26 10 MR. HODSON: That is April 14th, 1986.

11 BY MR. HODSON:

12 Q And I think you told us it was Mr. Carlyle-Gordge
13 who recommended Mr. Wolch, wasn't it?

14 A That's correct.

10:26 15 Q And did they have a previous working relationship
16 on the Katie Harper matter?

17 A That's correct.

18 Q And, again, I think you told us that, when you
19 talked to Mr. Wolch initially, you had indicated
10:26 20 "Peter Carlyle-Gordge has information and can
21 help"; is that fair?

22 A Yes.

23 Q Information, not only what he knows, but
24 documents, transcripts?

10:26 25 A Supports the idea of David's innocence, too, I'm



1 sure I told him that.

2 Q Do you remember when you first met with David
3 Asper, what time frame that would be?

4 A I would have come up from Princeton, I think,
10:26 5 in -- right when he started pretty well.

6 Q So March of '86?

7 A Yeah.

8 Q Do you have a recollection of a meeting with him?

9 A Yeah, I have recollection of him saying he'd been
10:27 10 out to see David --

11 Q Yes?

12 A -- and said he was -- what he had asked him, he'd
13 asked him "did you do it" and David said "no", and
14 that they'd talked, and he felt he believed
10:27 15 him, --

16 Q I think that --

17 A -- and then he headed out to the scene of the
18 crime.

19 Q And I think that interview was around April 24th,
10:27 20 '86. I'll show you a memo a bit later.

21 A Uh-huh.

22 Q So sometime in the spring, --

23 A That's right.

24 Q -- some early part of '86, you would have met
10:27 25 David Asper for the first time; --



1 A Yes.

2 Q -- is that correct?

3 A That's correct.

4 Q This is probably an appropriate spot to break, Mr.
10:27 5 Commissioner.

6 COMMISSIONER MacCALLUM: Okay.

7 (*Adjourned at 10:27 a.m.*)

8 (*Reconvened at 10:53 a.m.*)

9 BY MR. HODSON:

10:53 10 Q If we can go to 218627, please. And this is a
11 letter April 21, 1986 from *Fifth Estate* to
12 Mr. Wolch, and it says:

13 "I have been asked by
14 Mrs. Joyce Milgaard to forward the
10:53 15 enclosed documents.

16 They are transcripts mostly of
17 telephone conversations between
18 Mr. Peter Carlyle-Gordge, a journalist,
19 and witnesses who gave evidence in the
10:54 20 David Milgaard murder case in 1970."

21 And:

22 "The trial transcript is
23 being sent ... separately ...".

24 It would appear, from this, that all of the
10:54 25 witness interviews that Mr. Carlyle-Gordge and



1 you had done in the early '80s had been sent to
2 the CBC *Fifth Estate*, is that right, for their
3 show?

4 A I believe that Peter had given them to them, yes.

10:54 5 Q And so that would that be everybody that was
6 interviewed to assist the CBC in what -- in the
7 show that they were planning?

8 A Yes. I think, at first, it was to get their
9 interest to do a show.

10:54 10 Q Oh, I see, so that you would have sent this off,
11 when, in '83-'84?

12 A Yeah, to show them what we were doing and why, and
13 some of the things we were finding out.

14 Q And would you have given them everything, do you
10:54 15 think, or everything that you had come up with?

16 A Umm, I -- I think that was what Peter was doing,
17 like, Peter gave them to them.

18 Q And then here's a letter back -- or sorry, if we
19 could go to 162433. And this is April 28th, '86
10:55 20 back to Mr. Wolch, and he just says, "lookit, if
21 you haven't heard from him" -- or sorry, about
22 getting the information from Gordon Stewart at
23 CBC, and:

24 "... I think the fastest route is to
10:55 25 phone Fifth Estate in Toronto and ask to



1 speak to him. He has copies of all the
2 relevant material and since Joyce, David
3 and I all agree you should have the
4 material to work on, there should be no
10:55 5 problem."

6 And I think the letter we just saw shows that
7 Mr. Wolch had already got that information; is
8 that right?

9 A I don't -- I'm not --

10:55 10 Q I'm sorry.

11 A I'm sorry, I'm not seeing --

12 Q Okay, no, let me just go back up. I think, I just
13 showed you the letter from CBC to Mr. Wolch --

14 A Right.

10:55 15 Q -- sending the transcripts on your request.

16 A To Mr. Wolch.

17 Q Right. And Mr. Carlyle-Gordge wrote back, between
18 the time Mr. Wolch wrote to Mr. Carlyle-Gordge the
19 CBC had already sent the transcripts --

10:56 20 A Sent it back, yes.

21 Q -- to him?

22 A Okay.

23 Q Mr. Carlyle-Gordge writes back and says, "lookit,
24 contact the CBC to get the information, that's the
10:56 25 quickest route"?



1 A Right.

2 Q I'm just asking for confirmation that I think you
3 had already got them?

4 A Yes, I think we had at that time.

10:56 5 Q And then if we can scroll down just a little bit
6 here -- no, sorry, go back up, no, this paragraph.
7 He says, this is Mr. Carlyle-Gordge to Mr. Wolch
8 in April of 1986:

9 "The key to the case is to get one of
10:56 10 the three young Crown witnesses--
11 Cadrain, Wilson or Nicol John--to talk
12 and admit they were leaned on to change
13 their testimony. *Fifth Estate* has been
14 trying to do exactly that--without
10:56 15 success as yet."

16 And do you know, Mrs. Milgaard, why, or whether
17 there was any discussion about -- with Mr. Wolch
18 or Mr. Asper, before the application was filed in
19 December of '88, about going out and interviewing
10:57 20 Wilson, John, and Cadrain as Mr. Carlyle-Gordge
21 suggests, or is that something you left up to
22 them?

23 A I don't remember any actual discussions on it.
24 I'm sure, a lot of it, I was leaving up to them.

10:57 25 Q And again, as far as the decision to either go



1 interview Cadrain, Wilson, or John by Mr. Wolch or
2 Mr. Asper, would that be something you would leave
3 to them if they thought it was necessary?

4 A Because I had already, you know, I had, with
10:57 5 Peter, already interviewed these people.

6 Q But as far as whether they should be talked to
7 again, was that something --

8 A Oh, that was something that I was certainly
9 leaving up to them.

10:57 10 Q Because we know, in May of 1990, they were
11 interviewed with Mr. Henderson; correct?

12 A Yes.

13 Q And I'm just wondering if you're aware of any
14 reason why that didn't happen earlier, if there
10:57 15 was some reason? Did you ever tell them, "lookit,
16 don't go talk to Wilson, Cadrain or John", or
17 anything of that nature?

18 A Well, no, but they knew what we had got from them,
19 and maybe we were pursuing other avenues at that
10:58 20 point.

21 Q Okay. If we can go to 213125, please. And this
22 is an April 28th, 1986 memo from David Asper to
23 Hersh, and I think this is where Mr. Asper first
24 visited David, and when I go through this I'll try
10:58 25 and use "David" to signify David Milgaard and "Mr.



1 Asper" for David Asper so that we can --

2 A Okay.

3 Q -- keep the two separate, or did you have a better
4 name for Mr. Asper that you called him --

10:58 5 A No, that's fine.

6 Q -- to keep them apart? No?

7 A I always just said "my David" for my David.

8 Q If -- and this appears to be the first time that
9 Mr. Asper went to visit him, and I think that was
10:59 10 his evidence, would this have been -- you told us
11 earlier this morning that you remember meeting
12 with David after he had gone out and talked to --

13 A Yes.

14 Q You remember meeting with Mr. Asper after he went
10:59 15 out and talked to David; is that right?

16 A Yes, I do.

17 Q And so, here, the summary of his notes:

18 "1. ...",

19 David, your David, says that:

10:59 20 "... his mother knows more about when
21 the fifth estate will air the show then
22 he does. Apparently the mother has gone
23 into some kind of Christian scientist
24 program in England but may be returning
10:59 25 in a couple of weeks on her way through



1 to Vancouver where she intends to
2 permanently reside."

3 And I think, at this time, you had told us
4 earlier that, from England, part of your training
10:59 5 was into New Jersey?

6 A Yes.

7 Q And so you wouldn't have been in Winnipeg at this
8 time but had travelled there sometime after this
9 memo; is that right?

10:59 10 A That's correct.

11 Q And Mr. Asper writes that:

12 "Mr. Milgaard indicated that he is
13 interested in retaining your services
14 ...",

11:00 15 which is Hersh:

16 "... for the purposes of either
17 obtaining a new trial or exoneration and
18 compensation."

19 And I take it at this point, as part of the -- of
11:00 20 what was going on, that David and you were saying
21 "lookit, not only am I innocent and I should get
22 out of jail, I should be compensated for the fact
23 that I have been in jail wrongly", that that was
24 a matter that --

11:00 25 A Yes, that was something that was very important to



1 David.

2 Q And David Milgaard:

3 "... indicated that the Crown, at the
4 time of the trial, had a statement from
5 one Debbie Hall which apparently say's
6 that David never went through the motion
7 of stabbing pillows when a news report
8 of the murder came on the television set
9 ...",

10 and then goes on:

11 "You might recall that in the court of
12 appeal decision there had been some
13 evidence that David saw a news report of
14 the murder and then went through a
15 series of stabbing motions using the
16 pillow as the victim."

17 So it would appear, at this initial meeting, that
18 your David is telling Mr. Asper that there's
19 information that -- from Debbie Hall which
20 disputes the Melnyk and Lapchuk evidence?

21 A Yes.

22 Q And I think he says:

23 "... the Crown, at the time of the
24 trial, had a statement from one Debbie
25 Hall ...",



1 I'm not sure that there was ever a statement --

2 A No --

3 Q -- at trial?

4 A -- they did not.

11:01 5 Q And, possibly, this may have been the statement
6 given to Chris O'Brien; is that --

7 A Yes, I think so.

8 Q And so, again, can we -- you would have dealt with
9 your David throughout this time. Is it fair to
11:01 10 say that on his mind in early 1986 was, "lookit,
11 the Deborah Hall information, that's one piece of
12 information that" --

13 A Uh-huh.

14 Q -- "of the things that I am relying upon", and
11:01 15 that's why he would tell Mr. Asper?

16 A Yes, that's true.

17 Q And then David:

18 "... say's that he is not a 'secreeter'
19 and therefore the typing of blood from
11:01 20 the frozen semen found near the body
21 could not be his."

22 And then Asper goes on to tell Wolch that:

23 "You will recall that 2 yellow clumps of
24 frozen substance ...",

11:02 25 etcetera.



1 "As I understand it the way that these
2 antigens would be traceable in semen is
3 if the individual is known as a
4 'secreter'."

11:02 5 And just scroll down:

6 "Although Milgaard is type A blood he
7 say's that he's not a secreter. He
8 could not recall whether this fact was
9 disputed at trial but claimed that if it
11:02 10 had he would have remembered."

11 So it would appear, at this time, that your David
12 is -- has raised the secretor issue --

13 A Yes.

14 Q -- with Mr. Asper, and would that be something
11:02 15 that you and he would have discussed in going
16 through the trial transcripts, that -- prior to
17 that?

18 A We may have.

19 Q Do you remember, what was your recollection about
11:02 20 your knowledge as to whether David was or was not
21 a secretor at the time?

22 A Well at the -- at that time?

23 Q Yes?

24 A It would have been that he was a non-secretor.

11:02 25 Q And that would have been based on the evidence at



1 the trial; is that right?

2 A Yes.

3 Q Then the next page.

4 COMMISSIONER MacCALLUM: When you say "we
11:03 5 might have discussed it in going through the
6 trial transcripts", who do you mean, David Asper
7 or David Milgaard and you?

8 BY MR. HODSON:

9 Q And I'm sorry, my question was David Milgaard and
11:03 10 you?

11 A David Milgaard, yes.

12 Q Yes.

13 A We might have discussed it, but, you know, it's a
14 good thing the Commissioner mentions this because
11:03 15 the going through of the transcripts with David I
16 --

17 COMMISSIONER MacCALLUM: You will have to
18 say one or the -- you will to have distinguish
19 them, please, or we'll get --

11:03 20 BY MR. HODSON:

21 Q Yeah, distinguish between your -- David Milgaard
22 and David Asper here?

23 A Yeah. In going through the transcripts with my
24 David I think we started that much before this.

11:03 25 Q Okay. And so is it fair to say that, before Mr.



1 Asper went to see David Milgaard in prison, you
2 and David Milgaard had gone through the
3 transcripts from trial and identified this
4 secretor issue as one that was favourable to David
11:04 5 Milgaard's position?

6 A Yes.

7 Q Is that fair?

8 A That was our understanding of it.

9 Q And that might explain why, when David Asper first
11:04 10 meets with your David, that your David raises this
11 with him, that --

12 A I'm sure that that's what it was.

13 Q -- this secretor issue? And I think you told us
14 that, back at the time of trial, that Mr. Tallis
11:04 15 had told you as well that the secretor issue was
16 evidence that was favourable to David as well; is
17 that correct?

18 A Yes, he had.

19 Q And would it be a case of saying "lookit, why
11:04 20 didn't, why didn't it work for me?"

21 A If it was favourable, why didn't it do something
22 for us.

23 Q And so your thinking at the time, you and your
24 David in going to Mr. Asper, would be, "lookit,
11:04 25 this evidence should have been exculpatory, the



1 jury convicted, therefore something isn't right";
2 is that a --

3 A Correct.

4 Q -- fair way to put it?

11:05 5 A That's a fair way.

6 Q And then, here, it says:

7 "Milgaard ...",
8 this is David Milgaard:

9 "... was very anxious for me or you to
11:05 10 go through his case with a fine tooth
11 comb and confront him with every piece
12 of evidence which points toward his
13 guilt. He say's that he can explain it
14 all away and want's to do so as soon as
11:05 15 possible. He did not call any evidence
16 at the trial and say's that was probably
17 his problem. I am still going through
18 the material that you gave me and
19 perhaps latter this week we could spend
11:05 20 some time discussing it."

21 Did David Milgaard, did he express to you, at any
22 time, concern that, "lookit, if I would have only
23 testified maybe it would have been different"?

24 A Yes, he really felt that he'd made a mistake in
11:05 25 not testifying.



1 Q And would that have been, I mean obviously after
2 the fact looking back saying --

3 A It was hindsight.

4 Q -- "if I would have testified", in hindsight, "if
11:05 5 I would have testified maybe it would have been
6 different"?

7 A Yes.

8 Q And did he feel some -- it says here that he feels
9 that that was probably his problem; was he
11:06 10 feeling --

11 A That he didn't fight Tallis enough on it.

12 Q Yeah, I was going to say did he feel guilty -- but
13 that's probably the wrong word -- but did he feel
14 that he -- upset that he had not testified in some
11:06 15 way, that that might have had a factor in the
16 result?

17 A I think he did feel that it was a contributing
18 factor.

19 Q If we can go to 213604. This is a letter from
11:06 20 David to you of May 28th, 1986, and I think it's
21 about, well, anywhere from five to eight months
22 after you would have talked to Mr. Wolch
23 initially; is that fair?

24 A That's fair.

11:07 25 Q And I think you told us earlier that your



1 expectation and David's expectation was -- and we
2 saw the one letter where he said lookit, up to six
3 months before I get out, I think you said maybe up
4 to a year; was that your thinking of the time
11:07 5 frame?

6 A Yes, it was.

7 Q And here he is expressing some frustration, I
8 think, with you:

9 "The legal thing with Hersh Wolch
11:07 10 (actually with his flunky lawyer David
11 Asper) has gone no where fast and I've
12 been told I'd be seen and the thing
13 discussed but so far nothing - I called
14 Hersh and told him and he said he'd get
11:07 15 on it. Time will tell ..."

16 And was there some frustration at this point by
17 David with how fast things were moving, or not
18 moving, at least in his view?

19 A Yes, he was very frustrated. I can't, I don't
11:07 20 recall him ever calling David Asper his flunky
21 lawyer because, you know, it just seems so unlike
22 him, but I guess he was very frustrated at that
23 point, --

24 Q And so, again, this would be --

11:08 25 A -- because they really got along very well. David



1 Asper --

2 Q Right.

3 A -- was very good with my David.

4 Q And I think with just the point here, though, that
11:08 5 end of May of '86 your David was expecting things
6 to have gone much quicker; --

7 A Yes.

8 Q -- is that fair?

9 A That's fair.

11:08 10 Q And I think what Mr. Asper has previously said,
11 that he was going through the materials, and that
12 there was lots to go through?

13 A Yes.

14 Q 162432. And here's a letter from Mr. Asper to Mr.
11:08 15 Carlyle-Gordge June 5, '86, and he's, Mr. Asper
16 says:

17 "I'm assisting Mr. Wolch in this
18 endeavor and have began to wade through
19 the trial transcripts as well as the
11:09 20 interviews that you conducted with
21 several key witnesses."

22 And, presumably, those would be the interview
23 witness -- the interviews we've talked about?

24 A Yes.

11:09 25 Q Being with the key witnesses?



1 A That's correct.

2 Q And I think Mr. Asper confirmed that for us in his
3 evidence.

4 "I am trying to see Mr. Milgaard on a
11:09 5 weekly basis ... and hope that within
6 the next few weeks I will have a firm
7 grasp of the whole case."

8 And then:

9 "At some point it may become necessary
11:09 10 for us to contact some of the witnesses
11 that you interviewed, notably Nicholl
12 John, Ron Wilson and Albert Cadrain.
13 Accordingly, I would very much
14 appreciate your providing me with the
11:09 15 addresses that you had for these people
16 so that if they have moved I at least
17 have a fairly recent starting point."

18 And, again, are you able to shed any light on the
19 question of what happened with those interviews?
11:10 20 We know they weren't interviewed until May 1990;
21 do you recall discussing or being made aware of
22 any reason as to why they wouldn't be interviewed
23 by Mr. Asper, Mr. Wolch, or somebody that they
24 engaged to do so?

11:10 25 A Well, just that we were doing other things at the



1 time.

2 Q Okay. And then Mr. Asper says:

3 "Also, Mr. Milgaard advises me that you
4 had formulated a theory which suggested
11:10 5 that it was physically impossible for
6 Mr. Milgaard to have committed the
7 murder. I would be very interested to
8 hear your thoughts on this point."

9 And that would be, I think, the product of your
11:10 10 brainstorming with Mr. Carlyle-Gordge where you
11 and your family went to the site and analysed
12 things?

13 A Yes.

14 Q And I think what he told us is that, I can't
11:10 15 recall the words he used, but after going through
16 it, that you and he were convinced that it was not
17 possible for David to have committed the crime?

18 A That's right.

19 Q And did at some point Mr. Carlyle-Gordge share
11:11 20 that with Mr. Asper, or did you and Mr.
21 Carlyle-Gordge share that with Mr. Asper?

22 A I'm sure we did.

23 Q And again 162430, this is Mr. Carlyle-Gordge's
24 letter back to Mr. Asper, the 1989 was written
11:11 25 later, I think this is June 18th, 1986 that Mr.



1 Asper confirmed for us, and again, he provided the
2 information on an address for Wilson, John and
3 Cadrain, and then the next page, there's a P.S.:

4 "Tony Merchant in Regina was retained at
11:11 5 one point and may have some suggestions.

6 He didn't achieve much, -- "

7 I'm not sure what that word is.

8 A "Alas".

9 Q Do you recall any discussion with Mr. Asper or Mr.
11:12 10 Wolch about what Mr. Merchant had done, what he
11 may have had on his file or getting his file
12 materials?

13 A I don't recall.

14 Q And would that be something you would leave up to
11:12 15 them, to determine whether --

16 A I'm sure we discussed it, but I have no
17 recollection of discussing it with them.

18 Q But as far as getting Mr. Merchant's file, would
19 that be something you would leave --

11:12 20 A I would leave up to them. I wouldn't be
21 contacting him.

22 Q And 182098, this is a September 15th, 1986 memo
23 from David to Hersh, and it looks like you were
24 back in Winnipeg and you planned to stay there
11:13 25 until the case is finally resolved. Mr. Asper met



1 with David and you on September 12th, 1986:

2 "... and as I was walking out Mrs.

3 Milgaard mentioned to me that David was

4 getting very very impatient and was

11:13 5 contemplating using another lawyer. He

6 apparently feels that his case is not

7 receiving our full attention."

8 And do you recall this and can you elaborate on

9 what was happening at this point?

11:13 10 A Yes, because things were not going as fast as
11 either I or my David had expected. I guess both
12 of us had unrealistic expectations when we turned
13 the case over to them. When I was doing
14 something, I, you know, I'm focused on it, I'm out
11:14 15 and I'm doing it, but Hersh had a law firm to run,
16 David Asper had other cases that he was working
17 on, they couldn't be working full time on this,
18 and yet I guess that's what we had expected and I
19 think that I felt that by staying there I might
11:14 20 help it become more focused, and by mentioning
21 that he was being very, very impatient, I felt
22 that if I told him that, it might have some effect
23 on maybe speeding up what they were doing.

24 Q And would the impatience, if I can call it that,
11:14 25 would be to get the application filed?



1 A Yes.

2 Q And that's what you were keen on happening, is
3 that a formal application -- because I think
4 you've told us you felt that you thought you had
11:14 5 enough information?

6 A Yes.

7 Q Go to 213552, this is a letter, just stepping back
8 a month, July 30, 1986 from David, your David to
9 the *Fifth Estate*. Just go to the next page, it
11:15 10 talks about:

11 "My presentation to the Minister of
12 Justice is almost done and I have been
13 advised to wait until the show airs, if
14 it airs. Personally I do not know how
11:15 15 important your show is to people unless
16 my considerations are ever considered."

17 And we've heard some evidence from Mr. Asper on
18 this and we see this in the documents, that David
19 Milgaard was preparing his own presentation to
11:15 20 the minister; is that right?

21 A Yes, because he was becoming very frustrated about
22 it and he was the one in prison and he had the
23 time on his hands and so he started preparing his
24 own --

11:16 25 Q And this would be --



1 A -- out of frustration.

2 Q And so this would be an application to the
3 minister for mercy under what became Section 690?

4 A That's right.

11:16 5 Q And we'll see in a few of the later documents he
6 talks about the two products, one being his and
7 one being Mr. Wolch and Mr. Asper's, and them both
8 going in; is that right?

9 A That's correct.

11:16 10 Q 182096, please.

11 A Can I have that just --

12 Q Sure.

13 A Where it says, "More to the point, I feel I have
14 been slieghted ..."

11:16 15 Q Yes, if you can just scroll down, please. Having
16 read that, I actually didn't see that before, but
17 it looks like he's saying to the CBC is it
18 possible you could even be privy to an obstruction
19 of justice, and would David's thinking at this
11:17 20 time have been that lookit, maybe the reason the
21 CBC is not running the story is because they are
22 part of the obstruction of justice?

23 A Yeah, that's what it looks like to me. This could
24 probably be when he was not doing very well.

11:17 25 Q And was it a case where -- and perhaps over time,



1 and certainly the longer it took and the more
2 unfavourable responses you received, is it fair to
3 say that both you and David would consider that
4 those who are responding unfavourably may be part
11:17 5 of the problem; is that a fair way to put it?

6 A Yes, that's a fair way of putting it.

7 Q And here we see the CBC saying we're not going to
8 run, or may not run the story or being slow, and
9 David's concern is well, lookit, maybe you are
11:18 10 part of the, whether it's a conspiracy or part of
11 the problem and you are part of the cover-up, was
12 that thinking that --

13 A I think that's what he was thinking there because
14 he's mentioning he's got good support in the
11:18 15 reform community and with Amnesty International
16 and just sort of telling them that there are other
17 people out there besides themselves that were
18 going to be helping.

19 Q And did that happen with you as well, and we're
11:18 20 only in 1986 in our chronology, but later on after
21 the application was filed and after things
22 happened, did you start to view those,
23 particularly in the authorities who responded
24 unfavourably to positions put forward, of
11:18 25 doubting, or perhaps thinking maybe they are



1 either covering up or maybe they are part of the
2 problem and that's the reason they won't listen?

3 A I think that there was definite suspicion on my
4 part, but I think that with David it depended
11:19 5 on -- like, a lot of these letters which you'll
6 see that he has written will be on days when he's
7 been in real despair and he struck out and we
8 tried to encourage him not to do that, but it was
9 very difficult for him, and I think I had a more
11:19 10 realistic expectation of what was, you know, what
11 was happening on the outside, but I was impatient
12 too, I wanted it over.

13 Q And when he had his bad days, if I can call it
14 that, would that make it more difficult for you to
11:19 15 deal with some of the downs?

16 A Oh, yeah, the downs were really bad.

17 Q And so again, just back to my earlier question,
18 when, for example, whether it be the Federal
19 Justice Department or the RCMP or the police or
11:20 20 somebody would come back and either take an
21 unfavourable position or an unfavourable response
22 or say something that you felt was wrong or
23 disagreed with your position, did you start to,
24 from time to time, start to think, okay, maybe
11:20 25 they are part of the problem and maybe they are --



1 A They are the problem.

2 Q They are the problem?

3 A Yes.

4 Q And maybe they are trying to cover up a problem,
11:20 5 things of that nature?

6 A Yes, definitely.

7 Q And over time --

8 A -- that builds up.

9 Q Yeah, it builds, so that your suspicions -- so
11:20 10 that in 1980, I think you told us, that maybe I
11 wouldn't think that way, but by 1986 and certainly
12 by 1990 the frustration built up, your son's
13 condition deteriorated I think you told us?

14 A It did, desperately.

11:20 15 Q And so your reaction to responses by the
16 authorities was different later on than it was
17 earlier because of that; is that fair?

18 A Yes, that's fair.

19 Q And would it be fair to say that you were less
11:21 20 tolerable of unfavourable responses later on than
21 you were earlier?

22 A Yes.

23 Q And perhaps more suspicious of responses later on
24 than you were earlier?

11:21 25 A Yes, that's true.



1 Q Go to 182096, this is August 12th, it's 1986,
2 we've already established that, that date is not
3 on there, and this is a memo from David Asper to
4 Hersh, and it talks about a call with Sandra
11:21 5 Bartlett. Now, tell us again, Sandra Bartlett I
6 think was the producer with the *Fifth Estate* who
7 had done a fair bit of work on the program; is
8 that right?

9 A I don't think she was the producer, she would be a
11:21 10 researcher.

11 Q Oh, I'm sorry, the researcher, I misspoke. Yeah,
12 she was the researcher, and so she would have
13 had -- she would have been the person that got Mr.
14 Carlyle-Gordge's interview transcripts and would
11:21 15 have gone and done --

16 A -- interviews with David and just researched the
17 whole thing and interested them in doing the story
18 to start.

19 Q And here Mr. Asper has a call with her and says:

11:22 20 "Insofar as the substance of my
21 conversation is concerned, Ms. Bartlett
22 advised that there is a witness named
23 Debbie Hall who was present in the hotel
24 room in Calgary when David allegedly
11:22 25 went through the stabbing motions as he



1 watched a television account of the
2 murder. She is prepared to swear that
3 David did no such thing. Moreover,
4 Ms. Bartlett has discovered that the two
11:22 5 witnesses who did testify to this event
6 made sweetheart deals with the Crown in
7 return for their evidence. Apparently
8 the witness named Melnyk entered a plea
9 bargain on a charge of armed robbery and
11:22 10 received a 3 month sentence."

11 Now, this information about Deborah Hall that Mr.
12 Asper got from Ms. Bartlett, that would have been
13 information that you had in 1980 from
14 Mr. O'Brien; is that correct, that --

11:22 15 A Yes.

16 Q -- Deborah Hall --

17 A But David Asper probably hadn't had it at that
18 time.

19 Q Hadn't had -- would he not have had the Chris
11:23 20 O'Brien interview of Deborah Hall?

21 A Well, I don't know what the date was when he was
22 getting the interviews from, uh, from Peter, or
23 whether he had even got to all of them.

24 Q I see.

11:23 25 A I mean, you have no idea of how much stuff there



1 was for him to go through and it's quite possible
2 that when he's writing this letter he was not
3 aware of that.

4 Q Yeah, I think this is a memo reporting of a phone
11:23 5 call. What about the information on the Melnyk
6 sentence, was this -- are you able to tell us
7 whether this would be the first time that you
8 would have learned about this suggestion that
9 did --

11:23 10 A It could have been, but I'm not certain.

11 Q And again I think you told us in the early '80s,
12 and even at trial, you were suspicious of Melnyk
13 and Lapchuk and what caused them to get to court
14 to give evidence against a friend?

11:23 15 A Yes, I was.

16 Q And would you -- if you had not been aware of this
17 information before, would you have become aware of
18 this around this time from Mr. Asper?

19 A Yes, and been very excited about it no doubt.

11:24 20 Q Do you have a recollection about learning about
21 this information at some point?

22 A Well, I did know about the information, but I
23 don't know when I got it.

24 Q And the fact that he had a --

11:24 25 A And I thought it was a six month sentence wasn't



1 it?

2 Q It could have been.

3 MS. KNOX: It was.

4 BY MR. HODSON:

11:24 5 Q Yes, it was six months.

6 A Yeah, my memory was different than that.

7 Q And so again, tell us how that piece of
8 information from Ms. Bartlett to Mr. Asper, or if
9 you learned it earlier, where did that fit in on
11:24 10 your thinking about Melnyk and Lapchuk?

11 A Well, it substantiated what my thoughts had been
12 about those witnesses.

13 Q And did you think that okay, they must have made a
14 deal with the Crown?

11:24 15 A Yes.

16 Q And a deal to do what?

17 A To sink David.

18 Q But to lie or --

19 A Well, I don't know that I really knew other than
11:25 20 the fact that they had come forward. I had
21 suspicions, I don't know when I had the
22 suspicions, but the fact that they had been with
23 Wilson and he talked to them and they had come up
24 with this story and then Wilson told the policemen
11:25 25 about them and then they came forward, or the



1 police then got them and brought them in, so it
2 was just pretty wild if it was just a coincidence
3 the way it happened.

4 Q And so -- but my question back is did you then
11:25 5 think that that somehow made their evidence at
6 trial against David either false or less credible?

7 A Less credible.

8 Q Go to 213588, this is September 15th, '86 from
9 your David to Mr. Wolch, and this is where he
11:26 10 talks about the two products to consider in the
11 application, so I take it very early on that was
12 in play, that your David was going to file his own
13 application?

14 A Yes, and I think part of the reasoning was we felt
11:26 15 that if he wasn't allowed to do that, he was just
16 going downhill, he needed to be involved.

17 Q And I think Mr. Asper talked about that as well,
18 so the plan was, well, let him work on that. Was
19 there ever an intention to have his filed do you
11:26 20 remember?

21 A I don't think so.

22 Q If we can go to page 591 of this document, and
23 this is again your David says:

24 "In talking to David --"

25 Asper,



1 "-- about the interview the C.B.C. wants
2 with both of you ... David said this
3 would or could be a spot to plug the
4 reform community and my efforts in this
11:27 5 direction."

6 Next page:

7 "I would not call this low key ..."

8 Etcetera, and I think sort of --

9 "... bringing in ordinary prisoner
11:27 10 concerns into this thing until I am
11 free."

12 We talked about this a bit earlier. I think
13 David in any media piece around this time and
14 after wanted to put the spotlight on some prison
11:27 15 issues unrelated to his own case?

16 A That's right. He was, he had organized a group
17 called the Justice Group in prison and they met on
18 a weekly basis -- well, weekly basis, they brought
19 in speakers to speak to them and they worked on
11:27 20 justice issues and a lot of the things that were
21 wrong with the prison system.

22 Q Can we go to 162421, this is a memo from David
23 Asper to Hersh October 24, 1986 and just talking
24 about Nichol John's information, and he says:

11:28 25 "Subsequent investigation revealed that



1 Nichol had been incarcerated under very
2 trying circumstances (i.e. she was
3 hallucinating or suffering from some
4 other drug-type problem) and this
11:28 5 information would tend to subvert the
6 validity of the original statement and
7 therefore rehabilitate her evidence as a
8 whole."

9 Now, we talked yesterday about your information
11:28 10 about, that you got from the matron. Do you
11 remember that?

12 A Yes.

13 Q And I think that would be consistent,
14 "incarcerated under very trying circumstances"?

11:28 15 A Yes.

16 Q This "hallucinating or suffering from other
17 drug-type problems at the time," do you know where
18 that would -- do you have any recollection of that
19 being part of what the matron said or what you
11:29 20 learned from somewhere else, that when Nichol John
21 was questioned around the time of her May 24th
22 statement, that she would have been hallucinating
23 or suffering from other drug-type problems?

24 A Well, it seemed to me that it came up that she was
11:29 25 coming down off drugs when they brought her in and



1 so that that would be part of her problem, was
2 withdrawal symptoms or something.

3 Q Okay. And would this be your thinking at the
4 time, that that might have explained some of her
11:29 5 behaviour over the course of those two days?

6 A Yes.

7 Q It may have had something to do with drugs that
8 adversely affected her state of mind?

9 A That's right.

11:29 10 Q And then scroll down to -- and about the motel
11 room:

12 "We have at least one person who was
13 present in the hotel room at Calgary,
14 who did not testify but who, apparently
11:30 15 gave the police a statement at the time
16 stating that nothing happened. This is
17 Debbie Hall and Peter Carlyle-Gordge
18 knows where she is and has spoken to
19 her."

11:30 20 And I'm wondering if that was maybe Chris
21 O'Brien. Do you know if Peter ever spoke to
22 Debbie Hall?

23 A I really don't, I don't think he did, I think it
24 probably should have been --

11:30 25 Q If we can scroll down, again this is October of



1 1986 and David Asper says:

2 "I cannot recall where I came across it

3 but I seem to remember reading that

4 David was a non-secretor. My

11:30 5 recollection of the transcript is that

6 they linked David to the scene by

7 determining that a person with type A

8 blood had secreted the semen that was

9 found on the ground beside the

11:30 10 deceased's body. David has type A blood

11 and the Crown used statistical evidence

12 that 85% of people are secretors - that

13 is to say they secrete blood antigens

14 into other bodily fluids. David tells

11:31 15 me that he cannot have the test

16 performed at Stony and we may want to

17 get a doctor in to see him and get some

18 bodily fluids to determine whether or

19 not he is a secretor."

11:31 20 And it looks like David Asper and David Milgaard

21 talked about getting the secretor test done

22 around October of 1986. Do you have any

23 recollection of those discussions and --

24 A No, I do not.

11:31 25 Q About getting a test done or not?



1 A No.

2 Q And then here Mr. Asper says:

3 "I was with David for approximately 20
4 minutes this week and have also made
11:31 5 arrangements to meet with Joyce and
6 Peter to start assembling the written
7 brief that we will have to file."

8 And then talks about what he proposes to put in
9 it, and I think at this time, what we heard from
11:31 10 Mr. Asper is he started to put together a brief,
11 the document to go to the minister and that you
12 and Peter met with him and you had some input; is
13 that right?

14 A That's correct.

11:32 15 Q 301675, this is David Milgaard's affidavit of
16 November 25, 1986, and it looks as part of the
17 application. Do you recall the circumstances of
18 this affidavit or how this came about?

19 A No, I can't.

11:32 20 Q Is --

21 A But I think that's required.

22 Q Right. And again, do you recall whether at this
23 time in November of 1986 you were putting together
24 the application?

11:32 25 A Yes, that's what we were doing.



1 Q And so this affidavit would be part of that
2 application?

3 A Was part of it.

4 Q And again, would that be something that Mr. Asper
11:33 5 would have dealt with? Do you remember dealing
6 with your David on helping him get the affidavit
7 ready or is that something the lawyers did?

8 A No, the lawyers were doing that.

9 Q Now, 026356, this is around the same date,
11:33 10 actually a couple of days earlier, the affidavit
11 of Deborah Hall, and do you remember Mr. Asper
12 getting an affidavit from Deborah Hall?

13 A I do.

14 Q And again, we've been through this many times, go
11:33 15 to 026361, and again this, in this affidavit she
16 talks about punching the pillow, fluffing it up
17 and saying, 'Oh yeah right," and just scroll down
18 to the bottom, and her saying that Melnyk and
19 Lapchuk both lied when they stated at trial that
11:34 20 David reenacted the murder, and so around this
21 time in 1986 you would have been aware of the fact
22 that she had provided an affidavit?

23 A Yes.

24 Q And again, do you remember thinking --

11:34 25 A And I had met with her.



1 Q Oh, did you meet with her?

2 A Oh, yes.

3 Q When was that? Sorry, I don't have any documents
4 to -- let me try and help you out here, we'll back
11:34 5 up. Chris O'Brien met with her in 1981, I think
6 around January, and had the taped interview with
7 her, David Asper got the affidavit in November of
8 '86.

9 A It was somewhere in between I met with her and
11:34 10 talked to her and I had phone chats with her and
11 things like that. I was keeping in touch.

12 Q I see. And so before Mr. Asper got the affidavit,
13 you would have talked to her; is that right?

14 A Yes, absolutely.

11:34 15 Q And I think she also did a short segment for the
16 *Fifth Estate*?

17 A She did.

18 Q Was it around that time?

19 A It would have been around that time.

11:35 20 Q And do you have any recollection of what you would
21 have discussed with Debbie Hall in these chats?

22 A Well, how much I appreciated her coming forward
23 and how I knew it was difficult for her and
24 that because she was going against her friends
11:35 25 and, you know, that type of thing. I was



1 encouraging her to speak out.

2 Q And if we could just go, there's a reference in
3 your book, it's on page 115, it's doc. ID 269317,
4 and go to page 269446, and there's just a part in
11:36 5 here that I just wanted to ask you about to see if
6 you can shed some light on it, and it says:

7 "We badly wanted to gather new evidence,
8 and an odd stroke of luck led us to
9 Deborah Hall, who as a teenager had
11:36 10 attended the Regina motel party. It was
11 there that George Lapchuk and Craig
12 Melnyk supposedly had heard David
13 confess to the murder. Deborah had
14 given a statement to Saskatoon police
11:36 15 that totally contradicted their tale,
16 but it was never passed on to our
17 defence team, leaving us vulnerable to
18 the last-minute, damning testimony of
19 Lapchuk and Melnyk. In her police
11:36 20 report, Hall was misspelled "Hull" and
21 then her file was apparently misplaced."

22 And do you recall what information you had about
23 that, about what is stated there?

24 A Well, yes, that's what I'm saying here, in the
11:36 25 police report that we had written down from some



1 police report we saw, her name was listed as Hull,
2 so we were trying to locate someone by that name,
3 and then as I go on here in talking about it,
4 Susan was the one that was following up on some of
11:37 5 these names and things and she was following up on
6 Hall and she mentioned it to Chris O'Brien who was
7 a friend of hers and it turned out that he knew --
8 she did his hair.

9 Q And --

11:37 10 A That's how we discovered her and that's how we
11 found her.

12 Q And I'm just wondering where the original -- I
13 think Mr. O'Brien found her in January of 1981 and
14 as far as what reports you would have had that had
11:37 15 misspelled her name, do you know what those would
16 have been?

17 A No, but obviously it would have been a police
18 report.

19 Q Now, let me see if I can help you out. One source
11:38 20 might have been the transcript of the trial that I
21 think Melnyk and Lapchuk might have mentioned who
22 was there?

23 A Oh, that could be.

24 Q Now, I haven't checked that, that's only one
11:38 25 source. The second one might be a bit later when



1 you got the statements from Mr. Tallis' files in
2 March of 1981 where you got the statements of
3 Melnik, Lapchuk and Ute Frank that referred to
4 Debbie Hall or Hull.

11:38 5 A That was probably in there and I think, didn't
6 that refer to Debbie Hull? I think it did.

7 Q And so that, and again as opposed to -- so that
8 might be what you are referring to here, is
9 that -- I think what you are saying is that you
11:38 10 were looking for a Hull instead of a Hall and
11 based on --

12 A Yes.

13 Q But again, as far as a police report, it may well
14 have been the transcript or it might have been
11:38 15 even the statements from Melnik and Lapchuk and
16 Frank?

17 A That's possible.

18 Q Now, those you would have got after Chris O'Brien
19 already talked to her, so that's why I wasn't sure
11:39 20 about --

21 A No, I think it was probably -- then it would have
22 to have been the reverse, but this seemed like
23 quite a stroke of luck to us.

24 Q Right.

11:39 25 A That we uncovered her then.



1 Q And I think we heard that from Mr. O'Brien, that
2 that's how he discovered who Deborah Hall was.
3 The other thing here about the statement, I think
4 you say here that:

11:39 5 "Deborah had given a statement to
6 Saskatoon police that totally
7 contradicted their tale, but it was
8 never passed on to our defence team ..."

9 A That's what she told us.

11:39 10 Q That's what Debbie Hall --

11 A -- had told us, yes.

12 Q And that's in one of your discussions with her?

13 A Yes.

14 Q Okay. I think -- let me just tell you what other
11:39 15 evidence we've heard and see if this might assist
16 you. I think the -- I'm wondering if this may
17 have been the Ute Frank statement that you might
18 have been referring to. Ute Frank gave a
19 statement to the police in 1970, but I think the
11:39 20 evidence we heard, and Ms. Hall may be right and
21 others wrong, but the evidence we heard from
22 others is that she could not be located at the
23 time of trial and she didn't give a statement, and
24 I think that was her evidence here as well, and
11:40 25 I'm wondering if this might have been --



1 A Ute Frank I'm talking about.

2 Q -- Ute Frank's, maybe, that you were thinking
3 about?

4 A That's possible.

11:40 5 Q Do you have any recollection of that?

6 A No, I haven't, I'm sorry.

7 Q No, that's fine. 182095, please.

8 A So it does say on here that I talked to her on
9 November the 23rd.

11:41 10 Q Oh, I'm sorry, can you go back to that page,
11 please?

12 A It was just there.

13 Q 29 -- or 269447. I think, if I may assist, you
14 are referring to right there:

11:41 15 "When she spoke with us on November 23,
16 1986 ..."?

17 A Yeah.

18 Q And that's the same date as the affidavit; is that
19 possibly referring to when she spoke to Mr. Asper?

11:41 20 A It could be, --

21 Q That --

22 A -- I could have taken the date from that, but when
23 -- but I remember, when I met with her that -- and
24 when Susan was there too, the both of us met with
11:41 25 her.



1 Q Right. And when it says here:

2 "When she spoke with us ...",
3 would the "us" maybe be with Mr. Asper as part of
4 your team?

11:42 5 A That could have been too.

6 Q Yeah, because his evidence is she did speak to him
7 on that date in Regina?

8 A On November 23rd?

9 Q Yeah.

11:42 10 A Yeah, so it probably was.

11 Q Yeah. You weren't present when he took the
12 affidavit from her, were you, from Deborah Hall?

13 A I don't think so.

14 Q I think Mr. Asper's evidence is he flew to Regina
11:42 15 --

16 A I don't think so.

17 Q Okay.

18 A I think he went there himself.

19 Q Okay. If we can go to 182095. February 26th,
11:42 20 1987, and we're getting into Dr. Ferris and the
21 DNA, and I think this is the first reference that
22 David Asper spoke to you:

23 "... on Feb. 25th, 1987, at which time
24 she advised me as to a new scientific
11:42 25 development regarding genetic



1 fingerprinting.",

2 and then goes on to talk about it.

3 A Well what happened was I received a phone call
4 from my son, David, and he had heard about this
11:43 5 test, and so I ended -- and it was going on in
6 England, and I ended up calling England and
7 talking to them over there, and they told me about
8 the fact that Dr. Ferris, a Canadian, was doing
9 that type of research in Canada, and they gave me
11:43 10 his number and I called him. And I explained that
11 I didn't have any money, but that I was just a
12 student nurse at the time, and he said that was
13 all right, he would help me, and arranged -- but
14 it was as a result of David reading about the
11:43 15 possibilities of this DNA research that we got in
16 touch with Mr. (sic) Ferris.

17 Q And so, when you contacted Dr. Ferris, do you
18 recall what was discussed, or what did you
19 understand he might be able to do to help you on
11:43 20 this genetic fingerprinting or DNA?

21 A Well, my understanding was that he could take the
22 exhibits, if -- we had to then get hold of the
23 exhibits and ship them out to him -- but that he
24 could take those exhibits and, from those
11:44 25 exhibits, extract and test for DNA and prove that



1 it wasn't David.

2 Q Okay. And so it would appear that you would have
3 informed Mr. Asper and Wolch of this around this
4 date, February 1987, and asked them to follow up
11:44 5 with this?

6 A Yes. Once Ferris agreed, when I talked to him he
7 agreed to do it, then it was a matter of getting
8 the doc -- having -- I can't remember the
9 language, but --

11:44 10 Q The exhibits?

11 A The exhibits, but no, having a clearly legal trail
12 of --

13 Q Oh, I see.

14 A Of --

11:44 15 Q Continuity?

16 A That's it.

17 Q So --

18 A -- the continuity of those exhibits out to him so
19 that there is -- would be no questions later on.

11:45 20 Q Right, so there'd be no contamination, or things
21 of that nature?

22 A That's right.

23 Q So you then went to Mr. Wolch and Mr. Asper and
24 said "make it happen" or "follow up"?

11:45 25 A Yes.



1 Q And what did -- do you recall what Dr. Ferris
2 would have told you about this testing process,
3 what it might be able to do if it worked?

4 A Oh, yes. I mean the way, my understanding of it
11:45 5 was that there were no two individuals had the
6 same genetic make-up and that it would show, he
7 didn't say it could show who did it but he said
8 that it could show that it definitely wasn't my
9 son if it wasn't his semen there.

11:45 10 Q And can you tell us, did you -- did you have a
11 fair bit of hope that this might be --

12 A Oh, it was an amazing development to both David
13 and I. He felt, my David felt that this would be
14 just terrific, I think, "mum, see if you can't get
11:46 15 it done".

16 Q And, again, would this be -- I hesitate to use Mr.
17 Merchant's word the 'bombshell' -- but, again,
18 this would be --

19 A Oh, it could be our bombshell, definitely.

11:46 20 Q And so would it be fair to say that, in February
21 of 1987, you and David, your David, were quite
22 enthused that Dr. Ferris may hold the key --

23 A The key.

24 Q -- to getting David out of jail; is that fair?

11:46 25 A Yes, yes.



1 Q Okay. And --

2 A And then, of course, when I got the call from Dr.
3 Ferris and he said that he couldn't, there wasn't
4 enough of the sample there or something, whatever
11:46 5 it was, he couldn't get a DNA result, and it was
6 like all our hopes were totally dashed, and he
7 said -- but he said, "you know, Mrs. Milgaard, I
8 wonder", he said, "you have more than enough
9 evidence already to prove that David didn't do
11:47 10 it", and I said "I beg your pardon", and he said
11 "you have more than enough evidence already to
12 prove that David is innocent", and I said "I have?
13 Will you tell me what it is?", and then he told us
14 about the non-secretor status. So I got really
11:47 15 excited about that, and phoned David Asper, and
16 told him what Ferris had said.

17 Q And just so that we're clear, when he said "you
18 have more than enough evidence", is it fair to say
19 that he was talking about --

11:47 20 A The fact that --

21 Q -- physical evidence?

22 A Yes, and that we had evidence that David was a
23 non-secretor.

24 Q And so, on that, that your understanding was Dr.
11:48 25 Ferris was saying, based upon the semen found at



1 the scene, that Dr. Ferris was saying "that proves
2 David's innocence"?

3 A That's right.

4 Q And that's what you understood?

11:48 5 A That's right.

6 Q And did he say "it's better than DNA"?

7 A No, I don't think he said "it's better than DNA",
8 but he said "you've got the evidence right there".
9 And so --

11:48 10 Q That's --

11 A -- that's when I said "well, will you tell my
12 lawyer about it, will you talk about it", and then
13 we arranged for him to be on T -- on the *Fifth*
14 *Estate* show.

11:48 15 Q And I think that would have been sometime around
16 September of '88, about a year and a half later;
17 is that right?

18 A Probably took that long.

19 Q Yeah.

20 A Uh-huh.

21 Q And so, just as far as the -- just back on the
22 DNA, was there, when he said "I can't get any,
23 enough samples to do a DNA test, but you don't
24 need it", I thought were your words, --

11:48 25 A Yes.



1 Q -- did he leave you --

2 A Apparently he was using the panties, --

3 Q Yes.

4 A -- and there wasn't enough, and we didn't -- we
11:49 5 weren't aware, of course this all happened
6 later that we found that there was all kinds of
7 semen on the nurse's uniform.

8 Q Right. Did you understand, though, that what Dr.
9 Ferris was saying is that he couldn't get enough
11:49 10 of a sample to do a DNA test, --

11 A That's right.

12 Q -- but that you didn't need to get a DNA test,
13 because what he -- all -- what he looked at on the
14 semen sample and the secretor issue was enough, in
11:49 15 his true view, to prove David's innocence?

16 A That's correct.

17 Q And just while we're on that point, was it your
18 understanding that it was sort of an unqualified,
19 uncontroverted opinion, that "yes, this proves
11:49 20 David's innocence" --

21 A Yes.

22 Q -- or did you -- I'm sorry, did you understand
23 there to be any --

24 A There was no doubt, the way he said it, "you have
11:49 25 the evidence right there and you can prove it".



1 Q And so, again, it wasn't a qualified opinion or
2 "assuming (a), (b), and (c)"; your understanding
3 was from Dr. Ferris that "lookit, this proves his
4 innocence", --

11:50 5 A Yes.

6 Q -- "end of story"?

7 A End of story.

8 Q Okay.

9 A David out of jail.

10 Q We'll come --

11 A But it didn't work.

12 Q And we'll come back to that a bit later. Just
13 back to February of '87, then, on the genetic
14 fingerprinting. Would it be fair to say -- and
11:50 15 let me just back up. We heard from David Asper
16 that he left the Wolch firm for I think about a
17 year, ten months, ten months to 12 months if I'm
18 not mistaken, --

19 A Yes, that's correct.

11:50 20 Q -- around this time frame, and so did he continue
21 to have contact with you, or did you then deal
22 with Mr. Wolch, or --

23 A Oh, I chased David a little bit. I kept in touch
24 with him about what we were doing, we discussed
11:50 25 things, but he wasn't actively working on it. He



1 was out of the firm and, of course, that meant
2 that I did have more contact with Hersh.

3 Q It would appear, at least from just going through
4 the documents -- and the documents I think we've
11:50 5 already gone through with Mr. Asper and others --
6 but it would appear, from February of 1987 through
7 until September of 1988 when Dr. Ferris gave his
8 opinion on the secretor issue, that during that
9 time frame the focus would have been on,
11:51 10 initially, getting ahold of him, getting the
11 exhibits from the Court, getting the testing done
12 and getting his opinion, and that, at least from
13 the documents, it does not appear that much else
14 was happening by way of investigation; is that --
11:51 15 is that a fair summary?

16 A No, because we've, we've got it, --

17 Q Okay.

18 A -- why do we have to go out and investigate, we've
19 got it.

11:51 20 Q Let me just back up. I think when you said you've
21 got it, would have been sometime in 1988, when you
22 heard from Dr. Ferris?

23 A Yes.

24 Q And I just want to -- again, we've got a
11:51 25 chronology, we've got a few documents, I'm not



1 suggesting that nothing happened, but it would
2 appear from February of '87 through until
3 September of '88 the primary focus of any work
4 done by you or Mr. Wolch or Mr. Asper would have
11:52 5 related to following up with Dr. Ferris first on
6 the DNA, then on the semen; --

7 A Yes.

8 Q -- is that correct?

9 A Yes, that's correct.

11:52 10 Q And when you started down the path with him on the
11 DNA, was it something that "let's pursue this
12 avenue, this might be the result, put everything
13 else on hold", or "carry on and do whatever we
14 need to do and" --

11:52 15 A I believe we sort of felt that that, that this was
16 it, and that we needed to pursue that, get it
17 done, and then everything could go forward.

18 Q And what was your, when you talked to Dr. Ferris
19 February of '87, what was your expectation as far
11:52 20 as time frame to get this done; what was your
21 thinking of what needed to be done to get the
22 testing?

23 A I don't know that I had any kind of an idea of the
24 time frame at that time, didn't know how long it
11:52 25 would take to get the, you know, get the exhibits



1 out and all the rest of it, and that took a while.

2 Q And did you have any part in that, any
3 recollection -- were there any issues with the
4 exhibits that you recall, --

11:53 5 A No.

6 Q -- getting the exhibits?

7 A Hersh was looking after all that.

8 Q Okay. And so again, from February '87 to
9 September '88, as far as the direct dealings with
11:53 10 Dr. Ferris, would that -- and getting the exhibits
11 and finding out what needs to be done, is that
12 something you would leave up to Mr. Wolch and Mr.
13 Asper?

14 A Yes, but I was following through to make sure it
11:53 15 was being done.

16 Q Okay. If we can go to 224987. I think the *Fifth*
17 *Estate* is still percolating along as well at this
18 time; is that --

19 A Yes, they are.

11:53 20 Q And actually, if we can go to 182373, this is a
21 letter February 27, '87 from David Milgaard to
22 Hersh. And I asked you this yesterday, but this
23 talks about his thinking, and maybe your thinking,
24 that somehow Tony Merchant was responsible for
11:54 25 talking to Eric Malling and, somehow, that's why



1 the *Fifth Estate* show wasn't going ahead, either
2 when it should have, or at all; do you remember
3 that?

4 A Yeah, I remember coming up with that suspicion,
11:54 5 that he came up with that when he found out that
6 Eric Mallings was a friend of his.

7 Q Oh, I see. So that this was -- you are talking
8 about your David?

9 A Yes, uh-huh.

11:54 10 Q And at that time -- and we'll see in this letter,
11 we don't have to go to it -- but there's mention
12 about Thatcher. So at this time would there be a
13 suspicion that not only was -- you had a suspicion
14 about Mr. Merchant, Mr. Thatcher, but as well that
11:54 15 that somehow spilled over to the *Fifth Estate*,
16 because Mr. Merchant and Mr. --

17 A Mallings were friends, --

18 Q -- Mallings --

19 A -- and he had talked him out of doing the show.

11:55 20 Q Okay.

21 A Yeah.

22 Q If we could go to 224987.

23 A And I didn't even watch soap operas --

24 Q Well --

11:55 25 A -- but I still got into these conclusions.



1 Q This is an April 13th, '87 letter from the CBC to
2 Mr. Milgaard, and I think David had written to
3 them asking to get their information, and they say
4 they cannot provide it. And I think this is where
11:55 5 they tell David:

6 "The filming and research ... was done
7 ... to produce a television documentary.
8 Unfortunately, although we did our best,
9 we failed to come up with the
11:55 10 information we believed necessary to
11 complete the documentary. In making
12 this admission I am not passing
13 judgement on you; I am saying only that
14 our failure to get the hoped-for
11:55 15 information meant that we could not
16 proceed with a documentary that would
17 clearly demonstrate your innocence.
18 Because of this failure, we were
19 stymied. And we remained so to this
11:56 20 day."

21 It goes on to say, basically, that:

22 "However, at no time did we ever
23 consider that the material we were
24 collecting would become part of the
11:56 25 evidence submitted by your lawyer at the



1 ministerial presentation. ... CBC policy
2 would forbid us to do this. There is an
3 additional problem. Our information is
4 incomplete; some of it may even harmful
11:56 5 to your cause. And as professional
6 journalists we would not want our
7 information used in a selective way by
8 any lawyer. I make this point only to
9 emphasize that our work was done to
11:56 10 produce a documentary ...",

11 and then goes on to say:

12 "... I would like to add that in my
13 opinion we have gathered no more
14 information than that collected by your
11:56 15 mother and Peter Carlyle-Gordge.",
16 and goes on about that. Do you recall getting
17 this information or becoming aware of this
18 position by the CBC?

19 A Yes.

11:56 20 Q And what -- what -- what was your reaction and
21 David's reaction to this?

22 A Well, I could understand it, but I know that David
23 did not understand it, and I could understand that
24 they couldn't, as a corporation, be involved in
11:57 25 handing over something like that.



1 Q And what about their comment to David in the
2 letter that says, "lookit, we tried, but we
3 couldn't get evidence to prove your innocence"; do
4 you recall his reaction to that or your reaction
11:57 5 to that at the time?

6 A Well his, he was just devastated by this, it was a
7 very hard thing for him to accept.

8 Q This is probably an appropriate spot to break for
9 lunch.

11:57 10 (Adjourned at 11:57 a.m.)

11 (Reconvened at 1:31 p.m.)

12 BY MR. HODSON:

13 Q Good afternoon. If we could have 182184, and I
14 want to just go through, we'll go through fairly
01:31 15 quickly, Mrs. Milgaard, the '87, '88, up until the
16 application part.

17 A Good.

18 Q And this document is just May 15th, '87. We had
19 left off before lunch talking about what Dr.
01:31 20 Ferris was going to do and the secretor issue --
21 and the DNA issue, pardon me, and it appears that
22 the CBC revived the *Fifth Estate* show on the basis
23 that genetic testing may happen; is that right?

24 A That's correct.

01:32 25 Q So in addition to getting your hopes up and



1 David's hopes up that this might be a breakthrough
2 in the case, it appears that it also had the
3 effect of causing the CBC to perhaps then run the
4 *Fifth Estate* program which David wanted to let the
01:32 5 public know about his plight; is that fair?

6 A That's fair.

7 Q 162418, July 3rd, 1987 memo, and it's not clear
8 from the documents, I think February 25, '87 was
9 the first contact you had with Dr. Ferris and this
01:32 10 is July -- and this is a memo from David Asper,
11 and I believe Mr. Asper may have been away from
12 the office during this time, this is maybe during
13 a time when he left, where he's trying to get
14 ahold of Dr. Ferris in Vancouver and --

01:33 15 A Well, he says I've been trying again to reach him
16 on June the 29th.

17 Q Right.

18 A I will be trying, and yet this is dated July the
19 3rd.

01:33 20 Q Yes, and it may have been dictated just before
21 that, but it looks as though -- I guess my
22 question is do you know what happened between
23 February of 1987 and July of 1987 about Dr.
24 Ferris, were you aware of any delays or concerns
01:33 25 or issues that existed?



1 A No, unless it was -- would that have been with him
2 getting the exhibits to him?

3 Q We haven't got to that part yet, that's in the
4 fall.

01:33 5 A Okay.

6 Q So this time frame, it looks like February of '87
7 is when you had your call with Dr. Ferris.

8 A Right.

9 Q And I think Dr. Ferris' evidence was that you
01:33 10 called him frequently --

11 A Yes, I did.

12 Q -- throughout the time period, and just from the
13 documents I'm trying to piece together what
14 happened or didn't happen from February '87 to
01:34 15 July, '87, whether there's any reason that -- and
16 it may have been that Dr. Ferris was involved in
17 other matters, I don't know, but do you know any
18 reason or anything --

19 A I have no reason to know about the time lapse
01:34 20 there.

21 Q Did you have concerns generally about how long the
22 process took to have Dr. Ferris do everything?

23 A Yes, I was concerned, because it put a terrific
24 amount of strain and stress on David. Every day
01:34 25 longer that he was in prison was hard on him.



1 Q If we can go to 162414, now this is July 15th,
2 1987 and this is from you to Hersh, and I think at
3 this time Mr. Asper was not at the firm, he was
4 away on other business, or away from the business,
01:34 5 not practicing law at the time, at least private
6 practice, and it sends the drafts of police
7 procedures, and I'll go to that in a minute, and
8 you also indicate that:

9 "I leave for Princeton on the 20th of
01:35 10 July. Please advise when you hear from
11 Mr. Ferris."

12 So it looks like in July you are waiting to hear
13 back as to what -- did you, once you talked to
14 Dr. Ferris, did you then turn it over to Mr.
01:35 15 Wolch and Mr. Asper to do whatever needed to be
16 done?

17 A Yes, I did.

18 Q And if we can just go to the next page, this
19 Police Procedure Picture/Nichol John, were these
01:35 20 David's or your drafts of arguments to put in the
21 application to the minister?

22 A I can't read it, I'm sorry.

23 Q I'm sorry, I should have -- this is Police
24 Procedure Picture/Nichol John and talks about sort
01:35 25 of an argument about what may have gone wrong with



1 Nichol and the effect her statement may have had
2 on the jury, etcetera, and it looks like, and I
3 think from some other evidence it may be that this
4 was part of David's work product, your David's
01:36 5 work product?

6 A It would have been a product because at that time
7 I had special permission from the warden to have
8 daily visits with my son and go over the
9 transcripts with him and that's what we were doing
01:36 10 at that time. We felt that we needed to be
11 prepared to have all that information and I think
12 this Police Procedure Picture that we have
13 identified is something, is the work product of
14 those meetings.

01:36 15 Q And this would be you and David, your David, the
16 work product of going through the transcripts?

17 A Yes, each and every one.

18 Q Right. And then it looks like there was an
19 adversity argument, there was police procedures
01:36 20 and Nichol, there was various segments that you
21 and David were working on --

22 A That's right.

23 Q -- that you gave to Mr. Asper and Mr. Wolch; is
24 that right?

01:36 25 A Correct.



1 Q 155420.

2 A We felt that by having these -- in a sense we knew
3 that we couldn't get anyone to sit down and read
4 all the transcripts and what we were doing was
01:37 5 breaking it down into readable items and if they
6 were interested in something, then they could go
7 find it.

8 Q And who was your audience on those documents, Mr.
9 Wolch and Mr. Asper?

01:37 10 A I think so.

11 Q And --

12 A And plus hopefully --

13 Q -- the minister?

14 A The minister.

01:37 15 Q And so the first instance was here's what we've
16 come up with the transcripts?

17 A Uh-huh.

18 Q Please consider this and, if appropriate, move it
19 on to the next level?

01:37 20 A Yes.

21 Q Here's July 16th, '87 and this is Mr. Wolch to Dr.
22 Ferris, and it looks as though, he refers to the
23 fact that Dr. Ferris has been contacted by Asper
24 and by you and goes on to talk about what's
01:38 25 required, so it appears that this would be the



1 first -- after your contact with Dr. Ferris in
2 February of 1987, this would be the formal, okay,
3 tell me what you need, Dr. Ferris, to do this
4 test; is that correct?

01:38 5 A Yes. So you can see how long it's taking.

6 Q And --

7 A If you were in prison from February till now, how
8 long it's taking, how you would find it a very
9 long time.

01:38 10 Q And again, was that a concern that you and David
11 had then at the time?

12 A Yes, it was.

13 Q And what was that doing to your patience and your
14 expectations and your time line, was that --

01:38 15 A We were both finding it very difficult.

16 Q Is it fair to say that you had hoped that Dr.
17 Ferris would give you something favourable sooner?

18 A Yes.

19 Q 163076, and here now August 5, '87 and here's the
01:39 20 CBC writing to Mr. Asper enclosing an article from
21 the *Sunday Times* of London and that news article
22 was attached to Mr. Wolch's affidavit later on
23 when he got the exhibits out, and again it appears
24 that the CBC is again expressing interest about
01:39 25 the DNA angle at least; is that fair?



1 A Yes, that's true.

2 Q 112001, and this is Dr. Ferris' first formal
3 communication back, August 24, 1987, responding to
4 Mr. Wolch's July 16th letter, and the second
01:40 5 paragraph, to apply the new techniques of DNA
6 genetic typing to your case to see whether it's
7 possible to associate or exclude the stains on the
8 panties of the victim with other samples obtained
9 at the scene. Do you know how -- at this point
01:40 10 the focus was on the panties as far as the source
11 of the semen stain. Was that based on what you
12 had read in the transcript?

13 A I think so, and I think because that's all that
14 was mentioned that there was semen on.

01:40 15 Q Right. In fact, if we can just go back to 155420
16 for a moment, I think in Mr. Wolch's letter to Dr.
17 Ferris he talks about:

18 "... have available for study the
19 panties of the victim which contained
01:40 20 traces of semen plus viles of frozen
21 substance which we are advised are semen
22 and were found at the scene ..."

23 And that would be the frozen semen that was found
24 in the snow; correct?

01:41 25 A Yes.



1 Q So again, back to 112001, go down to the bottom,
2 he talks here:

3 "In your particular case, the seminal
4 stains are obviously very old. I cannot
01:41 5 at this stage anticipate how much DNA or
6 for that matter the quality of the DNA
7 which we would be able to extract from
8 the samples. Clearly it would be
9 possible to obtain a control sample from
01:41 10 David Milgaard. I don't anticipate any
11 difficulty with the handling or
12 labelling of the samples from him."

13 Next page, and he says:

14 "I have spoken to Mrs. Milgaard on a
01:42 15 number of occasions by telephone and I
16 have cautioned her about expecting too
17 much from these results. There are many
18 reasons why the tests may not be
19 helpful. While it is possible that we
01:42 20 could reasonably exclude David Milgaard,
21 it is also possible that the testing,
22 because of the age of samples and the
23 technical problems associated with the
24 handling of a case so many years after
01:42 25 the event, might not allow for the



1 exclusion of David Milgaard."

2 Can you comment on that, do you recall your
3 discussions with him?

4 A Yes, and I think he was trying to keep me from
01:42 5 getting my hopes too high.

6 Q And what do you remember him saying?

7 A Well, that it's a new technology and this was a
8 very old sample and he just didn't know whether it
9 would be possible for that, us to get this.

01:42 10 Q Okay. If we can go to 162412. This is your
11 letter September 15, 1987 from you to David Asper
12 and you say:

13 "David and I are in the visiting room at
14 Stony, one of the offices, which I am
01:43 15 sure you are very familiar with. Are
16 you by any chance missing all the
17 rushing around and fast pace you had
18 here or are you finding it even more
19 accelerated where you are. My David
01:43 20 says, whichever way it is going for you,
21 slower is better."

22 So I take it at this time David Asper is away
23 from the law firm?

24 A Yes.

01:43 25 Q And when he left, was it your understanding that



1 he was leaving for good or that he was just
2 temporarily away or what do you recall?

3 A I think we thought he was gone for good.

4 Q And I think that -- I think that was his evidence,
01:43 5 that he had left and then decided to come back
6 later, so --

7 A Yes.

8 Q If we could scroll down --

9 A We were trying to encourage him coming back.

01:43 10 Q Scroll up. Actually, go back to the full page,
11 you say:

12 "We decided you might like to be
13 up-dated as to what has been happened.
14 It is not too difficult. It can be put
01:44 15 in one word. Nothing. At least up
16 until yesterday when I visited Hersh and
17 got him to phone Ferris office re his
18 letter as well as to dictate the letters
19 re the exhibits to Saskatoon.

01:44 20 Incidentally, I got him to include all
21 the ones we had originally suggested."

22 Can you tell me what was happening at this time
23 and elaborate a bit on what's in the letter?

24 A "Incidentally, I got him to include all
01:44 25 the ones we had originally suggested."



1 Is there more in the letter?

2 Q No, I'm sorry, this part here about -- well here,
3 why don't we -- let's go back and we'll finish the
4 letter and I'll come back. Go to the next page,
01:45 5 you say -- and I think on the previous page you
6 talk about including all the ones we had
7 originally suggested, and I think this is the
8 physical --

9 A Oh, the physical items that we were going to send
01:45 10 out to him, yes, so we got him to include those.

11 Q And I think you and David Asper had gone to the
12 courthouse and looked at the exhibits; is that
13 right?

14 A That's right, that's correct.

03:31 15 Q And you say:

16 "That's not quite true. David has
17 pointed out to me as we did not include
18 the toque so I'll maybe call and try and
19 get that included.

03:31 20 A Right.

21 Q "David has had his --"

22 So let me just pause there. So this would have
23 been a discussion about what garments to send to
24 Dr. Ferris; is that right?

03:31 25 A That's correct.



1 Q And so that would have been more than the panties,
2 it was the dress, the garter, the stockings, the
3 toque?

4 A Uh-huh.

03:31 5 Q And --

6 A Any of the exhibits that were there.

7 Q And then it says:

8 "David has had his high days and low
9 days as have I since things seem to be
03:31 10 standing still. We still may need your
11 help with C.K.N.D. Both David and the
12 rest of the family are now in agreement
13 to distance ourselves from the C.B.C.
14 You are, I know, aware that Gordon
03:31 15 Stewart is pushing to film the exhibits
16 going & coming etc. but we feel we will
17 get the tests done and then make a
18 decision on how to go.

19 David is still working hard on
03:31 20 his "Justice Group" and we would
21 appreciate getting everything you have
22 on the Justice Group for our files.
23 This is very important to Dave.

24 We think of you often and wish
01:46 25 you well in your new endeavours but



1 would still enjoy seeing you."

2 And this is from you and David?

3 A Yes.

4 Q If we could just go back, then, to the first page;
01:46 5 would this be a bit of an update or a report that
6 you and David wrote from prison to David Asper?

7 A Yes, but it had an ulterior motive, it was to make
8 him feel guilty and want to be back with us.

9 Q Apparently, it worked, did it?

01:47 10 A I think it did.

11 Q Did -- just back on this, were you concerned at
12 this time about what was happening or was not
13 happening, and I refer to the comment you are
14 making here?

01:47 15 A Yeah, because nothing was happening, I was having
16 to go in and push Hersh.

17 Q And so, writing to David Asper, were you hoping
18 that he would either come back or cause things to
19 happen quicker?

01:47 20 A Yes.

21 Q And so "things happened", was that relating to the
22 Dr. Ferris testing?

23 A Yes, because it just seemed to have stalled, it
24 was like everything seemed to take so long.

01:47 25 Q And then, the next page, it looks like there was a



1 discussion about the CBC wanting to film the
2 exhibits going out to Dr. Ferris for the DNA; is
3 that right?

4 A That's correct.

01:48 5 Q So at this time, September of '87, I take it you
6 had already known or contemplated that the
7 exhibits were going to go out to Dr. Ferris for
8 testing?

9 A Hersh had made some arrangements for that to be
01:48 10 done but, because David was with Global, we
11 thought that maybe we might do some publicity with
12 him as opposed to the *Fifth Estate*.

13 Q We're done with that document. We've already gone
14 through the correspondence -- I don't propose to
01:48 15 go through it again, I did with David Asper --
16 that in the late, I think from 1987-early part of
17 1988, steps were taken to get a court order to get
18 the exhibits released and sent to Dr. Ferris; you
19 recall that happening?

01:48 20 A I do.

21 Q And do you recall having any concerns about that
22 process or the time it took to get the exhibits
23 out of Court?

24 A Well, I did have concerns about the time
01:49 25 constraints, but Hersh and David Asper told me



1 that it was extremely important that the steps be
2 followed through the courthouse.

3 Q And was this the continuity issue that you had
4 talked about earlier?

01:49 5 A Yes, and the procedure. You couldn't just whizzle
6 down and pick them up and take them out or
7 anything.

8 Q Now if we can -- again, Dr. Ferris' opinion is
9 September 13th, 1988, just to give you that time
01:49 10 frame, so I think September of '87 was the letter
11 to Mr. Asper. I think, starting in October or
12 November through to January of '88, I think
13 January of '88 the court order came with the
14 exhibits and they were sent to Dr. Ferris, and I
01:49 15 think his evidence is that he started to do the
16 testing for DNA, and I think February-March, maybe
17 even April of 1988, is when he realized that he
18 could not do the DNA --

19 A Right.

01:50 20 Q -- sampling? And would you have stayed in touch
21 with Dr. Ferris to see how things were going?

22 A Yes, I phoned him quite frequently.

23 Q And that --

24 A I talked to both him and his wife.

01:50 25 Q And then at some point, you related earlier



1 finding out the results from the DNA, and that
2 was -- would that be in the spring of '88; does
3 that sound right?

4 A That sounds right.

01:50 5 Q And is that the same call where he told you -- is
6 that the same call where he told you he couldn't,
7 couldn't do --

8 A Why did I need it.

9 Q Right. So the same call he said, "lookit, I can't
01:50 10 do the DNA, I can't get enough DNA to did a
11 test" --

12 A That's right.

13 Q -- "but I can give you something equally as good,
14 I can say that the physical evidence proves
01:50 15 David's innocence"; is that correct?

16 A That's right.

17 Q Okay. And if we could call up, just back to your
18 book, there is an excerpt here. The book is
19 269317.

01:51 20 A And page number?

21 Q It's page 127. 269317. Actually, if we want to
22 just go back, right up at the top. Now is it also
23 fair to say, I think you talk about it in your
24 book, about Dr. Ferris' reputation; had you done
01:51 25 some checking on him or learned about his



1 reputation in other cases?

2 A Oh yes, I had, and he was involved in the dingo
3 dog in the -- in Australia.

4 Q And --

01:52 5 A They did a movie about that.

6 Q And did you view him, or was it your understanding
7 that Dr. Ferris was a very well-known expert, or
8 --

9 A Yes, --

01:52 10 Q -- highly reputable?

11 A -- highly respected, and the way the people from
12 England spoke about him in recommending him for us
13 to go to him I thought he had a good reputation.

14 Q Okay. And so here you say:

01:52 15 "Dr. Ferris struck me as a
16 wonderful man, and my opinion of him
17 never changed. Months passed as Dr.
18 Ferris did his tests. I often phoned
19 him to see whether there was any news.
01:52 20 If my calls bothered Dr. Ferris or his
21 wife, they didn't let on."

22 A They were very patient with me.

23 Q And then:

24 "One day in late summer ...",
01:52 25 and I'm sorry, I earlier said it was the spring,



1 but:

2 "One day in late summer of
3 1988, the doctor called me to say he was
4 terribly sorry, but the samples were
01:53 5 simply too old for him to find anything.
6 DNA testing was then in its infancy, and
7 there was nothing he could prove with
8 the process in David's case."

9 And:

01:53 10 "Then he paused and said, 'But you know,
11 Mrs. Milgaard, I don't understand why
12 you need it. You've got more than
13 enough evidence here to prove that your
14 son is innocent.'

15 'I do?' I replied, more than a
16 little stunned. 'Will you tell my
17 lawyer that? Will you put it in
18 writing?'"

19 And answer:

01:53 20 "'Of course I will.'"

21 And then:

22 "Although he could not do the
23 new DNA testing, Dr. Ferris's
24 conclusions on the blood and semen he
01:53 25 had analyzed went even further than we



1 had hoped. Those samples actually
2 eliminated David as a suspect."

3 And, again, would that be an accurate account of
4 what happened back in 1988?

01:53 5 A Yes, and it -- besides the part about the blood he
6 also, where it goes on to say he also:

7 "... was able to present a graphic
8 description of the murder ...",

9 and sort of really showing how it couldn't have
01:53 10 happened in the time frame that was there, and he
11 talked about how she might have been raped
12 elsewhere and her body dumped, and there were a
13 number of very good conclusions that he had come
14 up with.

01:54 15 Q And again, we had talked about this earlier this
16 morning, the evidence that he came up with that
17 according to your, or what you understood, the
18 evidence that proved David's innocence was his
19 analysis of the semen found at the scene though;
01:54 20 correct?

21 A Yes, but it also hinged on what, the other things
22 that he was saying about her for the time, and the
23 stabbing, and all the other items.

24 Q Let me just back up a bit. I think what, or what
01:54 25 I thought you said this morning -- and please



1 correct me if I'm wrong -- is that when you talked
2 to Dr. Ferris and were told the disappointing
3 results about the DNA he also said "but you don't
4 need that because the physical evidence proves his
01:55 5 innocence", --

6 A Yes.

7 Q -- "namely the semen"? Now -- and I thought you
8 said this morning that what you understood to be
9 the key that got David out of jail, or the
01:55 10 physical evidence that proved the innocence, was
11 his opinion with respect to the frozen semen found
12 near the -- Gail Miller's body; is that correct?

13 A That's -- but, in addition to that, he had also
14 done --

01:55 15 Q Correct?

16 A -- all this other stuff.

17 Q And then, in addition, here you are saying, "okay,
18 he also gave us some other information that didn't
19 relate directly to the frozen semen, it related to
01:55 20 other things about the crime scene that were also
21 favourable"?

22 A Yes, and the impossibility of it happening the way
23 they had said it had happened.

24 Q Okay. But as far as your understanding about the
01:55 25 piece of evidence that proved David's innocence,



1 was it not your understanding that it was his
2 analysis of the semen?

3 A Yes.

4 Q Right. And that the other stuff was helpful, but
01:55 5 it was the semen that was the key thing, in your
6 mind, that proved innocence?

7 A Yes.

8 Q If we can go to 002486. This is the letter that
9 Dr. Ferris gave to Mr. Wolch, and I don't propose
01:56 10 to go through it with you, but just ask you a
11 couple of questions about what your understanding
12 was and just get -- get some clarification here.

13 Is it fair to say that you received Dr. Ferris'
14 opinion -- and let's just focus, I don't mean to
01:56 15 downplay the other information about how long the
16 attack would have taken and those other things in
17 the report which you viewed to be very favourable,
18 I want to just focus for a moment on his analysis
19 of the semen, the physical evidence, okay, and his
01:56 20 opinion with respect to that?

21 A All right.

22 Q And is it correct that you received that opinion
23 from him verbally, either over the phone or in
24 person, before this written report was prepared?

01:57 25 A Yes.



1 Q And that would be in a phone call when he told you
2 that "the physical evidence proves David is
3 innocent"?

4 A That's right.

01:57 5 Q And then later on I think you said "put it in
6 writing", and he put this in writing for Mr. Wolch
7 and Mr. Asper; is that correct?

8 A That's correct.

9 Q And when you talked to Dr. Ferris about this, his
01:57 10 opinion, did he express any qualifications by
11 saying "lookit, based on this assumption or that
12 assumption it can prove his innocence", or was it
13 an unqualified "it does prove innocence"?

14 A My feeling, from the phone call, was that it
01:57 15 proved innocence.

16 Q Okay. And that -- that was your --

17 A Now, but I have to qualify that. As a mother, you
18 know, hearing that information, I thought we had
19 it, we had the proof right there. I was so
01:57 20 excited, I was just -- couldn't wait to get on the
21 phone and call everybody about it.

22 Q And so what you took from your call with Dr.
23 Ferris was that based on his work, unqualified
24 opinion, conclusively saying "it proves that David
01:58 25 is innocent "; is that fair?



1 A Yes, and we had our bombshell.

2 Q And, again, do you recall, when you talked to Dr.
3 Ferris, do you recall him saying "subject to this
4 qualification or that qualification" or "assuming
01:58 5 (a), (b), or (c)", or anything of that nature, or
6 was it just "here is the opinion"?

7 A No, we didn't sort of -- I don't remember him
8 getting into any details like that.

9 Q Now would it be fair to say that after you talked
01:58 10 to him, you asked him to put it in writing, and he
11 would have put it in writing for Mr. Wolch; is
12 that correct?

13 A Correct.

14 Q And I think there is a note here I'll show you in
01:58 15 a minute that suggests you may have read this
16 document back at the time. Can you tell us, would
17 you have gone through this in some detail, or did
18 you rely upon what you heard from Dr. Ferris and
19 what your lawyers were telling you as far as what
01:59 20 it meant and what it said?

21 A I can't remember whether I went through it in
22 detail. I haven't seen this document for some
23 time so I'd have to really look at it to know if I
24 --

01:59 25 Q Okay.



1 A -- did or not.

2 Q Let me ask it this way. Do you remember, after
3 getting the verbal news from Dr. Ferris about his
4 opinion on the physical evidence proving David's
01:59 5 innocence, do you recall either reading through
6 the written opinion or going over the written
7 opinion with Mr. Wolch or Mr. Asper and learning
8 that the opinion might be qualified or might be
9 contingent on a few things?

01:59 10 A No, I don't, because I was in Princeton --

11 Q Yes?

12 A -- at the time when he phoned, like he phoned me
13 when I was in Princeton, and I don't think it was
14 until I got up later on to Hersh that I would have
01:59 15 had a chance to go over the letter. But I don't
16 remember exactly when he even sent the letter,
17 what is that, September?

18 Q Yeah. Let me just give you a document here that
19 might help you, 174511. And this is your letter
02:00 20 September 18th, '88, and you're in Winnipeg, it's
21 to Mr. Wolch.

22 A Okay.

23 Q And you say here:

24 "I've read Ferris report + agree it is
02:00 25 good. I will look forward to seeing how



1 it will all fit together.

2 I leave for New Jersey tomorrow and will
3 look forward to receiving a copy even a
4 rough draft of what will be done."

02:00 5 And so does that assist you in --

6 A Yes, it does.

7 Q And so can you tell us what you think you would
8 have done with the written report?

9 A Well, just as I said, I've read the Ferris report
02:00 10 and I agreed it was good and I was wanting them to
11 go ahead and fit it into our submission.

12 Q And "them" being Hersh Wolch and/or David Asper?

13 A Yes.

14 Q Now I'm not sure if Mr. Asper was back --

02:01 15 A I think it was just Hersh at that time, --

16 Q Okay.

17 A -- because I was writing to him, if David had been
18 there I'd have been writing to him.

19 Q I see. So, again, do you recall, then, when you
02:01 20 read Dr. Ferris' report, in your own mind coming
21 to any conclusion other than what you had heard
22 Dr. Ferris tell you on the telephone?

23 A No, I felt we had the bombshell.

24 Q Okay. And if we can just go back to the 002486.

02:01 25 Okay. And we've heard a fair bit of evidence



1 during the course of this Inquiry, Mrs. Milgaard,
2 about secretors and Dr. Ferris' report, and I just
3 want you to go back, and if you can tell me around
4 the time, 1988, around September '88 when you
02:01 5 received this report, and in fact for the number
6 of years after, do you recall; did anybody, namely
7 Mr. Asper, Mr. Wolch, or Dr. Ferris, or anybody
8 who was assisting you, talk to you about this
9 opinion and the fact that part of the opinion, I
02:02 10 think the initial part of the opinion, says that
11 the frozen semen found at the scene was
12 contaminated, according to Dr. Ferris, and
13 therefore the evidence was of no value one way or
14 the other; do you remember --

02:02 15 A Right, I remember that.

16 Q Okay. Do you remember that being raised with you
17 back in 1988 as the --

18 A I'm presuming it would have been.

19 Q And did you -- do you remember anybody saying
02:02 20 that, "lookit, if the semen is contaminated, of no
21 value, it doesn't prove anything, in other words
22 it can't be used to link David but it doesn't
23 prove his innocence because it's contaminated";
24 and do you remember any discussion about that?

02:02 25 A No.



1 Q And, again, if someone -- remember someone saying
2 "lookit, Dr. Ferris' opinion might be construed as
3 being the semen is useless and proves nothing, and
4 therefore you may knock it out of being
02:03 5 incriminating, but it doesn't prove that David
6 didn't do it"; do you remember hearing anything
7 like that around that time, '88, '89, '90?

8 A No. Well, you were talking about the frozen lump?

9 Q Yes.

02:03 10 A Right. But there was the semen on the panties
11 that he did the testing on.

12 Q Okay. I don't -- I think he was referring to the,
13 what was found in the frozen semen, I think --
14 what was your understanding of what he had done?

02:03 15 A Well my understanding was with what, with what he
16 had David was a non-secretor --

17 Q Yes.

18 A -- and, therefore, that could not have been his.

19 Q Okay. And could not have been his semen in the
02:03 20 snow or on the panties?

21 A On the panties.

22 Q Oh, on the panties?

23 A Yes.

24 Q Okay. So that whether the frozen semen was
02:03 25 contaminated or not --



1 A Didn't make any difference.

2 Q I see. Okay. What about this, did anybody say to
3 you that the -- that his opinion was dependent
4 upon David being a non-secretor, and that the
02:04 5 secretor test they did in 1969 or '70 might not
6 have been valid, in other words there were
7 problems with that and that he should be
8 re-tested; did anybody -- do you remember that
9 coming up?

02:04 10 A I remember it coming up later, but I -- we thought
11 David was a non-secretor, --

12 Q Right.

13 A -- so, I mean, --

14 Q Sorry, in fairness, --

02:04 15 A -- that's where we were coming from.

16 Q -- at trial the evidence led against David was
17 that he was a non-secretor?

18 A Yes.

19 Q That was the evidence?

02:04 20 A Yes.

21 Q And I think what Dr. Ferris testified here, he
22 indicated that he told I think Mr. Wolch or maybe
23 Mr. Asper that he had some concerns with the '69
24 test done on David, the secretor test, that it
02:04 25 might not have been done properly, so that the



1 assumption that David is a non-secretor might not
2 be the right assumption; do you remember anybody
3 bringing that to your attention?

4 A No I do not.

02:05 5 Q And, again, 174511. This is the letter I referred
6 to you earlier, September 18, 1988. Is it a fair
7 reading of this, I think you are saying "okay,
8 take the Ferris report, fit it in", and the draft
9 you are talking of is the application to the
02:05 10 Minister; is that fair?

11 A That's correct.

12 Q And am I correct that, since February of 1987,
13 this would be the piece of information you were
14 waiting for to file your application?

02:05 15 A That's --

16 Q Is that right?

17 A That's right.

18 Q And then, once this information came in September
19 of 1988, you were saying "let's file the
02:06 20 application" or you were being told "let's file
21 the application"?

22 A Yes.

23 Q Which one was it, were you --

24 A I was pushing to get it in.

02:06 25 Q 182082, please. And we went through this with Mr.



1 Asper, this is December 19th, 1988, and it's a
2 memo from Hersh Wolch to David Asper basically
3 saying -- I think the evidence we heard at this
4 time is that there were three drafts of the
02:06 5 application, one done by David Asper, one done by
6 Heather Leonoff of Mr. Wolch's firm, and one that
7 David Milgaard had worked on; is that --

8 A That sounds right.

9 Q And, here, Mr. Wolch was saying "lookit, let's put
02:06 10 them together, and here's what ought to go in it",
11 and as well, "Joyce wants it faxed to her so she
12 can look at it", and I think at this time you were
13 in New Jersey; weren't you?

14 A Yes, I was.

02:07 15 Q And can you tell us, what role did you play -- we
16 know the application was filed December 28th,
17 1988, in fact why don't we bring it up, 000002.
18 This is the actual letter and application to Joe
19 Clark, who was the Minister at the time. What
02:07 20 role did you play in determining what, what should
21 be in the application, what grounds should be put
22 in, what arguments, what should not be put in,
23 things of that nature; can you recall what role
24 you played?

02:07 25 A Well basically we discussed every aspect of it



1 when I was up there with them, and then I'd go
2 back and work, but I think I had a lot of input
3 into it.

4 Q Who would have made the decision as to what the
02:08 5 application -- the application -- and, again, we
6 have been through it a few times. The application
7 had essentially two grounds; one ground was
8 Deborah Hall's affidavit said Melnyk and Lapchuk
9 lied at trial, --

02:08 10 A Yes.

11 Q -- number one; and number two, Dr. Ferris' opinion
12 proved that David Milgaard was innocent; --

13 A Yes.

14 Q -- correct? And what was not in the application,
02:08 15 in the initial application, was any of the
16 information that you obtained from Ron Wilson in
17 early 1981; correct?

18 A And part of that reasoning was because Herish felt
19 that we should keep some information back, --

02:08 20 Q Okay.

21 A -- that we would start out with this and have
22 additional information to give to them as we went
23 along.

24 Q Okay. And let me just go -- and what about the
02:09 25 information on Albert Cadrain?



1 A I think that was part of the other information
2 that we would have been giving.

3 Q And so, again, would that have been Mr. Wolch's
4 decision to not put that information in?

02:09 5 A I think it was a joint decision of everyone, I
6 would not say that --

7 Q Or, sorry, --

8 A A recommendation that -- I would say that maybe
9 was his recommendation and that we followed it.

02:09 10 Q If you recall, earlier this morning, I asked you
11 the question: If I was the Minister of Justice in
12 January of 1986 and you came to my office to
13 convince me of David's innocence, or that
14 something was wrong, I think you gave me your
02:09 15 version of what you would have provided?

16 A Yes.

17 Q And I think it was everything?

18 A Oh, yes, I would have provided everything.

19 Q And so 337731. If we could just go back to this
02:09 20 for a moment, and this is a document I went
21 through with you this morning about -- and there
22 is a couple of pages of the various information
23 that you and Mr. Carlyle-Gordge collected in the
24 early '80s, --

02:10 25 A Yes.



1 Q -- transcripts and interviews, and I'm trying to
2 understand why -- or who made the decision that
3 that information would not go to the Minister with
4 the first application, and what was the basis for
02:10 5 that; are you able to shed any light on that?

6 A No, I think it was the legal part of it, and you'd
7 have to ask David Asper about that.

8 Q Okay.

9 A He would be the one to speak to on that.

02:10 10 Q So, again, --

11 A Because, even if I was in the meeting with the two
12 of them, --

13 Q Yes?

14 A -- David would understand what Hersh was saying
02:10 15 and I wouldn't because, you know, they were the
16 lawyers.

17 Q Yeah. If we can just go back to 000002 -- and
18 please tell me if this properly summarizes it --
19 you would have given all of the information you
02:10 20 collected that you felt was relevant to re-open
21 David's case?

22 A Yes.

23 Q You gave it to your lawyers in late '85-early '86;
24 correct?

02:11 25 A Yes.



1 Q And that December 28th, 1988, when the application
2 on behalf of David was made to the Federal
3 Minister, you relied upon Mr. Asper and Mr. Wolch
4 to determine what of that information ought to be
02:11 5 included in the application and what ought not to
6 be; is that fair?

7 A That's fair.

8 Q And go to page 08, page number ending 08. Here,
9 this comment -- and I appreciate this isn't your
02:11 10 document, this, or that this wasn't your drafting,
11 it was your lawyer's -- but it says:

12 "It is submitted that the
13 strongest pieces of evidence tying David
14 Milgaard to the offence was the evidence
02:11 15 of the witnesses Melnyk and Lapchuk, and
16 the evidence of the forensic expert
17 which purported to tie David Milgaard to
18 the offence by showing that a person
19 with David Milgaard's blood type had
02:12 20 been responsible for the crime."

21 Would that have been your view? I mean you were
22 there at the trial, was that -- let's just talk
23 about the latter point. Did you think that was
24 one of the strongest pieces of evidence that
02:12 25 actually tied David to the crime, the physical



1 evidence about this frozen semen?

2 A No, my opinion probably was that the strongest
3 piece of evidence that the jury -- that the jury
4 relied on was Nichol John, but because it was
02:12 5 taken out of the picture and they were told not to
6 rely on it I guess, maybe, would that be the
7 reason a lawyer couldn't submit it? I don't know.

8 Q No, no, and I appreciate this is a legal document
9 for other purposes, I'm just trying to get your --

02:12 10 A Yeah.

11 Q And I think you said your assessment at the time
12 was that the Nichol John statement, whether it's
13 evidence or not, --

14 A Yeah.

02:12 15 Q -- but in your mind that was the strongest piece
16 that --

17 A And the next piece was Lapchuk and Melnyk.

18 Q And that -- yeah, that's where I was going to go
19 next, was the Melnyk and Lapchuk evidence.

02:13 20 A Oh, I would certainly agree with that.

21 Q Yeah.

22 A And then the fact that the forensic evidence that
23 they showed at the trial was so confusing to
24 everyone.

02:13 25 Q Go to the last page, please, 017, and this is the



1 conclusion of the application, call that out,
2 please, and it says:

3 "David Milgaard has always maintained
4 his innocence, an independent
02:14 5 pathologist has substantiated that
6 claim."

7 That's obviously Dr. Ferris. And was that your
8 belief and understanding at the time that that's
9 what Dr. Ferris had done?

02:14 10 A Yes.

11 Q 219251, was there any, as far as the timing, that
12 was filed December 21, 1988, had you been pushing
13 Mr. Wolch and Mr. Asper to get the application in?

14 A For a long time.

02:14 15 Q For a long time?

16 A Yes.

17 Q And so again, if we go back, December 28th, '88,
18 that would be eight years after you started, back
19 in, I think December, almost to the day, December
02:15 20 23, 1980 is when you --

21 A Right.

22 Q I shouldn't say started, but when you and your
23 family stepped up the work you were doing; is that
24 correct?

02:15 25 A That's correct.



1 Q And is it fair to say that in December of 1980 you
2 did not expect it to take eight years to get an
3 application -- or to get materials forward?

4 A No, we had no idea it would take us that long.

02:15 5 Q And so on December 28th, 1988, David would have
6 been in jail for 18 years?

7 A That's correct.

8 Q Eighteen and a half. And had you been out
9 investigating for eight years gathering
02:15 10 information?

11 A Yes.

12 Q And I think it's fair to say that December of 1988
13 would be the first time -- well, let me clarify
14 that. I think the 1986 letter that David Milgaard
02:15 15 wrote to John Crosbie, we touched on that earlier,
16 saying I'm going to bring an application, --

17 A Uh-huh.

18 Q -- or I am.

19 A That's right.

02:16 20 Q Apart from that, would it be fair to say that
21 December, 1988 would be the first occasion where
22 David Milgaard or someone on behalf of David
23 Milgaard formally approached the authorities, the
24 Federal Justice Minister for a remedy?

02:16 25 A Yes.



1 Q And can you tell us, what was your expectation
2 once you filed the application about what was
3 going to happen?

4 A I think it was very similar of that of David
02:16 5 Asper, that they would get in touch with us and
6 start to investigate all the anomalies that we had
7 and that we would maybe sit down with them and
8 explain all the things that we had found out that
9 didn't fit and be able to work together to get the
02:16 10 case re-opened.

11 Q Can you just elaborate a bit, you said a bit
12 earlier that one of the, I think the reason you
13 didn't put the Ron Wilson information and the
14 Albert Cadrain information into the application, I
02:17 15 think you said Hersh Wolch wanted to hold some
16 back; is that right?

17 A Well, I think maybe not so much as hold some back,
18 but to have some other things to discuss with
19 them, because we all thought that we would end up
02:17 20 discussing this with the justice officials.

21 Q And so, I'm sorry, so that what -- it would be
22 something that you could add in later then?

23 A Yes, and we would be able to add all these other
24 things in when we're sitting down discussing this
02:17 25 about what needed to be done and what needed to be



1 checked on, because we had more than just that, I
2 mean, we had all kinds of other things that we
3 wanted to share with them.

4 Q And can you tell us, why was it not shared then,
02:17 5 other than what Mr. Wolch has said?

6 A Why was it not -- well, I think the two things
7 that we put in we felt were enough to get us to
8 the table.

9 Q Yes.

02:18 10 A And then at the table we would share everything
11 and that didn't happen.

12 Q And again, in fairness, Mrs. Milgaard, this may be
13 a question that is appropriate for others, but to
14 the extent that you have any personal knowledge or
02:18 15 involvement in this, I think in going through the
16 file and the record it appears that most, if not
17 all, of the interview work that you and Mr.
18 Carlyle-Gordge did in the early '80s, namely, the
19 interviews of Ron Wilson, Nichol John, Albert
02:18 20 Cadrain, Dennis Cadrain, Mr. and Mrs. Cadrain,
21 none of those transcripts or tapes made their way
22 to the authorities at all prior to the Supreme
23 Court reference, or during the Supreme Court
24 reference, I think that's the evidence that we
02:18 25 have heard and expect to hear, that, for example,



1 your two interviews of Ron Wilson in 1981 were
2 never provided to the Federal Justice Minister as
3 part of either of the two applications, nor were
4 they before the Supreme Court in the reference
02:19 5 case. Now, were you aware of that?

6 A No, I wasn't, and I was sure that they had been
7 discussed. I was sure that they had been
8 discussed.

9 Q Discussed with whom?

02:19 10 A With David Asper and Hersh.

11 Q Okay, no --

12 A And the justice officials.

13 Q And so was it your understanding that -- well,
14 tell me what your understanding was about the
02:19 15 information you obtained from Ron Wilson being
16 provided to the authorities?

17 A Well, I don't know that I would specifically say
18 Ron Wilson, but my understanding was they were,
19 they met with Williams.

02:19 20 Q Yes.

21 A And that they were giving information back and
22 forth, and I guess I naturally assumed that that's
23 what they would be giving them because that was
24 the strengths that I saw in the case.

02:19 25 Q And so again as far as the specific pieces of



1 information, the transcript or the tape or the
2 type of information, that after the first
3 application was filed, that what information would
4 be provided and when, is that something that you
02:20 5 would have relied upon Mr. Wolch and Mr. Asper to
6 decide what should be given, when it should be
7 given and if it should be given at all?

8 A Yes, because I had no idea.

9 COMMISSIONER MacCALLUM: You had no idea of
02:20 10 what, ma'am?

11 A Of what I should give, you know, I didn't know
12 what the parameters of this was with it being a
13 legal application.

14 BY MR. HODSON:

02:20 15 Q Did you know what was in fact given, what
16 information was provided to the authorities over
17 the course of the, I guess, three years, from 1988
18 until April of 1992, the two applications and the
19 reference case?

02:20 20 A I assumed that they got everything.

21 Q And when you say they, you are talking about the
22 authorities?

23 A The Justice Department.

24 Q Right. And everything being all the interviews
02:20 25 you would have done with Peter Carlyle-Gordge in



1 the early '80s and beyond; is that correct?

2 A Yes.

3 Q This letter, January 5, '89, is a letter from Mr.
4 Asper providing the package which was sent to the
02:21 5 minister on December 28th and so I take it once
6 the application was filed, you got a copy of it
7 and I think you said you expected -- you expected
8 that there would be a meeting or something of that
9 sort?

02:21 10 A Yes.

11 Q And is that something Mr. Asper or Mr. Wolch told
12 you would happen next, is that where you got that
13 understanding?

14 A I think we discussed it, that they would probably
02:21 15 go and meet with them and, you know, sit down and
16 the case would be discussed and they could bring
17 out everything that they had that was relevant.

18 Q And what -- and again, I don't want to get too
19 much into sort of the legal issues because I
02:21 20 appreciate you've told us you relied upon your
21 lawyers for that, but what did Joyce Milgaard
22 think on December 28th, 1988 would happen? Let's
23 talk about if things went favourable, what did you
24 see happening, did you think they would go and
02:22 25 investigate, that they would have a hearing, that



1 they would order David's release? What was on
2 your mind?

3 A I guess I thought that they would go and meet with
4 them, they would explain all that we had, the
02:22 5 department would investigate and see in fact
6 everything that we had put in there was the truth.

7 COMMISSIONER MacCALLUM: You expected --
8 you said they twice, you expected --

9 A The justice officials.

02:22 10 COMMISSIONER MacCALLUM: -- Asper and Wolch
11 to go to justice and meet with them?

12 A Yes, I assumed that when you put an application
13 in --

14 COMMISSIONER MacCALLUM: Yes.

02:22 15 A -- that then they would come together.

16 COMMISSIONER MacCALLUM: Who would?

17 A The justice officials and Hersh and David.

18 COMMISSIONER MacCALLUM: Okay, yeah.

19 A Would come together with them.

02:22 20 COMMISSIONER MacCALLUM: And who did you
21 expect to go to whom, or did you know?

22 A I had no idea. I just assumed that the Justice
23 Department would contact the lawyers and say let's
24 meet and that they would meet and that's the way
02:23 25 it would happen. I had no real understanding of



1 what happened in these cases.

2 BY MR. HODSON:

3 Q And then once there would be -- then did you
4 expect Federal Justice to go out and investigate
02:23 5 what you had put forward? When I say you, I mean
6 on behalf of David.

7 A Yes.

8 Q So they would go check what you put forward?

9 A Correct.

02:23 10 Q Did you expect them -- did you expect them to go
11 out and reinvestigate the entire case from start,
12 was that --

13 A I think I felt that we had presented enough
14 information that they would want to look at it
02:23 15 thoroughly, and so when we started to get reports
16 back from the witnesses about the way they were
17 being treated, it was such a slap in the face, I
18 mean, I thought what are they doing to these
19 people that I've gone out and talked to. It
02:23 20 really disturbed me a great deal.

21 Q And would that have been Deborah Hall and Linda
22 Fisher?

23 A Yes. I mean, Linda was such a sweet girl and she
24 was just beside herself when I talked to her after
02:24 25 she had been interviewed by Eugene Williams.



1 Q And so again just -- again, just your expectation,
2 what you had at the time, your understanding, was
3 that they would go out and investigate, so they go
4 out and talk to people anyway and gather
02:24 5 information?

6 A That's right, but I thought they would be nice to
7 them.

8 Q Okay. But they would be out to verify -- was it
9 your understanding they would go out and verify
02:24 10 and check the information that your lawyers had
11 provided to them?

12 A Yes, and that there would be some dialogue.

13 Q And then what did you expect, and again I'm just
14 asking in December of '88 when you filed, what did
02:24 15 you think was going to happen once they checked
16 the information, what was going to happen next, or
17 did you know?

18 A I expected David would be released.

19 Q So that they would go out, check out Dr. Ferris
02:24 20 and Deborah Hall and come back and say okay, in --

21 A Yeah, there's been a mistake, it looks like
22 there's been a mistake made. I think we
23 reasonably expected at that time that David might
24 get out on bail and that there would be some sort
02:25 25 of a hearing where they would present their



1 findings.

2 Q And was that something that, the bail and that,
3 was that something you learned from Mr. Wolch or
4 Mr. Asper or --

02:25 5 A No, but it has always been in the back of my mind
6 and that's why I kept the Langenburg house, you
7 know, thinking that if it was heard again in
8 Saskatchewan, that I would have property there
9 that would be used for bail.

02:25 10 Q So again, let's assume, I mean, obviously when you
11 filed the application, or the application was
12 filed on your son's behalf, I take it that you
13 believed that Dr. Ferris' opinion proved David's
14 innocence?

02:25 15 A Yes, I did.

16 Q And that Deborah Hall's evidence established that
17 two witnesses lied at trial?

18 A Correct.

19 Q And so that assuming those two things were borne
02:25 20 out by the Federal Justice investigation, was it
21 your expectation that once they verified that,
22 that they would then say we made a mistake and let
23 David out of jail?

24 A No, I don't think they were going to say we made a
02:26 25 mistake and let him out of jail, I think that



1 there would have been some sort of a hearing, that
2 was my thought.

3 Q Okay. So that there would be some process that
4 would --

02:26 5 A Step into play.

6 Q A hearing that would lead to David's release?

7 A Yes.

8 Q Okay. And I'm sorry to ask again, but the time
9 frame you were hoping or expecting, maybe hoping
02:26 10 isn't fair, but what time frame, perhaps, what did
11 Mr. Wolch and Mr. Asper tell you of how long it
12 might take for Federal Justice to do whatever they
13 needed to do?

14 A Well, I think our expectation was just maybe a
02:26 15 matter of months.

16 Q And so --

17 A Not just weeks, but, you know, a matter of maybe a
18 few months we should hear something back.

19 Q And certainly that if things went well, that maybe
02:26 20 within how long a time period that David might be
21 released?

22 A I was hoping within a month, you know, within a
23 few months that he could be released on bail --

24 Q And then what about --

02:27 25 A -- pending --



1 Q I'm sorry?

2 A Pending some sort of hearing.

3 Q And again, was this hearing thing, what were you
4 thinking of there, how long that would take?

02:27 5 A I had no concept of that.

6 Q Okay. Sooner rather than later; is that fair?

7 A Yes, that's fair.

8 MR. HODSON: I see it's 2:30. Maybe we'll
9 take a 10 minute break, Mr. Commissioner? We go
02:27 10 till 3:30 today.

11 COMMISSIONER MacCALLUM: Sure. We'll take
12 15.

13 MR. HODSON: Or 15.

14 (*Adjourned at 2:27 p.m.*)

15 (*Reconvened at 2:45 p.m.*)

16 MR. HODSON: If I could just call up
17 337731, the document for a moment,
18 Mr. Commissioner, I just wanted to make a comment
19 on the record about this.

02:46 20 As I said earlier, this is a
21 document we put together yesterday to assist with
22 Mrs. Milgaard that lists some of the information
23 she obtained and as we deal with Mr. Williams
24 from Federal Justice when he's on the stand I'll
02:46 25 be going through with him as far as what



1 information was provided to him and what
2 information ended up with the Supreme Court
3 reference, and this is not a complete document
4 yet, so I just want to make it clear that we'll
02:46 5 still hear more evidence where we have put in
6 "no" in the column about it being disclosed or
7 produced to authorities prior to or during the
8 Supreme Court reference. That's based on the
9 document record and our review of the Supreme
02:46 10 Court reference and certainly we will hear
11 evidence on it, and to the extent that we hear
12 different evidence than what's on the documents,
13 we'll change that, so I don't want to put this
14 forward as gospel quite yet. By the end of the
02:47 15 evidence, though, we will have a complete list of
16 what information was provided.

17 We do know on record what was
18 on the reference case, but as far as what may
19 have passed between Mr. Wolch and Mr. Asper and
02:47 20 Mr. Williams, I think we'll wait until that
21 evidence is concluded before we finalize the
22 list, so I just wanted to point it out, but it
23 was a useful document for me to go through with
24 Mrs. Milgaard and --

02:47 25 COMMISSIONER MacCALLUM: Yes, indeed, thank



1 you.

2 BY MR. HODSON:

3 Q 163061, please. Now, this is a letter December
4 28, 1988 from Mr. Asper to Sandra Bartlett at the
02:47 5 CBC, and I went through this before, but we've
6 talked about the importance of the *Fifth Estate*,
7 so Mr. Asper sent a copy of the application and
8 David's interest is keen on the *Fifth Estate*. I
9 take it that now that the application was filed
02:48 10 with the minister, can you tell us at this time,
11 what were your desires with respect to media
12 exposure of both the application and David's
13 situation?

14 A I think we felt it would be good to have this
02:48 15 exposure, that it would be helpful.

16 Q And so again, even prior to the application we
17 talked about the importance to you and to your son
18 David about getting this exposure. Is it fair to
19 say that once the application was filed, that the
02:48 20 importance continued and maybe even increased?

21 A I would think so, yes.

22 Q And then Mr. Asper imposes a seven to 10 day time
23 limit for CBC, are you going to run it, if not,
24 they may make it available to other media in
02:48 25 general. Can you tell us anything about what was



1 happening -- was this Mr. Asper's work or planning
2 or were you involved in this?

3 A No, I think it was mainly David, at this point he
4 was really anxious to get this off the ground and
02:49 5 up and running, and that's my David I'm talking
6 about.

7 Q Okay. So he --

8 A I think he was working with David Asper and saying
9 give them a time limit, make it fly.

02:49 10 Q Can we maybe just talk generally about the media.
11 I think what Mr. Asper testified to, that
12 initially when the application was filed I think
13 he said that the Milgaard group, if I can call it
14 that, was wanting to get some media coverage, the
02:49 15 fact that the application was out there and get
16 some coverage. I think he talked about a couple
17 of things, one, that to the extent media covered
18 it, that it might validate for both you and your
19 son that there's some merit in your application,
02:50 20 because if the media looked at it and reported it,
21 that it might give you some validation; is that
22 correct?

23 A I believe that was the philosophy.

24 Q And at this stage, or -- and what he also said is
02:50 25 that later on, and I think he said there was a



1 turning point at some point when it became more of
2 a war, that one of the purposes of the media then
3 was to influence the public to support David's
4 cause and to influence the politicians. Do you
02:50 5 remember Mr. Asper giving that type of evidence?

6 A Yes, I do, and I would substantiate that.

7 Q But earlier on I think what he said, initially
8 that wasn't the plan; is that fair?

9 A That is fair.

02:50 10 Q And so again, as far as media attention, it would
11 be to get the case out there, but not with any --
12 is it fair to say when you first filed the
13 application, there wasn't a desire to use the
14 media to influence the minister to give a
02:50 15 favourable decision; is that fair?

16 A No, because I still at this point believed in the
17 Justice Department.

18 Q 213762, and this is a February 10th letter from
19 Mr. Wolch to David, and I haven't been able to
02:51 20 find David's January 23 letter that he sent, but
21 in any event, the second paragraph, Mr. Wolch
22 says:

23 "You are concerned that we have an
24 overall game plan and that we have our
02:51 25 priorities. I fully agree, although I



1 do feel that it is impossible to have a
2 rigid game plan under the circumstances.
3 At this point in time the Department of
4 Justice is reviewing your matter. This
02:51 5 is number one. As well the Fifth Estate
6 will hopefully be airing a lengthy
7 program in the near future which will
8 undoubtedly attract a great deal of
9 attention. They apparently would like
02:51 10 very little publicity until their
11 program and one can fully understand
12 their reasoning. Once their program
13 airs undoubtedly there will be a great
14 deal of attention directed your way."

02:52 15 Can you tell us, was there a concern your son had
16 about the plan or where things were going at this
17 time or can you shed any light on this?

18 A He was just tired of waiting, I mean, he was
19 constantly checking up on everything we were
02:52 20 doing. I mean, he's in there 24 hours a day
21 thinking about this and so he would be questioning
22 everything in his mind and he had his good days
23 and his bad days. At the time when we actually
24 were, had him coming to Herish's office and
02:52 25 everything, it was incredible, the experience for



1 him even. I can remember the first day, instead
2 of trying to get him into Hersh's office that we
3 could talk to him, David was riding up and down in
4 the elevators because he hadn't ridden in
02:53 5 elevators before and he was so excited about these
6 elevators and talking to people and things like
7 that, but he would have high days, but there were
8 lots of low days, and so probably when he wrote to
9 Hersh and Hersh has said, "You are concerned that
02:53 10 we have an overall game plan," he would be going
11 in his mind over and over strategies and
12 everything, well, we should have this and we
13 should have that and I wonder if mom has thought
14 of this or if Hersh has thought of that, and so
02:53 15 there were constant missives to us about various
16 things.

17 Q Go to the next page, Mr. Wolch says:

18 "The importance of responsible publicity
19 at this time is to ensure that your
02:53 20 Ministerial Review will have to satisfy
21 public scrutiny. From my understanding
22 the Minister is swamped with
23 applications for review and while the
24 people doing the review are responsible
02:54 25 and intelligent individuals, the added



1 knowledge that the public is awaiting
2 their review may simply speed up the
3 process and ensure that the review is
4 thorough."

02:54 5 And so it looks like at this time there's some
6 thought about publicity being used to cause the
7 justice officials to make sure that they do a
8 speedy and thorough review?

9 A I would agree with that.

02:54 10 Q Do you have any recollection of this, where this
11 came from, the fact that the minister was swamped
12 with applications?

13 A No, because with my Association in Defense of the
14 Wrongly Convicted, I really -- I don't think they
02:54 15 were that swamped.

16 Q And again, what was your understanding about how
17 many applications they might have at a given time,
18 was that --

19 A I can't answer. You better ask Mr. Williams about
02:55 20 that.

21 Q So again at the time though, based on your work
22 that you had done with -- was that with Centurion
23 or was this later with AIDWYC?

24 A No, this would be with AIDWYC.

02:55 25 Q Okay. Which would have come later?



1 A But I think I had some work at this time that I
2 had done with them, or contact with them at this
3 time.

4 Q If we can go to 004868 --

02:55 5 A Or it could have been with my association with the
6 John Howard Society, that could have been it, and
7 Elizabeth Fry.

8 Q And was it your understanding that there were not
9 very many applications that were filed under
02:55 10 Section 690?

11 A I didn't think -- my understanding, there were not
12 a lot.

13 Q Okay.

14 A And so I'll be very interested to find out if that
02:55 15 was the case.

16 Q Now, this is February 16th and this is the first
17 letter, February 16th, 1989, this is the first
18 letter back from Doug Lewis, the minister, in
19 response to the application, and asks that the
02:55 20 following materials be provided, and it's the
21 transcript, factum at the Court of Appeal, which
22 there wasn't any, and then the documents which I
23 think were the lab reports referred to in Dr.
24 Ferris' report, and do you have any recollection
02:56 25 about this, about the issue of whether or not the



1 transcripts should have been sent in at the time
2 of the application or later or any concern about
3 the minister's response on this, or was that
4 something you left to your lawyers?

02:56 5 A I really left that to the lawyers and -- but when
6 I look at this and think if a person has to do
7 this and they don't have a mom that's out fighting
8 for them and they are in prison on their own, how
9 would they ever manage to do all this stuff.

02:56 10 Q Would you have had the -- I think you had a number
11 of copies of the transcripts --

12 A Yes, we did.

13 Q -- in your case, so again, maybe we'll come back
14 to this when we get into the systemic issues, that
02:56 15 perhaps in other cases this might be an area
16 where --

17 A -- they might like to change their rules.

18 Q Okay. But as far as your application, were you
19 aware of any concern about sending in a copy of
02:57 20 the transcripts that you had obtained?

21 A No.

22 Q Or the information, the lab reports that you had
23 sent to Dr. Ferris, were you aware of any concern
24 about getting a copy of those to the minister?

02:57 25 A I didn't realize it was necessary.



1 Q Okay. Go to the next page, and again, please
2 forgive me if I'm getting into areas that Mr.
3 Wolch and Mr. Asper were dealing with, I just want
4 to find out whether you would have had any
02:57 5 involvement or any knowledge about what was going
6 on. You'll remember the application that was sent
7 to the minister relied upon Deborah Hall and Dr.
8 Ferris, it also said, oh, by the way, we can
9 factually demonstrate Nichol John's statement is
02:57 10 impossible, but we haven't done that because, I
11 think, as I read it, because her statement was in
12 evidence at trial. You remember that being --

13 A I remember that.

14 Q And so here the minister came back and said, okay,
02:58 15 if you can demonstrate it, please do so, and
16 certainly any information and material which you
17 have in relation to that would be of assistance in
18 assessing the merits of this application. And
19 again, do you know whether it was discussed or
02:58 20 considered sending to the minister your interview
21 of Nichol John in 1981 where you and Mr. Merchant
22 questioned her about the circumstances under which
23 she gave the statement and what she remembered and
24 what she didn't remember, do you recall any
02:58 25 discussion about that?



1 A No, I don't.

2 Q Or any reason why that transcript would not have
3 been provided to the minister in response to this
4 request?

02:58 5 A I don't know what was actually provided, so --

6 Q Okay. And then again the issue comes up about
7 obtaining a waiver of solicitor/client privilege
8 from David in relation to his trial and appellate
9 counsel in order to facilitate the conduct of this
02:59 10 assessment, and the record shows that your son
11 David signed a waiver right away, provided a
12 waiver of privilege and allowed Federal Justice to
13 talk to Mr. Tallis about what discussions took
14 place between them; correct?

02:59 15 A That's correct.

16 Q Did you have any concerns at the time about this
17 request and about David, your son David waiving
18 his privilege with Mr. Tallis?

19 A No, because we had the truth on our side we felt.

02:59 20 Q 333292, and this is a letter from David to the
21 justice minister, this is now February 23, 1989,
22 so it's almost two months after the application
23 was filed, and so he refers to the application of
24 December 28th and he says:

03:00 25 "My lawyer, a Mr. Hersh Wolch, has said



1 in most cases many presentations are
2 deemed frivolous because many of them
3 are. I would like you to tell me if my
4 case has passed this initial stage -
03:00 5 evaluation."

6 Do you have any recollection of Mr. Wolch giving
7 this information to you or to David about
8 applications in this initial stage or anything of
9 that nature?

03:00 10 A No.

11 Q And no recollection of this?

12 A None at all.

13 Q And then he says:

14 "It is also important to me and my
03:01 15 family to know what sort of 'input' we
16 can have into all of this. If you feel
17 there is a need for an investigation in
18 the interests of justice, what role can
19 we play (if any) in the direction of
03:01 20 this? We feel there should be a
21 'sharing' between yourself and us. Do
22 you agree?

23 Please address these three
24 questions of 'stage', 'input', and
03:01 25 'sharing.' Please do this for us soon."



1 And then:

2 "Can you please

3 send me a

4 copy of this

03:01 5 letter

6 so I can

7 send it to

8 my Mother."

9 Again, do you recall the circumstances how this
03:01 10 came up or --

11 A No, just, I can see that David is being anxious.

12 Q Go to 218743. And we're back to the *Fifth Estate*,
13 and this is March 8th, 1989, so this is two months
14 after the application is filed. We know that on
03:02 15 December 28th, 1988 Mr. Asper sent to Sandra
16 Bartlett a copy of your application that included,
17 I believe, the doctor -- that it did include Dr.
18 Ferris' report, and so here, March 8th, 1989 --
19 and you will recall earlier, in 1987, they said
03:02 20 that with the DNA or the genetic testing they were
21 gonna do a show, and now, here, they say that:

22 "This is to let you know that the fifth
23 estate is unable to do a story on the
24 case of David Milgaard. I say this with
03:02 25 great regret, because I know how much



1 importance Mr. Milgaard was placing on
2 the fifth estate to publicise his claim
3 of innocence. Unfortunately, after
4 spending considerable effort and expense
03:03 5 on the matter, we have concluded that we
6 cannot get enough evidence to produce a
7 documentary that would support Mr.
8 Milgaard's claim. This does not mean
9 that we believe Mr. Milgaard to be
03:03 10 guilty; it is only that we cannot prove
11 his innocence.

12 And proof, fairly conclusive proof, is
13 what we have always needed before we
14 could commit ourselves to putting the
03:03 15 Milgaard case on the fifth estate."

16 Now --

17 A This, when it came, was absolutely devastating to
18 David and to the family, because we had really,
19 really put our hopes, and believed this was going
03:03 20 to go ahead.

21 Q And they would have had, I believe the record
22 shows, they would have had Dr. Ferris' report; do
23 you recall having some concern about how they
24 would reach this conclusion?

03:03 25 A Yes.



1 Q And who, if any -- did you talk to anybody about
2 that or explore it further?

3 A Oh, we all talked about it, and I know I
4 thought -- Susan and Maureen and I and Lorne, we
03:03 5 talked about it and said, "well, if they're taking
6 this view, what -- what's the Justice Department
7 going to take", and that was a question that was
8 on the table at that time for us, quite honestly.

9 Q Did you not ask your counsel or others and say,
03:04 10 "lookit, how can they do that, did they not read
11 Dr. Ferris' opinion, it proves" --

12 A Yeah, and I was shocked, completely shocked. And
13 I remember, I don't know if it was David or Hersh,
14 one of them saying to me that they have to be very
03:04 15 careful because they can be sued and so they
16 really have to be very, very careful about what
17 they publish or what they, you know, present.

18 Q So okay, I'm sorry, so that when you went back to
19 Mr. Wolch or Mr. Asper and said "how could they,
03:04 20 how could they turn us down because they can't
21 prove his innocence when they have Dr. Ferris'
22 report", the response was they'd have to be
23 careful because they might be sued?

24 A Well if they say, if they support a case wrongly,
03:05 25 --



1 Q Yes?

2 A -- that they could be in deep trouble over it, so
3 that they would be inclined to back off unless
4 they had absolute proof.

03:05 5 Q Okay. And, in your mind, did you think you had
6 absolute proof in --

7 A I did.

8 Q -- Dr. Ferris?

9 A I did.

03:05 10 Q And did this cause you to, in any way, doubt the
11 validity of Dr. Ferris' opinion, or did you --

12 A No, I still believed in it.

13 Q And so what did you think had happened here that
14 caused the CBC not to accept Dr. Ferris' opinion
03:05 15 or not to -- maybe that's not fair -- that caused
16 the CBC not to go ahead on the basis that they
17 couldn't -- they weren't satisfied about proving
18 his innocence?

19 A Well, I think we also still had some suspicions
03:05 20 about what was causing the *Fifth Estate* to back
21 off, whether it was anything to do with Eric
22 Malling still.

23 Q If we can go to -- actually, let me -- if we can
24 go to 182102. And, again, this information back
03:06 25 to -- 182102 -- the letter back from the *Fifth*



1 Estate, would it be fair to say that once you
2 filed your application you were -- you thought you
3 had sufficient information and that a good
4 response was coming; is that fair?

03:06 5 A Yes, that's fair.

6 Q And so you, now, you al -- in addition to sending
7 it to Federal Justice you sent it to CBC, who you
8 thought were going to do a program, they then get
9 back to you after having looked at your
03:07 10 application and said, "we're not going to run the
11 show because we don't think -- we have concerns
12 about proof of innocence, not saying that he is
13 guilty or anything, but concerns about what's
14 there"?

03:07 15 A So we were looking for an ulterior motive, both
16 David and I, for that coming back.

17 Q Did you have some concerns that, I think you
18 talked about "if the CBC thinks this, what's
19 Federal Justice going to think"; is that right?

03:07 20 A I'm sure that was in my mind at the time.

21 Q And --

22 COMMISSIONER MacCALLUM: I'm not sure I
23 followed your question, Mr. Hodson. They were
24 turned down by the *Fifth Estate* and then they
03:07 25 submitted it to CBC? I thought it was the same



1 place.

2 MR. HODSON: The same thing. I'm sorry,
3 what did I say?

4 COMMISSIONER MacCALLUM: Well it's maybe
5 just --

6 BY MR. HODSON:

7 Q Okay. Let me start over again. When you filed
8 your application with the Minister you also sent a
9 copy of that to the CBC *Fifth Estate* program?

03:07 10 A Yes.

11 Q And I think you said you expected a favourable
12 reply from the Federal Government to your
13 application?

14 A Yes.

03:07 15 Q And then, a couple months after you filed the
16 application and sent it to the CBC *Fifth Estate*,
17 that the CBC *Fifth Estate* got back to you and said
18 "lookit, we're not prepared to run a show any
19 more, we've got your application materials but we
03:08 20 don't think" -- I better be careful here what
21 their language is, but what they say is:

22 "... after spending considerable effort
23 and expense on the matter, we have
24 concluded that we cannot get enough
03:08 25 evidence to produce a documentary that



1 would support Mr. Milgaard's claim."

2 And again, that was my question, that after

3 having filed the same ap -- or giving the same

4 application materials, one to the Federal

03:08 5 Government, one to the CBC, who already had

6 everything else that you had produced in the

7 early '80s from Mr. Carlyle-Gordge, that when

8 they come back and say "lookit, we don't think we

9 have enough to run a show to establish his

03:08 10 innocence", and my question there was did that

11 cause you to pause and think "what would federal

12 Justice think", because you, actually you gave

13 them -- you gave them the application only two

14 months earlier; correct?

03:08 15 A Yes. I think it did make me question that, but I

16 think the main thing that we got out of it was

17 that there may have been this ulterior motive, the

18 one about Eric Malling, and someone was stopping

19 us at the pass, to have this production take

03:09 20 place.

21 Q Did -- so that was one thought. Did you ever

22 think, "maybe our materials aren't good enough"?

23 A No, because I trusted our materials, and I felt

24 they were good enough.

03:09 25 Q Okay. And so your thinking then -- please tell me



1 if I'm wrong -- is that "our materials are good,
2 there must be something with the CBC, something
3 must be happening there that would cause them" --

4 A That we don't know about, yes.

03:09 5 Q Right. Did I clarify that, Mr. Commissioner?

6 COMMISSIONER MacCALLUM: Yes.

7 BY MR. HODSON:

8 Q And then here, March 13th, it looks like 1989,
9 David got in touch with Robin Taylor of the *Fifth*
03:09 10 *Estate*, and then here David Asper says:

11 "I would think that we would like to
12 consider plan 'B' and go public with
13 someone else."

14 Would it be fair to say that, at least based on
03:10 15 your discussions with Mr. Asper and Mr. Wolch,
16 that their view was similar to yours in that the
17 fact that the CBC did not see fit to go ahead
18 with a story based on the earlier information and
19 the application, that you'd go look for some
03:10 20 other media outlet to run it, as opposed to
21 saying "okay, maybe -- maybe our application
22 materials aren't what we thought they were"; is
23 that fair?

24 A That's fair. And then you'll notice the other
03:10 25 reason for setting up the conference call was the



1 money. The legal -- we couldn't get -- Legal Aid
2 wouldn't cover us, either Saskatchewan or
3 Manitoba, and when you think of it these lawyers
4 were putting money out of their own pockets, and
03:11 5 he is pointing out the fact that it cost
6 approximately \$800 to obtain the photocopies of
7 the transcripts.

8 Q And, again, I think your position there is,
9 "lookit, it's not fair to a person making an
03:11 10 application to pay the cost of copying all the
11 transcripts"; is that --

12 A That's correct.

13 Q Yeah.

14 A And, you know, when I -- when I was doing the
03:11 15 investigation work and everything I was looking at
16 sort of the time lines and the times in between.
17 I wasn't a stay-at-home mum, I was working, I had
18 a full-time job as a property administrator, a
19 very demanding job that I put many hours in on, so
03:11 20 it -- because when you look at all the time frames
21 and everything I look back and think "well, gee,
22 what was I doing", but then I had to answer that
23 with "I was working and trying to get money
24 together". I was renovating houses, we -- I
03:12 25 bought houses and lived in them and renovated them



1 and then sold them, and as well as my job as
2 property administrator, and it was the money that
3 I made from these that allowed me to go out and do
4 more investigation.

03:12 5 Q And, again, is what you are saying is that --

6 A That's a picture that's never come out, that
7 nobody sees.

8 Q That -- and again, please correct me if I'm
9 wrong -- what you are saying is that a person
03:12 10 helping a wrongfully convicted person cannot spend
11 24 hours a day seven days a week on the case,
12 there's other things in life that need to be dealt
13 with, --

14 A Absolutely.

03:12 15 Q -- and that you devoted much of your time but you
16 had other demands that you had to deal with as
17 well; is that fair?

18 A Yes.

19 Q Family, work, and the other demands that everybody
03:13 20 faces in life; is that correct?

21 A That's correct.

22 Q Okay. And I -- did that make it difficult as far
23 as the time -- and I'm not going to ask you to
24 tell us how much time you spent on the matter
03:13 25 because I'm assuming it was a significant part of



1 your life from 1980 --

2 A On.

3 Q -- onward?

4 A Yes, a very significant part.

03:13 5 Q If we could go back to 162408, please. And we
6 have been through, this just relates to the
7 information on Nichol John, and this is
8 communications between Mr. Wolch and Mr. Asper.
9 You will recall the Minister got back, the first
03:13 10 letter back on your application, saying "if you
11 have information on Nichol John, send it", and Mr.
12 Asper sends a memo to Mr. Wolch asking if he'd
13 like to draft a memo.

14 And then if we go to 162407,
03:14 15 this is a few days later, and Mr. Wolch says to
16 Mr. Asper April 3, 1969 (sic) -- if we can call
17 that out, please:

18 "I feel we should draft a response
19 regarding Nicole John now. I don't
03:14 20 recall if it's in the unedited
21 presentation that we were going to send
22 or not, but I do think we should get it
23 ready so that we could either give them
24 everything at once or piecemeal if we
03:14 25 want to keep their interest up."



1 Was there a much longer version or set of
2 information that was there that wasn't sent in,
3 or do you know what this relates to?

4 A I have no idea.

03:14 5 Q And this idea of giving them some or all of the
6 Nichol John information to keep their interest up,
7 is that anything that you would have been involved
8 in discussing, or was that between Mr. Wolch and
9 Mr. Asper?

03:14 10 A I think that was between Mr. Wolch and Mr. Asper.

11 Q 163063, please. This appears to be the first
12 communication between -- with a fellow by the name
13 of Dan Lett?

14 A Yes.

03:15 15 Q And can you tell us -- again, we'll, as we go
16 through chronologically we'll see more discussions
17 that you had with Mr. Lett and some of his
18 articles -- but can you tell us, just generally
19 give us an introduction as to how Mr. Lett became
03:15 20 involved and what, what did he do to assist your
21 cause or what role did he play in your efforts,
22 and just give us a general idea? And we will go
23 into specifics later, but just a general
24 introduction to his involvement?

03:15 25 A Well, for one thing, I was not aware that David



1 Asper was the contact with Dan Lett.

2 Q Okay.

3 A So --

4 Q And he may not have been, this is just a letter,
03:15 5 this is the first document that looks like he is
6 involved, so -- and I think it's just sending
7 information?

8 A Well, yeah, but obviously he has talked to Dan
9 Lett. I had the feeling, somehow, that Dan Lett
03:16 10 had found me, but, you know, this looks the other
11 way around.

12 Q And --

13 A So I have no idea.

14 Q Let -- and maybe I shouldn't have shown you this
03:16 15 letter, let's put the letter aside. Tell me your
16 recollection of how Dan Lett became involved in
17 this matter?

18 A Well it seemed to me he talked to me about the
19 case, and obviously he must have found out about
03:16 20 it from David Asper and he was interested in doing
21 a story on it, and he did one fairly major story
22 on it that got other people interested in it and I
23 felt that -- oh, he ended up being intensely
24 interested in it, --

03:16 25 Q Uh-huh?



1 A -- and he was so helpful, and he actually went out
2 to, he went out to Saskatchewan with me. I
3 remember him going with me to Gail Miller's grave,
4 and the feelings that I had when that happened,
03:17 5 and trying to show him the area and all of the
6 things that had happened so that he would have a
7 real understanding of it.

8 Q And, again, I think we saw Mr. Carlyle-Gordge, his
9 involvement, he was a writer; would Mr. Lett, did
03:17 10 he have a similar type of involvement, or to a
11 lesser degree?

12 A Well Dan never became involved in going out and
13 investigating on our behalf, but he did go out and
14 investigate on behalf of the newspaper, so he
03:17 15 would go and track down people and talk to them
16 and get their opinions on it.

17 Q And is it fair to say that you would have shared
18 information back and forth with Dan Lett?

19 A Absolutely.

03:17 20 Q And --

21 A Because as we got new information, we would pass
22 it on to him, and that funneled his interest in
23 the case.

24 Q And he would publish materials that would assist
03:17 25 your cause, --



1 A Yes.

2 Q -- and --

3 A Yes.

4 Q -- he would find information and he'd pass it on
03:18 5 to you; is that right?

6 A Correct. And then, later on, I went to the
7 *Toronto Daily Star*, where I used to work, and went
8 to the switchboard operators there because I had
9 worked as a switchboard operator, and they hadn't
03:18 10 been doing anything on the story and it would --
11 had been strictly a Manitoba story at this point,
12 and so I knew as a switchboard operator that we
13 did a lot of the reporters' work for them and that
14 if the switchboard operators weren't co-operating
03:18 15 with the reporters, the reporters would have a
16 very difficult time. And so I talked to them
17 about supporting me and told, explained my story,
18 and they more or less told the editorial
19 department that they better start doing something
03:19 20 about this story, and supported me in the case,
21 and they gave me Peter Edwards for one day to come
22 out, and he ended up being out in Saskatchewan
23 with me for ten days, --

24 Q What --

03:19 25 A -- and then they subsequently took up the story.



1 Q And what, was that in the early '90s that Peter
2 Edwards came out, do you remember the time frame?

3 A I'd have to go back and --

4 Q Sure.

03:19 5 A -- just check through when they started to come
6 in, but it was when we felt it had to go national,
7 and so we'd had some work with *The Globe and Mail*,
8 because there was a local man here that helped us.
9 But, you know, once the reporters started seeing
03:19 10 what we had they become -- became convinced
11 themselves. I mean, it wasn't me convincing them,
12 it was what they were finding that was convincing
13 them.

14 Q Did you give -- I think there is a note, and I'll
03:20 15 find it for you on Monday -- but a reference where
16 Dan Lett, I think Dan Lett was provided with the
17 transcripts of the interviews that you and Mr.
18 Carlyle-Gordge conducted with the witnesses in '81
19 to '83; is that right?

03:20 20 A Yes, that's right.

21 Q And he was provided with all of those, the
22 interviews of Cadrain, Dennis Cadrain, Albert
23 Cadrain, Ron Wilson?

24 A Yes.

03:20 25 Q And what was he -- what was the purpose in



1 providing those to him?

2 A Well, we wanted him to see what we had, and what
3 we were sharing, and, you know, once people
4 started to look at these things and see the
03:20 5 documentation they realized that, eh, it looks
6 like there is a miscarriage of justice here.

7 Q Okay. If we could go to 333303, please. I'm
8 sorry, actually go to 213808, I think that's just
9 a draft, 213808. And this is a letter April 3,
03:21 10 1989 to David from the executive assistant -- you
11 remember I read to you David's February 3rd, 1989
12 letter to the Minister saying, you know, what can
13 we do?

14 A Yes.

03:21 15 Q And you'll see they say about:

16 "You also inquired as to what, if any,
17 role you and your family members may
18 play during the review ...",
19 and then scroll down, please:

03:22 20 "As you may now be aware, the
21 Minister has written to your counsel,
22 Mr. Hersh ... Wolch, and has requested
23 certain information which, given the
24 nature of the case, is essential to the
03:22 25 assessment of this application."



1 And I think that's the Nichol John information.

2 "Once this information is

3 received and reviewed, the official who

4 has been assigned to assess your

03:22 5 application will be in a position to

6 know if any further information will be

7 required. You and members of your

8 family should make submissions with the

9 assistance of your counsel."

03:22 10 And is it fair to say that -- and I think you

11 explained earlier that David was writing directly

12 to the Minister or to the government, sometimes

13 you knew, sometimes you didn't, --

14 A That's right.

03:22 15 Q -- and it was something that he obviously felt

16 important and you couldn't tell him not to do it;

17 is that fair?

18 A That's fair. He had to be involved.

19 Q But would you also have been aware that as far as

03:22 20 the formal lines of communication on his behalf

21 with the Federal Minister, at least as far as the

22 690 application, that it would go between counsel,

23 between Mr. Wolch, Mr. Asper, and Federal Justice?

24 A Oh, absolutely, I knew that.

03:23 25 Q 162409. And this is a memo from Heather Leonoff



1 to David Asper April 10, 1989 about -- do you
2 remember Heather Leonoff being involved at all?

3 A I do. She was wonderful.

4 Q And so she would have been involved back at the
03:23 5 time, in 1988; --

6 A Yes.

7 Q -- is that right?

8 A A lot of the lawyers in the firm were involved,
9 not just Heather.

03:23 10 Q And there is reference, later on in some of the
11 materials, about a "war room" at Mr. Wolch's
12 office, or about where all this information was
13 kept, and here I think Heather is writing to Mr.
14 Asper saying we've got:

03:24 15 "... a bunch of collection of
16 information which I hope you know where
17 most of it is or if it is available to
18 us."

19 Can you tell us what -- was the information, was
03:24 20 it kept at Mr. Wolch/Mr. Asper's office and sort
21 of added to as it went in, or how did you manage
22 all the paper?

23 A Well, the war room was their boardroom, --

24 Q Yes.

03:24 25 A -- and we literally took over the boardroom, we



1 had all the, all the boxes and everything of
2 evidence, all that there. And Bob Bruce, myself,
3 Susan, Maureen, we would go in and we would work
4 in the boardroom, going through the materials and
03:24 5 getting them ready, and anything that we found,
6 and as we got more information back on reports,
7 and of course when we were going to the Supreme
8 Court we worked on all of the stuff that we got
9 from there in the war room, as we called it.

03:24 10 Q And so am I correct that at some point, maybe in
11 '86 or '87, 1986-'87, there'd be a collection of
12 all the information at Mr. Wolch's or Mr. Asper's
13 office, and that that grew over time, and that as
14 information came in it was added, and that that
03:25 15 was the headquarters for the documents, tapes,
16 information, etcetera?

17 A Absolutely. Everything was there.

18 Q 163064. And this, again the *Fifth Estate*, you
19 will recall the earlier letter where they said
03:25 20 they were not going ahead and here is a letter
21 from Mr. Asper to the *Fifth Estate*, Robin Taylor,
22 saying:

23 "As you may understand, David Milgaard
24 was rather upset with the decision of
03:25 25 The Fifth Estate to not air his story.



1 Nonetheless, he contacted my recently
2 and dictated the following letter and
3 asked that I forward it to you.

4 'Since our last telephone
03:26 5 conversation I have been very puzzled
6 about the quality of your
7 investigation into my case. At some
8 point your people contacted Mr. Wolch
9 about Dr. Ferris' forensic report.
03:26 10 They claimed that they had consulted
11 someone in Toronto who disputed Dr.
12 Ferris' findings. Mr. Wolch was
13 asked to comment on this and he
14 referred your people directly to Dr.
03:26 15 Ferris.

16 As far as I know, no one ever spoke
17 with him.'"

18 And it appears from this -- and I think Mr. Asper
19 confirmed this -- that perhaps one of the reasons
03:26 20 the *Fifth Estate* didn't go ahead with the show
21 was that they took Dr. Ferris' findings and had
22 them -- consulted someone, apparently in Toronto,
23 who looked at them and disputed them; do you
24 remember hearing about that?

03:26 25 A I did not remember hearing about this at all.



1 Q And, again, would that have -- can you tell us, I
2 appreciate you don't recall that, but what -- I
3 think we had talked earlier about the CBC saying
4 "we're not going ahead", I think you said you
03:27 5 thought there was an ulterior motive; are you
6 telling us you don't think you would have heard
7 about this as being one of the reasons why they
8 may not have run the program?

9 A Well I would think because this was in '89, in
03:27 10 April of '89 I was around and involved, that I
11 would have known about this, but I honestly don't
12 recall my reaction to it, if you will.

13 Q Yeah. That's probably an appropriate spot to
14 break for the day, Mr. Commissioner.

03:27 15 (Adjourned at 3:27 p.m.)
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OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATES:

We, Karen Hinz, CSR, and Donald G. Meyer, RPR, CSR,
Official Queen's Bench Court Reporters for the Province of
Saskatchewan, hereby certify that the foregoing pages
contain a true and correct transcription of our shorthand
notes taken herein to the best of our knowledge, skill,
and ability.

_____, CSR

Karen Hinz, CSR

Official Queen's Bench Court Reporter

_____, RPR, CSR

Donald G. Meyer, RPR, CSR

Official Queen's Bench Court Reporter



\$	'90 [1] - 30368:7 '90s [1] - 30417:1 'b' [1] - 30409:12 'bombshell' [1] - 30330:17 'but' [1] - 30359:10 'david' [1] - 30263:17 'do' [2] - 30262:25, 30263:2 'input' [2] - 30401:15, 30401:24 'it' [1] - 30263:19 'legal' [1] - 30282:9 'mom' [1] - 30263:18 'no' [1] - 30263:20 'no' [1] - 30263:5 'of' [1] - 30359:20 'oh' [1] - 30320:17 'secreter' [2] - 30293:18, 30294:4 'sharing' [1] - 30401:25 'sharing' [1] - 30401:21 'since' [1] - 30422:4 'stage' [1] - 30401:24 'we've' [2] - 30251:10, 30251:15 'well' [1] - 30262:12 'what' [1] - 30262:11 'will' [1] - 30359:16 'yes' [1] - 30263:2 'you' [1] - 30255:17	12 [1] - 30334:17 127 [1] - 30357:21 12th [2] - 30304:1, 30310:1 13th [3] - 30339:1, 30356:9, 30409:8 148 [1] - 30207:22 14th [2] - 30282:14, 30283:10 15 [3] - 30350:11, 30389:12, 30389:13 155420 [2] - 30346:1, 30348:15 156666 [1] - 30282:14 15th [5] - 30238:18, 30303:22, 30314:8, 30341:18, 30344:1 16 [2] - 30262:4, 30266:5 162407 [1] - 30412:14 162408 [1] - 30412:5 162409 [1] - 30419:25 162412 [1] - 30350:10 162414 [1] - 30344:1 162418 [1] - 30342:7 162421 [1] - 30315:22 162430 [1] - 30302:23 162432 [1] - 30300:14 162433 [1] - 30286:19 162436 [1] - 30268:21 163061 [1] - 30391:3 163063 [1] - 30413:11 163064 [1] - 30421:18 163076 [1] - 30347:19 16th [6] - 30213:21, 30267:14, 30346:21, 30348:4, 30397:16, 30397:17 174511 [2] - 30365:19, 30370:5 18 [2] - 30370:6, 30378:6 182082 [1] - 30370:25 182095 [2] - 30326:7, 30327:19 182096 [2] - 30306:10, 30310:1 182098 [1] - 30303:22 182102 [2] - 30405:24, 30405:25 182184 [1] - 30341:13 182348 [1] - 30274:11 182350 [1] - 30271:2 182373 [1] - 30337:20 18th [2] - 30302:25, 30365:20 19 [1] - 30256:22 1969 [2] - 30369:5, 30412:16	1970 [2] - 30285:20, 30325:19 1980 [12] - 30218:6, 30218:13, 30220:17, 30259:16, 30261:11, 30266:1, 30276:11, 30309:10, 30311:13, 30377:20, 30378:1, 30412:1 1981 [12] - 30229:9, 30237:8, 30238:23, 30250:10, 30250:17, 30275:12, 30321:5, 30323:13, 30324:2, 30372:17, 30381:1, 30399:21 1982 [1] - 30234:20 1983 [7] - 30239:3, 30239:15, 30240:17, 30241:11, 30246:3, 30256:7, 30257:2 1985 [14] - 30211:7, 30212:1, 30212:10, 30212:15, 30213:15, 30220:17, 30223:15, 30230:18, 30236:2, 30237:22, 30241:18, 30251:5, 30251:13, 30256:8 1985-1986 [1] - 30242:18 1986 [46] - 30213:21, 30244:10, 30244:11, 30244:17, 30246:21, 30247:20, 30248:4, 30251:18, 30251:23, 30252:8, 30254:17, 30256:8, 30256:23, 30259:11, 30259:24, 30260:18, 30261:6, 30262:1, 30264:22, 30265:7, 30265:14, 30266:3, 30268:21, 30282:14, 30283:10, 30285:11, 30288:8, 30289:22, 30293:10, 30298:20, 30302:25, 30303:22, 30304:1, 30305:8, 30307:20, 30309:11, 30310:1, 30315:23, 30318:1, 30318:22, 30319:16, 30319:23, 30320:21, 30326:16, 30373:12, 30378:14 1986-87 [1] - 30421:11 1987 [14] - 30327:20, 30327:23, 30329:4, 30330:21, 30335:6, 30342:7, 30342:23,	30344:2, 30347:2, 30348:3, 30350:11, 30370:12, 30402:19 1987-early [1] - 30355:16 1988 [24] - 30223:16, 30335:7, 30335:21, 30355:17, 30356:9, 30356:17, 30359:3, 30360:4, 30367:4, 30367:17, 30370:6, 30370:19, 30371:1, 30371:17, 30375:1, 30377:12, 30378:5, 30378:12, 30378:21, 30382:17, 30383:22, 30391:4, 30402:15, 30420:5 1989 [9] - 30302:24, 30397:17, 30400:21, 30402:13, 30402:18, 30409:8, 30418:10, 30418:11, 30420:1 1990 [4] - 30225:7, 30289:10, 30301:20, 30309:12 1992 [1] - 30382:18 19th [1] - 30371:1 1:31 [1] - 30341:11
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