Commission of Inquiry

Into the Wrongful

Conviction of David Milgaard

before

EDWARD P. MacCALLUM

THE HONOURABLE MR. JUSTICE

## Transcript of Proceedings

and

Testimony before the Commission sitting at the

Bessborough Hotel at

Saskatoon, Saskatchewan

On Tuesday, May 16th, 2006

Volume 150

Inquiry Proceedings



## Commission Staff:

Mr. Douglas C. Hodson, Commission Counsel

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Ms. Cheryl Ellerman, Assistant Document Manager

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## Appearances:

Mr. Hersh Wolch, Q.C., for Mr. David Milgaard

Ms. Joanne McLean, for Ms. Joyce Milgaard

Ms. Lana Krogan-Stevely, for Government of Saskatchewan

Ms. Catherine Knox, for Mr. T.D.R. (Bobs) Caldwell

Mr. Garrett Wilson, Q.C., for Mr. Serge Kujawa

Mr. Pat Loran, Esq., for the Saskatoon Police Service

Mr. Aaron Fox, Q.C., for Mr. Eddie Karst

Mr. Bruce Gibson, Esq., for the RCMP

Mr. David Frayer, Q.C., for Minister of Justice

(Canada), The Hon. Vic Toews



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1 Transcript of Proceedings 2 (Reconvened at 9:00 a.m.) 3 COMMISSIONER MacCALLUM: Good morning. 4 ALL COUNSEL: Good morning. 5 JOYCE IOLA MILGAARD, continued: BY MR. HODSON: 6 Yesterday, Mrs. Milgaard, I had told you I would Q 8 check and get you a copy of the police report. 9 Remember, you testified that when Mr. Wolch phoned 09:05 10 you around February 26 or February 28th, 1990 11 advising about the phone call about Larry Fisher, 12 and you remembered his name from the police --13 from a police report; do you remember giving that 14 evidence? 09:05 15 Yes, I do. Α 16 And I think you said you pictured in your mind the Q 17 actual document? 18 That I saw. Α 19 And if we could call up 183170 and go to the next 09:05 20 page, this is the police report of February 5, if 21 we could go to the next page, please. Now it's 22 cut off a bit on the right-hand side on this copy, 23 and you will see there is the -- this is the 24 actual police report that talks about it; is that 09:05 25 the document you recalled in 1990?



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	1	А	The wording is identical. I remember that, the
	2		wearing the hard yellow hard hat.
	3	Q	Okay.
	4	А	Umm
09:06	5	Q	Let me show you, if you want to take a look at
	6		that, I'll also show you Mr. Carlyle-Gordge's
	7		notes and see if that or his dictated notes,
	8	А	Yeah.
	9	Q	that's 174037, and go to the next page please.
09:06	10		And you'll see right here, this is Mr.
	11		Carlyle-Gordge's
	12	A	No.
	13	Q	No?
	14	А	I'm sure it was the other. If you just go back to
09:06	15		the other for a minute?
	16	Q	Sure, yes.
	17	A	Umm
	18	Q	183170, and it was on page 2, but this would be
	19		the front page. And you'll see it's a Saskatoon
09:07	20		Police Department investigation report, and then a
	21		bunch of times, and there is the 6:49; is that
	22		that page 183171, is that what you think you had
	23		looked at prior, at some time prior to your call
	24		to Mr. Wolch?
09:07	25	А	Yes, I believe that was the one, because I
		1	



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	1		remember the time slots, the 6:49, the 6:52, the
	2		7:13. I remember, in my mind, going over the
	3		times, that I was looking at that report, and
	4		because we were sort of time was of the essence
09:07	5		there for us, and so I'm sure this is the one that
	6		I saw, or
	7	Q	Right?
	8	А	something very more similar than what that
	9		other report showed.
09:07	10	Q	Right. So that your recollection and again,
	11		just so that we have the time frame, around
	12		February 26th or 28th, 1990 when Mr. Wolch
	13		telephoned you and said "Sidney Wilson called,
	14		said Larry Fisher is the real killer", you at that
09:08	15		time recalled, earlier, looking at a police report
	16		similar to 183171;
	17	A	That's correct.
	18	Q	is that right? And that was it at some time
	19		years prior, months prior to 1990 that you
09:08	20		remembered seeing that back in your, if I can call
	21		it, the earlier days with Mr. Carlyle-Gordge, or
	22		was it a more recent review; do you remember?
	23	A	I think it was more recent.
	24	Q	So some
09:08	25	A	Because we were going through everything.



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			, age 65500
	1	Q	So some
	2	А	Every piece of paper.
	3	Q	Oh, I'm sorry. So perhaps sometime in let's
	4		put it this way; would it have been something that
09:08	5		you reviewed while Mr. Asper and Mr. Wolch were
	6		your lawyers, or would it have been prior to that
	7		that you think you would have looked at this
	8		report, or are you able to say?
	9	A	I'm not able to say.
09:08	10	Q	Okay. If we could go back to 043662, do you know
	11		where that police report would have come from,
	12		where it would have been obtained from?
	13	A	Would that not have come from one of the files,
	14		like
09:09	15	Q	It may have. I'm not sure. When you say "one of
	16		the files" are you talking from Mr. Tallis or Mr.
	17		Caldwell?
	18	А	Yeah, Mr. Caldwell, maybe Mr. Tallis, I don't know
	19		where it came from. But, you know, I had this
09:09	20		recollection of seeing it and
	21	Q	Sure. It
	22	A	it may have been, it may have been when we were
	23		starting to check out things that I was going
	24		through reports. Now
09:09	25	Q	Is it possible that Mr. Carlyle-Gordge made
		1	



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	1		photocopies of some of the police reports he
	2		looked at in 1983; is that a possibility?
	3	А	That is definitely a possibility, and that
	4		because this is just so familiar to me. And so,
09:09	5		don't forget, we pored over documents and
	6		everything
	7	Q	Yes?
	8	A	to get and this is probably one of the ones
	9		that I'd gone over it so many times to see so many
09:10	10		people and to check it out that I'm sure that is
	11		the document.
	12	Q	If we could just go back to the full page.
	13	А	I'm sorry I can't give you a
	14	Q	No, that's fine.
09:10	15	A	date.
	16	Q	So do you think and let's just go look at some
	17		of these other names and see whether John
	18		Husulak, Tony Humen, the bus driver, Beck, Holder,
	19		some
09:10	20	A	Uh-huh.
	21	Q	You did a fair bit of checking, I think you told
	22		us before?
	23	А	Oh yes.
	24	Q	And is it possible this would have been
09:10	25	А	And we were trying to find all these people too,
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	1		you know, to go and talk to them to get more
	2		information because, we thought, in case the
	3		police missed something with these people.
	4	Q	Right. So I think you told us last week that in
09:10	5		the early '80s, '81-'82, '80-'81-'82-'83 you and
	6		your family went out and blitzed the
	7		neighbourhood,
	8	A	Yes.
	9	Q	knocked on doors, talked to people, and
09:11	10		certainly I think Mr. Carlyle-Gordge assisted you
	11		in that; correct?
	12	A	Yes, he did.
	13	Q	And so this may have been the source document that
	14		helped you with that?
09:11	15	А	I would think so.
	16	Q	And then I think you said later on in the, if I
	17		can call it the Wolch-Asper time frame later in
	18		the '80s, you did that as well; is that correct?
	19	А	We did.
09:11	20	Q	All right. If we could go back to 043683, we were
	21		talking yesterday when we broke about Cliff
	22		Pambrun sorry, 043662 and we have been
	23		through this transcript with Mr. Pambrun and Mr.
	24		Henderson so I don't propose to go through it. I
09:11	25		think you told us yesterday that, despite your
		l	<b>.</b>

1		efforts and Mr. Henderson's efforts to try and get
2		information from Mr. Pambrun that would confirm
3		that Larry Fisher either did have or could have
4		had his vehicle on the morning of Gail Miller's
5		murder, he wouldn't go that far; is that right?
6	А	That's right.
7	Q	And then as far as the statement, if we could call
8		
9	А	But then eventually he did.
10	Q	When was that?
11	А	I believe he did.
	_	
12	Q	Okay. At a later stage?
12 13	Q	Okay. At a later stage?  COMMISSIONER MacCALLUM: Did what?
13		COMMISSIONER MacCALLUM: Did what?
13 14		COMMISSIONER MacCALLUM: Did what? BY MR. HODSON:
13 14 15	Q	COMMISSIONER MacCALLUM: Did what?  BY MR. HODSON:  Did confirm that
13 14 15 16	<b>Q</b> A	COMMISSIONER MacCALLUM: Did what?  BY MR. HODSON:  Did confirm that  That Larry had his car on occasion.
13 14 15 16 17	Q A Q	COMMISSIONER MacCALLUM: Did what?  BY MR. HODSON:  Did confirm that  That Larry had his car on occasion.  I'm sorry, that Larry had
13 14 15 16 17 18	Q A Q	COMMISSIONER MacCALLUM: Did what?  BY MR. HODSON:  Did confirm that  That Larry had his car on occasion.  I'm sorry, that Larry had  That he made a statement to that effect, that
13 14 15 16 17 18	Q A Q A	COMMISSIONER MacCALLUM: Did what?  BY MR. HODSON:  Did confirm that  That Larry had his car on occasion.  I'm sorry, that Larry had  That he made a statement to that effect, that  Larry had his car on occasion?
13 14 15 16 17 18 19 20	Q A Q A	COMMISSIONER MacCALLUM: Did what?  BY MR. HODSON:  Did confirm that  That Larry had his car on occasion.  I'm sorry, that Larry had  That he made a statement to that effect, that  Larry had his car on occasion?  Oh, yes. If we could 043291. I think the
13 14 15 16 17 18 19 20 21	Q A Q A	COMMISSIONER MacCALLUM: Did what?  BY MR. HODSON:  Did confirm that  That Larry had his car on occasion.  I'm sorry, that Larry had  That he made a statement to that effect, that  Larry had his car on occasion?  Oh, yes. If we could 043291. I think the  statement he gave after you and Mr. Henderson met
13 14 15 16 17 18 19 20 21 22	Q A Q A	COMMISSIONER MacCALLUM: Did what?  BY MR. HODSON:  Did confirm that  That Larry had his car on occasion.  I'm sorry, that Larry had  That he made a statement to that effect, that  Larry had his car on occasion?  Oh, yes. If we could 043291. I think the  statement he gave after you and Mr. Henderson met  with him, was that, yes, I let him use my car
	2 3 4 5 6 7 8 9	2 3 4 5 6 A 7 Q 8 9 A 10 Q



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1		night?
2	A	Yes.
3	Q	What Mr. Pambrun has told the Inquiry is that,
4		although he let Larry he use his car, he would not
09:12 5		have he would not have lent him his car in the
6		early morning hours because he used it to go to
7		work every day.
8	A	Uh-huh.
9	Q	And so I think Mr. Pambrun's evidence here is that
09:12 10		he doesn't recall lending him his car, nor does he
11		think he ever would have, nor does he think Mr.
12		Fisher would have had his car the morning of the
13		murder. Now what was said between 1990 and now, I
14		think we've I think the only other statement he
09:13 15		gave was to Mr. Pearson?
16	А	Right. Well, no, that's what I recall. I wasn't
17		thinking of his testimony here, because even when
18		he testified here I was going back in my mind to
19		the time when we talked to him, and I had felt
09:13 20		sure, at that time, that because of the situation
21		that he had been in with drinking, and everything
22		like that, that he was remembering this in a way
23		that, I don't know, was protective of Larry or
24		because he was his friend, but that somehow he'd
09:13 25		wiped that out. I really firmly believe that he
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	1		had his car that morning and that was the car that
	2		was there. I've often wanted to ask Larry Fisher
	3		"did you have the car that morning".
	4	Q	And so your belief today, based on what
09:14	5		Mr. Pambrun had told you, or and other sources,
	6		is that Larry Fisher had Cliff Pambrun's
	7		vehicle
	8	А	Yes.
	9	Q	on the morning of the murder?
09:14	10	A	Yes. And the theory that we had at the time, and
	11		still seemed to be very firm and made sense, was
	12		that after what had happened he'd he had taken
	13		the car back there and he was walk and the
	14		tracks, if you see the map, the tracks from
09:14	15		Pambrun's house down to Larry Fisher's house, he
	16		would a shortcut would have been to walk right
	17		down the tracks, and that going down the tracks
	18		would put him right in the position that he was in
	19		with (V4) (V4)
09:14	20	Q	Okay. Now this is 1990, March, (V4) (V4)
	21		doesn't come to light until August of '91. Is it
	22		fair to say this, Mrs. Milgaard and please
	23		correct me if I'm wrong that at the time you
	24		talked to Mr. Pambrun you needed to find a vehicle
09:15	25		that Larry Fisher had access to on the morning of

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	1		the murder to fit the theory that he had committed
	2		the crime; is that right?
	3	A	Yes, because it seemed perfectly logical that that
	4		type of thing could not just be done outside in
09:15	5		the weather that was there.
	6	Q	Right. And Larry himself, Larry Fisher himself,
	7		didn't have a car; correct?
	8	A	Correct, so we had to provide him with one.
	9	Q	Right. And then, and so the theory after you
09:15	10		talked to Mr. Pambrun would be "okay, there is the
	11		car, if he has the car", then in August of 1991
	12		(V4) (V4) came forward and we'll deal
	13		with her a bit later saying she'd been
	14		assaulted that morning well she had earlier
09:15	15		stated that to the police, but she then identified
	16		Mr. Fisher
	17	A	Correct.
	18	Q	as the assailant, and then that fit the theory
	19		that Cliff Pambrun's car was used and he was
09:15	20		walking down the tracks. So is it fair to say
	21		that, when $(V4)$ $(V4)$ came to light, that
	22		with that information, having Cliff Pambrun's car
	23		being available to Mr. Fisher, being used that
	24		morning, fit that theory as well; is that correct?
09:16	25	A	It just fit perfectly.

	1	Q	Okay. And, again, was it I don't want to jump
	2		ahead, but is it fair to say that when (V4)
	3		(V4) came along, that it was also part of,
	4		again, your theory that it was important to have
09:16	5		Mr. Fisher as the perpetrator of the (V4)
	6		assault as well as the Gail Miller assault? In
	7		other we've heard the saying "there couldn't be
	8		two serial rapists out on the loose that morning",
	9		that's been repeated many times during this
09:16	10		Inquiry by some counsel?
	11	A	That's true.
	12	Q	Is that something that, again with (V4) when
	13		she came along, that, as well, your theory was
	14		that Fisher also had to have committed that
09:16	15		assault?
	16	A	After talking to $(V4)$ $(V4)$ and meeting with
	17		her when she that first day that she identified
	18		when she was looking at the newspaper and she saw
	19		David's picture on the one side and Larry's on the
09:17	20		other side, and she really thought that Larry
	21		Fisher was David and vice versa, and she she
	22		said "I'll never forget it", and when she told me
	23		about it my hair was just standing on end.
	24	Q	But just on the issue of the identity of that, is
09:16	25		it fair to say that when you were we started
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1		down this path talking about how Cliff Pambrun's
2		car fit into the picture and is it fair to say
3		that once $(V4)$ $(V4)$ came along, you learned
4		about that assault and her identification of
5		Fisher, that it was important to your theory
6		that
7	A	Because we got out the maps and we started looking
8		and we saw the tracks and where it intersected
9		there at (V4's street and yes, it made perfect
10		sense.
11	Q	And if $(V4)$ $(V4)$ , if it had not been Larry
12		Fisher that assaulted $(V4)$ $(V4)$ , then in
13		addition to you are saying Larry Fisher killed
14		Gail Miller
15	А	Yes.
16	Q	at the same time someone else was out there
17		committing an assault on $(V4)$ $(V4)$ ?
18	A	Yes.
19	Q	And that was contrary to a theory or position that
20		your group took saying, well, there can't have
21		been two people out doing it?
22	А	That was our theory.
23	Q	And so it was important for your theory to have
24		Larry Fisher as the perpetrator of (V4)
25		(V4's assault; is that correct?
	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	2 3 4 5 6 7 A 8 9 10 11 Q 12 13 14 15 A 16 Q 17 18 A 19 Q 20 21 22 A 23 Q 24

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		3
1	А	Yes, correct.
2	Q	If we can just go back to Cliff Pambrun here, just
3		so I'm clear on this, if we can go to page 043686
4		of this interview, and just down at the bottom,
09:17 5		and I went through this with both Mr. Pambrun and
6		Mr. Henderson, so I don't want to go through all
7		of it, but here's where Mr. Henderson asks:
8		"Could you ever imagine a situation
9		uh where it was a working day and you
09:17 10		were planning on going to work and Larry
11		had your car."
12		And Cliff says:
13		"Oh I'd remember something like that."
14		And so this would be an example where, I mean,
<i>0</i> 9:17 15		this was specifically put to him, lookit, did
16		Larry have your car a morning when you went to
17		work, and he said I'd remember that and I don't
18		remember that happening.
19	А	Oh, no. We went up one side and down the other
09:18 20		side of this man and he was very firm in that.
21	Q	And then if we can go back to the statement
22		then what about, what was your assessment of
23		Cliff Pambrun? I think you said you thought he
24		was trying to protect Larry, is that right, or not
09:18 25		protect Larry, but didn't want to give information
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	1		that might be harmful to his position, is that
	2		your sense?
	3	A	Well, the first time around it seemed to me that
	4		he was trying to how do I express this. He
09:18	5		didn't want to see himself the way we were
	6		presenting him in the sense that he could have
	7		been out and drinking and forgot because of the
	8		drinking and not really been in control or know
	9		what was going on, I don't think he wanted to see
09:19	10		himself that way.
	11	Q	If we could go to 012090, and I asked a similar
	12		now, Mr. Henderson, would he have been the person
	13		in charge of deciding what goes in the statement
	14		and what doesn't go in the statement, was that
09:19	15		something you left up to him?
	16	A	Yes, because he had experience in those areas.
	17	Q	And is it fair to say, and I think did you
	18		observe whether or not Mr. Pambrun, did he write
	19		this out or did you observe any issues he had with
09:19	20		reading or writing at the time, did you make any
	21		observations of any difficulty?
	22	A	No, I didn't. I think we read it out to him.
	23	Q	Okay. In the statement, I guess what the
	24		statement doesn't say is it doesn't say lookit, I
09:20	25		don't think Larry had my car that morning, what it



	1		does say is:
	2		"Larry Fisher did not own a car at this
	3		time and sometimes asked to borrow mine.
	4		I recall that I let him use my car a
09:20	5		number of times. I have no recollection
	6		of letting him borrow my car on any
	7		specific date. But it is possible that
	8		he could have been driving the car with
	9		my permission either during the daytime
09:20	10		or at night."
	11		And would it be correct to say that this
	12		statement from Mr. Pambrun allowed you,
	13		notwithstanding what he told you and Mr.
	14		Henderson during the interview that he didn't
09:20	15		think Larry had used his car the morning of the
	16		murder, didn't recall it nor did he think it
	17		would happen, but this statement sort of kept the
	18		window open a bit?
	19	А	It did.
09:20	20	Q	Kept the possibility open and allowed you to
	21		continue with the theory that Cliff Pambrun's car
	22		might have been used?
	23	А	That's a fair comment. We were grasping at
	24		straws.
09:21	25	Q	And if Mr. Pambrun's car had not been available,

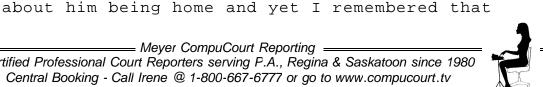
1		would you have gone out to try and find another
2		car then; is that
3	A	Probably would have.
4	Q	If we can go to 062143
09:21 5	А	But in a way, you have to remember, we got Roy
6		Pambrum through Linda Fisher, we didn't go out and
7		search for him, we got him through her.
8	Q	Sorry, Cliff Pambrun or Roy?
9	A	For both of them.
09:21 10	Q	I think both, right.
11	А	We got them both through Linda Fisher, so it
12		wasn't like we were going out searching for a car
13		at that point, this happened to us because we got
14		Linda Fisher.
09:21 15	Q	Right. So Linda Fisher informed you, I think,
16		correct me if I'm wrong, that you were searching
17		for what other information you would have about
18		Larry and she said at that time my Uncle Clifford
19		and Larry were friends?
09:22 20	А	Uh-huh, that's right.
21	Q	And that's how you Linda led you to Cliff and
22		Roy Pambrum as people who may have information
23		that might assist you?
24	А	That's right. It wasn't that we were going out
<i>0</i> 9:22 25		and looking for someone with a car.
	II .	



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	1	Q	Okay. But is it fair to say that when you first
	2		talked to Linda Fisher and said okay, after
	3		talking to her I think you said I think Larry is
	4		the culprit, you had to I think your view was
09:22	5		okay, in order to get some evidence or information
	6		to support my thinking that he's the culprit, he
	7		needs to have a vehicle that morning?
	8	A	Yes.
	9	Q	So that was something that you were searching for
09:22	10		because if you went to the authorities, let's say,
	11		and said here's the real killer and the evidence
	12		was that he didn't have a vehicle, that might be a
	13		problem?
	14	А	That's possible.
09:22	15	Q	This is the statement I think the next day that
	16		you took from Linda Fisher and again this touches
	17		on the police report that I showed you when we
	18		started this morning, and she says:
	19		"I was contacted again on this date"
09:23	20		Now, this is March 11th and I think March 9th was
	21		a Friday, you interviewed Linda I think March
	22		10th, you took a statement from her, went and saw
	23		Cliff and Roy Pambrun and then I think on the
	24		11th, the next day, you went back to her and it
09:23	25		says:



1 "According to Mrs. Milgaard, she was 2 reviewing information in her files this 3 morning and found a report documenting an interview that police had with Larry 4 5 Fisher on February 5, 1969. 09:23 According to this report, 6 police checked in the 300 block of 8 Avenue O South at 6:49 a.m. and 9 encountered Larry. He told them he 09:23 10 worked at Masonry contractors -- " 11 Etcetera, and then: 12 "According to the report, which was read 13 to me by Mrs. Milgaard, Larry further 14 claimed that on the morning of January 09:23 15 31, he had caught the bus at 6:30 a.m. 16 at Avenue O and 20th Street." 17 And then let me just pause there. Would that be 18 the police report I showed you earlier this 19 morning, that it looks as though you went back to 09:24 20 your records, found the police report about Larry 21 Fisher, then went back to her and read this to 22 her; is that correct? 23 Α Yes, because I was just amazed when I had talked 24 to her that day with the information that she said



09:24 25

	1		report and so that's why we wanted to let her see
	2		that report to see that they had actually
	3		questioned him, and she said if she had known that
	4		they questioned him, she would have done something
09:24	5		then.
	6	Q	And so I think she says that yes, because she
	7		thought let me just scroll down, it says:
	8		"Until talking with Mrs.
	9		Milgaard on this date, I was not aware
09:24	10		that Larry had been questioned by
	11		police, nor was I aware that he had
	12		claimed to anyone that he went to work
	13		on the morning of January 31.
	14		If I had been aware that Larry
09:24	15		was claiming to police or anyone to have
	16		gone to work on the morning of January
	17		31, I would have been quite suspicious
	18		of his motive for lying. In view of the
	19		murder that occurred on that date, it is
09:24	20		likely that I would have felt compelled
	21		to contact police."
	22		And again, is that is it correct that you went
	23		back and said lookit, Larry talked to the police
	24		the Monday after the murder, said he was at work
09:25	25		on the morning of the murder, did you know that?

			Page 30612
	1	A	Yes.
	2	Q	Now, do you recall, and I don't think this is in
	3		any of the transcripts of your interviews with
	4		Linda Fisher, what she told the Inquiry is I think
09:25	5		within days or a week after the murder the police
	6		came to her door and asked her if she had noticed
	7		anything unusual or suspicious and she said no and
	8		at that time I think she said she did not inform
	9		the police about the argument she had with Larry
09:25	10		Fisher the morning of the murder. Do you recall
	11		discussing that at all with Linda Fisher?
	12	A	No, I don't, and I think I would have remembered
	13		that if she told us. It would have been noted
	14		somewhere.
09:25	15	Q	If we could then go to, call up document 336785,
	16		and can you tell us, it looks as though from the
	17		tapes that you provided to us in around this time,
	18		I think around March March to June, 1990, it
	19		appears that you started to tape some of your
09:26	20		phone calls with David Asper, is that right, as
	21		opposed to prior? Let me ask you this, when did
	22		you start taping your phone calls with Mr. Asper
	23		and why?
	24	A	I think it was probably after my contact with Jim
09:27	25		McCloskey, maybe seeing what they did. I don't
			1



	1		know.
	2	Q	And so would that have been your contact in
	3		February of 1990? Maybe let's just go back. Do
	4		you remember why you started to what prompted
09:27	5		you to start taping it appears that at least
	6		we don't have tapes of discussions you had with
	7		David Asper, Mr. Wolch from 1986, '87, '88, '89,
	8		it looks as though they start in the spring of
	9		1990, and so
09:27	10	A	And I would be working with Centurion at that
	11		time.
	12	Q	And so again
	13	A	It's possible that because of my work there and
	14		seeing how they recorded, that I know that part
09:27	15		of my reasoning was we started to get involved
	16		with the media too and it was very important
	17		because of the work, the spiritual work that I was
	18		doing that everything that I said be the truth and
	19		I wanted to be sure that whenever I quoted
09:28	20		somebody as saying something or doing something,
	21		that I had something to back it up and that it
	22		would be the truth that was getting out there, if
	23		you will.
	24	Q	Right. Now, I think we saw in the early '80s when
09:28	25		you interviewed witnesses, you taped the witness
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1 interviews on a number of occasions as did Mr. 2 Carlyle-Gordge and I think when we get into the 3 1990 time period, let's leave witnesses aside for 4 a moment, but it appears that you taped calls with 5 David Asper and Hersh Wolch and as well the media 09:28 people, Dan Lett, Paul Henderson and some other 6 reporters; is that right? 8 When I first started out with Peter, of 9 course because of the, his relationship with the 09:28 10 media and everything, he recorded everything and I 11 think I started doing it at that time, but later, 12 and it may have been -- it's very hard for me to 13 pinpoint why I did it, it may have been as a 14 result of my work with Centurion, seeing how 09:29 15 professionally they did things and they recorded 16 everything that I felt that I should, but I think 17 it was often the media would ask me something and 18 I would say I would get back to you on that and 19 then I would go and I would listen to one of the 09:29 20 tapes to make sure that I was saying the absolute 21 truth. 22 And so again do you recall, did you inform 23 the people that you were taping that you were 24 taping or was this something you did sort of on 09:29 25 your own?



	1	A	I don't know when David Asper and Hersh found out
	2		I was taping them, but I know that they were aware
	3		of it because I can remember at one point when I
	4		was writing my book and I was going to quote what
09:30	5		David had said about Kim Campbell, he said
	6		"Joyce," and I said to him, "David, I have you on
	7		tape, remember, " and he said, "Yes, I remember,"
	8		so that he couldn't dispute what I was saying that
	9		he said about Kim Campbell.
09:30	10	Q	And so again when you were recording your
	11		conversations with Mr. Asper then, is it your view
	12		or belief that he was aware that you were taping
	13		your calls with him?
	14	А	I believe he was aware. When he became aware I
09:30	15		cannot tell you, but I know that he certainly was
	16		aware.
	17	Q	And was it sometime after you had taped the calls
	18		or in the midst of this time period?
	19	A	Probably in the midst of it.
09:30	20	Q	Did he express any concern to you about you
	21		recording, tape recording your calls with him?
	22	A	No. I don't think anyone ever told me I couldn't.
	23		I mean and I didn't, I wasn't doing it with a
	24		bad motive, I was doing it for personal use for
09:31	25		remembering, you know, what was going on and
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	1		documenting the truth more than anything.
	2	Q	And is it fair to say you wanted a record of what
	3		had been discussed from time to time and the tapes
	4		were a resource that you could go back to to see
09:31	5		what people said?
	6	А	And refresh my memory.
	7	Q	And again, just so we're I think you are saying
	8		it wasn't for any lack of trust or anything like
	9		that?
09:31	10	А	Oh, no, I didn't distrust David or Hersh or
	11		anything like that, I distrusted Joyce, I mean, it
	12		was my memory that I wanted to be sure of, I
	13		wanted to be sure that I had the facts right.
	14	Q	And I think is it correct to say that you would go
09:31	15		back to not only the tapes that you had collected
	16		in this time frame, the 1990s, but as well in the
	17		early '80s, that your library of tapes, if I can
	18		call it that, and transcripts, that you went back
	19		to those frequently to refresh your memory about
09:32	20		what people said at what time?
	21	A	Yes, I did.
	22	Q	And so, for example, we are, I guess, 25 years
	23		later from your first interviews with Ron Wilson
	24		in January and April of 1981, so 25 years later
09:32	25		you have the tape of your phone call with him as

	1		opposed to relying on your memory and his memory
	2		as to what was discussed between you?
	3	А	Correct, and just even hearing those tapes takes
	4		me right back it those days.
09:32	5	Q	So this is a tape that I think involves David
	6		Asper, if we can go to page 336802, and this is
	7		where I think you are talking with David Asper, I
	8		can't recall who else, it might have been it
	9		says unidentified female, and there's just you
09:33	10		are talking about and I think the date is May
	11		or June of 1990 and this relates to your meeting
	12		with Linda, and I think this is an unidentified
	13		female speaker, I think someone is asking you
	14		about how you got ahold of Linda.
09:33	15	Α	Okay.
	16	Q	And, "Because Bryan went with her." That was
	17		Bryan Wright. You say:
	18		"No, she never contacted me. Yeah.
	19		Like, you see, I went up there and I
09:33	20		finally, through the school system found
	21		out where Tammy lived, and she'd been
	22		transferred to Calgary, but by a fluke I
	23		managed to find some old neighbours of
	24		this Linda Fisher's and then that led me
09:33	25		out to where she lives in Cando,

			Page 30618
	1		Saskatchewan, and then I went out to
	2		Cando and took the statement from her
	3		and that's when she told me about the
	4		1980 business."
09:34	5	A	Uh-huh.
	6	Q	And that would be the statement to the city police
	7		in 1980; correct?
	8	A	Yes.
	9	Q	So it appears from this that Tammy was your
09:34	10		initial source, that's who you tried to find first
	11		to find Linda, was Tammy?
	12	A	Yes.
	13	Q	Then if we can go back to the full page, please.
	14	A	Well, that's not entirely true. If you go back to
09:34	15		that, I'm actually condensing that because I
	16		didn't just go up to find Tammy, like, I went up
	17		through the neighbourhood and did all sorts of
	18		things, but I was being concise with this.
	19	Q	Sure. Is it fair to say that finding Tammy or
09:34	20		getting information about Tammy would help you
	21		find Linda; is that fair?
	22	A	Yes, absolutely.
	23	Q	And so you were looking for Linda, but it appears
	24		that Tammy was maybe your initial step or one of
09:34	25		the early steps that you thought would help find
			<b>A</b>

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	1		Linda, if you could find Tammy?
	2	А	Yeah, but I did go through a lot of steps previous
	3		in that area with the neighbourhood.
	4	Q	And then if we go back to the bottom of this page,
09:35	5		sorry, and you start off:
	6		"Well, yes. And, you see, even when I
	7		talked to Linda, okay, I couldn't
	8		remember about the report, and I went
	9		back through my tapes after I talked to
09:35	10		her, so the first statement that I have
	11		from her, umm, we didn't get into that
	12		part. Well, because that was a name
	13		that the anonymous phone caller gave us.
	14		David Asper's office here got a phone
09:35	15		and, an anonymous phone call, okay, from
	16		a caller who simply said "this is the
	17		name of the real killer", and gave the
	18		name, and said, "and this person knows
	19		about it", and so when I heard that name
09:35	20		I knew that I heard it somewhere before,
	21		and I realized that this person lived
	22		near where Gail Miller well, or this
	23		person had access to Gail Miller, and
	24		I'd remembered the report."
09:36	25		"David Asper says you know all this.
			4

	1	Oh, I see. Okay. All right. So,
	2	really, it was on that basis I went out
09:36	3	and I searched around until I found
	4	Tammy, and Tammy's history, and then
	5	went and found Linda. And when I talked
	6	to her she told me, umm, that they'd
	7	been to the police, and then after that
	8	I went back and I dug out the tapes that
	9	I had and that's when I discovered that
09:36	10	Larry Fisher indeed had been interviewed
	11	by the police, so I went back and got a
	12	second statement from her telling her
	13	and I told her, I said "you know, he was
	14	questioned by the police on the 5th of
09:36	15	February", and I gave her that
	16	information, and she said "well, if I
	17	had known in February that he had been
09:36	18	questioned by the police then, I would
	19	definitely have gone to the police at
	20	that time, because why would he be lying
	21	to say he'd gone to work when he
	22	didn't."
	23	And again, you talk here about:
	24	" they took a police report from him
09:36	25	and said he was on his way to work"

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	1	А	Uh-huh.
	2	Q	You say:
	3		"Now if they had followed up on that
	4		then, Dan"
09:36	5		So presumably this is Dan Lett that's part of
	6		this call as well?
	7	А	Yes, I would think so.
	8	Q	And then it goes on. I think so again, this
	9		would have been a discussion with Dan Lett and
09:37	10		David Asper within a few months after your first
	11		encounter with Linda Fisher; correct?
	12	А	Yes.
	13	Q	And it would be accurate, what you state here
	14		would be accurate as to what happened?
09:37	15	А	Yes.
	16	Q	010050, this is a memorandum of Mr. Williams to
	17		his file March 12th, 1990, and so again March 9,
	18		10, 11 are the dates that you interview Linda
	19		Fisher, Cliff and Roy Pambrun, presumably you
09:37	20		would have talked to Mr. Asper and related the
	21		results of your interviews to him; is that right?
	22	А	Yes, I would have.
	23	Q	And here is a report, what Mr. Williams is writing
	24		on his file, he's writing what David Asper told
09:38	25		him about information about the Pambruns that I
		1	



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	1		think Mr. Asper got from you, and:
	2		"Linda Fisher had two uncles Roy and
	3		Clifford. Larry Fisher habitually
	4		borrowed Clifford's car. That car
09:38	5		apparently matched the description of a
	6		car that Miller's date observed outside
	7		Miller's residence when he took her home
	8		the night before she was killed. Roy is
	9		reported to have seen Larry burn a pair
09:38	10		of new or nearly new workboots."
	11		And again, would that be accurate as far as the
	12		information that you would have given to Mr.
	13		Asper as a result of your interview with Cliff
	14		and Roy Pambrun?
09:38	15	A	Yes, it would.
	16	Q	And we didn't talk about the description of Cliff
	17		Pambrun's vehicle, but when we go through that
	18		interview on the make of the car and the colour,
	19		was it your
09:38	20	A	We were trying to tie it down with what one of the
	21		witnesses that was either a resident of the
	22		house or no, the one that brought Gail
	23		Miller
	24	Q	Dennis Elliott?
09:39	25	А	Dennis Elliott, that brought Gail Miller home and



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	1		saw that vehicle parked there with a man in it and
	2		he described him with the hair and all the rest of
	3		it.
	4	Q	And described the vehicle?
09:39	5	А	Yes.
	6	Q	And again would it be fair to say in your
	7		discussions with Cliff Pambrun on March 10th,
	8		1990, you would be seeking to try and match his
	9		car or the car he had at the time with the
09:39	10		description of the vehicle outside of Gail
	11		Miller's house?
	12	A	Absolutely.
	13	Q	And after the discussion with Mr. Pambrun, was
	14		that your view, that it was a similar car?
09:39	15	А	I thought it was similar, yes.
	16	Q	And on the next page actually, no, go to
	17		045168, please. Did you at some point around this
	18		time become aware from Mr. Asper that both
	19		Federal Justice did you become aware that the
09:40	20		RCMP were involved, became involved in the
	21		investigation of Larry Fisher and, in particular,
	22		a Rick Pearson?
	23	A	I don't recall that, but I must have. I believe
	24		that I don't think David Asper would have been
09:40	25		talking to Pearson without talking to me and I can
			•

			Page 30624 ————
	1		vaguely remember him telling me what they were
	2		doing.
	3	Q	And
	4	А	And I was telling them they are not doing it fast
09:40	5		enough.
	6	Q	So again, if we talk, let's talk March to June,
	7		1990, that's the time frame we're dealing with
	8		now, at least in the initial investigation of
	9		Larry Fisher is it correct that you would have
09:40	10		been aware that Federal Justice, Eugene Williams
	11		engaged the RCMP to do some investigative work
	12		with respect to the lead that Larry Fisher may be
	13		the perpetrator?
	14	А	Yes.
09:40	15	Q	And did you ever talk to Rick Pearson of the RCMP
	16		during that time, do you have any recollection of
	17		any direct dealings?
	18	A	I believe I did talk to him at one point, but I
	19		can't remember about what.
09:41	20	Q	Okay.
	21	A	I think it was something to do with my interview
	22		with Larry or about going up to interview Larry
	23		Fisher which I was thinking of doing, and I think
	24		that it was at that point that maybe that's
09:41	25		where David Asper told me he doesn't want you



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	1		going up there.
	2	Q	So let's just take this in stages. You would have
	3		been aware around this time that the RCMP had an
	4		officer assigned to investigate Larry Fisher?
09:41	5	A	Yes.
	6	Q	And that would include interviews of Larry Fisher,
	7		Linda Fisher and anybody else who would have
	8		relevant information, you would have been aware
	9		that they were out doing that investigation?
09:41	10	A	Yes.
	11	Q	And did you become aware from Mr. Asper as well
	12		that the RCMP and Federal Justice did not want you
	13		to do anything that might impede that
	14		investigation and that they viewed your contacting
09:42	15		witnesses, Linda Fisher and Larry Fisher, might
	16		impede their investigation?
	17	A	I believe I was aware of that, but, I mean, look
	18		at the time frame, look when we put the
	19		application in, look how we heard nothing back. I
09:42	20		mean, when you get something like this you want to
	21		get out there, you want to get something done. My
	22		son is day after day in prison, I couldn't wait
	23		for these people.
	24	Q	And so again so you would have been aware of
09:42	25		the desire of the authorities that you not go out
			•



			Page 30626
	1		and do anything that might interfere with their
	2		investigation; is that correct?
	3	А	I was aware of that, but I discounted it because I
	4		figured it would take them another hundred years
09:42	5		before they would get to it.
	6	Q	So you were aware of it, but said I'm not prepared
	7		to
	8	А	To wait.
	9	Q	To wait. You'll go out and do whatever you
09:43	10		what you did, you would continue your
	11		investigation
	12	А	Absolutely.
	13	Q	notwithstanding their request; is that right?
	14	А	That's correct.
09:43	15	Q	And just back on the time frame, and we talked
	16		about this yesterday, is it fair to say, we're
	17		talking March of 1990, it had been 10 years since
	18		you had started your efforts; correct?
	19	А	Correct.
09:43	20	Q	And when you talk about impatience, would that
	21		factor into it as well, the fact that it had been
	22		10 years since you started your quest?
	23	А	That's right, and it was, it had become my life,
	24		it was taking over every aspect of my life and I
09:43	25		wanted it to end, I wanted to get my son out of



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			, and the second se
	1		prison.
	2	Q	And again, you mentioned yesterday about the delay
	3		by the authorities and I think you said, if we
	4		just look at the time frames, end of December, '88
09:43	5		is when the application was filed?
	6	A	That's right.
	7	Q	And you said okay, it had been 14 months and
	8	A	And nothing.
	9	Q	And you were impatient?
09:44	10	A	That's right.
	11	Q	But is it fair to say as well that your
	12		impatience, you were including the previous eight
	13		years as well?
	14	A	Oh, I'm sure I was.
09:44	15	Q	And in fact probably the previous 20 years?
	16	A	Probably.
	17	Q	And so when we stop in March of 1990, if we go
	18		through the time factors, it would be 21 years,
	19		close to 21 years that David had been in jail?
09:44	20	A	And I could see what it was destroying him.
	21		Every day, you know, as he would get excited about
	22		things and then we would have a down and then he
	23		went down and just seeing what, how it was tearing
	24		him up. It was tearing me up as his mom.
09:45	25	Q	If and let's just go back. December, again,
			4



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	1		December 28th, 1988 was the date you filed the
	2		application with the minister?
	3	А	Yes.
	4	Q	If in February of 1989, two months after the
09:46	5		application had been filed, the same information
	6		came to your attention about Larry Fisher, would
	7		it be correct to say that you would have done the
	8		exact same thing?
	9	А	I honestly don't know. If we'd just put it in, I
09:46	10		had so much hope with that application when it
	11		went in, I probably would not have. I don't know.
	12	Q	Okay.
	13	А	I can't honestly answer that. I think that I
	14		would want to know, but I think at that point I
09:46	15		might have been prepared to let them do it, you
	16		know. That was early enough that I still had some
	17		faith in Canada's Justice system.
	18	Q	And so then a year later
	19	А	Yeah.
09:46	20	Q	what
	21	А	It was gone.
	22	Q	what changed was that the delay, I think you
	23		told us yesterday the delay
	24	А	Not getting any answers, I mean we never knew what
09:46	25		they were doing, they weren't telling us.
	11		

	1	Q	Okay. And so if they had come back let's say in
	2		the latter part of let's say mid-1989, or the
	3		latter part of 1989, let's say November, and said
	4		"the minister hasn't made a decision yet but
09:47	5		here's what we think about Ferris, we think it's
	6		wrong for the following reasons and it doesn't say
	7		what you think it says, and (b), here's what
	8		Deborah Hall says, and so both of those grounds we
	9		don't think have much, but the minister has got to
09:47	10		make the decision, but just so you know, there are
	11		problems with the two grounds you put forward";
	12		would that have made a difference in your faith in
	13		the system, in other words
	14	Α	Oh, I think it would, but what it also would have
09:47	15		done, it would have said to us "okay, they aren't
	16		seeing the big picture, they aren't going back to
	17		seeing the other evidence", and then we'd have
	18		gone back to all the various things that I've
	19		already gone over with you that were wrong with
09:48	20		the picture.
	21	Q	So if they would have come back and said "Ferris
	22		is a problem, Deborah Hall is a problem", you
	23		would have then said "okay, well here's some
	24		better stuff"?
09:48	25	A	Yes.



1 And what would the 'better stuff' be? Q 2 Well I'd go back over all of the time frames, and 3 everything like that, that we knew about. have really gone back over the impossibility of it 4 5 happening the way Nichol John had testified that 09:48 it had happened, and I probably would have said to 6 them "go back and see what the jury saw that day, 8 because what they saw influenced them, Nichol John 9 really influenced them". And then, then I would 09:48 10 have gone on to say, "you know, it doesn't fit, 11 the time frame, where David was at the time", you 12 know, we would have gone through all of those. 13 0 If we could just go back, and again just on the 14 time frame, but let's say in December of '89/January of 1990, that time frame, the minister 09:49 15 16 had replied to your application and rejected it 17 saying "the two grounds you put forward in your 18 materials, being Dr. Ferris' report and the 19 Deborah Hall affidavit, we've investigated both 09:49 20 and here's why Dr. Ferris' report doesn't assist 21 you, and here's what Deborah Hall told our 22 investigator, in fact that it in some respects 23 corroborates Melnyk and Lapchuk, and therefore the 24 two grounds you've put forward don't get us 09:49 25 anywhere, therefore your application is rejected,



	1		and if you've got other information you can bring
	2		another application if and when you choose to do
	3		so"; if they would have done that and the Fisher
	4		information came to light in February of 1980,
09:49	5		what would you have done, would you have gone back
	6		to would you have done anything different,
	7		would you have gone back to Federal Justice and
	8		said "okay",
	9	A	No, no, I would not have gone back.
09:50	10	Q	And why not?
	11	A	When you put that it way, I can see that I
	12		wouldn't have gone back, because I didn't I
	13		wouldn't have trusted them, if they had come
	14		forward and said they discounted this, because of
09:50	15		our strong belief that the Ferris report did say
	16		that David could not have been the person that did
	17		this.
	18	Q	Okay.
	19	A	And Ferris' report, don't forget, Ferris' report
09:50	20		didn't just say 'because of the antigens' or
	21		'based on the blood' or any of those things, it
	22		also went into quite detailed report about how
	23		long it would have taken for that activity to have
	24		taken place, and with and dealt with the time
09:51	25		frame, and where David was seen, and all the rest



1 of it, and that he couldn't have had time to do 2 that. 3 And again, just so that I'm clear on this Okav. point, the -- is it fair to say that in February 4 5 of 1990, when Mr. Wolch became aware of this Larry 09:51 Fisher information, that at that time, unless 6 Federal Justice had previously replied to you 8 favourably, in other words said, "okay, we are, we 9 agree with you on Ferris or Deborah Hall", you 09:51 10 wouldn't -- if they'd -- if they'd come back 11 negative on those points, would that -- is it fair 12 to say you would have said "okay, I don't trust 13 them", and you would have gone and done the Fisher 14 investigation much as you did; is that fair? 09:51 15 That's probably fair. Α 16 And again, just back on the Ferris and All right. Q 17 Deborah Hall information, when -- if the 18 application came back saying -- if the response 19 had been to the effect not that, or that the 09:52 20 response had been "lookit, the information that 21 you provided as part of your application we've 22 checked, we've checked into Hall, we've checked 23 into Ferris, and neither of those cause us to 24 think that a miscarriage of justice has occurred, 09:52 25 there may be other information out there but we've

	1		only looked at what you have given to us, in other
	2		words we've looked at the grounds of your
	3		application", would that have changed matters?
	4	A	I don't know. You see, you have to be back there,
09:52	5		you have to be there at the time, you have to be
	6		there when you hear how they treated the
	7		witnesses, like, you have to be there sitting with
	8		the information that I was getting back about
	9		Eugene Williams and how he had treated Debbie
09:52	10		Hall, how he had treated Linda Fisher, and that
	11		they had been treated as adverse witnesses. I
	12		didn't feel they were giving us a fair shake.
	13	Q	And so that, Deborah Hall would be November of
	14		'89, I think Linda Fisher was in March of '90; so,
09:53	15		again, that would have been a factor as well in
	16		your mind about
	17	A	Absolutely.
	18	Q	what you would have done? Okay. And do you
	19		remember when, would you have talked to Deborah
09:53	20		Hall and I'm sorry, I may have covered this
	21		yesterday you had talked to Deborah Hall, you
	22		told us, at some time around her interview; is
	23		that right?
	24	A	Yes, I'm sure I did.
09:53	25	Q	And do you have any recollection of what she told
		İ	

	1		you about her interview with Eugene Williams and
	2		what concerns she had? I know that David Asper, I
	3		think, talked to her and had some information, but
	4		do you remember her
09:53	5	A	Oh, she
	6	Q	relating to you?
	7	A	Oh, I do, I do.
	8	Q	And what do you remember?
	9	A	And she was so upset with the way they and she
09:53	10		said that "the way he talked to me" and she said
	11		she felt she was being grilled, it she was
	12		really unhappy with the way she was being treated.
	13	Q	And, again, this would have been around, shortly
	14		after the time of her interview?
09:53	15	А	Yeah, and he was making her feel like a criminal,
	16		and that this is why it upset me, if he was out
	17		making them feel that they were doing something
	18		wrong when they were coming forward.
	19	Q	Oh, I understand your microphone is not working
09:54	20		and we need to take a short break to fix it, is
	21		that right? Or you'll have to yell.
	22	А	I'll bring it over closer, if you will.
	23	Q	I think if we could just take a break, is that
	24		COMMISSIONER MacCALLUM: Yeah.
09:54	25		MR. HODSON: Yeah, if we could just take a



1 few minutes. (Adjourned at 9:54 a.m.) 2 3 (Reconvened at 10:15 a.m.) BY MR. HODSON: 4 5 Q 045168, please. And this is a memo again, just 10:15 March 13th, 1990 -- and I appreciate that this 6 isn't your memo, this is Mr. Williams -- but it details what -- his discussions with Mr. Asper. 8 9 And so this would be, again, a couple of days 10:15 10 after your first interviews with Linda Fisher and 11 the Pambruns. And Asper, the memo says Asper led 12 him to believe that he had just left with you, led 13 me: 14 "... to believe that as a result of his 10:16 15 conversation with Mrs. Milgaard, she 16 would refrain from attempting to 17 interview the individuals who are 18 connected with the Larry Fisher 19 allegations." 10:16 20 Now what Mr. Asper told us is that that was the case, but -- and I think, and I'm paraphrasing --21 22 but he knew that you were investigating anyway; 23 is that correct? Can you tell us what, tell us 24 what your recollection is of your discussions 10:16 25 with Mr. Asper, what he told you about whether



	1		you should or shouldn't be investigating on your
	2		own and what what you told him and what you
	3		did?
	4	А	Well he told, he told me that they didn't, that
10:16	5		Justice Department didn't feel that I should be
	6		involved in it and I should not be in the
	7		interviews, and that he had told him that he would
	8		ask me to refrain, and I said "well, you have
	9		asked me". But I do remember telling him, in no
10:17	10		uncertain terms, that I'd waited too long to have
	11		something like this just sit for another year,
	12		because I couldn't see them getting on it or doing
	13		anything fast, because they had never done
	14		anything fast.
10:17	15	Q	Okay.
	16	A	And I was prepared to continue my work.
	17	Q	And is it correct to say that your efforts to
	18		investigate Larry Fisher didn't change after this
	19		discussion with Mr. Asper and after learning that
10:17	20		Federal Justice and the RCMP didn't want you to do
	21		that; is that correct?
	22	A	No, because I didn't think they were going to do
	23		anything anyhow.
	24	Q	Right, yeah. But just the question is that you
10:17	25		didn't, you didn't slow down or change, you did



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1		what you were doing regardless of what they said;
2		is that correct?
3	A	I continued.
4	Q	Yeah. And did you tell Mr. Asper that you would
5		continue, or that what did you tell him about
6		what you were gonna do?
7	A	I told him "you can tell them that you've told me
8		to refrain".
9	Q	Okay.
10	A	I remember being explicit about that.
11	Q	And did you then, thereafter, continue to
12		investigate
13	A	I did.
14	Q	the matter? And did you involve Mr. Asper and
15		Mr. Wolch, then, in what you were doing at that
16		stage?
17	A	Yes, I did.
18	Q	Kept them up to date on the
19	A	Yes, I did.
20	Q	Now there's some reference here about the radio
21		station and Bud, and there's some later documents
22		that imply or suggest that there were further
23		discussions with this Bud or Sidney Wilson, and my
24		understanding at least of the evidence we've heard
25		in the Commission and from Mr. LaFreniere himself, $lacksquare$
	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	2 3 A 4 Q 5 6 7 A 8 9 Q 10 A 11 Q 12 13 A 14 Q 15 16 17 A 18 Q 19 A 20 Q 21 22 23 24



	1		that other than the one call to Mr. Wolch there
	2		was no other communications with him and anybody
	3		by you or Mr. Asper or anybody else; is that
	4		correct?
10:18	5	A	But I remember calling the, I remember calling the
	6		radio station. I know that we put a message out
	7		there for Bud, I can remember following up on that
	8		part, asking him to call in and trying to I can
	9		even remember thinking that maybe he worked at the
10:19	10		radio station, or something, and checking that out
	11		to see if they had any Buds there. So there was
	12		some follow-up work done on it, but I can't tell
	13		you specifically, because it didn't result in
	14		anything so I have nothing, sort of, on record
10:19	15		except a memory of making those inquiries.
	16	Q	And so you never talked to him further, you tried
	17		to found out who he was and
	18	A	But couldn't.
	19	Q	tried to reach him, but couldn't. If we can go
10:19	20		to 056743, which is Rick Pearson's lengthy
	21		continuation report, and go to page 056750.
	22		Again, just on Pearson, what is your recollection,
	23		what did you know about his activity and what he
	24		was doing, Rick Pearson?
10:20	25	А	I vaguely remember David talking about him and



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	1		feeling that he was doing a good job and that they
	2		had established some kind of a rapport.
	3	Q	This is David Asper now?
	4	A	Yeah. But I, I don't know that I would have been
10:20	5		filled in with all of, all that I have seen here
	6		of Pearson's reports.
	7	Q	When you say "all that I have seen here" you're
	8		talking about what you have heard in the Inquiry
	9		
10:20	10	A	Yes,
	11	Q	and
	12	A	that he's done, yes.
	13	Q	And so at this time, I think other than one call
	14		with Sergeant Pearson or one contact with Sergeant
10:20	15		Pearson you think you may have had, would it be
	16		correct to say that your information as to what
	17		Sergeant Pearson was doing at this time would have
	18		come through Mr. Asper?
	19	A	Yes.
10:21	20	Q	And would you and Mr. Asper have frequent contact,
	21		then, about what he had learned, what you had
	22		learned, for example?
	23	A	I think we I honestly believe that David and
	24		Hersh shared every bit of information with me, I
10:21	25		could be wrong,

	1	Q	No
	2	A	but I think that he probably would have shared
	3		whatever he was getting.
	4	Q	No, I'm sorry, I didn't ask the question very
10:21	5		well. If it correct to say that if Mr. Asper
	6		learned something from Sergeant Pearson on a given
	7		day, or they had would it be the normal course
	8		that he would talk to you, you'd be in frequent
	9		contact?
10:21	10	А	Oh, absolutely.
	11	Q	And so that there would be no reason during this
	12		time frame, certainly with Mr. Fisher, for the two
	13		of you not to be exchanging information back and
	14		forth about what each were learning, you and Mr.
10:21	15		Asper?
	16	A	Yes, we were.
	17	Q	And did the fact that Rick Pearson and the RCMP
	18		was involved in the investigation and the fact
	19		that, I think according to David Asper, that he
10:22	20		had a good rapport with him or he was doing a good
	21		job, I think was your words; is that right?
	22	A	I think he had that feeling.
	23	Q	Yeah. Did that, in any way, change your view
	24		about doing your own investigation of Larry
10:22	25		Fisher?
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1 Α No. I kept on going. 2 0 And, here, this is a note of a -- I think this is 3 the first discussion, and it's sometime in March 4 of 1990, between David Asper and Rick Pearson, and 5 it's around, I think, the time that Mr. Asper may 10:22 have talked to you about Federal Justice's 6 concerns about you doing your own investigation, and what Mr. Pearson notes is that: 8 9 "Mr. Asper explained that he had been to 10:22 10 Saskatoon within the past couple of days 11 to see Joyce Milgaard, to tell her to 12 let authorities investigate the new 13 evidence, and to share her information 14 with everyone. Asper was expressing 15 concern that Mrs. Milgaard has become 10:22 16 very mistrusting of everyone and has 17 become somewhat of an independent 18 investigator, and is reluctant to turn 19 information over to even her lawyers. 10:23 20 She is particularly mistrusting of the 21 Saskatoon City Police, and in fact 22 believes there is a cover-up conspiracy 23 by them regarding her son's murder 24 charge." 10:23 25 Now this is Mr. Pearson's note of what Mr. Asper

1		was telling him about what Mr. Asper got from
2		you, and would this be accurate considering
3		you're the initial source but does this
4		accurately capture what you thought and what you
10:23 5		would have told and discussed with Mr. Asper at
6		the time?
7	A	I think that's probably very accurate.
8	Q	And so Mr. Asper did tell you, "lookit, let the
9		authorities investigate"; correct?
10:23 10	A	Yes.
11	Q	And what about sharing information, did you
12		what discussion, if any, did you have with Mr.
13		Asper about you were gonna go do your own
14		investigation, about sharing the information you
10:23 15		uncovered with both Mr. Asper and with the
16		authorities; what was your view, at the time, as
17		to whether
18	A	I wasn't I really didn't want to share with the
19		authorities at all. I figured that, you know, I'd
10:24 20		share it with Hersh and David but that I I
21		honestly felt that we were gonna have to do this
22		ourselves.
23	Q	And so, again, if you found out information that
24		was helpful you did not want to give it to Federal
10:24 25		Justice or the RCMP; is that correct?
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	1	А	Well, I wouldn't say that. I mean if I found
	2		something that was helpful and felt that they
	3		would then run with it I would probably know, by
	4		giving it to David and Hersh, that it would get to
10:24	5		them.
	6	Q	Let me
	7	A	I mean I wouldn't be saying "don't you tell", I
	8		wouldn't be saying to David Asper, "don't you tell
	9		these guys this".
10:24	10	Q	But let me put it a different way. Would you have
	11		concerns with sharing the fruits of your
	12		investigation with the authorities at this time,
	13		in other words every piece of information you had,
	14		saying "here you go RCMP, Federal Justice, the
10:25	15		minute I get it I give it to you", would you
	16		what were your concerns about sharing the
	17		information in that way?
	18	А	If they were doing a coverup job think of my
	19		position if they were doing a coverup job,
10:25	20		which I thought they were doing, they were gonna
	21		try to cover this up, then any information that I
	22		would give, they would jump on and try to change
	23		it.
	24	Q	Okay. Let me just pause there.
10:25	25	A	That's probably where I my thinking was at that

1		point. I'm trying to be very honest.
2	Q	Sure, no, I appreciate that. So who would be the
3		"they", when you say that they would be covering
4		up, is that everybody?
10:25 5	A	Well, I think it was mostly, my concern was
6		Saskatoon Police. It possibly extended to the
7		RCMP, I don't know, but certainly definitely the
8		Saskatoon Police, Caldwell, everybody involved.
9	Q	And what about Federal Justice; did you think at
10:26 10		this time that they were part of an effort to
11		cover up information that may assist?
12	A	I don't I don't think I did. I think that I
13		felt it was they weren't doing anything, and in
14		the meantime all the others would be covering this
10:26 15		up, so that if they ever finally did something the
16		coverup would be in place and they wouldn't find
17		out what had gone on.
18	Q	So is it correct let me go down this path a bit
19		further was it a concern of yours that lookit,
10:26 20		if I find a piece of evidence that might be
21		helpful to establish Larry Fisher's guilt and
22		therefore David's innocence, that if I give that
23		to the police, that somehow they're gonna go out
24		and destroy that evidence, or somehow hinder my
10:26 25		ability to use it later; is that what you are
	I	



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	1		saying?
	2	A	Yes, that's what I am saying.
	3	Q	And, for example, if you had gone out and found
	4		Larry Fisher's work records and I know that
10:27	5		that wasn't the case was it would it be a
	6		concern that, lookit, I'm concerned that someone
	7		is going to go out and destroy them or hide them
	8		or do something sinister; is that was that your
	9		thinking at the time?
10:27	10	A	My thinking was right there.
	11	Q	And so, therefore, that information, if you went
	12		out, you'd get it, you'd keep it, and you wouldn't
	13		share what you were doing with the authorities for
	14		fear that they would interfere with your
10:27	15		investigation?
	16	А	Right. Because, don't forget, I had the example
	17		of the Saskatoon Police going down to Regina,
	18		where we trying to get information, and telling
	19		the witnesses "don't talk to Mrs. Milgaard". So
10:27	20		obviously, in my mind, if they don't want there
	21		is something wrong, if they don't want me to talk
	22		to witnesses, they're trying to cover up
	23		something.
	24	Q	Is it correct to say that, at this time, you
10:27	25		didn't trust anybody but yourself and your



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	1		counsel?
	2	А	Yeah,
	3	Q	But as far as
	4	A	probably.
10:28	5	Q	As far as following up with Larry Fisher, at this
	6		stage you did not trust anybody to follow this up
	7		other than yourself, is that correct?
	8	А	And McCloskey.
	9	Q	And your counsel?
10:28	10	А	Yeah, and McCloskey.
	11	Q	And I'm sorry, maybe let me rephrase that; other
	12		than your counsel and the people who were
	13		assisting you,
	14	А	Yes, our team.
10:28	15	Q	your team, you were not prepared to trust
	16		anybody but your team to do this work?
	17	А	That's correct.
	18	Q	And you felt that anybody outside of your team was
	19		involved in some way, or may be involved in some
10:28	20		way, in a coverup of information, or may have some
	21		sinister motive not to get to the truth; is that
	22		correct?
	23	А	That's correct.
	24	Q	And, therefore, you would have gone down this
10:28	25		path and just again, as far as sharing
		ıĺ	



	1		information, and maybe I can read this part here
	2		again, it says that she is reluctant to share her
	3		information, to even turn it over to her lawyers.
	4		Again, can I read into that and you've said
10:28	5		this is accurate that number one, you may not
	6		give everything to Mr. Wolch and Mr. Asper
	7		because, if you did, they may have to give it to
	8		the authorities; would that be a was that your
	9		thinking at the time?
10:29	10	А	It could have been.
	11	Q	And
	12	А	I can't think of any instant where that happened,
,	13		but
,	14	Q	Or that at least
10:29	15	А	it could have.
	16	Q	And that, secondly, you would have to think
	17		carefully as to what information you would provide
	18		to the authorities, and if you had this fear that
	19		it might somehow be used to cover up or to impede
10:29	20		your investigation, you wouldn't give it to them?
2	21	А	That's right.
2	22	Q	And did you have any concerns that if we have
2	23		these two parallel investigations going, yours and
2	24		the RCMP, that if they don't know what you uncover
10:29	25		that might hinder their investigation, or was that $lack$



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	1		a concern of yours?
	2	A	It wasn't a concern of mine.
	3	Q	Or that what you might do in your investigation
	4		might somehow impede what they're trying to do,
10:29	5		for example, was that a concern?
	6	A	I think I felt that I was there for the purpose of
	7		finding out the truth, and that I wouldn't be
	8		doing anything to circumvent the truth coming out,
	9		so I felt I had right on my side, if you will.
10:30	10	Q	Let me put it this way; were you concerned at all
	11		that, in your seeking of the truth, that you might
	12		take a step that might preclude the authorities
	13		from getting the truth?
	14	A	No, I don't think that I had that in mind, I
10:30	15		thought that they'd be able to follow up.
	16	Q	And for example we've heard from Sergeant Pearson,
	17		and we'll see it a bit later in the documents,
	18		that one of the concerns was that the publicizing
	19		of Larry Fisher's involvement may have impeded
10:30	20		their ability to get some better evidence from
	21		him. And his evidence, I think, was quite candid,
	22		saying that "I can't say that I would have got
	23		anything", but one of the concerns that was
	24		expressed around this time or shortly after was
10:31	25		that "having Mr. Fisher being aware that he is the
			4

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	1		subject of an investigation and having it
	2		publicized might have a negative impact on our
	3		ability to get a confession from him or to get
	4		other evidence, things of that nature"?
10:31	5	A	And I think we did hold back for some time on
	6		that, Mr. Hodson, as far as Larry Fisher was
	7		concerned.
	8	Q	What
	9	A	We never gave his name out.
10:31	10	Q	Right. And we'll go through the "publicize", and
	11		maybe that was a bad example, but just back on the
	12		is it correct, at this time, your concern was
	13		with your investigation and you were seeking the
	14		truth, and whatever steps you took, right was on
10:31	15		your side and therefore
	16	A	I couldn't do anything wrong.
	17	Q	couldn't do anything wrong? Okay. What about
	18		information the other way; did you expect that the
	19		RCMP, in their investigation, would be sort of
10:32	20		sharing with you, through your counsel, what they
	21		were coming up with?
	22	A	I expected that they would.
	23	Q	And that that might be information that might
	24		assist you in what you were doing?
10:32	25	А	Yes.



	1	Q	Now at this time you talk about your mistrust, I
	2		think, of the city police, the Saskatoon City
	3		Police, and a coverup. To your knowledge, at this
	4		time, were the Saskatoon City Police involved at
10:32	5		all in investigating the Larry Fisher matter, or
	6		can you where why were you concerned that
	7		the city police, the Saskatoon City Police, might
	8		somehow become more involved at this point?
	9	A	Well, because they had been down, already had been
10:32	10		down trying to keep me from people from talking
	11		to me.
	12	Q	Was it a case of police are police and whoever is
	13		out there, whether it be the RCMP or whoever, you
	14		had a certain mistrust of any police officer, or
10:33	15		was it the specific
	16	A	Well, no, it was the fact that they were actually
	17		out there saying don't talk to me, that that's
	18		what made me suspicious of the police officers.
	19	Q	So it stems back to what we've talked about in
10:33	20		1981, that that was one of the factors that caused
	21		you to think "the city police may get involved at
	22		this stage and tell witnesses related to Larry
	23		Fisher not to talk to us"?
	24	A	Do exactly what they did before.
10:33	25	Q	And when it talks here about 'cover-up
			lack lac

1 conspiracy', and we see this later in the 2 documents, did you at this point think there was 3 coverup, or at what point did you think that, and 4 what did you mean by a 'coverup' and a 'conspiracy'? 6 A Well I think that because of my involvement with 7 what, with the police, and the fact that we were 8 had all this information that was surfacing to 9 indicate that they really hadn't done their job,
coverup, or at what point did you think that, and what did you mean by a 'coverup' and a 'conspiracy'?  A Well I think that because of my involvement with what, with the police, and the fact that we were had all this information that was surfacing to
what did you mean by a 'coverup' and a  'conspiracy'?  A Well I think that because of my involvement with  what, with the police, and the fact that we were  had all this information that was surfacing to
10:33 5 'conspiracy'?  6 A Well I think that because of my involvement with  7 what, with the police, and the fact that we were  8 had all this information that was surfacing to
6 A Well I think that because of my involvement with 7 what, with the police, and the fact that we were 8 had all this information that was surfacing to
what, with the police, and the fact that we were  had all this information that was surfacing to
8 had all this information that was surfacing to
9 indicate that they really hadn't done their job,
10:34 10 thought there must be some reason that they were
11 trying to cover it up. I remember the conspiracy
12 theory went even farther, because when (V4)
13 (V4) came forward and I found out that she was
14 related to the Attorney General, I immediately
10:34 15 thought that got them involved in my mind.
16 Q That would be Mr. Romanow?
A Yes, that, eh, he must have known, because look,
18 mean that was in his family and that had happened
19 It
10:35 20 Q I
21 A I know when you look back at it now, it doesn't
sound very logical, but you had to be there, you
23 had to be out there beating the bushes and trying
24 to find the information, and finding things and
10:35 25 not having them all come together, and you think
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	1		"well, someone is trying to do something here,
	2		someone is covering up".
	3	Q	And is it fair to say at some point, and it looks
	4		certainly at this point, that in your mind,
10:35	5		because of the frustration you had in getting a
	6		remedy for your son and some of the frustrations
	7		you've talked about about getting authorities to
	8		do anything, is it fair to say in your mind you
	9		concluded that, lookit, someone in the
10:35	10		authorities, or some people, must have some
	11		must have done deliberate wrong, otherwise I would
	12		be further ahead by now; is that
	13	A	Yes, I think that was it.
	14	Q	And that because you had not I shouldn't say it
10:36	15		that way because David had not been out of jail
	16		and the wrong been remedied, and here we are 1990,
	17		20 years later, and the frustrations you felt with
	18		authorities and what we've covered and what's
	19		happened and what didn't happen, that you
10:36	20		started or that you did conclude that someone
	21		has done deliberate wrong here?
	22	А	Yes, I did.
	23	Q	And is it correct to say that pretty much
	24		everything you looked at as far as when new
10:35	25		information came in, that that's one of the things

			, ago occoo
	1		that you thought about saying, okay, here's some
	2		new information, the $(V4)$ $(V4)$ one might be
	3		a good example, that would it be fair to say one
	4		of your first thoughts is okay, well and I
10:35	5		think it was her uncle was Roy Romanow?
	6	A	Yes.
	7	Q	And therefore something is nefarious here?
	8	A	Uh-huh.
	9	Q	Something is sinister because she's related to the
10:35	10		Attorney General; therefore, maybe that's where
	11		there's some deliberate wrong?
	12	A	Uh-huh.
	13	Q	And is that correct?
	14	A	That's correct.
10:35	15	Q	And instead of, or I shouldn't say and so at
	16		this time frame then, 1990, would it be fair to
	17		say that that would be your mindset, that lookit,
	18		everything that happens, I'm looking at it with an
	19		eye that says someone is out to deliberately do
10:36	20		wrong and deliberately cover up a wrong?
	21	A	That's right, and I wanted to find out who those
	22		people were.
	23	Q	And again just so that we're clear, what got you
	24		to that point I think you told us in 1980 you
10:36	25		maybe didn't think that; is that correct?
		ì	



		Page 30654
1	А	That's correct.
2	Q	By 1990 10 years had passed and you had been up
3		and down so many, I think you called them peaks
4		and valleys, and at that point your thinking had
10:36 5		changed and said okay, because I have not got a
6		remedy yet, someone must have done something
7		wrong, so that what happened in that 10 year
8		period caused you to change your thinking; is that
9		correct?
10:36 10	А	I would say so, yes.
11	Q	And that in fact would it be fair to say that even
12		over time, even after 1990, as authority figures
13		would deal unfavourable with a position or an
14		issue, you would ascribe a sinister motive to
10:37 15		that; is that correct?
16	A	Yes, I would.
17	Q	And so, for example, let's talk about Dr. Ferris,
18		and we'll deal with him a bit later, and we've
19		heard all kinds of evidence on that, but is it
10:37 20		correct to say that when justice comes back and
21		says we don't agree with your assessment of the
22		value of Dr. Ferris' opinion, your reaction would
23		be to say, okay, but you are biased, you are
24		covering up, you are doing something wrong, you
10:37 25		are a prosecutor and the various things, that



	1		would be your thinking that says okay, I discount
	2		what you are telling me, the merits of what you
	3		are telling me because I don't trust you; is that
	4		correct?
10:37	5	Α	That's right, and I felt that we had merits and
	6		that the case should be re-opened. The thing was
	7		we never asked, I never asked anyone to believe or
	8		to say that David was innocent, all I asked them
	9		was to give him a new trial, to open up the case
10:38	10		to give him a chance
	11	Q	Right.
	12	Α	to prove his innocence, I never asked people to
	13		say he was innocent, so the people came to help
	14		us, that was one of the things I said, I'm not
10:38	15		asking you to believe that he's innocent, I'm
	16		asking you to look at all these facts and we
	17		had a fact sheet and I haven't seen it I don't
	18		think.
	19	Q	I'm getting there.
10:38	20	А	And that pointed that out in particular, and then
	21		I would list all the facts of the case to them.
	22	Q	Just back on this point about when, and I plan on
	23		covering this again when I deal with Kim
	24		Campbell's February 27th, 1991 letter, but is it
10:38	25		correct to say that by this stage, 1990 and



	1		onward, that when authorities would come back with
	2		substantive responses; in other words, saying
	3		okay, you know, the motel room thing, we disagree
	4		with your position and here's why, that is it
10:39	5		correct to say
	6	A	They didn't come back to us with that I don't
	7		think until the decision.
	8	Q	Right, the decision, but when they would come back
	9		with a substantive position saying we disagree
10:39	10		with this piece of evidence or this theory and
	11		here's why, would it be correct to say that you
	12		didn't umm, that your view of their position
	13		was coloured so that maybe you didn't look at the
	14		merits of what they were saying, you were saying,
10:39	15		well, because it comes from you, authority, and
	16		because I don't trust you it's got to be wrong, as
	17		opposed to looking at what they are saying and
	18		saying, okay, well, they might be right on this
	19		point they are wrong on the overall picture,
10:39	20		but they might be right on this point, and what
	21		I'm trying to understand is did you simply say
	22		lookit, because I don't trust you, everything you
	23		say and come back to me I'm not prepared to
	24		accept?
10:39	25	А	I would say I was partway in between. $\P$

	Ī		Page 30657
	1	Q	And so a very skeptical eye as to what you
	2		might look at it
	3	А	Yes.
	4	Q	but the fact of who was saying it, you would
10:40	5		have a skeptical eye?
	6	А	Absolutely.
	7	Q	Go to 178850, please, and this is a memo March
	8		15th of '90 from David Asper to Hersh Wolch and
	9		this has the, I think the statements of Linda
10:40	10		Fisher and the Pambruns, and David Asper says to
	11		Hersh:
	12		"She insists that the statement not be
	13		forwarded to Fisher until she gets
	14		answers to the follow questions:"
10:40	15		And I think that probably should be Williams. I
	16		appreciate this isn't your memo, but maybe we'll
	17		just go through, and what it looks like is you've
	18		given your lawyers the Linda Fisher statements,
	19		but saying don't give them to authorities until
10:40	20		you find out:
	21		"1) Whether Fisher is right-handed.
	22		Evidence at the trial indicated that the
	23		assailant was probably right-handed."
	24		And:
10:41	25		"2) Whether Fisher owned any knives."
			•



	1		And do you know if this would have been, are you
	2		able to help us out, whether that memo, and if
	3		it's not to be forwarded to Fisher, it would be
	4		either Linda or Larry, would there be any
10:41	5		reason your lawyers would be sending to well,
	6		maybe it is to Linda. Are you able to help us
	7		out on this memo at all?
	8	A	No. I insisted on retaining the originals.
	9	Q	Would you have said
10:41	10	A	I think that that's incorrect, that it was
	11		forwarded it would have been forwarded to
	12		justice rather than to Fisher I think.
	13	Q	Yeah, okay. And so you think at this time you
	14		would have said lookit, don't give the Linda
10:41	15		Fisher statements until you find out whether
	16		Fisher is right-handed?
	17	A	Right.
	18	Q	And the knives; is that correct?
	19	Α	Yeah.
10:41	20	Q	Now, here we see the bone-handled hunting knife
	21		come up and we talked about this a bit last week
	22		and
	23	А	That was very prominent in our thinking at that
	24		time because it was, there was evidence given at
10:42	25		trial that the wounds could have been inflicted by



1		two different knives, one of them being a they
		were consistent with that of a double-edged blade
3		and that knife never played any role in the
4		proceeding or, you know, in hindsight I'm going
5		back to the trial and I'm remembering that that
6		knife was found on a stringer and that
7	Q	Would is it correct that after learning from
8		Linda Fisher what you told us yesterday, that the
9		missing paring knife that she said went missing
10		around the morning of Gail Miller's murder, that
11		it did not match the maroon-handled paring knife,
12		that having another knife or a second knife
13		involved in the murder of Gail Miller and having
14		that knife identified as belonging to Larry Fisher
15		would assist you in establishing Larry Fisher as
16		the perpetrator?
17	A	Yes.
18	Q	And did that motivate you on the second hunting
19		knife to say okay, well, if the maroon-handled
20		paring knife isn't his, you recalled that there
21		was another knife found?
22	А	And I thought maybe it was.
23	Q	And so did the significance of this hunting knife
23 24	Q	And so did the significance of this hunting knife increase after Linda Fisher told you that the
	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	2 3 4 5 6 7 <b>Q</b> 8 9 10 11 12 13 14 15 16 17 A 18 <b>Q</b> 19 20 21



	1		paring knife?
	2	А	That's right.
	3	Q	And the dates, I mean, this would be shortly after
	4		your interview with her. Now, this talks about
10:43	5		the:
	6		" double-edged at the scene on the
	7		morning that the body was discovered."
	8		It says:
	9		"Mysteriously, this knife went missing
10:43	10		from a policeman's locker, and never
	11		played any role in the proceedings."
	12	A	Somewhere I understood that, that when we went
	13		back to look for it or something, they said it had
	14		no connection with it, and then they were going to
10:44	15		find it and it was missing from the policeman's
	16		locker and that's all I remember, and it never
	17		came up at trial.
	18	Q	And where did you get the information about the
	19		policeman's locker and it going missing from that
10:44	20		locker?
	21	А	I have no idea, but that was my recollection of
	22		it.
	23	Q	And was it from a transcript or was it from
	24		another source, and the reason I ask is we went
10:44	25		through this at the Inquiry with Mr. Oliver who
			4



	1		was the officer with Mr. Caldwell and Mr. Tallis.
	2	А	Uh-huh.
	3	Q	And the evidence to date seems to be that this
	4		hunting knife was found, it was kept, it was not
10:44	5		tendered at the preliminary hearing, it was taken
	6		to the Queen's Bench trial, Mr. Caldwell didn't
	7		have any evidence to link it to the crime,
	8		Mr. Tallis did not want the knife to go in as
	9		evidence, and towards the conclusion of the trial
10:44	10		Mr. Caldwell released it from the trial process
	11		because it wasn't needed as evidence and it was
	12		returned to Mr. Oliver and returned to the police
	13		station and became part of their stored exhibits
	14		and I think his evidence was at some point it
10:45	15		either would have been destroyed or made part of
	16		their, I think he said
	17	А	Well, it wasn't part of the exhibits.
	18	Q	It was not part of the exhibits at trial.
	19	А	No.
10:45	20	Q	Right.
	21	А	So maybe the fact that we didn't find it in the
	22		exhibits, maybe that's what made me think it went
	23		missing, but somehow no, I had that thought
	24		that it and I mentioned it to David and I think
10:45	25		that he also had some memory of that.

			7 age 30002
	1	Q	And so it's clear at this point that your thinking
	2		at the time is that there's something sinister
	3		about this second hunting knife?
	4	А	Uh-huh.
10:45	5	Q	That it disappeared; is that correct?
	6	A	Yes.
	7	Q	And I think later on we'll see that your thinking
	8		is that they deliberately hid it?
	9	А	Yes.
10:45	10	Q	And can you explain how did you come, arrive at
	11		that and how did that fit into what you were
	12		thinking about other matters?
	13	А	Well, I think because we got Linda, we've got
	14		someone that had a number of rapes, all of them
10:46	15		were involved with knifes and paring knives, and
	16		also the fact that Linda was saying this wasn't
	17		her knife, but remembering that it could, wounds
	18		could have been inflicted by a double-edged blade,
	19		I remember talking to her about him having other
10:46	20		knives like hunting knives or things like that and
	21		that took me back to this and the fact that we
	22		never had it at the trial. I don't know where I
	23		got the idea that it was missing from a
	24		policeman's locker, whether I was told that or
10:46	25		where that came up, but the fact that it wasn't in

			7 age 30003
	1		the proceedings was very suspicious to me.
	2	Q	And on that point about suspicious, whether it was
	3		at this point or at a later point, did you come to
	4		the conclusion or did you have a theory that this
10:47	5		missing hunting knife was the murder weapon that
	6		belonged to Larry Fisher and the police, the
	7		Crown, defence or whoever, some people
	8		deliberately got rid of
	9	А	Got rid of it.
10:47	10	Q	the knife to cover up the fact that Larry
	11		Fisher committed the crime and not David, was that
	12		your thinking?
	13	A	Yes, it was.
	14	Q	And that would have started around this time?
10:47	15	A	Probably.
	16	Q	004815, again there's just another
	17	A	A look at the past.
	18	Q	Yeah, and again this is an article March 15th,
	19		1990, so around the same time as the memo, and
10:48	20		this is where you and Mr. Asper are at the
	21		courthouse looking at exhibits, that's in the
	22		early part of the article. Scroll up, please, and
	23		they say here:
	24		"There's also the question of a missing
10:48	25		knife. A double-edged, bone-handled



			1 age 3000+
	1		knife with a 7.6 centimetre blade was
	2		found near Miller's body on the day of
	3		the murder. But it disappeared before
	4		the preliminary hearing. A second knife
10:48	5		was found in the spring when the snow
	6		melted. It was single-edged."
	7	A	Now, it could be that I assumed since it wasn't at
	8		the preliminary hearing you know, I don't know
	9		much about criminal proceedings, it could be that
10:48	10		I assumed that it must have disappeared or they
	11		would have had it there.
	12	Q	But again, this day it looks like you and your
	13		lawyer are at the courthouse looking at exhibits?
	14	Α	Uh-huh.
10:48	15	Q	Would that have been what you were looking for, is
	16		this knife?
	17	Α	Yes, it would have been helpful if we could have
	18		found that knife and shown, presented it.
	19	Q	But the transcripts show the knife wasn't put in
10:49	20		as an exhibit?
	21	A	That's right.
	22	Q	And so when it wasn't at the courthouse, I'm just
	23		trying to figure out where, whether this is where
	24		you concluded that okay, somehow it went missing,
10:49	25		or what prompted the suspicions about the knife?
			Meyer CompuCourt Reporting



			Page 30665
	1	А	I guess we thought that if it had been found,
	2		okay, that it would have been in with the
	3		exhibits.
	4	Q	And just again at this point, is it correct that
10:49	5		over the following months and even years this
	6		double-edged knife became a prominent part of some
	7		of the allegations that you and your group were
	8		making about wrongdoing; is that correct?
	9	А	Absolutely.
10:49	10	Q	And I think, and I've tried to go back and trace
	11		where this issue is first mentioned, it appears to
	12		be around here, there might have been one earlier
	13		mention about the knife, but would it be correct
	14		to say that amongst your group of people, the view
10:50	15		of your advisors, your lawyers, Mr. Bruce,
	16		Henderson, McCloskey, etcetera, the thinking was,
	17		okay, the bone-handled, double-edged hunting knife
	18		mysteriously went missing during the course of the
	19		trial and we think it was used in the murder and
10:50	20		there's something sinister about how this knife
	21		went missing, that was the thinking of your group?
	22	А	Yeah, and once we found Larry, we thought we had a
	23		connection with him and the knife that could be
	24		used.
10:50	25	Q	050467, this is a letter from Mr. Asper to Mr.
			4



			7 age 50000
	1		Williams, we've reviewed this before, and I take
	2		it this would be the source of your information at
	3		the time? Mr. Asper gave you the details of Larry
	4		Fisher's record when you went out to visit Linda
10:51	5		Fisher?
	6	A	Correct.
	7	Q	And we see here he has them listed as Regina and
	8		Prince Albert and so that would have been your
	9		knowledge at the time from Mr. Asper, was that
10:51	10		these rapes that Larry Fisher had committed had
	11		been committed in Regina; correct?
	12	A	Yes, that was my understanding.
	13	Q	And then scroll down, Mr. Asper would have also
	14		told you that the dates of those offences were as
10:51	15		listed?
	16	A	That's correct.
	17	Q	'68 to 1970, those four dates?
	18	A	And the fact that they all surrounded Gail Miller
	19		was very significant to us.
10:51	20	Q	But at this time you thought they were in Regina;
	21		correct?
	22	A	Yes, but the fact that
	23	Q	Oh, I'm sorry.
	24	A	that she was in the middle of it was very
10:52	25		interesting to us.
		•	



	1	Q	And at the time you learned that, was that of some
	2		significance in your thinking?
	3	A	Oh, yes.
	4	Q	And tell us how?
10:52	5	А	Well, because he had done this before and he did
	6		it again.
	7	Q	Go to the next page.
	8	A	You know, that report that we got, I'm trying to
	9		think when we even got it, the report that we got
10:52	10		from the RCMP where they and I think, I don't
	11		even think we got it at the Supreme Court, I think
	12		we got it when we came here, if we had had that
	13		information that the RCMP were talking about, do
	14		you remember the one where they went out and
10:53	15		they
	16	Q	You are thinking of the Rasmussen report or the
	17		you are talking about the 1969 RCMP reports?
	18	A	Yeah, in May, I believe it was in May of 1969,
	19		those officers, they went out and they tied this
10:53	20		whole thing together at that time and I can
	21		remember reading that report, and I don't think we
	22		got it until we got here because we didn't have it
	23		at the Supreme Court. If we had had it at the
	24		Supreme Court, I think that would have maybe
10:53	25		changed the Supreme Court Justices' decision at



			Page 30668
	1		that time.
	2	Q	And why do you say that?
	3	А	Well, I would have to go back and look at the
	4		report, but it seemed to me that they were
10:53	5		certainly pointing out the strong possibility that
	6		it was someone else that had committed the crime,
	7		it was the one that was attacking people in the
	8		area, and if we had had, if Tallis had had that
	9		information, if we had had that information, if
10:54	10		they had had that information at the Supreme Court
	11		of Canada, so even the fact that some RCMP
	12		officers knew that was happening through all of
	13		this, it would have been nice if some of them had
	14		come forward and told us that they had all
10:54	15		believed that way at one time.
	16	Q	And we'll come back to this issue when we deal
	17		with the reference case about that point, but you
	18		are talking about the three RCMP reports, I think
	19		it was Rasmussens, the reports that were
10:54	20		discovered I think in 1993 or that were part of
	21		the Flicker investigation, those are the reports
	22		you are talking about?
	23	А	I think they are, and if we're going to go into
	24		them at another time
10:54	25	Q	Sure.



			, age codec
	1	A	I would be more aware of what it says.
	2	Q	Sure. Here we're talking about, in the letter
	3		from Mr. Asper, again this is around the time of
	4		your visit to the courthouse:
10:55	5		"Secondly, we reviewed the transcript of
	6		the preliminary enquiry, and can confirm
	7		that a double-edged bone-handled
	8		hunting-type knife had been found at the
	9		scene of the crime shortly after police
10:55	10		attended the scene. The police clearly
	11		believed that this knife might have had
	12		something to do with the crime, and the
	13		pathologist agreed that some of the
	14		wounds could have been inflicted with a
10:55	15		double-edged blade. Oddly enough, this
	16		weapon was lost after being taken into
	17		police custody, and never played any
	18		part in the trial proceedings."
	19		And again, this is Mr. Asper's letter, but this
10:55	20		is consistent with what you thought at the time;
	21		is that right?
	22	A	Probably. It was just maybe we came to that
	23		conclusion.
	24	Q	So if you are at the courthouse, the knife is not
10:55	25		there, because it's not in at trial; correct?
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			Page 30670 ————
	1	A	Uh-huh.
	2	Q	Correct?
	3	А	Yes, correct.
	4	Q	And I think the evidence that we've if you look
10:55	5		at the preliminary hearing transcript there is
	6		reference to the bone-handled, double-edged knife
	7		and I think Mr. Tallis' evidence was to the
	8		effect, and I stand to be corrected, but I think
	9		his evidence was to the effect that at the
10:56	10		preliminary hearing he would be not as concerned
	11		about having a second knife being brought out in
	12		evidence because at the preliminary hearing
	13		there's no jury there, so in other words, he might
	14		use that to probe and find out what other knives,
10:56	15		but at the trial in front of the jury he did not
	16		want the mention of another knife, the hunting
	17		knife being mentioned, particularly when the
	18		evidence of, I think, Nichol John, or one of the
	19		witnesses was that they had observed that David
10:56	20		had a hunting knife or some type of knife on the
	21		trip up, I think that was the evidence, so
	22		Mr. Tallis said he did not want the knife even
	23		brought up at trial?
	24	Α	Yes.
10:56	25	Q	And Mr. Caldwell didn't put it in because it

1		wasn't part of the Crown's case as being linked,
2		so that was the evidence that we heard. Is it
3		possible that when you and Mr. Asper looked at the
4		preliminary hearing transcripts, saw the knife
10:57 5		mentioned, went to the courthouse, looked,
6		couldn't find the knife and then realized that it
7		wasn't mentioned at the trial, that you concluded
8		that it must have disappeared?
9	A	Yes, and don't forget we thought at that point in
10:57 10		time Tallis was involved as well.
11	Q	Involved in what?
12	А	Setting David up.
13	Q	Okay. So at this time you would have thought,
14		okay, Tallis would have played some role in not
10:57 15		having the knife, or somehow having the knife
16		disappear?
17	A	Yeah, yeah.
18	Q	If we can go to 155610, this is a letter from Mr.
19		Wolch to Mr. Williams, he sends in the statements
10:58 20		of Linda Fisher. Now, you talk if we can just
21		scroll up. You mentioned earlier about not asking
22		anybody to conclude that David is innocent; is
23		that right?
24	А	Yes.
10:58 25	Q	Was that, though it appears, let me just read
		4

you this:

"As you can appreciate, being totally satisfied as to David's innocence, the matter becomes more frustrating as days go on. We are confident that any tribunal looking at this matter in its totality will without question come to the conclusion that David is innocent. Whether they can conclude that Fisher is quilty, only time will tell."

This issue of innocence, and I think you told us it was very important to you and to David that he be exonerated, but as far as what you were, what you thought you had to establish with justice or what you thought you had to establish to get the case re-opened, was there one constant test that you thought you had to meet or did it change, and we see different things in the documents, everything from lookit, we think we could raise a reasonable doubt today if we had another trial, to we think David is innocent and we've proven it, three, we've proven Larry Fisher is the killer, therefore David isn't, and I'm just wondering if you can comment on what your thinking was, you've talked about earlier, that

1 lookit, I'm not asking anybody to find him not 2 innocent, I just want my day in court. 3 I think that that was something that I used with Α 4 the volunteers or people that we talked with and 5 everything like that, but I think that as he's 10:59 pointing out in this letter, I was totally 6 satisfied with, as to David's innocence and I was 8 satisfied that if we could get any court looking 9 at all the information that we found, that they 11:00 10 would come to the conclusion that David was 11 innocent as well, so we just wanted to be able to 12 present our evidence to the court. 13 0 Okay. And here Mr. Wolch says: 14 "I have conveyed to Mrs. Milgaard our 11:00 15 need to put our trust in you and allow 16 you to carry out your duties. 17 confident you can appreciate, however, 18 that as the mother of a young man who 19 has been wrongfully incarcerated for 21 11:00 20 years and who has met numerous 21 obstacles, it is very difficult to 22 maintain faith in a justice system that 23 has let her family down so drastically. 24 I look forward to hearing from you and 11:00 25 we will continue to be of assistance

			Page 30674
	1		wherever possible. Should your
	2		investigator require any type of
	3		information or assistance or whatever,
	4		we will cooperate fully."
11:00	5		And would that have been your position at the
	6		time, this last part, about if they want
	7		anything, would you have co-operated fully with
	8		Sergeant Pearson and their investigator?
	9	A	I think if they had asked us for information about
11:01	10		something, yes.
	11	Q	If they would have asked you to co-operate by not
	12		taking any further steps on your own, would you
	13		have done that?
	14	А	No, I would not.
11:01	15	Q	And then as far as the comment about "difficult to
	16		maintain faith in a justice system that has let
	17		her family down," I think you told us earlier that
	18		by this time you had lost faith in the
	19	A	I absolutely had.
11:01	20	Q	And 009476, this is your letter to Ms. Campbell of
	21		March 20th, 1990, and you say:
	22		"I have spent the past 21 years enduring
	23		the grief of my wrongly convicted son,
	24		David Milgaard. I have tried for 21
11:02	25		years to be David's voice on the
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"outside" and to get someone in a position of authority to lend a sympathetic ear. It seems that our system of justice is so cynical that no one is prepared to accept that mistakes can be and are made. The bias against a convicted person is most frustrating.

A well respected forensic

A well respected forensic pathologist has interpreted the evidence in my son's case and concluded that the same evidence used to convict him, in fact, disproves his guilt.

The facts of the case --"

Or let me just pause there. So at this point,

would it be correct to say that the Dr. Ferris

opinion is figuring significantly in your mind,

that you are writing to the minister saying this

evidence, amongst other things, concludes that

he's not -- concludes that he's innocent?

Yes.

A Yes.

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- Q And yet the system has doing nothing with it?
- A That's correct.
  - Q And then you say:

"The facts of the case itself as presented to the jury provided my son

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	1		with an alibi, yet the Crown pressed on
	2		with evidence that police must have
	3		tailored to fit their theory of the
	4		murder."
11:03	5		And are you able to elaborate on what that would
	6		be referring to?
	7	A	"The facts of the case itself " oh, sure, the
	8		facts of the case itself as presented to the jury,
	9		I mean, they were presented with the Danchuks,
11:03	10		they were presented with the hotel owner, they
	11		were presented with the fact that they saw car
	12		headlights, the caretaker from the church saw car
	13		headlights in the lane at the time when, and
	14		someone walking across in front of those
11:04	15		headlights at the time when my son was, had an
	16		alibi, that he was out getting a map, so the facts
	17		of the case itself as presented to the jury
	18		provided my son with an alibi, yet the Crown
	19		pressed on with evidence that police must have
11:04	20		tailored to fit their theory of the murder.
	21	Q	Again, and just on the alibi, that I guess
	22	A	And I think that I meant "must have tailored" was
	23		how they changed the statement of the witnesses,
	24		that's where my thinking was there. But,
11:06	25		definitely, the way we presented the case it did
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	1		provide my son with an alibi.
	2	Q	But would
	3	A	He couldn't have been there.
	4	Q	would you agree that the jury heard that and
11:06	5		thought otherwise, though, for whatever reasons?
	6	А	Well, after they heard Nichol John
	7	Q	Right. And so
	8	А	and the motel witnesses, it was pretty hard to
	9		believe.
11:06	10	Q	And then down at the bottom, if you can scroll
	11		down, you say:
	12		"The officials in your department who
	13		are handling this case have not given me
	14		the slightest glimmer of hope. It has
11:06	15		been over a year now since my son's
	16		application was filed and there has been
	17		no indication or communication as to
	18		what has been done."
	19	А	Well, that's the thing. The Justice Department,
11:06	20		if anything comes out of this Inquiry, if nothing
	21		else comes out of it, that they have some
	22		communication with the family and the person
	23		that's been convicted so that they know what's
	24		going on. There's got to be a sitting down, there
11:06	25		has to be a talking to one another, because this
			Meyer CompuCourt Reporting

	1		is it. I mean you go on over a year, and we filed
	2		the application and we're getting nothing back
	3		from them and it's so frustrating, and I don't
	4		want to see another family go through what we went
11:07	5		through.
	6	Q	And again, we touched on this yesterday, I think
	7		despite the fact that your son David was writing,
	8		I think, directly to the minister on a few
	9		occasions
11:07	10	А	Yes.
	11	Q	the communication channel between the Milgaard
	12		family and the Department of Justice was through
	13		your lawyers, Mr. Asper and Mr. Wolch, and the
	14		Justice lawyers;
11:07	15	А	Right.
	16	Q	is that correct?
	17	Α	But they weren't getting anything either.
	18	Q	And your expectation, then, was that there should
	19		have been communication
11:07	20	A	Absolutely.
	21	Q	to your lawyers as opposed to, for example, Mr.
	22		Williams calling you up directly, or the minister
	23		calling you or David directly. My understanding
	24		is you take issue what you are saying is,
11:07	25		lookit, there was no communication,
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	1	A	Period.
	2	Q	period, you're not taking issue with the fact
	3		that the communication would be through your
	4		lawyers and not
11:08	5	А	Oh, no.
	6	Q	Right, okay.
	7	А	If there had been communication of any kind, that
	8		would have been great.
	9	Q	And then the next page you say:
11:08	10		"I cannot stand by in the hope that the
	11		system which condemned my son will
	12		secretly help to free him. I'm afraid I
	13		have lost faith in the Justice system."
	14		I want to talk about a couple things here. When
11:08	15		you talk about:
	16		" the system which condemned my son
	17		will secretly help to free him."
	18		is it correct to say that in your mind
	19	А	They're not telling us anything
	20	Q	Okay.
	21	А	so they're secretly
	22	Q	No, I'll get to the "secretly" in a minute, but in
	23		your mind the federal Justice Department let me
	24		just back up. The Attorney General of
11:08	25		Saskatchewan is the entity that prosecuted David
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	1		originally?
	2	A	Right.
	3	Q	And the application for a remedy under Section 690
	4		was made to the Federal Justice Minister?
11:08	5	А	Correct.
	6	Q	So it would be federal and provincial government,
	7		and from a legal perspective I think the
	8		Provincial Attorney General prosecuted, the
	9		federal Justice Department is looking at the
11:08	10		application for a remedy. Is it correct to say
	11		that, in your mind, that you didn't draw much of a
	12		distinction between whether it was federal or
	13		provincial, it was government and it was Justice,
	14		is that correct?
11:09	15	А	That's correct.
	16	Q	And so the fact that it was a different level of
	17		government Justice lawyers that were looking at
	18		the application for mercy than the level of
	19		government of Justice lawyers that prosecuted your
11:09	20		son, did that have any make any difference to
	21		you?
	22	A	No, they were all of the same ilk, they weren't
	23		doing anything.
	24	Q	And, but putting aside their conduct, was it your
11:09	25		view that, lookit, to me they're one and the same;

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	1		was that your thinking, that
	2	А	I think it probably was.
	3	Q	And then about the:
	4		" secretly help to free him";
11:09	5		what were you meaning by that?
	6	А	Because they hadn't been telling us anything, so
	7		that everything they were doing was done in
	8		secret, we didn't know what 'that I can't stand
	9		by in the hope that they're going to secretly try
11:09	10		to help to free him', I think that I was maybe
	11		being pretty cynical.
	12	Q	And we had talked earlier, and Mr. Asper talked
	13		about this as well, that at some point in the
	14		course of your efforts to re-open there was a
11:10	15		significant change in your thinking; correct? And
	16		I think "change", that's when Mr. Asper described
	17		it as a war and the gloves came off, and how you
	18		and your family and your lawyers started to deal
	19		differently with the media and
11:10	20	A	Absolutely.
	21	Q	things. Would it be correct to say that,
	22		looking at this letter, that by this date this
	23		would be a pivotal change, that and maybe it
	24		had been a bit prior to this but by this time
11:10	25		you are telling Kim Campbell "I've lost faith in
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	1		the system"?
	2	A	Yes.
	3	Q	So can we conclude from this that at least by
	4		March 20th, 1990, and maybe sooner, Joyce Milgaard
11:10	5		had said "I'm not prepared to rely on the justice
	6		system to correct the wrong, I'm gonna do it my
	7		own way"; is that
	8	A	Yes, I think that's probably it.
	9	Q	And it may have been, it may have been I don't
11:11	10		want to pin you down on dates it may have been
	11		something that grew to this point, but certainly
	12		by this point your thinking had changed and you, I
	13		think, have told us that you were not prepared to
	14		trust anybody
11:11	15	А	That's right.
	16	Q	in the system?
	17	A	And this, I did mention:
	18		"I am not asking you to declare my son
	19		innocent"
11:11	20	Q	Right. I think is that yes:
	21		"I know that you have the power to help.
	22		I am not asking you to declare my son
	23		innocent, although he is, at this
	24		point."
11:11	25		And I think you're saying and you go on to say



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	1		you want him out on sorry:
	2		" for my son to be released from
	3		prison and for my lawyers to have the
	4		opportunity to show just how imperfect
11:11	5		the system of justice operated with all
	6		its human frailities."
	7		And that would have been a concern at this time,
	8		you wanted David out of jail
	9	A	Right,
11:11	10	Q	immediately?
	11	A	absolutely, because he was in terrible shape.
	12	Q	And then, just down at the bottom, you say:
	13		"My trust in the system has been so
	14		shaken that I am forwarding the original
11:12	15		statements from my investigative work to
	16		you directly with this letter."
	17		And then, down at the bottom, the original
	18		statements of Linda Fisher and Cliff Pambrun are
	19		enclosed, and so those would be the, that's the
11:12	20		investigative work that you are talking about
	21		there,
	22	A	Yes.
	23	Q	the recent
	24	A	Yes.
11:12	25	Q	And did you have a concern that you knew that
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			Page 30684
	1		your lawyers had sent them to Eugene Williams;
	2		correct?
	3	А	Yes.
	4	Q	And were you concerned that Kim Campbell might not
11:12	5		get them?
	6	A	I didn't know. At this point I was wondering, you
	7		know, who was holding what back and where.
	8	Q	If we could go to 158345, please.
	9	A	I think I also felt, if anyone read Linda Fisher's
11:12	10		statement, that they would see, you know, how
	11		powerful it was, and that if she'd read that, that
	12		she might dig, herself, a little bit into it.
	13	Q	This is a March 26th, 1990 letter from Mr. Asper
	14		to Mr. Henderson, and I think this is where Mr.
11:13	15		Asper sends him a draft of his 1986 brief. When,
	16		when you and Mr. Henderson were finished with
	17		Linda Fisher and Cliff Pambrun on March 9th, 10th,
	18		11th, how was it left with Mr. Henderson as far as
	19		his further involvement, were you, did were
11:13	20		you hoping that he would come back and help
	21		further with investigative work, or what was
	22		discussed or contemplated?
	23	А	I don't remember. I think that we felt that we
	24		were there, in a sense. I don't know. I think we
11:13	25		felt that we'd got all this information and that,
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	1		with that information, I don't think that we felt
	2		he'd ever have to come back.
	3	Q	What, after getting the Fisher information?
	4	А	Yes.
11:14	5	Q	And so in May and we'll go through this in more
	6		detail but in May of 1990, a couple months
	7		later, he comes back to help with interviews of
	8		Cadrain, Wilson, and John; correct?
	9	A	Yes, correct.
11:14	10	Q	And what prompted that?
	11	A	Because, still, nothing was being done. We felt
	12		that we had to have that information and we had to
	13		have it documented.
	14	Q	And so is it correct that in March, after you were
11:14	15		done with Linda Fisher, at that time there wasn't
	16		a thought that, well, while we have Henderson here
	17		we should go out and interview Wilson, John and
	18		Cadrain, or did that come up later as a result of
	19		some later events?
11:14	20	A	That came up later.
	21	Q	If we can go to 162388.
	22		COMMISSIONER MacCALLUM: What number is
	23		that document, please?
	24		MR. HODSON: Sorry, it's 158345.
11:14	25		COMMISSIONER MacCALLUM: Okay.



1 BY MR. HODSON: 2 Now I had covered this letter, I think, with Mr. 0 3 This is his letter of March 27th, 1990, and I'm not even sure of who Alan Aitken is, but 4 5 it's a letter that expressed Mr. Asper's view at 11:15 the time and I just want to get your comment on 6 what your -- whether this will assist you in what 8 your thinking was at the time. And he sends this 9 fellow, and whether it was a reporter or somebody, 11:15 10 but it's information about the case, and then Mr. 11 Asper says: "In brief, the Crown's case rested on 12 13 three major foundations: ", 14 and number: 11:15 15 "2) The evidence of experts who claimed 16 that semen samples found at the 17 scene of the crime belonged to David 18 Milgaard; " 19 Was that your understanding, Mrs. Milgaard, of 11:15 20 what you thought happened at trial or what your 21 take was at trial, that there was evidence of 22 experts who claimed that semen samples found at 23 the scene of the crime belonged to David 24 Milgaard?



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Yes.

	1	Q	And that was your based on your observations of
	2		at the trial
	3	А	Yes.
	4	Q	and what you heard about the semens the
11:15	5		semen samples?
	6	A	And I thought the jury believed that too.
	7	Q	And the next page, please. He then goes on to
	8		say:
	9		"This has been a very long haul",
11:16	10		and:
	11		"We believe that this case should be
	12		re-opened solely on the strength of the
	13		Ferris report.",
	14		and then goes on to talk about some other
11:16	15		information that supports it. But is it correct,
	16		would this be your position at the time as well,
	17		that, number one, at trial the semen was linked
	18		to David Milgaard by evidence of experts; two,
	19		Dr. Ferris says it proves his innocence, as
11:16	20		simple as that? And I appreciate, you've told us
	21		there's other facts and other information,
	22	А	Uh-huh.
	23	Q	but the Ferris report you told us, in and of
	24		itself, you felt was sufficient to re-open the
11:16	25		case?
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	1	A	And it was the new, that they kept saying that we
	2		had to have something new, and this was new.
	3	Q	157802. This is a letter from the minister's
	4		office to you, Mrs. Milgaard, March 30, 1990 just
11:17	5		acknowledging receipt of an earlier letter, that
	6		was your March 3rd letter, the first one you wrote
	7		to the minister,
	8	A	Yes.
	9	Q	and sort of indicating that it's been received.
11:17	10		And there is also examples of this that are on the
	11		record before the Commission where communications
	12		have been sent by David, by you, and by your
	13		lawyers to Federal Justice, either to the Minister
	14		or Justice lawyers where there would be a letter
11:17	15		back acknowledging receipt, and I take it that
	16		your concern about getting feedback was beyond
	17		just "we've got it, we'll consider it, and you'll
	18		hear our result in due course". And I use this
	19		only as an example, I think
11:18	20	А	You're using this because you can't find anything
	21		else from them.
	22	Q	Well there is a few others between and I haven't
	23		brought them up, I did with Mr. Asper, but where
	24		Mr. Asper would correspond with Mr. Williams there
11:18	25		was letters back acknowledging receipt of the
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	1		letters, so that
	2	A	But that's about all they did.
	3	Q	Yeah. And so my only question is that, that when
	4		you say they were not responding, is it correct to
11:18	5		say, "well, that they were not responding beyond
	6		acknowledging that they got our letters"?
	7	A	That's right.
	8	Q	Right. So that and, again, your concern would
	9		be beyond just saying "thanks for your letter",
11:18	10		you wanted some more substantive feedback; is that
	11		correct?
	12	A	Absolutely.
	13	Q	So you were getting when I say "you", you and
	14		your lawyers and David were getting an
11:18	15		acknowledgment that what you were sending them was
	16		received, but you weren't getting anything beyond
	17		that, and that was your concern?
	18	A	We weren't getting any acknowledgment that they
	19		were doing anything
11:19	20	Q	Okay.
	21	A	with the stuff that they were receiving.
	22	Q	Now 010045, and this happens to be the next
	23		document I was going to show you, but if you can
	24		go to the next page this isn't why I was
11:19	25		bringing it up but on the next page you will



1		see this is Mr. Asper's letter and it appears that
2		Mr. Williams has written back:
3		"I acknowledge and thank you for your
4		letter which was transmitted"
11:19 5		So, again, this type of feedback, in your view,
6		wasn't the feedback you were hoping to get, you
7		wanted
8	A	That's correct.
9	Q	Right, okay. And if we could go back to the
11:19 10		previous page, so this is April 2, 1990, and at
11		this point I think Mr. Asper is saying:
12		"We have no further submissions to make
13		at this time on behalf of Mr. Milgaard."
14		And I think, earlier on in his letter, he says
11:20 15		we're satisfied that Larry Fisher is the culprit.
16		So would it be correct that at this time, April
17		1990, once you get the Linda Fisher's statement,
18		that at that point, from your group's
19		perspective, you
11:20 20	А	We've done it.
21	Q	you've done it, you've had enough information,
22		you've presented it, and you had no further
23		information to pursue?
24	A	Correct.
11:20 25	Q	And, as far as your information of Larry Fisher,
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	1		were you do you recall what further work, if
	2		any, you were doing at that time, or was the Linda
	3		Fisher statement, in your view, enough, enough
	4		supporting evidence?
11:20	5	A	Oh I think, with all that we had, we felt we had
	6		given them everything they needed.
	7	Q	1
	8	A	And that they would follow up on it.
	9	Q	162387. This is a memo April 6th, 1990 where Mr.
11:21	10		Asper talks to Jim McCloskey where he brought him
	11		up to date. Would it be correct that after Mr.
	12		Henderson and maybe even before became
	13		involved, that you and Mr. Asper would consult
	14		with Mr. McCloskey from time to time for advice,
11:21	15		feedback on various matters by phone?
	16	A	Oh, yes, I was constantly in touch with him on
	17		whatever I was doing.
	18	Q	And Mr. Henderson told us that they did not take
	19		your son's case as a normal case sort of in their
11:21	20		normal stream of cases; is that correct?
	21	A	Yes, because Jim was strapped very thin and he
	22		didn't have a lot of resources or things like
	23		that, and there was so many cases in the States
	24		that he felt he just couldn't go out of the States
11:21	25		and come to Canada.



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	1	Q	And so would it be correct that it was a bit of an
	2		ad hoc relationship, that when you needed help you
	3		would go to him and he would try and give you some
	4		assistance from time to time?
11:22	5	A	Yes, yes.
	6	Q	But it wasn't a situation where you gave him sort
	7		of "here's everything, here is all the
	8		transcripts, here's everything we've done, you go
	9		to work and do the type of investigation you would
11:22	10		normally do if it was a case that Centurion
	11		handled from the outset"?
	12	А	No, they, they couldn't handle, they felt that
	13		they couldn't handle it in that manner, but he
	14		certainly stepped in and got up to the bat when it
11:22	15		counted.
	16	Q	And so, here, he appears to tell Mr. Asper that:
	17		"He urged that we",
	18		being your group:
	19		" not go public and start attacking
11:22	20		the Department of Justice until giving
	21		them a fair opportunity to investigate.
	22		However, he said that if we could wait
	23		no longer, he would be prepared to come
	24		to Canada with Henderson and get
11:22	25		involved."



	1		And I think this related to the Fisher
	2		information. Do you recall these discussions,
	3		and what was your view at the time, and what was
	4		being discussed about 'going public and attacking
11:22	5		the Department of Justice'?
	6	А	Well I felt that, I mean, here we had a situation
	7		where they have done their work for them and found
	8		the serial rapist that had committed the crime,
	9		and that they weren't doing anything with it
11:23	10		either.
	11	Q	Let me just pause there. When you say "did their
	12		work" did you expect, when you filed the 690
	13		application, the first application, that they
	14		would go out and investigate other perpetrators,
11:23	15		or go out and find information that might suggest
	16		someone else was the perpetrator?
	17	А	Yes, we did, I did.
	18	Q	And you thought, once you filed it, that they
	19		would then say "okay, we better"
11:23	20	А	I thought they would meet with us, I thought that
	21		they would hear everything we had, and that we'd
	22		have discussion back and forth. We thought that,
	23		you know, we'd sit down and talk with them,
	24		because there was just so much stuff to go over,
11:23	25		to expect them to sit and read and read and read
			1



1 this stuff would be very hard for anyone, but if 2 3 4 5 11:24 6 happened. 7 Q 8 9 11:24 10 11 12 in the crime"? 13 Α 14 11:24 15 16 17 18 19 11:24 20 21 22 23 area, if they'd gone back and looked at all of 24 those things they would certainly have come up 11:25 25 knowing there was enough to open up the case.

you could sit down with them and say "there's this point, this point, this point and this point", and they -- that would bring them up to speed and then they could work from that area, but that never But did you expect, though, that Federal Justice would send out investigators with the instructions "lookit, go out and see if someone else killed Gail Miller" or "go and start up another investigation about who might have been involved I think that if they'd got to the point where they had come out and looked at what we had and knew that it couldn't have been him, they had access, didn't they, to that report we talked about, they had access to all of that information, so -- that we didn't have access to -- so if they had gone out and looked at that, those kind of things, and what the police were thinking at that time, that it was a serial rape -- you know, that it could be the same one that had raped other people in the

	1	Q	Okay. But, again, just I think I understand,
	2		you are saying that you expected them to go out
	3		and investigate absolutely everything, including
	4		trying to identify if someone else may have
11:25	5		committed the crime?
	6	А	Yeah. I think we expected, once they saw the
	7		stuff that we had, that they would work with us,
	8		with my lawyers, in going through why they thought
	9		these different things were true, but there was no
11:25	10		working together.
	11	Q	And so, again on this issue of going public, was
	12		there was there one school of thought in your
	13		group, if I can call it that, that said "lookit,
	14		let's let them investigate Larry Fisher and not go
11:25	15		public and chastise them, let them do their work",
	16		and that appeared to be Mr. McCloskey's view, and
	17		saying "but, if you can't wait any longer, I'll
	18		come"?
	19	А	Yeah.
11:26	20	Q	That
	21	А	Well I had reached the stage where I wasn't
	22		prepared to wait any longer, it just seemed to me
	23		that I was being shattered by the experience of
	24		seeing my son being whittled away at this time,
11:26	25		and just getting more down and more down and more

1		down, and I wanted to just get out there and fight
2		back, and I thought that if we could somehow get
3		all this stuff out to the public, that it would
4		force the minister to act and do something about
11:26 5		it.
6	Q	And was there some thought in your group that
7		said, "okay, one option is to let it run its
8		course through the Justice Department
9		investigation, and that that might result in a
11:27 10		favourable reply", and the second group, being
11		your group, being, "no, I think the best way"
12		and let me back up. Your remedy was to get David
13		out of jail; correct?
14	A	That's right.
11:27 15	Q	And your thinking was the best and the quickest
16		way to do that would be to go public,
17	A	Go public.
18	Q	and when you 'go public' would be to criticize
19		Justice, get the public on side, and throw
11:27 20		everything out there
21	A	For people to see what the truth was and what we
22		had.
23	Q	And so your thinking was that that was the
24		quickest and best way to get your son out of jail,
11:27 25		would be to go the public route, as opposed to
		4

			1 age 30091
	1		staying
	2	A	Behind closed doors.
	3	Q	staying, staying the course with the
	4		application that had been filed, and simply
11:27	5		carrying on with and letting Justice do what
	6		they were doing or not doing, and what you were
	7		doing or not doing, but the legal path, if I can
	8		call it that; is that correct?
	9	A	Yes, that's correct.
11:28	10	Q	And so it was your decision, or certainly your
	11		thinking at the time, "I'm not prepared to
	12		continue down the legal path, I don't think it's
	13		working"?
	14	A	Because it's not going anywhere.
11:28	15	Q	Right, "so let's change course and let's go
	16		public"?
	17	A	Yes.
	18	Q	And let's talk about that. When you say "go
	19		public" what were you trying to do?
11:28	20	A	I felt, at that point in time, we had to get not
	21		just the local papers interested, like it couldn't
	22		be the StarPhoenix, it couldn't be the Winnipeg
	23		Free Press, it had to be The Globe and Mail, it
	24		had to be the Toronto Star, it had to be eastern
11:28	25		newspapers that were getting involved, it had to $\P$

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	1		go right across the country.
	2	Q	And were you looking at what were you hoping to
	3		achieve, what was the end gain here?
	4	А	Well, to show the information that we had and to
11:29	5		get the public realizing that nothing was being
	6		done, and an innocent man is still sitting in
	7		prison.
	8	Q	And would that be so that the authorities, or the
	9		people who could change that, who could allow
11:29	10		David to get out of jail, being the Justice
	11		Minister under 690, was the purpose then to
	12		influence her to respond favourably?
	13	A	Well, yes.
	14	Q	And so, again, going public would be
11:29	15	A	It would get us some answers, at least. We were
	16		getting nothing.
	17	Q	And so again, by going public, getting the media
	18		exposure, getting the public on side, you felt
	19		that that that would give you a more favourable
11:29	20		and a more expeditious response from the minister
	21		to your Section 690 application; is that correct?
	22	А	Yes, that's correct.
	23	Q	And so that was your thinking around this time,
	24		March-April of 1990, that "let's change our
11:30	25		course, let's not rely upon the system", if I can
			•



	1		call it that,
	2	А	Correct.
	3	Q	"to have this go through the minister, we're
	4		going to go public, we're going to get the media
11:30	5		on side, we're going to try to get national media,
	6		and we're going to put everything out there"?
	7	А	Yes. And that's when I started going to all the
	8		politicians as well.
	9	Q	And when we talk about what was being put out
11:30	10		there, I guess number one would be all the
	11		information you had gathered about the case;
	12		correct?
	13	А	Correct.
	14	Q	And that would be everything from theories,
11:30	15		thoughts, suggestions, facts, evidence, every
	16		you were prepared to put everything out there; is
	17		that correct?
	18	А	Yes, we were.
	19	Q	And
11:30	20	А	We held nothing back.
	21	Q	And so where something might be a theory, for
	22		example the bone-handled, the second hunting
	23		knife, I think you told us "yeah, that's what we
	24		thought, we were suspicious that there was
11:30	25		something there", I take it you would have had no
			4



			1 age 30700
	1		concerns with going to the media saying, "lookit,
	2		here's what we think, we think that there is a
	3		second knife and we think it went mysteriously
	4		missing, we think something sinister has
11:31	5		happened"?
	6	A	Yes.
	7	Q	And did you have any concerns about going public
	8		with what were theories, at the time, as opposed
	9		and
11:31	10	А	No, I think we did, we certainly put our theories
	11		forward
	12	Q	Umm
	13	А	to them.
	14	Q	And did you have any concerns that some of them
11:31	15		were just theories as opposed to
	16	А	We wanted them to test the theories, we wanted to
	17		get the interest alive enough that people would
	18		start going out. One thing, I didn't have the
	19		money to get out and research and do the things,
11:31	20		once CBC got involved, once CTV got involved, once
	21		the newspapers got involved and I was able to get
	22		reporters and talk with them and go with them, I
	23		mean I went out to Saskatchewan with the
	24		reporters, I showed them what we got, I introduced
11:32	25		them to people.
			1

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	1	Q	And so, again, am I correct that let's take the
	2		second hunting knife because we just talked about
	3		that as an example in going public with that to
	4		the media would one hope be that "here you go,
11:32	5		maybe someone from the media can follow up"
	6	A	Yes.
	7	Q	"and find out about this"?
	8	A	That's right, I had hoped to get them all digging,
	9		and that's really what happened because it was as
11:32	10		a result of the CBC that we came up with the
	11		Larry, you know, all the information on Larry
	12		Fisher.
	13	Q	And, again, so one of the objectives was saying
	14		"here you go, media, here's a theory, here's some
11:32	15		suspicion we have about this second hunting knife,
	16		we've already seen that it's been reported",
	17	A	Go find it.
	18	Q	"there is a suspicion, go find it." Now, in
	19		addition to information, you would have also made
11:32	20		public or made through the media you and Mr.
	21		Asper, Mr. Wolch and others allegations of
	22		wrongdoing against people; is that correct?
	23	A	Yes. And we have had our fact sheet
	24	Q	Right.
11:33	25	A	that you haven't got to yet.
			•

	1	Q	And so, again, let's look at the hunting knife.
	2		The allegation, either express or implied, would
	3		be that the police committed some misconduct there
	4		by hiding the knife?
11:33	5	A	Yes.
	6	Q	Mr. Caldwell committed some misconduct by hiding
	7		the knife or doing something;
	8	A	Yes.
	9	Q	correct? And that Mr. Tallis may have had, may
11:33	10		have had something to do with that as well?
	11	А	I don't know if that was on our fact sheet, I'd
	12		have to
	13	Q	Okay. But in any event and, again, this is
	14		just an example you'd agree that a number of
11:33	15		the theories or positions that you would have put
	16		out in the media would have involved a some
	17		notion of misconduct on the parts of various
	18		people?
	19	A	Yes.
11:33	20	Q	Right? But primarily witnesses, police, Crown,
	21		government, that that's sort of the stuff that you
	22		put out there in the public domain would include
	23		allegations of misconduct?
	24	A	Yes.
11:33	25	Q	And did you have any concerns about that, the fact
			<u> </u>

	1		that these might be out in the public domain and
	2		may, may not be correct?
	3	А	I think my concern was with my son, I think seeing
	4		what this was doing to him, what it was doing to
11:34	5		my family. We were all just going I can't tell
	6		you how the pain and the frustration and the
	7		anger and and one of the things that I have
	8		tried so hard in my life as a Christian Scientist
	9		is to not let anger consume me and tear me up, but
11:34	10		it was tearing me up at that point. I could see
	11		the demoralizing effect it was having on all of my
	12		family, it it was just something that we were
	13		all breaking down a little bit more and more at a
	14		time, and I just I'd reached the end of my
11:35	15		rope.
	16	Q	And, again, I think what Mr. Asper said and you
	17		heard his evidence, I think, on this point to
	18		the effect that at that point he, I think, chose
	19		David's liberty interest over anybody else's
11:35	20		interest in being in having an allegation made
	21		against them in the public domain that they had
	22		done wrong, that they had done
	23	A	I think that I was right with him on that, believe
	24		me.
11:35	25	Q	And so if it was a case of let's take the knife

			Page 30704
	1		example. If it turned out, for example, that
	2		there wasn't anything nefarious or sinister about
	3		the second knife
	4	A	Then I could apologize.
11:35	5	Q	No, no, but in that sense, that if it turned out
	6		that that got in the public domain, and whether it
	7		was the police, the Crown, or whoever ended up
	8		being maligned in the media over that issue or
	9		felt maligned in the media over that issue, would
11:35	10		your response be "well, that was the price that
	11		had to be paid for me to get my son out of jail";
	12		is that
	13	A	Well, if we hadn't have got it out in the media,
	14		there is no way my son would have been out of
11:36	15		jail.
	16	Q	And so, when you get it out into the media, would
	17		
	18	A	It was getting all of those extra investigators,
	19		if you will, out there.
11:36	20	Q	So the plus side would be you get some extra
	21		investigators, you pursue some of your theories a
	22		bit further, and perhaps you get some more
	23		information; would be one plus side?
	24	А	Yes.
11:36	25	Q	Another plus would be that you might influence the

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	1		politicians?
	2	A	Absolutely.
	3	Q	There might be more plus sides. On the downside,
	4		one downside might be that what's put out in the
11:36	5		media and I think Mr. Asper said once you go to
	6		the media you don't could control what they write
	7		but one downside would be that some information
	8		might get out there that might be unfavourable,
	9		may be unkind to people in the justice system or
11:36	10		the justice system itself that may or may not be
	11		correct, but it would get out there and that might
	12		cause some harm; that would be a downside, is that
	13		right?
	14	A	I don't know that I deliberately went out with the
11:35	15		thought of hurting anyone or doing damage to
	16		anyone, I think that I wouldn't do that, but I
	17		believed in what I found and the information that
	18		we were putting out there; otherwise, I wouldn't
	19		have put it forward.
11:36	20	Q	No, and I appreciate I think what you are
	21		saying is everything you put out there you
	22		honestly believed
	23	A	That's right.
	24	Q	either had a factual basis or was a theory that
11:36	25		you believed in; is that right?



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			<b>3</b> • • • • • • • • • • • • • • • • • • •
	1	A	That's correct.
	2	Q	And the media then would sometimes take these and
	3		perhaps pursue them further or put their own
	4	A	spin on it.
11:36	5	Q	Spin on them. And that sometimes by the time it
	6		ended up, and I think we've seen in some cases
	7		what gets reported once and by the third time
	8		sometimes has a little bit different connotation?
	9	A	Absolutely, one picks it up and one changes it and
11:36	10		it goes on and on.
	11	Q	And I think, is it fair to say on the dog urine, I
	12		think it went from probable possible, probable,
	13		likely to it was dog urine in various media
	14		reports and that might be an example where a
11:37	15		theory becomes a fact in the media?
	16	A	I think that's that's put it very well because
	17		I think that's what happened in many of the cases,
	18		and as David Asper pointed out, you have no way of
	19		controlling the media, they read all the different
11:37	20		stories and then they add their new headlines and
	21		it just goes.
	22	Q	And again, did you have any concern that one
	23		downside in going this way might have a negative
	24		impact on the minister; in other words, that
11:37	25		might did you have any concerns or discussion
			4

	1		that lookit, going this route might actually hurt
	2		our chances on the legal remedy?
	3	A	No. I think that it was quite clear that we
	4		weren't going anywhere with the normal route and
11:37	5		that something had to be done and this seemed to
	6		me to be the only way to do it.
	7	Q	And so again I think what you are telling us is
	8		that at the time you didn't is it fair to say
	9		you didn't see any downsides to this approach or,
11:38	10		if you did, they weren't at the top of your list
	11		of concerns that there might be some problems that
	12		come out of going this route?
	13	A	I think that I probably didn't have the
	14		understanding that David Asper had about what
11:38	15		would happen when you got involved in the media.
	16		I had no, absolutely no idea that it would
	17		escalate the way it did and the my phone just
	18		lit up, I mean, it was, I was working from five in
	19		the morning until one or two in the morning on
11:38	20		dealing with media and people, it was incredible
	21		what happened at that time, and so and it was
	22		incredible to see the jumps and the leaps that
	23		they made.
	24	Q	And what do you mean by that, incredible in the
11:38	25		sense that

			_
	1	A	Well, just that what you were just saying about
	2		how their stories sort of changed from one to the
	3		other and they got more and more and more.
	4	Q	Did you have concerns that some of the information
11:39	5		that had been regurgitating through the media that
	6		was becoming, that there may be a concern that
	7		some of that information may not be reliable and
	8		that if it's being relied upon, I mean, your
	9		purpose was to say lookit, minister, we're going
11:39	10		to get everything out there, we want to put
	11		pressure on you to re-open this case, we've given
	12		you information on the legal route, we're now
	13		putting it in the public domain, and did you have
	14		any concerns that once it got out in the media,
11:39	15		that by the time and obviously you wanted the
	16		politicians and the decision-makers and the
	17		Justice Department lawyers to read this
	18		information.
	19	A	Yes, we did.
11:39	20	Q	And did you have any concerns that, again, I think
	21		you said lookit, I don't know, I didn't know, like
	22		Mr. Asper knew, about what would happen once we
	23		got into the media. Once you got into it, did you
	24		have concerns that lookit, this information in
11:40	25		this type of forum we've lost a bit of control



1 over. 2 Yes, I did in a sense feel that we lost a bit of Α 3 control, but the upside of it was the story was 4 getting out there and there was going to be 5 pressure on the minister and that something would 11:40 have to be done, they couldn't shove us away in 6 the corner if all of Canada was seeing that 8 something wrong had been done to David, they were 9 going to have to deal with it, and the only way 11:40 10 that I could see that they could deal with it 11 would be to have them re-open the case. 12 And I think what Mr. Asper said, and I'm 13 paraphrasing a bit, but what I took from what he 14 said was that once we got this information out 11:40 15 there, at some point it didn't matter so much 16 whether or not it was accurate, I don't know if he said those words, but if it was sensational and 17 18 got headlines, the dog urine was one that said 19 lookit, not saying it's wrong, but it's out there, 11:41 20 it grabs headlines, it grabs attention and that's 21 a good thing? 22 Yes. 23 And so that did there come a point where, when you 24 are dealing with the media as far as what 11:41 25 information to put out, when to put it out, that

			Page 30710
	1		the sensational stories went further fastest?
	2	A	They did, and they took on a life of their own.
	3	Q	And again that would have been part of the plan or
	4		the strategy though, to get, to get this out there
11:41	5		as quickly and as loudly and as across the country
	6		as you could?
	7	A	Yes.
	8	Q	If we can go to 159873, please, and just sort of
	9	~	
			back on our chronology here, this is April the
11:41	10		10th, 1990, and again I think around this time,
	11		certainly this is the report that talks about the
	12		fact that Dr. Ferris' report had not been provided
	13		to Kim Campbell. Do you remember learning about
	14		that at some point, that she didn't have Dr.
11:42	15		Ferris' report?
	16	A	Right, and that's the one I was trying to give to
	17		her.
	18	Q	Right. And that's and was that a concern when
	19		you found out that she didn't have the report yet?
11:42	20	A	Yes, it was a grave concern to me. I had thought
	21		that she would be updated with all of the stuff
	22		that we were sending in.
	23	Q	And did you have any discussion with Mr. Asper or
	24		Mr. Wolch about their understanding of how and
11:42	25		when the minister would get a report from the $\blacksquare$



1		department lawyers and at what point she would get
2		the Dr. Ferris report?
3	A	I think we all believed that she would have got it
4		when it went in, that she would have seen those
5		things.
6	Q	So then when it was filed in December of '88
7	A	Yes.
8	Q	your understanding was that she would have got
9		a copy of it at that time?
10	А	Yes.
11	Q	Her personally as opposed to her staff or her
12		Department of Justice lawyers?
13	А	Right.
14	Q	And so did the fact that when you did learn that
15		she did not yet have a copy of the Ferris report,
16		and we'll see in May, the following month where
17		you try and give it to her, was that something
18		that caused you to again, and we've covered this
19		already, but was that another factor that caused
20		you to think that there was something wrong with
21		the Department of Justice or that something was
22		wrong with the process?
23	A	Well, I just really felt upset by it because I
24		thought something nothing was being done and
25		that we were being thwarted.
	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	2

	1	Q	And I probably should have shown you this article
	2		before I showed you your letter to Kim Campbell,
	3		which I think was actually, that was March
	4		20th. Is it fair to say that at the time when you
11:43	5		wrote to her and said lookit, I've lost faith in
	6		the justice system and I'm going the media route
	7		or the public route, that one of the factors would
	8		have been this information that, when you learned
	9		that she did not yet have personally a copy of the
11:44	10		report?
	11	А	Yes.
	12	Q	Did you at some later point come to understand how
	13		the justice lawyers dealt with the application and
	14		at what point she would get the report?
11:44	15	A	I found that out at the Inquiry.
	16	Q	And again, if you would have been made aware back
	17		at this time, let's say in April of 1990, or even
	18		at some prior date, of the information about how
	19		the Department of Justice dealt with these
11:44	20		applications; namely, that justice lawyers do an
	21		investigation and prepare a report and the
	22		information goes up to the minister and the
	23		minister gets the information, your application
	24		with the Justice Department report, and it's at
11:44	25		that point that the minister considers the matter $\P$



	1		after it has been reviewed by her staff lawyers,
	2		would that have changed your thinking at all? If
	3		you would have been aware that the reason she
	4		doesn't have it is because her lawyers are doing a
11:45	5		review and once they are done the review and once
	6		everything is in and analysed, they will send it
	7		up to her with the report, would that have
	8	A	I think that would have been very helpful, if they
	9		had sent a letter to the family or to the lawyers
11:45	10		stating that this is the way the procedure
	11		functions, but not knowing it, you know, you are
	12		in the dark.
	13	Q	And I guess in the dark, did you then assume
	14	A	the worst.
11:45	15	Q	Assumed the worst?
	16	А	I did.
	17	Q	And 327678, I think your son David also felt the
	18		same way and assumed the worst
	19	А	Yes, he did.
11:45	20	Q	with respect to the Ferris report. And again,
	21		this is April 17th, and this is where:
	22		"I can't understand why they're working
	23		that way. My lawyers tell me to take it
	24		easy and relax, but it's difficult."
11:46	25		And then:



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	1		" Asper, said his client "believes
	2		the system is a sham and I can see his
	3		point of view."
	4		Asper said Ferris's report has
11:46	5		been on file for more than a year
	6		without any indication that it has been
	7		considered sufficient to grant a new
	8		trial."
	9		And again it would appear that your David, David
11:46	10		Milgaard, was of the same view as you about being
	11		in the dark and not knowing how justice
	12	A	was functioning.
	13	Q	What about David Asper, do you recall what his,
	14		whether he did you ask him about this, did he
11:46	15		tell you
	16	A	I think he was just as frustrated as we were.
	17	Q	And what about Mr. Wolch, do you recall would
	18		you have had those discussions with him or would
	19		you have been dealing with Mr. Asper, about this
11:46	20		issue about what, how does the Justice Department
	21		deal with this and what are they doing?
	22	А	I don't remember having that discussion with
	23		Hersh.
	24	Q	333384, this is April the 20th, and again this is
11:47	25		Mr. Williams recording what Mr. Asper told him in
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	1		a call and advised:
	2		" that Mrs. Joyce Milgaard was
	3		returning from her European trip sooner
	4		than anticipated. He also said that he
11:47	5		had learned that Joyce Milgaard had told
	6		members of the press (in Saskatchewan or
	7		Manitoba I assume) details of the
	8		alleged involvement of Larry Fisher in
	9		the death of Gail Miller."
11:47	10		And we heard some evidence from Mr. Asper that
	11		you had given information about Larry Fisher's
	12		involvement to the media, some media outlets on
	13		some type of, I think embargo or some type of
	14		arrangement. Do you recall him giving that
11:48	15		evidence, Mr. Asper?
	16	А	Yes, I believe I do.
	17	Q	And can you tell us maybe just your recollection
	18		about who in the media did you tell about Larry
	19		Fisher and when did you tell them?
11:48	20	A	That's a hard question. I can't remember exactly
	21		who I I know that of course Dan knew everything
	22		that was going on, David Roberts of The Globe and
	23		Mail, they were involved in it, CBC, Carl Karp,
	24		Cecil Rosner, they were the ones that dug up a lot
11: <b>4</b> 8	25		of the information, Peter Edwards from the Toronto



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	1		Star when I was able to get him out and working on
	2		the case.
	3	Q	So now we know that nothing was published, I think
	4		we'll see in May, May 10th John Harvard raised it
11:49	5		in the House of Commons committee when the fact
	6		that there was another suspect being investigated
	7		came up and it wasn't until June 22nd of 1990 that
	8		the CBC reported the name?
	9	А	That's right.
11:49	10	Q	I guess what I'm trying to find out, is it correct
	11		that weeks or months prior to that time you would
	12		have shared this information with the media, but
	13		on some basis where you asked them not to publish
	14		it; is that right?
11:49	15	A	Yes. We felt that it was important that it not be
	16		published because we didn't want to, we wanted to
	17		give them a chance to get out and interview Larry
	18		Fisher.
	19	Q	And when you say we, who are you talking about?
11:49	20	А	The team.
	21	Q	So was Mr. Asper involved in these discussions or
	22		these arrangements?
	23	А	Oh, I think we were all involved in that, and
	24		Hersh would have been involved in that as well.
11:49	25	Q	And so let me understand this. The plan would be $\P$



	1		again, would it be sometime in March or April of
	2		1990, around after you talked to Linda Fisher?
	3	A	Yes, that we were giving them the information,
	4		preparing them for it, but that we couldn't give
11:50	5		them the actual.
	6	Q	Did you give them the did you give them
	7		Fisher's name, the media?
	8	A	No, I don't believe we did, because actually
	9		Fisher's name in a sense came through that report
11:50	10		from CBC. I mean, we had the report, we had the
	11		anonymous phone call, but the one piece of paper
	12		that I recall as the most relevant was that
	13		statement that we got from the CBC listing all the
	14		dates of those rapes and everything and seeing
11:50	15		where they were and all the information
	16		surrounding them. When we got that, that was such
	17		an important document.
	18	Q	And I think that was July 2nd or July 4th of 1990
	19		that Carl Karp I think what you are talking
11:51	20		about is David Asper sent a memo to Hersh saying
	21		Carl Karp phoned me and gave me the information
	22		and I think that's when you learned that the rapes
	23		had been committed in Saskatoon. Is that the
	24		document?
11:51	25	A	Yes, that's the one I'm thinking about.

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	1	Q	Right.
	2	А	But prior to that we also had information, we had
	3		the dates, we had the dates, the dates prior to
	4		Gail Miller and the dates after Gail Miller.
11:51	5	Q	Right.
	6	A	The fact that we thought they were in Regina was
	7		incidental, I mean, the fact is that this was the
	8		serial rapist that was in the area at the time
	9		that she was killed.
11:51	10	Q	Now, I had understood Mr. Asper's evidence, and I
	11		could be wrong on this, that you would have given
	12		the media Larry Fisher's name, but with
	13		instructions that you can't publish his name
	14		because we do not want to interfere with the
11:52	15		investigation that's being conducted?
	16	A	I believe that's correct.
	17	Q	Okay. And earlier you had said you don't think
	18		you gave them the name, and I'm just
	19	А	Well, I could have, I can't say that I didn't, but
11:52	20		don't forget, David dealt with the media.
	21	Q	David Asper?
	22	А	Yes, a lot more than I did in the sense of any
	23		releases or any information that was going out.
	24		He had daily contact with Dan Lett.
11:52	25	Q	Would it be fair to say that you would have given
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	1		Dan Lett the name of Larry Fisher and Linda
	2		Fisher's statement and all of that information?
	3	A	I believe that Dan received that from
	4	Q	From either you and/or Mr. Asper?
11:52	5	A	That he did receive it from David Asper, but I
	6		would have had no qualms about giving it to him,
	7		not at all.
	8	Q	And I guess I'm trying to understand the reason
	9		that Dan Lett wouldn't have run a story right
11:52	10		after getting it saying here's all the
	11		information, and I'm assuming that
	12	A	We would have told him you can't.
	13	Q	Okay, that's the point I'm trying to get at.
	14	A	Oh, yes, definitely, we would have said you can
11:53	15		know this, we'll tell you who it is, but, you
	16		know, you can't print it.
	17	Q	And I think that's what Mr. Asper said, and I
	18		think he attributed it more to you than to him,
	19		that the plan was to get these reporters out there
11:53	20		digging on Larry Fisher?
	21	A	Yes.
	22	Q	So here's the information we have, here's the
	23		name
	24	A	You get out and get some stuff.
11:53	25	Q	And so that would have been the plan?
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			, age 60, 20
	1	A	Yes.
	2	Q	To release the media to go gather the information,
	3		but with instructions that don't publicize the
	4		name and don't publicize the fact that Federal
11:53	5		Justice is investigating
	6	A	That's right.
	7	Q	this fellow. And then I think we see that
	8		Mr. Harvard I think
	9	A	Then blew it.
11:53	10	Q	I was going to use kinder words, but Mr. Harvard
	11		disclosed this
	12	A	in the house.
	13	Q	In the house, and so that became public?
	14	A	Yes.
11:53	15	Q	And then I think in June, or June 22nd the CBC
	16		published a story with Larry Fisher's name?
	17	A	Yes.
	18	Q	And Mr. Asper, I think his evidence was, somehow
	19		it got to the point where either the media weren't
11:54	20		prepared to continue not reporting it or they
	21		found information on their own. Do you remember
	22		how that came about?
	23	А	They found information on their own.
	24	Q	And were able to run the story without relying on
11:54	25		the information you gave them?
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	1	А	That's right.
	2	Q	When you gave the media this information in
	3		March would it be March or April, '90; correct?
	4	A	Probably.
11:54	5	Q	Is it fair to say that you knew at some point they
	6		would have a story about it, I mean, that was the
	7		objective?
	8	A	Oh, yes.
	9	Q	And is it fair to say that if Joyce Milgaard had
11:54	10		her way, you would have had them publish the story
	11		right away?
	12	A	Yes.
	13	Q	And that Mr. Asper, Mr. Wolch or others said
	14		lookit, hold off publicizing it to give Mr.
11:54	15		Pearson an opportunity to do some of his own
	16		investigation?
	17	A	Yes.
	18	Q	And you agreed for a while; is that correct?
	19	A	For a while I agreed.
11:55	20	Q	And here is, just if we can scroll down, so again
	21		here's April 20th where Mr. Asper is telling Mr.
	22		Williams that you had told members of the alleged
	23		involvement, so we know at some time prior to
	24		April 20th, 1990 if we can just scroll up,
11:55	25		please that at least prior to April 20, 1990



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	1		you had told the media, or some media about Larry
	2		Fisher's involvement?
	3	A	Yes.
	4	Q	And then scroll down, Mr. Asper says:
11:55	5		"He expressed some concerns about the
	6		impact, if any, that those revelations
	7		may have on the outcome of our
	8		investigation and upon Mr. Milgaard's
	9		application. He indicated also that his
11:55	10		firm preferred that those allegations be
	11		kept confidential until they could be
	12		thoroughly investigated. He expressed
	13		some concerns about the risk of
	14		defamatory libel that the public airing
11:56	15		of these concerns could attract."
	16		And would Mr. Asper have concerns about you
	17		giving this information to the media and it
	18		becoming in the public domain for the reasons
	19		stated here?
11:56	20	A	I had no awareness of this.
	21	Q	Of his concerns?
	22	А	Of his concerns, no.
	23	Q	What is your recollection of Mr. Asper's
	24	Α	I don't think he ever told me I could get, be
11:56	25		libeled for doing what I was doing.
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	1	Q	What's your recollection of Mr. Asper's advice or
	2	~	position to you about you or he or your group
	3		giving the Larry Fisher information to the media
	4		at this time, prior to Mr. Pearson completing his
11:56	5		investigation? Do you remember what position Mr.
	6		Asper took on that?
	7	A	Well, I think that he definitely felt it should be
	8		kept confidential and that the information
	9		shouldn't go out there and I felt that I trusted
11:56	10		the reporters that I was dealing with enough that
	11		I could give them the information and know that I
	12		could trust them not to print it. We built up a
	13		relationship over the years, these reporters, you
	14		know, so that I would often give them information
11:57	15		and say, well, hold off on that until we see how
	16		it goes, you know. We were working together.
	17	Q	It appears from this memo that Mr. Asper may have
	18		had some concerns that justice and the RCMP might
	19		have been taking a negative view of your group
11:57	20		giving this information to the media and that in
	21		disclosing this to Mr. Williams, Mr. Asper was,
	22		may have been concerned about that, saying that it
	23		might somehow be viewed negatively by the
	24		authorities, and is it correct to say that that
11:57	25		would not have been a concern of yours, you felt



	1		it more important to get this information
	2	А	I did.
	3	Q	to the media and if it ruffled feathers or
	4		upset Mr. Williams or Mr. Pearson, that was not as
11:57	5		much of much concern to you; is that correct?
	6	A	No. If it was just feelings, then I would
	7		probably have thought I was
	8	Q	Well, maybe I asked the question poorly, not just
	9		feelings, but again it talks about impact on the
11:58	10		outcome of the investigation and upon David's
	11		application to the minister. In other words, I
	12		think what is being stated here is that the
	13		concern that your steps, being your group's steps,
	14		in disclosing this information to the media, the
11:58	15		concern would be will that have a negative impact
	16		on the authorities' investigation of Larry Fisher
	17		and your son's application under Section 690, and
	18		so that, I guess that's the competing interest
	19		here, if we give this to the media, we get a
11:58	20		benefit because they go out, but are we going to
	21		negatively impact the legal route we're going;
	22		namely, the fact that Rick Pearson is
	23		investigating Fisher and the fact that the
	24		Department of Justice is assessing our
11:58	25		application. Was that something that was on your

		Page 30725 ————
1		mind at all?
2	А	I don't think so. I think my position was pretty
3		clear, I had been investigating for a long time by
4		myself, I felt that I needed more help, the other
5		route didn't seem to be going anywhere, and by
6		giving this information to the media with an
7		embargo on it with the idea that they could start
8		getting into it and find out the truth and that I
9		would get that feedback from them. Most of them
10		didn't publish anything without talking to me
11		about it, I knew a lot of what their stories were
12		going to say before they were published.
13	Q	Did you have more confidence in your reporter, not
14		allies, but your reporter I don't know, you
15		said you trusted these people?
16	А	Yes.
17	Q	Whatever group of reporters, you had developed a
18		relationship with them?
19	A	Yes.
20	Q	Did you trust them more than you trusted Mr.
21		Pearson?
22	A	Absolutely.
23	Q	In investigating Larry Fisher?
24	А	Yes.
25		MR. HODSON: This is probably an
	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	2 A 3 4 5 6 7 8 9 10 11 12 12 13 Q 14 15 A 17 Q 18 19 A 20 Q 21 Q 21 22 A 23 Q 24 A

	1		appropriate spot to break for lunch.
	2		(Adjourned at 12:00 p.m.)
	3		(Reconvened at 1:32 p.m.)
	4	BY I	MR. HODSON:
01:32	5	Q	Mrs. Milgaard, before noon we had talked about you
	6		had went through your desire to go to the media or
	7		the public to get your remedy, and we talked a bit
	8		about the advantages and the disadvantages of
	9		going to the media with all of the information and
01:32	10		getting them to run with it. Was there also a
	11		benefit, from your perspective, in that the media
	12		listened to what you had to say?
	13	А	Yes.
	14	Q	And was there a sense of frustration, on your
01:32	15		part, that others hadn't to that point?
	16	A	I think that was a big part of it, and not only
	17		did they listen, but they listened
	18		sympathetically.
	19	Q	And so, in some sense, you going and telling your
01:33	20		story or David's story to the media, for you
	21		personally, had some benefits; is that correct?
	22	А	Very cathartic, I think.
	23	Q	If we could go to 056764, which is part of the
	24		Pearson 056743. And, again, this is an April
01:33	25		discussion between Mr. Pearson and Mr. Asper again

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	1		with this issue of the Fisher investigation, and
	2		here Mr. Pearson tells David Asper that he:
	3		" had contacted Fisher and that
	4		ongoing inquiries were being made."
01:33	5		Were you aware around this time, then, that
	6		Sergeant Pearson had, in fact, made contact with
	7		Larry Fisher and had interviewed him on a couple
	8		of occasions?
	9	A	I don't believe I was. I think, at that time I
01:34	10		was in England, and so I wasn't in daily contact
	11		with David at that point.
	12	Q	And that's David Asper; correct?
	13	A	Yes, correct.
	14	Q	And that when you got back from England, I think
01:34	15		this talks about that you were coming home from,
	16		early from England:
	17		" and it is suspected that she is
	18		going to press ahead about the inaction
	19		of the Federal Justice Department on
01:34	20		their Section 690 application and
	21		Asper stated he felt better knowing that
	22		Fisher may cooperate with us."
	23	A	That's very interesting, when I read that, because
	24		I got a phone call from David Asper in England,
01:34	25		and about a month prior to that the thought had

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	1		come to me to resign my position.
	2	Q	With whom?
	3	A	With the nursing service that I was working for.
	4	Q	In England?
01:35	5	A	In England.
	6	Q	Okay.
	7	A	And it came very strongly that I should do this,
	8		and I walked in and resigned, and she said "well,
	9		if you could stay to the end of the month, that
01:35	10		would be very helpful". The end of the month
	11		came, and I'd heard nothing, and I was about to go
	12		and tell them that I would continue working when I
	13		got a phone call from David Asper.
	14	Q	And what did he tell you?
01:35	15	A	He said "Joyce, you have got to come home right
	16		away", he said, "they're doing absolutely nothing,
	17		we're getting no information back from the Justice
	18		Department, you are going to have to come back".
	19		And, because I'd had that insight to put in my
01:35	20		notice, I was available to leave right away and
	21		come back, and I did come back.
	22	Q	And
	23	A	So when he is saying, there, that he suspected I'm
	24		going to press ahead about the inaction, he knew I
01:36	25		was going to press ahead, because he had told me



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	1		to come home to do just that.
	2	Q	I see. And I had maybe understood from the
	3		documents or Mr. Asper's evidence that it may have
	4		been the other way around, that you were coming
01:36	5		home, but you are telling us he asked you to come
	6		back?
	7	A	He phoned me and very specifically told me nothing
	8		was happening with the Justice Department, and we
	9		were going nowhere, and he wanted me to come back.
01:36	10	Q	And would it likely be this is a discussion
	11		around April 23rd or 22nd of 1990; would that be
	12		about the time frame of the call then? Maybe in
	13		relation, Linda Fisher you interviewed March 9th,
	14		10th, 11th; did you then go to England after that
01:36	15		at some point?
	16	А	I don't know the dates.
	17	Q	All right.
	18	A	But I know at the time that he called me back,
	19		that I know that he called me in England and said
01:37	20		I had to come back, and I remember because I'd
	21		already asked to have the time off and figured I
	22		was going to have to turn around and go back on
	23		it.
	24	Q	I see. So you had planned on staying in England,
01:37	25		Mr. Asper phoned and said he needed you back?
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	1	А	Yes.
	2	Q	And what, what did he, what did he need you back
	3		for?
	4	A	Well, I presume to go out with the media again, to
01:37	5		go out and try to stir things up.
	6	Q	And is that what you would have discussed with Mr.
	7		Asper or was that your understanding of
	8	A	That was my understanding of the call, that we
	9		weren't going anywhere, and we'd needed to get
01:37	10		busy again.
	11	Q	And then, here, Pearson says:
	12		"I advised Mr. Asper that unnecessary
	13		publicity would possibly hamper the
	14		police investigation and that there is a
01:37	15		certain danger in having Fisher's name
	16		become subject of a press release, and
	17		this will have no positive effect on our
	18		inquiries. I explained to Mr. Asper
	19		that my role at this point is to find
01:37	20		the truth and to gather evidence, not
	21		become embroiled in a press release,
	22		which in my opinion would serve no one's
	23		interest at this time."
	24		Did Mr. Asper provide you with this information
01:38	25		that he received from Sergeant Pearson?
			4



	1	A	No, I think maybe the information when he called
	2		me about England was before this.
	3	Q	What about when you arrived back, did you ever
	4		do you recall Mr. Asper saying to you that there
01:38	5		was a danger of having Fisher's name becoming
	6		subject of a press release and it will have no
	7		positive effect?
	8	A	Yes, I remember us discussing that, and I don't
	9		think we released his name at that point in time.
01:38	10		His name, if and you can correct me if I'm
	11		wrong from the record but I believe his name
	12		was released by John Harvard.
	13	Q	I think John Harvard brought up the fact that
	14		there was a suspect, I don't think he named Larry
01:38	15		Fisher, I think that was named June 22nd by the
	16		CBC.
	17	А	Oh, okay.
	18	Q	I think is what the record shows.
	19	А	Okay. I thought that it was him, then, because
01:39	20		well, maybe it was because I was thinking that
	21		when he mentioned it, the person that did it, like
	22		Larry Fisher that did it, when he rec said that
	23		there was a serial rapist in the area at that
	24		time, Fisher would have known who he was talking
01:39	25		about; wouldn't he have?
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	1	Q	I think that was the evidence that we heard from
	2		Sergeant Pearson, that Larry Fisher was aware that
	3		
	4	A	That
01:39	5	Q	your group was investigating him and the RCMP
	6		were investigating him.
	7	А	Right.
	8	Q	Yes.
	9	A	I think that that's probably where I got that
01:39	10		idea.
	11	Q	Go to 001818. And this is a memo April 26th, 1990
	12		from Mr. Asper to Mr. Wolch, and he says:
	13		"As you know, the Milgaards
	14		are becoming more and more anxious about
01:39	15		David's fate. To that end,
	16		Mrs. Milgaard has now returned from
	17		England, and is once again focusing her
	18		energy on David's case. The original
	19		reason for her return was that they were
01:40	20		prepared to 'go public' with the
	21		entirety of the case in an effort to
	22		publicize their plight.
	23		Based on my most recent
	24		conversation with Sergeant Pearson,
01:40	25		however, I have been able to dissuade
			•



	1		them from doing anything at this point."
	2		Do you recall that happening when you returned
	3		from England?
	4	А	Yes, I do recall that. What's the date of this?
01:40	5	Q	April 26th of 1990. So if I can just run through
	6		this and tell me if this is right; you went to
	7		England after you got the Linda Fisher
	8		information, you went there to work?
	9	А	Yes.
01:40	10	Q	At some point during that time Mr. Asper called
	11		you, in probably early April 1990, and said "we
	12		need you back here, nothing is happening", you
	13		came back at his request, and once you got here he
	14		said "well hold on a minute here",
01:40	15	А	"Pearson is doing something, we want you to hold
	16		back".
	17	Q	Does that sound right as far as
	18	А	That sounds right, uh-huh.
	19	Q	And then it talks scroll down, please it
01:40	20		says:
	21		"Joyce Milgaard contacted me on
	22		Thursday, April 26th, to advise that she
	23		had called Mr. O'Sullivan, who is the
	24		Warden at Prince Albert Penitentiary.
01:41	25		According to Joyce, O'Sullivan concurs



Α

that she could very well be an Ace in the hole for the investigator in terms of obtaining a confession from Larry Fisher. The Warden also indicated that he would be prepared to make any arrangements required to have Joyce attend at the prison."

And is that accurate?

Yes, that's accurate. And I must say, I talked about a warden at one time in my testimony, it certainly wasn't this man.

Mr. O'Sullivan was such a good warden. When David went to Prince Albert there, and we'd had a lot of difficulties with him, he had a meeting with me and with David, and I was trying to get him transferred to Winnipeg where we would be -- or to Stony Mountain where we would be close by, and he sort of laid the ground rules out. "Give me a year", he said, "no misbehaving, keep your nose clean, get your studies on board, and if you do that, within a year I'll see that you're transferred to be near your family".

Now he had a reputation for being fair and honest with the prisoners, so David believed him and he just settled right down, and

	1		within a year Mr. O'Sullivan got him transferred.
	2		So I had a good rapport with
	3		him, and so with this Fisher information I called
	4		him and talked to him about and told him what
01:42	5		was happening and updated him and everything, and
	6		he thought it might be very powerful, that I could
	7		be the ace in the hole, and we talked about that.
	8		And, again, he strongly cautioned me that it would
	9		be contrary to what they were saying, but I felt
01:43	10		that he should pass that information I was
	11		trying to get them to move and to move faster.
	12	Q	So let me just back up. David was at Stony
	13		Mountain at this time; correct?
	14	A	No.
01:43	15	Q	What
	16	A	Not at this time when oh yes, oh yes, he would
	17		be in Stony Mountain at this time.
	18	Q	And so
	19	А	But I was talking about the warden having a good
01:43	20		relationship
	21	Q	that was from before?
	22	А	from before, yes.
	23	Q	And so am I right that you contacted the warden
	24		with a view to you going up to the Prince Albert
01:43	25		Penitentiary and interviewing Larry Fisher
		1	<b>_</b>

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1		yourself?
2	А	Yeah. And I had told him what, you know, what had
3		been going on, and how we had found this
4		information, and all the details on it.
01:43 5	Q	Now, and I think you said you were trying to get
6		people moving, was it was the contact made
7		knowing that that information would get to the
8		authorities, or did you genuinely plan on going to
9		interview Larry Fisher yourself?
01:44 10	A	Well it wasn't so much as maybe by myself, but I
11		thought maybe I might even go with the police
12		officer, but that because I was the mum of
13		someone, that maybe Larry Fisher, having me there
14		as the mum, that he might might confess more
01:44 15		easily.
16	Q	Which police officer were you thinking of going
17		with?
18	А	Well, the one that David was telling me was
19		working on it.
01:44 20	Q	Okay. So you contacted the warden saying maybe
21		you should go in, or to see if the warden would
22		let you go and interview?
23	А	Yes, to see if he could set it up. Because, you
24		see, you are not on a visiting list, you are no
01:44 25		relation or anything like that, whether it was
	II .	



	1		something we could do together or whether I could
	2		get in there on my own and actually interview him
	3		and sort of play the card that we knew about all
	4		these other things and that if he would come
01:44	5		forward, you know, that it might go much better
	6		with him and
	7	Q	So was your intent to go in there, we saw in your
	8		interview with Linda Fisher yesterday the tape
	9		where you and Mr. Henderson were brainstorming
01:45	10		about ideas of
	11	A	Yes.
	12	Q	what cards you might play with Mr. Fisher to
	13		try and get him to confess, was that what you were
	14		thinking here, that
01:45	15	A	Possibly.
	16	Q	And then you go on to talk about asking David to
	17		communicate this to Sergeant Pearson and advise
	18		that you are available and
	19	A	That I was prepared to go with him and do anything
01:45	20		I could to help.
	21	Q	Now was this a bit of a departure from what you
	22		had thought earlier you said that, earlier this
	23		morning you said that in March or in April you
	24		were not prepared to rely upon the police to do
01:45	25		the investigation, you were going to do your own
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			Page 30738 ————
	1		investigation?
	2	A	Right.
	3	Q	Was this a departure, or was this the only way you
	4		could get in, is if you had a police officer with
01:45	5		you?
	6	А	No, I think that in a sense, from what David had
	7		been telling me about what he had been doing with
	8		Pearson, that he felt that he was a very
	9		principled man and that we'd be all right working
01:46	10		with him, I think I had that sort of assurance
	11		from him.
	12	Q	And so your view maybe changed a bit, then, at
	13		this time, that maybe you would work with
	14	A	That I would work with Pearson, but not Eugene
01:46	15		Williams, I would have nothing to do with him.
	16	Q	And then, if we can scroll down, it says:
	17		"Finally, both Joyce and David",
	18		and I'm presuming that's David Milgaard
	19	А	Yes.
01:46	20	Q	" have imposed a deadline of May
	21		7, 1990. They are prepared at that time
	22		to go public, regardless of the stage of
	23		the investigation, as they feel they can
	24		no longer wait for what to them seems to
01:46	25		be an interminable process. They are



1		very adamant about this, and are
2		prepared to go forward over our advice
3		to the contrary?"
4		And is that accurate?
01:46 5	A	That is correct.
6	Q	And did was Mr. Asper's advice to you "don't go
7		public", or was he, where was he on this, as far
8		as your discussion?
9	A	Well, truthfully, I think he really wanted to use
01:47 10		me to pressure the department into doing
11		something.
12	Q	And when you say "use you" to go to the department
13		and say "lookit, I'm trying to hold her back, but
14		she is the one"
01:47 15	A	Yeah.
16	Q	"and I can't control her any more", and use you
17		in that way to put pressure on Sergeant Pearson
18		and Mr. Williams?
19	A	I believe that.
01:47 20	Q	And why do you say that, what causes you to and
21		was that discussed with him?
22	A	He never out and out said that, but that was the
23		feeling that I got, that he was sort of using the
24		fact that I was back as a ploy to get them to act
01:47 25		right away rather than taking weeks and weeks and
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	1		weeks the way other things had done.
	2	Q	And so he could, in dealing with Pearson and
	3		Williams, be cooperative but saying "lookit, my
	4		client who"
01:48	5	А	Isn't.
	6	Q	"I can't control isn't",
	7	А	That's right.
	8	Q	and use that to get the best of both; to, one,
	9		be cooperative; but two, being uncooperative; is
01:48	10		that fair?
	11	A	Correct.
	12	Q	If we can go to 155505. This, Dr. Peter
	13		Markesteyn, this is a May 1 letter we have been
	14		through. We haven't heard from Dr. Markesteyn yet
01:48	15		but I think we will. Can you tell us your
	16		recollection, here, about how and why he became
	17		involved in the matter? This would be May 1, and
	18		he gave his report about a month later, he was the
	19		forensic
01:48	20	A	Wasn't it him that came forward that knew
	21		something about the other report and was very
	22		interested in it?
	23	Q	Yeah, I'm not sure.
	24	A	I believe so. I think that somehow we got a
01:49	25		connection with him that way, and it seems to me
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	1		that he was following the story, if you will, and
	2		I think that, that he came forward and offered his
	3		help.
	4	Q	And so then did you ever have any dealings with
01:49	5		him or did David Asper?
	6	А	No, David Asper had dealings with him, so I'm
	7		I'm not as clear on that as I should be, probably.
	8	Q	And I think we see from the record that he was
	9		asked to review the Ferris report, is that right,
01:49	10		and give another report?
	11	A	Yes.
	12	Q	And do you recall what was the reason for getting
	13		another report, was there any strategy behind
	14		that, or was it simply to get more information?
01:49	15	A	I think it was to make sure that the Ferris report
	16		was validated.
	17	Q	Did you have concerns about the validity of Dr.
	18		Ferris' report, or did Mr. Asper have those
	19		concerns?
01:50	20	А	I don't think for one minute that my David and I
	21		had any concerns about the validity, but because
	22		it was taking so long, I thought we should really
	23		check it out.
	24	Q	Do you recall any discussions with Mr. Asper or
01:50	25		Mr. Wolch where they expressed to you any concerns

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	1		that either they had, as your lawyers, or they had
	2		heard directly or indirectly from any source about
	3		concerns about the validity of the Dr. Ferris
	4		opinions?
01:50	5	А	There is something in the back of my mind that
	6		tells me they had suspicions that the report was
	7		not being looked at favourably. Where they got it
	8		from, I have no idea, but I think that that's why
	9		umm, could it well, when you hear from
01:50	10		Mr. Mark Dr. Markesteyn, maybe he had come in
	11		with something about it, I don't know, I honestly
	12		do not know.
	13	Q	And so, again, you and David Milgaard didn't
	14		let me back up. You have some memory of being
01:51	15		aware of some concerns being expressed about the
	16		validity of Ferris' report
	17	A	At that time.
	18	Q	at some point before Markesteyn is engaged; is
	19		that right?
01:51	20	A	That's right.
	21	Q	And you think that came, or you heard that via
	22		Mr. Wolch or Mr. Asper, and they got it from
	23		somewhere?
	24	A	I must have.
01:51	25	Q	Now we saw the other day that the CBC Fifth



	1		Estate, we saw that one article where your David
	2		was told by someone at the Fifth Estate that they
	3		had someone in Toronto, I think a forensic
	4		pathologist, look at it, and dismissed or disputed
01:51	5		Dr. Ferris' opinion; you will recall we had looked
	6		at that earlier?
	7	A	I recall that.
	8	Q	Right.
	9	A	And it may have been, because of that, that we
01:51	10		were looking elsewhere.
	11	Q	And do you recall whether or not Mr. Wolch or Mr.
	12		Asper heard anything directly or indirectly from
	13		the Department of Justice that they had concerns
	14		about Dr. Ferris' report?
01:52	15	A	No, I don't believe that they'd heard it directly
	16		from Justice, it I think, now that you are
	17		refreshing my memory, that it was probably as a
	18		result of that other information.
	19	Q	Do you recall any discussions or brainstorming
01:52	20		trying to figure out if the reason for the
	21		15-month time period or the 12-month time period
	22		you referred to earlier was that maybe the Dr.
	23		Ferris report was not what you thought it was; do
	24		you remember any discussions of that?
01:52	25	А	Well, I think we were concerned because no one had



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	1		been out to see Dr. Ferris.
	2	Q	And
	3	A	No one had even been out to talk to him, so it was
	4		like you send this information in and they don't
01:52	5		even bother to contact him.
	6	Q	And, again, I'm trying to identify if you'd made
	7		inquiries when I say "you" or your counsel did
	8		to determine whether there was something wrong
	9		or suspect or disputed in the Ferris report that
01:53	10		might have informed you more as to why they had
	11		not yet been to talk to him or why you hadn't
	12		heard anything back directly?
	13	А	I honestly don't recall that, it it's possible
	14		that it was part of it but I think that, at the
01:53	15		time when that information came up that the Fifth
	16		Estate couldn't document that, I think that made
	17		us think "what's going on here, we need to" but
	18		I also, in the back of my mind, somehow think that
	19		Markesteyn came to us, I don't know that we went
01:53	20		to him. There is something there telling me that
	21		and I'm not sure of it.
	22	Q	And we certainly see, and have seen in the record,
	23		the letters and the comments in the press by Mr.
	24		Asper for many months subsequent about his belief
01:53	25		of what the Ferris report states and proving



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	1		innocence?
	2	А	Yes.
	3	Q	And do you recall Mr. Asper ever expressing to you
	4		any doubts about the validity of the Ferris
01:54	5		opinion, namely that the Ferris opinion proved
	6		David's innocence?
	7	A	No, I think we were all very strong in believing
	8		it proved his innocence.
	9	Q	And 213579. And this is a letter from David May
01:54	10		9th, 1990 to the minister, and would it be fair to
	11		say that as far as David was concerned your
	12		David that the information he received about
	13		what was happening with his application, that it
	14		would come from you and Mr. Asper and Mr. Wolch;
	15		is that right?
	16	А	Yes.
	17	Q	And so when David Milgaard said "tell me what's
	18		happening" he would hear that either from you or
	19		Mr. Asper or Mr. Wolch?
01:54	20	А	Correct.
	21	Q	And would it be correct that, from what he heard
	22		from you, you would be telling him, "lookit,
	23		nothing has happened, we haven't heard anything,
	24		we're waiting" and expressing concern; is that
01:55	25		correct?



	1	А	Yes. We tried to not get him upset, but I was
	2		also talking to politicians, and Felix Holtmann
	3		was in our area and he went out to see David and
	4		to meet with him, and this is where he has given
01:55	5		Felix this letter to pass I guess he thought
	6		that, if Felix Holtmann gave the letter to Kim
	7		Campbell, that it would be better than a letter
	8		just coming out of the blue to her.
	9	Q	And do you recall what Mr. Asper was telling David
01:55	10		Milgaard about how Federal Justice was dealing
	11		with Dr. Ferris' report?
	12	А	We were trying to downplay delays to a degree to
	13		give him, keep his hopes up that something was
	14		going to happen and not sort of have him become
01:56	15		really frustrated and whatever, but I don't know
	16		that they had discussed any action or anything.
	17	Q	But when the Ferris report was obtained, I think
	18		you've told us that you and Mr. Asper would have
	19		told David that "lookit, this report proves your
01:56	20		innocence, we're going to send it in"?
	21	A	Oh, yeah, we were all really excited about that.
	22	Q	And so your David, then, would, I take it, would
	23		have an expectation that once the authorities had
	24		it
01:56	25	А	That something would happen right away.



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	1	Q	And so here is his letter, and so here May 9th,
	2		1990, what he has heard about what they have done
	3		or not done with that report would come from you,
	4		Mr. Asper and Mr. Wolch?
01:56	5	A	Yes.
	6	Q	And he says:
	7		"Your department will not disclose what
	8		action it has taken in regard to the
	9		conclusion of forensic expert",
	10		next page, please:
	11		" Dr. James Ferris. Why have I been
	12		held hostage to this for 15 months? It
	13		has been a nightmare for me."
	14		"In all",
01:57	15		Scroll down, please:
	16		"In all likelihood, this report once
	17		validated will see me released. This
	18		means if the report is correct, then
	19		someone made a big mistake in ignoring
01:57	20		this request in our completed
	21		application which was with the
	22		department of justice in December of
	23		1988."
	24		So would this fairly capture what David Milgaard
01:57	25		was

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	1	А	Feeling.
	2	Q	thinking at the time?
	3	A	Yes, his frustration.
	4	Q	159870, please. And this is a May 11th, 1990
01:58	5		article, RCMP reopen man's murder case, and this
	6		is where Mr. Harvard brought it up, I think in a
	7		Justice Committee meeting in Ottawa?
	8	А	Uh-huh.
	9	Q	If you could scroll down to the bottom, please, it
01:58	10		says:
	11		"Harvard detailed the
	12		investigation while grilling Justice
	13		Minister Kim Campbell on the delays
	14		during a justice committee meeting in
01:58	15		Ottawa yesterday.
	16		'The real killer is serving
	17		time in Saskatchewan and (I've been
	18		told) that the RCMP have interviewed
	19		this man twice,' Harvard said. 'What we
01:58	20		have here is an investigation on two
	21		fronts, but no concrete action has been
	22		taken and meanwhile Milgaard remains in
	23		jail.'"
	24		And then it goes on to quote you about having
01:59	25		tracked this evidence down, etcetera. So, at
			4



		5
1		this time, I take it that John Harvard became
2		aware of the investigation from you; correct?
3	A	Oh yes, I had filled him in on everything we had
4		been doing and what we had found out.
01:59 5	Q	And is it correct that you told him not to
6		disclose this investigation publicly?
7	A	That's correct.
8	Q	And why was that?
9	A	Because of what we'd been told.
01:59 10	Q	By by whom and what?
11	A	By what the information that David got back
12		from Pearson.
13	Q	Oh, I see, so it was the at this time you were
14		prepared to let Sergeant Pearson do some
01:59 15		investigation work
16	A	Yes.
17	Q	and not publicly disclose either the
18		investigation or Larry Fisher's name?
19	A	Yeah, give him the chance to have the time with
01:59 20		Fisher.
21	Q	And would you have been aware that he had actually
22		met with and interviewed Fisher and was seeking to
23		obtain information from him that might assist in
24		establishing that he was the culprit?
02:00 25	A	I may have known that at the time I talked to John



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	1		Harvard.
	2	Q	And would that have been one of your concerns,
	3		that
	4	A	Yes.
02:00	5	Q	publicizing this might adversely affect
	6		Sergeant Pearson's ability or his relationship
	7		with Mr. Fisher?
	8	А	Yes.
	9	Q	And were you aware of a concern about, that Mr.
02:00	10		Fisher might have if he heard publicly that either
	11		he was being investigated by name or that someone
	12		in the Prince Albert Penitentiary, etcetera,
	13		etcetera, had been investigated, so that the
	14		inmates and the prison staff would know who it
02:00	15		was; was that
	16	A	Right, that was a concern, I didn't want Larry
	17		Fisher to be killed before we could bring him to
	18		Justice.
	19	Q	And was that a concern that was expressed to you,
02:00	20		that if information became public that he was
	21		being investigated
	22	А	That could happen.
	23	Q	that could happen? Yes?
	24	А	Yes, that that could happen.
02:00	25	Q	And so that was one of the reasons that you did
			4



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	1		not want it publicized?
	2	A	That's correct.
	3	Q	Now, notwithstanding the fact that you were
	4		co-operating with Federal Justice and Sergeant
01:59	5		Pearson in not publicizing the investigation of
	6		Fisher or his name, is it correct, though, that
	7		you continued your own investigation?
	8	А	I did.
	9	Q	If we can call up 336810, or 336804 is the
01:59	10		transcript, and go to page 810, and this is I
	11		think a phone call with Mr. Harvard shortly after
	12		when he asks you:
	13		"Did I do all right?"
	14		And you say:
02:00	15		"You did very well. The only thing that
	16		I'm concerned with was the question you
	17		asked in The House. We didn't want the
	18		RCMP investigation brought out."
	19		And Harvard says:
02:00	20		"Well, David thinks it's now the best
	21		thing now, so"
	22		"Yes, I guess in hindsight it probably
	23		is, but I was just terrified when I
	24		heard it because I thought well, what if
02:00	25		this guy does something crazy, like
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	1		commit suicide or something, you know?"
	2		And Harvard says:
	3		"Well, so what."
	4		"Well, I don't know. I would have loved
	5		to have had a confession and have it
	6		wrapped up, you know."
	7		"Well, to me, I don't think that you
	8		know, they are parallel investigations,
	9		but I don't think they should be drawn
02:00	10		together."
	11		Would this David that he was talking about, would
	12		that be David Asper or your son David?
	13	A	That would have been David Asper.
	14	Q	And so this would have been a conversation shortly
02:00	15		after Mr. Harvard brought this up in the house?
	16	A	Correct.
	17	Q	Or in the committee. And am I correct that he
	18		would have talked to David Asper and maybe got
	19		different instructions about releasing this or do
02:01	20		you know what he's referring to there?
	21	А	No, I do not. I don't think that David Asper gave
	22		him instructions to release information though, I
	23		think that just sort of came out.
	24	Q	From Mr. Harvard?
02:01	25	A	Yes. That was the feeling that I got about this.

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	1	Q	Okay. If we can now go to 336804. Sorry, go to
	2		159867, please, and this is an article by Dan Lett
	3		May 12, 1990 that just talks about Markesteyn, Dr.
	4		Markesteyn doing his review, and when you decided
02:02	5		to go ahead with the report, I think at this point
	6		you were giving everything you had to the media;
	7		is that right?
	8	A	Yes.
	9	Q	And so here this is the type of story that you
02:02	10		would want out there, that you've now got someone
	11		else looking at the case?
	12	A	Absolutely.
	13	Q	Go back to 336804 and this is a transcript of, I
	14		think it's in early May, 1990 with Mr. Asper, if
02:02	15		you could go to page 825, and I think this is a
	16		discussion around the time Kim Campbell came to
	17		Winnipeg, and I think what the record reflects is
	18		that, and the evidence we've heard is that you
	19		became aware that Kim Campbell was coming to
02:03	20		Winnipeg, I think for something related to Meech
	21		Lake or some other subject?
	22	A	Yes, it was for Meech Lake.
	23	Q	And it's my understanding, and please correct me
	24		if I'm wrong, that you, being you, and Mr. Asper
02:03	25		and perhaps others viewed this as an opportunity

1 to do a couple of things, one, for you to provide 2 a copy of the Ferris report to Kim Campbell, but 3 secondly, to get some media coverage of you confronting the minister; is that correct? 4 5 Α That's correct. We had -- we contacted, I 02:03 contacted, or David contacted, between us, every 6 media person that was already involved in the 8 case, as to where I was going to be with my 9 daughter at that time so that they would cover it. 02:04 10 And again, so this would be in advance knowing she 11 was coming and that you were going to -- and I 12 think confront was the word used in the media or 13 elsewhere, and is that what it was? 14 From my point of view I was going to hand her Α 15 this report. I was going to -- they kept saying 02:04 16 that she had never seen it and I can't tell you 17 how excited I was that day that she was going to 18 be there, and I know it's totally unrealistic now 19 when I look back at it, but I thought I would hand 20 her the report and she would accept it graciously 02:04 21 and say she would look at it and she would look at 22 it and that would be it, and when she pushed me 23 aside and said, "Don't talk to me, Mrs. Milgaard." 24 It was, well, one of the most devastating moments 02:05 25 of my life. I know my daughter was there and she



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	1		tried to comfort me, but it was very, very
	2		difficult.
	3	Q	And was there any reason that you gave her a copy
	4		of the Ferris report as opposed to Deborah Hall's
02:05	5		affidavit?
	6	А	Well
	7	Q	Or some other
	8	А	Well, the Ferris report was the new information
	9		that we felt was, had proved his innocence.
02:05	10	Q	And again, as far as the and I take it from
	11		your answer about contacting the media, that that
	12		was a desired effect. Was there any reason you
	13		didn't arrange to privately meet with her and
	14		provide her the report or was having the media
02:05	15		there to cover it part of the strategy?
	16	A	Oh, I think it was definitely part of the
	17		strategy, but we had no idea that she would react
	18		the way she did.
	19	Q	And so again part of the strategy in what respect,
02:06	20		what were you hoping to gain about having the
	21		media there to capture this exchange between you
	22		and Kim Campbell?
	23	А	I think it was for them to witness the fact that
	24		I, as a mother, was approaching this, approaching
02:06	25		her.



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	1	Q	And so but again, for what purpose, so that
	2	А	That the public could see that we what we were
	3		trying to do.
	4	Q	And if we could just go through, this is the
02:06	5		transcript of your discussion with David Asper,
	6		and I think you ask about the Ferris report and:
	7		"I'll have to dig it out."
	8		And he says:
	9		"I wouldn't even worry about that. What
02:06	10		I would suggest you do, if you go and
	11		confront her"
	12		And you say:
	13		"I want to have an envelope from you to
	14		give her."
02:06	15		And Asper says:
	16		"You just give her the Ferris Report.
	17		Don't even put it in an envelope. Let
	18		the media see that it's the Ferris
	19		Report, and hand it to her and say, "if
02:06	20		your officials won't give this to you, I
	21		am. I will."
	22		And you say:
	23		"Okay. If I've got a Ferris report
	24		left?"
02:07	25		And get on with it. So that would be the plan,
			•



			Page 30757
	1		to just sort of publicly in front of the media
	2		say "your officials won't give you this, so I
	3		am"?
	4	A	Right.
02:07	5	Q	Did you have a concern at the time that she might
	6		react unfavourably to that type of approach, was
	7		that
	8	A	It was totally unexpected to me. David may have
	9		had thoughts that way, like, he may have had a
02:07	10		better understanding, but I thought it was woman
	11		to woman, I thought it would work, and it was a
	12		disaster.
	13	Q	Now, David Asper described it differently and he
	14		said that it was a significant turning point in
02:07	15		the campaign because it gave your media campaign
	16		something that would play well with I can't
	17		recall his exact words, but play well with the
	18		public because it pitted the mother against the
	19		minister and he felt that from a public relations
02:08	20		perspective it was a great piece of information.
	21		I'm paraphrasing, but you recall him giving that
	22		evidence?
	23	A	Oh, yes, and I'm not saying that I didn't think of
	24		it that way because people responded to it
02:08	25		effectively and came, we got all kinds of
			•



	1		volunteers and all kinds of helpers as a result of
	2		this, but in my mind I'll always remember her
	3		brushing me aside and in my mind it was a
	4		disaster. It wasn't until I saw the media reports
02:08	5		and every time anything came up about our case,
	6		whatever it was, the first thing that they would
	7		show would be Kim Campbell brushing me aside and
	8		that was good.
	9	Q	And was part of your strategy then, is to portray
02:08	10		to the public that Kim Campbell was someone who
	11		wasn't trustworthy and someone who wasn't dealing
	12		with this appropriately, or what were you trying
	13		to portray with Kim Campbell?
	14	А	We were trying to portray what was happening, that
02:09	15		the Justice Department wasn't listening and wasn't
	16		doing anything and was not acting appropriately we
	17		felt, and of course we had no control over the
	18		fact that it preceded every news interview or
	19		anything that we did, but that was just it sort
02:09	20		of took over the campaign, if you will.
	21	Q	And again, I think you said you contacted
	22		everybody, you and Mr. Asper, and we have seen
	23		some transcripts where the calls were made
	24		basically saying lookit, do not tip off the
02:09	25		minister's office that we're going to be there,



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	1		just show up and be there; is that right?
	2	A	Basically that was it, it was we're doing this and
	3		we want to let you know, and most of them were
	4		very supportive, so I honestly, Mr. Hodson, cannot
02:10	5		recall even suggesting to them don't tip off.
	6	Q	Yeah, maybe that was Mr. Asper. I recall, and I
	7		can't put my finger on it, but I recall, and it
	8		may have been a taped discussion with you and a
	9		media person, in fact, I think that's what it was,
02:10	10		that said lookit, it's going to be tomorrow, but
	11		if she finds out I'm going to be there with this,
	12		I don't want her to sort of go to another location
	13		or change her plans.
	14	A	Right.
02:10	15	Q	Do you remember something like that?
	16	А	Something like that, but I would never say it in
	17		the way you just said it.
	18	Q	I'll maybe see if I can put I think the sense
	19		was that in alerting the media you did not want
02:10	20	A	to alert her.
	21	Q	Pardon me?
	22	А	I didn't want them to alert her.
	23	Q	Right. Is that fair, that's correct?
	24	А	That's fair.
02:10	25	Q	And so that she would avoid her meeting with you? $\P$

	1	А	Correct.
	2	Q	You didn't want that to happen; is that
	3	А	That's fair.
	4	Q	Okay. If we can go to 220898, please, and this is
02:11	5		one of many articles that came out after, this is
	6		Dan Lett's, and "minister shuns Milgaard pleas",
	7		and then there's a photograph here of you and Kim
	8		Campbell, and we've got in the database many of
	9		the news clips and I think you'll agree that it
02:11	10		was played in various media outlets on and after
	11		this date; is that correct?
	12	А	Every time something came up pretty well.
	13	Q	And what this article indicates, it says:
	14		"Campbell, in Winnipeg to address a
02:11	15		luncheon on Meech Lake, bolted as Joyce
	16		Milgaard and her daughter Maureen
	17		introduced themselves, saying she could
	18		not personally accept any information
	19		about the case."
02:11	20		And it quotes her, and I think this is accurate
	21		from the news reports as well where she says:
	22		"I'm sorry, but if you want your son to
	23		have a fair hearing, don't approach me
	24		personally," Campbell said, leaving the
02:12	25		Milgaards behind in stunned silence.
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1		"I'm sorry, but I want her son to have a
2		hearing that will withstand scrutiny.
3		I'm sorry."
4		And do you recall talking to Mr. Asper or Mr.
02:12 5		Wolch to get them to explain what she may have
6		been talking about here or did you ever
7		understand why she was saying she couldn't deal
8		with you directly?
9	A	Well, yes, I believe Hersh said something about
02:12 10		the fact that she had mistakenly put herself in
11		the position of a judge and that a judge shouldn't
12		be approached with evidence or something to that
13		effect and that really wasn't her role.
14	Q	And so again from your lawyers, did they tell you
02:12 15		that it was okay for you to be contacting her
16		directly and giving her information directly, or
17		did they express any concerns to you about that?
18	A	No, they didn't. I was encouraged to do it.
19	Q	And again, as far as her response back, I think
02:13 20		you say Mr. Wolch explained to you that he thought
21		that Ms. Campbell mistakenly thought she was in a
22		position of a judge and mistakenly thought that
23		she couldn't deal with you directly?
24	A	That's right.
02:13 25	Q	And then if we can go back to the main page, it
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	1	says:	
	2		"Milgaard, who was attempting to give
	3		Campbell a copy of a forensic report by
	4		a pathologist who cleared her son of
02:13	5		involvement in the crime, said she fears
	6		the federal government is not giving the
	7		case enough attention.
	8		The so-called Ferris report
	9		states forensic evidence presented by
02:13	10		Crown prosecutors at the 1969 trial in
	11		fact clears David of the crime.
	12		Campbell has repeatedly stated
	13		she has not seen the Milgaard file and
	14		will not until all the evidence has been
02:14	15		thoroughly researched and checked."
	16	And then	a quote:
	17		"The public has a right to know what's
	18		going on," Milgaard said moments after
	19		Campbell had departed. "My son should
02:14	20		be free."
	21		"This is being covered up.
	22		There are people in high places who
	23		don't want this, but we're not going
	24		away."
02:14	25	What did	you mean by, "This is being covered up,"

	1		and who are the people in high places who don't
	2		want this out? Can you elaborate on that?
	3	А	Well, I just felt at that time that I was being
	4		pushed back by everybody and that every time we
02:14	5		seemed to get something we were being pushed back
	6		and I felt that things were being covered up, and
	7		the only people that could cover it up would be
	8		people in high places, so that was my assertion
	9		there.
02:14	10	Q	But who, like, which department?
	11	А	I had no idea. All I knew, that we were being
	12		stopped at the pass, literally, every time in all
	13		the investigations and everything we were doing,
	14		and it goes back to again don't talk to Mrs.
02:15	15		Milgaard, but when you have enough of those
	16		situations happen, you feel that they are
	17		dominating the whole situation and they couldn't,
	18		the policemen couldn't be doing it if they weren't
	19		sent out to do it, so somebody in high places
02:15	20		would be sending them out, so that was my feeling,
	21		that they were trying to cover up and it had to be
	22		people in high places.
	23	Q	And would you be referring to Kim Campbell and the
	24		Department of Justice?
02:15	25	А	No, I think at that time I was referring to

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	1		Saskatchewan officials.
	2	Q	And being who, the attorney
	3	А	The Attorney General, all of those.
	4	Q	So
02:15	5	А	The Saskatchewan government, the police, the
	6		investigators, you know, officials.
	7	Q	And so the people, the police who investigated and
	8		the people who prosecuted David; is that
	9	A	Yes, yes.
02:16	10	Q	And so you felt that they were now, when you
	11		say, "There are people in high places who don't
	12		want this out," am I right that when you say "who
	13		don't want this out", are you talking about the
	14		Ferris report?
02:16	15	A	No, not the Ferris report in particular, but
	16		really didn't want David out of prison.
	17	Q	Well, and I guess I'm trying to understand, and I
	18		appreciate that this is a news article that Mr.
	19		Lett wrote touching on your exchange with Kim
02:16	20		Campbell, and in reading this
	21	А	I could see you could read it that way, but I
	22		don't think that was meant that way.
	23	Q	Okay.
	24	А	I think that if there were what I was saying is
02:16	25		that every time I would find something, it just
			4



	1		seemed like I was being pushed back all the time
	2		and trying to get my son free, I felt that the
	3		whole affair was being covered up, they were
	4		saying there's nothing there, there's nothing
02:17	5		there and we're getting no response, and I really
	6		felt it was people in high places that were
	7		causing this block, if you will.
	8	Q	If we can go to 159861, and this is May 15th,
	9		1990, and I think the headline, "Saskatoon police
02:17	10		ignoring evidence that sports Milgaard, mother
	11		says," and again maybe the headline, the headline
	12		seems to suggest that the Saskatoon police were
	13		involved in investigating the matter at this time?
	14	A	It does look like that, but, you know
02:18	15	Q	In reading the article, I think what you refer to
	16		is actually, perhaps over here, that:
	17		"The police were told in 1980 by a
	18		person close to the Prince Albert inmate
	19		of his possible involvement in the case.
02:18	20		The city police did nothing."
	21	A	Yeah, and that was when Linda Fisher went in in
	22		1980.
	23	Q	So that would that be, and again I know you
	24		didn't write the headlines, and I understand that
02:18	25		maybe Mr. Lett didn't either, but would that be

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	1		you would have given that information to Mr. Lett
	2		at this time, you would have given him everything
	3		on Linda Fisher I take it?
	4	А	Oh, yes, he would have had all of that
02:18	5		information.
	6	Q	And then if we can scroll down, the headline,
	7		"Mother fears coverup by Saskatoon police," and
	8		you say:
	9		"However, Milgaard said she fears the
02:19	10		police department may be trying to hide
	11		important information from federal
	12		investigators."
	13		What were you referring to there?
	14	A	Well, if you go down a little further, "That's the
02:19	15		worst part of this"
	16	Q	I'm sorry, yeah.
	17	А	"That's the worst part of this" can you blow
	18		that up? I can't quite read it.
	19	Q	Sure. I can read that:
02:19	20		"That's the worst part of this, is that
	21		the person that I ended up investigating
	22		in Saskatoon just this year, had already
	23		been to the police and told them they
	24		knew who the real killer was, she said.
02:19	25		"And they hadn't done anything
			4

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	1		with it. They're hiding something.
	2		Why?"
	3	A	Yeah. Well, this is why I felt that Linda had
	4		gone in there in 1980, she told them information
02:19	5		that if they had followed up on then, something
	6		could have been done at that time, and so that's
	7		why I thought they were covering up because they
	8		did nothing.
	9	Q	And when you say cover-up, when you say cover-up,
02:20	10		what is your meaning of that?
	11	A	Sweep it under the table, they swept it under the
	12		table, literally.
	13	Q	And so ignore it or
	14	А	Ignore it, do nothing.
02:20	15	Q	Or to take deliberate steps from preventing other
	16		people from seeing it?
	17	А	I think that I felt that there was a definite
	18		cover-up. Let's say I don't know, I've used
	19		that word a lot, I know, cover-up, but their
02:20	20		covering up of the true facts. The facts that we
	21		were trying to bring out with Linda Fisher was
	22		that there was someone in the area that was
	23		committing rapes before and after Gail Miller and
	24		instead of them acting on that information and
02:21	25		following it up, they did nothing about it. To me $lack$

	1		that was, they were covering up their bad, shoddy
	2		work from before.
	3	Q	And when you use the word cover-up, do you, is
	4		your meaning that there's been some wrong, known
02:21	5		wrongdoing in the first place; in other words
	6		let me give you an example. You talk about the
	7		Linda Fisher statement in 1980, going into the
	8		police, and you talk about them ignoring it or
	9		sweeping it away, if the police got the
02:21	10		information and did not look at it, and maybe
	11		should have looked at it but didn't look at it,
	12		just put it away and did nothing.
	13	А	Well, that wasn't good police work.
	14	Q	Yeah. And would you say that's a cover-up when
02:21	15		you use
	16	А	No, that would not be good police work.
	17	Q	And the second scenario would be where if in 1980
	18		the police saw this information and said, well, we
	19		know that David Milgaard is innocent and that
02:22	20		Larry Fisher is the guilty person but we don't
	21		want anybody to find that out because then they
	22		will find out that we convicted the wrong person
	23		and therefore will hide it to make sure that no
	24		one else sees it, is that when you use is
02:22	25		that the type of cover-up, that deliberate steps
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	1		to cover up known misconduct, or somewhere in the
	2		middle?
	3	A	Somewhere in the middle I think, I don't think I
	4		was way up there, but I knew that something was
02:22	5		happening and I didn't know what.
	6	Q	And would it be correct that people were not
	7		seeing the police were not seeing the case the
	8		same way you saw it; correct?
	9	A	That's correct.
02:22	10	Q	And so
	11	A	And I couldn't understand why they couldn't see
	12		it. I couldn't understand why Mr. Karst, who was
	13		the one that interviewed everyone and went down
	14		and he was involved in Gail Miller's murder
02:22	15		investigation all the way through and then he went
	16		down and he got this information with Fisher, now,
	17		it just was totally unreasonable to me that that
	18		information didn't, holy, just be high, high up on
	19		the radar saying we have made a terrible mistake
02:23	20		here, what are we going to do about it, and going
	21		back and doing nothing about it, so to me that's
	22		when the cover-up started.
	23	Q	When the Fisher information
	24	А	Yes.
02:23	25	Q	And when you say that's when the cover-up started,

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	1		and I think you have expressed this later on in
	2		some of the media reports, would that be a case of
	3		saying you believed that the police knew they had
	4		convicted an innocent person and took steps to
02:23	5		cover that up?
	6	А	Yes.
	7	Q	And so that and that, you started thinking that
	8		when, when you became aware of what?
	9	А	When I became aware of Larry Fisher and the fact
02:24	10		that he was interviewed by the Saskatoon police.
	11	Q	In Winnipeg?
	12	А	In Winnipeg, and that's when everything really
	13		boiled up.
	14	Q	And so at that point your views changed a bit to
02:24	15		the point that said okay, I think people did
	16		deliberate wrong here?
	17	А	Yes, and then when I found out that, through the
	18		source that now has proved unreliable, that they
	19		actually had the Fisher file and the Milgaard file
02:24	20		together with Kujawa and Romanow and they had all
	21		of this information together and then it was
	22		buried.
	23	Q	And you are talking about Mr. Breckenridge?
	24	A	Yes.
02:24	25	Q	So again, did that that



Those suspicions, if you will, all the time, they kept getting bigger and bigger and bigger until right here we're now in 1990 and sure I'm saying I think there was a cover-up, because I did.  1 If we can go into mid May, 1990, I want to talk now about the interviews of Cadrain, Wilson and John and Paul Henderson, and we've talked about this a bit, we've gone through these interviews in detail with Mr. Henderson and a number of other witnesses, but can you tell us what, why May 25, 1990 did you, your group, send out Paul Henderson as opposed to May 25, 1986, and forget the May date, but why in May of 1990, what caused your group to say, well, now let's go interview Wilson,
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date, but why in May of 1990, what caused your
14 group to say, well, now let's go interview Wilson,
02:25 15 John and Cadrain as opposed to 1986, '87, '88,
16 '89?
17 A I don't know. I honestly can't tell you.
18 <b>Q</b> And would you have been involved in the
19 decision-making about doing the interviews or was
02:26 20 that Mr. Asper, Mr. Wolch, Mr. Henderson or how
21 did that come about?
22 A No, I would have been involved in that. Can you
take me to some documentation?
Q I'll go through some documents, yeah. I mean, the
02:26 25 documents, I can tell you what we'll go through,
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1		you and Mr. Asper discussing who to get to do the
2		interviews, the discussions with Mr. Henderson
3		about the interviews, but I haven't been able to
4		find any document that says, well, here's why
02:26 5		we're going to do this now. That doesn't mean
6		there's not one out there, but so again, can
7		you
8	A	I think we were I think you just have to go
9		back and realize what we were doing, we were going
02:27 10		through it step by step, year by year doing
11		whatever seemed the right thing to do at the right
12		time.
13	Q	And we have already gone through the early '80
14		interviews of, your interviews of Nichol John, Ron
02:27 15		Wilson and Peter Carlyle-Gordge's of Albert
16		Cadrain. Do you recall whether you would have
17		made those transcripts and tapes available to Paul
18		Henderson?
19		COMMISSIONER MacCALLUM: To who?
02:27 20		MR. HODSON: Paul Henderson.
21	A	I think he would have, he would not have had them
22		available when we went up to interview Linda
23		Fisher, okay, because we didn't have time for
24		anything, he knew absolutely nothing, and from the
02:27 25		time that I picked him up in Saskatoon until the

	1		time we got to Cando, he was busy writing notes
	2		about, which he subsequently lost, of everything
	3		that we were talking about.
	4		BY MR. HODSON:
02:28	5	Q	And I think Mr. Henderson's evidence, and I stand
	6		to be corrected on this, but I think Mr.
	7		Henderson's evidence is that he was not aware, nor
	8		did he see the early interviews of Cadrain, Wilson
	9		and John, the '81 to '83 interviews.
02:28	10	А	I'm sure that's quite possible.
	11	Q	And again, do you know, was there a reason that he
	12		was not provided with that information?
	13	А	Well, it all happened so quickly.
	14	Q	Okay.
02:28	15	А	He was just coming and we were going.
	16	Q	And so
	17	А	And don't forget, Centurion Ministries had not
	18		taken up the case, so he wasn't prepped, he wasn't
	19		prepared, he didn't have the normal things that
02:28	20		would have happened if they had the case.
	21	Q	And do you recall at this time, again May of 1990,
	22		would you have gone back and listened to those
	23		tapes or reviewed the transcripts of the Cadrain,
	24		Wilson and John interviews, or is that something
02:29	25		that had been
			•



			Page 30774
	1	А	That was the past. We were on a fresh
	2		investigation. I don't think I would have.
	3	Q	If you can call up 336785, and this is a
	4		conversation between you and Mr. Asper, go to page
02:29	5		793, and I've gone through most of this with Mr.
	6		Asper, this is a discussion about who you are
	7		going to bring in, someone from Saskatoon into the
	8		picture, you say:
	9		"Well the only thing I was thinking is
02:30	10		that a local person would find them much
	11		faster than anybody else."
	12		And earlier on I think it's talking about Wilson,
	13		John and Cadrain.
	14	A	Uh-huh.
02:31	15	Q	And then get someone else to do the actual visit,
	16		so is it correct that you and Mr. Asper would have
	17		discussed this first, about going out and
	18		interviewing
	19	А	Yes.
02:32	20	Q	these people? And then on the right-hand side,
	21		bottom right, and we go on, it goes on to talk
	22		about two people in Winnipeg, two police officers.
	23		And if we can go to the next page, and he says:
	24		" and if you tell them what you want,
02:32	25		they'll get it."

1	And he says:
2	"Even if what they're getting is a lie,
3	they'll get it.
4	MRS. JOYCE MILGAARD: Oh, well, we don't
5	want that.
6	MR. DAVID ASPER: Well listen, umm, we
7	don't know that it's a lie, first of
8	all.
9	MRS. JOYCE MILGAARD: No, but I mean
10	MR. DAVID ASPER: But, I mean, if you get
11	Cadrain saying "umm, of course I didn't
12	say anything, I was afraid that Fisher
13	was gonna kill me",
14	MRS. JOYCE MILGAARD: Uh-huh.
15	MR. DAVID ASPER: we take that down and
16	we run with it, whether it's true or
17	not, because, you know, how are we to
18	know whether it's true or not.
19	MRS. JOYCE MILGAARD: Hmm, well I think the
20	only way, we've just got to be very
21	truthful in everything."
22	And scroll down, please.
23	A And, of course, that was my feeling at that time.
24	I was working with a statement from the <i>Bible</i> , "Ye
25	shall know the truth and the truth shall make you

02:33

			1 age 30170
	1		free", and I it was important that the truth
	2		was right there and that we were being truthful in
	3		what we were doing.
	4	Q	And so again, as far as getting information from
02:33	5		Albert Cadrain, you wanted to get the truth from
	6		him?
	7	А	Yes.
	8	Q	Whatever it might be?
	9	A	Whatever it was, but I didn't want to be telling
02:33 1	10		lies about anything.
1	11	Q	And you say:
1	12		" make any mileage for ourself by
1	13		lying.
1	14		MR. DAVID ASPER: No, no, I'm saying
1	15		MRS. JOYCE MILGAARD: Or taking lies.
1	16		MR. DAVID ASPER: No, no, I'm saying if we
1	17		get a statement from these people
1	18		MRS. JOYCE MILGAARD: Uh-huh.
1	19		MR. DAVID ASPER: we don't know whether
2	20		they're telling the truth or not.
2	21		MRS. JOYCE MILGAARD: I realize that. But,
2	22		you know, anyhow
2	23		MR. DAVID ASPER: I mean if they say, if
2	24		they give us a statement denying that
2	25		there was any impropriety, how do we

1		know that that's the truth?
2		MRS. JOYCE MILGAARD: I see what you are
3		saying. Well
4		MR. DAVID ASPER: You know, so you know,
5		we're not sitting as judge on these
6		statements. So that, you know, whoever
7		we send there, we say we tell them up
8		front
9		MRS. JOYCE MILGAARD: Uh-huh.
10		MR. DAVID ASPER: what our theory is, I
11		mean we have to because they don't know
12		anything about the case.
13		MRS. JOYCE MILGAARD: Well to me, if you're
14		gonna have someone up there, you could
15		you know, like I don't know what
16		these guys get in Canada",
17		and you start talking about expenses. Now do you
18		recall, and I went through this with Mr. Asper,
19		do you have a recollection of what what was
20		your take on this conversation or your
21		understanding about this discussion about
22		getting, even if what they're getting is a lie,
23		they'll get it?
24	А	Well, it's obvious from my discussion with it that
25		I I think, knowing David Asper, that he was
		4

02:34

02:34

	1		prepared to put whatever we got from the witness
	2		out there. I don't know that he would knowingly
	3		have done it if it was a lie, but I think that he
	4		felt it was important to get the evidence out
02:35	5		there, and that if they came up with some story
	6		that we didn't know for sure would support but
	7		that would get the case re-opened, that the end
	8		justified the means type of thing, that if he was
	9		getting the case opened, even if the evidence
02:35	10		subsequently proved not to be true, that if it
	11		opened the door to prove what we knew was true
	12		that it would be all right, and I guess my feeling
	13		was wanting to go with McCloskey.
	14	Q	Okay. If we could just go back to the left-hand
02:35	15		side, please. And so again on that point, that if
	16		you got a statement from Albert Cadrain saying "I
	17		didn't say anything, I was afraid that Fisher was
	18		going to kill me", and as Asper stays:
	19		" we take that down and we run with
02:36	20		it, whether it's true or not",
	21		that a statement like that, if Albert Cadrain
	22		said "lookit, I lied because I was afraid of
	23		Fisher"
	24	A	Well, I had thought that would be a terrific idea,
02:36	25		when he said that.



	ſ		Page 30779
	1	Q	And that that would get some attention,
	2	А	Uh-huh.
	3	Q	it might get the case re-opened,
	4	А	Right.
02:36	5	Q	but if it wasn't true
	6	A	I guess I was very strong in wanting to just go
	7		with the truth on everything, but I could see his
	8		point.
	9	Q	And did you understand his point to be that even
02:36	10		if it wasn't true, if it was a statement that
	11		would open the eyes of the authorities or get some
	12		attention, that it was all right to do?
	13	A	Yes. But I wouldn't do it.
	14	Q	And then we go on a discussion about, I think you
02:36	15		ended up deciding to go with Mr. McCloskey and Mr.
	16		Henderson
	17	A	That's right.
	18	Q	as opposed to someone local?
	19	A	That's correct.
02:37	20	Q	If we can then go to 337359. And this is a
	21		follow-up discussion with, I think this is again
	22		May of '90, and this is a discussion of Mr.
	23		Henderson. Go to page 360. And I think this is a
	24		subsequent conversation from the one I just showed
02:37	25		you, and he says:
		1	



1	" in my view it would be great, and
2	I don't know how open he is to this,
3	",
4	and, again, he is talking about McCloskey:
02:38 5	" but it would be a very positive
6	starting point for them to have a chat
7	with Cadrain and get a statement from
8	Cadrain to the ex sort of saying, I
9	mean I was talking to Hersh about this,
10	and, you know, I mean it would be just
11	wonderful if we could get a statement
12	from Cadrain saying "yeah, I knew it was
13	Fisher, lived in the basement, umm, you
14	know, I didn't want to say anything
15	about it because I figured he'd kill
16	me", you know, something like that, and
17	then "I saw Fisher come home with blood
18	on him".
19	MRS. JOYCE MILGAARD: Oh yeah.
20	MR. DAVID ASPER: You know, something like
21	that.
22	MRS. JOYCE MILGAARD: Well that would be
23	nice.
24	MR. DAVID ASPER: And then "and that, you
25	know, when the cops came and asked me

	1		about Milgaard, you know, it was easy
	2		for me to get off the hook with Fisher
	3		by just pointing it at Milgaard".
	4		MRS. JOYCE MILGAARD: Wouldn't that be
02:38	5		great?",
	6		and
	7	A	These were, you know, off-the-wall conversations
	8		that we had a lot of the time. Like I look at
	9		these and I think they were our dream
02:38	10		conversations, these are what we would see coming
	11		in our dreams, like that we would do this and we'd
	12		do that. And David and I would talk on the phone,
	13		it quite often could be 2:00 or 3:00 in the
	14		morning when we had these phone calls, and after a
02:39	15		long day, and we're talking about all the things,
	16		and then when you know, David would throw in
	17		these comments:
	18		"And then when the cops came and
	19		asked me about Milgaard it was easy
	20		for me to get off the hook.",
	21		and "oh, wouldn't that be great", but you had to
	22		actually hear the tape, I think, to get that
	23		context there. A lot of the comments that come
	24		out, Mr. Hodson, are joking comments too, and I
	ΩF.		



think you're losing them.

02:39 25

	1	Q	Okay. Well no, and if you can tell me your
	2		understanding and the context, please do?
	3	А	Yeah.
	4	Q	And so on this call, tell me, what would be the
02:39	5		nature of the discussion then?
	6	А	It's sort of an idea-storming, a
	7	Q	And again
	8	А	Kooky ideas that might work, and stuff like that,
	9		trying to build up, I don't know, maybe build up
02:40	10		hope.
	11	Q	And was this a theory that you had at the time,
	12		that maybe that's what Albert Cadrain saw or maybe
	13		that's what happened?
	14	А	Could have been. We didn't know, and we were
02:40	15		guessing, we were just going through our minds
	16		with every possibility that there could be.
	17	Q	And I think what Mr. Asper said when I asked him
	18		about this area was that if a witness were to say
	19		that, even if it weren't true, that it might have
02:40	20		some benefit as well, saying as long as it's not
	21		put forward as the truth of the statement, in
	22		other words "here is what Albert Cadrain is now
	23		saying, he's now saying that it was really Larry
	24		Fisher and he was afraid of Larry Fisher", and
02:40	25		that that statement, even if it's not true, might
			•

			1 age 30703
	1		have some benefit to the authorities?
	2	A	It would have benefit because it would show how he
	3		shifted, and even his latest statements at the
	4		Supreme Court, it was obvious that he was really
02:41	5		out of it with all the exaggerations and
	6		everything he put in, but they used them anyhow.
	7	Q	This continues on, where Mr. Asper says:
	8		" I mean you can even lead him to
	9		believe that,",
02:41	10		and again we're talking about Albert Cadrain and
	11		the Fisher story:
	12		" lead him to believe that, even if
	13		he's lying, you know, you can, you can
	14		have a chat with him to plant the story
	15		in his mind, you know, to give him an
	16		easy out from the questioning with
	17		McCloskey and, you know, I'm gonna say
	18		that to Jim."
	19		And, again, would are you able to shed any
02:41	20		light on the context of that discussion? Again,
	21		that's would that be brainstorming?
	22	A	I think so, I think we're just shooting ideas back
	23		and forth, and I think this is where we came up
	24		with the idea of seeing Nichol and Wilson again.
02:42	25		And that's, you know, just because we chat at



			7 agc 30704
	1		night about all these things, and I think that's
	2		where a lot of our ideas came from, when we would
	3		talk back and forth.
	4	Q	If we can go to 337359. And this is a discussion,
02:42	5		now a bit later in May of 1990 involving Mr.
	6		Henderson, and if we can go to page 378, and this
	7		is a discussion involving you and Mr. Asper and
	8		Mr. Henderson about who's going to do the
	9		interviews. And do you recall there being some
02:42	10		discussion about you being present at the
	11		interviews with Paul Henderson as both a factual
	12		resource and, I think, playing the mother card?
	13	A	Correct.
	14	Q	And that it was decided that that would not be the
02:43	15		best route to go; is that correct?
	16	A	Yes.
	17	Q	And it looks like, at this time, that and you'd
	18		mentioned this earlier that Mr. Henderson,
	19		after his initial involvement with Linda Fisher,
02:43	20		am I right that he went back to Centurion and that
	21		
	22	A	Back to his own business.
	23	Q	Right. And, at that time, it wasn't clear that he
	24		was going to get called back in?
02:43	25	A	That's correct.

•	1	Q	And so here he's, it looks like this is the call
2	2		where you are setting up him coming in to do the
;	3		interviews, and there is a discussion here if
4	4		we can just scroll down about sending out by
02:43	5		Fed Ex the transcripts from the preliminary
(	6		hearing and the trial, and I think Mr. Henderson
-	7		told us that he would not have had that
8	8		information at that time; correct?
(	9	A	Yes.
02:44 10	0	Q	And so when Paul Henderson went out to see the
1	1		Cadrains and Ron Wilson, Nichol John, I think the
12	2		evidence is he would have got the transcripts from
1:	3		the trial and the prelim of those witnesses; is
14	4		that right?
02:44 15	5 .	A	I think he would have at that time.
16	6	Q	If we can go to the next page. And this is a
17	7		discussion, and I went through this with both Mr.
18	8		Henderson and Mr. Asper about the comment, Mr.
19	9		Asper says:
20	0		"I think, you know, and and, Paul, I
2	1		think that the first person that we
22	2		should go to is Cadrain. I think that
23	3		he's probably the most likely to
24	4		respond, umm, to the new scenario, that
25	5		being, umm, "we understand that you were
	ll .		

	1		scared of Fisher, we know that Fisher
	2		did it, and you can be a hero or a bum"
	3		—— "
	4		Let me just pause there. And I do you
02:44	5		remember that being that Mr. Henderson and Mr.
	6		Asper both talked about the need to have these
	7		witnesses have an out, sort of a reason?
	8	A	Yes. I think that the fact that, if they would
	9		know that we've now discovered Fisher and all the
02:45	10		information about it, that it was important for
	11		them to come forward now in light of this new
	12		information, and so they could explain what
	13		happened with their stories and why they said what
	14		they said at the time.
02:45	15	Q	And, again, this this word "new scenario", was
	16		that sort of an idea at the time that you maybe
	17		thought that Albert Cadrain was frightened of
	18		Fisher and that that's why he lied?
	19	A	We had no idea, but that could have been one of
02:45	20		the new scenarios, that that could have been
	21		some of the things that actually happened.
	22	Q	And then at the bottom there is a comment about,
	23		Asper says:
	24		" because he's not, umm, all there I
	25		don't think.
		1	



1 MRS. JOYCE MILGAARD: He's not real bright. 2 MR. PAUL HENDERSON: Uh-huh. 3 You know, I think he can MR. DAVID ASPER: 4 be shaped reasonably easily throughout 5 the course of an interview with him, and once we get that, I mean, that's our ace 6 in the hole. Then we go to the other 8 two, who are tougher to crack a little 9 bit I think, and say "not only do we 10 know who did it but Cadrain now agrees." 11 And was that one of the strategies, to try and 12 get one of those three, Cadrain, Wilson and John, 13 to change their statement, and then use that to 14 get the other two, in other words get one and 02:46 15 then go to the other two and say "lookit, Albert 16 now has recanted, he has changed his story, and 17 therefore you better as well or you should as 18 well"? 19 Yes, because we believed that -- I mean we're 02:46 20 starting from the premise -- the way you've put 21 it, it sounds horrible -- but we're starting from 22 the premise that these people lied, because we are 23 starting from the premise that they all told the 24 truth when they were first interviewed, --02:47 25 Right? Q



		7 age 30700
1	А	Nichol John and Wilson, and the truth was that
2		they saw nothing. Now if we're going back to them
3		and saying, "look, we know now who the real killer
4		is, and it wasn't David, so here's your chance of
5		coming forward and telling the truth of what
6		really happened and how you felt pressured into
7		saying what you said", or giving them a way out
8		that they aren't going to look bad.
9	Q	Okay. And so, again, on the but, again, back
10		to starting with one and getting that statement, I
11		
12	А	I think that would have been the easiest thing,
13		was we felt that
14	Q	Yeah.
15	А	it might be easiest to start with Albert.
16	Q	And I wasn't suggesting anything nefarious, but
17		getting one person to say "okay, I lied, and
18		here's the truth"?
19	А	Yes.
20	Q	Would it be fair to say that that would assist you
21		in approaching the other two, to say "we now know
22		that one of your friends has now recanted", and
23		that that might influence the others to also
24		recant?
25	Α	And tell
	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	2 3 4 5 5 6 7 8 9 Q 10 11 1 12 A 13 14 Q 15 A 16 Q 17 18 19 A 20 Q 21 22 23 24

			Page 30789
	1	Q	And tell the truth?
	2	А	And tell the truth, yeah.
	3	Q	Okay.
	4	А	We were after the truth.
02:48	5	Q	If we could go to 156873. And this would be the
	6		May 22, 1990 letter to Mike Brecht at Robinson
	7		Investigations to find these people, so this would
	8		be the time frame, and then I think around this
	9		time you are having the calls with Mr. Henderson.
02:48	10		So he is called out on the, I think on the 24th,
	11		and on the 22nd you were asking Mr. Brecht to find
	12		these people; correct?
	13	А	Yes.
	14	Q	And so did this happen fairly quickly, this
02:49	15		decision to go out and find these people, it looks
	16		like it
	17	A	It did, I think.
	18	Q	came up? If we can go to 016475. And I think
	19		the evidence we've heard is that Paul Henderson
02:49	20		phoned Dennis Cadrain from Saskatoon, interviewed
	21		him on the phone, and then went out to Coquitlam,
	22		B.C. on May 26th, interviewed Dennis and Albert
	23		Cadrain, at that time got a statement from Dennis
	24		Cadrain, and then I think met separately or took
02:49	25		Albert out for a steak dinner and then moved on;
		_	Meyer CompuCourt Reporting
		C	ertified Professional Court Reporters serving P.A. Regina & Saskatoon since 1980

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			r age 30730
	1		is that correct?
	2	А	That's correct.
	3	Q	And he would have phoned you from B.C. with the
	4		results of this statement?
02:49	5	A	Yes, he did.
	6	Q	And we have been through this statement on a
	7		number of occasions but I just want to touch on a
	8		couple of parts. If you go to the next page, and
	9		Dennis says:
02:50	10		"At some point it became
	11		apparent to me that Albert had given
	12		police information that they planned to
	13		use against David Milgaard. At the time
	14		I had no reason to believe that what
02:50	15		Albert told police was not true. Later
	16		I came to have serious concerns about my
	17		brother's credibility.
	18		Knowing my brother as I do, I
	19		am certain that he would not
02:50	20		intentionally lie about anything. But I
	21		also know that he is prone to
	22		exaggeration and suggestion, and that he
	23		could easily be coerced and manipulated
	24		by police. If ideas were planted in
02:50	25		Albert's mind it is quite possible that

			Page 30791
	1		he would come to accept them as the
	2		truth.
	3		Frankly, I would not consider
	4		my brother to be a reliable witness
02:50	5		And for this reason, I have had concerns
	6		that David Milgaard may not have
	7		received a fair trial."
	8		And then on the next page actually, sorry, the
	9		previous page at the bottom he says:
02:51	10		"I have additional insights
	11		into my brother Albert, that are
	12		pertinent",
	13		next page:
	14		" to the Milgaard case. I prefer
02:51	15		not to detail them in writing at this
	16		time but am willing to disclose them to
	17		the Justice Department or their
	18		representatives."
	19		And I think what he was referring to there is
02:51	20		what he told Paul Henderson in the interview,
	21		that Albert was suffering from mental illness,
	22	A	Yes.
	23	Q	and was committed to the hospital I think in
	24		the early 1973, and that Dennis said that
02:51	25		Albert's credibility was suspect, is that right,
			1

		——————————————————————————————————————
		ŭ
1		because of his mental illness?
2	А	That's correct.
3	Q	And would that be the same type of information,
4		then, that you would have got, or Mr.
02:51 5		Carlyle-Gordge would have got, in 1983? We went
6		through that last week, you will recall his
7		interview with Dennis Cadrain where Dennis Cadrain
8		talked about Albert's mental illness, and
9	A	I don't think it was as strong.
02:52 10	Q	And do you have a recollection of connecting the
11		two, and when Mr. Henderson said "lookit, here's
12		what Dennis Cadrain told us", and in thinking back
13		and in any way connecting it to what Peter
14		Carlyle-Gordge had got from Dennis Cadrain, or had
<i>0</i> 2: <i>5</i> 2 15		that been something that was parked away?
16	A	I think it was sort of parked away, but like it
17		rang bells, because I remember some of the
18		similarities to it.
19	Q	And
02:52 20	А	But this was new, this was a statement that we
21		had, this was one we were going to run with. We
22		certainly weren't going to run with what Peter had
23		done.
24	Q	And why not?
02:52 25	A	Because this was current, this was now.



	1	Q	Oh. And so again, that's what I am trying to find
	2		out, whether there was any was there a reason
	3		to say "lookit" other than obviously it would
	4		be about eight, seven years later
02:53	5	A	Yes, yeah.
	6	Q	so it's updated, but was there anything I'm
	7		trying to understand whether Peter's, Peter
	8		Carlyle-Gordge's interview of Dennis Cadrain
	9		played any part in the 1990 interview of Dennis
02:53	10		Cadrain as sort of the basis of the interview, or
	11		was in any way used to corroborate or support the
	12		information obtained from Dennis Cadrain, or had
	13		it been sort of part of a previous investigation
	14		and not really looked at?
02:53	15	Α	I don't think it was looked at, but I mean that's
	16		a question that you would have to sort of put to
	17		Paul, if he had that other information. I don't
	18		believe that we did give it to him.
	19	Q	I think his evidence was that he didn't have it.
02:53	20	Α	No? Well then I would think it would be
	21		predicated on the fact that this was new, this was
	22		current, and this is what we were doing.
	23	Q	Is it fair to say that both Mr. Henderson and Mr.
	24		Asper were excited about I think "excited" is
02:54	25		the right word about this information from



			1 age 30194
	1		Dennis Cadrain, that and that I think what they
	2		both said is that they went out there hoping that
	3		Albert would recant, say "I didn't see any blood",
	4		he didn't do that, but what Mr. Henderson got was
02:54	5		equally as good
	6	A	Or better.
	7	Q	or better because it meant that his evidence
	8		was not reliable; is that fair?
	9	A	That's fair.
02:54	10	Q	And, again, was that something that both Mr.
	11		Henderson and Mr. Asper thought was helpful?
	12	А	Yes, and I did too.
	13	Q	This is probably an appropriate spot to break.
	14		(Adjourned at 2:54 p.m.)
02:54	15		(Reconvened at 3:14 p.m.)
	16	BY N	MR. HODSON:
	17	Q	050412. And this is, I think, a May 24, 1990
	18		conversation between Paul Henderson and Dennis
	19		Cadrain. If we can go to page 419, and this is
03:14	20		the initial call with Mr. Henderson and Cadrain
	21		where he's trying to set up the interview, I
	22		think, and there's a remark here where Mr.
	23		Henderson says about Larry Fisher:
	24		"The R.C.M.P. is talking to him they
03:15	25		didn't want him talking seriously
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1 Now, we've heard today that he's 2 confessed. That may be true or may not 3 be true, it may be a rumour, may be a fact ..." 4 5 And I think what Mr. Henderson said is he --03:15 someone would have told him that, he's not sure 6 who, but I think he said either you or Mr. Asper, 8 and I think Mr. Asper said he doesn't recall 9 that; do you have any memory or recollection of 03:15 10 thinking or hearing that Larry Fisher had 11 confessed or was going to confess around that 12 time? 13 I don't believe that I had heard that he had 14 confessed, because I would have been pretty excited about it if I'd heard it, and I would have 03:15 15 16 remembered it. This may have been a tool he was 17 using to -- that Larry, you know, "that Larry 18 Fisher may be talking and that the real truth is 19 going to come out", it may be a tool he is using, 03:16 20 I don't know. 21 And go to 30184 -- or, I'm sorry, go to 301838. 22 And I think this is a phone call between you and 23 Mr. Henderson where he plays the tape, but if we 24 go to 301844 and Mr. Henderson is talking to you,



and he says:

03:16 25

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	1	"Shorty is just like ah' Jackie said,
	2	he's ah' you talk to him and he sounds
	3	okay until he starts getting on these
	4	wild impossible things. And that of
03:17	5	course is what tipped off his brother a
	6	long time ago."
	7	Now would the Jackie be, Jackie Groat; was that
	8	
	9	A Yes, and Jackie had experience with a child that,
03:17	10	that had a mental impairment and had more or less
	11	said you know, we'd been talking about it and
	12	the challenges that he had faced and my perception
	13	of him, and she had mentioned the fact that they
	14	can get into a state of really wild accusations.
03:17	15	Q And so
	16	COMMISSIONER MacCALLUM: What was the last
	17	name of that person?
	18	MR. HODSON: Groat, G-R-O-A-T, I think?
	19	A Uh-huh.
	20	MR. HODSON: Is that right?
	21	BY MR. HODSON:
	22	<b>Q</b> And so I take it that you had mentioned earlier
	23	about as being a friend that had helped you out.
	24	Did she have any dealings with any of the
03:17	25	witnesses or was she involved in that way, or was
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	1		she simply
	2	А	The only witness she had any involvement with was
	3		the other nurse murderer, she's the one that went
	4		up with me and witnessed my conversation with him.
03:18	5	Q	Oh, Mahar?
	6	A	No,
	7	Q	Lalonde?
	8	A	Lalonde, yes.
	9	Q	Okay. But as far as the witness
03:18	10	A	But we stayed with her,
	11	Q	Right?
	12	A	with her and her husband, because our
	13		budget and my I didn't have the money to put us
	14		up anywhere.
03:18	15	Q	No, no, I just was making sure that she had not,
	16		when I saw the name here I just wondered whether
	17		she had been
	18	A	No.
	19	Q	helping you. Other than providing support
03:18	20		while you were there she was not out directly
	21		involved in the investigation; is that right?
	22	A	That's correct, although her son Rick was, he
	23		he was the one that went out and followed up on
	24		the church bells that were ringing.
03:18	25	Q	At St. Mary's Church?



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	1	Α	Yeah, when Nichol said that they were ringing, and
	2		we found out that the bells had been removed prior
	3		to that time.
	4	Q	If we can go to 301846, please. And I think this
03:19	5		is where there is a discussion about Albert's
	6		recollection of seeing blood, and Paul says:
	7		"And they're cemented in his mind.",
	8		and you say:
	9		"So there was no way you could swing him
03:19	10		around?"
	11		Henderson:
	12		"Well no, I wouldn't try to. That would
	13		be manipulation and he's going to swing
	14		right back."
03:19	15		"No, no what you, what we have to do is
	16		paint the picture of a guy who was not
	17		in his right mind.",
	18		and then about the hospital records. So is it
	19		correct that at this point, I think the strategy
03:19	20		going in was Albert lied when he saw blood, that
	21		he was influenced by the police, remember us
	22		going through that last week, that the police
	23		somehow influenced him before he went in on March
	24		2nd, that the police influenced him to say he saw
03:19	25		blood on David; correct?



			——————————————————————————————————————
	1	A	Yes, and also the dream sequence, where he would
	2		say that he was afraid of Fisher and
	3	Q	Pardon me?
	4	A	And I say also our dream sequence where he said he
03:20	5		was afraid of Fisher and had seen him do it, that
	6		type of thing.
	7	Q	And so now is it correct that, at this stage, it's
	8		saying, okay, well the way to deal with his
	9		evidence is to say that it's not credible because
03:20	10		Mr. Cadrain is suffering from a mental illness,
	11		and had been for some time, and that would have
	12		influenced his evidence in some way?
	13	A	Yes.
	14	Q	And so that, rather than getting him to or
03:20	15		trying to get him to recant and say "no, I didn't
	16		see blood", you would chalk it up to saying, okay,
	17		he may have saw may have seen what he saw was
	18		blood, or may have thought it, but he shouldn't be
	19		relied upon based on what his brother said and
03:20	20		what he said?
	21	А	Yes, and based on what he said at the trial when
	22		he got into that Mafia bit and everything else,
	23		you know, Albert and the bathtubs and the
	24		virgins and all the things that he started
03:21	25		throwing in there it was obvious that he was
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1		just not credible.
2	Q	And again, I'd asked you this question earlier,
3		but is that was that your sense in 1983, from
4		when Peter Carlyle-Gordge had interviewed him and
03:21 5		talked to Dennis, that he was not credible?
6	А	Absolutely.
7	Q	And would this, then, be confirmation in 1990,
8		then, similar information to what Mr.
9		Carlyle-Gordge had obtained in '83 of a similar
03:21 10		nature, in other words saying that he had mental
11		illness problems
12	A	Yes.
13	Q	and shouldn't have been relied on?
14	A	And I think what Peter found out when he was doing
03:21 15		the interview was just how mental it was, because
16		he went off the wall on many of the comments to
17		him.
18	Q	Right, and we went through the aerial, broken
19		aerial that he talked about in 1983?
03:21 20	A	Yeah. And, I mean, he was telling his mum things
21		like that and, I mean, there had never been an
22		aerial on the car to break off, the car the
23		radio hadn't been working, so he was obviously
24		making things up.
03:20 25	Q	So if we go to 048385, please, and this is a



	1	further conversation, I think this is where you
	2	play the tape of your call with Mr. Henderson and
	3	you play it for Mr. Asper and record not only the
	4	tape, but your discussion with Mr. Asper, and if
03:20	5	we can go to page 048396, and this is some
	6	discussion here, and again you and Mr. Asper, I
	7	think you and Mr. Asper go through not only, you
	8	go through the tape of Mr. Henderson where he
	9	describes not only Dennis Cadrain's statement, but
03:21	10	some of the other information he obtained about
	11	Albert and his mental problems, and I think here's
	12	where you discuss, you know, that he:
	13	" was committed for shock treatment
	14	after the trial."
03:21	15	And then you say:
	16	"I mean if we go public with that. What
	17	would the Justice Department do at that
	18	point?"
	19	Asper:
03:21	20	"Let me sleep on this because it may be
	21	the type of thing where we send what we
	22	have to Justice with a letter."
	23	"Saying um this is getting deeper and
	24	deeper and deeper and you people aren't
03:21	25	doing anything about it."



	1		And then down here:
	2		"And we've had to. And and you've got
	3		seven days before we start trying this
	4		thing in the media. And we start making
03:21	5		these, I mean what ever the words are,
	6		whatever the exact words."
	7		"The message then is, here's here's what
	8		we found out while you guys have been
	9		loggy-gagging around. Here's your
03:21	10		Makesteyn report. Here's the Cadrain
	11		stuff. Now get off your butt."
	12		And you had talked earlier about the desire when
	13		you decided to say let's go to the media with
	14		public that going with information that would
03:22	15		draw attention to your case?
	16	A	Correct.
	17	Q	And was this the type of information that Albert
	18		Cadrain, I think he was referred to as the star
	19		witness suffering from mental problems, and
03:22	20		putting that out in the media, that would draw
	21		attention to your case and assist on the
	22		re-opening?
	23	А	Absolutely.
	24	Q	And here it looks like it's a discussion, should
03:22	25		we send it to the media first or should we give it

			Page 30803
	1		justice; is that right?
	2	А	That's right.
	3	Q	And what was your thinking about how to proceed,
	4		whether it should go to the media first or
03:22	5	A	I think I would have to go to the end of this
	6		conversation to think, but I think I would have
	7		probably I was so fed up with Saskatchewan
	8		Justice and the justice of Canada, that at this
	9		point I probably wanted to just go to the media
03:23	10		and get it out in the open and let everybody see
	11		what was going on.
	12	Q	And so again as far as your end goal, which was to
	13		get a remedy from the Federal minister getting
	14		your son out of jail, you would have felt that at
03:23	15		this time going to the media, going public with
	16		the information on Albert Cadrain would get you
	17		the remedy quicker?
	18	А	Faster.
	19	Q	Faster than if you would have given it to Mr.
03:23	20		Williams?
	21	А	Yes.
	22	Q	Or to the minister. Now, again the information
	23		about Albert Cadrain's mental condition you would
	24		have had in 1983; is that fair, at least some
03:23	25		information about that?
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1 Α Some. 2 0 And again, are you able to tell us any reason why 3 that information had not been provided to justice in December of 1988, or prior to this point, 4 5 whether it was a deliberate reason or whether it 03:24 6 just didn't happen, as to why, for example, the tape of Peter Carlyle-Gordge's interview of Albert 8 Cadrain, the lengthy one in '83 and his 9 conversation with Dennis where Dennis described 03:24 10 similar things to what he described to Paul 11 Henderson about Albert's reliability, and again as 12 to why that information had not been included with 13 the materials given to justice in December of 1988? 14 03:24 15 I think it would have been very clear to anyone Α 16 going through the trial transcript what the mental 17 condition of Albert Cadrain was, the way the 18 exaggerations grew and everything like that, and 19 so I guess my expectation would be that the 03:25 20 investigators would have all the reports about how 21 often Albert was picked up and over what a long 22 period of time and how his testimony had just 23 skyrocketed and how they got the Mafia in there 24 and all kinds of things, so to me justice would 03:25 25 have had all that, or should have had all that.



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	1	Q	And what about this information of Mr. Henderson,
	2		would it not apply to that as well?
	3	A	Well, yes, but this is something that we have
	4		recently got, it's an update, and so we're putting
03:25	5		it in at this time to show them, look, we've
	6		got the Markesteyn report was going to
	7		substantiate the Ferris report, now we've got this
	8		Cadrain stuff and we've got his brother saying
	9		very strongly that there was a mental problem
03:26	10		here.
	11	Q	Do you think it would have helped your application
	12		if in December of 1988 the application would have
	13		included the interviews conducted of Albert
	14		Cadrain and Dennis Cadrain in 1983?
03:26	15	A	I think it's possible, but from the way they
	16		looked at things, I think it's highly unlikely.
	17	Q	And again, are you able to shed any light as to
	18		I think we talked about this earlier and I think
	19		what you said was that your lawyers decided what
03:26	20		materials went in at the outset and there was
	21		various reasons as to what was included, what was
	22		not. Was there any, ever any step taken on your
	23		part to say lookit, don't put that information in,
	24		don't give that to the authorities?
03:27	25	А	No.



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	1	Q	Or was it a case you relied on your counsel and,
	2		for legal reasons, they decided what to put in and
	3		what not to put in?
	4	А	I don't believe I ever said to them what to put in
03:27	5		and what not to put in, I believe that I relied on
	6		my counsel to do that.
	7	Q	If we can get, go to page 398, and this is a
	8		discussion and we see this in another, this is in
	9		the same discussion with Mr. Asper, and just to
03:27	10		give you some help on the time frame, I think this
	11		is the call would be around May 26th, so you've
	12		got the information from Dennis Cadrain and I
	13		think the plan is that Paul Henderson is going to
	14		go see Ron Wilson is his next stop and there's a
03:27	15		discussion here about Donna Friesen, a CBC
	16		reporter, and some information that she may have
	17		obtained that suggested Ron Wilson had admitted
	18		lying, and I'll maybe just go through parts of
	19		that and see if this, if you can shed some light
03:28	20		on that, and so the discussion here you have with
	21		Mr. Asper is okay, you've got the Cadrain
	22		information, now how do we, what is our approach
	23		to Wilson in light of that, and you say:
	24		"Don't forget we we hopefully will have
03:28	25		the statement saying Ron Wilson lied." $lacksquare$



	ſ		Page 30807
	1		"From the CBC reporter."
	2		Asper:
	3		"Is she gonna do it?"
	4		You say:
03:28	5		"Uh she's quite willing to do it
	6		providing CBC has no objections. And
	7		she doesn't think they will. But her
	8		boss said it, she'd have to run it by
	9		the."
03:28	10		"Lawyers."
	11		"Lawyers. Can you see them saying no?"
	12		And then the next page, and I think this relates
	13		to a phone call that was traced back to
	14		Mrs. Cadrain eventually?
03:28	15	A	Yes.
	16	Q	It says:
	17		"Well I can see them not objecting but
	18		the statement will come out looking very
	19		equivocal. I got a phone call. I can't
03:28	20		identify the voice. The voice, the
	21		caller never identified herself, all I
	22		can tell you is that it came from this
	23		number."
	24		And you say:
03:29	25		"Yeah but she's willing to go a little
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	1		farther. She's willing to phone this
	2		woman again and talk to her."
	3		Etcetera, and then Mr. Asper says:
	4		"She knows that ah Shorty is the subject
03:29	5		of ah some inquiries."
	6		And it carries on. And I think what he's
	7		referring to, if you can scroll down, he says:
	8		"That's a possibility. I mean she's no
	9		dummy."
03:29	10		And I think what he's referring to there is that
	11		if this reporter goes back to Mrs. Cadrain, she's
	12		going to figure out that it might be something
	13		related to her son. Do you have a recollection
	14		about what this relates to?
03:29	15	А	I hadn't remembered this part about, "One of the
	16		easiest ways to protect him is to deflect
	17		attention," and so Mrs. Cadrain was lying about
	18		saying that Ronald Wilson said he lied so that it
	19		would focus attention on him rather than on her
03:29	20		son.
	21	Q	But if we can just take a step back, and can you
	22		tell us what you recall about what Donna Friesen
	23		told you?
	24	Α	Donna Friesen received a phone call from a woman
03:30	25		who said that Ron Wilson had told her that he had
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			Page 30809 ————
	1		lied in court and that Donna Friesen had checked
	2		the number and phoned back and found out that it
	3		was Mrs. Cadrain that was calling.
	4	Q	Okay. Was it Mrs. Cadrain's number or house or
03:30	5		was it did she confirm that it was Mrs. Cadrain
	6		herself? Do you remember?
	7	A	She confirmed that it was Mrs. Cadrain herself.
	8	Q	And so this would have been around the time that
	9		Paul Henderson had been out to see Dennis Cadrain?
03:31	10	A	That's my understanding, yes.
	11	Q	And so is it fair to say you and Mr. Asper were
	12		trying to figure out how to get this into some
	13		form of evidence that could be used?
	14	A	Yes, we were, but I completely forgot what David
03:31	15		Asper had said about "One of the easiest ways to
	16		protect him is to deflect attention, " so that it's
	17		quite possible that Ron Wilson never told her that
	18		and that she was just trying to get us off her
	19		son's back.
03:31	20	Q	And would this have been around the time then that
	21		you were making inquiries? I think Mike Brecht
	22		went out on May 22nd looking for Albert Cadrain.
	23	A	Yes.
	24	Q	So it would have been in that time frame?
03:31	25	A	It would have been.



	1	Q	Then to page 402, please, and this is where I
	2		think there's a further discussion about the issue
	3		of do you give the Cadrain information to the
	4		media or do you give it to justice, and Mr. Asper
03:32	5		says:
	6		"No I think this is the kind of thing
	7		Joyce that um you have a news conference
	8		and you just we just blast Justice.
	9		And I think that we send this and I
03:32	10		think that we send the material. Even
	11		if not verbatim but in capsulized form
	12		to them. Saying and criticizing the
	13		hell out of them saying you know your
	14		investigation has not included any of
03:32	15		the principal players."
	16		"And for your information the guy who
	17		Caldwell calls his star witness, and we
	18		can quote."
	19		And then carries on. And then scroll down, and
03:32	20		then he says:
	21		"We've got that, Dan's got that
	22		transcript where Caldwell talks about
	23		Cadrain the whole case starting with
	24		Cadrain."
03:32	25		And in fact I think what he's referring to is Dan

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	1		Lett and the transcript that you gave to Dan Lett
	2		and to David Asper, being the interview with
	3		Caldwell by Carlyle-Gordge?
	4	A	Yes.
03:33	5	Q	And then set up the news conference and then
	6		produce the statements, so and then at the
	7		bottom:
	8		"So that the Crown's star witness is a
	9		schizophrenic who goes for shock
03:33	10		treatment right after the trial. I mean
	11		it makes it, it ridicules it."
	12		"That's amazing. And then if you get
	13		Celine to say she told the cops there
	14		was no blood."
03:33	15		And then:
	16		"That's what we need right now."
	17		"Even if she says I was there an' I, and
	18		I didn't see any blood and the police
	19		didn't ask me. Because it's in the
03:33	20		transcript that she was there."
	21		"And defence Counsel starts to look bad
	22		there too."
	23		And scroll down:
	24		"Yeah."
03:33	25		"They the Defence never went into it."
			4



	1		And let me just pause there and talk about the
	2		Celine Cadrain information, and I think that came
	3		out of the information with Dennis, and we've
	4		been through this subject before, so I think if I
03:33	5		can just summarize what the record reflects and
	6		see if you can agree with this.
	7		I think Dennis Cadrain told
	8		Paul Henderson that Celine his sister would have
	9		been home that morning as well and that his
03:34	10		sister Celine told Dennis that she did not
	11		observe any blood on David's clothing that
	12		morning; correct?
	13	А	Correct.
	14	Q	And I think Mr. Henderson became quite excited
03:34	15		that that might be evidence contradictory to
	16		Albert's evidence, that if Albert saw blood and
	17		she didn't, that that would be significant
	18		evidence; correct?
	19	Α	Yes.
03:34	20	Q	And that thirdly
	21	А	We hadn't seen it as important, but Paul saw it as
	22		very important because if the police had
	23		interviewed her and she said she saw no blood and
	24		he said he had, that we should have known about



03:34 25

it.

	1	Q	Right. And so the next step then is that I think
	2		Mr. Henderson then said okay, well, the police
	3		should have interviewed her and if they did and
	4		got her to say I didn't see blood, then the police
03:34	5		are at fault if they didn't give it to Caldwell.
	6		If they did give it to Caldwell and Caldwell
	7		didn't give it to Tallis, then Caldwell is in
	8		trouble, and if Caldwell did give it to Tallis and
	9		Tallis didn't use, then Tallis was in trouble.
03:35	10		Was that the
	11	А	That was the scenario.
	12	Q	The scenario, so that's the Celine information,
	13		and I think the record reflects, and certainly her
	14		evidence and the evidence from others is that at
03:35	15		trial the evidence was that when David, Nichol and
	16		Ron arrived at Cadrain's house, Albert was up, his
	17		younger brother was up, Celine his sister was in
	18		bed and that she came down and observed David
	19		after David would have changed out of the clothes
03:35	20		that Albert had observed the blood on; correct?
	21	А	That's correct.
	22	Q	And again, that would have been something that
	23		perhaps Mr. Henderson didn't know at the time he
	24		interviewed Dennis Cadrain?
03:35	25	A	Probably.



	1	Q	And so the Celine angle, if I can call it that,
	2		was pursued for a while that she might have
	3		evidence, and the police, the Crown and Mr. Tallis
	4		may somehow be at fault for their failure to
03:35	5		properly deal with the information and it ended up
	6		turning out that it wasn't significant; is that
	7		fair?
	8	A	That's fair.
	9	Q	And it looks as though Mr. Asper also was with
03:36	10		perhaps Mr. Henderson and you going down this path
	11		for a while as well trying to sort out whether
	12		this information about Celine might be
	13	A	valuable. We thought it might be valuable at
	14		first.
03:36	15	Q	And at this time was the mindset of you and Mr.
	16		Asper and Mr. Henderson suspicious of everything
	17		that came so that when this information came,
	18		that the suspicion would be, okay, well, someone
	19		must have covered it up, someone must have hidden
03:36	20		it, something nefarious must have happened with
	21		this Celine information?
	22	A	Yes, I'm afraid that's about where we were.
	23	Q	And then if we can go to 335929, please, and this
	24		is just another transcript on the Donna Friesen
03:37	25		that might assist you, go to page 946, again this $\P$

			7 age 30070
	1		is a call between you and David Asper around May
	2		of 1990 actually, 947 and where you say:
	3		"Well, I'm not going to worry about
	4		Nichol, but I really think um, this CBC
03:37	5		reporter."
	6		And David says:
	7		"Who Donna?"
	8		"Yeah, Donna, was talking to, hold onto
	9		your hat, a woman that phoned in that
03:37	10		had left her phone number and wanted to
	11		remain anonymous"
	12		" and it was Mrs. Cadrain."
	13		"Yes."
	14		"Ah, the mother, on Confederation."
03:37	15		"Yeah."
	16		And again, the mother on Confederation, is that,
	17		I think that was the street that she lived on?
	18	А	Yes, that's right.
	19	Q	And I think we recalled last week the interview
03:38	20		you had with Mrs. Cadrain in 1983 or '81, I think
	21		that came up as to where they had moved, to
	22		Confederation Drive; is that right?
	23	А	That's correct.
	24	Q	And then:
03:38	25		"And in her talk with her, she said that

	1		Ron Wilson had told her that he had lied
	2		at the trial."
	3		"Get outta here."
	4		"I kid you not."
03:38	5		"Get outta here."
	6		"That's, that's right."
	7		"Get that, state, get that in, get that
	8		in writing."
	9		So that would be the information from Donna
03:38	10		Friesen?
	11	A	Yes.
	12	Q	Did anything ever come of that, did she ever
	13		follow up and talk to Mrs. Cadrain or anybody else
	14		about that?
03:38	15	A	I don't think so. I think what happened was the
	16		CBC said that we couldn't do anything with it,
	17		that she wouldn't be allowed to talk about it. I
	18		think that they lawyered her up.
	19	Q	Then if we can go to 048405, this is a tape
03:39	20		between you and Mr. Asper, this relates to the
	21		Celine issue, if we can go to page 048407, here's
	22		where Mr. Asper says, and they're talking about
	23		Celine, this is right around the time of the
	24		Dennis Cadrain interview with Henderson:
03:39	25		"I mean, if the Police got a statement

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	1		from her for example, either that
	2		they"
	3	And then	you say:
	4		"Oh, speaking of which I talked to Gary
03:39	5		Young, when I was in Saskatoon, and he
	6		at one time got Tallis's file."
	7	Asper:	
	8		"Oh, yeah?"
	9		"So he's going to look through and find
03:39	10		the stuff for us, and get it to you."
	11	And then	the next page:
	12		"Okay. Ah', if ah', Selene talked to
	13		the Police, at some point ah' either the
	14		Police wrote it down and she signed it,
03:39	15		or they Police just wrote it down in
	16		their notebooks."
	17		"And ah', at some point that
	18		information. If it didn't go to the
	19		Crown, is a just a severe condemnation
03:40	20		of the Police."
	21		"And if it did go to the Crown"
	22	You say:	
	23		"Then Caldwell's in trouble."
	24	Asper say	ys:
03:40	25		"Then the Crown's in deep, deep trouble.
		1	



			, age coo.e
	1		Deep trouble. So I mean that could be a
	2		real dynamite thing. You know it's
	3		dynamite enough that Cadrain, Cadrain's
	4		evidence is a product of a visions
03:40	5		looking into the clouds."
	6		"Ah' and that he was immediately after
	7		the trial, I mean it was right after the
	8		trial."
	9		"That he was committed."
03:40	10	And then	down at the bottom, and you say:
	11		"Well of course she was only very young.
	12		And I think maybe her mom didn't"
	13	And Asper	c:
	14		"She's a year older than Albert."
03:40	15	You say:	
	16		"That's right but it seemed to me that
	17		the testimony indicated she'd gone,
	18		already gone when they came."
	19		"No, no, no."
03:40	20		"Let me go back over the transcripts."
	21	Asper:	
	22		"No, Cadrain himself puts her there."
	23		"Not in the transcripts."
	24	And then	a further debate. So that would be
03:40	25	where the	e idea that somehow the Celine Cadrain



			Page 30819 ————
	1		information may have been part of some cover-up
	2		or withholding?
	3	А	Yes.
	4	Q	169911, this is a May 25, 1990 memo from Mr. Asper
03:41	5		to Mr. Wolch, and this gets back to the Markesteyn
	6		report that's coming out and the blood typing
	7		issue at trial, and Mr. Asper says to Mr. Wolch:
	8		"I think you should be aware of the
	9		relevance"
03:41	10		And talks about how many pages in the transcript
	11		the prosecutor used, how many pages for Paynter's
	12		evidence, recites the Court of Appeal decision,
	13		and then says:
	14		"Clearly, the Court of Appeal was
03:41	15		drawing an adverse inference here.
	16		Moreover, they did not consider that the
	17		sample was found four days after the
	18		murder"
	19		Etcetera, and then he says:
03:41	20		"The bottom line is that the suggestion
	21		that this evidence did not play any kind
	22		of a meaningful role in the trial does
	23		not make sense. The Crown obviously
	24		thought it did, and so did the Court of
03:42	25		Appeal. The Crown successfully fit a



	1		square peg into a round hole."
	2		And when I look at that May 25, 1990, I wonder
	3		whether Mr. Asper is getting back to Mr. Wolch
	4		responding to a suggestion that came from Federal
03:42	5		Justice or from someone else that the evidence
	6		did not play any kind of a meaningful role in the
	7		trial, and I'm wondering if you have any
	8		recollection of that being the case, of hearing
	9		anything about that at this time, that someone
03:42	10		had told either Mr. Wolch or some information
	11		came to your group that, suggesting that the
	12		evidence, being the semen, did not play any kind
	13		of a meaningful role in the trial, either that or
	14		Mr. Wolch himself came up with that and asked Mr.
03:43	15		Asper to respond. I mean, I'm just trying to
	16		find out whether any of that might have happened
	17		or whether you recall any of that coming up?
	18	А	I don't recall any of this coming up, but I don't
	19		think are you intimating that this bottom
03:43	20		section is talking about the report that we've
	21		just sent in?
	22	Q	No, this is before let me rephrase it. This is
	23		before Dr. Markesteyn's report.
	24	A	Right.
03:43	25	Q	And this is a memo from Mr. Asper to Mr. Wolch, so

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	1		you may have never seen it before.
	2	A	I don't think I did.
	3	Q	And so what I'm trying to find out, you had said
	4		earlier you had some memory of something coming up
03:43	5		about someone perhaps taking issue with the
	6		validity of the Ferris report. Do you remember
	7		telling me that?
	8	A	Yes, I do.
	9	Q	And so here's a memo, May 25, 1990, it's before
03:43	10		the Markesteyn report is done, shortly before, and
	11		it's a report from Mr. Asper to Mr. Wolch going
	12		through the relevance of the blood typing issue,
	13		and then he goes on to say lookit, here's how much
	14		time the prosecutor spent on it in his opening
03:44	15		address, here's how many pages in the transcript
	16		Paynter's evidence takes, here's what the Court of
	17		Appeal said, and then goes on to comment about
	18		that, and then says:
	19		"The bottom line is that the suggestion
03:44	20		that this evidence did not play any kind
	21		of a meaningful role in the trial does
	22		not make sense."
	23		And I'm trying to find out who it was that made
	24		the suggestion.
03:44	25	A	I have no idea.
			4

			Page 30822
	1	Q	Okay. And you don't recall discussing this issue
	2		with Mr. Asper, Mr. Wolch at this time?
	3	A	No, I have no recollection of that at all.
	4	Q	154605, and this is Mr. Henderson's memo to David
03:45	5		Asper reporting about his interview with Albert,
	6		and this has some of the information he obtained
	7		from Albert, and at the bottom he says Albert:
	8		" described how David broke off the
	9		aerial from the car (to prevent him from
03:45	10		hearing about the murder on the news)
	11		and how David made a solo trip to the
	12		library in Calgary to read about the
	13		murder."
	14		And again, both of those pieces of information,
03:45	15		that's what he said to Peter Carlyle-Gordge in
	16		1983 didn't he?
	17	А	Right.
	18	Q	And that's what caused you to suspect in 1983 that
	19		he was maybe not credible?
03:45	20	A	Correct.
	21	Q	154611, and this is a reference here where Dennis
	22		I think expressed concern to Mr. Henderson about
	23		the suggestion by you that Albert testified
	24		against David Milgaard for the reward money and he
03:46	25		went on to say:

	1		"Money means nothing to my brother, it
	2		means absolutely nothing at all."
	3		And what Albert wanted to do with it. Did this
	4		information cause you to change your view in any
03:46	5		way that the reward money played a role in
	6		Albert's evidence?
	7	Α	I think I I think when I heard that it caused
	8		me to rethink what Albert was like and as I
	9		recalled him and I think I really believed at that
03:46	10		point that maybe that was true.
	11	Q	If we can go to 337359, and this is a
	12		conversation, if we could go to page actually,
	13		let me just skip that for a moment. This relates
	14		to the Markesteyn report. Let's finish up with
03:47	15		Ron Wilson and come back to that.
	16		We know that, from the evidence
	17		of Mr. Henderson, that on June 4th, 1990 he
	18		visited Ron Wilson in Nakusp and interviewed him
	19		and got a statement from Ron Wilson recanting some
03:47	20		of the evidence he gave at trial; correct?
	21	Α	Correct.
	22	Q	And would Paul have contacted, Mr. Henderson have
	23		contacted you that evening?
	24	A	Yes.
03:47	25	Q	And do you recall what the nature of your

	1		discussion was with him, what he told you
	2		happened?
	3	A	Well, he told me everything that had happened and
	4		read some of it to me.
03:48	5	Q	And did it surprise you that Mr. Wilson had
	6		recanted?
	7	A	I think the way Paul put it to me was almost like
	8		you should have seen this guy, he really wanted to
	9		tell the truth, he really wanted to get it off his
03:48	10		chest, this has been haunting him all the time,
	11		and so I guess to me I saw it as a real different
	12		Ron Wilson to the one that I had interviewed, as
	13		when he told me about it, because when I met him
	14		and talked to him he was into drugs, he was into
03:49	15		drinking and all the rest of it and I didn't think
	16		very highly of him, but now Paul is telling me
	17		about someone that has been working and raising a
	18		you know, married, all the good things that
	19		were going on in his life, and yet he was prepared
03:49	20		to come forward even though it would be
	21		detrimental to him and tell this, so I really was
	22		putting a lot of credibility into what he had told
	23		Paul.
	24	Q	And would you agree that, and we've been through
03:49	25		both his 1990 statement many times and the '81

	1		interviews you had with him on a number of
	2		occasions, and looking at the two, would you agree
	3		that in 1990 on certainly some of the areas where
	4		he recanted his incriminating evidence, that it
03:49	5		was similar information to what he had provided to
	6		you in 1981?
	7	Α	Very similar.
	8	Q	Right. And so, I mean different language used,
	9		but would you agree that basically most of what
03:51	10		was in the 1990 statement, at least on the areas
	11		where he backed off or recanted, that it was
	12		similar in nature to what he told you in 1981?
	13	Α	Similar?
	14	Q	Similar. In other words he said, for example,
03:52	15		that
	16	A	Yes.
	17	Q	In '81 he said "I don't think I saw blood, I
	18		didn't see blood", in 1990 he said the same thing,
	19		so that apart from Mr. Wilson's circumstances in
03:52	20		life at the time and the wording that was in
	21		Mr the statement that Mr. Henderson took from
	22		him, that he was saying similar things to you in
	23		1981 that he was to Mr. Henderson in 1990; is that
	24		would you agree with that?
03:52	25	Α	Yes, I would say that they were similar, but the
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1		second one was believable, the first one wasn't.
2	Q	And that was because of his situation at the time?
3	Α	Correct.
4	Q	Now do you remember being told by Mr. Henderson
5		that he'd taped his interview with Ron Wilson?
6	Α	Yes, I do.
7	Q	Did you ever have a chance to listen to the tape
8		of his interview with Ron Wilson?
9	А	I believe he played it for us and we listened.
10		That wasn't we
11	Q	My next question is going to be "did you record
12		it" but
13	А	I believe that he played it for us at one point.
14		I know it was but it may just be that he told
15		me what he said, and then of course we got the
16		statement right away.
17	Q	Yeah. Do you recall ever getting a copy of the
18		tape of his interview with Ron Wilson?
19	А	No, because I'm sure that if I had it, Mr. Hodson,
20		you would have it.
21	Q	And so, again, do you have any recollection of
22		ever listening to that, of having the tape and
23		listening to it?
24	А	No, I really do not.
25	Q	And do you know what again, and we've asked Mr.
	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	2 Q 3 A 4 Q 5 A 7 Q 8  9 A 10 Q 11 Q 12 A 13 A 14  15 A 14  15 Q 18  19 A 20 Q 21 Q 22 Q 23 Q

	1		Henderson to go search again but do you have
	2		any information or can you be of any assistance to
	3		us in determining where that tape may have gone or
	4		where it might be, of that interview?
03:53	5	Α	Well because most of the tapes I got were because
	6		I was working with him, okay, that particular trip
	7		I was not, he was out there on his own, so I'm
	8		assuming that he took it back to Seattle. And you
	9		only have to know Paul and work with Paul for a
03:54	10		little while to know that things are not always
	11		readily available to find after he's had them, he
	12		tends to lose things.
	13	Q	So, again, you're you're suspecting that he may
	14		have lost it because of your observations of his
03:54	15		habits, but you have no information about
	16	A	I
	17	Q	where it may have gone or where it might be?
	18	A	I have no information on it.
	19	Q	If we could go to 336852. And this is go to
03:54	20		336830. And this is a discussion, I think in June
	21		of 1990, shortly after go to page 880 after
	22		the Wilson statement would have been obtained, and
	23		I think around this 336880. This is a
	24		discussion between you and David Asper, and I
03:55	25		think around this time I could be mistaken on
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1		the date but I think around this time David,
2		your son David, had fired David Asper and Hersh
3		Wolch, and he didn't want them representing them;
4		do you recall that happening from time to time?
5	А	Yes, I certainly do.
6	Q	And I think the discussion here is well, let me
7		do I think that's the backdrop here. And what
8		Mr. Asper says here, he says:
9		" you know the incredible thing is
10		",
11		and I think the backdrop is as to whether David
12		needed a lawyer back in '82 or whether he now
13		needs one, and Asper says:
14		" you know, the incredible thing is
15		that it's all in reverse of the way
16		he sees it, you know, I mean I suppose
17		that up to this point and I mean we
18		nearly had it in the bag in about '82 on
19		your own."
20		" he was so close, you know with what
21		we know now."
22		"He was so close in '82"
23		" or '81 or '80 whatever it was."
24		And you say:
25		"'81."
	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	2 3 4 5 A 6 Q 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24



			- Fage 30029
	1		And David says:
	2		" that it's it's just, ah I wanna
	3		scream."
	4		And you say:
03:56	5		"Oh yeah, it's all that wasted time."
	6		David:
	7		"Well yeah, and and you know where
	8		Wilson is teetering on the verge of
	9		· · · " ,
03:56	10		You say:
	11		"Talking."
	12		David:
	13		" coming clean and then you know,
	14		shuts his mouth again that, you could,
03:56	15		you could have",
	16		And you say:
	17		"If we'd have had an investigator at
	18		that point"
	19		"It would"
03:56	20		" go and see Wilson."
	21		"It would have been done."
	22		And, again, it would appear that you and Mr.
	23		Asper are looking back, saying that Mr. Wilson
	24		was
03:56	25	A	Teetering.



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	1	Q	teetering?
	2	А	Yup.
	3	Q	And, again, can you shed any light on this
	4		discussion, or what Mr you and Asper were
03:56	5		talking about here?
	6	A	Well I think that just that it's hindsight again,
	7		you know, we're going back and looking. We now
	8		have the new documentation and we're looking at
	9		the old and saying "you know, he was teetering
03:57	10		there, we really had that information back then if
	11		we'd done if we could have done something with
	12		it back then".
	13	Q	But was it hindsight in saying that and I think
	14		where Mr. Asper says he would scream or "I wanna
03:57	15		scream", that with what you now know about Mr.
	16		Wilson, either he wished or the group wished that
	17		someone would have gone or you would have gone
	18		back or an investigator would have gone back to
	19		him sooner;
03:57	20	А	Yes,
	21	Q	is that a fair reading of it?
	22	А	that's correct, that's a fair reading.
	23	Q	And then, as well, 334970. After the interview of
	24		Ron Wilson, I think the evidence we've heard is
03:58	25		that he was interviewed on June 4th, 1990 and gave

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1		a statement, it was faxed to you, and that before
2		it was sent to Justice it was given to Dan Lett
3		and Dan Lett was allowed to do an exclusive
4		interview with Ron Wilson that ended up getting
5		published the same day or morning that Federal
6		Justice received the statement; is that correct,
7		that's what happened?
8	A	That's correct.
9	Q	And I think Mr. Asper said that it was a I
10		better be careful with the word he used but it
11		was to show appreciation to Mr. Lett for the work
12		he had done, is that correct, is that your
13		recollection?
14	A	That is definitely my recollection. Dan had done
15		so much for us that we just felt he needed to have
16		this.
17	Q	And so would it be correct that the decision, when
18		you had the Wilson recantation, was that you would
19		want to put it in the media first, or at least
20		simultaneously, with providing it to Justice?
21	A	Yes.
22	Q	And you did not want to give it to Justice to let
23		them review and do any work before it appeared in
24		the public domain?
25	А	Absolutely not.
	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	2 3 4 5 6 7 8 A 9 Q 10 11 12 13 14 A 15 16 17 Q 18 19 20 21 A 22 Q 23 24



	1	Q	And why not?
	2	А	Because of all our bad experiences already.
	3	Q	Okay. And would this have been part of the
	4		strategy that we talked about earlier, that
03:59	5		everything gets out in the public domain?
	6	А	That's correct.
	7	Q	And so Dan Lett, when he interviewed Ron Wilson
	8		in I think June 5 he wrote a story, I think the
	9		day after, maybe even that night, but within a day
03:59	10		of Wilson's statement to Henderson Dan Lett did an
	11		interview and ran a story, and you'll recall I
	12		think I went through that with Mr. Asper; do you
	13		remember that, the story that Dan ran?
	14	A	I don't remember the story, but I'm
03:59	15	Q	And
	16	A	sure that he did run one right about that time.
	17	Q	And in that story that we also had a tape where I
	18		think Mr. Lett said he had got some more
	19		information out of Wilson about various matters
03:59	20		that Mr. Henderson didn't get, that was one of the
	21		discussions, do you recall us hearing that?
	22	А	Yes, I do.
	23	Q	Yeah. And so here, if we could go to page 987,
	24		and, again, this is Mr. Lett talking to you after
04:00	25		he has done his interview of Ron Wilson in early
			4



		1 age 30033
	1	June of 1990, and he says:
	2	"Oh, okay, this is something he said to
	3	me, it wasn't in the statement he gave
	4	to Paul, but I said, well, because he
04:00	5	said, you know, for the longest time
	6	afterwards",
	7	he is talking about Ron Wilson:
	8	" he just believed that what he said
	9	was the truth and I said well when did,
04:00	10	when did it come to you that it wasn't,
	11	and I said well, you know, I think it
	12	was really after I talked to
	13	Mrs. Milgaard in 1981."
	14	And so this is Dan Lett relating what Ron Wilson
04:00	15	told him in the post-Henderson interview. You
	16	say:
	17	"You're joking."
	18	"No."
	19	"Oh, that makes me feel better."
04:00	20	And Dan Lett says:
	21	"Yeah, and, and I'll, I'll tell you
	22	something. I went over the photocopies
	23	I have of that interview"
	24	"Right."
04:00	25	" and, you know, Joyce, there's some $\P$

	1		really awesome foreshadows in there, you
	2		know, like there are things in there
	3		that literally, you know, I guess it's
	4		easy to see in retrospect now but, but
04:01	5		they, if somebody like Paul Henderson
	6		had seen that re, that transcript in
	7		1981, he may, I'm sure he would have
	8		been able to say right away, 'He's
	9		lying'."
04:01	10		"And he's admitting that he's lying,
	11		cause he said things then that he said
	12		to me ten years later",
	13		And I take it from this well I, not take it
	14		I think what Dan Lett is referring to is he would
04:01	15		have had the 1981 transcript of your two
	16		interviews of Ron Wilson?
	17	A	Right.
	18	Q	Correct? And so, before he interviewed Ron Wilson
	19		on June 4, June 5, Dan Lett would have had the
04:01	20		benefit of your 1981 interviews?
	21	A	And compare, and the comparison that he was
	22		taking.
	23	Q	Okay. In we can now turn to Dr. Markesteyn,
	24		337377. I'm sorry, I'm not just give me a
04:02	25		moment. This, yeah, this relates to a discussion



	1	around the time of the Henderson interviews of
	2	Cadrain, and it's a discussion between you and Mr.
	3	Asper and Mr. Henderson
	4	COMMISSIONER MacCALLUM: I'm sorry, Mr.
04:02	5	Hodson, was that part of 359, 337359?
	6	MR. HODSON: Yes, 337359.
	7	COMMISSIONER MacCALLUM: Thank you.
	8	BY MR. HODSON:
	9	<b>Q</b> And I think this is talking about the interviews,
04:02	10	and I think this is maybe right after the Cadrain
	11	interview, you say:
	12	"I told Paul what you mentioned about
	13	Ottawa may be coming out with some
	14	MR. DAVID ASPER: Oh.
	15	MRS. JOYCE MILGAARD: negative
	16	information.
	17	MR. DAVID ASPER: Yeah. I'm just, I'm just
	18	concerned that, you know, we've got all
	19	the publicity going our way at this
	20	point
	21	MR. PAUL HENDERSON: Right.
	22	MR. DAVID ASPER: and, you know, at some
	23	point, for political reasons, Ottawa may
	24	just decide that they're gonna start
	25	shooting back with whatever they have



1 got that we don't know about. 2 MR. PAUL HENDERSON: What have they got do 3 you think? 4 MR. DAVID ASPER: Well, I'm not sure, but 5 I've heard sort of from third, fourth, eighth-hand sources that they're 6 consulting, independently, different 8 serologists, you know, to -- to examine 9 that Farris forensic report. 10 don't know, I don't know if they're 11 doing it for sure, number one, and I 12 don't know that their conclusions could 13 be any different, but it's just that we 14 run the risk, umm, that Ottawa is gonna 15 start setting up a rejection of the 16 application --17 MR. PAUL HENDERSON: Uh-huh. 18 MR. DAVID ASPER: -- by leaking negative 19 information, and that, you know, that 20 may get, psychologically may get these 21 people, particularly Cadrain, off the 22 hook if they think that the heat is not 23 coming down on them. 24 MRS. JOYCE MILGAARD: Uh-huh. 25 MR. DAVID ASPER: So that, I mean, I



1		suppose that's my only real concern,
2		umm, you know, in terms of the timing."
3		And I think this relates to right around the time
4		of the interviews of Cadrain, and it's the same
04:04 5		time or within a few days of that memorandum that
6		I showed you earlier of Mr. Wolch that Mr. Asper
7		wrote to Mr. Wolch about this suggestion, and I
8		it appears from this discussion that Mr. Asper
9		may have had some information, although he said
04:04 10		it's, it's third, fourth, or eighth hand, that
11		Ottawa might be leaking some information that's
12		negative to your case that takes issue with the
13		Ferris report; do you remember that coming up?
14	A	Just very vaguely. I can remember this
04:04 15		conversation, but I really didn't know what he
16		meant by it, you know, and I don't think we knew
17		what information was going to be coming out, but
18		he suspected something was coming.
19	Q	Now
04:05 20		COMMISSIONER MacCALLUM: Have you got a
21		date on that?
22		MR. HODSON: Yes, I can provide you with a
23		closer it's late May of 1990.
24		COMMISSIONER MacCALLUM: Okay.
04:05 25		MR. HODSON: And I'll go back and, tomorrow



	1		morning, advise of something else that can place
	2		it, but it relates to yeah, I'll go back and
	3		I'll find it's the end of May, 1990, I can be
	4		a bit more precise.
04:05	5		BY MR. HODSON:
	6	Q	And is one read of this would be that what Mr.
	7		Asper is saying is that, lookit, it's going to be
	8		false information out there that they're gonna
	9		leak to try and throw us off the trail; is that a
04:05	10		fair reading of that, that
	11	A	Yes, I would think that was a fair reading of
	12		that.
	13	Q	That, be careful, they might leak some false
	14		information about the Ferris report; was that your
04:05	15		take of it?
	16	A	Well, that they were going to leak negative
	17		information, it would have to be about the report,
	18		so I think he's saying that if that came out and
	19		if we're trying to get Cadrain to say things, that
04:06	20		that's sort of gonna let him off the hook when
	21		we're sort of telling him about the possibility
	22		that he needs to come forward now.
	23	Q	And I think there's some talk about the timing,
	24		and would that be he says:
	25		" my only real concern, umm, you



	1		know, in terms of the timing",
	2		and would that be to look at to get Cadrain's
	3		information or statement before
	4	A	Before this Ottawa, something, material came out,
04:06	5		so I think it was to get Paul out there as soon as
	6		possible.
	7	Q	Okay. If we could go to 169913. This is a May
	8		30th, 1990 memo to the file from David Asper, and
	9		it talks about a call with Dr. Merry, and I think
04:07	10		this is where he's first advised of Dr. Merry's
	11		view that the human semen, or that the frozen
	12		semen found in the snow may, was, is, could be,
	13		probably is dog urine; do you remember this
	14	A	Yes, I do.
04:07	15	Q	coming up?
	16	A	And I, to this day, can't figure out why anyone
	17		didn't figure that out way ahead of time because
	18		it seems so normal to know.
	19	Q	That it was
04:07	20	A	That dog semen would be yellow, human semen
	21		wouldn't be, but this came as a tremendous
	22		breakthrough to us.
	23	Q	And so what is your recollection, then, of the
	24		significance of this?
04:07	25	А	Well the significance, to me, was the fact that he

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	1		was probably part-way convicted on the fact that
	2		it was his semen that was there, because of the
	3		way the jury heard the information come out, and
	4		the fact that it's dog urine and couldn't have
04:08	5		been David's, I thought that was very positive.
	6	Q	Did you not was there not a concern and I'll
	7		show you a transcript in a moment where I think
	8		you expressed this concern but if we go back to
	9		what Dr. Ferris said in the proof of innocence his
04:08	10		opinion, I think what you have described to us, is
	11		that the frozen semen is from the person who
	12		killed Gail Miller, the frozen semen can't come
	13		from David Milgaard, therefore it proves his
	14		innocence?
04:08	15	А	Right.
	16	Q	You now have another doctor coming along and
	17		saying oh, by the way, the very piece of physical
	18		evidence that you rely upon in your application to
	19		the minister to prove David's innocence isn't
04:08	20		semen from the perpetrator, but it's dog urine;
	21		would that not cut the legs out from under Dr.
	22		Ferris' opinion with respect to the frozen semen
	23		and proving David's innocence?
	24	А	Yes, it is, and I think we had some concerns about
04:09	25		that.

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	1	Q	And so that I think that
	2	А	But the initial reaction was it was something that
	3		we all should have seen before, that it was so
	4		logical.
04:09	5	Q	Logical that I'm sorry, I'm not following?
	6	А	Well, it was logical to me that everyone should
	7		have seen before that human semen was white, the
	8		other being yellow couldn't have been human, it
	9		must have been dog urine. So, I mean, that is
04:09	10		something that, if you were thinking about it,
	11		especially if you had a dog and took them out
	12		walking, you it was something that people know.
	13	Q	And so if we can go to 106948. And, again, is it
	14		fair to say, though, that in the Markesteyn the
04:10	15		dog urine became sensational news, didn't it?
	16	A	It did.
	17	Q	It became information that, and it was portrayed
	18		as 'dog urine used to convict David Milgaard', and
	19		things of that nature?
04:10	20	A	Absolutely, just the media had a heyday with
	21		it.
	22	Q	And the fact that it was dog urine made it a bit
	23		more newsworthy, is I think that was Mr.
	24		Asper's words?
04:10	25	А	Right, and we were trying to figure out what the $lacktriangle$

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	1		headline was going to be. I remember, with Dan
	2		Lett, talking about a few possible headlines.
	3	Q	Did any reporter, do you recall, ever ask you
	4		"Mrs. Milgaard, if it's dog urine, what does this
04:10	5		do to Dr. Ferris' opinion that it proves his
	6		innocence"?
	7	A	No.
	8	Q	Do you recall that ever coming up with any
	9	A	No, I do not.
04:10	10	Q	Was it a concern that it might come up and someone
	11		might say "if it's dog urine, it doesn't prove
	12		David's innocence, Ferris report no longer valid",
	13		or words to that effect; was that something that
	14		you were concerned with?
04:11	15	A	I can't recall that coming up.
	16	Q	And so this would be Dr. Merry's June 1, 1990
	17		letter to Mr. Asper, and I think if we follow this
	18		through, I think he starts off saying:
	19		" I do not believe that the
04:11	20		possibility can be excluded that the
	21		frozen yellowish substance found near
	22		the body of the deceased was dog urine,
	23		"
	24		And that's how it started out, didn't it, that
04:11	25		"it might be, we can't say that it's not dog



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1		urine, it might be"?
2	А	Yes.
3	Q	That was the scientific opinion?
4	А	Yes.
04:11 5	Q	And would you agree that, after it got into the
6		media, that it evolved to becoming in fact I
7		think it was in the Toronto Star where they said,
8		actually, "it is dog urine"?
9	А	That's correct.
04:11 10	Q	And how did, how did that happen, was that
11		something that that happened in the media
12		world, or did that happen in your group; was that
13		something that
14	А	I believe it happened in the media world.
<i>04:11</i> 15	Q	And so there was information that put out that got
16		evolved there's probably a better word out
17		there that someone will come up with that
18		became something more than what the scientists
19		said that it was?
04:12 20	А	Absolutely.
21	Q	I want to go to the next page. And I take it Mr.
22		Asper would have shared these reports with you
23		from Dr. Merry and Dr. Markesteyn?
24	А	I believe I would have seen them, yes.
04:12 25	Q	And, here, Dr. Merry says talks it says:
		<b>▲</b>



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	1		"From the manner in which the test for
	2		secretor status was performed it is not
	3		possible to be certain if David Milgaard
	4		is a secretor or non-secretor of blood
04:12	5		group A antigen."
	6	A	I remember that.
	7	Q	And why do you remember that?
	8	А	Well, because I said, "well, we need to know".
	9	Q	Okay. So here we have Dr. Ferris, I think as
04:12	10		you've told us, his opinion proves David's
	11		innocence
	12	А	If he's a non-secretor.
	13	Q	Right, I'm going to get to that, but your the
	14		opinion and I appreciate you've told us that,
04:12	15		in addition to the secretor issue, Dr. Ferris'
	16		report gave other favourable information?
	17	А	Absolutely.
	18	Q	But if we just focus on the Ferris report, which I
	19		think you said was the underpinning or the main
04:13	20		part of your initial application,
	21	А	Correct.
	22	Q	and your belief and your son's belief was that,
	23		based on Ferris' opinion the frozen semen, the
	24		physical constituents of that proved that David
04:13	25		could not have been the killer?
		1	



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	1	А	That's correct.
	2	Q	Dr. Merry's report comes along and it does two
	3		things, number one it says "I don't think, that
	4		may not be semen, it may be dog urine, in which
04:13	5		case it couldn't be from the perpetrator,
	6		therefore it has no value in saying whether or not
	7		David Milgaard was involved in the crime", number
	8		one; correct?
	9	A	Correct.
04:13	10	Q	And number two, if he's wrong on the dog urine,
	11		it's challenging the premise that Dr. Ferris
	12		relied upon, a significant premise was he's
	13		basically saying "lookit, we're not so sure that
	14		David is a non-secretor"; is that fair?
04:13	15	A	That's fair. And yet, don't forget, the Ferris
	16		report went much farther than that, it had all
	17		kinds of other reasons for David not being
	18		guilty,
	19	Q	But I think
04:14	20	A	the timing, everything.
	21	Q	Sure. But I think and correct me if I'm
	22		wrong I think the part of the report, though,
	23		that certainly you and Mr. Asper relied upon, at
	24		least in as far as the application to the minister
04:14	25		and the reports in the newspaper were, was the
			Meyer CompuCourt Reporting

			Page 30846
	1		secretor issue?
	2	А	That's correct.
	3	Q	And so that if the, if David was a secretor, I
	4		think you told us, then, that Ferris' opinion was
04:14	5		of no value?
	6	A	And this is why, when I read that, I can remember
	7		the discussions that we had on it.
	8	Q	And I'll tell you, I mean I can ask you to tell me
	9		your recollection, I do have a couple one
04:14	10		transcript, if you would rather
	11	А	That would be good.
	12	Q	Sure, why don't we go to that, and we can if we
	13		can go to 336785. And if we can go to page 797,
	14		and this is a discussion, I think this is before
04:15	15		Markesteyn and Merry's report are out, but that
	16		Mr. Asper knows what they're gonna say, and he
	17		says:
	18		"But it's possibly not even human, and
	19		it's certainly not scientific evidence.
	20		MRS. JOYCE MILGAARD: Well would Farris not
	21		have checked to see if it was human.
	22		MR. DAVID ASPER: Umm
	23		MRS. JOYCE MILGAARD: I think you've got to
	24		ask him that question."
04:15	25		And would that have been sort of your first
			•



	1		reaction, "why didn't Ferris check that?"
	2	A	Yes.
	3	Q	Because if it was dog urine then Ferris shouldn't
	4		have been giving an opinion that exonerated
04:16	5		David;
	6	А	Yes, correct.
	7	Q	correct? And I'm not sure who the Unidentified
	8		Female Speaker was, it might have been your
	9		daughter Maureen, is a possibility. And then
04:16 1	10		David says:
1	11		"I think Farris operated on the
1	12		assumption that it was.
1	13		UNIDENTIFIED FEMALE SPEAKER: Right.
1	14		MR. DAVID ASPER: I mean that's what
1	15		Markesteyn is doin'.
1	16		UNIDENTIFIED FEMALE SPEAKER: And I think
1	17		we should wait and get the report.
1	18		MR. DAVID ASPER: Markesteyn, you see
1	19		Markesteyn is a more of a Quincy type,
2	20		you know.
2	21		MRS. JOYCE MILGAARD: Yeah.
2	22		MR. DAVID ASPER: Markesteyn wants to
2	23		investigate, Markesteyn is like a
2	24		real he's like a cop, almost."
04:16 2	25		And then down at the bottom, I think this is your
			•

1		daughter:
2		"So you might as well wait and get this
3		report from Markesteyn before even
4		putting to Farris about the other
5		MRS. JOYCE MILGAARD: (Sighs).
6		UNIDENTIFIED FEMALE SPEAKER: see what
7		it says first until you talk to Farris?
8		MRS. JOYCE MILGAARD: Okay.
9		MR. DAVID ASPER: And
10		MRS. JOYCE MILGAARD: It would have been
11		nicer
12		UNIDENTIFIED FEMALE SPEAKER: But if that
13		happens
14		MRS. JOYCE MILGAARD: if it had been the
15		other way.
16		MR. DAVID ASPER: What?
17		UNIDENTIFIED FEMALE SPEAKER: If that
18		happens and they say "this evidence is
19		going to be okay",
20		and it would appear from this that you were
21		disappointed in the, this information from
22		Markesteyn and Merry that it might be dog urine
23		because of the effect it had on the Ferris
24		opinion; is that correct?
25	A	Yeah.

04:16

04:17



1 Q And then on the secretor issue, if we could go to 2 337073, and this is around mid-June of 1990. 3 we can go to page 094, and I'll take you through some other documents after this, but let me just 4 04:17 5 give you a bit of background. After the 6 Markesteyn report comes out and the Merry report 7 comes out, they go to Federal Justice, Mr. 8 Williams goes out and talks to Dr. Merry, Dr. 9 Ferris, and Dr. Markesteyn, and the memos which I 04:17 10 will show you basically say that I think all three 11 of these people have indicated that the secretor 12 status of David Milgaard is not something that --13 in different ways, but basically they said you 14 can't rely on the '69 secretor test. And so that 04:18 15 information, at least, had been communicated to 16 Eugene Williams, and it appears that Markesteyn, 17 Ferris and Merry may also have conveyed that to 18 Mr. Asper around this time, so I think that's --19 and I'll take you through those documents probably 04:18 20 tomorrow morning. But so here's the discussion, 21 and then I want to ask you about your 22 recollection, Asper says: 23 "By the way, as I'm going through this 24 thing, Ferris has a blood sample from 25 David.",

1	top of the next page, and David says:
2	"MR. DAVID ASPER: We've got to get
3	Ferris to confirm that he's a secretor,
4	a non-secretor. On January 18 <sup>th</sup> , '88, a
5	blood sample was taken from him and sent
6	to Ferris. What do you think? Well, of
7	course, Ferris is out of town now.
8	MRS. JOYCE MILGAARD: He's on holidays
9	for a few days, isn't he.
10	MR. DAVID ASPER: Yeah, or longer."
11	"MRS. JOYCE MILGAARD: Well, how come
12	Justice has just interviewed him then?
13	MR. DAVID ASPER: They saw him
14	yesterday."
15	Which I think was June 11th:
16	"MRS. JOYCE MILGAARD: Oh, and he's
17	gone?
18	MR. DAVID ASPER: Yeah, he was leaving
19	today.
20	MRS. JOYCE MILGAARD: Oh, that's too
21	bad. Okay.
22	MR. DAVID ASPER: But, I don't know,
23	it's totally up to you. I leave the
24	issue of confrontation to you and to
25	David because it gets him into"

04:18



1	trouble, I think that relates to another matter.
2	If you can just scroll down, and you say:
3	"MRS. JOYCE MILGAARD: Right. What
4	about this blood test though? Ferris
5	must have that's the reason he got
6	it, surely.
7	MR. DAVID ASPER: No, it was for the DNA
8	testing. He got it so that he could
9	extract genetic material.
10	MRS. JOYCE MILGAARD: Well, I'm sure he
11	must have tested the other, too.
12	Wouldn't you think so?
13	MR. DAVID ASPER: I don't know that that
14	necessarily follows.
15	MRS. JOYCE MILGAARD: Well, it would
16	follow to me if I if I had David
17	Milgaard's blood sample there, and I was
18	going by the fact that he was a
19	non-secretor and I was reading it in
20	evidence I'd be checking it to make
21	sure.
22	MR. DAVID ASPER: One would think so.
23	MRS. JOYCE MILGAARD: Well, then, I
24	think the proper procedure would be to
25	ask him

1	MR. DAVID ASPER: Yeah.
2	MRS. JOYCE MILGAARD: did you?
3	MR. DAVID ASPER: Yeah, okay.
4	MRS. JOYCE MILGAARD: And I mean, if
5	they conclusively approve the other way
6	the point is, another question I've
7	often had is, if you're once a
8	secretor
9	MR. DAVID ASPER: Are you always a
10	secretor?
11	MRS. JOYCE MILGAARD: always a
12	non-secretor? Do you ever change?
13	MR. DAVID ASPER: Yeah no, you don't.
14	Although, what they're saying now is
15	that
16	MRS. JOYCE MILGAARD: With the new
17	technology.
18	MR. DAVID ASPER: Yeah.
19	MRS. JOYCE MILGAARD: Yeah.
20	MR. DAVID ASPER: But well, okay
21	MRS. JOYCE MILGAARD: I'm not so
22	concerned. I mean, the way the
23	Markesteyn Report reads on that sample
24	
25	MR. DAVID ASPER: It doesn't matter.



1		MRS. JOYCE MILGAARD: in any event.
2		MR. DAVID ASPER: It doesn't matter.
3		MRS. JOYCE MILGAARD: But it would be a
4		question you should ask him, I would
5		agree. Okay?
6		MR. DAVID ASPER: All right."
7		Now the next discussion with Mr. Asper about the
8		secretor is about a year and a half later, right
9		around the time of the Supreme Court, when Murray
04:20 10		Brown from the Government of Saskatchewan asks
11		Mr. Asper if David will agree to be tested for a
12		secretor status. So I'm presuming, from that,
13		two things; one, Dr. Ferris never tested David
14		for secretor status, which he confirmed for the
04:20 15		Inquiry; and two, it was not done around this
16		time that you had this discussion with Mr. Asper?
17	A	That's correct.
18	Q	Can you tell us, again, what is your recollection
19		about, in addition to what's in these transcripts,
04:20 20		about what happened about the secretor issue?
21	A	I honestly don't know why we didn't continue down
22		the path and do it, but it must have been
23		something else that came up right afterwards.
24	Q	It would appear, from this discussion, that you
04:21 25		presumed that Dr. Ferris would have done the test,
		1

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	1		if he was relying on the fact that David was a
	2		non-secretor and he had his blood
	3	А	They
	4	Q	you assumed that he would have tested it?
04:21	5	А	Yes.
	6	Q	And you are asking Mr. Asper, and he was saying
	7		"well" I'm not sure what he is saying, maybe,
	8		maybe not, and that you asked Mr. Asper to follow
	9		up with Dr. Ferris and
04:21	10	А	And check it.
	11	Q	check to see if he had done it or to do the
	12		test; is that correct?
	13	A	That's correct.
	14	Q	And do you know what happened, or why that didn't
04:21	15		take place?
	16	А	I have no idea. Obviously, though, in in there
	17		somewhere it's it did say that he was going to
	18		be away, so maybe how long he was away was the
	19		difference.
04:21	20	Q	Okay. We'll come back to this issue in December
	21		of '91, or January of '92 it comes up.
	22	А	Okay.
	23	Q	But again, at this point did you start to have
	24		concerns about the Ferris opinion about David's
04:22	25		secretor status, did you have some doubts about



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	1		that?
	2	A	No, I think I really felt that he was very
	3		reliable, and I felt that if David had been there
	4		and he had that sample and he was testing it and
04:22	5		reading that information, he would have done it.
	6	Q	And so you assumed that Ferris would have done the
	7		secretor test?
	8	А	Absolutely. He struck me as that kind of a man.
	9	Q	If we can go to 155517, and this is the Markesteyn
04:21	10		report which we've been through with a few
	11		witnesses, and I think he touched on, if we can
	12		maybe go to page 522 of that, and again I don't
	13		propose to go through it, but this is where he
	14		touches on, spends a bit of time on the yellowish
04:21	15		stains and I think what he says is lookit, it's
	16		possible that it's dog urine and then goes on to
	17		say that that was not excluded by the RCMP back in
	18		1969 when they did the test, he says that based on
	19		a discussion with Staff Sergeant Paynter; correct?
04:21	20	A	Correct.
	21	Q	And what was your understanding of the Markesteyn
	22		and Merry report as far as whether it was or
	23		wasn't dog urine and how might this have been
	24		missed before, what was your understanding?
04:22	25	Α	Well, it was so startling and it was so newsworthy

1 that it seemed to be a wonderful opportunity to use it to show the type of evidence that had been 2 3 used against David and to me it was just one more 4 show of how wrong things had gone. 5 Q Now, what if it wasn't dog urine, though, and in 04:22 fact it was human semen, which I think Staff 6 Sergeant Paynter testified at this Inquiry, saying 8 yes, he did do the test in '69 that confirmed it 9 was of human nature, and so to go back in 1990 you 04:22 10 are saying if, if -- I think what the experts are 11 saying, lookit, we can't exclude it as being dog 12 urine, we think it might be because of the 13 yellowish colour and we have tried to identify 14 whether this specific test was done and the quy 04:23 15 can't find his notes or can't recall, so it can't 16 be excluded so it might be, and so it gets out in 17 the public domain that it may have been dog urine 18 that was used to convict David Milgaard at trial 19 when in fact, if Staff Sergeant Paynter's evidence 04:23 20 is correct before the Inquiry, that it wasn't, it 21 was human semen. 22 And the question is? 23 I'm saying is that something, were you concerned 24 about that at the time? You said it was 04:23 25 sensational, it was out there and it brought



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1		attention to it, but what if it was wrong, did	
2		that matter?	
3	A	Well, I don't think we thought it was wrong at the	
4		time and we only ran with things that we thought	
<i>04</i> :23 5		were important and we ran with that because we	
6		thought it just showed how inept the investigation	
7		had been.	
8	Q	It	
9	A	Maybe we didn't look at the downside of it at the	
04:24 10		time that we did it, I think we were quite excited	
11		about it and got it out there.	
12	Q	And that would be inept if it was dog urine; is	
13		that correct?	
14	A	Yes.	
<i>04:24</i> 15	Q	And if it was in fact human semen, then that's	
16		what I'm trying was that an issue on your mind,	
17		to say okay, well, did that matter?	
18	A	It didn't really matter. We needed to get it out	
19		there.	
04:24 20	Q	And also the fact that it would undermine to some	
21		degree the Dr. Ferris opinion; agreed?	
22	A	Yes, I believe we looked at that.	
23	Q	And in the grand scheme of things, you decided to	
24		go with it?	
04:24 25	А	Yes, we did.	
	II		



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1	MR. HODSON: This is probably an
2	appropriate spot to break for the day.
3	(Adjourned at 4:24 p.m.)
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1	OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATE:
2	We, Karen Hinz, CSR, and Donald G. Meyer, RPR, CSR,
3	Official Queen's Bench Court Reporters for the Province of
4	Saskatchewan, hereby certify that the foregoing pages
5	contain a true and correct transcription of our shorthand
6	notes taken herein to the best of my knowledge, skill, and
7	ability.
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11	
12	, CSR
13	Karen Hinz, CSR
14	Official Queen's Bench Court Reporter
15	
16	, RPR, CSR
17	Donald G. Meyer, RPR, CSR
18	Official Queen's Bench Court Reporter
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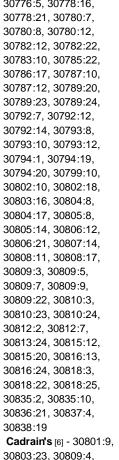
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