

Commission of Inquiry
Into the Wrongful
Conviction of David Milgaard
before
THE HONOURABLE MR. JUSTICE
EDWARD P. MacCALLUM

Transcript of Proceedings
and
Testimony before the Commission
sitting at
TCU Place at
Saskatoon, Saskatchewan

On Wednesday, May 31st, 2006

Volume 155

Inquiry Proceedings



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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. Eamon O'Keefe, Esq., **for** Mr. Larry Fisher
Mr. Bruce Gibson, Esq., **for** the RCMP
Mr. David Frayer, Q.C., **for** Minister of Justice
 (Canada), The Hon. Vic Toews
Mr. Marshall Hopkins, Esq., **for** Justice Calvin Tallis
 (Retired)



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Transcript of Proceedings

(Reconvened at 9:00 a.m.)

COMMISSIONER MacCALLUM: Good morning.

ALL COUNSEL: Good morning.

JOYCE IOLA MILGAARD, continued:

BY MR. HODSON:

Q Good morning, Mrs. Milgaard.

A Good morning.

Q Yesterday we finished up on the issue of DNA, and I had asked you a question about, I think you told us in 1995 you took steps to meet with the Prime Minister and with Allan Rock and to try and get DNA testing done, and I think you told us as well that it was somewhat related to your involvement on the Guy Paul Morin case; is that correct?

A Yes. Because we had, Dr. Blake had got the DNA testing done regarding Guy Paul Morin, and that had been successful. Prior to that, DNA was not -- and we'd even had DNA testing tried at the Supreme Court.

Q Right, and I neglected to mention that when I asked you the question yesterday about why didn't -- I think I asked you why didn't you do DNA testing between '92 and '95, or what was it in '95 that prompted you to do it, and I neglected to



1 mention, I think in March of '92 as part of the
2 Supreme Court reference, testing was attempted and
3 it was determined that it was not, at that time,
4 feasible based on what they had looked at; is that
09:08 5 correct?

6 A Yes, that's correct.

7 Q And so I guess the question is, after the Supreme
8 Court or after that testing was attempted, what
9 was it in 1995 that prompted you to think that DNA
09:08 10 testing could now be done; was it the fact that
11 Guy Paul Morin had his --

12 A His was done and it was successful, and the
13 technology had improved tremendously at that
14 point, and we talked to Blake about it and he, he
09:08 15 felt that it could be done.

16 Q And so it was advancements in technology that
17 prompted you to think now, now we may be able to
18 do it, whereas before we couldn't do it?

19 A That's correct.

09:08 20 Q And would it be fair to say that you would have
21 been relying -- and when I say "you" let's extend
22 that to your group, your son, your lawyers,
23 etcetera, the Milgaard group -- would have been
24 relying upon two previous attempts at testing, one
09:09 25 Dr. Ferris' attempt in 1988, and as well the DNA



1 testing that was attempted in 1992 I think as part
2 of the Supreme Court reference; would it be
3 correct to say that your group would have relied
4 upon those two testing attempts in reaching your
09:09 5 conclusion that DNA testing was not possible?

6 A That's correct.

7 Q At that time?

8 A At that time.

9 Q Yeah. I now want to turn to systemic issues to
09:09 10 deal with you, and I want to make a couple of
11 comments before I asked you some questions. And I
12 understand that, based on your involvement in the
13 efforts to re-open your son David's case, you
14 encountered or identified a number of systemic
09:09 15 issues that you think need to be addressed; is
16 that fair?

17 A That's very fair.

18 Q And as well, wearing your AIDWYC hat and your
19 involvement in other wrongfully convicted cases,
09:09 20 you are also familiar with systemic issues in
21 other cases that are similar to the systemic
22 issues that you have identified in David's case?

23 A That's correct.

24 Q So, in addition to what you personally observed
09:10 25 and encountered in David's case, that is that



1 experience has been added to by your experience in
2 other cases?

3 A That's correct.

4 Q And by using the term "systemic issue" is it fair

09:10 5 to say that that would be an objection or a

6 problem that you have identified as to how the

7 system works for a wrongfully convicted person?

8 And when I talk about "the system" I'm meaning the

9 police, the Court system, and the system that's in

09:10 10 place to allow a wrongfully convicted person to

11 seek a remedy; would that be a fair description of

12 the system?

13 A Yes.

14 Q And --

09:10 15 A And the system doesn't work.

16 Q And when you talk about "the system" and "systemic

17 issues" is it fair to say what you are referring

18 to is the system right from the initial

19 investigation, the trial, and the ability to

09:11 20 re-open a wrongful conviction; would that be --

21 A That's correct.

22 Q And what I would like to do is to go through with

23 you and have you identify the problems in the

24 system that you and your son David, or those on

09:11 25 behalf of David, encountered, and I will try and



1 divide it into the investigation, the original
2 police investigation; secondly the trial
3 proceedings; and third, which is a pretty broad
4 area, and ef -- the efforts to re-open. And I
09:11 5 would like to ask you, in some of these areas,
6 your thoughts on suggested changes, but I want to
7 provide one caveat.

8 You, Mrs. Milgaard, are a party
9 with standing before this Commission of Inquiry,
09:11 10 and therefore your counsel has the right, and no
11 doubt will, put in submissions on any systemic
12 issues that you and she think are appropriate to
13 be put in, and the purpose of me asking you
14 questions on the systemic issues and you giving
09:11 15 evidence on them is not to force you to put all of
16 your submissions in while you are a witness on the
17 stand; do you understand that?

18 A I understand.

19 Q And so that, certainly, I expect that I will touch
09:12 20 on some of them, I expect other counsel may, and I
21 expect your own counsel, Ms. McLean, will also
22 canvass systemic issues with you, and at the end
23 of hearing all the evidence your counsel will have
24 the right to make submissions. So I want you to
09:12 25 understand that this isn't your only chance to put



1 everything forward --

2 A -- good.

3 Q -- before the Commission.

09:12 4 A We could be here all day just on systemic,
5 otherwise.

6 Q And just as far as where I intend to go, I wish to
7 address those systemic issues where you have
8 personal knowledge and where you have some
9 evidence or comments that may assist the
09:12 10 Commission in dealing with these issues, and so
11 I'll try and focus on those where you have
12 evidence or personal knowledge that might assist.
13 If there is a systemic issue that is really a
14 legal argument, if I can call it that, I'll leave
09:12 15 that for Ms. McLean to deal with. And, again, if
16 I don't raise all the systemic issues with you,
17 which is likely, like I said, that doesn't
18 preclude you and your counsel from putting them in
19 in another format.

09:13 20 I should also comment that we
21 have already touched on, in the course of your
22 evidence I think you would agree that you have
23 already identified some of the concerns you have
24 with the system; is that fair?

09:13 25 A That's fair.



1 Q So what I will propose to do is put forward the
2 systemic issue and get your observations, or you
3 to tell us or explain the problem that it posed;
4 and then, secondly, any suggested changes or your
09:13 5 thoughts on suggested changes as to how the system
6 works, with a view to ensure that the problems you
7 encountered don't happen again; is that fair?

8 A That's fair.

9 Q And I want to start with the investigation back in
09:13 10 1969-1970, the original police investigation of
11 David, and a systemic issue that I think you've
12 talked about in this Inquiry on occasion is tunnel
13 vision by the police, and I wouldn't mind your
14 comments on that issue, what -- what you observed
09:14 15 in that respect. And I know you have, in the
16 past, made public and other comments about a
17 suggested change, I think it's a shadow
18 investigation or an advocate for an accused person
19 being part of the police investigation, so maybe
09:14 20 I'll ask you that general question on tunnel
21 vision and your thoughts on what you observed in
22 that area?

23 A Well, even before you get to the tunnel vision, if
24 you have someone that's been charged and they
09:14 25 don't have money, it's a Legal Aid type of a



1 situation, for instance, the way we were at that
2 particular time, I think right from the outset
3 there has to be better provision for the defence
4 lawyer to have an investigator that is paid for
09:15 5 that can go out and get information on behalf of
6 your client.

7 Nothing was ever checked about
8 what David said happened, that was never followed
9 up, and I think that if they'd had that
09:15 10 information at the trial that would have been very
11 important.

12 So, from the outset, you need to
13 provide more funds for the person who is defending
14 so that he has the ability to pay someone to go
09:15 15 out and check and follow up on their client's
16 story.

17 Q If we can just pause there for a moment. So what
18 you are saying is that you wished that Mr. Tallis
19 would have had more resources from Legal Aid to be
09:15 20 able to pay someone to go out and investigate; is
21 that correct?

22 A Correct.

23 Q What are the types of things you think, based on
24 what you observed both at the time and in your
09:15 25 efforts to re-open, that an investigator could



1 have investigated?

2 A Well I think, for instance, where they -- where
3 they -- how they really came into town, where they
4 -- perhaps, if we found out, the investigator
09:16 5 could have found out that they came in another way
6 and that they were talking to a woman in another
7 part of the city, they might even have found the
8 woman they talked to. There -- if an investigator
9 at that time, when it was clear in David's mind
09:16 10 about where he'd got this done or he'd got that
11 done, at that point he could have -- they could
12 all have given a better description of where they
13 were and what they were doing, and I think that
14 that could have been brought into the Court, and
09:16 15 it would have been very helpful.

16 Q Okay. And so you're talking in addition, then, to
17 Mr. Tallis, you've heard Mr. Tallis' evidence
18 about the time he spent with your David --

19 A Yes.

09:16 20 Q -- going through that, and his evidence also was
21 that he would not, for a number of reasons,
22 contact any Crown witnesses due to the risk that
23 it would pose at trial; remember him giving that
24 evidence?

09:17 25 A Yes, but him contacting them and an investigator



1 contacting them would be a different thing
2 entirely.

3 Q So again, and when you've talked in the past --
4 and I know you've wrote about this in your book
09:17 5 and have commented about it before -- the fact
6 that you had a Legal Aid lawyer and a lack of
7 resources, is it fair to read into that that one
8 of the concerns is not so much about Mr. Tallis'
9 efforts but about the fact that, in addition to
09:17 10 defence counsel, you didn't have the resources to
11 get other people such as an investigator involved;
12 is that fair?

13 A That's correct.

14 Q And so that as far as a systemic issue, and a
09:17 15 suggested change is to ensure that people on Legal
16 Aid accused of crimes have adequate resources, not
17 only for legal counsel but for legal counsel to
18 employ investigators to do the work that's
19 necessary?

09:18 20 A Correct.

21 Q Okay. Anything else on that subject matter?

22 A No, in particular. And then you get to the tunnel
23 vision from that, because this case shows very
24 clearly how tunnel vision took over. On the one
09:18 25 hand, at one point they were sure that it was



1 involved with serial rape and a serial rapist and
2 that there was some involvement there, but the
3 minute that David was brought forth that
4 circumstance changed and they started centring in
09:18 5 on David. And the fact that they hadn't found
6 anything up until they found out that David was in
7 the area when Cadrain came forward, at that point
8 everybody suddenly just focused on him and
9 everything, every other detail, was left alone.

09:19 10 And we see that in many of the
11 cases that I've dealt with at AIDWYC. Once the
12 police get some suspect in their headlights, so to
13 speak, everything else is dropped, they don't look
14 for any of the things that would say they didn't
09:19 15 do it, they just look for the things that say they
16 do.

17 Q And by "tunnel vision" -- and I know there are
18 probably different definitions of it -- but would
19 it be correct to say that at least generally what
09:19 20 tunnel vision is, is where police have a suspect
21 in mind and tend to put more weight and
22 credibility and emphasis on that evidence that
23 implicates the suspect they have in mind, and with
24 respect to evidence or information that would tend
09:19 25 to exculpate that suspect they put less emphasis



1 or no emphasis or credibility on?

2 A That's right. And this is why it's so important
3 to have someone working to look to the innocence
4 as well as someone looking to -- to look at the
09:20 5 guilt.

6 Q Let me just, and we'll come back to that
7 suggestion in a moment, but on the question of
8 tunnel vision, I think what we have heard from
9 some of the police officers anyways is that they
09:20 10 felt they had an honest belief that he was the
11 right person, that your David was the right
12 person, and therefore when they were going to get
13 evidence that did implicate him, they felt that
14 they were right in doing so because they, for a
09:20 15 number of reasons, felt that he was the right
16 person, and I want to ask you this question, in
17 some cases would you agree that where the
18 police -- for example, let's talk about Larry
19 Fisher and where they investigate Larry Fisher and
09:20 20 perhaps exhibit the same tendencies as they did in
21 the investigation of David Milgaard, in other
22 words, saying lookit, we're pretty sure this is
23 the guy because we've got his DNA, and go out in
24 the same way and look at information that
09:21 25 incriminates him more so than that which



1 exculpates him, so in other words tunnel vision,
2 would you agree, sometimes occurs when the police
3 have the right person?

4 A Yes, I think that it could be, but if, for
09:21 5 instance, you had someone in the department that
6 overseed it similar to the, Mr. Ullrich who looked
7 at the case overall and was able to say, well,
8 this doesn't add up or that doesn't add up, if
9 there was someone in the department that wasn't
09:21 10 involved in the zeroing in or the active part of
11 it but could take an overall view of it and say,
12 well, this really doesn't make sense, that might
13 stop some of this tunnel vision.

14 Q Sure, and we'll come back to that as well, but is
09:22 15 the challenge that the police face or the
16 challenge that we face in addressing tunnel vision
17 one that the police officers are investigating the
18 crime, although they may have a belief, they don't
19 know for certain who committed the crime?

09:22 20 A That's right.

21 Q And sometimes they are right and sometimes they
22 are wrong; correct?

23 A Correct.

24 Q And so if we look at contrasting, taking a look
09:22 25 again at what the police did with Larry Fisher, I



1 suspect some officers will say, well, it's a good
2 thing we did focus on the things that incriminated
3 him because that helped us get the evidence. When
4 they do the same thing with respect to someone who
09:22 5 they believe to be guilty that turns out to be
6 innocent, it's a problem, and so let's now turn to
7 the suggested changes, and I think you are talking
8 about a police officer or someone within the force
9 who can basically advocate or be a devil's
09:23 10 advocate on behalf of a suspect; is that right?

11 A Correct.

12 Q And you talked about Mr. Ullrich who was, I think,
13 the person who put the case together?

14 A Yes.

09:23 15 Q And so that would be someone who would challenge
16 the police findings?

17 A Yes.

18 Q Any other thoughts on the issue of tunnel vision
19 and what might, based on your observations in this
09:23 20 case, be helpful suggestions that the police can
21 implement to deal with that issue?

22 A Well, I think the handling of witnesses is very
23 important and the way they get false confessions
24 is by coercion and I don't know if it's required
09:23 25 here in Saskatchewan now, but every interview



1 should be videotaped right from the get-go, from
2 the minute that they walk in the door until the
3 end of it so that there's no setting up the
4 interview and saying now we're going to put you on
09:24 5 videotape, from the minute the door opens into a
6 room it should be on videotape.

7 Q And would the benefit there be that people later
8 in time, such as everybody in this room, instead
9 of trying to piece together what happened at a
09:24 10 given interview --

11 A They would know what happened.

12 Q You would have some record of that?

13 A And if the police were being videotaped, they
14 would be more careful of how they handle the
09:24 15 witnesses. When I look back and see what happened
16 to Nichol John and Ron Wilson and how they were
17 treated, I mean, they were afraid and they are
18 brought back into an environment and questioned
19 again and they are afraid that they could be
09:25 20 charged with perjury, so there's got to be a way
21 to protect the witnesses.

22 Q I want to just put to you one concern on the other
23 side for your comment and I think we may hear this
24 from some police officers or from some people who
09:25 25 are knowledgeable in the area, that although



1 videotaping every interview is a good idea because
2 it gives a record, in some cases the videotaping
3 of the interview will impede the ability to get
4 evidence from a witness; in other words, some
09:25 5 witnesses are going to be less forthcoming if they
6 are taped or videotaped, and I think we heard that
7 from Sergeant Pearson and as well from Paul
8 Henderson, that in some cases, I stand to be
9 corrected on that, but I think we've heard some
09:25 10 evidence that sometimes people are not going to
11 talk when the tape is on, and I just wondered if
12 you had a comment on that, because that seems to
13 be the balance of saying okay, everything has to
14 be videotaped, what happens if the police say,
09:26 15 okay, well, that means some people won't talk and
16 we won't get the information we need.

17 A I think that if it became standard procedure that
18 it was videotaped automatically and it's not a
19 matter of you go in and they sit down and they
09:26 20 have to push a button and they have to set this up
21 and that up and the people are conscious of it
22 being videotaped, but if you walk into a room and
23 the video camera automatically goes on and tapes
24 whatever is in the room regardless of who is going
09:26 25 into that room --



1 Q No, and I guess my concern is that, and I
2 appreciate I'm just asking for your comment on
3 it --

4 A Uh-huh.

09:26 5 Q -- and I appreciate that different people have
6 different views, but what I think we have heard or
7 we will hear on the other side of the issue about
8 videotaping every witness interview is the concern
9 from the police that that in some cases may cause
09:27 10 witnesses not to be forthcoming; in other words,
11 that the police may say lookit, we can't get the
12 information from this witness because he or she is
13 a young person, is afraid and is not prepared to
14 say something about X when they are videotaped,
09:27 15 but they will tell me if they are not videotaped,
16 and I just put that to you because that's the flip
17 side of the position about wanting to videotape so
18 that you have the best and most reliable
19 information possible, and the counter to
09:27 20 videotaping everything is that in some cases I
21 think some officers will say it's an impediment,
22 and are you saying too bad, that that's the price
23 you've got to pay?

24 A That's the price you've got to pay to get the
09:27 25 truth.



1 Q Okay. Is there anything else with respect to the
2 investigation, the original investigation and the
3 police investigation of your son David that you
4 wish to comment on, and we certainly can come back
09:28 5 to it when we deal with the trial and the
6 re-opening, but is there anything other than --
7 we've talked about tunnel vision, we've talked
8 about the treatment of witnesses and how
9 interviews should be conducted and recorded and I
09:28 10 think you've also told us about having an advocate
11 or some other person who can look at the
12 investigation objectively and perhaps say, take a
13 position on behalf of the suspect saying what
14 about these issues?

09:28 15 A Yes, and that's merely the start because once you
16 have been wrongly convicted, you are up against a
17 brick wall in getting the case re-opened. I
18 believe that the appeal court standard needs to be
19 changed.

09:28 20 Q Okay.

21 A You know, we get -- the AIDWYC people, we get a
22 case and we start to read it and as you read it
23 there's a smell to the case, it just isn't right,
24 you read it and you think this is crazy, this guy
09:29 25 should never have been convicted, and so we get



1 involved and start to look at it. The standards
2 right now of the appeal court I believe are that
3 based on evidence alone can a conviction be
4 overturned, but I think that they should have
09:29 5 maybe more latitude there.

6 Q If we can just -- I want to go back to one of the
7 comments you made, and I will come back to the
8 Court of Appeal issue, but you made, just before
9 that you made the comment that once a wrongfully
09:29 10 convicted person is convicted, the ability to
11 challenge what happened before is greatly
12 diminished; is that fair?

13 A That's fair.

14 Q And so am I correct that this devil's advocate, or
09:30 15 this advocate position of challenging all these
16 things in the police investigation, is what you
17 are saying is once David was convicted and the
18 appeals exhausted, people were not prepared to
19 listen in the same way because he was convicted?
09:30 20 In other words, let's take the Danchuks and the
21 Rasmussens, we've heard about that many, many
22 times.

23 A Yes.

24 Q And we know that the jury heard that evidence and
09:30 25 for whatever reason the jury convicted David



1 notwithstanding the fact that Mr. Rasmussen and
2 the Danchuks did not observe blood on him or
3 anything unusual?

4 A Yes.

09:30 5 Q And is it correct, is one of the issues then that
6 once David was convicted, the ability to use the
7 Danchuk and Rasmussen information was basically
8 minimized because the answer was --

9 A -- you've already had that information.

09:30 10 Q Yeah. And so in a way, and I know this isn't,
11 this might sound a bit absurd, but if David had
12 not been convicted, in other words, if he had been
13 pending trial while you were out gathering all
14 this information and trying to re-open the case
09:31 15 and doing all those things, is it fair to say that
16 had the conviction not been there, in other words,
17 had his trial been pending for the years that you
18 went and gathered all this information, are you
19 saying lookit, I would have had a better chance of
09:31 20 taking this information -- let's take the Ron
21 Wilson '81 interview, the Nichol John interview,
22 the Deborah Hall information, all the information,
23 the Ferris information you gathered, that if you
24 would have had that information before the
09:31 25 conviction was there, you would have had a better



1 chance of convincing either the police, the Crown
2 or a jury?

3 A Yeah. There would have been no conviction.

4 Q So that once the conviction is in place, I think
09:31 5 you are telling us that the ability to go back and
6 challenge is --

7 A Is gone.

8 Q Is gone or greatly minimized?

9 A Uh-huh.

09:31 10 Q Okay. So now let's go back to the appeal court.
11 We've skipped the trial, but we'll come back to
12 that. The -- and I think Mr. Tallis may have
13 commented on this as well, and I think what you
14 are saying is that the Court of Appeal, when
09:32 15 looking at convictions, should have broader powers
16 to almost apply a smell test; is that what you are
17 saying?

18 A Absolutely.

19 Q That lookit, instead of sticking to the strict
09:32 20 legal requirements that they had in appellate
21 review, that they ought to have broader powers to
22 be a better check in the event that there's
23 something there, that that's maybe another place
24 that it could be caught; correct?

09:32 25 A It could be caught right at that level.



1 Q Let's talk about trial and disclosure, and before
2 I do that, I think we all know that the law has
3 changed significantly since 1969, 1970 as far as
4 disclosure, and I'm talking about two levels of --
09:32 5 two avenues of disclosure, I'm talking from the
6 police to the prosecutor and from the prosecutor
7 to defence counsel.

8 A I think there should be an absolutely open box
9 disclosure. You know, some of the comments that
09:33 10 were made by Mr. Kujawa, for instance, he said,
11 you know, he didn't put things in about Fisher
12 because it would just have been wasting the
13 defence counsel's time. Well, you can't have
14 people making decisions like that if they should
09:33 15 get everything. Let them read -- if it takes them
16 longer to read it, so be it, but give them
17 everything, complete disclosure.

18 Q So when you talk about open box disclosure, let's
19 talk about -- you are talking about the entire
09:33 20 police file?

21 A Everything.

22 Q To the Crown and from the Crown through to
23 defence?

24 A Yes, because if a policeman has interviewed
09:33 25 someone, taken the time to interview someone and



1 written a report on it, obviously they thought it
2 was important. I think it's important for the
3 defence to have access to that.

09:34 4 Q And one of the -- and I'm sure there may be other
5 issues on the other side, but one of them I think
6 that has been mentioned from time to time is
7 privacy, in other words, that there may be
8 information on the investigation file that may be
9 unrelated, at least in the view of the police
09:34 10 officers and/or the prosecutor may be unrelated,
11 and how is that protected by giving disclosure to
12 defence counsel? Do you have any comments on
13 that?

14 A Well, I think that someone being wrongfully
09:34 15 convicted overrules privacy.

16 Q And I suspect the issue of privacy is something
17 that might be dealt with in the manner in which,
18 and I think in place now at least in most
19 jurisdictions are undertakings by defence counsel
09:34 20 to the Crown with respect to how --

21 A How they would handle it.

22 Q How they would handle the information?

23 A Uh-huh.

24 Q And again, is it fair to say the bottom line is
09:34 25 you think that there ought to be open box



1 disclosure which means disclosure of absolutely
2 every piece of information --

3 A Everything.

4 Q -- the police gather in the investigation of a
09:34 5 crime through to the prosecutor and through to
6 defence counsel?

7 A And also if there's any kind of RCMP work done --
8 like, for instance, the Rasmussen report, we
9 didn't get that until we got here at the Inquiry.

09:35 10 Q Right.

11 A And that was a dynamite piece of paper, we should
12 have had it, and that piece of paper could have
13 changed everything for us.

14 Q Okay. Is there anything else about the trial
09:35 15 itself and the appeal process, certainly on the
16 issue of section 9(2) of the Evidence Act is
17 something that I'm sure Ms. McLean will address
18 and others will address as far as the legal
19 issues, that's why I'm not asking you about that.

09:35 20 Is there anything else -- you've also already told
21 us about your observations of the effect Nichol
22 John's evidence had on the jury and I think you
23 said it was likely the most compelling piece of
24 evidence that may have convicted your son?

09:35 25 A It was, and of course you had to really be there



1 to see the effect it was having on the people. I
2 don't think that even when it went to the appeal
3 court they would really have realized and --

4 Q So is what you are saying is lookit, regardless of
09:36 5 what the law was or is, it was very prejudicial?

6 A It was.

7 Q That her statement, at least that portion which
8 she did not adopt, was heard by the jury?

9 A Right, but we still have to go back because they
09:36 10 never would have had that statement if the police
11 had been interviewing her in the correct manner.

12 Q Okay. So we've talked about the system check that
13 could have been in place at the police level and I
14 think you are saying had the interview of Nichol
09:36 15 John, and I don't know if they had videotape at
16 that time --

17 A No.

18 Q -- but we're talking about the suggested changes,
19 that had that interview of Nichol John been
09:36 20 videotaped and of Ron Wilson and their encounter
21 with Inspector Roberts, we would be much wiser
22 here and at the trial they would be much wiser, --

23 A Absolutely.

24 Q -- your defence counsel about what happened, so
09:37 25 that would be one check. Let's go to the trial



1 and talk about the check there and saying if it
2 gets through and there's a statement at trial, the
3 system check, I think what you are saying is
4 lookit, the statement shouldn't have been heard by
09:37 5 the jury in those circumstances because she didn't
6 adopt it and it was far too prejudicial?

7 A And the judge should not have had the jury there
8 when that statement -- you know, at that
9 particular time, so when it went to the appeal
09:37 10 court they could have ruled on it at that point
11 too, but they didn't.

12 COMMISSIONER MacCALLUM: I don't know if
13 this witness should be making comments about
14 section -- what she is doing now really is
09:37 15 attacking section 9 in its entirety, not just
16 9(2). Under section 9(1) the statement can be
17 read if everything is done properly beforehand,
18 it can be put to the witness and the witness
19 either adopts it or doesn't adopt it and the
09:37 20 judge gave the appropriate instructions in this
21 case to the jury both at the time the evidence
22 was being put to the witness and during his
23 charge, so I don't think the witness is qualified
24 to comment on it.

09:38 25 BY MR. HODSON:



1 Q Okay. If I could turn to the re-opening efforts,
2 Mrs. Milgaard, and again this is a pretty broad
3 area, and why don't I go through some subject
4 matters here that might assist you. Let's just
09:38 5 talk about resources, and you've mentioned this
6 before, and I'm not sure if it bears repeating,
7 but the ability to, for a wrongfully convicted
8 person to access, and I think if I put them in
9 this order, legal counsel and investigators, is
09:38 10 that fair, that --

11 A That's fair, and this is why, I mean, we have a
12 model, if you will, that could be used here in
13 Canada and that's the model that they have in
14 England, it's an independent board where if people
09:38 15 feel they've been wrongly convicted, they can go
16 to and there they have available investigators and
17 lawyers and all the help that you need, the
18 resources that that person needs, and they can go
19 there, and the beautiful part of it is because
09:39 20 it's totally separate from the government, there
21 isn't that thought that someone in high places,
22 for instance, is stopping you, it's completely
23 independent of the justice system, and it makes an
24 incredible difference. It's doing a wonderful job
09:39 25 in overturning wrongful convictions.



1 Q And so what you are saying is that there be a
2 resource available for a wrongfully convicted
3 person to go to to have, investigate on that
4 person's behalf?

09:39 5 A Yes, and they have all the resources there that
6 can be used and that's what's needed.

7 Q I want to go back to something you said earlier in
8 your evidence which was back in 1980 when you
9 started to investigate and hired Gary Young and I
09:40 10 asked you the question why didn't you get an
11 investigator to do it and you said you felt it
12 important that you had to do it, it was important
13 to you that you be the one to do this for your
14 son.

09:40 15 A Well, that was because there was no one
16 independent of the system that I felt I could get.

17 Q A private investigator such as Mike Brecht or Paul
18 Henderson would be independent; right?

19 A Yes.

09:40 20 Q And so I thought you had said earlier that in 1980
21 or '81 that the reason you wanted to investigate
22 is that I think a couple of things, one, you said
23 it was important to you that you be the one to do
24 it, and secondly, I think in a round-about way you
09:40 25 were saying you maybe didn't trust anybody else,



1 private or otherwise, to be doing it, you had to
2 know for yourself?

3 A Yes, but if it had been conversely instead, it had
4 been in 1971 and I knew that there was someone I
09:41 5 could go to that was independent of all of the
6 systems, I would have felt free to go to them
7 then.

8 Q But again just, and let's go back to 1980, '81,
9 Gary Young was independent; right?

09:41 10 A Yes.

11 Q And so I'm trying to understand what would -- had
12 there been an independent Commission in 1981 --

13 A I would certainly have gone to them instead of
14 Gary Young.

09:41 15 Q And would you have trusted that commission to do
16 everything that you had done?

17 A Yes, I would.

18 Q And so again, I guess back to the question of,
19 although it's not a commission, but Gary Young and
09:41 20 a private investigator would be similar in the
21 sense that they are both independent. Now, you've
22 got to pay for them, that's the difference.

23 A That's the difference, is you have to pay for
24 them, and so part of my challenge at that time,
09:41 25 although I had the money, I didn't have a lot of



1 money, and by being involved I was doing a lot of
2 the work and saving a lot of money at the same
3 time, but I think that I needed the involvement,
4 Mr. Hodson, as a mother at that point because
09:42 5 after David had escaped and was shot in 1980 and I
6 was there and feeling that he was never going to
7 walk again, I felt I was such a failure as a
8 mother, and so I think when I got to that point of
9 reinvestigating, I really felt I had to do it.

09:42 10 Q Right. And again, and I'm not trying to be
11 critical in any way of what you had said you had
12 done then or what you just now said, I'm trying to
13 fit in what you experienced in 1980 and '81 and
14 how the suggested change you say would have
09:42 15 addressed that, and I'm wondering whether, had
16 there been an independent commission that said,
17 "oh, by the way, if you come to us we investigate,
18 not you, and you stay away," whether you might
19 have said, well, lookit, I'm not prepared to, for
09:43 20 the reasons you've expressed over the last number
21 of weeks, that, "I'm sorry, it's my son, I have
22 got to go and investigate." For example, the
23 Larry Fisher information, I think what you've told
24 us is that was just too good, you would not let
09:43 25 anybody but you -- I mean, they could go do it as



1 well, but you had to do it, and what I'm wondering
2 is if an independent commission said okay, we'll
3 investigate, but you can't, how does that fit in
4 with your earlier evidence about your desire that
09:43 5 you felt it important and necessary that you be
6 the one who does it?

7 A My earlier evidence was predicated on the length
8 of time that it had taken us to get where we were.
9 If, for instance, there had been an independent
09:44 10 board earlier on where I could have gone, I would
11 have gone willingly, I would have been so
12 grateful, and we would not have had the years and
13 years of tumult that we had.

14 Q And, again, I don't want to get --

09:44 15 COMMISSIONER MacCALLUM: Counsel -- sorry.

16 MR. HODSON: I'm sorry.

17 COMMISSIONER MacCALLUM: The counsel is
18 asking you, Mrs. Milgaard, if you would have
19 stayed out of it?

09:44 20 A Yes, I would have.

21 COMMISSIONER MacCALLUM: You would have?

22 Okay.

23 A Because I wouldn't have had all the aggravation,
24 all of the things that forced me to get to the
09:44 25 point where I didn't trust anyone.



1 BY MR. HODSON:

2 Q And I guess the -- and not to get too far ahead
3 because we're speculating a bit -- but let's say
4 with an independent commission, and some would
09:44 5 argue -- and I know you disagree with this -- that
6 under the system, now, the Federal Justice
7 Department is independent of the Saskatchewan
8 Justice Department who prosecuted your son, and
9 there -- and I appreciate, and I'm not -- I know
09:44 10 you disagree with that.

11 A Absolutely.

12 Q But there's different views of independence, and I
13 guess the question comes back, an independent
14 commission is comprised of humans who make
09:45 15 mistakes and there is always the risk that the
16 independent commission doesn't see it your way
17 either; correct? In other words, this commission
18 that would go out and investigate might have come
19 back and said "you know what, sorry, we don't
09:45 20 agree with you", in which case you are then --
21 you've got another group in the system, and even
22 though they're independent, they're another group
23 out there, that is the wrongful conviction
24 commission, which has now investigated this and
09:45 25 may mistakenly say "we don't think there's merit



1 there". And so, again, the fact that it's
2 independent doesn't necessarily guarantee that you
3 are going to get the right result; is that fair?

4 A No, I don't think it is fair.

09:45 5 Q And why is that?

6 A Because I think that if someone goes out and
7 properly investigates both sides, and it is a
8 wrongful conviction, they will find it.

9 Q Is the premise in all of this is that where humans
09:45 10 are involved in the system, humans can make
11 mistakes, correct? I think that's the premise?

12 A Yes.

13 Q That in the investigation, the trial, that in
14 wrongful convictions, in many cases mistakes are
09:46 15 made by humans, some well-intentioned, some not?

16 A Yes.

17 Q And with an independent commission, which is a
18 group -- my understanding of the British model --
19 it's a group of people who are hired, although
09:46 20 they're independent they're funded by the
21 government --

22 A That's right.

23 Q -- and they are government, you know, they're no
24 different than Eugene Williams other than they are
09:46 25 -- or I shouldn't pick on Eugene Williams -- but



1 they are no different than a Justice investigator
2 except that they are in a different commission,
3 different rules, different reporting, etcetera?
4 And I don't mean to say there's not differences,
09:46 5 but at the end of the day they are humans who are
6 being tasked with going out and investigating the
7 matter, and all I'm saying, is there not still a
8 risk that humans in that position can be mistaken,
9 in other words that there's an independent
09:47 10 commission still may not see it your way,
11 mistakenly?

12 A That could be, and yet I think that from what I
13 have seen of the work that they're doing, they're
14 so focused on going over everything so thoroughly
09:47 15 and checking out all of the things that quite
16 often do make up a wrongful conviction, that their
17 success rate has been tremendous.

18 Q Right. So it may be that, because of how they're
19 set up, their focus, the people they have on
09:47 20 there, their mindset, that it's less likely that
21 they will make a mistake?

22 A Than anyone else.

23 Q Is that fair?

24 A Yes.

09:47 25 Q Right. And so, with that, maybe the bottom line



1 is this; that that independent commission you talk
2 about, in your view, would be far better equipped
3 and better able to investigate and uncover a
4 wrongful conviction than the system you faced at
09:47 5 the time?

6 A That's correct.

7 Q And my only question was, but still, you are
8 relying on humans to do -- to do the job, and at
9 times they make -- they may make mistakes, and
09:48 10 that if that independent commission that was
11 better equipped, better focused, independent,
12 unbiased, full of resources, at the end of the day
13 may still come up with a conclusion that a
14 wrongfully convicted person doesn't agree with, in
09:48 15 which case we're back to saying "okay, well now
16 the system" --

17 A Now the mum has to do it.

18 Q Now the system -- and I think the independent
19 commission is part of the system, isn't it, it's
09:48 20 the system that's in place to address wrongful
21 convictions?

22 A Yes.

23 Q So it's part of the system, although it's a
24 different part than the Federal Government and
09:48 25 provincial government, so at the end of the day



1 you are still faced with the fact that you have to
2 rely on a system and human beings to investigate
3 and try and deal with the problem, and there is
4 always a risk that humans will either make
09:48 5 mistakes, or come to conclusions that are
6 different than yours?

7 A That's possible.

8 Q Right. So is it fair to say the bottom line is
9 you think the independent commission is far more
09:49 10 likely to uncover a wrongful conviction than the
11 current system?

12 A Yes.

13 Q Okay. And is it -- we talked about this before,
14 and it might be worth highlighting just on the
09:49 15 systemic part -- is it fair to say that, in the
16 case of David, the three priorities, if I can call
17 them that -- and please tell me if I'm ranking
18 them wrong -- but I take from your evidence that
19 after the conviction and the appeals are exhausted
09:49 20 the three priorities are number one, to get out of
21 jail; number two, to clear his name; --

22 A Right.

23 Q -- and, three, to be compensated?

24 A Yes.

09:49 25 Q And --



1 A And that's an area, of compensation, you should
2 have compensation without having to sue anyone, it
3 should be given as a right, not as a charity, and
4 you shouldn't have to beg for it.

09:49 5 Q And so, again, would I have properly characterized
6 those in the order of importance to the --

7 A Yes, the importance was to get him out, and the
8 next important thing was to prove his innocence.

9 Q And again --

09:50 10 A The compensation always came last with us.

11 Q And I take it, would you agree, that the
12 compensation is somewhat dependent on the clearing
13 his name?

14 A Yes.

09:50 15 Q In other words, if they're -- and we've talked
16 about this, when the Supreme Court of Canada said
17 "lookit, we find that you are not probably
18 innocent", do you understand how that might be an
19 impediment to a government compensating him?

09:50 20 A Absolutely.

21 Q In effect saying how can we compensate him and
22 acknowledge his innocence when he just appeared
23 before the highest Court in the land and they
24 found him probably guilty, or not probably
09:50 25 innocent, right, and that was an impediment, and I



1 think you agree that that is an impediment that
2 might preclude a government from giving you
3 remedies two and three?

4 A That's correct.

09:50 5 Q And --

6 A How -- and the thing that gets me, and I know I'm
7 going back to the Rasmussen report, but if the
8 Supreme Court had had the Rasmussen report, I
9 think their decision would have been probably
09:51 10 innocent, --

11 Q Okay.

12 A -- and it would have made a vast difference.

13 Q If you go back to these three remedies, I guess,
14 that a wrongfully convicted person is seeking, can
09:51 15 we summarize the -- you know, we've heard some
16 evidence, we'll hear more evidence about how the
17 Section 690 operated; is it fair to say this --
18 and let me try and summarize -- that as far as a
19 remedy and an avenue to get that remedy from a
09:51 20 wrongfully convicted person, that ideally what you
21 are saying and have said is it would be nice to
22 have one body that could provide all three
23 remedies?

24 A Yes.

09:51 25 Q Or provide a process to get all three remedies?



1 A Yes.

2 Q Namely David out of jail, exoneration, and
3 compensation?

4 A Right.

09:51 5 Q So that you can go to one body?

6 A One body.

7 Q And that that body be independent of governments
8 as best possible?

9 A Yes.

09:52 10 Q And the reason for that would be your concern that
11 if they're part of government -- or what was --

12 A They could be influenced. They could be
13 influenced by someone saying "well, you know, we
14 don't want anything done in that area".

09:52 15 Q And so your concern with them being part of
16 government is this suspicion that the government
17 will not act --

18 A If they're going to look bad.

19 Q Okay. Now what about cases -- well, no, I won't
09:52 20 go into other cases -- but there are cases that,
21 under 690 and subsequent, where wrongfully
22 convicted people have been -- received the remedy;
23 correct?

24 A Yes.

09:52 25 Q And so, again, is your concern that, lookit,



1 sometimes they, they may do fine, but ideally it
2 would be nice to have someone completely
3 independent?

4 A Yes. And I think one thing I didn't mention, and
09:52 5 I think is important, we talked about open-box
6 disclosure. I think that there should be ongoing
7 disclosure, I think that's very important, it
8 shouldn't -- that those obligations should never
9 end, so that if something comes up later that the
09:53 10 police find or something, that disclosure should
11 be given.

12 Q And so you're talking that, after a person is
13 convicted and appeals exhausted, that there
14 continue to be an obligation to do what, and to
09:53 15 continue to investigate?

16 A No, but if something comes up in another
17 investigation that shows, for instance, that there
18 is a real possibility, like when Fisher turned up
19 in 1971, that there's an obligation right there
09:53 20 that they would have to disclose it.

21 Q Okay. If we can just go back to the 690 process,
22 you've talked about independence, you've talked
23 about resources, one of the -- I want to talk a
24 bit about some of the challenges you identified in
09:54 25 your efforts to go out and talk to witnesses. And



1 I think you told us that, particularly in the
2 early '80s, you were met with some resistance by
3 the people you were contacting, namely Nichol
4 John, Ron Wilson, the Cadraings, Melnyk, Lapchuk,
09:54 5 etcetera?

6 A Right.

7 Q And is it correct to say that the challenge there
8 is that, once David was convicted, that to go
9 back, to go back to those witnesses, and indeed to
09:54 10 the police, that you're really going back to the
11 very people that were part of the process that
12 convicted David?

13 A Yes, and I'm sure that they viewed me as the
14 enemy, like that someone -- that I'd be upset with
09:54 15 them. They were afraid of David, that David was
16 going to hurt them for what they did, because in
17 their hearts they knew they'd done wrong.

18 Q And you're talking about who there, the --

19 A Well, Nichol, Wilson, Cadrain, they all knew in
09:55 20 their hearts what had happened.

21 Q Now let's talk a bit about timeliness, and I think
22 we've heard this from you with respect to your
23 dealings in the late '80s-early '90s about
24 timeliness, and we've heard evidence from Paul
09:55 25 Henderson that anywhere from two to five years,



1 that it takes a while to undo a wrongful
2 conviction, --

3 A Right.

4 Q -- and that it's not an overnight process, much as
09:55 5 a convicted person would like it to be. Any
6 thoughts on that, about what can be done to ensure
7 that these matters are done in as timely a fashion
8 as possible?

9 A Well I think, if you had a board there that was
09:55 10 doing it and handling it with investigators and
11 everything set up, that you would have the
12 timeliness you needed.

13 Q And, again, do you acknowledge -- again, I think
14 what Mr. Henderson said and others have said --
09:56 15 that once you have a conviction in place, that --
16 and appeals exhausted -- that it is an
17 extraordinary remedy to go and undo, it's not
18 something that can just be done --

19 A Easily.

09:56 20 Q -- easily?

21 A Correct.

22 Q And so that would you acknowledge, there, there is
23 some merit in the system, if I can call it that,
24 putting some weight on the fact that your son was
09:56 25 convicted, in other words that that might be the



1 starting point to say "lookit, he's been
2 convicted, his appeals have been exhausted, if
3 we're gonna change that then", you know, that
4 that's -- is that a fair starting point in your
09:56 5 mind --

6 A Yes.

7 Q -- or do you think -- yeah. So the authorities
8 shouldn't be saying "okay, well let's start from
9 square one and see if he's guilty, we're starting
09:56 10 with the point that he's guilty because the system
11 found him guilty", but perhaps with a more an
12 attitude of saying "but there could have been
13 mistakes made"?

14 A That's right.

09:56 15 Q And so the starting point is "what is it out there
16 that would cause us to doubt the safety of the
17 verdict"?

18 A Yes.

19 Q What about -- and I don't want to get into too
09:57 20 many, into sort of a legal debate here -- but as
21 far as what you felt -- and when I say "you" on
22 behalf of your son -- what did you feel you had to
23 prove to get him the remedy? Now we've talked
24 about this, whether it's innocence, miscarriage of
09:57 25 justice; what was it that you understood you had



1 to prove to get the remedies you wanted?

2 A We had to prove his innocence, and even -- and
3 that's the hard part of it, like, for other
4 wrongfully convicted people. What if there is no
09:57 5 DNA? We had the DNA that finally showed everyone
6 that David was innocent; what about the people
7 that have no DNA?

8 Q And I guess let me just pause there, though. As
9 far as from your perspective -- and we're talking
09:58 10 about systemically -- are you okay with the
11 prospect that a wrongfully convicted person, in
12 order to set aside the guilty verdict that the
13 system has put in place, that it does require
14 something along the lines of establishing
09:58 15 innocence, or do you think that's too high a
16 standard?

17 A I think it's a very high standard and I think it's
18 very -- in some cases, almost impossible to meet.

19 Q And so then how does the system ensure that truly
09:58 20 guilty people don't get a post-conviction remedy
21 for wrongful conviction?

22 A Well I think, I don't know if it was Jim McCloskey
23 that said it, but to the effect that it would be
24 better that one guilty person go free than ten
09:58 25 people be wrongfully convicted, or something to



1 that effect.

2 Q And I think that's often quoted at the trial and
3 at conviction, but when you've got a conviction
4 that's been through the system, been through two
09:59 5 levels of appeal, and you have a conviction, again
6 I think the systemic issue there is to say "okay,
7 well if we're gonna undo what the system did" --
8 and the system works most times --

9 A Uh-huh.

09:59 10 Q -- "there may have been mistakes, and if we're
11 gonna upset the system and undo what the system
12 did, it's not" -- let me put it to you this way:
13 I don't know that if it's the same after
14 conviction as it is before conviction, because
09:59 15 after conviction I think the authorities, can they
16 not say "but this person has been through the
17 system"?

18 A Yes.

19 Q And --

09:59 20 A It's much harder, after the conviction, to have
21 anything done, so if we'd had -- if the system had
22 provided better funding, and all the rest of it,
23 we might never have got into that area.

24 Q Isn't -- yeah. Isn't the challenge -- let me put
09:59 25 it this way: That if, in post-conviction, if you



1 make it too easy for a person claiming wrongful
2 conviction to get a remedy, the risk there is you
3 might have guilty people being -- having their
4 convictions undone --

10:00 5 A That's true.

6 Q -- and being compensated for crimes they
7 committed; is that -- that -- if it's too easy
8 that's the risk?

9 A Yeah, and then you don't -- you wouldn't want it
10:00 10 to be too easy.

11 Q Yeah. And so, in a perfect system, you would like
12 to get those who are truly wrongfully convicted
13 and have a remedy, and the challenge really is
14 which ones are and aren't?

10:00 15 A That's right.

16 Q And the system somewhat, human beings have to
17 address that issue, and somehow, whether it's a
18 commission, a Court, a Justice Department, human
19 beings have to try and figure out whether the
10:00 20 person claiming wrongful conviction is or isn't
21 innocent, which is often, I think as you said, an
22 impossible task?

23 A It is. I, and I worked with the, Jim McCloskey, I
24 wrote letters to people that he refused help to,
10:01 25 but -- and that was because they felt that there



1 wasn't anything that they could do, they really
2 felt what was there was not something that they
3 could do with, and so I know that there are all
4 kinds of cases that can't be overturned or can't
10:01 5 be dealt with.

6 Q Is it fair to --

7 A There would have to be a "no" someplace along the
8 line there.

9 Q So is it fair to say that you acknowledge that a
10:01 10 wrongfully convicted person, there has to be some
11 threshold of establishing --

12 A That they must meet.

13 Q That they must meet?

14 A Yeah.

10:01 15 Q And whether it's proving innocence or a
16 miscarriage of justice, there has got to be
17 something significant that they have to establish
18 so that it's not too easy for people to simply go
19 to the government or the Commission and say
10:01 20 "lookit, I'm wrongfully convicted, let me out"?

21 A That's right.

22 Q And the question is finding the right, the right
23 bar?

24 A The right threshold.

10:02 25 Q And I guess the second question is finding and



1 making sure that the people who are making the
2 decision have all the information and are in the
3 best position to make the decision?

4 A That's correct.

10:02 5 Q You've talked a bit about the difficulty of
6 establishing innocence, and we've talked about
7 this a bit before, and David's testifying at the
8 Supreme Court of Canada. And I think you said --
9 and please correct me if I'm wrong -- that, I
10:02 10 think you acknowledged that his evidence at the
11 Supreme Court probably didn't help his cause; is
12 that fair?

13 A Absolutely.

14 Q In fact, we see in the Supreme Court judgement
10:02 15 that reference was made to the fact that he
16 contradicted in significant areas -- or I can't
17 recall the words -- but Mr. Tallis' evidence?

18 A That's correct.

19 Q And, in fact, it was the dispute between David
10:02 20 Milgaard's evidence and Ron Wilson's evidence
21 about the knife and about whether they got stuck
22 that, I think, prompted Mr. Wolch to cross-examine
23 Ron Wilson on that point and get Ron Wilson to the
24 point where he agreed with David Milgaard's
10:02 25 evidence, at which time he was cited with contempt



1 of Court and then came back and said "no, what I
2 said to Mr. Wolch isn't true, I now disagree with
3 David on this point"?

4 A That's right.

10:03 5 Q And I guess the question is, or the challenge
6 there is a person who is seeking exoneration, the
7 challenges faced by that person in testifying
8 about the events?

9 A Years afterwards.

10:03 10 Q And would it be fair to say, though, that that --
11 that his giving evidence, though, was also
12 influenced by a number of other factors, I mean
13 one being his emotional state at the time?

14 A Yes.

10:03 15 Q Two, the fact that he was upset that Dr. Ferris'
16 report had not been -- had not opened the door
17 sooner, in other words he was saying "I don't even
18 need to go there"; correct?

19 A Correct.

10:03 20 Q And, three, he was not made aware, before he
21 testified, about what Mr. Tallis was going to say?

22 A That's correct.

23 Q And he had already committed to a position in an
24 affidavit for the Justice Minister that had
10:04 25 contradicted Mr. Tallis?



1 A That's correct.

2 Q And so for, for perhaps other reasons, your son
3 was in a difficult predicament at the Supreme
4 Court because, no matter what he said, he would
10:04 5 have to be acknowledging -- he would either have
6 to contradict Mr. Tallis or acknowledge that he
7 said something wrong in the affidavit he filed
8 with the Court?

9 A Yes.

10:04 10 Q Yeah.

11 A And, if there hadn't been that huge space of years
12 of memory, I think that that wouldn't have
13 happened. So that, again, if we had a place to go
14 to earlier we wouldn't have had that kind of a
10:04 15 problem.

16 Q Right. And I suppose, in hindsight, David could
17 have said "lookit, I don't -- my memory is not
18 reliable about those events other than I know I
19 didn't kill her"?

10:04 20 A Yes.

21 Q And "whatever Mr. Tallis said I told him" --

22 A Would have been right.

23 Q -- "I accept as truth" --

24 A Uh-huh, yeah.

10:04 25 Q -- "and, even though I don't remember it, I might



1 disagree"; that was another course that could have
2 been taken I suppose?

3 A It could have been, and, in hindsight, should have
4 been.

10:05 5 Q Yeah. Let's talk a bit about the media, and we've
6 heard from you and Mr. Asper about the decision
7 that was made to go to the media and to the public
8 to assist you in getting your remedy, and I think
9 it boiled down to this; you felt you were not
10:05 10 getting the answers from the authorities and,
11 therefore, you decided to go to the media to get
12 the public involved and to get the media to put
13 pressure on politicians and the decision-makers to
14 make a more favourable decision?

10:05 15 A Right.

16 Q And --

17 A Without the media, Mr. Hodson, we would not be
18 here today.

19 Q And that's because of your belief that the media
10:05 20 caused the decision-makers to make a favourable
21 decision?

22 A No, the media didn't cause them to make the
23 favourable decision, the media caused them to
24 get -- us to get to where we are today, we would
10:06 25 never have got the support of the people of Canada



1 that subsequently forced the government to get us
2 to the Supreme Court.

3 Q Okay. So it's your belief that the media pressure
4 was responsible for getting the matter to the
10:06 5 Supreme Court?

6 A Yes.

7 Q Okay. Now at the Supreme Court though, once you
8 got there, I think you've told us basically,
9 although David got out of jail, you lost?

10:06 10 A Right. But then we went back to the media --

11 Q Okay?

12 A -- and they eventually -- that help --

13 Q Did you ever consider whether what was in the
14 media may have had a negative impact on your
10:06 15 efforts, and in particular before the Supreme
16 Court, in the sense of what information might have
17 been out there, what reactions it might have
18 caused with some witnesses, things of that nature?
19 Was that -- and you had mentioned earlier, I think
10:07 20 when we talked about in late 1990 you thought that
21 your strategy with Kim Campbell might have not
22 worked quite right because she was very upset, --

23 A Right.

24 Q -- and I'm wondering if, again in hindsight when
10:07 25 you look back, whether -- whether the media



1 exposure may have had any negative impact in --

2 A I think it could have, because there was a media
3 explosion, if you will, and it's possible that
4 that disturbed the authorities.

10:07 5 Q And the example I gave you earlier, and I'll give
6 it to you again, and I think the Dr. Ferris report
7 where you go out in the media saying "lookit, this
8 proves his innocence, this frozen semen, it's not
9 David's and Ferris proves it", and then you go out
10:07 10 and say "and this expert now says it's dog urine",
11 --

12 A Right.

13 Q -- yet -- and so if it's dog urine how can it
14 prove innocence, in other words they're a bit
10:07 15 contradictory, and whether -- and I think Mr.
16 Asper and you both said, "you know what, the dog
17 urine was such a good headline-grabber that it was
18 great"?

19 A Yes.

10:08 20 Q But did you ever consider that, okay, to the
21 people who are looking at the merits of the
22 evidence that's being put forward, that that might
23 cause them to say "well, hang on a minute here, if
24 it's semen and exonerates, how can you say it's
10:08 25 dog urine", what -- the credibility factor I



1 guess?

2 A Yes.

3 Q Was that an issue there where -- did you ever
4 become concerned that, because of what the media
10:08 5 was doing with the information you gave them, the
6 credibility of the information you were providing
7 to the Minister may have been adversely affected?

8 A Yes, I think so, but we were in a position where
9 we had no choice.

10:08 10 Q And I think --

11 A There was no other avenue open to us.

12 Q And I think that was the judgement, I think that
13 Mr. Asper commented on that as well, and you are
14 saying "lookit" -- and at the time I think you
10:08 15 made the decision to go to the media you hadn't
16 received the Minister's decision, but is it
17 correct to say that you felt you weren't going to
18 get a favourable result?

19 A That's right.

10:09 20 Q And so I guess we won't know what would have
21 happened had there been a different path taken,
22 but your view would be that it would have been the
23 same result, at least in the first application?

24 A I -- yes, absolutely.

10:09 25 Q And then again, as far as just the -- and we've



1 heard a bit about this from Mr. Asper -- the fact
2 that once the issue is put in the public light, it
3 can end up that -- I can't remember his words or
4 your words -- that the media will take something
10:09 5 and run with it, and it can end up being something
6 that may end up not being exactly accurate as
7 reported, and I think we saw that with the, I
8 think the dog urine story, where it came out the
9 report said "it's possible" or "I can't exclude it
10:09 10 being dog urine", and after it's reported a couple
11 of times the headline is "it is dog urine"?

12 A Yes.

13 Q And, again, would you agree that from a systemic
14 perspective, when wrongfully convicted people are
10:10 15 pursuing their remedy through the public and
16 through the media, that there are a number of
17 negatives with that, that there are a number of
18 risks in that?

19 A Absolutely.

10:10 20 Q And, if I go back, is it fair to say your position
21 would be that a wrongfully convicted person should
22 not have to go to the public and through the media
23 to get a remedy?

24 A Well if they, if you had someplace else for us to
10:10 25 go, we wouldn't have had to have done that.



1 Q And so you would agree, then, that when a case is
2 tried in the media there are -- and I think what
3 you are saying is you had no choice and you had to
4 do it and, if you hadn't done it, you wouldn't
10:10 5 have got your son a remedy; is that fair?

6 A That's fair, uh-huh.

7 Q Okay. But, having said that, do you agree that,
8 in going that route because you felt you had to,
9 there were a number of downsides to that as well?

10:10 10 A Absolutely.

11 Q And not only to you and to your son, would you
12 agree that the media exposure had some negative
13 effects on you and your family; is that fair?

14 A Oh, it definitely had high effects. My family
10:11 15 would dearly love to be just other people.

16 Q And so let's, let's just focus again, and I
17 appreciate what you are saying is both you and Mr.
18 Asper have said "we felt we had to go the public
19 route and use the media", so let's put that, that
10:11 20 premise aside for a moment and just talk about
21 what happened once this became the media campaign,
22 and I think you've told us that you and your
23 family, it had some negative effects on you, you
24 suffered in the fact that the exposure was perhaps
10:11 25 more than you had hoped for; is that correct?



1 A That's right.

2 Q And would you also agree that other people who
3 were involved in this case, whether it be
4 witnesses, police officers, government officials,
10:11 5 whoever, and they also would be -- some of them
6 would be adversely affected as well?

7 A Absolutely.

8 Q Yeah. And I'm not asking you to agree with their
9 positions but would you at least acknowledge that,
10:12 10 or do you acknowledge that a number of people at
11 least felt that they were improperly maligned by
12 what was in the media about them or what they had
13 done, whether it be witnesses, police, Crown, they
14 certainly had those feelings; is that fair?

10:12 15 A I'm certain they had.

16 Q And in some cases would you agree they might be
17 justified, in other cases, maybe not? And I'm not
18 asking you to pick and choose, but just to -- do
19 you accept that, by going to the media, in
10:12 20 addition to your family, other people who were
21 involved in the *Milgaard* case also were negatively
22 affected?

23 A Yes, I do agree.

24 Q And in a significant way?

10:12 25 A And in a very significant way, and I -- and,



1 because of the hurt and everything that we felt, I
2 sympathize with the hurt that they felt.

3 Q And, lastly, would you agree that, in addition to
4 the people involved, that the system, if I can
10:12 5 call it that, the justice system that I think
6 people will say is -- maybe have different views
7 about how good it is, but I think everybody says
8 it is what it is, and maybe has some flaws because
9 it deals with humans and makes mistakes; would you
10:13 10 agree that the media campaign also may have
11 inflicted some damage to the system in the sense
12 that -- and maybe that was your intent -- that the
13 public would have some concerns about the system
14 and how it works?

10:13 15 A I think, from that point of view, they did a good
16 job, because I think people realized that the
17 system must change.

18 Q And would it be correct to say that some of the
19 damage inflicted to the system was warranted, but
10:13 20 again, some may not have been warranted?

21 A Definitely.

22 Q And so that, although there are some flaws in the
23 system, in some cases it may not have been as bad
24 as it was portrayed in the media; is that fair?

10:14 25 A I think that's very fair.



1 Q Now those are all the specific questions I have on
2 the systemic issues, Mrs. Milgaard. If there is
3 anything else -- and I know that Ms. McLean will
4 be dealing with you as well on those -- is there
10:14 5 anything else you wish to add?

6 A No, I'm fine.

7 Q I would like to thank you very much for your many
8 days of evidence, and your cooperation in meeting
9 with me, and giving your evidence.

10:14 10 I think, it's quarter after
11 10:00, I think counsel may be ready to go, or if
12 we want to take a break, Mr. Commissioner, I'm not
13 sure what --

14 MR. GIBSON: I am --

10:14 15 MR. HODSON: Mr. Gibson is ready to go, so
16 maybe we can just go until 10:30.

17 COMMISSIONER MacCALLUM: All right.

18 MR. HODSON: Thank you.

19 BY MR. GIBSON:

10:15 20 Q Mrs. Milgaard, for the record, my name is Bruce
21 Gibson, we certainly have had a chance to chat a
22 few times during the last many months that we've
23 been in various rooms together.

24 A Yes.

10:15 25 Q I want to touch a little bit on the systemic



1 issues that Mr. Hodson just went through with you
2 and get your views again on some of those areas.

3 You mentioned at the outset with
4 Mr. Hodson that you felt it may have been
10:15 5 beneficial in 1969 for defence counsel to have had
6 an investigator to work with to investigate some
7 avenues for the accused?

8 A Yes.

9 Q And would you agree that that created, or the lack
10:15 10 of that follow-up from defence counsel's
11 perspective created some problems for you later on
12 in trying to follow up on some of those leads when
13 the case was cold?

14 A That's correct.

10:15 15 Q And I suppose you would agree then that that also
16 created difficulties for other agencies that had
17 to follow up and do that kind of work
18 subsequently, and I'm speaking again of Federal
19 Justice that went out and tried to interview
10:16 20 various people where information is cold.

21 A Memory.

22 Q And the RCMP is similar?

23 A Right.

24 Q One of the areas you mentioned as well was that it
10:16 25 may be beneficial to have a person within the



1 police agency that gathers all of the information
2 up, I think you mentioned Mr. Ullrich's name?

3 A Yes, and that's not really involved in the
4 day-to-day investigation of it, but can have a
10:16 5 sort of overall picture of it.

6 Q And I guess what we're talking about here then
7 would be sort of a file manager that would gather
8 all that information in and look at all of that
9 information not from just the particular avenue
10:16 10 that an investigator went down on one issue, but
11 look at all of the issues and all the information
12 gathered?

13 A Yes.

14 Q And are you aware that that is something that
10:17 15 police agencies do now on major crimes, that there
16 are file managers?

17 A I know that that has been changed since my time,
18 yes.

19 Q And one thing that you did mention as well was the
10:17 20 RCMP report, you've mentioned the Rasmussen report
21 and how helpful that would have been to have had
22 that report earlier?

23 A Yes.

24 Q And I believe you were here for the evidence of
10:17 25 Staff Sergeant Edmondson and Mr. Rasmussen himself



1 also gave evidence about the file retention
2 periods for the RCMP on an assist file, where here
3 they were simply assisting the Saskatoon Police
4 Service and that they were not leading that
10:17 5 investigation?

6 A However, I believe that if you are having changes
7 to the system, it would be very important that
8 that type of assistance should be part of the
9 record and part of the disclosure.

10:17 10 Q Right. And what I'm getting at then is if there
11 is something the Commissioner wishes to look at
12 with respect to file retention periods --

13 A Yes.

14 Q -- fortunately that information of Mr. Rasmussen
10:18 15 and other RCMP officers survived, but not on RCMP
16 files, they were already purged because of the
17 fact they simply assisted the Saskatoon Police
18 Service for a number of weeks during the
19 investigation, but a report went up to the
10:18 20 provincial Attorney General's office and that's
21 how that eventually surfaced.

22 A Okay.

23 Q So I suppose what you are saying is that if there
24 is going to be any assistance offered by any
10:18 25 police agency, that those documents be forwarded



1 over to that main police agency even though they
2 may have that information in another form?

3 A Yes, I do.

4 Q Okay. That's all that I wanted to deal with on
10:18 5 systemic.

6 I do want to focus a little bit
7 on the time frame 1992 to 1993, '94 when the RCMP
8 was involved in various aspects of the case
9 dealing with the Supreme Court reference and after
10:19 10 that in the 1993 criminal investigation, so that's
11 the area I'm looking at.

12 A Yes.

13 Q And I want to be fair with your evidence, and I
14 don't want to go through it all in any great
10:19 15 detail, so please correct me if I'm wrong on any
16 of the aspects I put to you, but following the
17 1992 Supreme Court decision, I think you indicated
18 that you were happy that David was out of prison,
19 but I think frustrated with the decision itself?

10:19 20 A Yes, I was.

21 Q The decision never cleared your son's name and it
22 wasn't open for you now on the basis of that
23 decision to readily apply for compensation?

24 A That's correct.

10:19 25 Q Now, around the time of the Supreme Court



1 decision, the allegations of Michael Breckenridge
2 surfaced?

3 A Right.

4 Q And his view I believe fit with your view in that
10:20 5 there had been some sort of a cover-up?

6 A That's correct.

7 Q And you indicated, I think quite candidly, you
8 wanted his allegations to be true because in
9 essence that would validate your opinion that
10:20 10 there had been a cover-up?

11 A Yes.

12 Q Now, on the issue of Mr. Breckenridge's
13 information or allegations, allegations were made
14 by yourself against various high-ranking
10:20 15 government, police and Department of Justice
16 officials?

17 A That's correct.

18 Q And you were hoping for, I believe, an inquiry,
19 but instead a criminal investigation was ordered
10:20 20 by the provincial Attorney General's office?

21 A That's right.

22 Q And again, again I believe your evidence was that
23 didn't really fit with your objective to try and
24 clear David's name and to move towards
10:21 25 compensation?



1 A That's right.

2 Q And again I believe your evidence was that you
3 co-operated with the RCMP, but you were not all
4 that thrilled with the fact that it was a criminal
10:21 5 investigation as opposed to something more broad?

6 A That's correct.

7 Q Now, you co-operated with the RCMP, I believe you
8 met with them over a couple of days with Inspector
9 Sawatzky and you provided all of your views and
10:21 10 information and I believe Mr. Wolch, Mr. Asper and
11 others co-operated at length with the RCMP and
12 provided their thoughts and theories on all the
13 work that you had done for many years?

14 A Yes.

10:21 15 Q If I could just call up a document, 023167, and
16 this is the RCMP report that was prepared, at
17 least it's the first volume of that report, and
18 the date on that I believe is January of 1994, and
19 if we could go to 023167 of that -- sorry, 176, my
10:22 20 apologies -- if you can call out that bottom
21 portion dealing with the scope of investigation,
22 and if I can just look at that a little bit here,
23 it says:

24 "... the focus of this investigation was
10:22 25 to examine all issues to determine



1 whether or not, or to what extent, the
2 Saskatoon Police Department, Saskatoon's
3 Crown Counsel office, and the
4 Saskatchewan Department of Justice
10:22 5 (Attorney General's Dept.), obstructed
6 justice in the prosecution for murder of
7 David Milgaard."

8 And:

9 "Our purpose was not to reinvestigate
10:22 10 the murder of Gail Miller ..."

11 And then a little bit further down it says:

12 "Any new evidence or information
13 emanating from our inquiries would be
14 directed to the police force with
10:23 15 jurisdiction."

16 And when you met with the RCMP, I think you
17 indicated you were aware that it was a criminal
18 investigation and they were not reinvestigating
19 Gail Miller's murder; correct?

10:23 20 A I don't know.

21 Q Okay. Mr. Wolch met with the RCMP as well and did
22 you have discussions with Mr. Wolch about that
23 with respect to what his understanding was?

24 A I'm sure we must have, but as I read that now, I
10:23 25 felt the scope of their investigation was wider



1 than that.

2 **Q** Okay. And it clearly indicates any information
3 that they would gather that was extraneous to the
4 specific purpose of the criminal investigation
10:24 5 would be documented, but in essence, it was a
6 criminal investigation as we've just discussed a
7 moment ago?

8 **A** Yes.

9 **Q** All right. Now, it's going to be trite to say
10:24 10 this, but, Mrs. Milgaard, it's very obvious you've
11 had to live with your son's conviction and
12 incarceration for a very long period of time and
13 you worked tirelessly to free him. Would you
14 agree that it was hard to shake you from your view
10:24 15 of what happened, that there was some sort of
16 wrongdoing or cover-up with respect to David's
17 conviction?

18 **A** It still hasn't shaken me from my conviction.

19 **Q** Right. And you still feel that way?

10:24 20 **A** That's right.

21 **Q** Now, you've said numerous times you were out doing
22 investigating and I suppose doing things you never
23 thought you would have to do as a mother?

24 **A** That's right.

10:25 25 **Q** And you conceded that you weren't a trained



1 investigator?

2 A Correct.

3 Q And you conceded that it would have been helpful
4 to have a trained investigator to assist in this
10:25 5 process?

6 A Yes.

7 Q And I'm hoping that you will concede the RCMP are
8 trained investigators in criminal investigations?

9 A Yes.

10:25 10 Q Okay. And their job would be to do criminal
11 investigations in the public interest? For
12 example, in this investigation that we're talking
13 about here, it wasn't an investigation for the
14 Milgaard family's benefit, per se, but was for the
10:25 15 benefit of the public in general?

16 A Yes.

17 Q If we could call up document 032805. Now, this is
18 a report that Mr. Hodson touched on with you
19 earlier, it's the report of Alberta Justice into
10:26 20 the allegations of criminal offences arising from
21 the David Milgaard case, and it's dated August
22 15th of 1994, and involved in that from Alberta
23 Justice were Neil McCrank, who was the Deputy
24 Minister of Justice and Deputy Attorney General,
10:26 25 and also Bruce Fraser who was the Chief Crown



1 Prosecutor out of Calgary, and so those are two
2 fairly high-ranking individuals with Alberta
3 Justice, and if we could just look at the next
4 page of that report, it talks about the mandate as
10:26 5 to their involvement. Actually, we'll just look
6 at that portion there and it deals with the
7 assistance that they provided, and I'm just going
8 to go through those five points.

9 "The assistance was to include the
10:27 10 following:

11 1. Provide legal advice to the RCMP
12 which was investigating these
13 allegations."

14 And there will be evidence certainly from Mr.
10:27 15 Sawatsky when he testifies about the ongoing
16 rapport that he had with Alberta Justice.

17 "2. At the conclusion of the RCMP
18 investigation, assess and analyze the
19 findings to determine if any basis
10:27 20 exists to proceed with criminal charges
21 against any members of the Saskatoon
22 City Police or the Saskatchewan
23 Department of Justice.

24 3. In assessing and analyzing the
10:27 25 findings, apply the usual charging



1 standard in Saskatchewan:"

2 And again this is a criminal investigation, so
3 there has to be:

4 "- a reasonable likelihood of
10:27 5 conviction; and

6 - that it is in the public interest to
7 proceed.

8 4. Provide this opinion directly to
9 Saskatchewan Justice and Justice Canada
10:27 10 through the offices of their respective
11 Deputies.

12 5. In the event that charges are
13 warranted, Alberta Justice would handle
14 the prosecutions."

10:28 15 And again, so it's clearly contemplated by this
16 document that the possibility of charges existed?

17 A Yes.

18 Q If we can go to the next page, please, and the
19 part dealing with process, I just want to touch on
10:28 20 a little bit of that, and in that first paragraph
21 it says:

22 "An investigation team of 12 members was
23 assembled under the direction of
24 Inspector M.J. Sawatzky ..."

10:28 25 If we skip down to the next paragraph after that:



1 "The investigation and prosecution teams
2 met on numerous occasions in Regina,
3 Saskatoon, Edmonton and Ottawa between
4 the fall of 1992 and the summer of 1994
10:28 5 and had extensive discussions concerning
6 the investigation and its findings."

7 So a rather lengthy process covering a couple of
8 years --

9 A Yes.

10:28 10 Q -- to look into the allegations. If we can go to
11 the next page, please. At the top there it says:

12 "This report of Alberta Justice will
13 only review the major allegations.

14 However, all of them were reviewed with
10:29 15 the police and the conclusions reached
16 on each and every allegation were
17 unanimous among all members of the
18 investigation and prosecution teams."

19 So clearly they were all on the same page and all
10:29 20 12 members of the RCMP investigation task force
21 and the prosecutors involved here were unanimous
22 in their viewpoint.

23 Now, I want to touch a little
24 bit on the possible *Criminal Code* offences and
10:29 25 this portion here indicates that:



1 "All of the allegations as set out in
2 the RCMP report, involving criminal
3 wrongdoing, suggest only one possible
4 offence, that being an attempt to
10:29 5 obstruct justice, pursuant to section
6 139 of the *Criminal Code*."

7 It then lists the section there, and if we can go
8 to the next page of that report, this portion
9 here:

10:29 10 "Although the allegations could fall
11 within the parameters of section
12 139(3)(a), it is more likely to fall
13 within section 139(2).

14 To prove the offence under
10:30 15 section 139(2) there must be proof of
16 the following:

17 1. an intention to obstruct, pervert or
18 defeat the course of justice."

19 If we can go to the bottom of that, the last
10:30 20 sentence there reads:

21 "The evidence must support that an
22 individual specifically intended to
23 defeat the course of justice and
24 committed an act which had a tendency to
10:30 25 hinder the proper judicial disposition



1 of the proceedings in R. v. Milgaard."

2 Now, I won't go any further into the report, but
3 that is the basis that the RCMP were
4 investigating on, it was a criminal investigation
10:30 5 dealing with that and that was the review that
6 was done by Alberta Justice on that basis, and
7 again you realize that there was no finding of
8 criminal wrongdoing?

9 A I do.

10:30 10 Q Okay. Now, I take it that report and the report
11 of Alberta Justice, the RCMP report, wasn't very
12 helpful in your quest to clear your son's name or
13 to obtain compensation?

14 A That's correct.

10:31 15 Q And I think you were also candid in saying that
16 that was part of the reason that you referred to
17 the RCMP report as a whitewash?

18 A Yes.

19 Q And if we can go to document 147954, please, and
10:31 20 this is a newspaper report of July 13th, 1995 I
21 believe, just call up that first column there, and
22 your comment there was:

23 "The public is not going to be taken in.
24 They know a whitewash when they see
10:32 25 one."



1 And you were contacted obviously relatively
2 shortly after the report came out. And then in
3 the next column over here -- sorry, here,
4 please -- you indicated, or at least the report
10:32 5 indicated:

6 "Joyce Milgaard, who hadn't
7 yet read the report, said the conclusion
8 comes as no surprise.

9 "You have a police force
10:32 10 investigating their bosses ..."

11 I think you remember Mr. Hodson touching on that
12 with you?

13 A Yes, I do.

14 Q So your view, even though you hadn't read the
10:32 15 report, was that it was a whitewash, and we've
16 touched on that, that part of that was because it
17 wasn't very helpful for you; correct, in that it
18 didn't clear David's name and it didn't open up
19 the door for compensation?

10:33 20 A That's correct.

21 Q Now, by whitewash, I think again your evidence,
22 you indicated that the RCMP didn't do a very
23 thorough investigation because they were
24 investigating their bosses?

10:33 25 A Yes.



1 Q And I do think you also went on to indicate that
2 you now acknowledge that the RCMP is a federal
3 police force and is not part of the Saskatchewan
4 government?

10:33 5 A That's correct.

6 Q And I take it that when the investigation was
7 ordered, the criminal investigation was ordered by
8 the provincial AG's office, you never raised the
9 certain about the RCMP investigating provincial
10:33 10 justice and other officials at the outset of that
11 investigation?

12 A No, I did not.

13 Q But you felt that it was a whitewash afterwards
14 because again it was not helpful to your cause?

10:33 15 A That's correct.

16 Q Is that fair? Okay. If we could just call up one
17 more document here, 032797, please, and this is a
18 letter from Alberta Justice, it's from Neil
19 McCrank and Bruce Fraser, and it's to Brent Cotter
10:34 20 who was the Deputy Minister of Justice for
21 Saskatchewan in August of 1994, and if I can just
22 read a little portion of that, the first
23 paragraph, and it indicates:

24 "We have now completed our assessment of
10:34 25 the RCMP investigation into the



1 allegations of criminal offences arising
2 from the David Milgaard case. We are
3 now reporting to conclude the referral
4 made to us by your letter of October 9,
10:34 5 1992."

6 And then this paragraph here indicates:

7 "I am sure you will appreciate the depth
8 of the investigation that is evident
9 from the RCMP report. Inspector M.J.
10:34 10 Sawatsky and his team of investigators
11 completed an extremely thorough and
12 objective examination of all available
13 evidence and presented this to us in a
14 clear and concise report."

10:35 15 Q Now, I'm assuming that you would concede that
16 Alberta Justice was not part of the Saskatchewan
17 government and they were appointed to review this
18 report, to be an outside agency?

19 A Yes.

10:35 20 Q And I take it you would agree that their view of
21 the RCMP investigation is different than yours?

22 A Probably.

23 Q And I take it you would agree that in the area of
24 criminal prosecutions, that they would probably be
10:35 25 more knowledgeable as to whether something should



1 go to charge or not, whether there should be
2 charges levied or not?

3 A Yes.

4 Q Now, Mr. Hodson went through a number of pieces of
10:35 5 correspondence with you yesterday in the fall of
6 1992 between Mr. Wolch and Mr. Mitchell, the
7 Minister of Justice in Saskatchewan at that time,
8 dealing with requests for compensation for Mr.
9 Milgaard, and in one of those letters, it may have
10:36 10 been in more than one letter, he took the view
11 that if an innocent person is convicted of a crime
12 and given a fair trial, that that is still a
13 miscarriage of justice and that a miscarriage of
14 justice can occur without culpability, without
10:36 15 wrongdoing, and would you agree with that
16 proposition?

17 A I suppose that's possible, yes.

18 MR. GIBSON: Thank you. Those are my
19 questions.

10:36 20 MR. HODSON: It's 10:30, so perhaps an
21 appropriate spot to break.

22 COMMISSIONER MacCALLUM: Mrs. Milgaard, of
23 course you are under cross-examination now, so
24 don't discuss your evidence, please, until you
10:37 25 return to the stand. I'm sure your counsel will



1 explain the position to you. Thank you.

2 (Adjourned at 10:37 a.m.)

3 (Reconvened at 10:54 a.m.)

4 BY MR. FOX:

10:54 5 Q Thank you, Mr. Commissioner. I think Mr. Wilson
6 was going to go next, he has graciously agreed
7 that I can go next and I thank him for that.

8 Mrs. Milgaard, my name is Aaron
9 Fox and I represent Eddie Karst and you certainly
10:54 10 know Mr. Karst and you probably know me as well.

11 I wanted to say at the outset,
12 and these are a bit more comments than questions,
13 but I think maybe it's important to say it on the
14 record. It has been a long, we have to go back a
10:55 15 long time since Mr. Karst testified in these
16 proceedings, we've been here for a while, but I
17 want to say at the outset that both myself and Mr.
18 Karst accept without question the fact that you
19 and your son and your family have gone through an
10:55 20 horrific experience. I think some of the things
21 you've alluded to in your testimony, one can't
22 help but be moved by it, and I heard, for example,
23 this morning again that, the despair in your voice
24 and your description of the despair you felt when
10:55 25 David escaped and you thought at that point in



1 time I'm never going to see him again out as a
2 free man, and all I wanted to say is that those
3 comments and sentiments that you expressed ring
4 true with us and for whatever it's worth we very
10:56 5 much accept that.

6 A Thank you.

7 Q And I think as well when you describe the efforts
8 being made to free him and sort of the frustration
9 of going to, from relying on the judicial system
10:56 10 to relying then on the parole system to then
11 realizing that I've got to do something myself,
12 those comments ring true as well, and I know Mr.
13 Karst has a very large family, as do I, and I
14 don't know and we don't know what we would do had
10:56 15 we been faced with the same situation you were in,
16 where I have an innocent son basically looking at
17 a lifetime in a federal penitentiary for a crime
18 he didn't commitment, and again those comments
19 that you've made and those feelings you've
10:56 20 expressed ring very true with us. We can't for a
21 moment say that we understand exactly how you
22 would feel because only you have gone through it,
23 but believe me, we accept those.

24 Mr. Karst has acknowledged when
10:57 25 he testified earlier on that mistakes were made



1 and, for the record, on August 25th, and it's page
2 12591 of the transcript, we don't need it, but he
3 used the words that he accepted responsibility and
4 didn't feel very good about what happened and
10:57 5 those comments were accurate and still correct
6 now. I think Mr. Karst, and it is Mr. Karst's
7 position, that he did not intend that an innocent
8 person would be found guilty and be incarcerated
9 for an extended period of time any more than he
10:57 10 intended that a guilty person should walk free,
11 and I appreciate that you have your feelings on
12 that and your opinions on that and, believe me, I
13 don't intend to force you into any debate over
14 that, but again, for the record, that's Mr.
10:57 15 Karst's position.

16 One of the things Mr. Karst
17 talked about, you actually alluded to it this
18 morning already in your questions and your answers
19 to Mr. Hodson about some of the systemic problems,
10:58 20 but one of the things he alluded to, and again
21 this was in his testimony on August 25th at page
22 12450, he was asked about what could have been
23 done differently to have maybe prevented this
24 tragedy early in the game, not later on, but early
10:58 25 in the process, and he described that it would



1 have been really helpful if there had been
2 somebody independent, someone who he described as
3 an overseer or an independent reader who would
4 come in fresh, look at all of the file, not be an
10:58 5 investigator and then make some assessment should
6 there be a charge laid, that sort of thing.

7 I take it from your comments
8 this morning you would agree that that would have
9 been a very good thing to have had then?

10:58 10 A Yes, I do.

11 Q And certainly is a good thing to have now, and I
12 think Mr. Gibson has alluded to the fact that
13 police agencies are moving towards that?

14 A They are moving towards that.

10:58 15 Q And although we saw, even in 1969 there are levels
16 of, for example, rank of officers and you have
17 detectives doing foot work and you have inspectors
18 and deputy chiefs and chiefs making decisions and
19 prosecutors making decisions, that sort of
10:59 20 independent overseeing didn't sort of exist at
21 that time, and you would agree, I think you've
22 already agreed that that would have been helpful
23 if something like that had existed?

24 A Yes.

10:59 25 Q You understood, Mrs. Milgaard, that Mr. Karst was



1 a detective at that time; in fact, I think we saw
2 from the seniority chart was a rather junior
3 detective at that time. You understood that?

4 A Yes, I did.

10:59 5 Q And he would report as such to others, for
6 example, staff sergeants, inspectors, deputy
7 chiefs and chiefs, that sort of thing?

8 A Yes.

9 Q And ultimately obviously to the Crown prosecutor,
10:59 10 would have some decisions on the prosecution, that
11 sort of thing?

12 A Yes.

13 Q You referred to the Rasmussen report, and we all
14 know the report you are referring to, and you
11:00 15 indicated that certainly from your perspective, if
16 you, being you and David's defence team, had had
17 that report in 1969 or 1970 when it went to trial,
18 that would have been a helpful document to have?

19 A Yes, absolutely.

11:00 20 Q And even later on as you are going through the
21 review process or trying to get a review, it would
22 have been helpful to have had it?

23 A Yes.

24 Q We've heard evidence that that, and we've sort of
11:00 25 heard evidence of who was involved in the meetings



1 that led to that document, and I'm not going to
2 ask you to acknowledge this one way or the other,
3 but there's evidence that Mr. Karst wasn't
4 involved in those meetings, and that report, for
11:00 5 whatever reason, the process was that it went down
6 to Regina versus being sort of circulated on the
7 police file. If we accept that for the moment and
8 accept that Mr. Karst didn't see that report in
9 1969 or '70, that also may have had some impact on
11:00 10 his thinking had he seen it? That's a pretty
11 convoluted question, but in other words, if Mr.
12 Karst had seen that report in 1969 and '70, maybe
13 his approach or his thoughts on David's guilt or
14 innocence may have been different as well; would
11:01 15 you agree with that?

16 A That's possible.

17 Q Mrs. Milgaard, I think you've testified, I think
18 this is on May 18th, I think you've stated it a
19 couple of times, and I don't have the specific
11:01 20 line, but at the time of David's trial in 1970, I
21 think you accept that the police honestly believed
22 that David was guilty at that time?

23 A Yes.

24 Q And your concern is your belief that the police
11:01 25 must have or at least should have picked up on



1 Larry Fisher when they became aware of him in
2 October of 1970?

3 A That's correct.

4 Q And notwithstanding that the jury had convicted
11:01 5 David already at that time, and again your view
6 would be that if you didn't make the connection,
7 you sure should have made the connection?

8 A That's right, because Saskatoon isn't even a big
9 place now.

11:02 10 Q Yeah.

11 A And at that time it was very small, so I'm sure
12 that if anything was going on, Mr. Karst, even if
13 he was a detective in another division, he would
14 know what was going on in Saskatoon and I felt
11:02 15 that he certainly would know what was happening as
16 far as victims being raped and everything were
17 going on too.

18 Q Sure. So -- but again, your view, 1970 he was
19 convicted, they honestly believed --

11:02 20 A Yes.

21 Q --- when Larry Fisher was discovered, after the
22 conviction, either did know, either they did make
23 the connection or should have made the connection?

24 A They should have made the connection then.

11:02 25 Q Okay. Now, I think it's clear that from the



1 outset, the very first time there was any
2 suggestion made to you that David might have been
3 involved in the death of Gail Miller, you were
4 very much convinced that he was not, that he was
11:02 5 innocent?

6 A That's correct.

7 Q And that would include the first time detectives
8 attended at your residence in Langenburg?

9 A That's correct.

11:03 10 Q And certainly that's the position that has never
11 changed for you?

12 A Pardon?

13 Q You've never changed in that, never wavered in
14 that belief?

11:03 15 A No, I have not.

16 Q Okay. There was some discussion about your
17 husband's reaction and his reaction wasn't quite
18 the same as yours, and I think you've indicated
19 that he didn't necessarily believe that David was
11:03 20 guilty of the offence, but that his reaction might
21 have been interpreted at least initially that he
22 thought that that was a possibility, that could
23 have been interpreted that way?

24 A My husband's memory of that and my memory of that
11:03 25 was that it should not have been interpreted that



1 way. He said very clearly that he didn't believe
2 it at the time and the remark was a remark that
3 was indicating that he always knew that sometime
4 there would be a policeman at the door because
11:03 5 David's lifestyle would have him in trouble, but
6 never ever anything like that.

7 Q Yeah.

8 A And so he was very upset by that comment.

9 Q Sure, sure. And the remark that you always
11:04 10 thought that there might have been a policeman at
11 the door may have, I think you already indicated,
12 may have been misconstrued, that's possible?

13 A Absolutely.

14 Q Yeah. But certainly then, going back to 1969 when
11:04 15 you first heard about this, I take it then you
16 would have been aware at the outset, or at least
17 been thinking at the outset, I mean, my son didn't
18 commit this murder, somebody else must have, who
19 did that, who actually -- who murdered Gail
11:04 20 Miller?

21 A No, I don't think that I was thinking that way.

22 Q Okay. The thought never crossed your mind in
23 1969, that if David didn't kill Gail Miller, who
24 did?

11:04 25 A I don't -- I really don't believe that I was



1 thinking in that way because I knew he didn't do
2 it and I just assumed that the police would find
3 that out.

4 Q Okay. And so was there any vigilance on your part
11:05 5 for other possible suspects or were you
6 thinking --

7 A No.

8 Q No? And when would you have first started
9 thinking about, well, who are the other possible,
11:05 10 who might have done this? If David didn't do it,
11 and I know David didn't do it, then somebody else
12 must have done it, when would you have started
13 thinking about that?

14 A I think I trusted the justice system and I trusted
11:05 15 the fact that -- I actually thought it was a good
16 thing that it happened because it would show David
17 that, it would just sort of show him that you are
18 known by your friends and would make him not have
19 those kind of friends, but never for a minute did
11:05 20 I think he would be found guilty.

21 Q All right. In other words, this might be a bit of
22 a life lesson, --

23 A Yeah.

24 Q -- but you didn't think he would end up with a
11:05 25 life sentence out of it?



1 A No, I didn't.

2 Q Okay. Would it have been after the conviction,
3 then, that you would have began thinking, or at
4 least you talked about, for example when you began
11:05 5 looking at the newspapers to see if -- going back
6 to the -- I think it was the --

7 A Oh, yes, that was after he was convicted.

8 Q So would that have been in 1970-'71, in that time
9 period there?

11:06 10 A No.

11 Q Okay.

12 A Because I really, at that time, felt that the
13 appeal would do something.

14 Q Okay.

11:06 15 A It wasn't until much after that that we started
16 investigating.

17 Q And that would have been -- involved going back,
18 looking at the newspapers, that sort of thing, --

19 A That's right.

11:06 20 Q -- to see if there's any information in there that
21 might point to another suspect?

22 A That's right.

23 Q Okay. And certainly, as I take it, you didn't
24 receive any information or have no recollection of
11:06 25 receiving any information in 1969 and '70 that



1 there was somebody who had committed rapes in
2 Saskatoon, or there were unsolved rapes, and those
3 existed; you didn't receive any information like
4 that --

11:06 5 A Not at that time.

6 Q -- from --

7 A We got the information, and I think it's been up
8 on the board, about the -- a warning that went out
9 to the women in the area --

11:06 10 Q Okay.

11 A -- saying that there was a rape, you know, that
12 people had been raped.

13 Q Sure. Could we just bring up, and I think this is
14 the document you are referring to Mrs. Milgaard,
11:07 15 document 039527?

16 A That's correct.

17 Q That's the one. And I think that appeared in the
18 Saskatoon *StarPhoenix* December 14th, 1968. Do you
19 know when you would have seen that?

11:07 20 A That wasn't until later, when we were going
21 through, digging up everything.

22 Q This would have been after the appeal process
23 would have been complete?

24 A Yes, yes.

11:07 25 Q Okay. And what I was asking you then is in that



1 time period, like David was charged in 1969, went
2 to trial in 1970, and his appeal was either '70 or
3 '71; during that time period no one brought to
4 your attention, whether friends or acquaintances
11:07 5 or the defence team or anybody, that there were
6 some -- there was some rapes that had not been
7 solved?

8 A No, and that's why I mentioned that it would have
9 been important to have had that kind of
11:07 10 information.

11 Q Sure, yeah. And then all I was asking --

12 A Because it was obviously there.

13 Q Yeah. And what I was just asking is that, just
14 even anecdotally, no one sort of said to you,
11:08 15 "gee, you know what, you know, there's been
16 reports in the paper about some women being raped,
17 that sort of thing", that information just never
18 came to you even anecdotally or on the street, so
19 to speak?

11:08 20 A No, because I'm -- you know, we're in Langenburg,
21 Saskatchewan, a little small town, we don't hear
22 anything going on in Saskatoon, --

23 Q Yup?

24 A -- and you sort of didn't have TV at that time or
11:08 25 anything like that.



1 Q Sure. And I'm not, believe me, I'm not
2 challenging you that you didn't know that, I'm
3 just asking what your recollection was, that's
4 all.

11:08 5 A No.

6 Q And again, as you indicated, the focus initially
7 would have been on the judicial system itself,
8 expecting that David is going to learn a lesson
9 here but he's not going to be convicted of
11:08 10 something he didn't do?

11 A That's right.

12 Q And then, after the conviction and appeals were
13 exhausted, then it was a bit of a focus on the
14 parole system, hoping that that would get him out?

11:09 15 A Yes, it was, because we still had my -- I had a
16 seven-year-old daughter at that time, and we had
17 to move from Langenburg because of the situation
18 there, and all taking new positions in the city
19 and everything.

11:09 20 Q Sure. Your life went on, I mean --

21 A Yeah.

22 Q -- the rest, your obligations to the rest of your
23 family didn't end because you were trying to help
24 David, you still had to deal with those as well?

11:09 25 A That's right.



1 Q Okay. And then, when it didn't seem as though the
2 parole system was going to be the answer, then the
3 focus became on whether the government -- and that
4 would be the federal and provincial government at
11:09 5 various times -- would somehow be able to
6 intervene and help out?

7 A That's right.

8 Q And eventually, and things went on and became more
9 desperate and it seemed like the point when David
11:09 10 escaped and was shot, that was sort of the low
11 point, if I can describe it as that?

12 A Well that's the point where we realized that he
13 would never see the light of day any more.

14 Q Yeah. And at some point it became obvious to you,
11:09 15 at least, that you were going to have to do
16 something, --

17 A That's right.

18 Q -- that you would have to make this happen,
19 whether through public support or media support or
11:10 20 whatever way possible, to try and bring attention
21 to David's situation and hopefully move somebody
22 to getting involved in reviewing it?

23 A That's correct.

24 Q And I think you've described, pretty candidly, the
11:10 25 numerous facts and statements and rumours and



1 anonymous phone calls, and everything that you
2 have received, that you followed up on hoping that
3 it would lead you to a trail that would help
4 exonerate David?

11:10 5 A Correct.

6 Q And in going down those trails, sometimes the
7 facts proved to be accurate, sometimes the facts
8 proved to be rumours and not substantiated, and
9 all you could do is follow them and hope you found
11:10 10 one that helped?

11 A Yes.

12 Q And certainly, in terms of time frame, it would be
13 by the late 1980s that you were then hoping to
14 elicit public support for your position; would
11:11 15 that -- would I have that time frame right?

16 A Well 1980 is when we --

17 Q I said the late 1980s, would --

18 A Oh, the late 1980s? Yes, probably late 1980s.

19 Q Because I think the early '80s you would have been
11:11 20 dealing with Merchant, and then Mr. Young,
21 and still --

22 A Right.

23 Q -- trying to deal with the system as such, if I
24 could put it that way?

25 A Yes.



1 Q By the late 1980s I think it would be fair to say
2 you had become frustrated with the system and were
3 trying, by that point, to get some public support
4 for your position?

11:11 5 A Yes.

6 Q And, again, part of that would be to try and get
7 out to the public, and through the media and
8 otherwise, the facts and the rumours, the
9 information that you had, hoping that some of it
11:11 10 would perhaps move, again, the powers to be to
11 take some steps to review David's situation?

12 A Correct.

13 Q Mrs. Milgaard -- and believe me, I'm not, do not
14 want to compare your situation to the police, you
11:12 15 are a mother trying to deal with a son who has
16 been unjustly convicted -- but did you at any
17 point in time think that you had tunnel vision on
18 the file, on any of the issues on the file?

19 A Yes.

11:12 20 Q Okay. One of the examples I just wanted to touch
21 briefly on was, for example, the dealing with the
22 evidence of Mr. Melnyk and Mr. Lapchuk. And I
23 take it you determined in your own mind, fairly
24 early in the game, that these people were liars;
11:12 25 have I got that right?



1 A Yes, I -- I still believe they are. They don't
2 lie, didn't lie about some things, but that is how
3 I would still categorize them.

4 Q Okay. The initial information you got that
11:12 5 supported that would have been the information
6 that was supposedly coming from Deborah Hall?

7 A Yes and no, because basically she supported the
8 statements of Lapchuk and Melnyk in the sense that
9 she was there and she said it happened, but she
11:13 10 said that it was a joke.

11 Q Okay. I -- we've heard what Deborah Hall had to
12 say and some might interpret her statement as,
13 frankly, being more damning, even, than Melnyk's
14 or Lapchuk's; would you agree?

11:13 15 A The second one was.

16 Q Yeah.

17 A The first one that we got was not.

18 Q Okay. So she kind of was -- either didn't get --
19 give you correct information, or it didn't get to
11:13 20 you correctly, but certainly her second one, and
21 the one that she alluded to when she testified
22 here at the hearing, really was more damning, the
23 words used. And My Lord, I'm not going to -- or
24 Mr. Commissioner, I don't have to repeat it, but
11:13 25 it was in Deborah Hall's evidence of February



1 16th, '05, that's at page 3,216 of the
2 transcript -- but the words she said that --
3 attributed to David were, frankly, more offensive
4 than what Lapchuk and Melnyk had testified to?

11:14 5 A That's correct.

6 Q Okay. So the perception, then, of the lying of
7 those two individuals would be not so much their
8 repeating what they heard David say, but the
9 suggestion that it sounded to them as being
11:14 10 serious, as opposed to joking?

11 A That's correct.

12 Q Right. And that would be the basis on which you
13 would say they were lying?

14 A Probably.

11:14 15 Q Okay. Is there anything else that you say they
16 lied about?

17 A I have, I honestly don't remember if I have said
18 they lied about things.

19 Q Okay. Would --

11:14 20 A But my perception at the time was that they had
21 got together with Wilson, and the two of them had
22 decided that they would use this information and
23 make a deal with the police and get -- like, and
24 when I found out that the one fellow had got a
11:15 25 light, very light sentence, I figured that they'd



1 made a deal with them and so I -- their evidence,
2 at that point, was definitely suspect.

3 Q Sure. I'm just wondering though, in light of what
4 Deborah Hall said then though, I mean let's assume
11:15 5 for the moment they did make a deal, --

6 A Uh-huh.

7 Q -- and I'm not going to review the evidence that
8 says they didn't or did -- but it does appear as
9 though what they said was fairly accurate, so I'm
11:15 10 wondering where the lie is?

11 A Well I guess I had felt that they had slanted it
12 in that way for their benefit.

13 Q And slant --

14 A Slanting it by saying that it was real and that he
11:15 15 had really re-enacted it --

16 Q Yet --

17 A -- and it wasn't a joke.

18 Q Okay.

19 A And I think if they had really -- and they knew
11:16 20 David, and they knew the way he joked, I think
21 that they probably knew, if that happened that
22 way, that it was a joke.

23 Q And you -- you seemed -- you took objection or you
24 thought that it was wrong that they would sort of
11:16 25 come forward and say this about a friend?



1 A Yes.

2 Q And were you of the same view of Nichol John and
3 Ron Wilson, that they should not be coming forward
4 and talking about what happened or what they saw,
11:16 5 because David was --

6 A Well I think --

7 Q -- because David was their friend?

8 A No, I think that they should have given testimony
9 about what they saw, but that -- I think the
11:16 10 circumstances they got put into, such as Ron
11 Wilson, where he was put into a situation, and
12 then with Nichol said "you know, we're going to
13 have to give them David", because they were forced
14 into that position, it was either he was going --
11:17 15 they were going to get him for it or going to get
16 David.

17 Q Yeah?

18 A So the police have put them in that position, and
19 I feel badly for them, for both of them, they were
11:17 20 put in a horrendous position.

21 Q I -- and we've heard Nichol John and Ron Wilson
22 testify, --

23 A Uh-huh.

24 Q -- and I'm not gonna review in detail what they
11:17 25 have said here because the Commissioner has that



1 and will have to decide what did or didn't take
2 place, but what I was getting at is if you thought
3 Melnyk and Lapchuk shouldn't be really saying
4 anything because they were some sort of friends of
11:17 5 David's --

6 A But they came forward.

7 Q Yeah.

8 A There is a different thing between someone coming
9 forward and ratting on a friend, so to speak, than
11:17 10 someone being a witness and being questioned.
11 That -- that was my perception of it.

12 Q Okay. So you didn't think Lapchuk and Melnyk
13 should come forward with the information they had?

14 A I felt that they came forward with the information
11:17 15 that they had because they were trying to make a
16 deal for themselves, --

17 Q Okay, and you --

18 A -- and it was for their benefit that they were
19 coming forward, certainly not for David's.

11:18 20 Q Okay, but -- and I think you indicated, as a
21 friend of his, they shouldn't have been doing
22 that?

23 A Well, it seems to go against what a friend would
24 normally do.

11:18 25 Q Yeah. In 1983, Mrs. Milgaard, by that time you



1 were trying to determine who may have killed Gail
2 Miller, because obviously, if you found out who
3 killed Gail Miller, that would go a long ways to
4 exonerating David; is that fair to say?

11:18 5 A That's fair to say.

6 Q And one of the individuals you identified, there
7 were two names mentioned, one was a fellow named
8 Lalonde, and I think you -- that was quite a bit
9 later and he was discounted fairly quickly?

11:18 10 A Yes.

11 Q His name was mentioned, pretty quickly determined
12 it couldn't have been him, but the other fellow's
13 was Mahar?

14 A Mahar.

11:18 15 Q And that's M-A-H-E-R?

16 A M-A-H-A-R.

17 Q Okay. And he was a suspect for, or at least in
18 your mind, you thought is the one likely to have
19 killed Gail Miller for a fair, considerable period
11:19 20 of time?

21 A Yes.

22 Q And can you tell me, first of all, how you became
23 aware of him, like how did you get information
24 that this might have been --

11:19 25 A It was a newspaper account.



1 Q So reviewing the newspapers?

2 A Yes.

3 Q And what information did you get that suggested to
4 you that he had killed Gail Miller?

11:19 5 A Well, it wasn't information that he had killed
6 Gail Miller, I went back through all of the
7 newspapers and anybody that had been charged with
8 rape or assaults of -- dealing with women, and I
9 would try to find out where they were at the time
11:19 10 that Gail Miller was killed, or if they were still
11 in Saskatoon or if they were in jail or anything,
12 so I -- I followed up hundreds of people.

13 Q Okay. The -- the --

14 A These are major ones that -- you know, because
11:20 15 some of the similarities in the case that got me
16 really doing him more in depth than others.

17 Q Okay. So this would have been going to the
18 Saskatoon public library?

19 A Well, I actually went to the Winnipeg public
11:20 20 library and looked through papers from Saskatoon,
21 and I did come up to Saskatoon as well.

22 Q Okay. And so you looked -- that would have been
23 the Saskatoon *StarPhoenix*?

24 A Yes.

11:20 25 Q And do you know what period of time you would have



1 looked, would have covered, in your review of the
2 papers?

3 A Well, I started back in the '60s, I believe.

4 Q Okay. And up to what period of time?

11:20 5 A I don't remember.

6 Q Like would have you gone to 1970 and '71, or past
7 that, to see who might be out there as rapists,
8 that sort of thing?

9 A I don't know whether I went past that date or is
11:20 10 that as far as we went to, you know.

11 Q Okay. You mentioned, we looked at the police
12 warning that was out there, and I take it you
13 didn't find that when you were doing your review,
14 then, didn't come across that?

11:21 15 A No, I believe that was found by someone else that
16 was reviewing --

17 Q Yeah, --

18 A -- a little more thoroughly than I was.

19 Q -- but my question, though, was that when you did
11:21 20 your review you have no recollection of coming
21 across that?

22 A I have not.

23 Q Okay. There was a -- and, as I understand it, one
24 of the -- one of the thoughts that you had -- and
11:21 25 because, of course, you were concerned about



1 Nichol John's testimony -- and one of the issues
2 may have been "well, maybe Nichol did see
3 something, but it didn't have anything to do with
4 David"; that was one possibility you looked at?

11:21 5 A Yes.

6 Q And the possibility that you looked at, in fact
7 that you believed for a period of time, was that
8 this Mahar killed Gail Miller?

9 A Yeah, he had connection with the church there.

11:21 10 Q Connection with that St. Mary's Church?

11 A Yes, right.

12 Q So that kind of put him in the area?

13 A Uh-huh.

14 Q And that she may have witnessed Mahar killing Gail
11:21 15 Miller --

16 A Right.

17 Q -- and, now, was sort of alluding or somehow
18 connecting that to David when, in fact, she's got
19 the wrong person altogether?

11:22 20 A Right.

21 Q Okay. Could you just bring up document 159724,
22 please. This is a report that appeared in the
23 Saskatoon *StarPhoenix* May 29th, '71 which referred
24 to Larry Fisher sentenced to 13 years in Manitoba,
11:22 25 Larry Fisher of Saskatoon sentenced to 13 years in



1 Manitoba for charges of rape, possession of a
2 weapon, that sort of thing. Do you recall,
3 Mrs. Milgaard, if, in your examination of the
4 newspapers, that you would have come across this
11:22 5 article in the *StarPhoenix*?

6 A No, I did not, and so this is why perhaps I was
7 only dealing with ones prior to, you know,
8 probably up to 1970.

9 Q Okay. You --

11:22 10 A Because I think the first time I saw this was
11 years later.

12 Q Okay. So no recollection of seeing this, or if
13 you --

14 A Not at that time.

11:23 15 Q -- did come across it, it didn't twig anything
16 with you at the time?

17 A No, no.

18 Q Okay. Mr. Hodson has reviewed with you,
19 Mrs. Milgaard, in some detail the various
11:23 20 documents that alluded to information that you or
21 Peter Carlyle-Gordge had about Larry Fisher in
22 that 1983 time frame; do you recall when he went
23 through that evidence with you?

24 A Yes.

11:23 25 Q And I don't mean to go through that in detail with



1 you but, Mr. Commissioner, I could maybe -- just
2 for the record, I'll just refer to the documents
3 just by number so that they are there on the
4 record, and I sure don't want to go through them
11:23 5 one by one with you again, Mrs. Milgaard, you've
6 dealt with them already. But the documents, this
7 is a Peter Carlyle-Gordge document 174037 at page
8 38, or at 38; 325624 at 644; 333001; 333013 at
9 014, those would all be Peter Carlyle-Gordge notes
11:24 10 of interviews, and so on, where he is --

11 COMMISSIONER MacCALLUM: What was the last
12 one, I'm sorry?

13 MR. FOX: Sorry, My Lord, 333013 at 014.

14 COMMISSIONER MacCALLUM: Okay.

11:24 15 BY MR. FOX:

16 Q -- where he has information that Larry Fisher
17 lived in the basement of the Cadrain house, where
18 he spoke to the Cadrains about him, that sort of
19 thing, where he had information about the rapes
11:24 20 that Larry Fisher had been involved in; 332585, if
21 we could just bring that up, this would have been,
22 this would have been, and we have seen this a
23 number of times, this is Mr. Merchant's letter to
24 the Empire Skip Tracing trying to find Linda
11:25 25 Fisher in regard to Larry Fisher:



1 "She married Larry Fisher who is
2 presently in prison for a rape charge.",
3 February 25th, 1983 -- and I think you indicated
4 you don't have any recollection of seeing that at
11:25 5 the time?

6 A No, I did not.

7 Q Okay. The further documents Mr. Commissioner,
8 I'll just refer them by number; 216089; 159890,
9 that was the Peter Carlyle-Gordge ad looking for
11:25 10 Linda Fisher; 224990 at 98, which is Peter
11 Carlyle-Gordge obtaining Linda Fisher's address;
12 213947, which is Linda Fisher's letter; 213627,
13 Mr. Merchant's letter to Universal; and 325616 at
14 621, which is Peter Carlyle-Gordge speaking to
11:25 15 former Detective Mackie about Larry Fisher.

16 Now -- and I think you've
17 already, those were reviewed with you by Mr.
18 Hodson -- those, that material, as it was
19 presented in 1983, didn't cause you to twig on to
11:26 20 Larry Fisher as the likely killer of Gail Miller;
21 I think you've already indicated that?

22 A We've indicated -- I've indicated that I don't
23 believe I had access to that particular material
24 at that time.

11:26 25 Q Well, the --



1 A Because that was just prior to Peter going to
2 England.

3 Q Yeah. So you --

4 A And --

11:26 5 Q -- you're thinking that Peter Carlyle-Gordge
6 didn't convey any of that information to you?

7 A Some of it may have, but certainly not to the
8 extent that we went through, because we looked at
9 it.

11:26 10 Q Sure. Likely, some information was conveyed to
11 you that there's information about a Larry Fisher,
12 you may have not have had it in the detail that's
13 here, but it would be fair to say that likely some
14 information was conveyed to you about Larry Fisher
11:26 15 in 1983?

16 A Yes, and I'm sure that, if I had been knowing the
17 information that I have now, that I would have dug
18 a little deeper there, so --

19 Q Is it possible in 1983, Mrs. Milgaard, that at
11:27 20 that time you were focused on Mr. Mahar as the
21 killer of Gail Miller and that --

22 A Having tunnel vision?

23 Q Having tunnel vision?

24 A It's possible.

11:27 25 Q Yeah. And I think Mr. -- Inspector Sawatzky, when



1 he spoke to you in 1993, asked you about that; do
2 you recall that?

3 A No, I don't.

4 Q Okay. The interview of yourself with Inspector
11:27 5 Sawatzky I think is doc. number 331214, that would
6 have been a -- do you remember meeting with
7 Inspector Sawatzky?

8 A Yes, I do.

9 Q And I think it covered two days, February 25th and
11:27 10 26th of 1993?

11 A Yes.

12 Q And you would have obviously covered a great deal
13 of ground at that meeting about all sorts of areas
14 of concern, and the investigation and information,
11:27 15 that sort of thing?

16 A Yes.

17 Q And if we could turn to page number 331240, if I
18 could just -- this is Inspector Sawatzky asking
19 you the question:

11:28 20 "Q What brought you to follow that
21 connection - to go back and look at the
22 girl's murder ...",
23 and you answer:

24 "A I got an, I was looking at everything; I
11:28 25 was looking at all the murders and



1 everything that was connected around

2 ..."

3 If I could just pause there; that would be
4 correct?

11:28 5 A Yes.

6 Q "It seemed to me David hadn't done it,
7 like I'm starting from that premise and
8 if David hadn't done it I felt that it
9 must be someone with similar type of ...
11:28 10 modus operandi, if you will, and so I
11 started looking back to see - we, we
12 followed up on ...",

13 and it has "McHarg", M-c-H-a-r-g, but would --
14 that might -- correct, that should be referring
15 to Mahar?

16 A Mahar, yes.

17 Q That's who you were referring to?

18 A Yes.

19 Q "... which was, was a guy at that time
11:29 20 was ... actually came to St. Mary's
21 Church and was seeing visions and
22 everything and he was convicted of a
23 murder with stabbing with a paring knife
24 and he'd been visiting with the priest
11:29 25 at St. Mary's."



1 If I can pause there, that's what you were
2 referring to earlier, that he somehow was
3 connected to St. Mary's Church, which was close
4 to --

5 A That's right.

6 Q -- where Gail Miller was killed, --

7 A Uh-huh.

8 Q -- so logical that he would be a prime candidate
9 for the murder of Gail Miller?

11:29 10 A Right.

11 Q "Uh, that was his priest and telling him
12 about the visions that he had and all
13 the rest of it so, we followed up on so
14 many cases and it was, at the time that
11:29 15 we found out about Fisher, we didn't
16 follow up on him because we got locked
17 into the McHarg, and we got, we were
18 just like the police. We got tunnel
19 vision (laugh). We got into a, one
11:29 20 area, and you know, we're, we're finding
21 that the police had tunnel vision on
22 David. I know how that can happen
23 because as soon as you get something
24 that fits you just go after it. I
11:30 25 followed many, many avenues - ohh - all



1 these different things and - what I was
2 doing all that time but it was because,
3 you know you start... You know how long
4 it takes."

11:30 5 Would that have been the answer you gave
6 Inspector Sawatzky?

7 A Yes.

8 Q And would that be an accurate answer?

9 A Yes.

10 Q And he goes on, Inspector Sawatzky, apparently he
11 concedes:

12 "Q You're right about the tunnel vision.
13 There's no, no doubt whatsoever that
14 happens. I've been the victim of that
11:30 15 myself."

16 And you answer:

17 "A Umm hmm. And you don't realize it, like
18 I can look back now and I can say that
19 was stupid. I mean you just, like you
11:30 20 had Larry Fisher there, you could have
21 found him at that time."

22 That would have been the answer you gave?

23 A Yes.

24 Q And that would be accurate?

11:30 25 A Yes.



1 Q And, again, what you are saying there is that,
2 looking back on it now, gee, maybe I should have
3 picked up on Larry Fisher, I didn't, I was focused
4 on this other fellow, and that's what happened?

11:30 5 A That's right.

6 Q And then the next question:

7 "Q At the time it's the logical chain of
8 events.

9 Q Yeah, that's right."

11:31 10 And then you answer:

11 "A Yeah, and so whenever I want to really,
12 umm, uh, nail those police officers I
13 [laughs], I, I can I understand it."

14 A That's right.

11:31 15 Q That would have been the answer you gave?

16 A That's right.

17 Q And that would be accurate?

18 A Yes.

19 Q Mrs. Milgaard, you had some -- you've expressed
11:31 20 concerns that efforts were made to cover up the
21 existence of Larry Fisher by many people at,
22 really at the highest levels or the highest
23 places, I think you've described it as?

24 A That's right.

11:31 25 Q And you indicated, I think it was on May 18th,



1 that Gus Weir, for example, didn't know about
2 Larry Fisher, and that was the one police officer
3 that you had indicated you had some knowledge
4 wasn't informed about Larry Fisher, even though he
11:31 5 was involved in the investigations?

6 A Yes.

7 Q Okay. And --

8 A I remember how upset he was that -- and I believe
9 he went after Mr. Karst and said "why didn't you
11:32 10 tell me?"

11 Q Yeah, have you -- you saw his report of February
12 5th, 1971, that's document 105246?

13 A I don't know.

14 Q I wonder if we could put -- bring that up, and
11:32 15 just maybe highlight that there. This would be
16 where they are returning some articles that were
17 taken from her, and then:

18 "The situation concerning this
19 occurrence and the alleged mental
11:32 20 condition of the accused was explained
21 to this girl and her parents. At the
22 present time these people appear to be
23 completely satisfied with the actions
24 taken re this occurrence. This therefor
11:32 25 is a concluding report."



1 Did you, have you seen that report before,
2 Mrs. Milgaard?

3 A Yes, and I think that that was when we went to the
4 girl and she said that they told her that it was
11:33 5 Larry Fisher, and that he was in a mental
6 institution, and of course that wasn't true.

7 Q Well maybe we could bring up what (V5)-- (V5)---
8 actually said at these proceedings.

9 A Yeah.

11:33 10 Q That's April 20th, 2005, 8,334 is where it starts.

11 A Actually, there is a document, *The Globe and Mail*
12 had a story in there about it.

13 Q Why don't we check and see what Ms. (V5)--- said
14 under oath as opposed to what *The Globe and Mail*
11:33 15 said. She's questioned here, this is I think by
16 Mr. Hodson, we'll just start there --

17 COMMISSIONER MacCALLUM: Who's evidence?

18 MR. FOX: This is (V5)-- (V5)---.

19 COMMISSIONER MacCALLUM: Oh, (V5)--
11:33 20 (V5)---.

21 BY MR. FOX:

22 Q This would be the victim that Gus Weir was dealing
23 with. If we could just go to page 105218, the
24 last page, and I just want to call out the last
11:33 25 three lines, if I could please, and it says:



1 "Could recognize him if I saw
2 him again. I think I have
3 seen him someplace before.

4 And I just want you to confirm ..."

11:34 5 Sorry. Carry on. Sorry, I've got the wrong page
6 number here.

7 A Yeah.

8 Q If you could carry on, move up. My Lord, I've got
9 the wrong page number. If you could scroll back,
11:34 10 scroll back down, scroll back to the top.

11 If we could go to document
12 254911 and if we could go to 913 I think, 914,
13 sorry, where it's at. I'm sorry, Mr.
14 Commissioner, I'm going to have to check my notes,
11:35 15 I've got the wrong page number here for (V5)--
16 (V5)---' evidence.

17 A I'm sort of remembering, and I have turned to this
18 article here, it said:

19 "A second victim who was
11:35 20 raped on February the 21st says she
21 identified Mr. Fisher as her attacker
22 when she was shown a single photograph
23 of him by Detective Weir in the fall of
24 1970."

09:32 25 "'It was one of those



1 Polaroid pictures of Fisher alone', she
2 recalled in an interview from her rural
3 Saskatchewan home last week. 'It was
4 just one picture, just him. I
09:32 5 identified him. I was sure. Then they
6 told me he was responsible for two other
7 rapes in Saskatoon, they told me he was
8 in a mental institution. Then they
9 left.' "

11:36 10 Q And I won't get the transcript, you accept that
11 that's essentially what Ms. (V5)--- said when she
12 testified here?

13 A Yes.

14 Q So she knew of Mr. Fisher in 1971, she knew of two
11:36 15 rapes in Saskatoon and there was reference to him
16 being in a mental institution; correct?

17 A That's what she said.

18 Q Yeah. That would seem to say, though, that she
19 was advised that the person who had raped her had
11:36 20 been captured; correct? Obviously she's been
21 shown a picture of him and she identifies him?

22 A Yes.

23 Q And he has been charged and there's a reference to
24 a mental institution. Did you know that Mr.
11:37 25 Fisher was taken for a psychiatric examination in



1 Winnipeg?

2 A Yes, I understood he went for a psychiatric
3 examination, but that he was never in a mental
4 institution.

11:37 5 Q Okay. Do you know where he was taken for that
6 psychiatric examination?

7 A No, I don't.

8 Q No, okay. You saw Albert Cadrain testify at the
9 preliminary hearing, Mrs. Milgaard?

11:37 10 A Yes.

11 Q You saw him testify at the trial?

12 A Yes.

13 Q And I take it that you didn't detect any signs of
14 mental illness on his part when he testified on
11:37 15 those two occasions?

16 A I always saw some kind of mental problems with
17 Albert and I think that was my evidence at the
18 first, that he was mentally challenged.

19 Q Well, I understand that you didn't detect any
11:38 20 signs of mental illness when he testified at the
21 preliminary hearing or at his trial, or at the
22 trial; would that be correct?

23 A I don't know that I would say that. I may have
24 felt that and yet --

11:38 25 Q Well, did you go to Mr. Tallis and say I think



1 this person is suffering from mental illness?

2 A No, but I think my testimony has always been that
3 Albert was mentally challenged and he was a
4 mentally challenged youth and so when he started
11:38 5 to get sort of really irrational about the things
6 that he was saying, I think it was obvious at that
7 point.

8 Q But am I correct, though, that you didn't -- while
9 you may have detected that he was mentally
11:38 10 challenged, you didn't detect anything that
11 indicated he was suffering from a mental illness?

12 A No, I don't believe that I did.

13 Q And in fact when you spoke to him the first time,
14 similarly I think you described him as mentally
11:39 15 challenged, a sweet boy, but didn't detect any
16 signs of mental illness at that point in time
17 either?

18 A Probably didn't.

19 Q Mrs. Milgaard, do you know when you first had an
11:39 20 opportunity to review the police reports that were
21 authored by Eddie Karst?

22 A I have no idea.

23 Q Would it have been -- when I say long after the
24 fact, would it have been after the 1970s sometime?
11:39 25 If the trial was in '70, the appeal was in



1 '70-'71, would it have been the 1980s at least
2 before you saw those reports?

3 A Oh, probably.

4 Q And when you saw the reports, like, for example,
11:39 5 and I'm not sure if you are familiar with those
6 reports, but Mr. Karst in those reports points
7 out, for example, Ron Wilson says there's no
8 blood, then says there's blood, then says there's
9 no blood, that sort of thing. Do you --

11:40 10 A I don't remember which reports I had when, I'm
11 sorry.

12 Q Okay. Do you have any recollection of reading
13 those reports and saying, you know, gee, here's
14 Mr. Karst raising some questions, what happened,
11:40 15 who answered those questions for him?

16 A I don't remember that.

17 Q Okay. Do you want me to give you an example of
18 what I'm referring to?

19 A Yes, sure.

11:40 20 Q Sure. If we could just bring up report 009254,
21 this is Mr. Karst's observation about Nichol John
22 in his report of April 18th, 1969, starting there
23 with further:

24 "Further investigation of this girl when
11:41 25 she was interviewed gave one the feeling



1 that she was telling the truth and that
2 she emphatically stated she could not
3 recall any time while they were in the
4 City of Saskatoon during the morning of
11:41 5 the murder at which time Wilson or
6 Milgaard left the vehicle in which they
7 were driving long enough to commit this
8 offence."

9 Do you have any recollection of reading that in
11:41 10 Mr. Karst's report?

11 A Oh, yes, I've read that a hundred times.

12 Q And did you determine who sort of answered that
13 question, who sort of responded to that? He
14 obviously is putting in information in his report
11:41 15 which would suggest that David wasn't responsible
16 for the murder; would that be correct?

17 A Yes, and he seemed to be believing that she was
18 telling the truth.

19 Q Similarly, if go to the next page, this paragraph
11:41 20 here:

21 "Although there are many unanswered
22 questions with regards to Milgaard's
23 activities on that particular morning,
24 if one is to believe the girl, Nichol
11:42 25 John, and it appears that she is very



1 convincing with her story, then there is
2 no way in which Milgaard can be
3 connected with this crime."

4 A Yes.

11:42 5 Q Again, it seems to be sort of stating there's a
6 question here, somebody is going to have to answer
7 that statement?

8 A Uh-huh.

9 Q Have you determined sort of the process of where
11:42 10 those reports went or who processed them or who
11 kind of was responsible for answering those
12 questions?

13 A No.

14 Q Okay.

11:42 15 A This is why I suggested that there be someone that
16 looked over all of these reports.

17 Q And that would be the benefit of an independent
18 review person?

19 A That's right.

11:42 20 Q Here's Mr. Karst, he's told to go out and do this
21 particular area of the investigation, he does it,
22 files a report, raises some questions, somebody
23 else does another area of the investigation, one
24 person independent of it all looks at it and tries
11:42 25 to make sense of it?



1 A Correct.

2 Q And that would be a desirable result?

3 A It would be.

4 Q Yeah. And even if we look at his report of

11:43 5 009264, May 25th, 1969, and you of course would
6 know the significance of the May 25th date, this
7 is now, Nichol John and Ron Wilson have now given
8 their incriminating statements against David?

9 A Yes.

11:43 10 Q And at page 267, referring to Ron Wilson:

11 "Also in this statement Wilson states he
12 had seen blood on Milgaard's trousers
13 when changing his clothes at the Cadrain
14 residence at 334 Avenue O South on the
11:44 15 morning of Jan. 31st, 1969. This he had
16 previously denied."

17 Again, Mr. Karst is pointing out that we've not
18 got Ron Wilson saying he saw blood, he previously
19 said he didn't see blood?

11:44 20 A Uh-huh.

21 Q And you would hope somebody would sort of try and
22 process that apparent conflict?

23 A Yes.

24 Q But certainly it would be accurate, and you would
11:44 25 be glad, I'm assuming, to see that Mr. Karst made



1 that observation there, that he's saying one thing
2 now that's incriminating, but he said just the
3 opposite before?

4 A Correct.

11:44 5 Q And again that independent overseer might have
6 been able to take all of that and make some sort
7 of conclusion or consideration that might have
8 ended up with a different result than you did?

9 A Right.

11:44 10 Q And even at the last page of the report, at least
11 it seemed to be Mr. Karst's observation, that as
12 of May 25th, 1969, even though the statements had
13 been obtained from Nichol John and Ron Wilson, the
14 investigation was continuing?

11:45 15 A Yes.

16 Q It seemed to be on his part, he seemed to be of
17 the view hopefully we're going to get some more
18 information or some more answers as to what's
19 going on here?

11:45 20 A Yes.

21 Q Mrs. Milgaard, would I be correct that in the late
22 '80s and early 1990s when this matter started to
23 come forward in the public forum, that there were
24 a number of people who were reluctant to speak,
11:45 25 and certainly to speak to the press about this



1 matter who were involved in the investigation and
2 the prosecution?

3 A Yes.

4 Q And similarly there were a number of people,
11:45 5 because you were asking for an inquiry or review
6 and a number of people said no, there's no way
7 there should be one, we shouldn't have one, that
8 sort of thing?

9 A Yes.

11:45 10 Q Would I be correct in saying that Mr. Karst was
11 one of the exceptions in the sense that he was
12 prepared to speak to the media and he didn't
13 object to there being an inquiry?

14 A I believe he did.

11:46 15 Q And I was just wondering if an example of that
16 would be his interview with Dan Lett, and of
17 course we've heard who Mr. Lett is, he was
18 investigating the matter as a media person and
19 obviously sharing some information with you, but
11:46 20 he was working in his capacity as a journalist?

21 A Yes, he was.

22 Q Doc. number, and I've got two, and the one I'm
23 using is, hopefully you've got this, 004110, and
24 first of all, obviously Mr. Karst did the
11:46 25 interview, he spoke with Mr. Lett, so he was



1 prepared to answer the questions he had for him;
2 would that be correct?

3 A Yes.

4 Q And then it seems as though, fairly clear from
11:46 5 this interview, and I'm not sure if you have much
6 recollection of it, but that he wasn't objecting
7 to there being an inquiry if somebody thought that
8 would be appropriate, and maybe just refer to page
9 116 and just sort of start there, this is Mr.

11:47 10 Lett:

11 "Mhm. What about now, that the
12 Milgaards --"

13 And just for the record, Mr. Commissioner, this
14 interview is, the date of this document, this
11:47 15 interview was August 21st, 1991.

16 A Can you go back a little higher on that?

17 Q Yeah, go ahead.

18 A I just missed that.

19 Q Okay?

11:47 20 A So he says that if he had known things, he would
21 have queried his whereabouts a little more to
22 ascertain that he was telling the truth or he
23 wasn't.

24 Q Yeah. And in fairness, at this point in time Mr.
11:48 25 Karst still was of the view that David was guilty?



1 A Yes.

2 Q Yeah.

3 A Uh-huh.

4 Q But in terms of his position, I think you would
11:48 5 acknowledge that his position was David is guilty,
6 so there shouldn't be an inquiry, it's a done
7 deal. Notwithstanding that he believed David was
8 guilty, he was still prepared to go ahead with an
9 inquiry? Maybe I can read that and see if this
11:48 10 helps:

11 "What about now, that the Milgaards say
12 they don't want David Milgaard released.
13 That they just want - they wanna go back
14 and they wanna do it all in a court.
11:48 15 They wanna bring in all these people
16 that, you know, like Wilson and John and
17 and Cadrain, and they wanna put them
18 under oath; 'cause nobody's had a chance
19 since the trial - put them under oath -
11:48 20 do you think that that there would be
21 this way put everything to the rest once
22 and for all if they just went back to
23 some sort of a court and had it all
24 out?"

11:48 25 Mr. Karst responds:



1 "If they could get a proper court, I
2 wouldn't - I wouldn't see anything wrong
3 with that at all. But I don't know how
4 you'd get one. I'm sure there's
11:49 5 witnesses that aren't around. I'm sure
6 there's witnesses like I said before -
7 I've kept notes and I don't think they'd
8 ever find them down there. And there is
9 reports which would refresh my memory
11:49 10 anyway. And you are experienced at this
11 kind of thing - how do you people twenty
12 some years who'll remember what happened
13 on that day that they, you know, it's -
14 it means nothing to them."

11:49 15 Mr. Lett:

16 "Mhm."

17 Karst:

18 "But to that extent, I can't see how
19 you'd have an honest trial. I would
11:49 20 rather - that's just my opinion, I'm not
21 a legal mind - I would rather, rather
22 see this go to a panel or whatever they
23 call a hearing . . ."

24 Lett:

11:49 25 "Judicial inquiry."



1 Karst:

2 ". . . judicial inquiry. And if, if the
3 prosecution or if the defence has new
4 evidence, let the panel hear it - let
11:49 5 these learned judges hear it. I was
6 never an advocate of a jury in the first
7 place."

8 Mr. Lett:

9 "Right."

11:49 10 Mr. Karst:

11 "I. . . But then again I'm not a legal
12 mind; but I can never see somebody that
13 isn't versed in law and that kind of
14 stuff judging somebody else and you get
11:49 15 some funny people on juries, I know
16 that. But I'd rather see to me, have a
17 - have a - in my mind if there'd be a
18 real just thing - excuse me - a just
19 thing would be to have a hearing with
11:50 20 some learned judges and present to their
21 new evidence."

22 Lett:

23 "Mhm. An announcement that you have
24 because that's - like it sets in the
11:50 25 frustration that so far the Justice



1 Minister has decided that, you know,
2 she's got _____ judgment herself -
3 they wanna go and they wanna have an
4 inquiry. I guess part of the problem is
11:50 5 that there's a lot of people that think
6 the case shouldn't be reopened at all.
7 That it's just water under the bridge."

8 Karst:

9 "Don't - don't misunderstood me. I'm
11:50 10 not saying it should be, I'm saying I
11 would have no objection, you know - I'm
12 not telling those people in Ottawa what
13 they should be doing."

14 And if we can go to page 127 near the bottom, Mr.
11:51 15 Lett says:

16 "Yeah, well then I guess that's another
17 then - the Milgaard lawyer says "Well,
18 this is another reason why we need a
19 review, we need a review so so that we
11:51 20 can look it over and . . ."

21 Karst:

22 "As I say, I have no objection to it. I
23 would welcome it. There's no . . ."

24 And then if we could go to page 129, and again

11:51 25 Mr. Lett:



1 "Mmhm, mmhm. And you do think it was -
2 well, how do I get around it? You
3 wouldn't - you're not advocating it, but
4 you wouldn't, you know, you wouldn't
11:51 5 disagree with some sort of a judicial
6 inquiry?"

7 Karst:

8 "Not at all. Nope. You're exactly
9 right. I'm not advocating what they'd
11:51 10 do what they're supposed to do, but I
11 have certainly no objection if they had
12 one."

13 Lett:

14 "Yeah. And if it were called, you would
11:51 15 certainly support that and . . ."

16 Karst:

17 "Oh certainly. That - without a doubt I
18 haven't got no qualms about that at
19 all."

11:51 20 Now, you would accept, Mrs. Milgaard, that
21 obviously he still thinks your son is guilty in
22 1991?

23 A Right.

24 Q But he's not objecting to there being an inquiry
11:52 25 and him participating in an inquiry to determine



1 if in fact that's the case or not?

2 A That's right.

3 Q And it looks like he's expressed a little bit of
4 some of the same frustrations you have in terms of
11:52 5 what has gone on here. I mean, Wilson has said
6 something, Nichol John said something, Cadrain
7 said something, all these people have said
8 something, sooner or later we've got to get to the
9 bottom of this and find out what exactly these
11:52 10 people know; would that be fair?

11 A Fair.

12 Q And really that's what your inquiry was over the
13 years, I want to know exactly what these people
14 saw, if anything, just give me the truth?

11:52 15 A Correct.

16 Q And I think maybe to that extent, maybe you
17 wouldn't agree to the procedure, but the
18 objective, this is at page 120 of this report, and
19 here's Mr. Karst, he's asked:

11:53 20 "First of all, are you absolutely
21 convinced that Larry Fisher didn't do -
22 kill Gail Miller?"

23 And he answers:

24 "Absolutely. No, no doubt in my mind.

11:53 25 None. I just - I'd have to - to be



1 convinced otherwise - I'd have to, I'd
2 like to sit down and talk with Milgaard,
3 Wilson, Cadrain, Lapchuk, the other guy,
4 Nichol - all these people - I'd like to;
11:53 5 I'd like to get together and say, you
6 know. I'd like to be in a room with
7 them altogether and say to them:
8 "What's going on? You guys all lied to
9 give - you know, did you all perjure
11:53 10 yourselves or what?"

11 A Isn't that interesting, that although he says
12 absolutely no doubt in my mind, he would still
13 like to sit down with all the others.

14 Q Yeah. And it is interesting --

11:53 15 A So he would have questions.

16 Q Sure.

17 A He must have questions in his mind.

18 Q Sure. And I think that's probably right in the
19 sense that, Mrs. Milgaard, people are coming along
11:53 20 saying something else and what he's saying there
21 you would agree, and I think you would agree with
22 the sentiment, you might not agree the best way to
23 do it is put them all in a room together, although
24 maybe it is --

11:54 25 A No.



1 Q -- but the sentiment of let's get to the bottom of
2 this, if these people lied, if these people
3 perjured themselves, then let's get that out on
4 the record and deal with this, that view, that
11:54 5 sentiment you would agree with?

6 A Yes.

7 Q Mrs. Milgaard, you mentioned that there had been
8 some indication that people had been told by some
9 members of the Saskatoon Police Service that they
11:54 10 shouldn't speak to you when you were making your
11 inquiries. Do you recall that?

12 A Yes.

13 Q And I take it you weren't sure who had said that
14 specifically and I take it there was no specific
11:54 15 reference to Mr. Karst as regards that?

16 A I don't believe there was.

17 Q And the reason why I say that is I know just --
18 we've heard, for example, Ron Wilson testify and
19 he testified on March 21st at page 5962, and I
11:55 20 don't know if you recall this, and I'll ask you if
21 you recall, if you don't I'll bring it up, but he
22 indicated he was not told by the police, and I
23 think it was Mr. Karst who spoke to him, was not
24 told that he didn't have to -- or that he
11:55 25 shouldn't speak to you? Do you recall that?



1 A No, but I'll take your word for it if he said it.

2 Q Okay. And that may be possible, that Mr. Karst at
3 least in speaking to Ron Wilson said you don't
4 have to speak to Joyce Milgaard, but I'm not
11:55 5 telling you not to?

6 A Uh-huh.

7 Q You would accept that?

8 A You don't have to speak to --

9 Q -- Joyce Milgaard, but I'm not telling you you
11:55 10 shouldn't speak to her.

11 A Oh, okay.

12 Q Would you accept that?

13 A Possibly.

14 Q Do you want to see what Mr. Wilson said?

11:55 15 A No. If that's what he said, I'll accept it.

16 Q And Nichol John on March 15th at transcript pages
17 5276 to 77 expressed a similar view, that she was
18 not specifically advised not to speak to Joyce
19 Milgaard, she was told it was up to her. Do you
11:56 20 accept that as well?

21 A Yeah, and I think it's interesting that they would
22 go out and tell them that, that they could speak
23 to me, but that they didn't have to. In other
24 words, they were warning them.

11:56 25 COMMISSIONER MacCALLUM: Who was the last



1 person?

2 MR. FOX: Nichol John.

3 COMMISSIONER MacCALLUM: Nichol John?

4 MR. FOX: Yeah.

5 BY MR. FOX:

6 Q You saw the letter that --

7 A I would see that as a warning.

8 Q You saw the letter that Nichol John's lawyers, I

9 think that was reviewed with you, sent to the

11:56 10 police, in fact accusing the police of releasing

11 information about her?

12 A Yes, she did.

13 Q She of her own was of the very strong view that

14 she didn't want to speak to you or have

11:56 15 information released?

16 A That's correct. None of them did.

17 Q Mrs. Milgaard, you talked about the treatment of

18 Ron Wilson by the police, and you were present

19 when Mr. Wilson testified; am I correct, Ron

11:57 20 Wilson when he testified here at this Inquiry?

21 A Yes.

22 Q And did you hear him allude to the fact that he

23 didn't have a complaint about how he was dealt

24 with by Detective Karst or former Inspector Short?

11:57 25 A Yes.



1 Q That his complaint was with how he was dealt with
2 by Mr. Roberts, the person that operated the
3 polygraph?

4 A Yes, I remember that.

11:57 5 Q And I take it one of the things that was difficult
6 to determine, and I'm not sure if the Commissioner
7 is going to be able to determine it based on what
8 evidence is available today, is what exactly Mr.
9 Roberts said and did to Ron Wilson?

11:57 10 A Right.

11 Q Right. And whether or not Mr. Karst was there to
12 basically take the statement after it was a done
13 deal or that sort of thing. You agree with that?

14 A Right.

11:58 15 Q Certainly Mr. Wilson's perspective, and I think he
16 actually used the words that he didn't think that
17 Karst or Short should be involved in a lawsuit
18 even, the person he had the complaint with was Mr.
19 Roberts?

11:58 20 A Yes.

21 Q And in terms of Nichol John, you similarly heard
22 her testify here that she had no complaints as
23 such as to how she was dealt with by the police,
24 she didn't voice any complaints?

11:58 25 A That's right.



1 Q You mentioned that you tried, when you first met
2 with Nichol John, to give her an out; in other
3 words, to offer her some reason why she could
4 explain what she said at the trial or in her
11:58 5 statement?

6 A I possibly said that. I don't recall that, but I
7 could have.

8 Q And that would be basically saying to her here's
9 some -- and, Mr. Commissioner, I'm just about
11:58 10 done -- here's some explanation as to why you said
11 what you said in your statement?

12 A Yes.

13 Q The police mistreated you, that's a good
14 explanation for that, you offered that to her?

11:59 15 A I may have.

16 Q And she didn't take that offer, she didn't say the
17 police mistreated me, that's why I said what I
18 said?

19 A That's right.

11:59 20 Q You mentioned that the information you had about
21 how Nichol John was dealt with in Saskatoon during
22 that May 23rd to 25, 1969 time period obviously
23 didn't come from Nichol John, you said that was,
24 eventually said that was as a result of a matron
11:59 25 that you spoke to?



1 A Yes, it was.

2 Q And you don't have the name of that matron?

3 A No, I haven't, but I'm sure there must be records
4 back to that time about who was working in the
11:59 5 police department.

6 Q Do you have a record of it?

7 A No, I don't.

8 Q Did you make a note of it?

9 A No, but I know the day, everybody knows the dates
12:00 10 that she was in there.

11 Q I'm just asking you if you made a note of it.

12 A Did I make a note?

13 Q Yeah. Like, you spoke to the matron who you
14 described the situation where Nichol John is
12:00 15 screaming and --

16 A And putting the mattress in and all the rest of
17 it?

18 Q Yeah.

19 A Yeah, I had all that information.

12:00 20 Q Did you make a note of that?

21 A Of the matron's name? No, I didn't.

22 Q Did you make a note of the information? Like, I
23 haven't seen any record that you made any notation
24 of "I spoke with a matron, this is her name, this
12:00 25 is the information she conveyed and I'm passing



1 this on to Tony Merchant or Gary Young or anybody
2 who is investigating," I don't see any record of
3 that. Would I be correct there is no record of
4 you making any such notation or passing it on to
12:00 5 anyone?

6 A I don't know that I passed it on as a record to
7 any of the lawyers, but I'm sure I told them about
8 it, because that was something that stood out in
9 my mind very, very strongly --

12:01 10 Q Wouldn't you --

11 A -- that Nichol was so frightened and that there
12 was no way she wanted to go back to jail the next
13 night, this was my thinking, because of what had
14 gone on with the matron, and so that information,
12:01 15 I mean, probably would still be available. If
16 someone wanted to search out and find this matron,
17 that could be done.

18 Q Wouldn't you have got the name of the matron? I
19 mean, you are speaking to the matron, she's
12:01 20 saying, describing this event, wouldn't you say,
21 "Can you give me your name, I'm going to pass your
22 name on"?

23 A I think I was talking to her on the phone and, you
24 know --

12:01 25 Q Did you ask her name over the phone?



1 A I may have, I don't recall, but I remember this
2 very vividly, her telling about the mattress going
3 down -- that she said I had to even get a mattress
4 and bring it into the jail cell and I had to go in
12:02 5 there with her.

6 Q But you don't recall asking her name?

7 A I must have, but I don't recall.

8 Q And you don't recall passing that name on to
9 anyone?

12:02 10 A I'm sure that in --

11 Q I haven't seen any record of you ever passing the
12 name on of a matron who conveyed that sort of
13 information to you. If you are able to point that
14 out to me, please do so.

12:02 15 A I haven't seen it either.

16 Q Thanks.

17 A But it's a very vivid memory that I have.

18 Q Was that your theory as to what happened to Nichol
19 John?

12:02 20 A Was that my theory?

21 Q Yeah, was that your theory as to why she gave the
22 statement she did, because she was taken to the
23 police station and very upset?

24 A Well, if I hadn't talked to the matron, I wouldn't
12:02 25 have known about the police station being under



1 construction and the fact that they had to call a
2 matron in in the middle of the night for her.

3 Q That was pretty significant information you got
4 from the matron?

12:03 5 A Yeah.

6 Q The one that you didn't make a note of whose name
7 you got it from?

8 A I'm sorry, I failed in my duty there.

9 Q No. I'm just asking whether or not it was fact or
12:03 10 theory, that's all.

11 A It was definitely fact. I don't make up things,
12 Mr. Fox. I definitely have a memory of talking to
13 this woman and all of that information about the
14 mattress and I guess that that gave me an
12:03 15 understanding of how I felt --

16 Q Yeah.

17 A -- Nichol would feel that day and how scared she
18 was.

19 Q But when you put that to Nichol, she didn't agree
12:03 20 with that?

21 A I didn't put that to Nichol.

22 Q When you said to Nichol you gave the statement
23 because you were scared, because the police were
24 coercing you, because you felt pressured, that's
12:03 25 what you basically put to Nichol and she said the



1 police didn't mistreat me; correct?

2 A That's right.

3 MR. FOX: Thank you. Those are all the
4 questions I have, Mr. Commissioner. Thank you,
12:04 5 Mrs. Milgaard.

6 MR. HODSON: Adjourn?

7 (*Adjourned at 12:04 p.m.*)

8 (*Reconvened at 1:32 p.m.*)

9 BY MR. WILSON:

01:32 10 Q For the record, my name is Garrett Wilson, and I
11 represent Serge Kujawa. Mrs. Milgaard, --

12 A Yes.

13 Q -- are you quite comfortable?

14 A Yes, I am.

01:33 15 Q Now I wasn't meaning physically, I was inquiring
16 as to whether you're content with the conduct and
17 progress of this Inquiry so far?

18 A Yes.

19 Q Entirely so? Because we have seen you make some
01:33 20 comments publicly to the contrary.

21 A That's correct.

22 Q I beg your pardon?

23 A That's correct.

24 Q So how does that square with the answer you gave
01:33 25 me that you are content with the conduct and



1 progress?

2 A I said I was comfortable, I thought that's what
3 you were -- the question was?

4 Q The question now is are you content with the
01:34 5 progress and conduct of this Inquiry to this date?

6 COMMISSIONER MacCALLUM: Ms. McLean?

7 MS. McLEAN: Mr. Commissioner, I do not see
8 the relevance or the appropriateness of this kind
9 of questioning, it was not appropriate for
01:34 10 Mrs. Milgaard to speak to the media and I would
11 submit that it is not appropriate for those types
12 of questions to be asked of her as a witness.

13 COMMISSIONER MacCALLUM: Mr. Wilson, tell
14 me the relevance, please?

01:34 15 MR. WILSON: Well, there have been some
16 comments made about other inquiries, as well,
17 that we had heard about this morning and
18 yesterday, and that Mrs. Milgaard, I will be
19 suggesting, is content with those inquiries only
01:34 20 that produce results satisfactory to her, and
21 that will bear considerably on the evidence that
22 we will hear hence, from here henceforth.

23 In particular, may I ask one
24 more question that will illustrate this?

01:35 25 BY MR. WILSON:



1 Q In addition to the comments that you have made
2 publicly, have you not also expressed the view,
3 privately, that this Inquiry is a whitewash?

4 A I don't believe I've made that comment about this
01:35 5 Inquiry, no.

6 Q Okay. I will accept that. And the next question
7 is you don't feel that it is a whitewash?

8 A I -- I believe, it is my hope and it is my belief
9 that everything that we have gone through here,
01:35 10 and the time that has been spent here, will yield
11 valuable results for those that are wrongly
12 convicted.

13 Q Will you agree with me that what we're engaged in
14 here is a search for the truth?

01:36 15 A Yes, I would agree with that.

16 Q And are we doing a fairly good job of it?

17 A I would say a fairly good job of it, yes.

18 Q Uh-huh. Tell me, Mrs. Milgaard, is truth a matter
19 of fact or belief?

01:36 20 A Truth, to me, is a matter of principle.

21 Q Would you explain that?

22 A I think of truth as another word for God, I think
23 of principle as another word for God, and so I try
24 to be principled in what I do and to be truthful
01:37 25 in what I do.



1 Q Is it necessary, in order to be truthful, that one
2 adhere closely to the facts?

3 A I would say it would be the facts as you know
4 them, yes.

01:37 5 Q I see. Or the facts as you believe them?

6 A No, I would say the facts as you know them.

7 Q We may come back to that. Langenburg, I spent a
8 good part of the summer of 1953 in that little
9 town, a very pretty little town. You weren't
01:37 10 there yet in 1953, though, were you?

11 A No, we were not.

12 Q Was that the year of your marriage?

13 A Umm, what relevance does that have to -- I don't
14 know --

01:38 15 COMMISSIONER MacCALLUM: '53 where?

16 MR. WILSON: I beg your pardon?

17 COMMISSIONER MacCALLUM: Where was that
18 that you were asking about?

19 MR. WILSON: I am asking about 1953.

01:38 20 COMMISSIONER MacCALLUM: And were you --
21 what was your question?

22 MR. WILSON: The question was if that was
23 the year of Mrs. Milgaard's marriage.

24 A No, it was not.

01:38 25 BY MR. WILSON:



1 Q When was it?

2 A Does this have relevance to the Inquiry, my -- the
3 time that I was married?

4 COMMISSIONER MacCALLUM: Well,

01:38 5 Mrs. Milgaard, it might or it might not, but I
6 would leave it to your --

7 A I --

8 COMMISSIONER MacCALLUM: I would prefer
9 that you left that sort of question to your
01:38 10 counsel to ask if she thinks it's improper.

11 And I'll ask Mr. Wilson, at
12 this moment, to explain where he's going?

13 MR. WILSON: Are you refusing to answer,
14 Mrs. Milgaard?

01:39 15 COMMISSIONER MacCALLUM: She doesn't want
16 to answer you until she's satisfied that it has
17 some relevance to the case, so if you could just
18 tell me what your objective is?

19 MR. WILSON: I'm not going to make an issue
01:39 20 of it, I'm interested in the response thus far.

21 COMMISSIONER MacCALLUM: The response is
22 "no".

23 BY MR. WILSON:

24 Q I was interested in your early testimony -- oh,
01:39 25 perhaps I should just explain why I asked that



1 question; because I have read your biography and
2 there is no mention of your marriage date in
3 there. The ceremony is described, but there is no
4 mention of a date, and I found that, in passing,
01:39 5 unusual, so I thought I would beg the question.
6 However, it's not important, you have said.

7 I don't have a file.

8 On Monday, May the 8th, was your
9 first day in the witness box here, and you gave us
01:40 10 some description of what your son David was up to
11 back in 1968 and 1969 when this saga began, and
12 may I look at transcript page 29535.

13 "In 1969 when this attack on Gail Miller
14 took place, at that point my son had
15 left the hippie lifestyle, he had a
16 short hair cut, he was working. We had
17 gone through a great deal of difficulty
18 during his teen years in that, because
19 it was the hippie era ..."

01:41 20 Is that correct so far?

21 A Correct.

22 Q "He and his girlfriend, they would just
23 simply take off and hitchhike and I
24 would call the police and he would be
25 brought back, they would be brought back



1 because they were both under age, but it
2 just seemed that everyone was doing it
3 at that time ...",

4 etcetera. Scroll down, please.

5 "... I used to work for Maclean's
6 Magazine selling magazines and I did
7 very well at it."

8 And at that point I'd like to refer you to your
9 biography, *A Mother's Story*, the -- I'm sure you
01:42 10 people know the doc. ID of that, I have it down
11 further, 269317. And at page 15 of the book --
12 I'm dealing with a different edition so we're
13 having a problem here, just a 'sec. Can we go to
14 the end of this chapter, yeah, here, here we are.
01:44 15 Thank you.

16 You were offered a job and you
17 moved to Winnipeg and:

18 "... realized that the job ...",
19 next page:

01:44 20 "... was actually selling magazines door
21 to door. At first I was horrified, but
22 I soon found that I could make plenty of
23 money. I also quickly learned that
24 direct selling was my strong point. I
01:44 25 loved to improvise and soon was heading



1 a team of sales people criss-crossing
2 Canada."

3 That's correct?

4 A That's correct.

01:44 5 Q In what year was that?

6 A I honestly don't -- don't know. It would be
7 probably in the late '40s.

8 Q How long did you spend at that?

9 A I was with Maclean's, I believe, for a couple of
01:45 10 years.

11 Q Uh-huh. Okay. We'll carry on. You had always
12 loved to tell stories and invent personalities,
13 and this job gave you the freedom to do just that.
14 You would pretend to be an Irish colleen at one
01:45 15 house.

16 "At the next I might be a lilting-voiced
17 Scots girl or a well-bred English
18 lady.";

19 that's also correct?

01:45 20 A That's correct.

21 Q And then you told us how you got tripped up in
22 that on the one occasion. So that was the job you
23 were talking about.

24 When we go back to page,
01:46 25 transcript page 29536, please. You used to work



1 for Maclean's selling magazines, and then you tell
2 us how you had a Maclean's man come to your door
3 and you had a supervisor come and see you, and you
4 arranged for David to get a job selling magazines
01:46 5 with Maclean's; correct?

6 A That's correct.

7 Q And then you go on to say:

8 "He had been working at that for some
9 time and doing very well ..."?

01:46 10 A He was.

11 Q He was one of their high sellers?

12 A That's correct.

13 Q "... highest selling employees, when they
14 decided that they would go out to B.C.
15 and he needed a special permit for that
16 ...";

17 is that correct?

18 A That's correct.

19 Q And that's how the fateful trip came about, he
01:47 20 went to see his girlfriend on a weekend off while
21 he was waiting for his permit to sell in British
22 Columbia?

23 A That's correct.

24 Q Well I think any of us who have had a magazine
01:47 25 subscription salesperson on our doorstep have not



1 really been offered an opportunity to purchase a
2 magazine subscription, but to put someone through
3 college or some other excuse such as that, is that
4 correct; have you had that experience?

01:47 5 A Not personally, no.

6 Q That wasn't how you operated?

7 A No, it wasn't. There was always contests,
8 Maclean's always had contests, and we were trying
9 to get points for contests, and they were
01:48 10 legitimate contests.

11 Q And so you would tell the householder "I'm within
12 two subscriptions of winning the contest and, gee,
13 could you give me a hand here", and that sort of
14 thing?

01:48 15 A That sort of thing. If you read any further in my
16 book you will find that I stopped being
17 untruthful when --

18 Q We'll come to that, we'll come to that, I read the
19 book.

01:48 20 A Good.

21 Q Right to the end.

22 A Good.

23 Q David's version of -- of this selling, if we could
24 look at doc. ID 306273, please. Did I give you
01:49 25 that wrong, is it 305? I can't read my own



1 writing. No, I've got to have 305, it's David's
2 statement.

3 MR. HODSON: Statement to the police?

4 MR. WILSON: Just a minute. I've got a
01:50 5 copy of it here somewhere I think.

6 MR. HODSON: Statement to the police March
7 3rd.

8 MR. WILSON: March 3rd.

9 MR. HODSON: The March 3rd, '69 statement.

01:50 10 MR. WILSON: 205273, sorry, I gave you a 6.
11 Thank you. Sorry about that.

12 BY MR. WILSON:

13 Q Would you turn to 305277. This is the statement
14 that David gave to the Winnipeg, the police in
01:50 15 Winnipeg on March the 3rd, 1969 when they were
16 first investigating with respect to this
17 Ms. Miller murder, and we see here David says,
18 well, he sells for *Maclean's*:

19 "We don't see magazines, we sell
01:51 20 ourself, have personality, they buy a
21 good many, 100 or more a week, no lunch
22 unless we make the quota."

23 That would be your understanding of the kind of
24 work that David was doing, that you had lined him
01:51 25 up for?



1 A "We don't sell magazines, we sell ourselves", well
2 I think --

3 Q Pardon?

4 A -- if he is saying we don't -- it says "see
01:51 5 magazines" but I think it means "sell magazines",
6 we sell ourselves. To me, that's the same in any
7 profession, it -- when you're in sales you never
8 sell a product, you have to first sell yourself,
9 the person has to be comfortable with you, and
01:52 10 that's what he's meaning, have a personality. And
11 "they buy a good many", they buy a good many
12 magazines, and he sells 100 or more a week.

13 Q Uh-huh.

14 A That's how I would interpret that.

01:52 15 Q I realize that David had some limitations in
16 acquired skills in education at that time, but
17 selling magazine subscriptions door to door was
18 not a very noble calling, was it?

19 A Probably not, and yet it's the way I started my
01:52 20 life and I felt it prepared me for many things
21 very well and very strongly, and many well-known
22 people started out their lives selling magazines
23 so I would not denigrate it.

24 Q Well the RCMP in Prince George didn't think it was
01:53 25 a very noble calling, either, when they ran the



1 crew out of town after his arrest, is that
2 correct, what Mr. Shannon told us?

3 A That's correct, and that happened in many cases,
4 even when I was a supervisor.

01:53 5 Q Yes, I can recall acting for some of these crews
6 when I was a young lawyer, and it was a pretty
7 unsavoury lot generally; would you agree with
8 that?

9 A Some may have been. I would not tarnish all of
01:53 10 them with that.

11 Q If I can go back to transcript page 29,536,
12 please, and back again:

13 "He'd been doing that ...",
14 we've covered this:

01:53 15 "... and doing very well ...",
16 one of their high sellers. Now this special
17 permit that was needed to go out to B.C., what
18 can you tell us about that?

19 A Not a lot, other than the fact that Roger, his
01:54 20 supervisor, had said that they had a permit to
21 travel within the Province of Saskatchewan but
22 they did not have a, I believe you need a
23 provincial licence in each case, and so they were
24 waiting for the licence to come through that would
01:54 25 allow them to sell in B.C.?



1 Q But he had been selling in Saskatchewan; is that
2 it?

3 A That's correct, they had a licence to sell in
4 Saskatchewan.

01:54 5 Q Uh-huh. You were here when Roger Renaud
6 testified?

7 A Yes.

8 Q Can we look at transcript page 20879, please. So
9 this paragraph confirms your version of how David
01:55 10 came to be working for the Maclean's sales crew,
11 that they came to the door, your door, as you had
12 requested, and he got the job. Down, please,
13 scroll down.

14 "... was that usual, to hire a
01:55 15 16-year-old?

16 A No, because you need, you needed
17 provincial sales licences, not in
18 Manitoba but you need one in
19 Saskatchewan here. And we travelled a
20 lot, I lived in Regina at the time, we
21 travelled a lot in Saskatchewan, so he
22 couldn't sell in Saskatchewan, but we
23 were just -- for him, when he tried
24 out for it we were working around in
25 Manitoba, around not too far from his



1 home town so he could come, at least
2 have a look at it and see if he liked
3 it, and then we proceeded to go for
4 his licence, his salesperson's
5 licence.

6 Q Okay?

7 A Direct Seller's."

8 Do you remember that Saskatchewan enacted direct
9 seller's legislation in 1960 -- in the 1960s?

01:56 10 A No, I'm sorry, I have no recollection of that. I
11 just know that, when they came, I had assumed that
12 they would get whatever licensing was necessary
13 for him, and he went to work with them right away.

14 Q "Q Can you recall when he started to work
15 for you?

16 A Well, from what I remember, I thought
17 it was before Christmas that he worked
18 just a bit of time while we were in
19 Manitoba.

20 Q In '68?

21 A In '68, yeah. And then when we came
22 back for Christmas, because the people
23 were from Saskatchewan and I spent
24 Christmas in Regina, he went home, and
25 then he came back for a week or two



1 after Christmas ...",?

2 scroll down:

3 "... and -- because we were supposed to
4 go work in Manitoba and then we needed,
5 we had to have his licence because we
6 wanted to work in Saskatchewan, ..."

7 So he had not been selling in Saskatchewan,
8 contrary to your version of the event?

9 A Well, I thought he had been, I guess it was
10 Manitoba he was selling in.

11 Q Yeah. Next page.

12 A Is there a problem between the fact -- I mean we
13 were right on the border, practically, in
14 Langenburg, as you know, but he would have been
15 selling in Manitoba then.

16 Q Well he hadn't been selling long enough to become
17 a high seller; had he?

18 A Oh yes, he became a high seller immediately, I
19 think they testified to that.

20 Q The first week? He was only on the job maybe
21 three weeks.

22 A He became -- he was one of their top sellers
23 immediately, I was told by them.

24 Q "... he went home I believe around in the
25 middle of January, and while all this



1 transpired, he came back around --
2 around the middle of February, if I'm
3 not mistaken, when his licence came
4 through.

5 Q Okay. And when he came back in February
6 that would have been to work where; --

7 A Umm --

8 Q -- in Saskatchewan?

9 A Saskatchewan or Manitoba."

01:58 10 And then the correction was it was 1969, in
11 February, when he came back.

12 So 20884, please. This is a
13 police interview with Mr. Renaud in Winnipeg and
14 he identifies, at that time, David Milgaard
01:59 15 started on the 14th of January in Langenburg, to
16 the 24th, a week in Regina not working, and then
17 back on the road since the 7th of February; would
18 you agree with that? Next page, please.

19 A I'm sure that Roger would have had the dates.

01:59 20 Q Uh-huh. Well likely Mr. Renaud, in the spring of
21 1969, would have a pretty clear recollection of
22 how long David had been working?

23 A I think he would have, yes.

24 Q Yeah. So it wasn't as you represented here, that
01:59 25 he had been doing it for more than a year and



1 doing extremely well, he had just barely begun; is
2 that correct?

3 A When did I make that statement?

4 Q Well, let's look, let's go back to page 29535:

02:00 5 "... my son had left the hippie
6 lifestyle, he had a short hair cut, he
7 was working."

8 We're going to examine that a little bit. Now,
9 Mrs. Milgaard, I want you to clearly understand
02:00 10 that I am not bringing forth some of the
11 activities that David was involved in way back
12 then to show that he was a person likely or
13 capable of murder. Would you agree with me that
14 people who work in the criminal justice system
02:01 15 and deal with hundreds of files, that the
16 individuals are usually just a name and a number,
17 that they never get to meet them in person and
18 they know only about them what they will find in
19 the files?

02:01 20 A That's correct. Mr. Wilson, you didn't answer my
21 question that I had asked about when I had made
22 that statement, please.

23 Q I'm sorry, maybe I missed it. I'm supposed to be
24 asking the questions, so I sort of ignore your
02:01 25 question marks.



1 A Well, you said that I had made a statement, you
2 said that I made an incorrect statement. I want
3 to know when I made that statement.

4 Q I just showed it to you.

02:01 5 A No, you didn't.

6 COMMISSIONER MacCALLUM: No, the question
7 was, "It wasn't as you represented here, that he
8 had been working for a year and was doing
9 extremely well, in fact, he had hardly begun
02:01 10 work," and she said "when did I ever say that?"
11 Was it -- are you referring to something she said
12 in testimony at the Inquiry or something she said
13 in her book?

14 BY MR. WILSON:

02:02 15 Q Well, I guess as far as I can go is that bit on
16 the bottom of page 29536 when he had been working
17 at that time for some time.

18 A For some time.

19 Q Yes. I think somewhere else I have references to
02:02 20 the year, but we'll leave that go.

21 A Well, I have no recollection of that. That's why
22 I asked you the question, sir.

23 Q Well, do you accept Mr. Renaud's version of the
24 event?

02:02 25 A That he had started then, but if I was being



1 questioned by the police in May, I would have said
2 he had been working for some time and that would
3 have been accurate.

4 Q Well, you were being questioned by Mr. Hodson
02:02 5 here, that transcript is from this Inquiry.

6 A Yes, but at that time I felt that he had
7 straightened his life out and he was doing well.

8 Q Did David confide in you during his hippie times
9 of his as to what he was up to?

02:03 10 A Did he confide in me? I found things out about
11 it, but he didn't necessarily confide in me, no.

12 Q No. He was kind of a normal teenager in that
13 respect I'm sure?

14 A Yes, he was.

02:03 15 Q Okay. This little problem of the permit to go to
16 British Columbia, could we look at document
17 097376, please. Have you seen that document
18 before?

19 A I don't believe I have.

02:04 20 Q Well, let's bring it up and let you read it. You
21 can see it's a letter from the Vancouver Police
22 Department to the Saskatoon Police Department re:
23 David?

24 A Oh, yes, I mentioned -- I haven't seen this, but I
02:04 25 did know about the theft of auto, and in fact I



1 think I even mentioned it in my book, that he was
2 getting into trouble and that he had been arrested
3 and there had been auto theft.

4 Q Well, let's just put this clearly out front:

02:04 5 "Millgaard was arrested in?

6 Vancouver in 1967 for Theft of Auto and
7 returned home to Yorkton ... by Juvenile
8 Authorities.

9 Millgaard again came to our
02:04 10 attention on May 7, 1968, when he was
11 picked up as a possible suspect in a
12 robbery dated November 3rd, 1967."

13 Insufficient evidence.

14 Then in '68:

02:05 15 "Millgaard was arrested and charged with
16 Possession of Marihuana and on January
17 8, 1969, was put on probation and sent
18 back to Yorkton, Saskatchewan. One of
19 the stipulations of his probation was
02:05 20 not to return to British Columbia until
21 he reached the age of twenty-one."

22 Were you aware of that in 1969?

23 A This would have been the time that David was in
24 the custody of the juvenile authorities in
02:05 25 Yorkton, Saskatchewan, he was for a year that we



1 had turned him over to them at that time, so I may
2 not have been aware of this.

3 Q Well, a couple of things arise out of that. First
4 of all, it would be clear that David wasn't
02:05 5 selling magazines prior to the 8th of January,
6 1969; correct?

7 A Well, he was selling magazines. Roger Renaud said
8 that and so did I.

9 Q Well, it's a little hard to sell magazines when
02:06 10 he's in jail in Vancouver isn't it?

11 A He wasn't in jail.

12 Q "Later in 1968 Millgaard was arrested
13 and charged with Possession of
14 Marihuana."

02:06 15 On January the 8th, '69 sent back to Yorkton.
16 You don't accept that?

17 A No, I don't. I don't think he was in prison for
18 any length of time at all or I would have known
19 about it.

02:06 20 Q So you thought he was out selling magazines while
21 he's in jail in Vancouver?

22 COMMISSIONER MacCALLUM: Where does it say
23 he was in jail?

24 MR. WILSON: Well, he was arrested.

02:06 25 COMMISSIONER MacCALLUM: He could have been



1 allowed out the same day.

2 A I think he -- I think I heard about him being
3 arrested and about the marijuana and that, but
4 there was no time he was in jail to my knowledge.

02:07 5 Q Well, let's leave that aside then. Oh, leave the
6 document up, please.

7 "One of the stipulations of his
8 probation was not to return to British
9 Columbia until he reached the age of
02:07 10 twenty-one."

11 Will you accept that that was a fact at that
12 time?

13 A I'm reading it in that letter, but it wasn't
14 anything that I had knowledge of.

02:07 15 Q So it wasn't a matter of getting a permit to sell
16 magazines in British Columbia, it was a fact --

17 A But he did and he was and he did go to B.C. and he
18 did sell. He was in Prince George, B.C. selling
19 magazines when he was -- when he went into the
02:08 20 police station and gave himself up.

21 Q Yes, and I suggest to you that he did so on the
22 violation of this probation order.

23 A Maybe it had been lifted.

24 Q Do you know that?

02:08 25 A No, but do you know it wasn't?



1 Q No. But you don't even know that it was ever in
2 existence?

3 A No, I don't.

4 Q And prefer to believe that it wasn't I think.

02:08 5 COMMISSIONER MacCALLUM: I don't think
6 suggestions of that sort are helpful, Mr. Wilson.

7 MR. WILSON: I agree it was out of order,
8 Mr. Commissioner.

9 BY MR. WILSON:

02:08 10 Q A couple of other things that I wanted to bring
11 forward here about David's activities prior to
12 January of 1969, and if we could return, please,
13 to 305273, and this again is the statement that
14 David gave the police on March the 3rd, 1969 in
02:09 15 Winnipeg, and when they asked him:

16 "Q Have you got a record of any type?"

17 He responded very frankly:

18 "A Sexual immorality, trafficking, stolen
19 cars, B&E, was deported from the States
02:09 20 too - maybe Seattle. I'm on probation
21 out of Vancouver."

22 Now will you agree that he was on probation?

23 A If he said so.

24 Q "Now transferred to Saskatoon, trouble
02:10 25 in Ottawa too.



1 Q When were you in Ottawa?

2 A Not sure - maybe 1968, stayed a month
3 with girl Sharon."

4 May we now look at document 009262, this is a
02:10 5 letter May 21st, 1969 from the RCMP to the police
6 in Saskatoon.

7 "The only entry on his FPS file is in
8 violation of U.S. immigration laws at
9 Blaine, Wash. He was allowed voluntary
02:11 10 departure to Canada ..."

11 On the 26th of October, 1967. Did you know about
12 that at the time?

13 A No, so this must be what the U.S. information was.
14 This is substantiating the fact that there was a
02:11 15 problem in the U.S. that he said about.

16 Q Uh-huh.

17 A Uh-huh. No, I made no -- in my book and
18 everywhere I said that he had a very troubled
19 lifestyle prior to this and -- but I felt that
02:11 20 once he started working with Maclean's, that he
21 was putting his life in order and he was on the
22 right track. I've never ever quibbled about his
23 background or the things that he did because I
24 knew -- certainly as a mom he drove me crazy, we
02:12 25 were always after him for where he was going and



1 what he was doing, but he wasn't alone at that
2 time, there were many people that were on the road
3 just like him.

4 Q Uh-huh. Well, I would refer anyone who is
02:12 5 interested to your book, because you don't really
6 tell us very much in the book other than he was a
7 little bit of a hippie lifestyle and that he got
8 caught joyriding a truck in Langenburg. This is
9 quite a bit more than was exposed in your book.

02:12 10 However -- and the girl Sharon Williams, with whom
11 he was travelling, was the girlfriend at the time?

12 A That's correct.

13 Q And she gave the police a statement in the spring
14 of 1969, on March the 20th in fact, and if you
02:13 15 look at 178577, please. You are familiar with
16 this document I'm sure are you?

17 A I can't really see it unless it's -- oh, yes, I
18 am, Sharon Williams' statement.

19 Q She gives a fairly lengthy description of her time
02:13 20 with David beginning with:

21 "He told me he stole a Pontiac
22 64 dark red with Manitoba plates. He
23 used this car to drive around. We
24 picked up two girls ... drove around ...
02:14 25 Then he asked me to go to Vancouver with



1 him and that night Monday we left Regina
2 in that stolen car. Bonnie and a short
3 dark girl were the other two and Ron
4 Wilson came with us. We stopped at
02:14 5 Salmon Arm and David picked up some
6 drugs that they had hidden in a brown
7 cabin underneath a dresser. This is a
8 cottage at a lake by Salmon Arm. He got
9 into this cottage by breaking a window.
02:14 10 He told me he was there before, he got
11 picked up for drugs at Salmon Arm a week
12 before I met him. He couldn't go back
13 to B.C. until he was 18. He got a dime
14 or nickle or both bags of marihuana and
02:14 15 David and Ron and 2 hitch hikers we
16 picked up by a gas station in the
17 mountains. Then we went to Vancouver
18 all seven ... and the next day he bought
19 some more marihuana we spent a week in
02:14 20 Vancouver and David Milgaard bought and
21 sold marihuana during that whole time,
22 he sold it at the Court House, to kids
23 mostly. In front by the water
24 fountain."

02:15 25 Were you aware of that kind of conduct at that



1 time?

2 A No, I was not.

3 Q Down a little further --

4 A And no mother likes to read that about her son.

02:15 5 Q I accept that. It goes on to say:

6 "He usually gave the marihuana
7 to carry, so that I would be the one
8 that would be charged with possession?"

9 The next page:

02:15 10 "He got picked up in Vancouver
11 during these 3 weeks, they never
12 convicted him."

13 Next page:

14 "He did a lot of stealing in
02:15 15 Ottawa, stole a bunch of dresses from a
16 salesman's car, sold a couple, he just
17 about made a living stealing and selling
18 drugs and sold an underground paper."

19 "One evening he had a little
02:16 20 gun ... and he played Russian Roulette
21 with it."

22 Next page:

23 "David wrote me that he was
24 going to court in Vancouver for
02:16 25 trafficking and possession."



1 "A week after he phoned that he
2 was on probation that he couldn't go to
3 B.C. until he was 21."

4 Next page, a bit of a description about a
02:16 5 breaking and entry there, and then this is the
6 trip, the famous trip you understand, this is
7 Saturday, February the 1st, 1969. Down at the
8 bottom of that page, please.

9 "Shorty wanted to go to
02:17 10 Vancouver, or did David but Nicky and
11 Ron didn't. They sold some marihuana at
12 the Sanctum got about 15 dollars from
13 some boys and girls one dime bag one
14 nickel bag."

02:17 15 Next page:

16 "They said they wanted to go to
17 Calgary. They talked about stealing
18 things like doing breaking and entering
19 here and or in Calgary."

02:18 20 Thank you, you can take that down.

21 I realize that that is a
22 difficult thing for a mother to go through even
23 so many years later, Mrs. Milgaard, but I wanted
24 that on the record because of what I said
02:18 25 earlier, that the people in the justice system



1 who were dealing only with a name and a file are
2 seeing that kind of a boy and you have said
3 yourself that David was not a choir boy?

4 A I said he was no angel, but that he was never
02:18 5 vicious and he would never be a murderer.

6 Q But you yourself had to be satisfied that he
7 wasn't on drugs that morning in Saskatoon to be
8 sure that he hadn't committed or been involved in
9 that murder?

02:19 10 A I had to be sure because I didn't have the
11 understanding of drugs that I have now, because I
12 knew that marijuana was the type of drug that they
13 seemed to be taking and apparently when you are on
14 marijuana you are cognizant of what you are doing.
02:19 15 I thought, because I had no knowledge of them,
16 that you could be completely out of it and do
17 something.

18 Q But this was not a 16-year-old boy who is doing
19 well in school, was interested in athletics and
02:19 20 had a bunch of interesting hobbies?

21 A No.

22 Q The kind of a kid who a policeman looking at a
23 murder file would say what's he doing in this
24 file; you would agree with me on that?

02:19 25 A I would agree with you on that.



1 Q Now, again referring to your earlier testimony:

2 "... my son had left the hippie
3 lifestyle, had a short hair cut, and was
4 working."

02:20 5 A And that is what I believed.

6 Q That, unfortunately, was not the truth was it?

7 A That apparently, from what the statements coming
8 out were, that was not the truth.

9 Q Because when we look at 178010, we see the
02:20 10 statement that Chris O'Brien secured from Deborah
11 Hall in January of 1981 and she gives a
12 description of what was going on in that motel
13 room in the spring of 1969?

14 A That's correct.

02:21 15 Q And you are familiar with this as well?

16 A Yes, I am.

17 Q And without going through the gory detail of it,
18 will you agree with me that David arranged that
19 party, got the motel room and supplied the
02:21 20 narcotics?

21 A Yes, that was the evidence that was given.

22 Q Would you agree with me, Mrs. Milgaard, that it is
23 more than ironic that David, in that motel room in
24 the spring of 1969, supplied the narcotics that
02:21 25 caused hallucinations that resulted in Lapchuk and



1 Melnyk testifying at his trial and probably
2 putting him away for 23 years?

3 A Would I agree with you on that?

4 Q It's a huge irony isn't it?

02:22 5 A I would think so, yes.

6 Q In addition to being a terrible misfortune.

7 A Are you saying that he was responsible for him
8 being put away, wrongfully convicted?

9 Q I'm sorry?

02:22 10 A Are you saying he was responsible for being
11 wrongly convicted?

12 Q No.

13 A Thank you.

14 Q But had he adhered to your advice to stay out of
02:22 15 bad company, he wouldn't have been wrongfully
16 convicted?

17 A That's possible.

18 Q I want to return to your biography for a moment or
19 two, Mrs. Milgaard, there's some other questions
02:23 20 that pop out of there if you don't mind my asking,
21 your own background, 269317. You tell us in here
22 that you had a very remarkable life,
23 unquestionably that's true, that you were out on
24 your own at the age of 11?

02:23 25 A I was. I wasn't on my own, I was living at home



1 with my parents. I was working.

2 Q Yes.

3 A I lied about my age and worked in a plant because
4 my dad was, had a broken leg and my mom was taking
02:24 5 in borders and we needed the money.

6 Q But you had left school?

7 A That's right.

8 Q So your formal education, if I can call it that,
9 terminated at the age of 11; correct?

02:24 10 A My formal education. I went to night school and
11 courses and everything after that.

12 Q Where did you do that?

13 A Various places across the country. I did some by
14 mail, I went to the University of Winnipeg.

02:24 15 Q My edition has page 10, can we start from there.
16 Back up a couple I guess. Here and the following
17 paragraph, next page. Here's the line that I
18 found just absolutely remarkable, you were already
19 in grade 9 when you were 11 years old because you
02:26 20 started school young.

21 A That's correct.

22 Q You stand by that statement here today?

23 A I started grade 9 and I was 11, yes. I actually
24 started school when I was, I think, five, four or
02:26 25 five.



1 Q Well, you would have to start at two to make that
2 add up.

3 A But I skipped grades.

4 Q Oh. But somewhere else you tell us that that
02:26 5 wasn't an item that was available?

6 A That I -- somewhere else I said what?

7 Q Wasn't available to David, but it was okay in your
8 time. You were 11 years old in grade 9?

9 A That's correct.

02:26 10 Q That's remarkable. I'm also interested -- thank
11 you -- in your career at Tenacre. Could we turn
12 to 29518, please. So this is what your activities
13 were following the first application, the first
14 690 application, which, as we know, went in at the
02:27 15 end of December, 1988; correct?

16 A That's correct.

17 Q And you went off to England and that's where you
18 decided to become a Christian science nurse?

19 A That's correct.

02:27 20 Q Next page, please. You started your training in
21 England?

22 A Yes.

23 Q And then Mr. Hodson asked you to do this
24 chronologically:

02:28 25 "Q And how long were you there for?"



1 Well three months, and then you went to Tenacre
2 in Princeton, New Jersey:

3 "A ... and then I was accepted at Ten-acre
4 in New Jersey for the nurse's training
01:10 5 course. Now that's a, normally a
6 three-year course, it took me five years
7 because I was constantly flying up to
8 Manitoba to work on David's case."

9 That's correct, you said that properly?

02:28 10 A Approximately, yes. It may sound confusing to
11 someone reading this, but what happened was I took
12 the nurse's aide training course --

13 Q You took the what?

14 A I took the nurse's aide training course in
02:29 15 England, that was a two week course there, and it
16 was at that time that I decided to go into the
17 nursing and applied and I was accepted at Tenacre.
18 Now, then what happened is you do three months on
19 the job and then you do nine months off the job,
02:29 20 like, three months in classes and then you do nine
21 months training on the floor, so I went back to
22 England to do my nine months' training on the
23 nursing floor there and it was when I was on the
24 nursing floor there that I was called back from
02:29 25 England by Mr. Asper.



1 Q Can I have the next page, please. That's the way
2 you described it here on the 8th of May.

3 A Well, after I came back from England, I went back
4 to Tenacre and then I would work one month on the
02:30 5 job and I would come back here and work, to Canada
6 and work on the case and then I would fly back and
7 work at Tenacre, so that's why instead of where
8 normally you would take three nine-month periods
9 plus three sessions of the class training of three
02:30 10 months each for three years and finish your
11 nurse's training course, that's why it took me
12 five years, because of all this running back and
13 forth.

14 Q So you were an employee at Tenacre?

02:30 15 A A student and employee at the same time, yes. I
16 was a student taking the course, but I'm paid as
17 an employee when I was working on the floor. I
18 was paying for the studies, but being paid when I
19 was actually on the nursing floor.

02:31 20 Q Okay. What was your salary?

21 A I honestly don't remember. It wasn't very much.
22 Once I had received my nursing degree, I was then
23 able to charge nursing fees and did private duty
24 nursing, and made quite a bit of money at that
02:31 25 time.



1 Q Uh-huh. Well, Tenacre doesn't issue degrees, do
2 they?

3 A Yes, I graduated as a Christian Science nurse.

4 Q Well, but it's not a, it's not a school of nursing
02:32 5 or medical training, it's a religious institution;
6 is it not?

7 A No, it's a school of nursing, and they are
8 accepted as Christian Science nurses, and you
9 graduate and you receive your certificate. It's
02:32 10 not just a religious institution. It's recognized
11 all around the world.

12 Q As a Christian Scientist nurse; correct?

13 A That's correct.

14 Q Or nurse's aide? And is it not true that in the
02:32 15 State of New Jersey graduates, if you wish to call
16 them that, are recognized as lay ministers?

17 A Umm, no, I don't believe that's true.

18 Q I take all this from the Tenacre web site?

19 A There have been some changes in some, --

02:33 20 Q Oh, sure.

21 A -- and some people may have that thought of being
22 lay ministers, but certainly at the time I never
23 considered myself a lay minister, I considered
24 myself a Christian Science nurse.

02:33 25 Q I don't want to clutter up the database here any



1 further, but I'm reading from a Tenacre printout
2 from their web site called the Tenacre school of
3 Christian Science nursing:

4 "Recognizing that our entire church
02:33 5 membership has been organized as a lay
6 ministry, ..." --

7 A The entire church has been.

8 Q -- "... the Tenacre School of Christian
9 Science nursing has endeavoured to
02:34 10 create a Christian Science nursing
11 education program that credits the full
12 spiritual adulthood of the Christian
13 Science nurse, which Mrs. Eddy so
14 clearly outlined in her manual ...";
02:34 15 any objection to that?

16 A No.

17 Q Next paragraph:

18 "Rather than building its education
19 program as a meritocracy, where talent
02:34 20 and advancement are determined through
21 competitive examination, our School has
22 chosen to foster an education program
23 that is able to respond to each
24 student's individual understanding and
02:34 25 present demonstration. The Tenacre



1 School of Christian Science Nursing
2 seeks to support each student on an
3 individual basis as they work to
4 establish their own Christianly
02:34 5 scientific, prayer-based nursing
6 practice."

7 Is that the way it was when you were there?

8 A No, it's not. At the time that I was there, there
9 were scheduled courses, there were -- it's changed
02:35 10 considerably in the last ten years. At that time
11 it was as I outlined to you.

12 Q And did you write competitive examinations?

13 A Yes, I certainly did.

14 Q Hmm. Well, let me read you one more item here:

02:35 15 "2006 Course Dates",

16 "Fundamentals For Christian Science
17 Nurses",

18 "July 10 - August 18

19 Come and apply Christianly Scientific

02:35 20 ethics to meet the basic daily needs of

21 those relying on God for healing as

22 taught in Christian Science.

23 This course includes the active

24 exploration of:

02:36 25 - Ethical Standards for Christian



1 Science nurses

2 - Bathing and shampooing

3 - Assisting with mobility

4 - Maintaining an environment conducive
02:36 5 to healing

6 - Foods, including mealtime assistance

7 - Communication, written and verbal

8 Also included is the opportunity to work
9 side-by-side with experienced Christian

02:36 10 Science nurses."

11 Would that describe the program that you took?

12 A No.

13 Q Was yours more medically training than spiritual
14 and theological training?

02:36 15 A At the time that I took the course, for instance
16 in bandaging and things like that we were using
17 various types of astringents, medical products you
18 might call them, for cleaning cuts and things like
19 that. Since that time I believe they've dropped
02:37 20 that area of it, but you learned to bandage and to
21 do all the necessary things that one would need
22 as -- as a nurse if you were running into someone
23 that had a cut or an injury, or something like
24 that.

02:37 25 Q But no assisting on surgery because surgery is not



1 permitted?

2 A No, there would be no surgery.

3 Q No medications?

4 A No medications.

02:37 5 Q And somehow, in the chronology that you have given
6 us here, you managed to conclude five years in
7 this activity at the same time that we see you in
8 Canada advancing your son's cause, and you are
9 suggesting that you did both on a
02:38 10 month-on/month-off arrangement; is that so?

11 A That's the way I worked it, yes. Sometimes I was
12 here longer than that.

13 Q Where did you fly from, out of New Jersey, coming
14 back to Winnipeg; what was your route?

02:38 15 A I can't even think of the name of the place that I
16 left from, it's just outside of -- wherever you
17 fly in today, the same place.

18 Q Well, I've never been to New Jersey, so I'm
19 relying on you?

02:38 20 A I'm sorry, I can't tell you the name of the place,
21 I would have to go on line to find out. Newark,
22 that's where I flew into, Newark. Thank you.

23 Q So you flew out of Newark to where, Toronto?

24 A I believe that we went to, it seemed to me that it
02:39 25 might have been Vancouver and then -- or not



1 Vancouver -- Minneapolis and then Winnipeg.

2 Q I see.

3 A We went through Minneapolis, not Vancouver, yes.

4 Q And then back Winnipeg-Minneapolis-Newark?

02:39 5 A Yes. I had many trips.

6 Q And what did those tickets cost you back in the
7 late 1980s?

8 A Well there were a lot of specials on at the time
9 and I took advantage of them.

02:39 10 Q Well it's kind of difficult to do that when you
11 are on a month-on/month-off; you are kind of fixed
12 to a schedule, aren't you?

13 A Well, I wasn't fixed to a schedule
14 month-on/month-off, I worked up here as long as I
02:39 15 had money and then I went back. I wasn't -- I
16 mean they were happy to have me back to work any
17 time, they didn't -- I didn't have a stipulation
18 about when I could be there.

19 Q Okay. So what was a special ticket, best price?

02:39 20 A I have no idea.

21 Q You can't remember that?

22 A No, I can't.

23 Q The number of times that you made that flight you
24 can't remember that? Tell me, Mrs. Milgaard, when
02:40 25 you got on the airplane in Winnipeg and flew to



1 Minneapolis you would have to pass through
2 American Customs and Immigration; correct?

3 A Yes.

4 Q And when they asked you what was the purpose of
02:40 5 this trip what was your answer?

6 A Personal.

7 Q Personal?

8 A Yes.

9 Q And you were through there almost every month, and
02:40 10 they would come to know you a little bit, wouldn't
11 they?

12 A It's a pretty big airport.

13 Q Did you file tax returns in the United States?

14 A Yes, and in Canada.

02:41 15 Q You were working and employed in the United States
16 as a Canadian citizen; is that correct?

17 A Yeah. I had a special, umm, I had a special
18 travel permit, now that I think of it, --

19 Q You mean you had a working --

02:41 20 A -- because I was working --

21 Q You had a working permit?

22 A Yes, yes, I did.

23 Q And can you describe it to us?

24 A It was just a regular permit that I had to show,
02:41 25 and it allowed me to travel back and forth.



1 Q And where did you get it?

2 A Umm, I believe Tenacre got it for us.

3 Q I see. You've heard of the famous 'green card',
4 have you?

02:41 5 A That's what it was, a green card.

6 Q Oh.

7 A Sorry.

8 Q Bingo.

9 A I'm sorry, you've got the right, that's it, it was
02:41 10 a green card that I had.

11 Q Remarkable. So when did the five years finally
12 conclude and your qualification from Tenacre
13 become established?

14 A I honestly don't know. I would have to go back
02:42 15 and look at my graduation certificate. I'm not
16 good on dates.

17 Q I think everyone in this room can tell you, right
18 practically to the hour, when they got their
19 degrees?

02:42 20 A Well, I'm sorry, I was so wrapped up in my son's
21 case that dates mean very little to me.

22 Q I see. Well could we turn to 29,517, please.
23 Just a second, just a second here, please. In
24 fact, somewhere we have the biography that that
02:43 25 relates to, and I'm not able to put my finger on



1 the number, and it tells us when you became
2 qualified. Do you remember now?

3 A No.

4 Q It was in the CV that you were using to apply to
02:44 5 become director of nursing; and you got that job?

6 A Yes, I was the director of nursing, and I was also
7 the administrator of the Christian Science
8 facility in New York.

9 Q And I think you had told us, around here, that you
02:44 10 were there a couple of years; is that right?

11 A Approximately, yes.

12 Q Possibly?

13 A Approximately.

14 Q Approximately?

02:44 15 A Yeah.

16 Q What years?

17 A Umm, that would -- I'm not, as I said, I'm not
18 good on years. I came back to write the book,
19 which was in '99, so I would have been in New York
02:45 20 there, at that time, prior to coming here.

21 Q We'll have a look at your biography, when I find
22 the number, and it will tell us --

23 MR. HODSON: 337709.

24 MR. WILSON: Thank you. Thank you, that's
02:45 25 it.



1 BY MR. WILSON:

2 Q You prepared this yourself I take it?

3 A I don't, I don't know.

4 Q You don't remember?

02:45 5 A No.

6 Q "Joyce became a Christian Science nurse
7 in 1990. She graduated from Tenacre in
8 Princeton, N.J."

9 That's what attracted my attention, because you
02:46 10 started the program after December 1988, spent
11 five years, and graduated in 1990. Remarkable.
12 Can you explain that?

13 A No, I can't, because I did work in Ottawa as a
14 Christian Science visiting nurse in '92, so it
02:46 15 must have been much earlier that I started. I
16 joined the church in '65, I was in the Ottawa
17 church.

18 Q Okay.

19 A As I said, I'm not very good with dates, but I can
02:47 20 go home and get my diploma if it would be helpful.

21 Q Well, sure, bring it next week and you can walk it
22 around and --

23 A Yes, I will.

24 Q -- show everyone that it exists. Thank you for
02:47 25 that.



1 May I have page 3612, please. I
2 want to talk to you, Mrs. Milgaard, a little bit
3 about the tape recording that you undertook, and I
4 think you told Mr. Hodson you started in about
02:47 5 1990? No, 30612. Next page, and scroll down.
6 You are reading this as we go. Scroll down.

7 You were -- you are telling us
8 here, determined that the truth be accurately
9 recorded; is that what you are saying?

02:49 10 A Yes.

11 Q So you were on a search for truth, as we are here;
12 correct?

13 A Yes.

14 Q Will you take me over to 30615, please, back up
02:49 15 just a little bit. You:

16 "... don't know when David Asper and
17 Hersh found out I was taping them ...",
18 Now you have read that, you are refreshed on it?

19 A Yes.

02:50 20 Q You were here when Mr. Asper testified?

21 A Yes.

22 Q Could we look at 27572, please, when I asked him.

23 "Q ... when did you learn that Joyce
24 Milgaard was taping your telephone
25 conversations with her?



1 A Umm, I may have been aware, at the
2 time, of some, but certainly not to
3 the extent that is the case. I
4 learned that when this proceeding was
02:50 5 under way."

6 You heard Mr. Asper say that?

7 A Yes.

8 Q You disagree with that statement?

9 A Well, he apparently didn't realize the extent of
02:50 10 all the tapes that I was doing, because he didn't
11 realize there were so many of them.

12 Q "Q How did you feel when that information
13 came to your attention?

14 A I wasn't very happy about it.

15 Q It throws an unfortunate light on the
16 solicitor/client relationship; would you
17 agree?

18 A Yes sir.

19 Q Have you made your feelings on that
20 known to Mrs. Milgaard?

21 A Yes, I have."

22 Do you recall Mr. Asper speaking to you about
23 that, the fact that you were taping his telephone
24 calls?

02:51 25 A I think he may have said something about it, it



1 wasn't a wise thing to do, or something to that
2 effect.

3 Q Well he was, as he says here, not very happy about
4 the fact that you were secretly taping his phone
02:51 5 calls?

6 A Obviously.

7 Q All right.

8 A But it was for my personal use. I had no idea it
9 was going to be ending up in Court for everyone to
02:51 10 listen to or I probably wouldn't have made the
11 tapes.

12 Q Well, President Nixon wasn't aware either. The
13 point I'm coming to, Mrs. Milgaard, is that at no
14 time back there did you walk in to Hersh Wolch or
02:52 15 David Asper and say "look, for my own needs, I
16 want to tape our telephone calls, do you mind?";
17 you never did that?

18 A No, I never did that.

19 Q Mrs. Milgaard, if the technology had been
02:52 20 available at the time, do you think Jesus would
21 have secretly taped his discussions with his
22 disciples?

23 COMMISSIONER MacCALLUM: I don't know how
24 to characterize that question in order to --

02:52 25 MS. McLEAN: Objection.



1 COMMISSIONER MacCALLUM: -- in order to
2 make -- put a stop to it, but suffice it to say
3 that I don't think it's a -- it's more than
4 rhetorical, and I'm not interested in rhetorical
02:53 5 questions.

6 A Thank you, Mr. Commissioner.

7 BY MR. WILSON:

8 Q Back to 29524, please. You said you had a
9 tendency to exaggerate a great deal and story-tell
02:53 10 and that was what caused you to do the taping, --

11 A That's correct.

12 Q -- to ensure -- in fact, as we know, you diagnosed
13 yourself as, at one time, having been a
14 pathological liar?

02:54 15 A Yes, I really believe I was.

16 Q And is this a diagnosis that you would have
17 performed bringing to bear some of the --

18 A That was before I was a Christian Scientist I
19 diagnosed myself. As a Christian Scientist, we do
02:54 20 not diagnose.

21 Q Umm. I was wondering whether you had brought to
22 bear any medical training at all in doing that
23 diagnosis?

24 A I don't think so, although I was very medically
02:54 25 oriented before I moved into Christian Science.



1 Q May we turn to 331214, please. This is your
2 interview with Inspector Sawatzky in February 1993
3 subsequent to the accusations you and Mr. Wolch
4 made in September previous. May we turn to 1248,
02:55 5 please. Now you were discussing with Mr. --
6 Inspector Sawatzky your taping here, and:

7 "... I want to be sure ... I'm not going
8 to get in trouble if I turn over phone
9 tapes to you."

02:55 10 This is the conversation you are having with
11 Mr. -- Inspector Sawatzky about the legality of
12 what you had been doing?

13 A Yes.

14 Q Next page, please:

02:56 15 "Q Police have to have authority, judicial
16 authority ..."

17 "A ... so it's alright ..."

18 "Q ... but as long as there was a
19 consenting party to the conversation and
02:56 20 you're not an agent of the state, then
21 it's okay for you to tape.

22 Q A consenting party ..."

23 "A Oh, I see, oh, okay, that's good. I
24 feel better."

02:56 25 A I did, I felt a lot better when he told me that I



1 could tape legitimately.

2 **Q** Yeah, because up until then you were concerned
3 that you were doing it not only illegitimately,
4 but illegally; correct?

02:56 5 **A** I don't know that, up until that point, I had even
6 thought about it, because I was doing it for my
7 own use, I didn't really -- because we started
8 talking about it and now I'm going to turn these
9 over to him, they are no longer for my own use,
02:56 10 then I was concerned.

11 **Q** And but, again, not only did you not go to Mr.
12 Asper and Mr. Wolch and ask if it was okay to tape
13 them, you didn't go to them and say "is it okay
14 that I tape at all"; you didn't ask any advice on
02:57 15 it?

16 **A** I -- by this point in time they both knew that I
17 was taping everything.

18 **Q** Well, not according to Mr. Asper, he found out
19 mostly when he got here?

02:57 20 **A** Oh, I think he knew about it before he got here.

21 **Q** Well we just went through his testimony, do we
22 want to go back to it, have you forgotten it
23 already?

24 **A** No, I haven't forgotten it, but I believe that
02:57 25 David, he may have not known how much I was



1 taping, but he certainly knew I was taping much
2 before coming here to the Inquiry.

3 Q I see.

4 A In fact, in some of my tapes, I'm sure I've told
02:57 5 him that he is saying it on tape.

6 Q Well, that would be good, if you could find that
7 for us?

8 A I'm sure we probably could.

9 Q Nonetheless, are you disputing his statement that
02:58 10 we just looked at, that he found out when he got
11 here, and that he was unhappy, and that he told
12 you that he was unhappy?

13 A I don't think that's what he said.

14 Q May we look at, please, 27572:

02:58 15 "Q ... when did you learn that ...",
16 just a 'sec here:

17 "... that Joyce Milgaard was taping your
18 telephone conversations with her.

19 A ... I may have been aware, at the
02:58 20 time, of some ..."

21 A Yes.

22 Q "... but certainly not to the extent that
23 is the case. I learned that when this
24 proceeding was under way."

02:58 25 A So that's true, he knew, he may have been aware,



1 at the time, that I was taping.

2 Q How do you suppose he got to that knowledge?

3 A How he got to that knowledge? Because I told him
4 how many tapes I was turning over.

02:58 5 Q No, no, no, how did he, when you say he was aware
6 at the time of some, how did he become aware at
7 the time that there was some taping being done?

8 A Because I told him.

9 Q Okay. You could establish that for us?

02:59 10 A I can't remember when I told him, but I know he
11 was aware at the time, but I used to kid him about
12 it.

13 Q Okay.

14 A But I think what he was saying, he just didn't
02:59 15 realize the extent of how much it was until he got
16 here.

17 Q Could we turn to 336592, please. This is one of
18 your tapes, tape 92, and we want to go to 336641.
19 You're talking to Susan here; is it?

03:00 20 A I have no idea.

21 Q Oh, well, let's go back to the beginning of it
22 then. You have a daughter named Susan?

23 A Yes, I do.

24 Q Oh, okay. Well, we can't go that far. Let's go
03:00 25 back to 592 and leave it alone, we'll just carry



1 on:

2 "... as I explained to David Asper, I
3 said I used to be a pathological liar
4 and David was and is, to quite a degree
03:00 5 a liar."

6 And we do have another tape and when you do make
7 that confession to David Asper; correct?

8 A Right.

9 Q Then you go on:

03:00 10 "At one time I would not know the
11 difference, I would not be able to
12 distinguish between the truth and
13 reality if I went to think back to
14 something that I had lied about for a
03:00 15 long time about at home, now I would not
16 maybe know what really was the truth
17 about the situation."

18 A Yes, and I remember when I think back to my
19 childhood and things like that, I really don't
03:00 20 know what was true and what wasn't.

21 Q And could we look at 651, please, and the C here I
22 think is your son Chris?

23 A I don't know.

24 Q "And I said well David, I was a liar
03:01 25 years ago, and I lied so much that I



1 wouldn't know the truth even now if I
2 look back I couldn't quite remember what
3 was the truth and what was a lie in some
4 situations. However, if it was, did I
03:01 5 rob a bank, or did I murder something,
6 somebody, that I would know, that I
7 would remember cause that would stand
8 out."

9 A "So the fact that he's not remembering
03:01 10 these things now does not necessarily
11 mean he's lying to us now. You know, a
12 lot of years have gone by."

13 Q Well, the point is that you spent a good part of
14 your early life as what you described as a
03:02 15 pathological liar?

16 A I did.

17 COMMISSIONER MacCALLUM: I think we should
18 have a break. It's three o'clock. 15 minutes.

19 *(Adjourned at 3:02 p.m.)*

20 *(Reconvened at 3:23 p.m.)*

21 BY MR. WILSON:

22 Q Mrs. Milgaard, this self-diagnosed condition of
23 pathological liar, are you aware of some recent
24 medical discoveries that identify that the brains
03:23 25 of pathological liars differ significantly



1 physically from those of the normal population?

2 A No, and of course as a Christian scientist, I
3 wouldn't believe that.

4 Q You wouldn't believe it anyways?

03:23 5 A No.

6 Q But you are no longer suffering from that
7 condition I take it you are telling us?

8 A I believe that I have been healed of that
9 condition.

03:23 10 Q And that you are fully truthful and honest now?

11 A I do my best to be completely truthful and honest.

12 Q Did the conversion come about as a result of an
13 epiphany or has it been a gradual evolution?

14 A I believe when I first learned about Christian
03:24 15 science and the fact that it is based on the
16 truth -- umm, I guess I would have to say it came
17 gradually, like, it took some time. I didn't just
18 immediately stop because it was sort of a habit
19 that one gets into of exaggerating and, you know,
03:24 20 you've been saying pathological liar, I've been
21 saying pathological liar and I don't even know
22 what pathological liar means. I guess I was
23 thinking in terms of someone that wasn't very
24 truthful and lies a lot and exaggerates a lot and
03:24 25 that's why I sort of put that title on it, but



1 when you started mentioning medical, I realized,
2 you know, I have no idea what the dictionary
3 definition of pathological liar is.

4 Q Well, it might be interesting if you Googled it,
03:25 5 you would see some interesting explanation.

6 However, obviously you thought that there was a
7 danger you were still suffering from the condition
8 in 1990 when you began your taping?

9 A I felt it was really important because I seem to
03:25 10 have problem with memories and dates and things
11 like that, that everything that I said was truth
12 and factual and that's why I taped, and I would
13 listen to them before I would tell someone else
14 something that someone told me.

03:25 15 Q So was that a yes, you were concerned in 1990 that
16 there may be some vestiges of the condition still
17 affecting you?

18 A No, I don't think I thought I was a pathological
19 liar in 1990, no, but I felt that it was important
03:26 20 that I have everything down correctly.

21 Q Mrs. Milgaard, the talent you discovered when you
22 went into the direct selling business years ago,
23 to role play effectively, is that still with you,
24 you are still able to do that?

03:26 25 A No. I've always wanted to be an actress, but I've



1 never had the time to pursue that role.

2 Q But you still have a bit of natural talent in that
3 field; right?

4 A I don't really know.

03:27 5 Q I would like to suggest that you've brought some
6 of that talent to these proceedings and
7 specifically I'm going to give you an example.
8 The other day when Mr. Hodson was leading you
9 through the history of this affair and came to the
03:27 10 February, '91 letter from Kim Campbell, you
11 effected distress, asked for a break, turned and
12 after we all left you sat there looking at the
13 wall for a few moments before you joined us
14 outside, and I suggest to you, Mrs. Milgaard, that
03:27 15 that incident was entirely feigned, contrived,
16 staged, in fact, phoney?

17 A I will tell you unreservedly that that absolutely
18 was not the case. I would not for one moment
19 resort to ploys like that at this Inquiry. This
03:28 20 is an Inquiry that I hope the truth will come out
21 of it. Do you think I would actually sit here and
22 do something like that? I find that obscene.

23 Q You will recall, I think I alluded to it in one of
24 my earlier questions to you, that last October you
03:28 25 made some unfortunate comments to the media about



1 what was going on in this Inquiry, specifically
2 the concern about David's standing. Do you recall
3 that?

4 A Yes, I do.

03:28 5 Q And I'm going to suggest to you that on October
6 the 26th you walked out of the Inquiry room and
7 you read a statement that you had written out to
8 the print media outside the Inquiry room. Do you
9 recall --

03:29 10 A Absolutely not.

11 Q That was over in the Sheraton Hotel.

12 A That I wrote down a statement and gave it to the
13 media?

14 Q And read it to the media.

03:29 15 A No, I did not.

16 Q Well, that's remarkable, because I stood and
17 watched you do it. And you threw some emotion in
18 because you were quite upset, you said, and I'm
19 quoting from the *StarPhoenix* article of October
03:29 20 the 27th:

21 "At this time I feel so
22 intimidated by the Commission, the
23 Commissioner, actually, that it's hard
24 to speak to the press. But I just feel
03:30 25 compelled to respond, "I can't abandon



1 my fight for David after doing it for 36
2 years."

3 "There seems to be no
4 understanding of what David's been
03:30 5 through. Larry Fisher has funding and
6 standing and I have to sit here and
7 listen to the Commissioner threaten to
8 take away my son's standing? It's just
9 unbelievable. I think Canadians will be
03:30 10 ashamed to see what is happening here in
11 Saskatoon."

12 You said that?

13 A I did, and are you saying that you saw me with a
14 piece of that on paper written down and speaking
03:30 15 from it, sir, because I say you are lying, because
16 that did not happen, and I will ask the media to
17 come forward and tell you that that did not
18 happen.

19 Q Okay. Let me deepen my accusation, Mrs. Milgaard,
03:30 20 that the television cameras had missed the event
21 and asked you to repeat it for them and that you
22 did and you read it word for word with a slight
23 addition at the end, and you threw in again the
24 appropriate emotion. Do you recall doing that?

03:31 25 A No, I do not.



1 Q Well, I have in my hand a copy of a script from
2 CBC television dated October the 26th, 2005 and
3 you say:

4 "There seems to be no understanding of
03:31 5 what David has been through. Larry
6 Fisher has funding and standing and I
7 have to sit here and listen to the
8 Commissioner threatening to take away my
9 son's standing? It's just unbelievable.
03:31 10 I think Canadians will be ashamed to see
11 what is happening here in Saskatoon. I
12 know I am."

13 Almost word for word from the original
14 performance. Do you recall doing that?

03:32 15 A Yes, I remember, but I had no statement.

16 Q But you did --

17 A I probably said the same thing because that's how
18 I felt at the time.

19 Q You did this in two performances, one for the
03:32 20 print media and one for the television; correct?
21 Do you remember that?

22 A I don't remember that, but that could be the fact.

23 Q Now, I asked you at the beginning of the Inquiry
24 if you were content with the conduct of this
03:32 25 Inquiry and the progress of this Inquiry and you



1 said yes, you were. Is that so?

2 A I have been since that time, I have felt much
3 better after that particular incident and I have
4 felt better since that time.

03:33 5 Q I see. But there was a little dust-up earlier
6 this month wasn't there?

7 A Yes.

8 Q About the 3rd of May, that you left the Inquiry
9 room and made another statement to the media?

03:33 10 A Oh, I thought that's when you were talking about,
11 the 3rd of May, about making the statement.

12 Q No, no, I read it to you, last October, the 26th.

13 A Oh, no, I'm sorry, I was confused, I thought you
14 were talking about the May statement, and I knew
03:33 15 how I felt in the May statement, I just walked
16 out. It was nothing prepared, I just went.

17 Q Okay, but you agree with me now that last October
18 that was a prepared statement?

19 A Oh, yes, at that time that was something entirely
03:33 20 different.

21 Q So I'm no longer a liar?

22 A No, I'll reverse that decision.

23 Q Could we look at page -- I'm not sure which one I
24 want here -- 29395. Your counsel spoke to the
03:34 25 Inquiry and these are the words that counsel used



1 are they?

2 A I assume they are.

3 Q Were you not in the room at the time?

4 A No, I wasn't.

03:34 5 COMMISSIONER MacCALLUM: Yes?

6 MS. McLEAN: Again, Mr. Commissioner, I
7 don't see the relevance of the admissibility of
8 this. Mrs. Milgaard was not here as you know,
9 she was in fact at the hotel preparing her
03:35 10 evidence, and I don't see that this is --

11 COMMISSIONER MacCALLUM: I'm having a
12 little difficulty, Mr. Wilson. Up to this point
13 I perceived it as sort of a general inquiry or
14 testing, if you like, in the area of credibility,
03:35 15 but surely there can't be anything, a question of
16 credibility arising here.

17 MR. WILSON: I'll clear it up.

18 COMMISSIONER MacCALLUM: She said what she
19 said and obviously counsel's words speak for
03:35 20 themselves. She wasn't here.

21 MR. WILSON: If you'll permit me,
22 Mr. Commissioner, I'll clear it up in just one
23 minute.

24 COMMISSIONER MacCALLUM: Okay.

03:35 25 BY MR. WILSON:



1 Q Your counsel was instructed and authorized to make
2 these remarks on your behalf?

3 A My counsel was authorized to speak for me, yes.

4 Q And this:

03:36 5 "... she realizes her comments were
6 extremely inappropriate."

7 Next page, please:

8 "It was a time when she was very upset
9 and she simply spoke when she should not
03:36 10 have. She will not do so again ..."

11 Etcetera. And the reason I raise that,
12 Mr. Commissioner, is that I have in my hand a
13 print-out from a web site maintained by Sigrid
14 Macdonald in Ottawa. She was and is the head of
03:36 15 the Ottawa branch of the Milgaard support group?

16 A She was. We no longer have a Milgaard support
17 group.

18 Q But she maintains a web site you are familiar
19 with?

03:36 20 A No, I'm not familiar with it, although
21 occasionally she has written to me and has sent me
22 some things.

23 Q Well, I have a note dated Thursday, May 4th, 2006,
24 headline:

03:37 25 "Joyce Did NOT Apologize!"



1 I would like to quote
2 directly from a memo that I just
3 received from Joyce.

4 PLEASE NOTE: I DID NOT APOLOGIZE FOR
03:37 5 WHAT I SAID. MY LAWYER SAID THAT I
6 REGRETTED MAKING COMMENTS TO THE PRESS
7 BUT THEY HAD FOLLOWED ME OUT AND I WAS
8 UPSET WITH WHAT HAD TAKEN PLACE. I SAID
9 I WOULD NOT SPEAK TO THEM AGAIN.

03:37 10 Previously I had reported that
11 Joyce apologized because I'd read that
12 on CBC news."

13 Did you write that memo that I just read?

14 A I wrote a personal memo to Sigrid, yes.

03:37 15 Q Did you write that memo?

16 A No, I did not.

17 MS. McLEAN: Again, Mr. Commissioner, you
18 may recall that a number of the media reports
19 came out with a headline entitled Mrs. Milgaard
03:38 20 apologizes or something to that effect. My words
21 speak for themselves, they are on the record,
22 Mrs. Milgaard was not here, and I think this is
23 beyond the scope of this Inquiry in any way.

24 COMMISSIONER MacCALLUM: Well, I think it's
03:38 25 legitimate to find out whether or not she



1 disclaims your apology and I believe that is what
2 counsel is asking her by reference to the note
3 which appeared to reflect her belief in the
4 matter, her statements in the matter, but she's
03:39 5 already told me that she didn't write this. I
6 suppose the next question is did you apologize or
7 didn't you.

8 BY MR. WILSON:

9 Q You did, however, write a personal memo, you said,
03:39 10 to Sigrid?

11 A Yes, I did.

12 Q What did that say, pray tell?

13 A I don't know the exact wording on it, but I did
14 tell her how upset I was that day and going out
03:39 15 and that I said things, and as to the apology, I
16 did not tell my lawyer to apologize for me for
17 what I said because I was sorry that I had made
18 the comments to the press, but I felt I had meant
19 what I had said.

03:40 20 Q So you still stand behind what you said?

21 A I stand behind what my lawyer said for me.

22 Q No, you stand behind the comments that you
23 initially made to the media that they reported?

24 A It's possible to feel something one day and not
03:40 25 feel the same the next. I have felt since that



1 time much better about everything and so I can
2 truthfully say today right now that that would not
3 be true.

4 Q You weren't under oath when you made the comments
03:41 5 to the media, but you were --

6 COMMISSIONER MacCALLUM: Excuse me. What
7 would not be true, ma'am? What would not be
8 true?

9 A That the words that I spoke that day about being
03:41 10 upset, I spoke them when I was upset.

11 COMMISSIONER MacCALLUM: Yes.

12 A And I'm in agreement now that my lawyer would
13 apologize for me, but I had really had said
14 something very similar to this to Sigrid because I
03:41 15 was still very mad at the time that I wrote to
16 Sigrid and upset, but I did not write that note.

17 BY MR. WILSON:

18 Q But you visit that web site now and then don't
19 you?

03:41 20 A I haven't visited it -- maybe once or twice a
21 month, something like that.

22 Q But did you write a memo to Sigrid in response to
23 her statement on the web site that you had
24 apologized?

03:42 25 A I didn't see that.



1 Q You didn't see that?

2 A No. I've never visited the web site since that's
3 been on obviously.

4 Q You've been aware, have you, that this item is on
03:42 5 the web site?

6 A No.

7 Q This is the first you've seen of it?

8 A Yes, it is.

9 Q What do you propose to do about it now that you've
03:42 10 seen it?

11 A I don't know. I'll probably ask her to remove it.

12 Q Pardon?

13 A I'll probably ask her if she would remove it.

14 Q Well, would you put this incident, Mrs. Milgaard,
03:43 15 as perhaps an example of a continuing condition of
16 a pathological liar?

17 A Certainly not.

18 Q It has nothing to do with it?

19 A No.

03:43 20 Q There's no untruth or dishonesty in what we just
21 looked at?

22 A I don't think so, no.

23 Q I have a little note here that I made from reading
24 your biography that I was also impressed with,
03:44 25 that in addition to all other things that you've



1 accomplished over the years, you found time to
2 acquire a private pilot's license; is that
3 correct?

4 A A partial pilot's license. I flew from St.
03:44 5 Andrew's airport. I had my own plane.

6 Q You had your own plane?

7 A Yes. My son gave me an airplane.

8 Q You are talking here about a Beaver. Is that the
9 aircraft?

03:44 10 A No. That's the one -- he gave me a book telling
11 me about the Beaver and I had a choice of what
12 kind of airplane to buy and one of them was a
13 Beaver, but I didn't buy the Beaver.

14 Q What did you buy?

03:45 15 A I'm not even sure of the name of the plane. I'm
16 sorry, I'm not good on names and dates, but it
17 would be -- if somebody gives me a name of an
18 airplane, I'll think of it. There's something
19 about being on this stand, Mr. Commissioner, that
03:45 20 my mind just goes blank.

21 COMMISSIONER MacCALLUM: Just describe it
22 to me. Did it have one engine, two engines?

23 A Two engines.

24 COMMISSIONER MacCALLUM: Two engines?

03:45 25 A Yeah.



1 COMMISSIONER MacCALLUM: Okay. Was it a
2 Piper?

3 A No.

4 COMMISSIONER MacCALLUM: A Cessna?

03:45 5 A No. You are getting closer though.

6 COMMISSIONER MacCALLUM: Does it matter?

7 BY MR. WILSON:

8 Q No, it doesn't. I don't know how we would ever
9 find this on the book, the web site, but I'm just
03:46 10 going to read you a couple of comments in my
11 second edition copy here at page 351, and this is
12 where David is offering to buy you a Beaver.

13 A Oh, yes, it would be in my book, I could probably
14 tell you from the book.

03:46 15 Q Well, I don't know what page it is, and you have
16 the hard cover?

17 A Yes, I have.

18 Q "Years before when I was learning to fly I used to
19 share my experiences with David during our prison
03:46 20 visits. I loved the idea of taking to the skies
21 again. Even before I selected a plane, I had a
22 name for it, the Easy Spirit."

23 Correct?

24 A That's right.

03:46 25 Q "A small part of me couldn't help but wonder,



1 however, if he didn't also --" that being David,
2 "-- didn't also want me to have a plane so that I
3 could fly him places. Recently we had talked
4 about that and I had told him that he had promised
03:47 5 me an airplane, but I hadn't promised to fly him
6 anywhere. Instead I suggested that he learn to
7 fly himself. One day I got an excited phone call
8 from him, he had taken his first lesson and he
9 loved it."

03:47 10 Correct?

11 A Right.

12 Q "And David is now also finding a special freedom
13 in the sky as I do."

14 A Yes, at that time he was. Subsequently he found
03:47 15 that as he flew he was getting air sick and he
16 couldn't continue, so he instead has gone into
17 paragliding and has his paragliding license now.

18 Q But you tell us there that you learned to fly?

19 A Yes, I did.

03:48 20 Q So you have a pilot's license?

21 A No, I haven't a license now, but I had, you know,
22 the beginner's license, I did my soloing and I did
23 all my flying, so I went out during that time, I
24 would go out and fly at the airport by myself, I
03:48 25 had the right to fly by myself, but not to take



1 passengers.

2 Q Uh-huh. What kind of aircraft were you flying
3 then?

4 A A Cessna.

03:48 5 Q What kind of Cessna?

6 A I can't tell you the kind, just a Cessna at that
7 time. Whatever it was --

8 Q What years are we talking about now?

9 A Umm, I was visiting David in prison at the time,
03:48 10 so I guess it would have been in the '90s
11 sometime.

12 Q How many hours did you acquire?

13 A I have no idea. More than the amount that I
14 needed, but I just never got around to really
03:49 15 going and writing the exams that I needed to do,
16 but I was soloing and doing all the things that I
17 needed to do. At that time what I was doing is I
18 just found that flying, if I went out to the
19 airport and could just go up and fly for an hour
03:49 20 and be by myself up there, I just found it
21 relieved me of all the anxiety and everything I
22 was going through with David at that time.

23 Q Oh, sure, uh-huh. You have no idea how many hours
24 you accumulated?

03:49 25 A No, I haven't.



1 Q 50, 100, 200?

2 A Oh, it would be over that I'm sure.

3 Q Oh, I'm sure.

4 A Yes.

03:49 5 Q If I suggested to you that there isn't a pilot in
6 the world that can't tell you exactly how many
7 hours he has, would you agree with me?

8 A If you suggested -- I'm sorry, I didn't get all
9 the question.

03:50 10 Q If I suggested to you that there isn't a pilot in
11 the world who cannot tell you exactly how many
12 hours he has accumulated in the air, would you
13 agree with me?

14 A No, I don't think so.

03:50 15 Q Because you are the exception?

16 A You say every pilot in the world knows exactly how
17 many hours they have flown?

18 Q Yup.

19 A I would find that very hard to believe.

03:50 20 Q Particularly junior pilots like you.

21 A Well, it wasn't of great importance to me. I was
22 using it more as a release from what I was going
23 through than anything else.

24 Q I have some difficulty believing that it happened
03:50 25 at all which is why I'm asking the questions.



1 Tell me the frequency of the Winnipeg tower?

2 A I can't.

3 Q Tell me the frequency of Winnipeg --

4 A Are you calling me a liar?

03:51 5 Q Yes.

6 A Well --

7 Q Tit for tat.

8 A I refuse to answer these questions.

9 Q Because you don't know the answers because you
03:51 10 don't have the knowledge, you never did this, this
11 is another one of your inventions.

12 A It is not one of my inventions, and if you want
13 I'll get documentation and bring it back to the
14 Commission next week of people that have flown
03:51 15 with me, my son included.

16 Q Well how can that be when you don't have the
17 licence to permit it?

18 A I had someone else with me at the time that did,
19 because when he gave me the airplane it was at St.
03:52 20 Andrews and it was parked at St. Andrews, and I
21 rented it out at St. Andrews and I had an
22 arrangement with the St. Andrews airport that they
23 could use it and rent it out, and then I would use
24 it, on the times that I wanted to just go out and
03:52 25 fly I would simply phone them and go out and fly.



1 But to think that you could stand there and say
2 that I am lying about these things, that's --
3 that's absolutely absurd.

4 Q Let's talk about Colin Thatcher for a few minutes.
03:52 5 Can I look at transcript page 29969, please? You
6 told us that you learned that Tony Merchant had a
7 connection to Colin Thatcher, and you learned
8 these facts about Colin, that he had known Gail
9 Miller, dated her?

03:53 10 A That's correct.

11 Q From whom did you learn this?

12 A I have no idea. I don't know whether it was one
13 of the people that was working with me at the
14 time, whether it was Peter, or whether it -- it
03:53 15 could have been someone that I was talking to, but
16 I know it was a suspicion that I had at the time
17 that -- because we learned somehow that he had
18 gone to the States right after she had been
19 killed, we learned that, and he was sent away to
03:54 20 the States to school, and so right away I thought
21 "well, maybe he did something", because later on
22 he was accused of killing his wife and had a
23 temper, so that's where I made this mammoth leap,
24 if you will.

03:54 25 Q I've underlined a line there:



1 "... when I checked out these facts
2 ...";

3 where and how did you check out those facts?

4 A I honestly don't remember whether someone in our
03:54 5 group called to see that he had gone to school in
6 the States, or called his parents, or how the
7 facts were checked out, but I -- my understanding
8 is that he did go out of town at that time. But
9 it subsequently went nowhere because it was only a
03:55 10 suspicion I had about my lawyer being involved
11 with it.

12 Q Well, you didn't have a suspicion about Colin,
13 it --

14 COMMISSIONER MacCALLUM: Let her finish the
03:55 15 answer, please.

16 A I didn't have a suspicion. At first I thought it
17 was the lawyer because he was Colin Thatcher's
18 lawyer, Merchant, at that time I was having
19 suspicions about him and thought that maybe that's
03:55 20 why he was stopping me and stopping the work that
21 was going forward, because he was connected to the
22 case. It was Merchant I was being suspicious of.

23 BY MR. WILSON:

24 Q But you made those statements of fact about Colin
03:55 25 Thatcher and claimed to have checked them out?



1 A If I've said "when I checked them out" I would be
2 speaking for "when we checked them out", I should
3 have said "when we checked them out", because
4 someone would have checked them out because we
03:55 5 were following up on it.

6 Q Could we look at 30186, please.

7 COMMISSIONER MacCALLUM: I just, I'm sorry,
8 I got a little bit behind there; what was your
9 explanation for having said that you checked out
03:56 10 those facts?

11 A Well, I think that someone would have checked them
12 out, so I don't, Commissioner, recall phoning the
13 school directly, but I remember seeing something
14 to the effect of the school that he went to and
03:56 15 the dates or the time that he went to this school.
16 That's all I recall. I mean it's years ago.

17 BY MR. WILSON:

18 Q "... we found out that he knew Gail
19 Miller and had dated, I believe had dated
03:56 20 Gail Miller ..."?

21 A I think that we got from a roommate, if I'm not
22 mistaken.

23 Q Uh-huh. When we look at it --

24 COMMISSIONER MacCALLUM: Which roommate?

03:57 25 A One of Gail Miller's roommates, I think one of the



1 ones that we were questioning, that we located
2 from her house, I believe.

3 BY MR. WILSON:

4 Q Could we look at 336584, please. This is your --
03:57 5 a taped conversation that you had with Dave
6 Roberts of *The Globe and Mail*, and 586, please.
7 And it's starting there, and here you are
8 concerned about Merchant having been a friend of
9 Romanow's. Next page, please, down. Here we are.
03:58 10 Here you take the story a little further, don't
11 you:

12 "When I found out that Merchant was
13 Thatcher's lawyer I thought my golly,
14 have I been really stupid here, I mean
03:58 15 have I been set up. Ah all this
16 information disappeared as soon as I got
17 going to Merchant and ah, and now you
18 tell me that he and you know by your
19 story."

03:58 20 Something more sinister because of Romanow's
21 connection to Merchant. Next page? Okay,
22 another --

23 A Well, you can see I was very suspicious about all
24 of it.

03:58 25 Q Well, certainly were, and you didn't let the facts



1 interfere with your suspicions. 331214, please.
2 This is your Sawatzky interview, again, at page
3 238:

4 "... we heard about Colin Thatcher and
03:59 5 the fact that Merchant was his lawyer we
6 suddenly thought, have I been used. Was
7 this \$5,000.00 -- this \$5,000.00 ever
8 really - take place or was it a set-up,
9 to find out where I was in the case with
03:59 10 what I was doing. Because at that point
11 umm, Maggie that was doing research for
12 the book umm, started to tell me about,
13 you know um, Colin Thatcher and they did
14 some research in it and found out that
03:59 15 he had known Gail Miller ...";

16 who is Maggie?

17 A I have no idea. I have no idea. Some, obviously
18 someone that was working in our group at that
19 time, I had so many volunteers working with me.

04:00 20 Q Mr. Sawatzky said:

21 "Q Tha... Thatcher had known Gail Miller?

22 A Oh, went with her and uh, and she did
23 some research and found out that he
24 had gone away uhm, had been sent away
04:00 25 to college right after this happened,



1 into the States."

2 A So I was --

3 Q You --

4 A -- I was trying to tell this gentleman all of the
04:00 5 suspensions and I, when I read all this stuff now I
6 think how could I ever have believed it all, how
7 could I have ever gone through all of these things
8 and had so many suspicions and everything, but it
9 just went with the territory, because I was being
04:00 10 pushed back everywhere I went.

11 Q Mrs. Milgaard, you told us a bit earlier that you
12 had spent some time in the library, both in
13 Winnipeg and in Saskatoon, searching old
14 newspapers, and your --

04:01 15 A On David's case, yes.

16 Q If you had asked at the reference counter for a
17 copy of the Legislative Digest you would have had
18 the biography of Colin Thatcher in your hands; did
19 you ever do that?

04:01 20 A No, I never did.

21 Q Let me just give you some facts, and if anybody
22 here wants them more properly presented, I will be
23 happy to accommodate them.

24 Colin Thatcher was born in
04:01 25 August of 1938, he lived in Moose Jaw with his



1 parents, he attended the University of
2 Saskatchewan here in Saskatoon for the year
3 1956-1957. He then went down to the University of
4 Iowa in Ames and he finished his college education
04:02 5 there, he graduated in May of 1962, that was the
6 year that he married JoAnn Geiger. They moved to
7 Moose Jaw and took up residence there. By 1969
8 they were still living in Moose Jaw, he was a
9 father, and at that time still happily married.

04:02 10 With those facts could you
11 believe that he ever knew Gail Miller, ever met
12 her, ever heard of her?

13 A I only went by what I was told and, obviously,
14 someone in our group gave me that information.

04:02 15 Q And you didn't check it out?

16 A Well, if someone is doing research for you, you
17 let them check it out.

18 Q It's so elementary, you could have checked that so
19 easily, and yet --

04:02 20 A I probably could have.

21 Q Would you like to do that over the weekend, and
22 check the facts that I gave you, --

23 A Do I need to check them?

24 Q -- and if they are correct would you like to
04:03 25 apologize to the Thatcher family for having



1 dragged him through your saga improperly, as you
2 now did?

3 A Well, I don't think I dragged him through my saga,
4 because I did nothing with that other than turn it
04:03 5 over to Mr. Sawatzky.

6 Q Well it's here?

7 A I said that I believed it at one time, but I
8 didn't say that I still believed it. I mean in
9 the book we know who did it, so I think the fact
04:03 10 that I was being truthful and saying I believed
11 all these things at that time, that I did believe
12 them.

13 Q I'm reading from page 122 and 123 of my edition of
14 your book. "We heard that Colin Thatcher and Gail
04:03 15 Miller had gone out for a while and then had
16 broken up. Did Tony Merchant know this? Merchant
17 was a friend of Thatcher's as well as his lawyer.
18 What if he thought that his friend had killed Gail
19 Miller? I began to suspect that Colin Thatcher
04:04 20 was the killer. We heard that the day after" --
21 we heard that -- you had a --

22 A You see, --

23 Q No, let me finish.

24 A Go ahead.

04:04 25 Q "We heard that, the day after Miller's murder,



1 Thatcher's family sent him away to college in the
2 States. We also knew that Thatcher had a terrible
3 temper, and whoever killed Gail Miller was
4 extremely violent. I had always suspected that
04:04 5 someone powerful might be involved and, in
6 Saskatchewan, few people are higher up than the
7 Thatcher family. Colin Thatcher was the
8 millionaire son of a former Premier and a Cabinet
9 Minister himself. The media frequently referred
04:04 10 to him as the Canadian version of J.R. Ewing, the
11 devious oil tycoon from the hit television series
12 Dallas. Like the fictitious J.R., Colin Thatcher
13 grew up learning to wield power and control things
14 and wasn't used to taking no for an answer."
04:04 15 End quote.

16 Now there isn't a scintilla of
17 truth in anything that I read, not an ounce,
18 nothing, and yet you blasphemed -- I have no
19 grief for Colin Thatcher, a lot of people will
04:05 20 tell you that -- but you blasphemed a perfectly
21 honourable family with this nonsense?

22 A I wrote in my book what I thought and went through
23 in my investigation, and that's what I thought and
24 that's what I went through in my investigation,
04:05 25 and that's why it's in the book.



1 Q I see. So the quality of this research indicates
2 the quality of your entire research; does it?

3 A It may.

4 Q It may. Well, certainly you didn't do much better
04:05 5 on Breckenridge, if I can slip in a personal
6 comment here. And let's talk about him for a
7 minute. May we look at 31528, please. Mr. Hodson
8 was questioning you about the Breckenridge affair.
9 No, I don't want to be there, I want to be at
04:07 10 31,499, okay.

11 And Mr. Hodson has showed you
12 the infamous letter that Mr. Breckenridge wrote to
13 Mr. Wolch dated the 21st of March, 1992, and you
14 tell us it was almost immediately that you became
04:07 15 aware of it, and you thought it was extremely
16 important; right?

17 A Yes.

18 Q And you thought you should get it out right away.
19 It didn't get out right away; did it?

04:08 20 A No, it didn't.

21 Q And one of the questions that naturally arose we
22 find at 31501:

23 "... do you have any memory of this
24 being considered or discussed as being
25 possible evidence?"



1 for use at the Supreme Court?

2 "A No, ...",

3 you don't:

4 "I don't even remember this being

5 considered or discussed before the

6 Supreme Court remedy, that's what I'm

7 saying ..."

8 That's true?

9 A Is what true?

04:08 10 Q Is it true that you don't remember discussing with
11 Mr. Wolch or Mr. Asper, or both of them, taking
12 the Breckenridge letter of March 21st, 1992 to the
13 Supreme Court?

14 A I can't remember -- I couldn't say I can remember
04:09 15 the discussion. I know it must have been
16 discussed, but I have no correct memory of any
17 particular conversation with them, but if they had
18 the letter and had showed it to me I would have
19 discussed it.

04:09 20 Q Now if we can look at 31529, please. You heard
21 the evidence, that's pretty recent stuff, that's
22 just Monday of this week, two days ago, that you
23 had a 2 1/2-hour conversation with Robert Perry at
24 Robinson Investigations talking with Mike
04:10 25 Breckenridge --



1 A Yes.

2 Q -- about his allegations?

3 A Yes.

4 Q But you don't remember it?

04:10 5 A I have no current memory of the conversation that
6 I had with the man, no.

7 Q "Do you have any recollection of this
8 discussion?

9 A Not at all."

04:10 10 That's correct?

11 A That's correct, I have no -- when you show me
12 papers and I go over things I can remember parts
13 of the conversation or something, or remember
14 having done certain things, but I have no current
04:11 15 memories of them. That's what I am saying.

16 Q Today, here, now?

17 A Today, right now.

18 Q Yeah. Next page, please.

19 "I really -- none of this triggers a
20 memory."

21 I think you've told us you have no recollection
22 of that, none at all, of any detail of that
23 meeting.

24 "I have a vague recollection of that,
25 but I can't even remember where we were



1 or what we were doing, it's just very,
2 very vague."

3 Now you gave us chapter and verse in your
4 testimony, here, of incidents that occurred back
04:11 5 in 1968, you just did that with me, you could
6 remember David's events and whatnot there and
7 prior to the major event?

8 A Maybe because all of those have been refreshed
9 since that time.

04:12 10 Q Well I -- we should imagine that this incident
11 that we're talking about here occurred in 1992,
12 that's 14 years ago; right?

13 A Correct.

14 Q Which is a lot more recent than 37 years ago;
04:12 15 right?

16 A Right.

17 Q So one would naturally assume your memory might be
18 a little bit better; right?

19 A Depends on whether it's family or otherwise.

04:12 20 Q I -- it probably depends on whether it's a big
21 deal or not; right?

22 A Yeah.

23 Q But you were going after the Premier of
24 Saskatchewan, you are telling us that wasn't a big
04:12 25 enough deal that you would remember it?



1 A Not in this particular incident I wouldn't have
2 been.

3 Q You are standing beside -- behind that?

4 A What do you mean?

04:13 5 Q That answer, that you don't remember, you don't
6 remember? You must have been so excited and
7 worked up over the thought that you had Roy
8 Romanow, as well as Serge Kujawa, as well as
9 others, where you wanted them after all those
04:13 10 years?

11 A I'm sorry, I -- I can't tell you more than what I
12 remember.

13 Q Next page, please. Mr. Hodson is asking you if
14 you would have brought up some names with
04:13 15 Breckenridge, and whatnot, but you just, you can't
16 remember. You can't remember, that's what you
17 want us to believe, you can't remember?

18 A I have no current memory of it.

19 Q You did tell Mr. Hodson that you checked Michael
04:14 20 Breckenridge out to see was he a "nut case", was
21 that the phrase you used?

22 A I think I may have used that phrase, I don't know.
23 I think, from the point of view I felt in talking
24 to -- the reason I talked to him in the first
04:14 25 place was to make sure that he wasn't just a nut



1 case, because sometimes we had some very strange
2 people calling.

3 Q Well, the thought occurred to you that he might be
4 a crank, --

04:15 5 A That's right.

6 Q -- wasn't reliable, and so you were -- you had
7 that in your mind when you spoke with him?

8 A That's right. But I couldn't even, today if I had
9 to draw a sketch of the man or any of those
04:15 10 things, I haven't a clue what he would look like
11 or any of those things.

12 Q Mrs. Milgaard, you've heard the phrase "due
13 diligence"?

14 A Due diligence? Yes.

04:15 15 Q Due diligence?

16 A Yes.

17 Q Do you know what it means?

18 A Perhaps you could tell me?

19 Q It means exercising a reasonable amount of care in
04:15 20 advance of an undertaking. You might investigate
21 the financial condition of a company you were
22 looking at, and that would be regarded as due
23 diligence.

24 A Okay.

04:15 25 Q You would exercise due diligence before you



1 publicly attacked the Premier of Saskatchewan
2 accusing him of criminal conduct, one would expect
3 that you would be extremely careful in ensuring
4 that you were on solid ground in so doing;
04:16 5 wouldn't you?

6 A Yes, and that's why I had lawyers working with me.

7 Q Was that in your mind at the time you were talking
8 with Michael Breckenridge, do you think, that you
9 really had to be terribly careful here?

04:16 10 A I don't know what was in my mind at that time,
11 because I have no real recall of that particular
12 time.

13 Q Mr. Hodson asked if you had thought of contacting
14 David Wollbaum, who was one of the names mentioned
04:16 15 by Breckenridge?

16 A That's right.

17 Q And you didn't, and you gave us reasons, well
18 because you might taint the investigation or some
19 other reason as such; is that right?

04:17 20 A I believe that it has been indicated to me in the
21 past that whenever I got involved, that I had
22 tainted the evidence, or could have tainted the
23 evidence by going to see people, --

24 Q Okay.

04:17 25 A -- and I didn't want this done in that case. But,



1 again --

2 Q More important, though, to make sure that the
3 truth is being told rather than little
4 considerations such as you just described;
04:17 5 wouldn't it?

6 A I think that I explained myself fairly clearly,
7 that I didn't want to get involved because of the
8 experiences that I had in the past.

9 I -- I've done the best, you
04:17 10 know, that I know how. I'm not a trained
11 investigator, I'm a mum.

12 Q You weren't a trained investigator --

13 A There is a big difference.

14 Q You weren't a trained investigator, but you were
04:17 15 an experienced one by then, weren't you?

16 A I certainly --

17 Q You had done a lot of it?

18 A I had been doing a lot of it.

19 Q May we look at 004019, please. You have, I'm
04:18 20 sure, since all of this blew in 1992 and 1993 and
21 1994, gone back and checked out some of the
22 elements that perhaps you should have checked out
23 first; have you?

24 A No, I never have.

04:18 25 Q Have you ever looked into what Dave Wollbaum might



1 have told you had you called him?

2 A No.

3 Q You --

04:18 4 A I've been very busy just keeping up with the
5 day-to-day activities of my life.

6 Q Well, here is the statement that the RCMP took
7 from him, 'did you ever work at the Attorney
8 General's office', 'Yes', 'Legislative Building',
9 he was a clerk, he handled the filing. Next page,
04:18 10 I don't want to take time reading all this.

11 "Q Do you know Michael Breckenridge?

12 A Yes, we socialized together in those
13 days. We were friends and worked in
14 the same office. In 1976/77 Mike and
04:19 15 I went out to Vancouver and visited
16 with a friend who had worked in the
17 A.G.'s office with us, by the name of
18 Dale Richter, who at that time became
19 a Special Constable with the RCMP in
04:19 20 Burnaby."

21 Next page. Breckenridge:

22 "... was a Clerk II and wouldn't have
23 arrived in the office until 1972 ...",
24 how long did he stay in the office:

04:19 25 "A Over a year but didn't make two years."



1 "Q Tell me what you can about Michael
2 Breckenridge?

3 A He had a booze problem. His
4 personality was not well accepted by
04:19 5 the other clerks, but Dale and I were
6 the only two who got along with him.
7 He thought he was a friend of Gerry
8 Allbright, the lawyer, and he always
9 poked around the lawyers' offices
04:20 10 trying to get brownie points. He did
11 not keep himself neat and clean and
12 often came to work hung over. After
13 Dale and I left, no one would
14 associate with him and I'm not sure
04:20 15 how long, but he quit sometime after.
16 Approximately 11 or 12 years ago was
17 the last time I saw Mike. He called
18 me up and came over for coffee. He
19 had quit drinking and had turned to
04:20 20 religion. He began to talk religion
21 and I sensed he was trying to convert
22 me. He indicated he wanted to save
23 and help people. Mike left my place
24 and I've never seen him since."

04:20 25 "Q Do you have any information ... that a



1 mistake or cover-up may have been made
2 in the David Milgaard police
3 investigation or prosecution of him?

4 A None!

04:20 5 Q Did ... Breckenridge ever tell you about
6 his concerns regarding the Milgaard
7 file?

8 A Not to my recollection."

9 "Q Was Serge Kujawa in that office at the
04:20 10 time?

11 A Yes he was, during the entire time I
12 was there. We handled criminal
13 matters. I have the highest respect
14 and admiration for the man."

04:20 15 "Q I have correspondence that states, "On
16 the Milgaard case it was brought to my
17 attention by Dave Wolbaum that according
18 to information we had been receiving, it
19 was becoming very evident that the
04:21 20 Milgaard case was a mistake". Respond
21 to that please.

22 A I don't think my memory is that poor,
23 and I know for sure that a case as
24 sensitive as that I would have
04:21 25 remembered. I sure don't remember



1 having such a conversation with him on
2 that.

3 Q I have correspondence that states, "From
4 the correspondence we were filing our
04:21 5 section was convinced that there was an
6 error made in the Milgaard case and this
7 was brought to Serge Kujawa's attention.
8 We were told basically to mind our own
9 business if we valued our jobs." Can
04:21 10 you respond to that please?

11 A If something like that happened I
12 would remember it and I was never told
13 anything like this. We never had
14 access to the prosecution of matters.
04:21 15 Our area was filing, not assessing
16 evidence. I was definitely never told
17 anything like this by Serge Kujawa.

18 Q I have correspondence that states,
19 "After being told that our section began
04:21 20 to apply for transfers or to find new
21 jobs." Can you respond to this please.

22 A The Milgaard case had nothing to do
23 with me leaving the section. It was
24 very hard for me to leave ...

04:21 25 Q In your opinion, why would Michael



1 Breckenridge say what is alleged?

2 A I don't know, unless it's the truth
3 for him, but it's not the truth for
4 me."

04:22 5 Carry on:

6 "A I don't see how he could see if there
7 was an error made in the Milgaard case
8 because everything on files such as this
9 is factual. I just can't see there
04:22 10 being a cover and I respect Serge beyond
11 question."

12 Next page:

13 "A If something like that had happened I
14 would remember it and I was never told
04:22 15 anything like this. We never had access
16 to the prosecution of matters. Our area
17 was filing, not assessing evidence. I
18 was definitely never told anything like
19 this by Serge Kujawa."

04:22 20 That's it, we're just repeating ourselves here.

21 That's what you would have found had you bothered
22 to phone Dave Wolbaum back in 1992; right?

23 A Correct.

24 Q And that might have prevented you from proceeding
04:22 25 with the allegations you made against the premier



1 of Saskatchewan?

2 A Correct.

3 Q You were here when Mr. Asper testified?

4 A Yes.

04:23 5 Q And he told us roughly that he didn't have any
6 belief in Breckenridge's credibility. Do you
7 recall that? 27625, please. Mr. Asper doesn't
8 have much of a recollection of Breckenridge
9 either, but he says he was on his way out, he was
04:23 10 leaving the firm:

11 "Q But you did have some concerns about
12 Mr. Breckenridge?

13 A I recall that, yes.

14 Q And part of the reason you had those
04:23 15 concerns was because you wouldn't
16 believe that Roy Romanow was involved?

17 A I found that a stretch. I found the
18 whole thing a stretch frankly, Mr.
19 Wilson, and didn't really want to
04:24 20 believe it, don't want to believe it
21 currently."

22 Next page. I'll leave it at that. Well, maybe I
23 might just as well give you this. You heard that
24 piece of information come into evidence?

04:24 25 A Yes.



1 Q About Mr. Lysyk? At the time you were making
2 these accusations in 1992, Ken Lysyk, former
3 Deputy Attorney General in Saskatchewan, was a
4 serving member of the Supreme Court of British
04:24 5 Columbia. Did you even bother to learn that
6 elementary fact at that time?

7 A That I should have learned this at that time?

8 Q I beg your pardon?

9 A Are you asking me if I learned this at that time?

04:25 10 Q Did you know that Mr. Lysyk was a serving judge in
11 British Columbia at the time you were making these
12 accusations in 1992?

13 A No.

14 Q Did you bother to check that? You made no cursory
04:25 15 investigation at all, so you were unaware of --

16 A I was really unaware of anything else that was
17 going on in the world. I never ever watched a
18 movie for years and years and years because I was
19 so focused on finding out other information.

04:25 20 Q But you had the Breckenridge file in front of you
21 and you were working it up to an accusation
22 against Roy Romanow and Ken Lysyk and Serge
23 Kujawa?

24 A And we were turning the file over to the police to
04:25 25 look at it.



1 Q But you didn't know that you were accusing a
2 serving judge of criminal conduct?

3 A No, I didn't know.

04:26 4 MR. WILSON: I'm sorry that I'm not
5 finished, Mr. Commissioner, but this is as good a
6 spot to stop as any.

7 COMMISSIONER MacCALLUM: All right.

8 *(Adjourned at 4:26 p.m.)*

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OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATE:

We, Karen Hinz, CSR, and Donald G. Meyer, RPR, CSR,
Official Queen's Bench Court Reporters for the Province of
Saskatchewan, hereby certify that the foregoing pages
contain a true and correct transcription of our shorthand
notes taken herein to the best of my knowledge, skill, and
ability.

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Karen Hinz, CSR

Official Queen's Bench Court Reporter

_____, RPR, CSR

Donald G. Meyer, RPR, CSR

Official Queen's Bench Court Reporter



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