

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

Transcript of Proceedings
and
Testimony before the Commission
sitting at the
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Inquiry Proceedings



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1 rape, and what Mr. Greenberg's instructions were
2 from Mr. Fisher were to enter guilty pleas and
3 clean them all up, and he said obviously get the
4 best sentence possible for all of the charges.
5 Mr. Greenberg testified that he tried to get all
6 the charges heard in one jurisdiction, he could
7 not, and therefore he proceeded in Manitoba and
8 then in Saskatchewan.

9 As far as his offer to plead
10 guilty, and I think that's what Mr. Greenberg
11 said, that he contacted the Attorney General and
12 said "I'm prepared to plead guilty to these four
13 charges and then discuss sentencing". Would the
14 prosecutor, or does a prosecutor have the ability
15 to reject a guilty plea and say "no, you must
16 plead not guilty and go to trial"?

17 A Well the prosecutor hasn't got the power to tell
18 that to his master, the Attorney General, but he
19 can certainly feel free to give advice, and he is
20 often asked for the advice before any sort of a
21 deal of that kind is made.

22 Q No, I'm sorry, can -- if an accused person, if
23 Larry Fisher comes to the Crown and says "you've
24 charged me with offences, I want to plead guilty,
25 I want to go to Court and plead guilty and be



1 sentenced", can you, as a prosecutor, say "well
2 no, Mr. Fisher, we don't like that, we'd like to
3 have a trial, we'd like you to" -- is there
4 anything you, as a prosecutor, can do to force Mr.
5 Fisher to go through a trial when he had indicated
6 his desire to plead guilty?

7 A Not that I know of, and I don't, I can't imagine
8 why I would ask for a trial when I could get a
9 guilty plea.

10 Q And so as far as a guilty plea, and again just
11 from your understanding as a prosecutor in the
12 position you were in, if a person is convicted
13 after entering a guilty plea compared to a person
14 who is convicted by a judge or a jury after trial,
15 is there any difference as far as the value of the
16 conviction, is this -- are the convictions equal,
17 if I can put it that way?

18 A I think they're equal.

19 Q As a prosecutor are there some merits, in some
20 cases, to have a guilty plea as opposed to having
21 a trial proceed? I think you touched on this
22 yesterday but maybe you could just elaborate
23 again.

24 A Well about the only place where there is a merit
25 is when you don't have a good case to take to a



1 trial, and you have a serious matter hanging
2 around, it's sort of desirable to get it cleaned
3 up and over with, not only from the society's
4 point of view, but from that of the accused
5 himself.

6 Q And what Mr. Greenberg testified before this
7 Inquiry is that his concern was that Mr. Fisher
8 would end up being sentenced twice, and he wanted
9 to get all the charges dealt with at once, and
10 what he told us is that he believes that before
11 Mr. Fisher entered his guilty pleas in Manitoba,
12 which was May of 1971, that he had had -- and I
13 can't recall his words, whether it was a deal or
14 an arrangement or an understanding, but he had
15 something in place with your office as far as how
16 the Saskatchewan charges were going to be disposed
17 of, and in particular a concurrent sentence. Now
18 I think you told us yesterday you didn't recall
19 any of the specifics of the dealings with
20 Mr. Greenberg; is that correct?

21 A No, I didn't recall any of those.

22 Q And, again, is that something, based on your
23 practices, if counsel for an accused said "lookit,
24 we're gonna plead guilty in Manitoba to two
25 charges but we don't want -- and we're gonna come



1 and plead guilty in Saskatchewan, we're prepared
2 to plead guilty if we get a sentence in this
3 range", is that the type of discussions you would
4 have with counsel from time to time?

5 A That's kind of a request we get from time to time,
6 and I certainly don't remember the details of the
7 discussion, but we normally agree on a sentence
8 and the whole thing is proceeded with and cleaned
9 up.

10 Q For example, if Mr. Greenberg came to you after
11 the Manitoba convictions and said "Mr. Fisher has
12 pled guilty in Manitoba, he's been sentenced to 13
13 years for the two rape charges, the four charges
14 in Saskatchewan, I'm prepared to plead guilty to
15 those four provided you agree to submit jointly
16 with me for a concurrent sentence"; is that
17 something that might happen, is that the type of
18 thing that would happen from time to time on these
19 negotiations?

20 A It's the type of thing that you expect to -- sort
21 of an approach that would be made. And in a case
22 like this, where 13 years to me in those days,
23 especially, it looked like a great big, long
24 sentence, and the substitute was no sentence at
25 all because we didn't have a case we could take to



1 Court.

2 Q And so let's go back. Let's just assume from --
3 for this line of questioning, then, that
4 Mr. Greenberg comes to you after Mr. Fisher is
5 convicted and says "he's got 13 years, we've got
6 four charges in Saskatchewan, here's what I am
7 prepared to do", this being Mr. Fisher, "I'm
8 prepared to plead guilty but I want concurrent
9 time." Now let's look at your options.

10 Your options, number 1, are to
11 say "no, come and we'll go through the trials", in
12 which case presumably Mr. Greenberg's offer to
13 plead guilty to you could not be used as evidence
14 against Mr. Fisher; is that fair?

15 A Right.

16 Q And so you'd have to go to trial, prove the case,
17 get four convictions; correct?

18 A Yes.

19 Q And then speak to sentence?

20 A Right.

21 Q And seek additional time?

22 A If that was what you wanted to get, --

23 Q Yeah.

24 A -- that's what you'd ask for.

25 Q Yeah. Or two, you could go back and say "okay,



1 I'm prepared to accept the guilty pleas, but I
2 think you should get some consecutive time", and
3 put something back to counsel; that's a
4 possibility?

5 A Yes.

6 Q Or, third, you could say, "okay, I'm prepared to
7 go along with that"; is that roughly the three
8 options?

9 A Yes, it is.

10 Q Who decides, ultimately when Mr. Fisher is
11 convicted and sentenced, who decides whether he
12 gets concurrent time or consecutive time?

13 A Well, only the trial judge decides, --

14 Q And --

15 A -- but if both the defence counsel and the
16 prosecution counsel agree on a date, most of the
17 time the judge goes along with that, and that's
18 the sentence which is passed.

19 Q And so, again, in this scenario where -- would it
20 be fair to say, Mr. Kujawa, that you would have to
21 exercise some judgement, then, based on your
22 experience, as to what would be appropriate in
23 this case to deal with the offer coming from
24 Mr. Greenberg?

25 A I would certainly be required to use that sort of



1 judgement if I had decent judgement of that kind.

2 Q And so, again, let's just talk about some of the
3 things you might need. Number 1, is it fair to
4 say you'd need to know something about the
5 circumstances of the Saskatchewan offences to have
6 an idea of what it was that Mr. Fisher was charged
7 with?

8 A Yes.

9 Q And --

10 A And how violent or nasty, or whatever, because it
11 could be much different degree of nastiness
12 involved.

13 Q And, number 2, would you need some indication of
14 what type of case the Crown might have against Mr.
15 Fisher if the matter were to go to trial?

16 A That would have a bearing, yes.

17 Q And would it be fair to say that, in the case
18 where you have concerns about your ability to
19 prove the case, you might look at an arrangement
20 more favourably than a case where you believe you
21 have strong evidence?

22 A Yes.

23 Q Three, would you consider the type of case and the
24 impact a trial might have on the victims and
25 others?



1 A It -- to some degree you tried to consider that.

2 Q And would it be fair to say that, in some cases,
3 there is a consideration that a guilty plea will
4 avoid putting people through a trial?

5 A Oh yes.

6 Q And that's a factor that would favour an
7 arrangement, if I call it that?

8 A Yes, it would.

9 Q Fourth, would you want to get some information
10 about Mr. Fisher and his background, the accused
11 and his background?

12 A Yes, sir, that would be a must-know situation.

13 Q And, lastly, presumably the amount of time that
14 Mr. Fisher was sentenced in Manitoba; would that
15 be relevant?

16 A Oh, certainly.

17 Q And let me give you an example to the extreme. If
18 Mr. Greenberg came back and said "okay, he got two
19 years for the Manitoba rapes", do you expect that
20 you would have looked favourably on a concurrent
21 sentence in that scenario?

22 A Well, totally no, because that, for that type of
23 an offence, even in those days, was a way too
24 little, in my opinion.

25 Q And at this time Mr. Kujawa, 1971, had you --



1 would it be -- we talked yesterday about criminal
2 sentence appeals before the Court of Appeal; would
3 some of those have been for rape charges?

4 A Oh, I think they included charges for every sort
5 of an offence --

6 Q And --

7 A -- over the years.

8 Q And as far as your personal involvement in dealing
9 with previous files involving rape, can you give
10 us any sense of your experience in appearing
11 before The Court and speaking to sentence on a
12 rape charge in Saskatchewan?

13 A Well the experience was that, when you were
14 talking about that sort of an offence, you were
15 not talking about breaking and entering and
16 stealing some groceries, it was a different
17 offence, a different nature of offence, and
18 different effect on society and the victims, and
19 so it was a much more serious matter and dealt
20 with, the best we knew how, accordingly.

21 Q And I guess my question was whether you,
22 personally, were involved in previous rape cases
23 where you were speaking before The Court on
24 appropriate sentences for rape matters; did you
25 have previous occasions, prior to Mr. Fisher,



1 where you dealt with the issue of an appropriate
2 sentence for rape before The Court?

3 A Yes.

4 Q Would that -- can you give us some idea of the
5 number of times, many times, many cases?

6 A Well it depends on what you call "many", and I
7 don't have -- I don't keep track of the number of
8 which cases I handled, but I would say it was
9 quite a few over the years.

10 Q And would it be fair to say that every case that
11 went to the Saskatchewan Court of Appeal on the
12 fitness of a rape sentence, at least in the three
13 years prior to Mr. Fisher, you would have been the
14 counsel on record?

15 A Yes.

16 Q So I want to go through what's in the file now, in
17 the Fisher file, if I can call it that, and this
18 is the file we talked about yesterday, as to what
19 information the Commission is led to believe you
20 would have had at the time in 1971, and that's the
21 paper documents that the government turned over to
22 us and said here's what was on our Regina head
23 office file, and I want to keep in mind I think
24 the five points that we talked about as being sort
25 of the relevant information that you need to know,



1 and the first document is 010718 and this is a
2 letter of March 17th, 1971 and it's from Deputy
3 Chief of Police Corey to Mr. MacKay, and I'll give
4 you a bit of background as far as the evidence.

5 What the evidence Mr. MacKay
6 provided us is that after Mr. Greenberg contacted
7 the Regina office of the Attorney General to try
8 and make an arrangement to dispose of the
9 Saskatchewan charges, that Mr. MacKay in turn
10 contacted I think Mr. Caldwell in Saskatoon and
11 then through to the police to request information;
12 in other words, it was Saskatoon police, tell us
13 what you have by way of charges and information on
14 Mr. Fisher, and what they wrote back, and we've
15 been through this document on a number of
16 occasions, but they got back and said here are the
17 four criminal charges against Mr. Fisher -- if you
18 could just call that out, please, the first page,
19 please, just call out the bottom -- and they
20 describe, and I think they take the quotes right
21 from the informations, which are attached, they
22 describe the dates and the charge, one, two,
23 three, four, and there's three rape charges, one
24 attempted rape. If we can go to the next page.
25 And then they go through and cite the facts



1 relating to the charges are as follows and they go
2 through and identify the circumstances of each
3 rape, they talk about a knife, and so this is
4 charge number 1, (V1)--- (V1)-, and then they say:

5 "During the investigation of this
6 offence Miss (V1)- viewed Police photos,
7 including that of Fisher, and was unable
8 to identify him as her assailant."

9 So let me just pause right there. And again,
10 would this be the type of information, Mr.
11 Kujawa, that would allow you to assess the nature
12 of the charge, the circumstances of the charge
13 and whether or not the Crown would be able to
14 prove the case?

15 A Yes.

16 Q And from what I've just read you with respect to
17 the (V1)--- (V1)- charge, would you have concerns
18 about the Crown's ability to prove that case based
19 just on this information?

20 A Well, just with that information we don't have a
21 case we can take to Court.

22 Q And why is that?

23 A Well, who could point a finger at the accused and
24 say he's guilty of an offence.

25 Q And as far as further investigation work to try



1 and establish the proof, would you rely upon the
2 police department to do that?

3 A If they could, yes. By the time the victim has
4 said I can't identify anyone, it's pretty hard to
5 do more investigating to add to that situation.

6 Q I suppose one way would be to get an admission or
7 confession?

8 A Oh, yes, yes, that would be about the only way.

9 Q What about, and again similar fact evidence might
10 be some evidence that might assist in a case?

11 A It might, but there's a great deal of similarity
12 between quite a different number of rapists and
13 their activities.

14 Q Okay. So again, if we then scroll down, charge
15 number 2, it sets out the details of the offence
16 and again talks about knife point and says the
17 victim was unable to identify Fisher from police
18 photos as her assailant. Again, would you have
19 the same answer to that charge as far as the
20 Crown's ability to prove it?

21 A The same concerns, yes.

22 Q And then scroll down, this is the attempted rape
23 and it sets out the details and says this man was
24 described in his early twenties, small, and could
25 not be identified from police photos as being the



1 culprit in this case. Again, and I'll come back
2 to some confessions that are talked about later in
3 the letter, but just based on this statement about
4 whether the victim can identify Mr. Fisher, again,
5 would you have concerns about your ability to
6 prove that case?

7 A Yes.

8 Q And then the last one, the fourth victim, the
9 bottom:

10 "She has viewed Police photos, including
11 one of Fisher, and states that he
12 appears similar to her assailant,
13 however, it appears that her
14 identification is extremely weak."

15 And again, would you have similar concerns with
16 respect to the ability to prove that case?

17 A Yes.

18 Q And then during October 22, 1970:

19 "... Members of our Force interviewed
20 Fisher while he was confined to cells at
21 the Fort Garry, Manitoba, Police
22 Station. Fisher admitted being
23 responsible for the rape of (V5)--
24 (V5)----- (V5)--- on February 21, 1970,
25 --"



1 And that's this rape right here where she
2 appeared to identify at least in some way,
3 "-- and also the attempted rape of
4 (V3)-- (V3) (V3)----- on November 29,
5 1968. Fisher was questioned about the
6 offences committed on October 21 and
7 November 13, 1968, --"

8 Which are rapes one and two,

9 "-- and denied any knowledge of same."

10 It then goes on to say:

11 "Police investigation revealed that
12 Fisher lived within a block of the
13 locations where these rapes occurred,
14 the description of the culprit is very
15 similar and the modus operandi is the
16 same in all four cases. Fisher claims
17 that he had never heard of these
18 offences being committed, which is hard
19 to believe as they happened within a
20 three week period in the same area and
21 received wide publicity."

22 And then goes on to say that the victims were
23 examined by their doctors. Again, this letter,
24 Mr. Kujawa, would this give you, in your view,
25 sufficient information about the details of the



1 offence against Mr. Fisher, the strength of the
2 Crown's case to enable you to consider
3 Mr. Greenberg's request for filing guilty pleas,
4 providing guilty pleas?

5 A Yes, it would.

6 Q And would you need -- again, the file that we have
7 does not indicate that any police reports
8 regarding the investigation were filed or sent to
9 you. Would that be something that you would need
10 to consider Mr. Greenberg's request to enter
11 guilty pleas?

12 A The sending of police reports would be of no help
13 at all unless they could possibly give me a prima
14 facie case. According to the information here,
15 none of them could.

16 Q And again if we can go back to that document,
17 sorry, again as far as the confessions, and we'll
18 deal with this in a bit more detail, assuming
19 those confessions or these admissions are
20 admissible in Court, would it be fair to say that
21 proving the last two offences, three and four,
22 might be a little easier than the first two?

23 A It might be, yes.

24 Q So that if you had an admissible confession but
25 absent sort of some unusual circumstances, that



1 that would be enough to prove the case?

2 A Well, of course if you have an admissible
3 confession to any crime, you have a good prima
4 facie case.

5 Q And then if we can go to, just for the record,
6 010733, and this is the information for the
7 original charge against Mr. Fisher, and the
8 evidence we have heard, that these were laid
9 December 30, 1970 and while Mr. Fisher was in
10 custody in Winnipeg and that he was never brought
11 before the Provincial Court to answer to these
12 informations because he was in custody. I just
13 want to go ahead, would this be relevant
14 information then for you to consider in your
15 negotiations or discussions with Mr. Greenberg, to
16 know what the charges were in Saskatoon?

17 A I think so, yes.

18 Q And we've also heard some evidence that once
19 direct indictments were filed, which is how this
20 matter proceeded, that in effect these
21 informations would effectively become a nullity,
22 these charges. Would that be your understanding
23 of the law at the time?

24 A Well, if a direct indictment was charged, well,
25 then he was charged with that offence and there's



1 no -- there's no difference between a direct
2 indictment and a committal after a preliminary
3 hearing.

4 Q Now, as well on the file, if we can go to 010721,
5 on your file are typed versions of the two
6 confessions, October 22, 1970, and we've been
7 through these before, they go through and describe
8 where Mr. Fisher confesses to committing an
9 attempted rape and a rape, describes the area
10 where it took place and describes the actions, and
11 I think they are, when you compare the confessions
12 to the circumstances of attempted rape number 3
13 and rape number 4, they are pretty close, it's
14 pretty clear they are talking about the same
15 offences, he doesn't obviously mention the victim
16 by name. Would that be again, these confessions,
17 and the other one is 010724, would that be
18 information then that would be of assistance to
19 you in considering what you are going to do with
20 Mr. Greenberg's offer to plead guilty?

21 A Yes.

22 Q Now, from the file, and again apart from telephone
23 discussions, and let me turn there, I think you
24 said you don't recall your dealings with
25 Mr. Greenberg. Would it be likely or possible in



1 this scenario for you and Mr. Greenberg to have
2 telephone conversations about what his thoughts
3 were, what his views were on your case and vice
4 versa; in other words, the discussions to sort of
5 flesh out where you each stand and where might be
6 an appropriate resolution?

7 A You mean as to sentence?

8 Q Sentence, yes.

9 A Yes, certainly that would have a bearing on that.

10 Q So what I've gone through is the police report to
11 you and the informations and the two confessions,
12 and again, would that be information that would be
13 sufficient in your view, Mr. Kujawa, to consider
14 the appropriateness of what Mr. Greenberg was
15 requesting by way of guilty pleas and some type of
16 sentencing?

17 A Yes.

18 Q If we can then go to what happens in Manitoba, if
19 we can call up 010710, and this is a letter from
20 Mr. Greenberg to Mr. MacKay April 21, 1971, and
21 what the letter indicates, Mr. Kujawa, is that
22 they are going to plead guilty -- dispose of the
23 charges in Manitoba, then dispose of the charges
24 in Saskatchewan once Mr. Fisher is transferred to
25 the Saskatchewan Penitentiary, and again, I think



1 Mr. MacKay, he had dealt with this, and does that
2 sound -- I appreciate you don't have a
3 recollection --

4 A No.

5 Q -- but anything unusual in that procedure, having
6 Mr. Fisher plead guilty in Manitoba, get sent to
7 the Prince Albert Penitentiary and then once in
8 Saskatchewan deal with the Saskatchewan charges?

9 A No, that seems the usual way of doing it.

10 Q And then if we can go to 010691, this is a letter
11 of June 7th, 1971 from Mr. Morton, the Manitoba
12 Crown Attorney, to Mr. Heald, the Attorney
13 General, and this is reporting on what happened in
14 Manitoba and that he was sentenced to 13 years in
15 Manitoba for the two rapes in Manitoba. The rapes
16 in Manitoba were, I'm not sure if I want to
17 describe them as similar to the Saskatchewan
18 rapes, both rapes, one involved a knife, one had
19 the victim bound and struck on a couple of
20 occasions, and so again, are you able to tell us
21 just again, with that bit of brief information,
22 Mr. Kujawa, was 13 years, based on Saskatchewan
23 sentencing principles at the time, what was your
24 view on a 13 year sentence for two rape charges?

25 A Well, my view at that time was 13 years was a very



1 long sentence. We didn't get that sort of thing
2 normally in Saskatchewan for that offence.

3 Q And so if there was one, two, three or four rapes,
4 what was your experience in Saskatchewan as far as
5 the length of sentence for serious rape charges?

6 A Well, if they were provable rape charges, we might
7 be able to extend the total amount of time, but
8 with bringing them in for a guilty plea that way
9 when we didn't have a case to take to Court, then
10 we were not in a position to argue for a longer
11 sentence, and that was my attitude, that boy, if
12 we can clean this up with 13 years, that's a
13 mighty long sentence.

14 Q But just back on the question, again based on your
15 experience before the Courts, was 13 years then
16 for two rape charges, I think you said a very long
17 sentence, would you call it unusual based on
18 Saskatchewan sentencing principles?

19 A I would, and I think I would be quite accurate in
20 saying that.

21 Q And so here Mr. Morton says:

22 "You might wish to advise your crown
23 attorney handling the prosecution of
24 Fisher that at no time was Fisher's
25 Saskatchewan involvement made known to



1 the sentencing Judge and therefore this
2 involvement was not taken into account
3 in his 13 year sentence."

4 Can you tell us, Mr. Kujawa, whether it would
5 even be appropriate to have information about
6 pending charges raised before a sentencing judge
7 on other matters?

8 A Well, the first thing that hit me as you read that
9 was no, it would not be appropriate, it would not
10 be admissible evidence.

11 Q And so are you telling us that when a judge
12 sentences in Manitoba, for example, that whether
13 the accused has pending charges or not in
14 Saskatchewan would, in your view, not be a
15 relevant consideration in sentencing?

16 A In his sentencing, right.

17 Q And then if we can go to 010693, this is
18 Mr. Greenberg's letter to Ken MacKay and it's got,
19 I think Mr. MacKay's evidence was he sent it on to
20 you, and Mr. Greenberg, Fisher's lawyer, talks
21 about the 13 years' imprisonment, and then if you
22 can scroll down to the third paragraph, he says:
23 "We would be pleased to forward to you
24 the pre-sentence report and psychiatric
25 reports which were tendered on the



1 hearing of this matter in Manitoba for
2 your edification and that of the Court
3 in considering the charges in
4 Saskatchewan. We would, however,
5 appreciate your advising as soon as
6 possible when these charges may be
7 disposed of in Saskatchewan."

8 And what the file indicates is that you did in
9 fact receive, or appears to have received from
10 Mr. Greenberg or from the Manitoba Crown Attorney
11 a number of psychiatric reports, pre-sentence
12 reports on Mr. Fisher that appear to have been
13 filed with the Manitoba Court for the purposes of
14 sentencing. Does that sound -- again, do you
15 have any reason to dispute that that was sent to
16 you and on your file?

17 A None whatsoever.

18 Q And just for the record, 010704, and I won't go
19 through this, this is the family history, this is
20 a pre-sentence report prepared for the Manitoba
21 proceedings I think in December of 1970 by a
22 probation officer and it is a six page report.

23 If we can go to 010739, this is
24 the information, the charges that were laid in
25 Manitoba. Would that be something you might want



1 to know in considering Mr. Greenberg's proposed
2 arrangement?

3 A Yes.

4 Q And there's one for each of the charges, I won't
5 go through them.

6 010697 is a report from
7 director, I think it's a psychiatrist if I'm not
8 mistaken, who interviewed Mr. Fisher on behalf of
9 the Crown. And then 010728 -- I'm sorry, that's
10 the same one.

11 010694, this is a report that
12 Mr. Greenberg obtained from his own psychiatrist
13 on Mr. Fisher that was used in the Manitoba
14 sentencing. Again, would that be something that
15 would be of assistance to you in determining
16 whether you should accept Mr. Greenberg's proposed
17 arrangement?

18 A Yes.

19 Q And 0107 -- pardon me, 010696 is a further report
20 to Mr. Greenberg from a psychiatrist.

21 101702 is a follow-up report
22 from the Crown psychiatrist. Again, these
23 documents are on your file, Mr. Kujawa, and would
24 they be something you would consider in
25 considering Mr. Greenberg's proposed arrangement?



1 A Yes, they would all be considered, but none of
2 them would be overwhelming because look at the
3 alternative that I had, which is no charge at all.

4 Q Okay. 010700, this is the pre-sentence report
5 filed in Manitoba. Now, let's just talk about --
6 so again, would it be fair to say that at some
7 point, Mr. Kujawa, you considered what might be
8 the appropriate sentence that you could submit to
9 the Court in Saskatchewan for the disposition of
10 these charges; is that correct?

11 A Yes.

12 Q And what we know from the record is that I think
13 the joint submission from you and Mr. Greenberg
14 was concurrent time; in other words, the 13 years
15 that was sentenced in Manitoba, that there would
16 be concurrent time by the Saskatchewan Court; is
17 that correct?

18 A Yes, we agreed to that.

19 Q And Chief Justice Johnson of the Court would have
20 imposed that sentence at the time?

21 A Right.

22 Q And as far as -- are you able to tell us what
23 might have happened if you would not have agreed
24 to a concurrent sentence; in other words, if you
25 would have said no, I want additional time, do you



1 know what Mr. Greenberg's response would have
2 been?

3 A Well, I think I knew what his response would have
4 been and that is, okay, I have nothing more to say
5 and that's the end of the matter so far as you are
6 concerned.

7 Q And would you then have to go off to Court and
8 prove the cases?

9 A Well, I couldn't go into Court because I didn't
10 have a prima facie case.

11 Q So let's just talk about the process now, and Mr.
12 MacKay touched on that and the distinction between
13 a direct indictment and, if I can call it, the
14 usual procedure, and we've heard evidence that the
15 usual procedure for an indictable offence is that
16 the accused would be charged, appear before a
17 magistrate, make an election if an election were
18 appropriate, set a preliminary hearing date, go to
19 the preliminary hearing, if committed then go to
20 trial, be arraigned and proceed to trial through
21 Queen's Bench Court. Is that a fair description
22 of the usual proceeding?

23 A Yes.

24 Q Can you tell us, in this case it went by direct
25 indictment, but what were the reasons for that?



1 A Well we were simply doing whatever was most
2 expeditious to clean up the matter, matters
3 involved, and we really had no alternative. This
4 was the most efficient, proper way to do it.

5 Q In deciding to go by way of direct indictment were
6 you guided in any way, or did you have any
7 consideration to avoid having Mr. Fisher appear in
8 Saskatoon?

9 A No, that had nothing to do with it at all.

10 Q And I think the indictment was filed in Regina as
11 opposed to Saskatoon where the offences took
12 place; can you tell us why that was?

13 A Because we were expediting it, and it had to be
14 done by the Attorney General, he was in Regina,
15 not in Saskatoon, and he was not going to be
16 forced to travel to Saskatoon to sign a document
17 just to carry out a technicality, in effect,
18 because --

19 Q Could he not have signed the indictment and had
20 you mail it to Saskatoon and had Saskatoon deal
21 with it?

22 A Oh, I suppose that might have been possible, I
23 haven't even thought about it.

24 Q And do you recall any, whether there would have
25 been any discussions with Mr. Greenberg about what



1 might be the most convenient centre for him?

2 A I don't think there was, I don't think it mattered
3 to him at all, well it couldn't matter if we, on
4 behalf of the Crown, said "we'll agree to the
5 13-year sentence", it didn't matter whether it was
6 passed in North Battleford or in Regina.

7 Q But do you know whether he would have had a
8 preference? He was from Winnipeg, would there
9 have been any preference from him as to the
10 location?

11 A Not that I know of, no.

12 Q As far as your convenience, Mr. Kujawa, if you
13 were handling the case, was Regina more convenient
14 to you?

15 A Oh, yes, --

16 Q And --

17 A -- that's where I was.

18 Q What about Mr. Fisher and having Mr. Fisher appear
19 before the Court, I take it he'd have to be
20 present when sentenced?

21 A Right.

22 Q Can you tell us whether Regina or Saskatoon would
23 have been more convenient to have Mr. Fisher
24 travel to?

25 A Well I don't, I don't know about the travel, but



1 someone from the Crown who was handling the direct
2 indictments, etcetera, and the conversation with
3 his counsel was here in Regina -- or pardon me --
4 there in Regina, and it was more convenient, all
5 in all, for us to carry out the technicalities in
6 Regina.

7 Q We've heard some evidence, I think from Mr.
8 Tallis, that the RCMP regularly transported
9 prisoners from Prince Albert to the Regina Court
10 for sentence appeals; do you recall that being the
11 case at the time?

12 A Oh yes, there was a very steady flow of prisoners
13 from, mostly from Prince Albert, the jail and the
14 penitentiary, to the Court of Appeal in Regina,
15 and there was a constant flow of people there, and
16 the RCMP were constantly flying prisoners in and
17 out of Court, so that was a standard bit of work
18 that was being done.

19 Q In proceeding in the charges in Regina, Mr.
20 Kujawa, was there any attempt on your part, or
21 desire, to hide Mr. Fisher and/or his guilty pleas
22 from the Saskatoon public, the Saskatoon Police,
23 and David Milgaard or his counsel?

24 A None.

25 Q In proceeding by way of direct indictment, was



1 there any attempt or desire on your part to
2 deliberately avoid Mr. Fisher appearing in
3 Saskatoon on these matters, whether it be in
4 Magistrate Court or Queen's Bench Court, and for
5 the purposes of keeping the charges against him
6 and his pleas secret from the public, the police,
7 or David Milgaard?

8 A Not, not at all.

9 Q Now 010690 is a memorandum June 25, 1971 from you
10 to Mr. Heald, as he then was, the Attorney
11 General. And we see a similar memo in December of
12 1971 and I'll just go through it for you. This is
13 your memo to the Attorney General seeking to get
14 the direct indictment filed, and so this -- the --
15 my understanding is that June 23rd, '71 was the
16 election, and this would be two days after the
17 election, and I believe the Liberals were defeated
18 and replaced by the NDP, Mr. Heald was a Liberal
19 and was, at some point after this date, replaced
20 by Mr. Romanow; is that correct?

21 A Yes, I don't know about the dates, but that --

22 Q Yeah, so --

23 A But those changes were made.

24 Q And so here you say:

25 "The above was convicted of rape in



1 Manitoba and sentenced to thirteen years
2 imprisonment. Now, through his counsel
3 in Manitoba, he has requested that we
4 dispose of the four outstanding charges
5 against him in Saskatchewan so as to
6 clean up his record and some day be in a
7 position to start anew."

8 And, again, would that be an accurate description
9 of what Mr. Greenberg was asking?

10 A Yes.

11 Q And then you say:

12 "Without his confession in Manitoba, we
13 have no evidence at all on which to
14 charge Fisher but the offences he refers
15 to were committed and reported to the
16 police at the time."

17 And again, we went through the police report and
18 the two confessions, would this statement be
19 based upon the information the police provided
20 you?

21 A I guess so.

22 Q And then you say:

23 "Since this is at the request of the
24 accused and his counsel, I do not think
25 a clearer case for a Direct Indictment



1 can be made out and I would respectfully
2 request that you sign the attached
3 Indictment so we can process this case
4 as soon as Fisher is transferred to the
5 Penitentiary at Prince Albert, which may
6 be within the next day or two."

7 It says here that:

8 "... this is at the request of Mr.
9 Fisher and his counsel ...";

10 was it your understanding that Mr. Greenberg
11 asked for the direct indictment proceeding?

12 A I don't know what form his request took, but I
13 think he was saying "yeah, we want to plead guilty
14 to this", and then he was informed, probably by
15 myself, that the most expeditious way of doing it
16 is through the direct indictment, and he said
17 "well, that's fine, let's go".

18 Q Okay. Now this, this memo did not result in Mr.
19 Heald signing the indictment, and are you able to
20 say; would that be because of the election and the
21 fact that he was, shortly after this memo, no
22 longer the Attorney General, are you able to shed
23 any light on that?

24 A I don't know.

25 Q We now go to 010686. And this is your memo, now,



1 to Mr. Blakeney, who was the Premier at the time
2 but Acting Attorney General because I think
3 Mr. Romanow was away, and again it's similar. You
4 talk about the charges and his request to clean up
5 the record, the same thing about the confessions,
6 and then, if we can scroll down, then you say:

7 "Since the above suggested procedure is
8 at the request of the accused and his
9 counsel, I do not think a clearer case
10 for a direct Indictment can be made out
11 and I would respectfully request that
12 you sign the attached Indictment so we
13 can process this case as planned on
14 December 21, 1971. The accused is
15 anxious to dispose of these charges as
16 soon as possible and we have arranged
17 the above date but require the

18 Indictment before Mr. Romanow gets back
19 ...",

20 and etcetera. And, again, this appears to be
21 similar to the memo you sent to Mr. Heald. Who
22 would have selected the date of December 21,
23 1971; do you know how that would have been
24 selected?

25 A Well, I don't, except someone would have



1 approached the Court of Queen's Bench and asked
2 for a convenient date as soon as possible since
3 they were in a hurry, and a date was fixed, and so
4 they tried to arrange the disposal of the case
5 that -- in that fashion.

6 **Q** So this appears to be December 8th that a date
7 would have been fixed by the Court; is that right?

8 **A** Well that's, I don't know when, but a date was --
9 had to be given by the Court of when it's
10 convenient.

11 **Q** It has been suggested by some, Mr. Kujawa, that
12 the date of December 21 was deliberately set by
13 you as being a date where it was unlikely the
14 media would be in the courtroom because it was
15 close to Christmas; did that happen?

16 **A** That's the most unbelievable statement that I have
17 heard in connection with this whole matter.

18 **Q** And why do you say that?

19 **A** Well why would I begin to pick a special date as
20 the most convenient for whatever improper reasons
21 that I didn't have in the first place.

22 **Q** And as far as media attention, again, would that
23 be of a concern of yours, Mr. Kujawa, whether the
24 media may or may not be in Court when this matter
25 is dealt with?



1 A No.

2 Q Now as far as the, this indictment happening on
3 December of 1971 as opposed to June of 1971, it
4 has been suggested by some that you deliberately
5 delayed the handling of this direct indictment
6 from June '71 to December 1971 for nefarious
7 purposes, in particular to allow Mr. Milgaard's
8 appeal before the Supreme Court of Canada to be
9 dealt with; am -- and I'll come to that a bit
10 later. Again, did you do anything deliberate or
11 take any steps to delay the disposition of Mr.
12 Fisher's charge in the Saskatchewan courts?

13 A No, not a thing.

14 Q Now the indictment itself, 0106669, this is the
15 actual indictment and it suggests that on that
16 date it was before Chief Justice Johnson, he was
17 the Chief Justice of the Court of Queen's Bench at
18 the time?

19 A I think so.

20 Q And it goes on, this would be the Registrar's
21 report, that -- I'm not sure if it's got counsel
22 listed on this, I don't think it does on this
23 indictment. So that this would be the formal
24 indictment that was presented then?

25 A I think so.



1 Q And if we can go to 010680. This is Mr. MacKay's
2 letter to Mr. Greenberg saying, of December 10th,
3 saying "here's the date for the Court hearing". I
4 just point that out for the record.

5 I now want to go to 010685, and
6 this is your memo to file December 24, 1971, and
7 you say:

8 "On December 21, 1971, Larry ... Fisher,
9 represented by Lawrence Greenberg from
10 Winnipeg, (also a member of the
11 Saskatchewan Bar) appeared before
12 Johnson, J. in the Court of Queen's
13 Bench and pleaded guilty to three
14 charges of rape and one charge of
15 indecent assault committed in Saskatoon.
16 He had earlier this year received a
17 thirteen-year sentence in Winnipeg for
18 rape and wanted to clear all outstanding
19 charges against him. Without his
20 confession in Winnipeg we had no case at
21 all against him and the confession would
22 not likely be held to be voluntary.

23 I asked for nothing more than a
24 concurrent and Judge Johnson readily
25 complied assessing a total of four and a



1 half years on these offences."

2 Now, again, this comment here about, let's put
3 aside the voluntariness for a moment, I think you
4 are saying:

5 "Without his confession in Winnipeg we
6 had no case at all against him ...",
7 and that, was that your view at the time, that if
8 you couldn't use the confessions to two of the
9 four, you couldn't prove a *prima facie* case
10 against him; would that have been your view?

11 A Yes.

12 Q Now you say here that:

13 "... the confession would not likely be
14 held to be voluntary.";

15 are you able to tell us on what basis you would
16 have made that statement?

17 A No, I don't know the details for saying that, but
18 --

19 Q We -- oh, I'm sorry?

20 A -- but I do know that, in order to get a
21 confession for a serious crime admitted, you have
22 to have a pretty clear case of voluntariness
23 before you could even present it with respect to
24 the Court.

25 Q We've heard evidence from Larry Fisher and



1 Mr. Greenberg on the issue of the confessions, and
2 Mr. Fisher testified that shortly prior to his
3 confessions he was beaten by some prison guards,
4 and that that influenced his decision to go
5 initially to the Fort Garry Police and confess,
6 and then later he provided, I think the next day,
7 a similar confession of two charges to Mr. Karst.
8 Mr. Greenberg testified that he was Mr. Fisher's
9 counsel at the time the confessions were made and
10 that he was not advised or made aware of the fact
11 that the police were talking to him, and he took
12 objection to the fact that the police would be
13 getting a confession from his client, I think his
14 words were "behind his back" or something to that
15 effect. Again, if -- is that the type of
16 information, Mr. Kujawa, that might cause you to
17 think that the confessions were not voluntary?

18 A It's the type of a situation which would convince
19 me that I couldn't make out a *prima facie* case of
20 voluntariness.

21 Q Now I appreciate you don't have a memory of your
22 dealings with Mr. Greenberg, but is it possible
23 that in your discussions with Mr. Greenberg this
24 information might have been conveyed to you by
25 Mr. Greenberg in an effort to dissuade you from --



1 or persuade you that you couldn't prove your case
2 against him?

3 A That might have been made, or must have been made,
4 or maybe I got information amounting to that from
5 the police officer who did the actual questioning,
6 I don't know.

7 Q And so again, as far as your position on
8 sentencing, it says from this memo that you did
9 not seek concurrent time -- or pardon me, you
10 sought, you were okay with concurrent time, you
11 didn't seek additional time; is that correct?

12 A Correct.

13 Q And if you would have been able to prove the four
14 rape charges against Mr. Fisher, if you had a
15 *prima facie* case and had no concerns about proving
16 the case, are you able to tell us whether you
17 think, if you would have gone that route, you
18 might have been able to get additional time over
19 and above the 13 years? And I'm just talking
20 about sentencing principles, that if Mr. Greenberg
21 would have said "lookit, I'll plead guilty, I
22 don't care what you say to sentence", do you think
23 you could have got the Court to order more time
24 based upon your experience before the courts in
25 Saskatchewan on rape charges?



1 A I certainly don't know with any degree of
2 certainty, but I, all I remember is that 13 years
3 for rape, in those years, sounded like a pretty
4 long, hard, impressive sentence, so I wouldn't bet
5 much in favour of us getting a greater sentence,
6 even if I had that possibility to ask for it.

7 Q And secondly, and I think you've already touched
8 on this, would you have been motivated in your
9 thinking on this matter by the fact that you may
10 have had concerns about your ability to prove the
11 case; in other words if you were of the view that
12 "I don't think I can prove the four rape charges,
13 I don't think I can get any conviction", would
14 that have influenced your thinking on sentencing?

15 A Well if I may, it's not -- it wasn't a case of I
16 didn't think I could prove it, I knew I couldn't
17 prove it, and that certainly had a great
18 impression on me as to my stand on sentence.

19 Q Now it has been suggested I think explicitly and
20 implicitly, Mr. Kujawa, that, by some, that in
21 some way your position on sentencing when Mr.
22 Fisher appeared before the Saskatchewan Court was
23 some part of an arrangement, a deal or a
24 conspiracy or a coverup, to keep Mr. Fisher -- I'm
25 not sure I can quite detail it for you -- but it's



1 some part of some nefarious activity to keep Mr.
2 Fisher from the public eye, and a part of that is
3 essentially rolling over on the sentence before
4 the Saskatchewan Court, and so I want to ask you
5 the following question: Did you have any -- did
6 any of that happen, were you influenced by any
7 desire to keep Mr. Fisher from the public eye and
8 agree to a sentence or to submit to a sentence
9 that you otherwise wouldn't?

10 A No.

11 COMMISSIONER MacCALLUM: Could I have the
12 doc. ID on that memo, please?

13 MR. HODSON: Yes, it's 010685. Now --

14 COMMISSIONER MacCALLUM: Mr. Hodson, I
15 don't know if it matters anything, but I don't
16 really think Justice Johnson was Chief at that
17 time, wasn't Bence still the Chief?

18 MR. HODSON: Ah, that's -- I could be
19 mistaken on it. He later, yeah, he later became
20 Chief Justice, I stand to be corrected on that.
21 Anybody --

22 MR. WILSON: He was then.

23 MR. HODSON: He was then?

24 MR. WILSON: Yes.

25 MR. HODSON: Mr. Wilson tells me that he



1 was Chief Justice then, so I'll maybe check that.

2 COMMISSIONER MacCALLUM: Okay.

3 MR. HODSON: He may well have.

4 COMMISSIONER MacCALLUM: As I say, I don't
5 know if it matters, but the prestige of his
6 position might be relevant.

7 BY MR. HODSON:

8 Q Now, again, we are done with that document. We
9 talked yesterday about the number of files that
10 you handled on a yearly basis, and I think we were
11 400, 450 files. Where would -- can you tell us
12 the relative significance of the Larry Fisher plea
13 arrangement, where would it fit in with the other
14 files you were handling at the time as far as
15 significance? And I appreciate that all your
16 work, I'm sure you'll say, is significant, but can
17 you give us some idea of where, where and how that
18 fit in with your other files?

19 A Well it fitted in, as we were dealing with
20 important crimes and injured people that made it
21 significant, but the fact that I didn't have much
22 alternative in how I could deal with that lessened
23 the importance of that file on my desk because
24 there was a limit to what I could do with it.

25 Q And, no, and I guess my question is that was this



1 a significant matter compared to the other files
2 that you were handling or did you view this as a
3 routine matter?

4 A Well, the fact that I had very little choice in
5 the matter made it fairly routine.

6 Q And Mr. Commissioner, I know it's earlier than the
7 break time, but maybe if we could just take, I
8 think we may just take, go for an hour and take a
9 ten-minute break; would that be fine?

10 COMMISSIONER MacCALLUM: That would be
11 fine, yes.

12 *(Adjourned at 9:57 a.m.)*

13 *(Reconvened at 10:16 a.m.)*

14 BY MR. HODSON:

15 Q Mr. Kujawa, when I went through the Crown file on
16 the Larry Fisher matter I went through some
17 documents which included the March 17th, 1971
18 letter from the Saskatoon police to Mr. MacKay and
19 that's the one that talked about the four charges
20 and talked about the confessions that Mr. Fisher
21 provided to two of the charges. That letter
22 indicates that there were enclosures, but it
23 doesn't list them, what there was, and I'm
24 speculating here, but if we assume that that's
25 when you received Mr. Fisher's confessions, does



1 that sound logical, that when the police sent you
2 the information telling you about Mr. Fisher's
3 confessions --

4 A Yes.

5 Q Do you recall or do you know, are you able to tell
6 us whether you would have received either the
7 confessions themselves or information on the
8 confessions prior to the police sending you that
9 information in March of 1971?

10 A I don't know.

11 Q Prior to Mr. Greenberg contacting your office
12 seeking to make an arrangement with respect to Mr.
13 Fisher's charges, I think that's the first
14 indication that the Regina head office would be
15 involved on Mr. Fisher's charges. Are you aware
16 of any reason why you would either get
17 information, get the confessions that Mr. Fisher
18 gave on these cases a number of months prior?

19 A Not that I know of, no.

20 Q So if we go through just the time line, I've gone
21 through your handling of the David Milgaard file
22 in 1971 and as well your handling of the Fisher
23 file in 1971, and I think if we go through, and
24 I'll just go through I think what you've told us
25 as far as the time and the dates, the Milgaard,



1 the David Milgaard appeal was argued before the
2 Court of Appeal on November the 6th, 1970 and the
3 decision was rendered January 5, 1971. It would
4 appear that your first involvement on the Larry
5 Fisher matter would be, at the earliest, March of
6 1971, and that may have simply been Mr. MacKay,
7 but in and around that time when matters started.
8 July of 1971 Mr. Milgaard would have made an
9 application for an extension of time to seek leave
10 to appeal before the Supreme Court of Canada and
11 November 15 of 1971 I think you told us you would
12 have appeared before the Supreme Court when that
13 application was dismissed, and then December,
14 December 21, 1970, and the weeks prior, would have
15 been the disposition of Mr. Fisher's charges, so
16 it would appear that during 1971, for a number of
17 months, Mr. Kujawa, that you were involved in
18 dealings on both the David Milgaard file, being
19 the application for leave to the Supreme Court of
20 Canada, and as well dealing with Mr. Fisher's
21 charges in Saskatchewan.

22 And can you tell us, are you
23 able to tell us whether in 1971, while you had
24 involvement in these two files, did you ever draw
25 a connection in 1971 between the files?



1 A No, I didn't.

2 Q And in particular did you ever consider whether
3 Larry Fisher might be the killer of Gail Miller,
4 that connection?

5 A No, I didn't.

6 Q And let me go a bit further. Was it a case of --
7 and let me give you two scenarios and you tell me
8 what it was, was it a case of, number 1, where you
9 didn't draw a connection and didn't even sit down
10 and consider the two files together, or secondly,
11 you consciously sat down, looked at the two files
12 and made a decision I don't think they are
13 connected? Can you tell me which one of those
14 happened?

15 A I think it was the first one.

16 Q In 1971 were you aware that in the initial stages
17 of the police investigation of the Gail Miller
18 murder, the police suspected that the person who
19 committed two rapes and one attempted rape in the
20 months prior to the murder may have been the
21 perpetrator of the Gail Miller murder?

22 A I didn't know that.

23 Q Were you aware that Larry Fisher was being charged
24 with the two rapes and attempted rape that the
25 police thought may have been connected to the Gail



1 Miller murder?

2 A Didn't know.

3 Q Were you aware at the time of the Gail Miller
4 murder Larry Fisher lived in the basement of the
5 Albert Cadrain house, 334 Avenue O South, where
6 David Milgaard and his travelling companions
7 attended on the morning of the murder?

8 A No.

9 Q Were you aware in 1971 of any information that
10 suggested Larry Fisher may have been responsible
11 for Gail Miller's murder?

12 A No, I wasn't.

13 Q Were you aware of any information that caused you
14 to doubt the propriety of David Milgaard's
15 conviction in 1971?

16 A No.

17 Q If in 1971 you had been aware, or had been made
18 aware, and again I want to take you back to your
19 dealings with, your dealings with the two files,
20 being the David Milgaard appeal and the Larry
21 Fisher charges, if you had been aware of the
22 following, number 1, that in the initial stages of
23 the police investigation of the Gail Miller murder
24 the police suspected that the person who committed
25 the two rapes and one attempted rape in the months



1 prior to the murder may have been the perpetrator,
2 and that secondly, that those were the rapes that
3 Mr. Fisher was pleading guilty to, and that at the
4 time of the murder, Gail Miller's murder, Mr.
5 Fisher lived in the basement of the Cadrain house
6 a block and a half from the murder scene, or from
7 where the body was found, and the same house where
8 Mr. Milgaard and his travelling companions were
9 the morning of the murder, if you had been aware
10 of that information in 1971 in your dealings with
11 these two files, what if anything would you have
12 done with it.

13 A Well, if I was aware of that and thought that this
14 may have been, that Fisher was involved in this
15 particular case, I would have asked whatever
16 police were available to me to look into that and
17 find out for sure if they could, that's what I
18 would have tried to do.

19 Q And if the police came back to you and said yes,
20 we did look at a, we did think initially that the
21 rapist was the murderer and the rapist who
22 committed the rapes that Larry Fisher plead
23 guilty, or was going to plead guilty to, and two,
24 he did live in the basement of the Cadrain house
25 and confirmed those facts, can you tell us what if



1 anything you would have done with that
2 information?

3 A Well, again, I would have asked for further
4 looking into of all details of his possible
5 involvement because I think I would have gotten
6 suspicious if I would have known all of that at
7 that time.

8 Q And would you have communicated any of this
9 information to Mr. Tallis, being David Milgaard's
10 lawyer?

11 A I think I would have, yes.

12 Q Why?

13 A Well, because if there was some justification for
14 believing that there might be someone else, he
15 would be the first person to be really interested
16 in it and he, with his experience, might be able
17 to do something about it in a hurry.

18 Q And so again, would this type of information then,
19 what I've described to you about the connection,
20 if I can call it, that the police drew between the
21 rapes and the murder and Mr. Fisher's residence
22 and the fact that he pled guilty to those rapes,
23 would that be -- would that be relevant
24 information, would you consider that to be
25 relevant in the David Milgaard matter?



1 A I think if I would have thought of it in that
2 sense, I would have considered it relevant, yes.

3 Q And as a prosecutor then, what would you do with
4 that information?

5 A Try and investigate it down to the bottom to find
6 out who did what, and what, how we could prove it.

7 Q And again, as far as your dealings with defence
8 counsel?

9 A Keep him informed of what looks like an issue
10 here, a problem that needs solving and see what
11 kind of help he could offer, not only to his
12 client, but to the public of Saskatchewan.

13 Q It has been suggested by some, Mr. Kujawa, that
14 you in fact did draw a connection between the two
15 cases and you deliberately suppressed and withheld
16 the Fisher information from Mr. Tallis. How do
17 you respond to that suggestion?

18 A Well, that's a very nasty suggestion and a very
19 improper reading of my mind and my integrity and
20 it says a lot about the people who made that
21 suggestion.

22 Q And do you deny that?

23 A Yes, I totally deny that.

24 Q If you would have made the connection and found
25 some relevance to this, would there be any



1 advantage to you, sir, in not providing it to
2 Mr. Tallis?

3 A I can't see any such advantage, no.

4 Q Would you be concerned if you learned information
5 in 1971 that a person convicted of a crime may in
6 fact be innocent, would that be of concern to you?

7 A Yes, it would.

8 Q Why?

9 A Because being convicted of a crime that you didn't
10 commit is a pretty horrible circumstance to live
11 with, and if society helped bring this on, and I'm
12 a representative of society, that's going to hurt
13 me along the way.

14 Q There's also been -- what about the suggestion
15 that, and I'm not sure if I can put it as others
16 have put it, but to the effect that you may have
17 had a belief that Mr. Milgaard was guilty and that
18 this information on Mr. Fisher might be used by
19 Mr. Tallis to get a guilty person out of jail, or
20 to get him acquitted, do you follow the nature of
21 that suggestion or allegation that has been made
22 and, if so, how do you respond to that?

23 A Well, I wouldn't suspect Cal Tallis of doing
24 anything improper in any case he has ever dealt
25 with.



1 Q After the files were done in 1971, after you are
2 done with David Milgaard in November of 1971, did
3 you ever have reason to go back to that file for
4 any reason prior to your retirement in 1989?

5 A I don't think so, no.

6 Q And after you were done with Larry Fisher's file
7 in December of 1971, did you ever have reason to
8 go back to that file for any reason prior to your
9 retirement in 1989?

10 A No.

11 Q And again back, I think we talked about the number
12 of files, again back in 1971 I think you told us
13 yesterday that the David Milgaard file and the
14 Larry Fisher file that you handled in 1971 would
15 be two of, I think, about 450, is that right, or
16 in excess of 400?

17 A Somewhere in there, yes.

18 Q And over the course of the following years, I
19 guess the following 20 years of your work, would
20 that number -- would that be a fair representation
21 of the number of files you would have handled in
22 each year, or did it go up and down?

23 A I think it stayed about the same place, because
24 all I remember is that I kept extremely busy
25 throughout those years.



1 Q And so again as far as over the course of a 29 or
2 30 year career, again I think if, would it be fair
3 to say that the number of files you would have
4 handled would be in the thousands, perhaps in
5 excess of 10,000 files where you were counsel of
6 record on a criminal matter in Saskatchewan?

7 A I would say so, yes.

8 Q I want to turn to 1971 after you were done with
9 the David Milgaard matter, you would have been in
10 a senior position with the prosecution's branch in
11 the Government of Saskatchewan until your
12 retirement in 1989; is that correct?

13 A Yes.

14 Q After Mr. Milgaard's application for leave to
15 dismiss, or leave to -- his application for an
16 extension of time and leave to appeal to the
17 Supreme Court was dismissed, so let's take it 1972
18 to 1989, did anyone on behalf of David Milgaard
19 contact you, or anybody else at the Attorney
20 General's office to your knowledge, to raise a
21 question about the conviction?

22 A Not that I remember, no.

23 Q We have heard evidence from Gary Young who was a
24 lawyer that represented David Milgaard in 1980 or
25 '81 I think and we saw some correspondence between



1 Mr. Young and the Saskatoon City Police. Mr.
2 Young wrote to the city police saying he was
3 representing David Milgaard, David Milgaard
4 contended he was innocent and was wrongly
5 convicted and he wanted the Saskatoon City Police
6 to provide, amongst other things, access to the
7 police files so that they could review matters to
8 pursue their claim of wrongful conviction and the
9 chief of police got back to Mr. Young and said to
10 the effect that lookit, no, we don't normally give
11 out our police files, however, if you go to the
12 Attorney General's Department and they tell us to,
13 and I'm paraphrasing, if they tell us to, we'll do
14 what they tell us, or words to that effect, and in
15 other words, let the Attorney General decide. If
16 legal counsel on behalf of Mr. Milgaard had come
17 to you or to the Attorney General's office in the
18 early 1980s and said we think there's been a
19 mistake, we think David Milgaard is wrongfully
20 convicted and we would like an opportunity to
21 pursue this and we would like to have you, Mr.
22 Kujawa, or you, Attorney General's office, assist
23 us in getting access to the police files or the
24 prosecutor files for our lawyer to look because we
25 think an injustice has been done, can you tell us



1 how you might have responded to that type of
2 request?

3 A Oh, I think I would have responded by saying okay,
4 I'll ask the police to give the information you
5 seek. Maybe not necessarily every detail that
6 they have, that some of it might be confidential
7 stuff that they are not free to disclose, I don't
8 know about that, but generally I would ask the
9 police to help you out as best they can, and if
10 they don't give you enough help, come back and
11 we'll see what more we can do.

12 Q And why would you do that?

13 A Because it seems like the proper thing to do.
14 When you are working in the Department of Justice,
15 you should be just.

16 Q And, Mr. Kujawa, would you, and do you and did you
17 acknowledge that, and I'm going to use the word
18 system, and when I mean system, I mean the legal
19 system, being the Court system, the *Criminal Code*
20 and our legal system, did you and do you
21 acknowledge that that system, as far as dealing
22 with criminal charges, is not perfect and that
23 mistakes are sometimes made?

24 A Oh, no human system that I know of is perfect.

25 Q And that there are people who are wrongfully



1 convicted by the system, if I can call it that?

2 A I think there's some, yes.

3 Q And so again, would you have any difficulty with a
4 person coming forward to you as a representative
5 of the Attorney General's office and raising that
6 type of issue?

7 A No, I don't think so.

8 Q Now, in August of 1991, and I think you would have
9 been retired for about two years, the David
10 Milgaard matter was getting a fair bit of
11 attention in the media and there was an
12 application to the Federal Minister of Justice,
13 actually, two applications, and the matter went to
14 the Supreme Court, and I'll get into some
15 specifics, but would you have been generally aware
16 at that time that David Milgaard's quest to set
17 aside his conviction was getting some play in the
18 media?

19 A Yes, just that it was getting some play, but I
20 didn't know what the play was or the details of
21 it.

22 Q Okay. And before we get -- I want to go, and I'll
23 go there in a minute, to some of the comments that
24 you made in the media and some of the exchanges
25 between you and Mr. Wolch and Mr. Asper, but



1 before I do that, I just want to cover some ground
2 here. I think you would have been aware and are
3 aware that the system, and again when I mean the
4 system, I'm talking about the laws, the legal
5 system, the courts, that would allow a person to
6 make an application to the Federal Minister of
7 Justice for relief if they think they've been
8 wrongfully convicted. You are aware of that?

9 A Yes.

10 Q And I think you've told us you accept that
11 mistakes can be made, I think you said any human
12 system makes mistakes, so that it's possible that
13 a person convicted of a crime might be innocent,
14 that's a possibility?

15 A Yes.

16 Q And would you agree that under the system, that a
17 person has a right to apply to the Minister of
18 Federal Justice for relief, a convicted person who
19 asserts that he's been wrongfully convicted?

20 A Yes.

21 Q And that as part of that system, and again we've
22 heard some evidence, and I'm sure we'll hear more
23 about that system, but the Section 690 system at
24 the time allowed a convicted person to put forward
25 evidence to the Federal Minister as the basis to



1 argue a miscarriage of justice, you would have
2 been aware of that; is that correct?

3 A Yes.

4 Q And that lastly, that the Federal Minister of
5 Justice could consider and grant relief if he or
6 she saw fit and send the matter to the Court for
7 an opinion or take other steps. Would you have
8 been generally aware of that?

9 A Yes, just generally.

10 Q And if there had been a miscarriage of justice and
11 a person wrongfully convicted, Mr. Kujawa, do you
12 have any difficulty with a person in that
13 circumstance claiming wrongful conviction and
14 seeking relief within the system?

15 A No.

16 Q And would you go further and that if, agree that
17 if the system convicts an innocent person or if
18 there's otherwise a miscarriage of justice in the
19 proceedings that convicted a person, that it would
20 be important to fix that miscarriage of justice?

21 A Oh, yes.

22 Q We talked about the system at trial being
23 imperfect and that it might make mistakes and
24 convict an innocent person. Let's take a look at
25 the system that's supposed to undo the mistake, if



1 I can call it that, the Section 690 where the
2 convicted person gets relief, and again, would you
3 agree that that system might also be capable of
4 mistakes again because mistakes are made by
5 humans?

6 A Oh, yes.

7 Q Now, notwithstanding -- I think -- so what you are
8 saying is the system, the trial system and the
9 re-opening system isn't perfect and can make
10 mistakes; would you agree with that?

11 A It's possible for it to make mistakes, yes.

12 Q And notwithstanding that, Mr. Kujawa, what's your
13 general belief or view about the system in
14 general, and even though it can make those
15 mistakes, what is your view as to whether or not
16 it's a good system?

17 A Generally I assume that all of our system is a
18 good system, but I think there are things that get
19 into it that were not really meant to be a part of
20 the system and that is the excessive interest that
21 certain persons or media types can put into the
22 system and have an impact on the system. That is
23 what I think is one of the most obvious weaknesses
24 in it.

25 Q Okay, and we'll go through that. If I can just



1 try and get -- let's go through, before we get to
2 the articles, go through some points and get you
3 to comment on them and see if we can get your
4 position on a couple of these points, and I think,
5 Mr. Kujawa, you'll agree that you expressed some
6 of these opinions in the media, 1991, 1992; is
7 that correct?

8 A To some degree, yes. I kind of remember it.

9 Q And let's talk about, number 1, did you take
10 issue, or do you take issue with the fact that
11 David Milgaard would seek a remedy under Section
12 690, do you have any concerns with the fact that
13 he would assert a position, and forgetting about
14 for a moment how he did it, but just the fact that
15 he would take that step and seek a remedy before
16 the Federal Minister, did you have any issue with
17 that?

18 A No, not if he felt that he was wrongfully dealt
19 with.

20 Q Number 2, did you have concerns or take issue with
21 the manner in which David Milgaard and his legal
22 counsel were seeking a remedy and, in particular,
23 their utilization of the media in their efforts to
24 seek a remedy?

25 A Well, I don't pretend to know all about what was



1 going on, and I didn't try to follow it that
2 closely, but the question that kept hitting me was
3 that there was so much media impact in this whole
4 area, that's one of the reasons that I paid so
5 little attention to it, because I didn't think
6 that was a great quality in that area of justice.

7 Q And why did you have concerns about the role the
8 media played?

9 A Because a whole lot of the people who were making
10 all of the noise in the media were not qualified
11 to express much opinion on judicial matters and
12 yet they were blasting away.

13 Q And so did you have concerns about the type of
14 information that was being put out in the media?

15 A The type of information, the quality of it and the
16 loudness of it, yes.

17 Q When you say quality, is that reliability?

18 A Reliability. In other words, a lack of insight is
19 the lack of quality that I'm concerned about.

20 Q Mr. Asper testified last week, he's not finished,
21 but I think his, what he has told us so far is
22 that part of what they were doing was, and he
23 didn't like the word utilize, but engaging the
24 media to publicize the case, to put pressure on
25 the public, to influence the public in a positive



1 way to put pressure on the politicians so that Mr.
2 Milgaard could get a remedy, and do you have a
3 concern with that type of approach to the Section
4 690 proceeding? Is that something you took issue
5 with?

6 A Well, not so much take issue with it, but I
7 question the validity of that kind of public
8 pressure on a judicial system, and that's pressure
9 from an area which doesn't have the information
10 and knowledge and background that the justice
11 system should have, and even though the justice
12 system is a highly-qualified system, we've all
13 admitted that it can make mistakes. Well, if it
14 can make mistakes, then the judicial system,
15 getting into that area where it doesn't belong can
16 make greater mistakes and more violent ones.

17 Q And did you have concerns about those on behalf of
18 David Milgaard, and I think the term used was
19 arguing his case through the media?

20 A I thought there was from the bits and pieces, and
21 I didn't get a reliable report and I didn't try to
22 get a reliable report, but from the bits and
23 pieces I picked up I thought that was overdone by
24 them, yes.

25 Q And again just from a, and you made comments and



1 we'll get into that, what was it that concerned
2 you, why were you concerned that they would be
3 making these, or arguing their case in the media?

4 A Well, I thought that cases of this kind should be
5 argued in the justice system, not in the media
6 system.

7 Q And did you have concerns that arguing a case in
8 the media might have an impact on the system
9 itself?

10 A If the media gave it enough pressure, it had to
11 have some effect on the system, yes.

12 Q Now, we also see that there were, through this
13 time frame, allegations made by counsel for David
14 Milgaard against a number of individuals and
15 relating to a number of different matters, and
16 again I think you were engaged in some debates on
17 that. Can you tell us just generally what
18 concerns you had with those types of allegations
19 being made in the media?

20 A Well, I thought I heard allegations to the effect
21 that I was doing some covering up for God knows
22 what and for who and why and I thought that those
23 comments about my honesty and decency and
24 understanding about what was going on was highly
25 criminal, improper, inhuman behaviour, and I made



1 comments to that effect. Sometimes I used
2 expressions I shouldn't have used, but I was
3 expressing the feelings that I felt then, and
4 still do.

5 **Q** And were you upset by the allegations against you?

6 **A** To some degree, yes, and usually not for long
7 term, but every once in a while I would pop off as
8 I guess we all know.

9 **Q** And did that influence your response on occasion
10 in the media?

11 **A** Well, only that I failed to contain my ideas and
12 emotions.

13 **Q** We also saw, and we've seen in some of the media
14 articles various allegations about the validity of
15 evidence, for example, the reliability of
16 witnesses and challenges to evidence that's put in
17 at the trial, things of that nature. Did you have
18 a concern with that being put forward in the
19 public domain through the media and having those
20 issues argued in the media, for lack of a better
21 word?

22 **A** Well, to have someone say out there in public that
23 you lied or cheated or stole is not a pleasant
24 thing to hear and I guess all I'm saying is I
25 experienced it every once in a while.



1 Q There was also some comment about, and I think,
2 and we'll get to the article specifically, but one
3 of the concerns that I think you repeated on a
4 number of occasions was that, words to the effect
5 that you would never want your original trial to
6 be argued in the media, your case to be decided in
7 the media; is that something that you said or
8 believed at the time?

9 A Well I certainly believe that, yes.

10 Q And, again, can you tell us; what are some of the
11 concerns you had where a legal issue, whether it
12 be the trial, someone's guilt or innocence at
13 trial or whether the legal system that's looking
14 at whether the original conviction was right, what
15 were some of the concerns that you had about the
16 pros and the cons and the merits of that
17 application being argued in the media or being --
18 using the media to influence the outcome?

19 A Well, I thought that was, that belonged in the
20 justice system and not in the great media system.

21 Q And so, and again if -- I'm sorry, did I cut you
22 off?

23 A Well I said I thought that. I guess all I was
24 gonna add is I still think that that's the way it
25 should be, that the justice matters should be



1 dealt with by the justice system, which should
2 admit that it's less than perfect and should be
3 willing to review what has been done and is now
4 questioned.

5 **Q** Now what about, and again you express some concern
6 in these articles about the media itself, and two
7 things, one is their accurate reporting of
8 information, and secondly, their interest in the
9 matter; can you comment on that?

10 **A** Oh, I think they went beyond their competence on
11 one or two occasions, yes.

12 **Q** And did you have concerns about the media getting
13 the information correct that was conveyed by you
14 and others?

15 **A** Well I don't think that -- I don't know how they
16 were getting, how they were using information that
17 they got, I just don't know.

18 **Q** Did you have concerns about whether the media
19 would capture, for example, what you said and
20 report it completely and accurately?

21 **A** Yes, I did have concern about that.

22 **Q** And did you express concerns about -- and I think
23 that, and again I will take you to some of this
24 when we go through the articles about the interest
25 the media would have in the matter by way of



1 headlines, for example, in this case?

2 A Well it seems that they had that, yes.

3 Q Did you have concerns about, if the case were to
4 be argued in the media, about whether both sides
5 would -- maybe 'sides' -- all sides, for lack of a
6 better word, would be out there in the public
7 domain?

8 A Would I have concerns about that?

9 Q Yes?

10 A To some degree, yes.

11 Q Now I want to turn to the Federal Minister's
12 response. And again, what we know is that the
13 first application was rejected by Minister Kim
14 Campbell, and then in November 1991 she directed a
15 reference to the Supreme Court of Canada, and the
16 reference case took place in April. Did you have
17 any concern about that process, about what may
18 have prompted the Minister to send the case to the
19 Court?

20 A I knew very little about it, I didn't know really
21 what was going on at all, I knew that this sort of
22 an order had been made and that's about it.

23 Q And did you have any concern with this, with the
24 matter being referred to the Supreme Court?

25 A Well it -- no, that was part of the law, that --



1 to be -- to refer it for that kind of a
2 consideration, but who should influence the
3 Supreme Court or the Minister of Justice to take
4 that step is the thing that I was a bit concerned
5 about.

6 Q And what concerns did you have?

7 A That a whole lot of the people that were pushing
8 for that kind of an inquiry were not qualified to
9 express opinions on that inquiry, or the justice
10 system, or the legal system, and so they shouldn't
11 have been acting as if they had the last word on
12 it.

13 Q And is it fair to say that you didn't have a
14 concern with an application being made, the
15 Minister considering it within the system on the
16 merits and sending it to The Court, and The Court
17 dealing with it in accordance with the system on
18 the merits; did you take issue with any of that?

19 A No. I think that was a part of the, part of our
20 law, we were stuck with it.

21 Q And so is it fair to summarize, generally, your
22 concerns were that where it went beyond that,
23 where the media was used to influence the Federal
24 Minister or The Court in dealing with the matter?

25 A I had the feeling that the media had pushed it



1 beyond where it should have been pushed.

2 **Q** Now we talked about the person who complains to be
3 wrongfully convicted and the mistakes the system
4 can make at the initial stage, and I think you
5 acknowledged that on the re-opening stage, the
6 Section 690, that mistakes can also be made there.
7 What -- I wouldn't mind your comment on where a
8 person who believes the system failed him
9 initially in convicting him, and then believes
10 rightly or wrongly that the system that's supposed
11 to fix the first mistake has also failed him or
12 will fail him, so in other words that he -- and,
13 as I say, rightly or wrongly -- believes that the
14 system has failed him, and again I'm probably
15 over-simplifying it, but what's your reaction to
16 that, for that person to then say "well, okay, the
17 system has failed me twice, I've now got to go to
18 the public to put pressure on the system because
19 I'm in jail and it's failed me twice"?

20 **A** Well then, if that is so and that's true, maybe he
21 has, he or she has no choice but to do that, and
22 maybe the move by the media and everybody else was
23 the thing that society should be grateful for.

24 **Q** If we go to, I want to now go to the 1991 time
25 period and get some, or go through some articles.



1 And I think, at that time, you would have been
2 retired for two years. I earlier asked you the
3 question whether, after 1971 when you were
4 finished with the David Milgaard and Larry Fisher
5 files, whether you ever went back to the files and
6 reviewed them, you said "no", you didn't think you
7 did. After you retired and left Prosecutions
8 Branch would you have had any reason to go back
9 and look at those files for any reason?

10 A No, I didn't.

11 Q And so would it be fair to say that, and when we
12 go through these articles, 1991, 1992, that, other
13 than what you had looked at in 1971 when you were
14 doing your work, had you looked at anything else
15 regarding the details or facts or files relating
16 to David Milgaard and Larry Fisher?

17 A No, not that I remember.

18 Q Now if we start, 004616, please. This is August
19 20th, 1991, it's a *Leader-Post* article, and it may
20 be that you were quoted earlier, I'm not, I can't
21 say for certain, but I think that this is likely
22 where it starts. And just to assist you, Mr.
23 Kujawa, I'll give you a bit of background as far
24 as timing. This is dated August 20, 1991, David
25 Milgaard applied to the Minister of Justice on



1 December 28th, 1988, and on February 27th, 1991
2 the Minister rejected the application. And so on
3 August 14th, which is right around the time of
4 this article, he applied again to the Minister, a
5 second application for relief under 690, and there
6 was a fair bit of publicity in the media around
7 this time about, I think, about the case, and I
8 think the people on behalf of Milgaard had
9 asserted that, right around this time, that Larry
10 Fisher was the killer and that David Milgaard had
11 been framed. I think Mr. McCloskey said it on
12 August 16th, so that was out in the media at this
13 time, and again, I don't propose to go through all
14 of that because there is a fair bit of it, but
15 that's what was the publicity at the time. And
16 there's some comments you made here; did you ever
17 go and seek out the media or were you responding
18 to their request to you?

19 A I certainly, I certainly did not go out and seek
20 the media.

21 Q Would it be fair to say that from time to time you
22 were a good quote, Mr. Kujawa?

23 A Well, a nasty quote is often a successful one,
24 from the media's point of view. I don't know.
25 I've made a lot of quotes I shouldn't have made.



1 Q And here we go through, and you are asked the
2 question, maybe just go up a bit. It says:

3 "What still bothers him about the case
4 today is Milgaard's failure to take the
5 stand in his own defence."

6 And it says:

7 "'Can you imagine . . . being charged
8 with murder and not wanting at least to
9 have your family and friends hear you
10 say, 'I didn't do it',' he asked."

11 Can you tell us, what, was that a significant
12 matter to you when you were looking at David
13 Milgaard's, the merits of his claim, if I can
14 call it that, at this time?

15 A Yes, it was a significant matter for me, and even
16 to the judicial system. The trial judge, in a
17 jury case of murder, could make -- point out to
18 the jury that they could draw some inferences from
19 the fact that the accused did not deny the charge
20 in that trial, so it's part of the system,
21 that's -- it's significant if you don't, in a
22 serious case, plead not guilty and give your
23 evidence.

24 So it's not my suggestion that
25 it is important, it's not my creation, but I



1 certainly believed that it was important and I
2 think it had a great bearing on a whole lot of
3 jurors' attitude in the course of a trial.

4 Q And did it have an impact on your thinking about
5 Mr. Milgaard's guilt or innocence at this time,
6 Mr. Kujawa?

7 A Oh, I think it did. The evidence that was called
8 against him was appropriate evidence so far as I
9 could see and tell, and he didn't deny it, and if
10 he could face a charge of that importance and not
11 deny it, it is significant. And that means that
12 case is over, let's get on to the next case, that
13 was my attitude.

14 Q What, can you tell us what influence or impact, if
15 any, the fact that Mr. Tallis was David Milgaard's
16 lawyer at trial; did that influence your thinking
17 as to where you stood at this time about whether
18 you -- whether David Milgaard had been properly
19 convicted or was guilty?

20 A To some degree, yes.

21 Q And why is that?

22 A Because he, that Cal Tallis was an experienced,
23 very intelligent lawyer and he knew the
24 seriousness of the offence and he knew the
25 significance of not testifying before a jury, and



1 he, if he didn't call this client he knows that
2 that is, that's a kind of a strong issue against
3 his client, and he still chose to do it.

4 Now I know that he had
5 difficulties with the personality of the person
6 and he was afraid that that might influence the
7 jury adversely, but would it be as adverse as the
8 jury hearing him fail to say "I didn't do it"?
9 That was something that was in my mind, of course,
10 I think it was in the mind of everybody who
11 thought about the case.

12 Q Okay. We'll go over to the second column, if we
13 can, and just to give you a bit of background, as
14 I say, I don't -- actually, if we can just scroll
15 up a bit, it -- at this time in the media were two
16 or three different themes; one of them was the
17 evidence or suggestion that a motel room
18 re-enactment, which was evidence at the trial,
19 that one of the people who was at that, in the
20 motel room, denied that it happened, so there was
21 some dispute about that; there was also Ron
22 Wilson, one of the key witnesses, had recanted
23 some of his evidence; and as well there was some
24 criticism of the forensic value of some frozen
25 semen that was tendered at trial, and so those



1 were some of the things that were being put out in
2 the media on a fairly regular occasion. And I
3 think, on behalf of David Milgaard, his lawyers
4 and supporters were saying "this is what points to
5 the fact that he was wrongfully convicted". And,
6 with that, it says:

7 "With respect to the recantation ...",
8 now what I just told you, would you have been
9 familiar with those facts, Mr. Kujawa, or to any
10 great detail?

11 A To some degree, yes.

12 Q And here you say:

13 "With respect to the recantation, Kujawa
14 said the change of story by one witness
15 'to me is not that hard to understand.

16 'Twenty-some years later, when
17 you get some of the absolutely fanatic,
18 persistent people that have been on this
19 case pushing you . . . what the hell
20 does he care, he wants them off his
21 back."

22 Can you tell us, again, is that's something you
23 said or would have said? Or let me just carry
24 on:

25 "Milgaard and his friends liked to bait



1 the cops and were not pushovers who were
2 likely to be intimidated by police
3 pressure, he said.

4 And with a murder charge, 'Boy
5 you don't say, 'my friend did it,'
6 unless (your) friend did it. I think
7 that would to go through the average
8 juror's mind.' "

9 Are you able to tell us whether that would be an
10 accurate quote or recording of what you would
11 have said?

12 A Well, it looks like it was an accurate quote, so I
13 assume it was, and --

14 Q Are you able -- oh, sorry, go ahead?

15 A And what I said, I think, was justifiably thought
16 of. So some guy, after 20 years, changed his
17 evidence, there is no perfect explanation for
18 that, but you can't say it's an insignificant
19 change when he, who says "this guy did it" said "I
20 shouldn't have said that 20 years ago", that's
21 significant, that should be considered. That's
22 why this Justice Department that we have been
23 talking about, and the Supreme Court and all,
24 should, perhaps should have heard that case for
25 that reason alone.



1 Q And what about the comment here about:
2 "... you get some of the absolutely
3 fanatic, persistent people that have
4 been on this case pushing you . . . what
5 the hell does he care, he wants them off
6 his back."

7 And I assume you are referring to Ron Wilson, who
8 is the fellow who recanted some of his evidence
9 20 years later, are you able to elaborate on what
10 you meant by that?

11 A Well I suppose that I am saying that some of the
12 people that were -- that have been described up
13 there, in my opinion, would have an impact on a
14 witness in the case.

15 Q In what way? What would be your concern?

16 A Well, just like it says there, to get them off his
17 back.

18 Q What, did you have a concern that he may have been
19 influenced, Mr. Wilson, in his recantation by
20 pressure put on him?

21 A I think any human being, with enough pressure on
22 him, is capable of being influenced by pressure.

23 Q And down at the bottom you say:

24 "With ...",
25 or the, pardon me, the article says:



1 "With respect to the experts' opinion on
2 the forensic evidence, one could find an
3 expert 'to testify to anything you
4 want,' Kujawa said."

5 And I think this is in reference to Dr. Ferris
6 had given an opinion that had been repeated many
7 times in the media about whether or not the
8 frozen semen excluded Mr. Milgaard as a suspect
9 and whether it should have been used at trial.
10 Do you recall, do you recall that type of
11 evidence, or can you elaborate on what you were
12 saying here?

13 A I don't really remember any part of that, but the
14 comment about experts' opinion on forensic
15 evidence, I think we all know that quite a few
16 so-called experts in the area of law -- or in the
17 area of science, it's often easy to find experts
18 to give you whatever opinion you want, --

19 Q And --

20 A -- so-called experts, so that's part of, that's
21 part of the world we live in.

22 Q If we can go to the right-hand column here, you
23 say:

24 "Much of what Milgaard supporters claim
25 to be 'new' isn't the type of cogent



1 evidence necessary to justify a new
2 trial, Kujawa said."

3 And, again, you've -- we've talked a bit about
4 that; can you elaborate any further about that
5 comment?

6 A Which?

7 Q Just about the, what they:

8 "... claim to be 'new' isn't the type of
9 cogent evidence necessary to justify a
10 new trial, Kujawa said."

11 A See, I don't know what evidence they're talking
12 about --

13 Q Okay.

14 A -- as I read that now.

15 Q If we can go to 160027, please. This is an
16 article in the *Winnipeg Sun* of August 22nd, 1991
17 and it says here, and I'll read it, it says, 'But
18 Serge Kujawa, who also advised the Crown attorney
19 who prosecuted Milgaard in January, 1970, didn't
20 connect the two cases, he said yesterday.'

21 And that's the Fisher and
22 Milgaard case.

23 'Maybe I should have. The
24 reason I didn't is that I didn't then, and I still
25 don't, know of any link between them, he said.



1 There was evidence against Milgaard but there was
2 no evidence against anyone else.'

3 And let me pause there. Would
4 that have been, are you able to tell us whether
5 that would have been an accurate quote of what you
6 would have said?

7 A Yes, I would say it was.

8 Q And at this time, Mr. Kujawa, about -- I think
9 you've already told us what you knew in 1971
10 about, if I can call it, the Fisher rapes and any
11 connection to the Milgaard matter or to the Gail
12 Miller murder, and you told us you didn't connect
13 them. At this time, in August of 1991, did you
14 know any more about the details of Larry Fisher's
15 rapes and, number 1, the fact that the police had
16 connected the rapes to the Gail Miller murder,
17 number 2, that Larry Fisher lived in the Cadrain
18 basement; would you have known that at this time
19 in August of 1991?

20 A I didn't know it, no.

21 Q Go to the right-hand side. Again, similar to
22 previous articles, it says, 'Milgaard's lawyer,
23 David Asper, refuted Kujawa's allegations forensic
24 experts who say 'semen' found at the crime scene
25 is not Milgaard's concocted their evidence.'



1 'When he talks about a forensic
2 person being bought and paid for, maybe that's
3 what they did,' he said.

4 Kujawa also claimed witnesses
5 who now say they lied when they implicated
6 Milgaard in the killing at his trial because of
7 police pressure aren't reliable.

8 The witnesses were all friends
9 of Milgaard, and 'drug using, hell raising,
10 anti-cop, anti-establishment types.'

11 And, again, is that, could you
12 tell us whether that would have been an accurate
13 quote of what you would have said?

14 A I suppose that last part would have been from what
15 I knew of them.

16 Q Can we now go to 026535, please. And this is an
17 article of August 22nd, 1991, if we can go to the
18 next page, and just at the bottom. And I think
19 this is around the same time as the previous
20 article. It says:

21 "But, says Mr. Asper, 'in the end it
22 doesn't matter whether it's inadvertent
23 or a deliberate course of conduct. They
24 missed the obvious, which is the
25 cardinal rule of investigation.'



1 Mr. Kujawa now concedes: 'It
2 may be a case of myself and others
3 simply not being able to put two and two
4 together. It seems to me the reason
5 none of us put this together is because,
6 as human profiles, Fisher and Milgaard
7 are different people.'

8 And, again, would that be an accurate quote of
9 what you would have said at the time, Mr. Kujawa?

10 A I guess so.

11 Q And would that be, you've told us earlier this
12 morning you did not connect them at the time, is
13 that what you are conveying here; that you --

14 A I did not connect them at the time, no. The one
15 case was tried by a jury, was found -- he was
16 found guilty, he didn't say a word about his
17 innocence, that case was over and that matter was
18 done with in my mind. Now whether it should or
19 should not have been is not the complete answer by
20 any means, but that's where it was.

21 Q Okay. If we can go to 33086 -- or pardon me --
22 330778, just do this chronologically, and go to
23 page 330860. And this, in 1991 the Saskatchewan
24 Police Commission did an investigation on missing
25 files, and as part of their report it appears that



1 they talked to you on the issue of location of Mr.
2 Fisher's guilty pleas, and it appears you sent
3 this letter, and I'll just go through it and ask
4 you a few questions. It looks as though you had a
5 telephone conversation with Mr. Graham, you say:

6 "While I do not have specific recall of
7 the details of this particular matter
8 all transfers of outstanding charges
9 came to the head office of the Attorney
10 General in Regina. This was true in
11 1971 and is still true to this day."

12 Now let me pause there. The, as far as a
13 transfer, would Mr. Fisher's charges in
14 Saskatchewan, would they be an out-of-province
15 transfer or would they be an in-province charge?

16 A No, they'd be an out of province.

17 Q And when you say out; because he was out of
18 province at the time?

19 A Right.

20 Q And then you say:

21 "In 1971, I do not believe we had an
22 office in Saskatoon, matters were
23 handled by one person T.D.R. Caldwell.
24 Rather than send instructions to him, we
25 had the staff handle these transfers so



1 arrangements were made to hear the
2 matter in Regina.

3 Another factor was the RCMP
4 escort plane flew more frequently
5 between Prince Albert and Regina than to
6 Saskatoon. This was a matter of dealing
7 with these transfers in the most
8 expedient method given the resources to
9 handle the task."

10 Do you recall sending this letter, Mr. Kujawa?

11 A I certainly don't recall the letter, but I agree
12 with the statement about that this is generally
13 the way we travelled and the way it was done.

14 Q If we can go to 222463, please. We're now moving
15 into November, this is November 29th, 1991, and so
16 on November 28th, 1991 Minister Kim Campbell
17 directed or ordered a reference to the Supreme
18 Court of Canada and the case was then heard
19 starting a couple of months later. And this is, I
20 think, a radio interview of you. And if we can go
21 to the next page, and he's -- and the radio
22 announcer is asking you about the reference case
23 and sending it to the Court, and you say, 'Well,
24 they were free to do that there, they are free to
25 do it here, as I understand it.' The announcer



1 asks, 'Is this retrying the case?' You say,
2 'It's, I don't think it's retrying it at this
3 point, it's looking into it very carefully to see
4 if a new trial is in order.' It says, 'Mr.
5 Kujawa, you prosecuted at the Appeal Court level,
6 I'm just wondering if you've heard anything new,
7 any new evidence that has helped you change your
8 mind about David Milgaard's guilt?' Next page,
9 'Well I haven't heard any new evidence at all, I
10 have, the only thing I've heard at all is a little
11 bit of the media coverage. And some of it was
12 wonderful [spoken sarcastically] quotes. Such as
13 me admitting to an astute newspaper person that I
14 could have. The questions was could Fisher have
15 done it and I said certainly he could have, so
16 could I. The last part was left out, the headline
17 comes out Kujawa says Fisher could have done it.
18 That's the sort of media coverage we've had here.
19 And that is the only part that I know anything
20 about. We have sold out our system of justice
21 into the United States trial by media justice.'

22 Again, is that something you
23 acknowledge, is that something you would have
24 said, Mr. Kujawa?

25 A Yeah, it -- that sort of a comment reminds me of



1 that famous football player's murder case in
2 United States which took a year I would have
3 handled in Regina in six days.

4 Q And was that --

5 A That's why I was making that kind of a reference
6 to leaning that way, in the U.S.A. direction.

7 Q And again just up at the top, if we could go back,
8 you indicate, 'I haven't heard any new evidence at
9 all, I've heard a little bit of the media
10 coverage.'

11 And, again, this is November
12 1991, and I think you've told us you would not
13 have gone back to your files or done any research
14 on this matter?

15 A No, no, not at all.

16 Q And then the next page, it says, 'Well, Mr.
17 Kujawa, what about our judicial system? Do you
18 see changes evolving within our system where
19 lobbyists are now becoming involved?' And you
20 say, 'Well we're following the United States,
21 we're allowing the news media to try cases in,
22 where they couldn't thirty years ago. This was
23 unheard of. This was called unethical behaviour
24 by lawyers and news media.'

25 What were you referring to



1 there?

2 A Well just the super-involvement in public comments
3 by the media about somebody charged with a
4 criminal offence instead of leaving the matter to
5 a criminal Court to deal with.

6 Q Okay. Next, if we could go to 327360, back to the
7 full page. This is a December 2nd, 1991 article
8 in the *Winnipeg Sun*, and I'm not sure whether
9 these headlines are all on the same page, it may
10 have been -- that might have been on the front
11 page, that might have been somewhere else, and
12 that might have been -- I'm not sure, I think they
13 all relate to the same matter. And let's leave
14 the headlines for a moment but go back to the body
15 of this article. And it says:

16 "Uneasy lies the head that was the
17 Crown."

18 And it says:

19 "It doesn't matter if ...",

20 "The former head of prosecutions for
21 Saskatchewan is furious the *David*
22 *Milgaard* case will be reviewed by the
23 Supreme Court of Canada."

24 Were you furious the case was going to be heard
25 by the Supreme Court of Canada?



1 A Well, I didn't think it -- I didn't think I knew
2 much about it or had many feelings about it at
3 that time. It was way behind me.

4 Q Okay, but were you furious, did you tell anybody,
5 this reporter, you were furious about the case
6 going to Court?

7 A I don't, certainly don't remember saying that.

8 Q Were you, do you remember being furious about the
9 matter going to --

10 A No, I do not remember that at all.

11 Q And then here, this isn't in quotes, but it says:

12 "It doesn't matter if Milgaard is
13 innocent of the 1969 murder for which
14 he's spent 22 years in prison - his case
15 should remain closed, said Serge Kujawa,
16 now an NDP MLA."

17 Did you say those words to that reporter?

18 A Oh, I don't want to say that he quoted me
19 incorrectly, it's just --

20 Q There is no quotes, there's some quotes down here,
21 this paragraph doesn't have quotes.

22 A Well the --

23 Q Well let me ask it this way. In 19 -- December of
24 1991 did it matter to you if Milgaard, David
25 Milgaard, was innocent?



1 A No. That -- well, it mattered to me if he was
2 improperly convicted, I think it certainly
3 mattered to me, but it's not something that was on
4 my mind or in my everyday worries or concerns or
5 anything like that, it was way behind me.

6 Q Okay. What I circled here and what the reporter
7 attributes to you, is that what you thought at the
8 time, that it doesn't matter if Milgaard is
9 innocent of the 1969 murder, his case should
10 remain closed?

11 A Well, if I said that I should apologize, because
12 if he was innocent it does matter, it's very
13 important.

14 Q Now, are you able to tell us whether this is
15 something you might have said, or perhaps you said
16 something that was construed this way. Are you
17 able to shed any light on that?

18 A Well, the only thing I could say is I certainly
19 never believed that to my knowledge any day in my
20 existence to say that whether you are guilty or
21 not doesn't matter so long as you spend your time
22 in jail, that's a totally improper, inaccurate,
23 unallowable statement for someone in my position
24 to make.

25 Q Do you think you might have said something along



1 those lines? Are you able to tell us?

2 A I have no idea what I might have said.

3 Q Now, I'm asking if it was something that was
4 construed that way.

5 A It must have been construed that way, but I sure
6 hope I didn't say that.

7 Q And then the next paragraph, which is in quotes,
8 says:

9 "I'm not primarily concerned with his
10 guilt or his innocence --"

11 And then a dash, and I'm not sure if that means
12 words were omitted or whether that's just a dash,

13 "-- what I'm concerned with is that you
14 (the media) and the lawyers are selling
15 us down the river."

16 "The whole judicial system is
17 at issue -- it's worth more than one
18 person," he said."

19 Now, are you able to tell us whether what's
20 attributed to you by quotes is something you
21 would have said?

22 A Well, what I'm concerned with is that the media
23 and the lawyers are selling us down the river.
24 Yeah, I am concerned about that if they are, and I
25 certainly can't say that his innocence or



1 otherwise is of no importance to me, it's of great
2 importance to me.

3 Q Now, in fairness, Mr. Kujawa, I will show you an
4 article the next day where you, I think, correct
5 what was attributed to you and so we'll go to
6 that, and maybe when we do we can come back to
7 this part, and then it says:

8 "Milgaard, 39, said Friday heads will
9 roll in the Saskatchewan Justice system
10 if the Supreme Court review -- likely to
11 be held early next year -- finds he was
12 wrongly convicted ..."

13 And:

14 "There's been a lot of irresponsibility,
15 there's no question about that. Some
16 heads will fall."

17 Kujawa called Milgaard a
18 "kook", and blamed the media for forcing
19 Justice Minister Kim Campbell to order a
20 review nine months after she refused an
21 earlier application for a new trial."

22 Again, is that something you think you would have
23 said to the reporter?

24 A Well, I certainly don't know if I said it, but
25 maybe I was referring to she refused that at one



1 stage and then without any changes, but just more
2 pressure, she changed her mind.

3 Q Okay. I'm sorry, I was actually -- that's fine,
4 I'm referring to the first part where it says you
5 called Milgaard a kook?

6 A Well, if I did, I'm sorry, because it's improper
7 for someone in my position to call people crazy
8 names, so if I did, I'm sorry I did.

9 Q And then it goes on to say:

10 "The whole system of justice
11 is built on the principle that the
12 rights of the community are more
13 important than the rights of the
14 individual," he said.

15 "That the rights of one
16 individual are more important than the
17 rights of everyone -- that's the America
18 way. That's not the British (or
19 Canadian) way."

20 Again, is that something that you thought at the
21 time or that you would have said?

22 A I think that's something I thought for most of the
23 grown-up days of my life and I still think it,
24 yes. Whether I said it that way, I don't know.

25 Q And I think in an article the next day you



1 elaborate a bit further, so we'll come back to
2 that. Now, I want to go back to the main
3 headlines here, it says, "Milgaard a guilty
4 'kook,' says MLA," and the article itself says you
5 called him a kook, and I'm not sure if it says in
6 the body that you called him a guilty kook. Do
7 you know if you would have called him a 'guilty
8 kook' or just a 'kook'?

9 A I certainly wouldn't have called him guilty if he
10 has just been found not guilty by the Supreme
11 Court.

12 Q No, this would be before the Supreme Court
13 reference.

14 A Oh.

15 Q And then let's go on to the next by-line, it says,
16 "Former Sask. prosecutor outraged by the decision
17 to review case." Were you outraged by the
18 decision to review the case?

19 A Not so much by the decision, but by the great bit
20 of news media pressure that was used to bring it
21 on.

22 Q Okay.

23 A That's what I was concerned about.

24 MR. HODSON: I'm just wondering for a time,
25 it's 11:20, we can take another short break and



1 go to noon or we can go maybe to quarter to 12
2 and finish for lunch.

3 COMMISSIONER MacCALLUM: I think perhaps
4 another short break would be in order.

5 (*Adjourned at 11:21 p.m.*)

6 (*Reconvened at 11:33 a.m.*)

7 BY MR. HODSON:

8 Q If we could call up 228837, I'll just go through,
9 Mr. Kujawa, some of these articles at the time
10 because they contain some similar quotes and some
11 expansion on some of the things you said, and this
12 is an article, I think, in the *Winnipeg Free*
13 *Press*, November 30th, if we could just enlarge the
14 bottom, please, and can you get that any bigger
15 there? And it says:

16 "One of those who helped put David
17 Milgaard behind bars says Justice
18 Minister Kim Campbell was swayed by
19 "publicity" when she referred his case
20 to the Supreme Court.

21 "We're getting away from the
22 old British system of justice and we've
23 gone silly. This is the justice system
24 of the United States of America," said
25 Serge Kujawa ...



1 "We're trying cases in the
2 media and not in the courts."

3 Kujawa said despite Milgaard's
4 recent protests of innocence, the
5 prisoner never made the same
6 pronouncements when he was tried for the
7 slaying of Gail Miller more than 22
8 years ago.

9 "Why the latest move? I don't
10 know," Kujawa, now a New Democrat member
11 of the Saskatchewan legislature, said
12 from his Regina home. "But I think I
13 share a fair part of public perception
14 in that this is a reaction to publicity.

15 "It's been building and
16 building and building and on the face of
17 it it seems she's giving in to pressure.

18 I may be wrong and I hope I am."

19 Now, again, you've probably touched on all of
20 that already. Would that be an accurate
21 statement of what you thought at the time, Mr.
22 Kujawa?

23 A Yes, and I think that last comment, I may be
24 wrong, "I may be wrong and I hope I am."

25 Q And that would be in relation to that the minister



1 was persuaded by public opinion?

2 A Yeah, about the minister and the system is the
3 comment that I made.

4 Q If we can then go to 229844, call up the bottom,
5 this is December 4, the *Winnipeg Free Press*, and
6 you say here, if we can call out that part, you
7 say:

8 "Federal Justice Minister Kim Campbell
9 may have caved in to media pressure in
10 ordering a review of the David Milgaard
11 case, Saskatchewan's former chief
12 prosecutor said yesterday.

13 "Are they doing it because it's
14 necessary, or is it simply selling out
15 to the public pressure ..."

16 And you say:

17 "I hope they're doing it because it's
18 appropriate. I hope."

19 And again, is that similar to what was in the
20 earlier article and that's what you thought at
21 the time?

22 A Yes.

23 Q And then if we can go to 170793, and this is an
24 article in the *StarPhoenix* December 3rd, and I
25 think you explain your comments that were quoted



1 or attributed to you in the Winnipeg press
2 article, and actually, if we can call up 327360 on
3 the left-hand side and the document 170793 --

4 COMMISSIONER MacCALLUM: And that was the
5 *Winnipeg Sun*, not the *Free Press*; right?

6 MR. HODSON: I'm sorry, did I say -- it's
7 the *Winnipeg Sun*, yes.

8 COMMISSIONER MacCALLUM: Thank you.

9 BY MR. HODSON:

10 Q And again that paragraph here, when I went through
11 this earlier, and again I think we went through
12 the quoted words and as well the comments that
13 were attributed to you, "it doesn't matter if
14 Milgaard is innocent," and I think what you told
15 us is you don't know whether you said that or not,
16 but you didn't think it; is that correct?

17 A That's right, and I certainly never thought it.

18 Q And so on the left hand if we can just --
19 actually, we can probably just go to the main
20 document on the right, and in this document, if we
21 could call out that, I think Mr. Wolch makes a
22 comment about what is attributed to you in the
23 *Winnipeg Sun*, and then they say:

24 "Kujawa, now an NDP MLA, was reported in
25 the *Winnipeg Sun* as saying: "It doesn't



1 matter if Milgaard is innocent ... I'm
2 not primarily concerned with his guilt
3 or innocence. What I am concerned with
4 is that you (the media) and the lawyers
5 are selling us down the river."

6 So in the *StarPhoenix* article it does put quotes
7 around what was not in quotes in the *Winnipeg Sun*
8 article and then attributes that to you, and then
9 if we can just scroll down -- just go back to the
10 document on the right is fine. And then what you
11 say here:

12 "In an interview Monday, Kujawa took
13 issue with the quote and said the point
14 he was trying to make is that "the
15 country is more important than any one
16 individual in it."

17 "Of course I care (if an
18 innocent person is in prison) -- it
19 could be my kid."

20 Let me pause there. When it says you took issue
21 with the quote, are you able to tell us what you
22 meant by that or --

23 A Well, I don't want anybody thinking that I said
24 that I don't care if he's innocent or he isn't
25 innocent. I certainly don't say that that's not



1 important, that's extremely important to everybody
2 who has any decency in him, and that's why I could
3 not say that it doesn't matter whether he was
4 found guilty or not, of course it matters, and
5 that was a misquote to say otherwise.

6 Q Did you have concerns about what the media was
7 reporting about your comments at this time?

8 A Well, yes, of course I did, to quite a great
9 degree.

10 Q And then if we can just carrying on:

11 "Of course I care (if an innocent person
12 is in prison) -- it could be my kid. It
13 could be me."

14 And then on the right-hand side:

15 "Media and "self-promoting" lawyers have
16 damaged the system by forcing the
17 Milgaard case to the Supreme Court.

18 "No system is perfect, but we
19 can't, because of the possibility that
20 one person was improperly convicted,
21 ruin our whole justice system and put it
22 in the hands of the prostitute lawyers
23 and media."

24 If Milgaard was wrongly
25 convicted, the matter should be dealt



1 with "according to law," said Kujawa.
2 The Criminal Code of Canada provides for
3 reviews of such cases.

4 Asked what he thought of those
5 who say the provisions are inadequate,
6 Kujawa said: "All I'm saying is don't
7 switch to something that's 20 times
8 worse."

9 Just on that last comment, what system are you
10 referring to that's 20 times worse?

11 A Well, if -- the comment about the media is running
12 the system is true, that's a worse system than the
13 one we're referring to.

14 Q And what did you mean, if we can just scroll up,
15 by the reference here of prostitute lawyers and
16 media, put in the hands of prostitute lawyers and
17 media?

18 A Well, that's probably an improper comment by
19 myself about the media and lawyers who push the
20 media instead of the Court system into this great
21 explosion that we've had in the media, the radio,
22 television media all over the place, which is, as
23 I've already said before, a poor substitute for a
24 criminal justice system.

25 Q And so again I think you said the word maybe was



1 nasty. What was the meaning you were trying to
2 convey in the comment about prostitute lawyers?

3 A Well, I suppose I was just trying to be judgmental
4 of anyone who fit the description that I had just
5 given, that they were running an improper system,
6 pushing it out of its proper places.

7 Q And then if we can scroll down, you say:

8 "The new emphasis on individual --"
9 Or I shouldn't say you say that, the article
10 says:

11 "The new emphasis on individual versus
12 group rights and the ability of media
13 and lawyers to force issues are moving
14 Canada away from what used to be the
15 best justice system in the world.

16 "We're going from the British,
17 to the American, which is a proven
18 failure."

19 And I think again you talked about this before,
20 the American system would be the media, I think
21 you said was influenced by the media; is that
22 correct?

23 A It was the media and the whole general system,
24 right.

25 Q Now, 222980, this is a letter that you got from



1 John Harvard, a member of parliament, to you, and
2 were you aware -- did you know who Mr. Harvard was
3 at the time?

4 A No, and I still don't, or at least I've forgotten
5 if I ever knew.

6 Q He was a member of parliament I think for
7 Winnipeg-St. James and took issue with your
8 comment in the paper, called it, he says:

9 "That's as outrageous as it is
10 disgusting."

11 Did you get some negative reaction, Mr. Kujawa,
12 to what you said publicly about this matter and
13 your thoughts?

14 A I don't remember any great reaction of any kind,
15 no.

16 Q Go to 004333, this is now December 4th, so again
17 the next day, the *Leader-Post*, it says:

18 "Kujawa said the media is now
19 effectively trying the Milgaard case and
20 his lawyer is participating in the
21 process.

22 "Milgaard's lawyer, 30 years
23 ago, would have been disbarred for
24 improper, unethical behaviour," Kujawa
25 told reporters Tuesday.



1 He's talking about the actual
2 evidence that should go in a court and
3 not into the media. That is -- not a
4 very long time ago -- improper in
5 Canada."

6 Can you elaborate on that at all?

7 A Well, it's just that a court case should be
8 handled by evidence admissible in a court of law
9 and not by pressure and violence and in great
10 speeches delivered by people who are carried away
11 with an issue, so it really boils down to just
12 that.

13 Q And then if we can go to the right-hand side, I
14 think you talk about the case going to the Supreme
15 Court and you say:

16 "Are they doing it because it's
17 necessary or is it simply selling out to
18 public pressure?" Kujawa asked.

19 What is happening in Canada,
20 and what the Milgaard case epitomizes,
21 is an Americanization of our judicial
22 system, Kujawa said.

23 "Would you want to be tried in
24 the media if you were charged with a
25 serious offence? That's a question," he



1 said."

2 Again, can you elaborate at all on that comment?

3 A Well, the only elaboration is that the media
4 system operating the way I was accusing them of
5 acting were certainly not being judicial, were not
6 being qualified to be judicial and should not have
7 the power to pass judgment on other human beings,
8 that's what we have this other system for, and
9 when you put on that kind of pressure, you are not
10 allowing that system to function freely and
11 properly by itself. That's really the only point
12 I was trying to make.

13 Q Then if we can go to 004329 -- actually, sorry, if
14 we can just -- yeah, we'll go to the -- this is
15 December 4, 1991. Now, at the time you made these
16 remarks, would they have been made by you as a
17 private citizen, when you were talking in the
18 media in 1991?

19 A You mean private citizen as opposed to MLA?

20 Q Yes.

21 A I don't know.

22 Q Or as a representative of the government, put it
23 that way.

24 A Well, I wasn't a representative of the government
25 as an employee. I might have been as a member of



1 the legislature, I don't know.

2 Q And in this article the government of the day
3 indicated that your remarks were not the
4 government view, and if we can just scroll over to
5 the right, Mr. Mitchell says:

6 "He's speaking for himself as a private
7 member. That's not the government's
8 view."

9 And would you agree with that? Do you have any
10 issue with that?

11 A Well, I was speaking for myself is certainly what
12 I was doing, and if Mitchell says it wasn't on
13 behalf of the government, well, he was the
14 Minister of Justice, he should know.

15 Q If we can then go to 004330, and this is actually
16 a *StarPhoenix* editorial, I'm assuming it's around
17 the same time, I'm sorry, I don't have a date, but
18 it refers to some earlier quotes, and what is said
19 here is:

20 "Kujawa insists using the media to bring
21 out the evidence -- both relevant and
22 irrelevant to the case -- is improper.

23 "I think the place for that is
24 in the Court. That's what made the
25 British system of justice the superior



1 one on Earth for a long time. We've
2 gotten away from it in the last few
3 years and we've followed the United
4 States," Kujawa said Tuesday. As a
5 result, he argues that it appears public
6 pressure, and not strictly legal
7 arguments, has been a factor in the case
8 being sent to the Supreme Court.

9 But this is where Kujawa's
10 argument breaks down. When he's asked
11 what's wrong if public pressure leads to
12 a case being reopened and perhaps
13 discovering a miscarriage of justice, he
14 suggests that we are somehow throwing
15 out the system. In other words,
16 maintaining the process is more
17 important than necessarily achieving
18 justice in this instance.

19 "If the public pressure, the
20 media or whomever, thinks the system is
21 not working properly, put the pressure
22 on the appropriate people to improve the
23 system. But don't throw it out until
24 you have something to replace it with.

25 "You don't call evidence (in



1 the media). You don't talk in the media
2 about people who have changed their
3 evidence or what the parents think. If
4 it's admissible, if it's relevant, it
5 should be dealt with by the court. This
6 way it's in the media and the other
7 side, if there is another side, doesn't
8 get a chance to be heard, examined or a
9 chance to do a damn thing. So public
10 opinion is that this was improperly
11 done."

12 And again, would that be a reflection of what you
13 thought at the time, your views at the time, Mr.
14 Kujawa?

15 A Yes, at that time, and today.

16 Q And again, 039322, and this is the same writer who
17 wrote the December 2nd story that I started with,
18 it says over here:

19 "Kujawa said last week he's angry
20 Milgaard's case is going to the Supreme
21 Court -- whether he's guilty or innocent
22 the case should remain closed."

23 Did you say anything of that nature at the time,
24 Mr. Kujawa?

25 A I don't know. I certainly don't remember saying



1 it.

2 **Q** Is that something you would have thought at the
3 time?

4 **A** No. My position is that if he is innocent, then
5 the whole country owes it to him to do its best to
6 deal with that issue and clean it up if it can be
7 done. Now, there's a further comment there about
8 the whole judicial system is more important than
9 one person. I certainly agree with that. We
10 can't have one individual among millions being the
11 most important thing there, the system is
12 important, and it's our major job to run it as
13 perfectly as we possibly can and deal that way
14 with individuals that come before it.

15 **Q** If we can go to 039000. Now, did you become aware
16 in January, February, March of 1992 that the
17 Supreme Court reference was going on, that there
18 was evidence being called before the Supreme Court
19 on this matter?

20 **A** No, I wasn't.

21 **Q** Did you follow it at all in the media?

22 **A** No.

23 **Q** Do you recall anybody talking to you about
24 possibly being a witness at the reference?

25 **A** I certainly don't recall it.



1 Q If someone would have asked you to go testify
2 before the Supreme Court on the matter, would you
3 have obliged?

4 A Oh, I think if I had been asked to go, I would
5 have at least noted I had been asked, and yes, I
6 think I would have gone.

7 Q And this article, February 18th, suggests that Mr.
8 Wolch was thinking about calling you as a witness
9 and it's reported that:

10 "... Wolch said he may also call Serge
11 Kujawa, then in charge of prosecutions
12 and now an NDP MLA, to explain why
13 admissions by serial rapist Larry Fisher
14 to two Saskatoon rapes were not
15 considered voluntary."

16 And then went on to talk about some other
17 matters. Do you have any recollection of
18 anybody, whether it be Mr. Wolch or the
19 government, federal or provincial, talking to you
20 about being a witness at the reference?

21 A No recollection at all, none.

22 Q If we can go to 004248, please, and this is a
23 March 9th, '92 column, and it says here that you
24 were part of a panel at the annual Canadian
25 Association of Journalists convention to discuss



1 the media's involvement with the Milgaard case.
2 Do you have any recollection of attending that?

3 A Some sort of a panel. I've talked about it in a
4 few places, that's all I remember now.

5 Q Okay. And here it says that:

6 "Kujawa criticized the media for the
7 extensive coverage the Milgaard case has
8 received.

9 "It is not my job and it is not
10 your job right here, right now, to
11 re-try David Milgaard . . . it is the
12 law's," Kujawa said."

13 Is that something you would have said?

14 A Yes, it is the law's job, right.

15 Q If we can go to the right-hand side of that
16 column, it refers to Shelly Johnson, sister of
17 Craig Melnyk, and Craig Melnyk was a witness at
18 the original trial, he has been a witness before
19 this Commission of Inquiry, he was in the motel
20 room and gave evidence about what he observed
21 David Milgaard do and say and he expressed
22 concerns as well before this Commission about his
23 treatment in the matter, for lack of a better
24 word, and this article suggests that his sister
25 made an unexpected appearance during the



1 discussion, it says:

2 "Johnson also criticized the media for
3 making the people involved in this case
4 "afraid . . . of what the media can do
5 with half truths."

6 Johnson read a letter from
7 Melnyk, who said the media was acting as
8 judge and jury on the case. "We all
9 feel like we are screaming in outer
10 space and no one can hear us," Melnyk's
11 letter said."

12 Do you have any recollection of this matter, Mr.
13 Kujawa, or matters raised by a witness in the
14 original case about the impact the media
15 attention had on them?

16 A No, I don't have any recollection of it.

17 MR. HODSON: Mr. Commissioner, I'm heading
18 into the Supreme Court reference decision and
19 maybe we'll start at 1:30.

20 COMMISSIONER MacCALLUM: All right.

21 *(Adjourned at 11:55 a.m.)*

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

23 BY MR. HODSON:

24 Q Good afternoon, Mr. Kujawa. I would now like to
25 turn to the Supreme Court of Canada reference



1 decision, and I think you told us earlier you
2 would have been generally aware that the Supreme
3 Court was hearing a reference on matters, and I
4 think you told us that you followed along a bit in
5 the media but not that much; is that correct?

6 A That's correct.

7 Q If we could call up 160801. I think you also told
8 us that you were not a witness and you didn't go
9 and look at any specific documents or review any
10 matters around this time; is that fair?

11 A That's right.

12 Q I just want to go through parts of this decision
13 because you, in the days that followed this, Mr.
14 Kujawa, you made some comments about the decision
15 itself and what it said and what it didn't say. I
16 just want to go through parts of this. And if we
17 can go to the next page, to 803 -- actually,
18 sorry, to 802, this is page, so yeah, this is
19 where the decision starts, if we could go to 802,
20 which is page 1. I think these pages got mixed
21 around. And you would have read the decision at
22 the time, is that fair, Mr. Kujawa?

23 A I don't remember reading it, I don't know, I must
24 have.

25 Q There is a newspaper article the next day where



1 you commented on parts of it, and I'll show you
2 that in a moment, and if we just go through parts
3 of this decision. And this is what the Court set
4 out, and what the Court said is that they were to
5 consider evidence as -- on the question of whether
6 the continued conviction of David Milgaard
7 constituted a miscarriage of justice, and they
8 provided these guidelines. Number 1, that if:

9 "The continued conviction of David
10 Milgaard would constitute a miscarriage
11 of justice if, on the basis of the
12 judicial record, the reference case
13 ...",

14 and that was a number of documents filed by the
15 parties:

16 "... and such further evidence as this
17 court in its discretion may receive and
18 consider, the court is satisfied beyond
19 a reasonable doubt that David Milgaard
20 is innocent of the murder of Gail
21 Miller."

22 I think they went on to say, if they were to
23 answer that question yes, they would grant a
24 pardon.

25 The second question of the



1 guidelines was that:

2 "The continued conviction of David
3 Milgaard would constitute a miscarriage
4 of justice if, on the basis of the
5 judicial record, the reference case and
6 such further evidence as this court in
7 its discretion may receive and consider,
8 the court is satisfied on a
9 preponderance of the evidence that David
10 Milgaard is innocent of the murder of
11 Gail Miller."

12 If they were to answer that question, it would be
13 open to David Milgaard to apply to re-open his
14 leave or his application for leave to appeal to
15 the Supreme Court of Canada, so again that was
16 the second prong.

17 And the third was that:

18 "The continued conviction of David
19 Milgaard would constitute a miscarriage
20 of justice if there is new evidence put
21 before this court which is relevant to
22 the issue of David Milgaard's guilt,
23 which is reasonably capable of belief,
24 and which taken together with the
25 evidence adduced at trial, could



1 reasonably be expected to have affected
2 the verdict."

3 And the Court said if they were to find that,
4 over to the next page which is 804:

5 "... the minister could quash the
6 conviction and to direct a new trial
7 ...".

8 And then it went on to say:

9 "If the judicial record ...",
10 etcetera:

11 "... fails to establish a miscarriage of
12 justice ...",

13 under (a), (b), or (c), the court might
14 nonetheless:

15 "... consider advising the Minister of
16 Justice that granting of a conditional
17 pardon ... may be warranted where having
18 regard to all the circumstances, it is
19 felt some sympathetic consideration of
20 David Milgaard's current situation is in
21 order."

22 Then The Court goes on to say:

23 "It is appropriate to begin by stating
24 that in our view David Milgaard had the
25 benefit of a fair trial in January 1970.



1 We have not been presented with any
2 probative evidence that the police acted
3 improperly in the investigation of the
4 robbery, sexual assault and murder of
5 Gail Miller or in their interviews with
6 any of the witnesses. Nor has evidence
7 been presented that there was inadequate
8 disclosure in accordance with the
9 practice prevailing at the time.
10 Milgaard was represented by able and
11 experienced counsel. No error in law or
12 procedure has been establish. At the
13 conclusion of the first trial, there was
14 ample evidence upon which the jury,
15 which had been properly instructed,
16 could return a verdict of guilty."

17 The Court says:

18 "However, fresh evidence has been
19 presented to us. Ronald Wilson, a key
20 witness at the trial, has recanted part
21 of his testimony. Additional evidence
22 has been presented with respect to the
23 alleged motel room confession. More
24 importantly, there was evidence led as
25 to sexual assaults committed by Larry



1 Fisher which came to light in October
2 1970, when Fisher made a confession."

3 Then the Court says:

4 "In our view, this evidence, together
5 with other evidence we have heard,
6 constitutes credible evidence that could
7 reasonably be expected to have affected
8 the verdict of the jury considering the
9 guilt or innocence of David Milgaard.
10 Our conclusion in this respect is not to
11 be taken as a finding of guilt against
12 Fisher, nor indeed that the evidence
13 would justify charging him with the
14 murder of Gail Miller."

15 An then, on the next page, the Court goes on to
16 say, Mr. Kujawa, first:

17 "As to the first, we are not satisfied
18 beyond a reasonable doubt that David
19 Milgaard is innocent of the murder of
20 Gail Miller.

21 As to the second, we are not
22 satisfied, on the basis of the judicial
23 record, the reference case and the
24 further evidence heard on this
25 reference, on a preponderance of all the



1 evidence, that David Milgaard is
2 innocent of that murder.

3 Third, we are satisfied that
4 there has been new evidence placed
5 before us which is reasonably capable of
6 belief and which taken together with the
7 evidence adduced at trial could
8 reasonably be expected to have affected
9 the verdict. We will therefore be
10 advising the minister to quash the
11 conviction and to direct a new trial
12 under s. 690(a) of the *Criminal Code*.
13 In light of this decision, it would be
14 inappropriate to discuss the evidence in
15 detail or to comment upon the
16 credibility of the witnesses."

17 And then to go on:

18 "Without being exhaustive it will
19 suffice to observe that there is some
20 evidence which if accepted by a jury
21 could implicate Milgaard in the murder
22 of Gail Miller."

23 And I want to go to one other paragraph on the
24 next page, paragraph 18, the Court says:

25 "While there is some evidence which



1 implicates Milgaard in the murder of
2 Gail Miller, the fresh evidence
3 presented to us, particularly as to the
4 locations and the pattern of the sexual
5 assaults committed by Fisher could well
6 affect a jury's assessment of the guilt
7 or innocence of Milgaard. The continued
8 conviction of Milgaard would amount to a
9 miscarriage of justice if an opportunity
10 was not provided for a jury to consider
11 the fresh evidence."

12 Now I've taken you through and read the parts of
13 this judgement that deals with fresh evidence
14 and, in particular, Larry Fisher. At this time,
15 and again beyond what's in the decision, Mr.
16 Kujawa, did you have any information about Larry
17 Fisher's sexual assaults, and in particular
18 whether the Saskatoon Police, in 1969, thought
19 that, due to similarities in those rapes and the
20 murder of Gail Miller, that it may be the same
21 perpetrator; secondly, that Larry Fisher lived in
22 Albert Cadrain's basement, were you aware of that
23 at the time the Supreme Court decision came out?

24 A No I was not.

25 Q Would your information about the circumstances of



1 Larry Fisher's offences, would it be fair to say
2 it would be limited to what was in this judgement,
3 was there anything else that you had that you
4 would have been aware of at the time?

5 A None that comes to my mind now at all, but that
6 doesn't mean it wasn't possible.

7 Q If we could go to 171295. And this is April 15th,
8 1992, so this is the day after the decision from
9 the Supreme Court, and you say, 'The Supreme Court
10 of Canada's ruling in the David Milgaard case has
11 damaged the administration of justice in this
12 country, says Saskatchewan's former chief Crown
13 prosecutor.

14 Serge Kujawa said the Court
15 yielded to emotionalism by ordering a new trial
16 and then recommending a conditional pardon if
17 Milgaard was found guilty a second time.'

18 And then, down at the bottom,
19 'Kujawa ... noted the following points ...', go
20 to the second column, '... in the Court's
21 nine-page ruling.'

22 Can we take it, from that, that
23 you would have read the Supreme Court's decision
24 around that time, Mr. Kujawa?

25 A I don't think I have read it, no. I read that



1 decision last night, because it was given to me by
2 counsel, and I think that's the first time I ever
3 read it.

4 Q Okay. Do you know where you would have -- this
5 article suggests that you are making points from
6 the judgement; do you know what that -- would that
7 have been based on some other reports of their
8 decision?

9 A I think that was based -- now I think, I don't
10 know but I'm guessing now, that again I was
11 reminded that I had forgotten about this entirely.
12 I think I was on a program of some sort, a TV
13 program, I guess, with Mr. Asper, --

14 Q Yes.

15 A -- and he had made comments about the Supreme
16 Court decision and I was, as I understand it,
17 responding to his comments on the Supreme Court of
18 Canada decision. That was his interpretation of
19 what they had said, not what I had read, and not
20 what you have read out of this document here.

21 Q Okay. Now this, this article is April 15th, 1992,
22 there are a number of different media interviews
23 of -- around that date, and maybe when we go to
24 those, those might assist you. So again, as far
25 as these points here about what was in the



1 decision, are you able to tell us where you would
2 have got those from?

3 A Well I think I got those from the comments by this
4 Asper fellow.

5 Q Mr. Asper?

6 A Asper fellow.

7 Q Okay. If we can go down to the bottom?

8 A I think, I'm not sure, I wouldn't bet 5 cents on
9 that.

10 Q Okay. So you have -- well maybe when we go
11 through the media, and I will show you the media
12 interview with Mr. Asper and then we will come
13 back and see if you are able to piece together the
14 timing, but your recollection today is that you
15 don't think you read the Supreme Court judgement
16 at the time?

17 A That's right.

18 Q And you are saying you got information from
19 another source about what the judgement said, and
20 you think that might have been from Mr. Asper?

21 A That's what I think.

22 Q Now there was a fair bit of media publicity in the
23 days April 14, 15, 16 of 1992; is it possible you
24 would have got some of the information from media
25 reports, whether it's reporting Mr. Asper or



1 others; is that --

2 A That's certainly possible, yes.

3 Q And then you say at the bottom, 'I don't
4 understand the Court's reasons', Kujawa said.'

5 And then the top right, you say,
6 'My main concern is that the Supreme Court has
7 decided on a mercy basis that Milgaard has put
8 enough time in the penitentiary. That's not its
9 purpose and that's why I object to all this going
10 on this way.' Then you go on to say, 'If
11 Milgaard was convicted a second time, it should be
12 up to the National Parole Board to decide if he
13 should be released', Kujawa said. They, the
14 Court, forget their job is now the administration
15 of justice and they go on sympathy.'

16 'Asked if he had sympathy for
17 Milgaard, Kujawa said 'I have sympathy for the
18 plight of anybody in that tragic a situation, but
19 I have a greater sympathy for the population of
20 Canada which is under a Supreme Court which works
21 not on the administration of justice but on
22 sympathy. They're supposed to be above that.'

23 And I think those comments,
24 please correct me if I'm wrong, would be related
25 to the reference in the decision where the Supreme



1 Court said that, if you have a new trial and he is
2 convicted, that you provide him with a conditional
3 pardon due to sympathetic reasons; is that fair?

4 A That's fair. Whether it's justified or not, now I
5 don't know, but that's what I think I was
6 referring to.

7 Q Now you'd mentioned an interview with Mr. Asper,
8 and I'm going to show you videotape, it's about
9 six minutes long. Do you recall being interviewed
10 by I think it was CBC with Mr. Asper, on a
11 different feed on a news program, around this
12 time?

13 A I don't recall that interview at all, but I saw a
14 flick of it somewhere, I think maybe shown by you?

15 Q Yeah, I showed you a couple of days ago; do you
16 recall looking at that video?

17 A Yeah, just for, just for a few --

18 Q Then --

19 A Half a minute or so was all.

20 Q Okay. If we could go to that, it's SK1, I think
21 the document ID is 230072, and it's at the
22 56-minute mark.

23 **(Videotape started)**

24 NEWS ANNOUNCER: Welcome back. As you saw
25 earlier on 24 Hours David Milgaard is a



1 free man.

2 On Tuesday the Supreme Court
3 ruled Milgaard should get a new trial.
4 That would be up to the Saskatchewan
5 Government. Today the government
6 concluded a new trial would be
7 pointless. Too much time has passed
8 since the murder of Gail Miller in
9 Saskatoon 23 years ago.

10 To talk about today's decision,
11 and the Supreme Court's ruling, we have
12 two people with completely different
13 legal interpretations.

14 David Asper is David Milgaard's
15 lawyer and Serge Kujawa is a former
16 chief prosecutor in the Saskatchewan
17 Government. Mr. Kujawa argued against
18 David Milgaard's legal appeals in the
19 1970s. He is now a Member of the
20 Saskatchewan Legislature?

21 Mr. Kujawa, what do you feel
22 about today's decision in Saskatchewan?

23 MR. SERGE KUJAWA: Well, I think the
24 decision was absolutely inevitable
25 because of the Supreme Court judgement,



1 and more than than the fact that 20 some
2 years have gone by. Because, after all,
3 the Supreme Court said "if you proceed
4 with a trial and convict him we hereby
5 order a pardon the -- two seconds
6 later." It would be impossible to get a
7 reasonable person to serve on the jury
8 when nothing is reasonable about that
9 procedure.

10 NEWS ANNOUNCER: And yesterday you were
11 quite outspoken as well about the whole
12 process of going to the Supreme Court in
13 the first place; is that correct?

14 MR. SERGE KUJAWA: Well the whole process,
15 going to the Supreme Court is part of
16 our law and therefore in order, but I
17 was very much objecting to it because it
18 was improper publicity that got it there
19 as opposed to legal means. And --

20 NEWS ANNOUNCER: Mr. Asper, Mr. Asper, do
21 you agree with that?

22 MR. DAVID ASPER: No, not at all. Umm, the
23 proper means were taken to get this case
24 to the Supreme Court by way of an
25 application under Section 690 of the



1 *Criminal Code of Canada*, the Minister of
2 Justice sought a legal opinion on our
3 second application, and pursuant to
4 Section 53 of *The Supreme Court Act*
5 referred the case to the Supreme Court.

6 NEWS ANNOUNCER: But Mr. Kujawa is
7 suggesting that perhaps there was some
8 political motivation in getting this to
9 court. We have seen the Prime Minister
10 with Mrs. Milgaard, all these sort of
11 political events. Taking place at the
12 same time?

13 MR. DAVID ASPER: Yes, I'm sure that all of
14 those things were important in the
15 application process, but ultimately the
16 Minister of Justice exercised her
17 discretion pursuant to the relevant
18 rules of law.

19 NEWS ANNOUNCER: Mr. Asper, what do you
20 think about today's ruling in
21 Saskatchewan?

22 MR. DAVID ASPER: I think it's
23 unsatisfactory, and I think it leaves a
24 lot of questions answered, and I think
25 that people are misreading some of the



1 things that the Supreme Court has said
2 for their own convenience.

3 I think that what's being
4 overlooked in this case is the fact that
5 the Supreme Court said quite clearly
6 that the fresh evidence relating to
7 Larry Fisher was available in October
8 1970 when Fisher made his confessions.

9 The question we have arising
10 out of that is who, in 1970, had that
11 information, and I think someone should
12 ask that to Mr. Kujawa right this
13 minute.

14 NEWS ANNOUNCER: Okay, Mr. Kujawa, why
15 don't you respond to that? You were the
16 Chief Prosecutor, I believe, at the
17 time, and you were prosecuting Mr.
18 Fisher; did you not notice some
19 similarities in that case?

20 MR. SERGE KUJAWA: I was not prosecuting --
21 well, I prosecuted Mr. Fisher in a very
22 informal sort of a way, he was pleading
23 guilty to some charges and clearing his
24 record in Saskatchewan. I dealt with
25 that, totally forgot, did not relate the



1 one case to the other.

2 And I have a question, a legal
3 question for Mr. Asper, which I know is
4 not fair, but he -- like the Supreme
5 Court says that the Fisher thing is of
6 major importance. I say there is,
7 according to our rules of evidence, no
8 way it can be brought in on a trial, and
9 the Supreme Court of Canada didn't even
10 attempt to tell us how it could be used
11 in the trial?

12 NEWS ANNOUNCER: Mr. Asper?

13 MR. DAVID ASPER: Well I just, you know,
14 this boggles my mind. I just wonder
15 whether Mr. Kujawa has even read the
16 decision, because a good portion of the
17 decision is devoted to the discussion of
18 the Fisher evidence, and in that portion
19 of the decision the Supreme Court says
20 that the Larry Fisher evidence is
21 relevant, it's credible, and forms the
22 basis on -- of the decision for The
23 Court ordering a new trial, so I just
24 can't understand where Mr. Kujawa is
25 coming from.



1 Nor has Mr. Kujawa adequately
2 answered the question that I put: Who
3 had the information? And for Mr. Kujawa
4 to simply say "I didn't make the
5 connection" belies the fact that the
6 police department of Saskatoon, three
7 days after the murder of Gail Miller, in
8 fact did make that connection.

9 NEWS ANNOUNCER: Mr. Kujawa, how would you
10 respond to that?

11 MR. SERGE KUJAWA: I don't know what
12 connection the police made. I went
13 according to the file which was before
14 us.

15 MR. DAVID ASPER: Well no, you went through
16 the file, but let me ask you this; when
17 you were prosecuting the Milgaard appeal
18 did you read the Milgaard prosecution
19 file?

20 MR. SERGE KUJAWA: Well, of course I did.

21 MR. DAVID ASPER: Well didn't you see the
22 references to the victims of Larry
23 Fisher that are replete throughout the
24 Milgaard prosecution file?

25 MR. SERGE KUJAWA: And I didn't, I didn't



1 see what Larry Fisher had to do with the
2 *Milgaard* case, I still don't, and the
3 Supreme Court of Canada says, in its
4 opinion, that's the main thing.

5 MR. DAVID ASPER: Well when you were, when
6 you were preparing the *Milgaard* appeal
7 --

8 MR. SERGE KUJAWA: Wait a minute, wait a
9 minute, I haven't finished my sentence.

10 The Supreme Court says Larry
11 Fisher is the main thing, and if anybody
12 in the Supreme Court of Canada wants to
13 get into our rules of evidence of
14 admissibility, they can't tell me how it
15 can be called. You haven't seen a
16 lawyer other than Asper on earth, that
17 is competent, to say that that is
18 admissible evidence.

19 NEWS ANNOUNCER: Gentlemen, I'm going to
20 interject here.

21 MR. DAVID ASPER: Well, I've got five
22 judges of the Supreme Court, what have
23 you got Mr. Kujawa?

24 MR. SERGE KUJAWA: You've got five judges
25 in the Supreme Court who came up with an



1 absolutely silly judgement which
2 contradicts itself and it does not tell
3 us how we can get that evidence in.

4 MR. DAVID ASPER: Well --

5 NEWS ANNOUNCER: Well one suggestion here
6 is perhaps that there should be an
7 inquiry to clear up some of this debate.
8 Obviously, both of you see things quite
9 differently.

10 First of all, Mr. Asper, what
11 do you think about that idea, that
12 should there be an inquiry to finally
13 put this to rest?

14 MR. DAVID ASPER: I think an inquiry is
15 essential and I'll tell you why. Today,
16 in part, the Attorney General for
17 Saskatchewan said that it would be
18 impossible to revive a trial 23 years
19 later against David Milgaard.

20 What is most distressing is
21 that in October of 1970 a good portion
22 of the evidence that the Supreme Court
23 ruled on was, in fact, available and not
24 disclosed to David Milgaard at a time
25 when he could have had a fair trial.



1 David Milgaard has not had a
2 fair hearing, and the Supreme Court of
3 Canada confirms that, and I think that
4 an inquiry is absolutely essential at
5 this stage to determine what, if
6 anything, went wrong way back in October
7 of 1970, and why David Milgaard wasn't
8 given an opportunity then to clear his
9 name, and is now precluded according to
10 the Attorney General for Saskatchewan.

11 NEWS ANNOUNCER: Okay, Mr. Asper. Mr.
12 Kujawa, sorry, what do you feel about an
13 inquiry, what's your impression on this?

14 MR. SERGE KUJAWA: Where are you going to
15 get an inquiry that, on the face of it,
16 is more independent and more qualified
17 than five judges of the Supreme Court of
18 Canada?

19 MR. DAVID ASPER: The Supreme Court of
20 Canada didn't deal with your conduct in
21 October of 1970.

22 MR. SERGE KUJAWA: Well, it's not because,
23 it's not because you didn't try to get
24 them to.

25 MR. DAVID ASPER: It wasn't part of their



1 mandate.

2 NEWS ANNOUNCER: Well should there be an
3 independent system other than the
4 Justice Minister, here, an independent
5 inquiry to settle some of that issue?

6 MR. SERGE KUJAWA: What is independent?
7 Who are you going to get to be on this
8 independent commission?

9 MR. DAVID ASPER: Somebody other than the
10 prosecution.

11 NEWS ANNOUNCER: Okay. Thank you both very
12 much, gentlemen, for speaking with us
13 this evening.

14 MR. DAVID ASPER: Thank you, Kurt."

15 **(Videotape ends)**

16 BY MR. HODSON:

17 Q If we can call up 039563, which is the transcript,
18 or a transcript of that. And I'm not sure, it's
19 got April 16th, 1992, I'm not sure if that is the
20 date of the program or not, but it would be around
21 that date.

22 Mr. Kujawa, do you recall,
23 having watched the video, do you have a
24 recollection of that interview?

25 A No I don't.



1 Q If we can just go through parts of it and I would
2 like to ask you some questions.

3 COMMISSIONER MacCALLUM: Did you say no,
4 you don't recall it, Mr. Kujawa?

5 A That's right, I don't recall any part of that
6 interview, I saw it a couple of days ago on TV and
7 it came as total news to me.

8 BY MR. HODSON:

9 Q If we can just go down to the bottom, and these
10 are just a transcript of your words, and this is
11 asked after Mr. Asper, I think, questioned you
12 about your knowledge of what he calls the Larry
13 Fisher information, and you say:

14 "I was not prosecuting...well, I
15 prosecuted Mr. Fisher in a very informal
16 sort of a way. He was pleading guilty
17 to some charges and clearing his record
18 in Saskatchewan. I dealt with that,
19 totally forgot...did not relate the one
20 case to the other ...",

21 And then:

22 "... I have a question for Mr. Asper
23 ...",

24 and you go on to ask about how the Fisher
25 convictions can be admissible in Court.



1 And at this time, Mr. Kujawa,
2 and I appreciate you say you don't recall the
3 interview, but on this date, April 16th or
4 thereabouts of 1992, did you have any more
5 knowledge about the Larry Fisher rapes than what
6 you have told us you had on April 14th and in
7 1971?

8 A No.

9 Q And, in particular, would you have been aware of
10 the fact, at the time of this interview, that the
11 Saskatoon Police, when they originally
12 investigated the matter of the Gail Miller murder
13 in 1969, identified similarities in the rapes and
14 the murder and had a theory that the rapist may
15 have been the murderer of Gail Miller, and
16 secondly, that Larry Fisher lived in the basement
17 of the Albert Cadrain house on the date of the
18 murder; would you have been aware of that
19 information at the time of this interview?

20 A Definitely not. First of all, I think I might
21 have remembered it if I had heard something about
22 that. Next, I didn't really get to see the police
23 file, and my first involvement in the case was
24 when it got to the Court of Appeal.

25 Q Would you have been aware --



1 A It was in the hands of our prosecutor in Saskatoon
2 throughout the other stuff.

3 Q And your question here to Mr. Asper, I take it at
4 this time, Mr. Kujawa, you had some questions as
5 to how Mr. Fisher's convictions for rape could be
6 admissible in a new trial against David Milgaard;
7 was that the point of the question to Mr. Asper?

8 A Yes, it was.

9 Q I think I have told you or asked you earlier, with
10 the information that others had at this time,
11 namely that the police drew a connection between
12 the rapes and the murder due to *modus operandi*;
13 secondly, that Larry Fisher lived in the Cadrain
14 basement a block away from the murder scene;
15 thirdly, that his wife, Linda Fisher, gave some
16 information to the police that suggested that Mr.
17 Fisher was not at work on the morning of the
18 murder and that she had suspicions about him; with
19 that information, Mr. Kujawa, are you able -- what
20 is your view as to whether or not those
21 convictions might be relevant in a trial against
22 Mr. Milgaard?

23 A Well if there was a whole package of circumstances
24 put together they might have been relevant, yes,
25 it might have been relevant at least to the point



1 of making anyone dealing with the case wondering
2 if Fisher was involved in that murder. That
3 doesn't mean that, just because you were wondering
4 about it, that that means you had some relevant
5 evidence in your case or in your head.

6 Q And so when you are asking Mr. Asper, raising this
7 point about relevancy, was it -- was it -- is it
8 correct to say that what your concern was as to
9 how that evidence would have been admissible at
10 Mr. Milgaard's trial if he had a new trial?

11 A That's right.

12 Q If we can go to the next page. And then you are
13 asked a question, I think by Mr. Asper through the
14 reporter, about some of this information, and you
15 say:

16 "I don't know what connection the police
17 made, I went according to the file ...".
18 And, again, I think that's what you just told us
19 a few moments ago; is that correct?

20 A Yes.

21 Q Scroll down. You were asked by Mr. Asper:

22 "When you were prosecuting the Milgaard
23 appeal, did you read the Milgaard
24 prosecution file?"

25 You answered:



1 "Well, of course I did."

2 What file were you referring to that you read?

3 A The only file I was referring to was the
4 transcript of the evidence given against Milgaard,
5 of the evidence, and the transcript of the
6 instructions at law given by the trial judge.
7 That's all that was relevant in the Court of
8 Appeal, that's all I dealt with.

9 Q And then if we can scroll down, you make a comment
10 about, you say:

11 "... who came up with an absolutely
12 silly judgment which contradicts itself
13 and does not tell us how we can get that
14 evidence in."

15 And again, would that be referring to the Fisher
16 convictions?

17 A The part that you just read?

18 Q Yeah. I think what you are saying here is Mr.
19 Asper says he's got five judges, what have you
20 got, and you said you've got five judges who came
21 up with an absolutely silly judgment which
22 contradicts itself and it does not tell us how we
23 can get that evidence in, and I'm presuming that
24 you are talking about the evidence being the Larry
25 Fisher convictions; is that correct?



1 A Right, and I still haven't had anybody tell me how
2 that could have been put in.

3 Q Mr. Tallis testified before the Commission of
4 Inquiry that he believes that he could have
5 tendered evidence at the trial if he would have
6 had this information to say that a jury, that
7 there's a more likely suspect; namely -- and at
8 that time it would be an unknown rapist who
9 committed similar rapes in the area, and so that
10 was his view about how he could get it in as
11 evidence?

12 A If he could have connected it in in some logical,
13 legal fashion, he could have got it in, but still,
14 there's no one that I've heard of to explain to me
15 how that can be done.

16 Q Okay.

17 A On those facts.

18 Q If -- just to take this interview, and I'll show
19 you some subsequent media reports about this, some
20 interpreted your comments in this interview to say
21 that back in 1971 you actually connected the two
22 and looked at the Fisher convictions in the
23 context of the Milgaard case and in 1971 you made
24 the judgment call that the Fisher information
25 wasn't relevant and that you deliberately decided



1 not to disclose that. Did that in fact happen?

2 A Well, I heard something about Fisher along the
3 way, that sort of stuff happened, along with the
4 Milgaard -- or the Miller killing at the same
5 time, so I must have heard about it, but if I saw
6 a statement which I didn't think was evidence in
7 my case, I of course disregarded it, disregarded
8 it.

9 Q And --

10 A What else could I do with it.

11 Q Let me put the question this way, Mr. Kujawa.
12 Some interpreted your comments in this interview,
13 and I think earlier this morning you told us that
14 you never connected the two, you never got to the
15 point of considering whether Larry Fisher, the
16 Larry Fisher information was connected to the Gail
17 Miller murder; is that what you told us this
18 morning?

19 A Yes, and that's what I still believe.

20 Q And some interpreted your comments here in this
21 interview when you said that the Larry Fisher
22 evidence was not relevant at this time when you
23 are saying it, some construed that to mean that
24 back in 1971 that you had made a similar
25 determination; in other words, that you



1 deliberately sat down, considered it and made a
2 conclusion back in 1971 and said it's not
3 relevant, therefore, I'm making a conscious
4 decision not to give it to anybody, and that was
5 my question, as to whether -- would that be a
6 proper interpretation of what you, of what
7 happened?

8 A No. To me it wasn't evidence involved in the
9 murder charge that I was dealing with and so I
10 wasn't dealing with it, I was doing my best to
11 deal with what there was.

12 Q If we could go to 328294, and this is another news
13 program transcript again on the same date which
14 causes me to think the other transcript might have
15 been the day earlier, but I'm not certain of that,
16 and this is another interview with you and Mr.
17 Asper, and if you go to 328294 and at the bottom,
18 if we can go to page 328296, you are quoted as
19 saying:

20 "I understand that the Supreme Court of
21 Canada says that the main reason for
22 this new trial is Fisher.

23 I say that I don't know how
24 the Fisher evidence is admissible in
25 this matter. The Supreme Court has not



1 told us how it is admissible."

2 Again, that's what you just told us; is that
3 correct?

4 A Yes.

5 Q Then if you can go to 328298, Mr. Asper says:

6 "My point is that in 1970, Mr. Kujawa, I
7 believe, personally was aware of the
8 Larry Fisher evidence.

9 I believe that the chief
10 investigating officer in the Milgaard
11 case was aware of the Larry Fisher
12 investigation."

13 I'm making an assumption here, I think what Mr.
14 Asper is referring to when he says the Larry
15 Fisher evidence, he's referring to all of it as I
16 put to you, and again, Mr. Kujawa -- actually,
17 let me go to the next page, and then you make the
18 comment, and I think you get into a debate with
19 Mr. Asper about whether or not in 1992 this
20 evidence would be admissible on a new trial and
21 perhaps whether it was admissible back in 1970,
22 and you say:

23 "Evidence that's not relevant is never
24 admissible. You should learn that in
25 first year law."



1 And again, would that be the same thing you had
2 told us earlier, your concerns about how you get
3 the Fisher evidence in as being admissible?

4 A To me it wasn't evidence in that case and no one
5 has explained to me how it could become that.

6 Q And would you agree, Mr. Kujawa, that if defence
7 counsel were able to establish that, those
8 convictions might show to a jury that someone
9 other than David Milgaard had committed the crime,
10 in other words, here's a better suspect and here's
11 relevant evidence that links this other suspect to
12 the Gail Miller murder? Mr. Tallis has said he
13 thinks that it would have been admissible or that
14 he would have sought to get it admitted, and
15 again, with the connection as I've stated, that
16 the police viewed the *modus operandi* to be similar
17 between the rapes, the murder, that Larry Fisher
18 lived in the basement of the Cadrain house a block
19 and a half from the murder scene and two houses
20 away from where Gail Miller's wallet was found,
21 and third, that Linda Fisher said that the morning
22 of the murder her husband wasn't at work under
23 suspicious circumstances and she had actually
24 accused him of the murder, would that type of
25 information, would you still have concerns about



1 whether or not that might be admissible?

2 A I would have concerns because I don't know about
3 this area in Saskatoon, but assuming it was an
4 ordinary city block within a stone's throw of
5 where Larry Fisher lived or whoever lived, where
6 another 200 people, would there be evidence
7 against their proximity, be admissible to raise a
8 doubt in a charge against Milgaard where it's had
9 evidence pointed right against it having committed
10 the offence? If it -- if I'm that bad for not
11 knowing the answer to that question, I'm sure glad
12 it wasn't raised at the law school or I wouldn't
13 be here.

14 Q Okay. So is it fair to say you would still have
15 concerns about the admissibility of that type of
16 evidence?

17 A Yes, I would, unless you had some other connection
18 that logically pointed a finger at someone else or
19 pointed it clearly away from you showing that you
20 couldn't have done it.

21 Q And I don't mean to debate the issue with you, but
22 I think that's what Mr. Tallis said, is that he
23 felt that that evidence would be of assistance to
24 show to the jury that there is a more likely
25 suspect or person who committed this crime, being



1 a person who committed similar crimes and was in
2 the area and other information of that nature to
3 raise a doubt with the jury.

4 A Well, if he could have raised that in some way,
5 after all, he was a law professor and not a
6 beginner like I was in those days, he might have
7 had a great idea of how to tie it up. I don't
8 know.

9 Q If we can go to 334777, and this is just a letter
10 that Mr. Wolch wrote to Kim Campbell on April
11 20th, 1992, and if we can go to 026935, and in
12 this letter, this is the letter from Mr. Wolch to
13 Bob Mitchell, Robert Mitchell, the minister. If
14 we can go to page 026937, and he's asking
15 Mr. Mitchell to order an inquiry and he's putting
16 forth his concerns about people's conduct and
17 their role in this and he says with respect to
18 you:

19 "Mr. Kujawa was acting in an advisory
20 capacity to Mr. Caldwell during the
21 prosecution of David Milgaard, and
22 handled the subsequent appeals of David
23 Milgaard. He would have been totally
24 conversant with the files, and has since
25 so indicated in interviews. "



1 Now let me pause there. I'm not sure what
2 specific interviews are referred to there. As
3 far as the files that you were conversant with on
4 the David Milgaard matter, I think you've told us
5 it would be the transcript and the Notice of
6 Appeal; is that correct?

7 A And the legal comments by the trial judge.

8 Q And then:

9 "Why the matter took so long for Fisher
10 to be dealt with has to be examined.
11 David Milgaard's application to the
12 Supreme Court of Canada was dismissed on
13 November 5, 1971; -- "

14 I think that should be 15,

15 "-- six weeks later Fisher was directly
16 indicted in Regina, and entered guilty
17 pleas to the matters which the Supreme
18 Court has now ruled form part of the
19 fresh evidence justifying a new trial.
20 Mr. Kujawa was handling both matters on
21 behalf of the Attorney General of
22 Saskatchewan. There was no publicity of
23 the Court proceedings, the victims were
24 never notified, and the investigation
25 continued. Mr. Kujawa has now publicly



1 stated that the evidence was in his view
2 not admissible, and he has further
3 stated that the Supreme Court was
4 "simply being silly". While it is open
5 for him to disagree with the Supreme
6 Court, hopefully in a more polite
7 manner, it was not open for him to be
8 the ultimate arbitrator. In our view,
9 his duty was to provide the information
10 to Mr. Tallis, who could then have
11 applied to the Court to make a
12 decision."

13 And let me pause here. I think what Mr. Wolch is
14 saying in the letter, Mr. Kujawa, is he is taking
15 from comments you made, number 1, I think you are
16 saying yes, in April of 1992 I don't think the
17 Fisher admissions were admissible based on what
18 you knew about them; is that correct?

19 A That's correct, what I knew about them.

20 Q Back in 1971 when you were dealing with the David
21 Milgaard file, did you consciously and
22 deliberately look at the Fisher evidence in the
23 context of the David Milgaard file and make a
24 decision that it was not relevant?

25 A No, I didn't consider that as part of the file I



1 was working on at all.

2 Q If we could then go to 230 -- just hang on a sec.
3 Yeah, if we can go to 230119, here is a subsequent
4 news clip, it's SK2, and there's two clips here,
5 there's Mr. Wolch's comments about what you had to
6 say and your response, so the first one is 230119
7 and it's at the one hour, six minute mark.

8 **(Videotape started)**

9 "Q Mr. Wolch, I believe last week Mr.
10 Kujawa was saying that he didn't see
11 what Larry Fisher had to do with all of
12 this. How do you respond?

13 MR. WOLCH: Well, he is entitled to be
14 obtuse, he's entitled to be not very
15 bright, he's entitled to not be able to
16 read, he's entitled to all those kind of
17 things, but he's not entitled to make a
18 final decision. That is, he can look at
19 it and say to himself I don't think it's
20 admissible, I think the Supreme Court is
21 dumb, I think the law is dumb, I think
22 the lawyers are dumb, but he has to
23 present it and let somebody else make
24 that decision. That is the distressing
25 part of it. People are entitled to be



1 wrong, but they are not entitled to
2 withhold.

3 Q I have a question of disclosure. The
4 Supreme Court had said that, you know,
5 there was adequate information disclosed
6 by prosecutors in Saskatchewan to Mr.
7 Milgaard's defence counsel at the time.
8 Are you interpreting that to say that
9 there was adequate disclosure at the
10 time of trial and at that point things
11 fell apart?

12 MR. WOLCH: The Supreme Court said, they
13 chose their words I'm sure carefully, as
14 they always do, they said there was
15 adequate disclosure by the rules as they
16 were then. Now, clearly not as they are
17 today, and today are the better rules,
18 today that would not be adequate
19 disclosure, but back in 1969 I guess
20 things were done a lot differently, but
21 they specifically did not condone
22 anything after 1970 when Fisher came to
23 light. There was not a reference in
24 their judgment to say that it was
25 inadvertently looked at, overlooked, it



1 was handled properly, they specifically
2 said it came to light in October of 1970
3 and didn't go on to say those things
4 they said about the earlier handling of
5 the matter.

6 Q What you are saying is that it's
7 incumbent upon the prosecution and the
8 police and everyone involved in this to
9 shed light on the fact that someone else
10 possibly may have committed the crime?

11 MR. WOLCH: Oh, sure, that's what
12 disclosure is all about. The
13 prosecution is not supposed to judge and
14 make the final decision, they are
15 supposed to bring it forward. The
16 evidence favourable to the defence was
17 supposed to be brought forward.

18 MR. ASPER: I mean, insofar as that
19 evidence is concerned, the state or
20 agents of the state investigated it,
21 they prosecuted it, they represented
22 Milgaard's interest in it by rejecting
23 the connection and then ultimately
24 judged on it without Milgaard ever
25 knowing about it, and, you know, the



1 A By these people?

2 Q Yes.

3 A There's no convenient way to answer that. What
4 they say or think doesn't bother me.

5 Q Maybe go to the one hour 17 minute mark.

6 **(Videotape started)**

7 "NEWS ANNOUNCER: Milgaard's lawyers want
8 to focus on three justice officials who
9 knew about that confession. Eddie
10 Karst, a police officer who investigated
11 both Milgaard and Fisher and who the
12 lawyers say withheld information on
13 Fisher. Bobs Caldwell, the man who
14 prosecuted Milgaard, who sent the Parole
15 Board pictures of Gail Miller's
16 mutilated body when it was considering
17 Milgaard's release, and most of all,
18 Serge Kujawa, the prosecutor who opposed
19 both of Milgaard's appeals who
20 Milgaard's lawyers say did not act on
21 information he had about Fisher. Kujawa
22 now sits on the government side of the
23 Saskatchewan legislature.

24 MR. WOLCH: We are deeply concerned that
25 there is, without even being told why,



1 no inquiry, and the question remains is
2 that to protect a member of the caucus,
3 because the Inquiry zeros in on him.

4 MR. KUJAWA: I thought these guys were
5 silly little jerks up till now.

6 NEWS ANNOUNCER: This afternoon Kujawa
7 shot back defending his actions.

8 MR. KUJAWA: I know that I am proud of my
9 handling of all criminal cases I've
10 appeared in."

11 **(Videotape ends)**

12 BY MR. HODSON:

13 Q Okay. And, Mr. Kujawa, do you recall those
14 exchanges you would have had at that time?

15 A A bit. I don't recall details. I know there was
16 some things like that said, but that's all I can
17 remember.

18 Q If we can go to 160397, just go through, this is
19 an article by Dan Lett in the *Free Press*, April
20 22nd, "Milgaard lawyers heap scorn on Kujawa." It
21 says:

22 "Former Saskatchewan chief prosecutor
23 Serge Kujawa was either incompetent or
24 dishonest when he failed to disclose key
25 evidence that may have kept David



1 Milgaard from a 1970 murder conviction,
2 Milgaard's lawyers say."

3 And then over to the right-hand side:

4 "As the province's top Crown attorney in
5 1970, Kujawa has already admitted he had
6 knowledge of both the Milgaard and
7 Fisher cases.

8 Wolch said Kujawa handled
9 Milgaard's 1970 Saskatchewan Court of
10 Appeal hearing and was frequently
11 consulted during Milgaard's trial by Bob
12 Caldwell, the original prosecuting
13 attorney."

14 Were you frequently consulted by Mr. Caldwell
15 during the trial?

16 A No, N-O, there was one consultation, I think I've
17 stated that before, when he called about that
18 cross-examination under *The Evidence Act*, that's
19 the only question during the course of that trial
20 that I got from Caldwell.

21 Q Then it goes on to say:

22 "Wolch said Kujawa failed to disclose
23 the Fisher evidence to Milgaard's
24 lawyers either because he was
25 incompetent or because he was trying to



1 save his office from embarrassment over
2 a wrongful conviction.

3 "We are deeply concerned that
4 there is, without even being told why,
5 no inquiry," Wolch said. "The question
6 remains: Is that to protect a member of
7 the caucus? Because the inquiry zeros
8 in on (Kujawa), his conduct."

9 Then:

10 "Kujawa told the Canadian Press in
11 Regina yesterday that Wolch's statement
12 was "an irresponsible, ludicrous thing
13 to say."

14 So do you recall, Mr. Kujawa, these types of
15 exchanges in the media about allegations about
16 your conduct in the matter and your responses?

17 A Just a bit. I don't recall the details. Like,
18 that last one you read out --

19 Q Yes.

20 A -- I suspect that I said that because I was
21 basically a straightforward, honest commentator,
22 but I don't want to repeat it, I don't want to get
23 into it and I would think that Mr. Wolch doesn't
24 either, but if I'm wrong, he can go ahead and
25 flail away.



1 Q Go to 077812, and again this is April 22nd in the
2 *StarPhoenix*, and it talks here about a request for
3 an inquiry and the Justice Minister Bob Mitchell
4 refused to call an inquiry and Mr. Wolch suggests
5 part of the reason might be to protect you, and
6 then over on the right-hand side you talk about:

7 "... proud of his career as a Crown
8 prosecutor, including his part in
9 Milgaard's trial and appeals.

10 "I took the appeals to the
11 Court of Appeal and the Supreme Court.
12 All you do with that is take a
13 transcript of the trial, apply the law
14 to it and try to be helpful to the
15 court."

16 In fact, both courts
17 complemented him on his efforts and he
18 had not heard the matter raised until
19 Tuesday."

20 If that's what was said, the
21 suggestion that I was a crook, a fraud
22 or a fool, that's a serious allegation,"
23 he said."

24 And did these allegations at the time bother you,
25 Mr. Kujawa, or tell us what your reaction was to



1 them?

2 A Just -- I was more annoyed than bothered. I don't
3 think anyone can ever enjoy being, hearing that
4 sort of talk, but that's as far as it went. It
5 certainly didn't get the long -- very, very
6 shallow impact.

7 Q I want to go now to 060586, an article again of
8 the same date, April 22nd -- sorry, 06 -- I'm
9 sorry, go to 060828, and I think Mr. Yanko --
10 pardon me, Mr. -- I'm sorry, if we can just --
11 that's the wrong page. 060828. And here's where
12 I think Mr. Yanko writes:

13 "While Kujawa says he didn't give
14 Milgaard's lawyer information about
15 Fisher because he thought it was
16 irrelevant, Wolch pointed to the Supreme
17 Court decision and attacked that view."

18 Is that in fact correct to say that, Mr. Kujawa,
19 that you didn't give Milgaard's lawyer
20 information about Fisher because you thought it
21 was irrelevant?

22 A I didn't give his lawyer that information because
23 I hadn't, I didn't realize it had anything to do
24 with that case, that's why I didn't give it.

25 Q 160399. Sorry, if we can go ahead to 227983, this



1 is an article of April 22nd, again the same date,
2 in the *Winnipeg Sun*, and it says:

3 "Key players in Milgaard's prosecution
4 kept the evidence under wraps, perhaps
5 intentionally, for more than 20 years,
6 Wolch said."

7 And then goes on to talk about Serge Kujawa knew
8 in late 1970 Fisher had confessed to three
9 Saskatoon rapes earlier linked in Miller's
10 murder. Again, I think you've told us this, that
11 back in 1971 when you dealt with the Fisher
12 files, were you aware that those rapes were
13 linked with the Gail Miller murder?

14 A No, I didn't.

15 Q And the right-hand side:

16 "Fisher's victims weren't told he'd been
17 caught and Saskatoon investigators
18 weren't told they could stop
19 investigating, Wolch said, suggesting
20 Mitchell -- who ruled out an inquiry and
21 compensation for Milgaard when he
22 announced last week Saskatchewan was
23 staying the murder charge -- may be
24 covering for Kujawa, his fellow caucus
25 member. Kujawa, who called the



1 suggestion ludicrous, has called the
2 Supreme Court decision leading to
3 Milgaard's release 'silly'."

4 Then down at the bottom:

5 "Wolch said it's odd Kujawa didn't ask
6 for additional jail time for Fisher,
7 earlier sentenced to 13 years for two
8 rapes in Winnipeg, and he wants to know
9 why the trial was held in Regina instead
10 of Saskatoon, where the crimes took
11 place."

12 I think you've covered that for us earlier this
13 morning.

14 I've just got one more article
15 to show you, 328178, and -- sorry, 328178 -- and
16 this is an article, it's a Regina wire story, and
17 I'm not -- actually, yeah, it's April 22nd, again
18 where it says:

19 "Wolch told a news conference Tuesday an
20 independent inquiry should be called
21 into Milgaard's case and focus largely
22 on Kujawa's handling of his client's
23 appeals."

24 And then there was some suggestion earlier that
25 Mr. Mitchell was avoiding calling an inquiry and



1 doing matters to cover up, I think that was the
2 word, or to protect you because you were a fellow
3 MLA. Were there any discussions of that nature
4 with Mr. Mitchell at the time about the
5 Government of Saskatchewan acting in a certain
6 way because of your role in the David Milgaard or
7 Larry Fisher matters?

8 A No.

9 Q And finally, it says:

10 "Wolch said evidence about Fisher was
11 withheld from Milgaard's lawyers in 1970
12 and said, "That's why an inquiry is
13 necessary. That's why a member of the
14 Saskatchewan caucus should not be
15 protected. Kujawa said he was only
16 doing his job when he argued against
17 Milgaard's appeals to the Saskatchewan
18 Court of Appeal and Supreme Court of
19 Canada. I am totally proud of what I
20 did because I worked at the thing
21 carefully and did my job."

22 Again, would that be an accurate statement of
23 your position?

24 A I don't know if it was accurate, but it's an
25 honest statement. It's my best belief.



1 Q And then one last document, 219270, and this is
2 May 2nd, 1992 in *The Globe and Mail* and a comment
3 here:

4 "For Milgaard supporters it is not a
5 question of whether there was a cover up
6 in the Fisher investigation, but how far
7 reaching it was: "The frightening
8 question about this is how many people
9 were involved in it? Mr. Milgaard's
10 lawyer David Asper asks. They find it
11 implausible that the Crown could
12 simultaneously handle the Fisher and
13 Milgaard cases without at least
14 considering the similarities." Who was
15 calling the shots? And why?"

16 And we'll go into this a bit after the break, Mr.
17 Kujawa, but did you become aware around this time
18 that allegations were being made publicly against
19 you that you were involved in a cover-up and some
20 dishonest misconduct relating to your handling of
21 the Larry Fisher and David Milgaard files?

22 A To some degree I've heard it, and I've heard the
23 same comments and the same commentators as before,
24 and that's why I just totally fail to remember or
25 notice it.



1 Q Would you have been aware, at least at that time,
2 that these allegations were being made in the
3 media about you?

4 A Some allegations of that kind were being made,
5 yeah.

6 Q This might be an appropriate spot to break, Mr.
7 Commissioner.

8 (Adjourned at 2:30 p.m.)

9 (Reconvened at 2:43 p.m.)

10 BY MR. HODSON:

11 Q Good afternoon. We, at the break we were just
12 finished up in May 1992 about -- a comment about
13 allegations made against you.

14 I now want to go to a time
15 period, Mr. Kujawa, around September of 1992, and
16 that is when Joyce Milgaard, David Milgaard, and
17 Hersh Wolch held a press conference outlining
18 allegations and information that they obtained
19 from a fellow by the name of Michael Breckenridge
20 suggesting that you were involved in a coverup and
21 deliberate wrongdoing. Do you have a general
22 recollection of these types of allegations being
23 made; do you remember the -- do you remember that
24 happening?

25 A Oh, I remember the, me finding out about the



1 allegations made by this fellow.

2 **Q** And when and how did you find out; was it in the
3 media?

4 **A** No, I think it was I was informed by the police
5 and asked for a time and a place for an interview
6 so they could check this out, I think that's my
7 first real information about it.

8 **Q** Okay. And I'll go through some documents here,
9 and I think in September 19th, 1992 was the date
10 of the press conference and the date the
11 information became public, and then the records
12 show, the evidence we have and will hear is that
13 the RCMP then conducted, in part, a criminal
14 investigation into your conduct and I think
15 interviewed you in 1993; is that right?

16 **A** I thought it was later than that, but I might be
17 wrong.

18 **Q** Now this fellow Breckenridge claimed to have
19 worked in your office in 1971 when you were
20 handling both the Milgaard and Fisher matters, and
21 I'll go through his statements in some detail; do
22 you remember Michael Breckenridge as an employee?

23 **A** A bit, yes, I do.

24 **Q** And what, if anything, do you remember about him?

25 **A** Oh, I thought that he was a very disabled fellow,



1 and I didn't exactly know what he was working at
2 so I didn't have much to do with him at work as
3 such, but I saw him around and about. And, oh, he
4 also approached people on -- in connection with
5 different things that I thought were strange. And
6 he, after he quit, well after he was sent away
7 from the department or whatever it was, I don't
8 know for sure about that, he used to come to my
9 office every once in a while and seek large
10 donations of money to great causes, even though he
11 never succeeded in any one of his approaches, and
12 he did things like that which were unusual.

13 Q And did you have any type of conflict with
14 Mr. Breckenridge while he was there?

15 A No, because I had nothing to do with him, and I
16 certainly -- well, even if he attacked me, I
17 wouldn't consider it much of a conflict.

18 Q Do you recall what he did, what his job was there?

19 A No, he, I don't know what he was doing in that
20 department.

21 Q And did he do any work with you, involved with any
22 of your files?

23 A No.

24 Q Mr. Breckenridge, in his initial statement -- and
25 I'll take you to this -- said that he started



1 working with the Department of Justice in 1971 and
2 was there when you and Mr. Romanow would have been
3 dealing with the Milgaard and Fisher files.
4 Subsequent investigation by the RCMP disclosed
5 that he didn't start working there until September
6 of 1973; do you have any knowledge as to when he
7 started working or whether he was there in 1971 or
8 not?

9 A Well all I sort of vaguely remember when they
10 asked me about this fellow in connection with this
11 case is that he, I didn't think he was anywhere
12 around, I didn't know who he was or that he was
13 alive on earth at that time. That's all I
14 remember. I may be wrong.

15 Q If we could call up 004064. And what I want to
16 do, Mr. Kujawa, is go through with you the
17 documents around this time, the letters that were
18 sent to the Federal Minister of Justice regarding
19 your conduct, and Mr. Breckenridge's statements,
20 and transcripts of the press conference, and get
21 your answers to some questions relating to that.

22 This is September 16th, 1992, a
23 letter by Mr. Wolch to The Honourable Kim
24 Campbell, and he says, again this is September
25 16th, 1992:



1 "However, new evidence has been obtained
2 which makes it imperative that the
3 Federal Government order an inquiry into
4 the entire Milgaard matter. Briefly,
5 this evidence consists of a witness who
6 was a former employee of the
7 Saskatchewan Attorney General's
8 Department who has come forward with
9 information concerning activities in the
10 Department shortly after David
11 Milgaard's conviction. Enclosed please
12 find a photocopy of the statement which
13 this witness has provided to a private
14 investigator in Saskatchewan."

15 And that is the Michael Breckenridge statement.
16 Did you, do you recall, Mr. Kujawa, did anybody,
17 prior to the police interviewing you which we'll
18 deal with a bit later, did anybody on behalf of
19 David Milgaard come to you and ask you for your
20 reaction or comment on what Mr. Breckenridge was
21 saying?

22 A I don't think so.

23 Q If we can scroll down, it says:

24 "It is clear from this statement that
25 some information came to the attention



1 of this witness which suggested that
2 there was a mistake made in the Milgaard
3 case. This witness brought this
4 information to Mr. Kujawa's attention,
5 and was told to mind his own business if
6 he valued his job. This witness also
7 indicated that by virtue of the filing
8 which was required in his position, he
9 became aware that meetings were held
10 where both the Milgaard and Fisher files
11 were considered together. These
12 meetings were behind closed doors and
13 involved senior attorneys in the
14 Attorney General's office."

15 And then go on to the next page, and then it goes
16 on to say:

17 "Mr. Mitchell has not seen fit to order
18 an Inquiry into the Milgaard matter, nor
19 does he seem inclined to do so. In
20 light of the evidence linking the
21 present Premier of the Province of
22 Saskatchewan to the Milgaard case, we
23 would suggest that it would be
24 impossible for the Milgaard family to
25 obtain any form of impartial inquiry in



1 the Province of Saskatchewan."

2 Do you recall, as part of these allegations made
3 against you, Mr. Kujawa, that they also included
4 the Premier at the time, Mr. Romanow, as being
5 involved and complicit in improper activities
6 with respect to the handling of the David
7 Milgaard file in 1971?

8 A I don't know when I first found out about that but
9 I know that the RCMP had, about the same, in the
10 same stretch of time that they interviewed me, had
11 also interviewed Roy Romanow, I am told. So
12 that's about all I knew about that.

13 But the, when I mentioned that
14 Breckenridge was a pretty strange fellow, well
15 that statement that he gave over there shows how
16 strange he was. He told you about seeing things
17 that didn't happen long -- that he wasn't there
18 when he says they happened.

19 Q Okay. And I'll go through the statement with you,
20 Mr. Kujawa, and we can -- I'll ask for your
21 comments on that.

22 A Right.

23 Q If we can go first to 159537. And this is a
24 letter March 21, 1992, there is a letter from
25 Mr. Breckenridge of March 21, 1992 and then a



1 statement dated May 22nd, a couple of months
2 later. So this would be the first letter of
3 Mr. Breckenridge contacting Mr. Wolch, and I just
4 want to go through parts of this, and this would
5 be at the time that the Supreme Court reference is
6 ongoing. And he says:

7 "I have been watching with interest the
8 David Milgaard case since I worked in
9 the Attorney Generals Dept. in Sask. at
10 the time of those cases (Fisher and
11 Milgaard). My job was to process the
12 criminal files. Serge Kujawa had just
13 been appointed Chief Crown Prosecutor
14 for party loyalty."

15 Let me pause there and put aside the party
16 loyalty. You were appointed in 1966, were you,
17 to the Director of Public Prosecutions?

18 A I think that was it. I'm not sure. I think I
19 was.

20 Q He says:

21 "Roy Romanow had just been elected ...",

22 A Pardon me, your question again, please?

23 Q Yeah, I think your resume you indicated in 1966
24 you were appointed the Director of Public
25 Prosecutions?



1 A I think that's it.

2 Q And then he says:

3 "Roy Romanow had just been elected and
4 appointed Attorney General and wanted to
5 make a name for himself."

6 And I think we've heard evidence that the
7 election was June 23, 1971, so again, right in
8 the middle of 1971 when you were working on both
9 of the Milgaard and Fisher files I think is your
10 evidence, and I think you told us that's when
11 Mr. Romanow became the Attorney General; is that
12 correct?

13 A I think that's right.

14 Q Scroll down.

15 "At the time of these cases there were
16 many closed door meetings between
17 Romanow, Ken Lysyk - Deputy Minister and
18 Serge Kujawa all because discrepancies
19 in the two cases. I remember delivering
20 both cases to Serge at the same time."

21 Let me just pause there. What, as far as the
22 Milgaard file, if I can call it that, what would
23 it be that Mr. Breckenridge -- well, first of
24 all, did this happen?

25 A No, it did not happen.



1 Q As far as a file, what would be the physical file
2 for the David Milgaard matter that you would have
3 had?

4 A Well, until the appeal came into the Court of
5 Appeal I didn't have a file as such.

6 Q When you were handling the appeal. This is, I
7 believe, talking about the time you are handling
8 the appeal; what would your file consist of?

9 A The transcript and the things that the Court of
10 Appeal demanded on a criminal appeal.

11 Q And then it says:

12 "The general feeling in the Dept. at the
13 time was that these were to high profile
14 cases that the N.D.P. could appear to
15 get great political milage from as part
16 of their law and order platform."

17 Now when you argued the Milgaard appeal in
18 November of 1970, and the judgement in January of
19 1971, was the Liberal government in power at that
20 time? I believe that's what we've heard?

21 A I don't know just exactly when which government
22 was there. I don't know.

23 Q And it says:

24 "They figured that since they were the
25 gov't nobody would ever question the



1 findings of their court system."

2 Again, Mr. Lysyk, did he become the Deputy
3 Minister when?

4 A Umm, again I don't know, I know he was the Deputy
5 Minister.

6 Q To Mr. Romanow?

7 A Yeah.

8 Q And would you have closed doors, closed-door
9 meetings with Mr. Romanow, the Attorney General,
10 and the Deputy Minister about specific prosecution
11 files?

12 A I haven't had a closed door meeting with those
13 people once in my lifetime.

14 Q You are --

15 A Not once, ever.

16 Q Have you ever had any meetings with them to
17 discuss specific prosecution files?

18 A None.

19 Q "Some other people in the Dept. that can
20 attest to this is Mr. Dale Richter now
21 with C.S.I.S. living in Quebec, Mr. Dave
22 Wolbaum ... and Maurice Herauf ..."

23 Now do you recognize those names as being people
24 that worked in the department at the time?

25 A No, I don't recognize the names.



1 Q Okay.

2 A That may be the fault of my memory, but I don't.

3 Q If we can go to the next page, Mr. Breckenridge
4 says in the letter:

5 "Today, I would suggest that there is a
6 cover up by the present administration
7 to hide the sins of the Blakeney regime.
8 I would also suggest that the main
9 motivation is political as opposed to
10 legal."

11 Again, I think that mention of coverup.

12 Then if we could go to 004066.
13 And this is actually the statement, May 22nd,
14 1992, that Mr. Breckenridge gave. The first
15 document was his initial letter to Mr. Wolch, and
16 I think the evidence we have and will hear, Mr.
17 Kujawa, is that from March 18th, 1992 and May
18 22nd, 1992, that Mr. Breckenridge, or on this
19 date provided the statement, and there was some
20 meetings between he and I think Mrs. Milgaard and
21 perhaps a private investigator. And in this
22 statement he says:

23 "Statement

24 As to events surrounding the Milgaard
25 Case:



1 I was hired to the Blakeney
2 gov't in approximately 1970 or 1971. I
3 started in the Dept. of Ind. and
4 Commerce, the minister was Kim Thorson.
5 After approximately 6 mos. there I
6 transferred to the Attorney Generals'
7 dept. under Roy Romanow. Here I stayed
8 until my job was threatened by Serge
9 Kujawa."

10 And we'll come back to that because I think there
11 is a reference a bit later, but I'll give you a
12 chance to respond to that when we get to the end
13 of the statement. Scroll down. He says:

14 "After working within the dept for some
15 time trust of the minister and others
16 was gained. I went from working 8 hours
17 a day in criminal records to running
18 errands for the minister that were party
19 business. All during this time in the
20 dept. Serge Kujawa was Chief Crown
21 Prosecutor and Bill Logan was liason
22 officer between police dept's."

23 Do you remember Bill Logan?

24 A Yes, I remember him quite well.

25 Q And what was his role?



1 A He had some sort of -- he was a fellow who had
2 spent a lot of years being an RCMP officer, when
3 he got pretty well through with that he went to
4 law school and got a law degree, and then came
5 into the Justice Department and got various jobs
6 doing paperwork in the Department of Justice.
7 That's my quick summary of Bill Logan. He is
8 still around and about in Regina today.

9 Q Okay. If we can scroll down to the bottom,
10 Mr. Breckenridge says:

11 "My specific job was to receive the mail
12 and date it, sort it, place file numbers
13 on it, direct it to the proper attorney,
14 and match it to the proper file for
15 filing. In order to do this all
16 correspondence had to be read. At first
17 this was menial boring work but that
18 changed as we began to get mail marked
19 everything from "Private and
20 Confidential" to "Eyes Only" that was
21 directed to Mr. Romanow."

22 Next page:

23 "We didn't open this mail but usually
24 ended up getting it back for filing.
25 Sometimes this would be quite soon other



1 times it might be months before it
2 returned to our section for filing.
3 Often when this mail arrived we had to
4 pull the corresponding file and take it
5 to the ministers office or Serges office
6 as he usually made the final decision in
7 consultation with the minister and
8 whoever else in the dept that needed to
9 know. We were often aware of these
10 meetings because after we delivered the
11 file the attorneys would meet behind
12 closed doors and our section was told to
13 stay away from that meeting, although,
14 there were times when they would request
15 another file at the same meeting."

16 And then he says:

17 "This often happened with the Milgaard
18 and Fisher files. Also there was a
19 paper shredder kept in the ministers
20 office that was used quite extensively
21 in cases of very sensitive material that
22 would do damage to the gov't, in such
23 cases, I was told that the government
24 could claim ignorance of this matter
25 thereby escaping any political heat."



1 Now the suggestion, here, that there were -- he
2 says:

3 "... aware of the meetings ...",

4 I think in your office:

5 "... after we delivered the file the
6 attorneys would meet behind closed doors
7 and our section was told to stay away
8 from that meeting ... and this often
9 happened with the Milgaard and Fisher
10 files."

11 Did anything of that sort ever happen?

12 A No, it did not. And since we've already read a
13 whole lot of this stuff of Breckenridge's writing
14 I would say that, if I were wanting to prove it, I
15 would take what he has written here, and some
16 evidence of what happened in the real world at
17 that time, and take it to my psychiatrist and
18 prove beyond any shadow of doubt that he is a
19 seriously insane person.

20 Q Okay.

21 A And, by the way, I have sort of a Canadian record
22 of being a member of a mental patients parole
23 board, so I have some idea of what a seriously
24 mentally ill person is like.

25 Q And we'll carry on and I'll come back and get some



1 general comments on it, Mr. Kujawa. Just as far
2 as the specifics, did you have any meetings where
3 you would have had both -- any meetings back in
4 1971 where you were dealing with both the Milgaard
5 file and the Fisher file at the same time?

6 A No.

7 Q It says:

8 "On the Milgaard case it was brought to
9 my attention by Dave Wolbaum that
10 according to the information we had been
11 receiving it was becoming very evident
12 that the Milgaard case was a mistake.
13 From the correspondence we were filing
14 our section was convinced that there was
15 error made in the Milgaard case and this
16 was brought to Serge Kujawa's attention.
17 We were told basically to mind our own
18 business if we valued our jobs. After
19 being told that our section began to
20 apply for transfers or to find new jobs.
21 This was done by everyone except
22 Patricia Styles, who was the section
23 head."

24 Did anything of the sort stated in this paragraph
25 that I just read to you happen?



1 A No, it did not.

2 Q Now I want to go to 327885. And this is a news
3 article September 18th, 1992, a radio report, and
4 this is the day before the press conference. And
5 I think, Mr. Kujawa, based on the documents I
6 think is that the Milgaards put out a notice that
7 there would be a press conference and that new
8 evidence in the Milgaard matter, I think actually
9 fresh evidence that will shock the Saskatchewan
10 Government and force a public inquiry, I think was
11 what was alluded to, and you are asked for a
12 comment. You say:

13 "I've heard this expression 'fresh
14 evidence' so many times from people who
15 have no idea what fresh evidence is.

16 I've heard of so many
17 absolutely crooked private detectives
18 who would do anything for money and
19 attention."

20 Then the next page:

21 "The Milgaards are holding a news
22 conference tomorrow in Winnipeg to
23 reveal the information.

24 Kujawa says fingers have been
25 pointed at him in the past and he admits



1 that the latest try of a coverup could
2 be headed in the same direction."

3 Again, do you have any recollection of this
4 discussion?

5 A No.

6 Q It would appear from this, Mr. Kujawa, that the
7 media contacted you after a notice announcing that
8 there would be a press conference disclosing
9 evidence that will shock the Saskatchewan
10 Government, and you were called for a comment;
11 would that be a fair interpretation of it?

12 A Yes, and I made a bit of a comment, but certainly,
13 as soon as I found out what it was about, I was no
14 longer interested in talking to anybody about it.

15 Q I wonder if we can go to 334827. And this is a
16 transcript of a press conference that occurred on
17 September 19, 1992 attended by David Milgaard,
18 Joyce Milgaard, and Hersh Wolch, and I want to go
19 through parts of this.

20 If we can go to 334830. And
21 this is Mrs. Milgaard speaking, and again there is
22 a discussion that precedes it about the Supreme
23 Court case and Mr. Mitchell's refusal to call an
24 inquiry. It says, 'Hersh also indicates that the
25 Supreme Court of Canada stated that it was not



1 their mandate to assess blame. He points out that
2 blame was assessed by implication and that the
3 blame falls squarely upon the Crown attorney's
4 office for suppressing the Larry Fisher evidence.

5 Public statements made by Mr.
6 Kujawa can only reinforce this conclusion.'

7 And again, we'll get into some
8 further statements, but were you -- did you become
9 aware that there were public statements made
10 against you, Mr. Kujawa, that you suppressed
11 evidence?

12 A No, and I didn't know these were made either.

13 Q Okay. If we can go to the next page. Actually,
14 sorry, just go back to the previous page. And
15 Mrs. Milgaard talks about, 'The new information in
16 this letter.' And that's the letter to Kim
17 Campbell that I read parts to you earlier in the
18 statement of Mr. Breckenridge in the next page.
19 This is Mrs. Milgaard at the press conference, 'A
20 man who worked in the Saskatchewan Attorney
21 General's office in and around 1970 when Roy
22 Romanow was Attorney General, wrote to us. He
23 explained he worked with files, reading them,
24 pulling them out for meetings and re-filing them
25 afterwards. He knew what - who was seeing what.



1 His letter urged us to get an outside inquiry. He
2 said we would never receive an impartial hearing
3 with the Saskatchewan Government. He told of
4 delivering the Milgaard and Fisher files together,
5 to Serge Kujawa, he told of meetings behind closed
6 doors with Roy Romanow, Kujawa and other senior
7 police and Crown officials with the Milgaard and
8 Fisher files.

9 We wanted to be clear that this
10 is not our quote "witness". He is unconnected
11 with the Milgaard family. What he says however,
12 fits in with the known and proven facts. The
13 Supreme Court said the Larry Fisher evidence that
14 the police had in 1970 was credible evidence which
15 could affect the verdict of the jury. Justice
16 Tallis said they never ever told him about Larry
17 Fisher. Somebody suppressed that evidence and
18 there has been no inquiry into it to see just how
19 this happened. The new evidence said that these
20 people had the files together. Since there was no
21 disclosure we can only assume a decision was made
22 to suppress it, pure and simply put, a coverup.'

23 And then -- maybe I'll go
24 through it and read it, parts of it, Mr. Kujawa,
25 and come back to it to get your reaction and some



1 comments.

2 Then the next page, and then a
3 reporter asks Mr. Wolch, 'What is the significance
4 of the letters you have from - legally?' And I
5 believe that's referring to either the letter to
6 the Minister, the Breckenridge letter. Mr. Wolch
7 says, 'It's simply more evidence of what we know
8 to be a fact. I ..."', and then on the next page,
9 '... take a bit of a different view than Joyce. I
10 think the letter simply adds one extra feature of
11 evidence but the coverup was established a long
12 time ago and this is just one more piece in
13 puzzle. That's all it is.'

14 Then a question, 'What about the
15 involvement of Romanow?' And Mr. Wolch says,
16 'Time will tell. I - the coverup was there, the
17 question was who covered it up is more important
18 to be found out. The difficulty we have is that
19 you have a situation where, as we know, David
20 spent 23 years in jail. There is another
21 individual out there somewhere who we believe
22 committed the crime. The Miller family right now
23 has I guess an unsolved murder and the Attorney
24 General for Saskatchewan says that justice has
25 triumphed. There is something questionable about



1 that given that background. And then you have the
2 person in charge of the case saying that the
3 system's more important than correcting wrongs.
4 You put that all together and you -- it cries out
5 for a full inquiry into what transpired. And now
6 we have more evidence of coverup, I think we have
7 that from the very mouth of Mr. Kujawa when he
8 went on television and acknowledged he had both
9 files.'

10 And the next page, and then a
11 question about Mr. Breckenridge and his, I think,
12 reliability, 'Now I'm not about to judge his
13 evidence.' This is Mrs. Milgaard. 'I met with
14 him and I thought that he was credible. I met
15 with him and private investigators. We made sure
16 that he was employed where he said he was at that
17 time and that the people he mentioned were also
18 employed and that he in fact did the things that
19 he said he did but he's the one that has come
20 forward and said that Roy Romanow was in these
21 meetings behind closed doors. I think that Hersh
22 properly has sent the information to the Minister
23 of Justice and he has indicated how can we get a
24 an impartial hearing in Saskatchewan if that is
25 the fact.'



1 If we can go to the next page,
2 Mrs. Milgaard then says, 'Perhaps I can tell you
3 what this man told me, very succinctly. I mean he
4 described, and I've got it in my private, sort of
5 my additional comments there. He described what
6 took place after one of these closed door
7 meetings. Now Roy Romanow was in this meeting,
8 okay, Kujawa was in the meeting, senior police
9 officials were in that meeting. They come out
10 after the session and they had only two files in
11 there. Like this man is responsible for what goes
12 in, and the only files that they had in this
13 meeting were the Miller -- Milgaard file and the
14 Fisher file.

15 He described a scenario where
16 someone else in the department, seeing the files
17 that Serge was returning, said - "gee, it looks
18 like there's been a travesty of justice in this
19 Milgaard case now that we have the Fisher
20 information". He said Kujawa in no uncertain
21 terms told him to mind his own business, to keep
22 his mouth shut if he wanted to continue working
23 there, and then looking around the room at that,
24 at that, everyone who was there he said "and that
25 goes for the rest of you too if you know what's



1 good for you".'

2 Now let me just pause there.

3 The part that I read you, Mr. Kujawa, about what
4 Mrs. Milgaard describing taking place, that you
5 and Roy Romanow and senior police officials were
6 in a meeting with the Milgaard and Fisher files,
7 did that happen?

8 A No, it did not.

9 Q And the suggestion that, after, you told employees
10 to mind their own business and keep their mouth
11 shut if they wanted to keep working there after
12 the *Milgaard* case; did anything like that ever
13 happen?

14 A No, it never did.

15 Q Then the next -- actually, we can scroll down, it
16 says, 'Can I ask you exactly when that meeting
17 took place? Was it after David's conviction but
18 before his appeal.' Mrs. Milgaard, 'Yeah, it was
19 during 1971 that these meetings took place when
20 like they had both the files at that time and I
21 guess a decision would have had to have been
22 made.' Next page.

23 A He, that is Breckenridge, --

24 Q Yes?

25 A -- was not there at that time.



1 Q The evidence we have heard, and we will hear more
2 evidence that Mr. Breckenridge did not start
3 working for the government until 1973, Mr. Kujawa.
4 And, again, that was borne out by the RCMP in
5 their investigation and has been before the
6 Commission, and will be before the Commission
7 again.

8 If we can go to this comment,
9 'All I know is that Roy Romanow, Serge Kujawa, and
10 other senior officials met with those two files.
11 Serge Kujawa says we never ever, I never ever put
12 them together. Now they told these people that
13 put it together, or he told these people according
14 to our source that they had put it together,
15 because the file clerks had put it together, and
16 they, I mean their reaction, you can imagine if
17 you had just been told that these people just went
18 back to their desks very quietly, but their mouths
19 sort of dropped open after this remark from Serge
20 and he explained that to us. Our source said that
21 shortly after that every one of those people in
22 that department, with the exception of one woman,
23 transferred out of Serge's department.'

24 Again, did anything like that
25 ever happen?



1 A No.

2 Q If we can then go to page 334842. Mr. Wolch says,
3 'One thing that's obvious is that the reasons so
4 far given for not calling an inquiry are not
5 valid. The reasons given to date such as it was
6 all covered in the Supreme Court is simply not
7 valid. It was the Supreme Court that said that
8 credible evidence came forward in 1970, and in
9 effect got buried then, and to now say that we're
10 not going to have an inquiry because everything
11 was canvassed in the Supreme Court is not a valid
12 reason.'

13 And again, scroll down. If we
14 go to the next page, Mr. Wolch is asked the
15 question, 'Why do you think that Romanow and
16 Kujawa buried this information shortly after David
17 Milgaard's conviction in 1970?' Mr. Wolch
18 answers, 'All I can say is that Mr. Kujawa has
19 publicly stated rather shockingly that the system
20 is more important than the innocence of one man,
21 that the system has to be protected over the
22 individual. He has said it. That's his own words
23 as you've all heard. That perhaps answers your
24 question.'

25 And 334850. And, again,



1 Mrs. Milgaard about -- is asked how many meetings
2 there were with the two files that
3 Mr. Breckenridge said happened with you and
4 Mr. Romanow and senior officials, and, 'There were
5 many meetings that were held with these files with
6 these two files.'

7 Again, I've only read parts of
8 this press conference, Mr. Kujawa. Would you have
9 been aware, back at the time, that these types of
10 allegations were being made against you?

11 A No, I was not aware.

12 Q Can you tell us, what is your reaction to going
13 through what was said about you at the time and
14 about what you allegedly did?

15 A Could I tell what my reaction is today as I hear
16 this?

17 Q Yes.

18 A Well, I suppose sort of a smart-aleck reaction is
19 I don't think I should tell you because I haven't
20 decided yet whether I'm going to sue them for
21 liable, so I don't want to interfere with that
22 case.

23 Q As far as the nature of the allegations against
24 you, Mr. Kujawa, do you dispute what was said
25 about you as I read them to you?



1 A Yes, I dispute them 100 percent, and these people
2 got it, got some of their stuff from Breckenridge,
3 who I've already commented on, and that's what
4 they fought on, that's what they believe, or they
5 say they believe. I am in a very serious
6 situation right now as to what I'm going to do
7 about it.

8 Q Maybe go on to 229084, here is a newspaper, the
9 front page of the *Leader-Post*, I think the day of
10 the press conference or the day after. Let me
11 just check. I think it's the day after, this
12 might be the Monday after, I think the press
13 conference was on Saturday, and in the *Leader-Post*
14 "Joyce Milgaard claims cover-up, says has proof
15 government had doubts," and then goes on and the
16 paper repeats some of what was said at the press
17 conference, and that:

18 'The meetings allegedly included Romanow,
19 who was then provincial justice minister,
20 and Serge Kujawa, a former senior
21 prosecutor.'

22 And then down at the bottom it says:

23 'Milgaard's lawyers insist prosecutors at
24 his original trial must have seen the
25 connection between the Miller murder and the



1 pattern of crimes committed by Fisher, who
2 was in Saskatoon at the time.

3 Joyce Milgaard said the new
4 evidence appears to prove that. This new
5 evidence says that these people had these
6 files together -- there were only two files
7 in there, she said. We can only assume it
8 was a decision made to suppress it. Pure
9 and simply put -- a coverup.'

10 And again, do you -- actually, if we can just
11 scroll down, I think there is a comment here.

12 'In an interview with the *Leader-Post* last
13 week, Kujawa repeated his oft-stated denials
14 of any coverup in the case. Coverup, well,
15 I didn't cover up a single solitary damn
16 thing, he said. Therefore you can't find
17 anything that says I did.'

18 And I think again you've already commented on
19 that.

20 If we can go to 162260, this is
21 an article September 24th, 1992 in the
22 *Leader-Post*, "Coverup just not possible," and it
23 says, but Kujawa maintains -- actually, sorry,
24 just follow up, it says:

25 'The Milgaards say Kujawa and Romanow



1 examined files that displayed similarities
2 between Miller's murder and the crimes of
3 serial rapist Larry Fisher.

4 But Kujawa maintains this is
5 impossible because no one connected the two
6 cases until years later.

7 Since no one connected the two
8 files together, they wouldn't have been
9 discussed by anybody, Kujawa said in a phone
10 interview.'

11 And then down at the bottom -- and do you accept
12 that that's something you would have said at the
13 time, Mr. Kujawa? Is that accurate? Is that
14 accurate, the part that I read, quote of yours?

15 A Yes, yes, totally.

16 Q And then down at the bottom you said:

17 'However, Kujawa conceded Romanow might have
18 seen Fisher's file, because he went through
19 a direct indictment. This procedure, which
20 involves bypassing a preliminary hearing,
21 requires the Attorney General's signature.
22 That is one file not connected to any other
23 and he must go on the department's
24 recommendation, Kujawa said, estimating it
25 would take 10 seconds for the minister to



1 resign (sic). However, *The Globe and Mail*
2 newspaper has reported Romanow was away at
3 the time and Blakeney signed the order.'
4 And I think we saw that earlier, Mr. Kujawa, that
5 it was Mr. Blakeney, the premier, who signed the
6 direct indictment because Mr. Romanow was away;
7 is that correct?

8 COMMISSIONER MacCALLUM: Mr. Hodson, am I
9 the only one in the room that heard you say
10 resign instead of sign? No, I guess not. Maybe
11 the record could show signed.

12 MR. HODSON: I'm sorry, what did I say?
13 "Takes 10 seconds for the minister to sign."

14 COMMISSIONER MacCALLUM: To sign, yeah.

15 BY MR. HODSON:

16 Q If we could go to 004006 -- I'm sorry, I think
17 that's just a repeat of the same article. If we
18 can then go to 060923, and this is an article of
19 November 17th, '92 and I'll give you a bit of
20 background here, Mr. Kujawa. In I think November
21 of 1992 the evidence we have heard and will heard
22 is that after the allegations were made regarding
23 Michael Breckenridge, after Mr. Breckenridge's
24 allegations were made of improper conduct by you
25 and by Mr. Romanow and by others, the Government



1 of Saskatchewan asked the RCMP to investigate the
2 allegations and asked them to report to the
3 Alberta Deputy Minister and to the Calgary Chief
4 Prosecutor on the matter, and thereafter, over the
5 course of about a year and a half, a number of
6 RCMP officers conducted a criminal investigation
7 and another investigation into a number of
8 allegations, including whether you committed any
9 criminal conduct, and you mentioned earlier that
10 you recall being interviewed by a police officer
11 about that; is that correct?

12 A I was interviewed by a police officer in
13 connection with the Breckenridge statements?

14 Q Yes.

15 A Is that --

16 Q Do you recall that?

17 A Yes, I recall that.

18 Q And do you recall there being, in the media, the
19 fact that there was going to be an investigation
20 by the police into your conduct and other peoples'
21 conduct in connection with this matter?

22 A I don't know if I do, I don't -- there are none in
23 my mind right now, but that might have been
24 forgotten.

25 Q And, here, this article says *RCMP in Saskatchewan*



1 *seeking criminal wrongdoing by Crown.* And then,
2 if we can scroll down, it talks about:

3 "The RCMP investigation was ordered
4 after federal Justice Minister Kim
5 Campbell's office referred new
6 allegations to Saskatchewan Justice
7 Minister Bob Mitchell in September."

8 And, again, I think that's the two letters that I
9 showed you, the letter to Kim Campbell with the
10 Breckenridge statement as well as the letter to
11 Bob Mitchell.

12 "Milgaard camp suggested six weeks ago
13 that high-level discussions were held in
14 1970-71 involving a cover-up of Mr.
15 Fisher's crimes by senior Crown
16 officials - including Saskatchewan
17 Premier Roy Romanow, then
18 attorney-general.

19 These allegations were
20 described as preposterous by
21 Mr. Mitchell, a former law partner of
22 Mr. Romanow. An independent inquiry by
23 the *Globe and Mail* suggests that the
24 source of the allegations - a former
25 records clerk who says he saw



1 Mr. Romanow and senior Crown officials
2 meeting to discuss the Milgaard and
3 Fisher cases in tandem - was not in the
4 department at the relevant time."

5 And then at the bottom Mr. -- or, I'm sorry,
6 let's go to the next page or the next column.

7 And here it quotes:

8 "Among the questions Mr. Wolch says
9 remain unsolved are:

- 10 - What happened to a number of missing
11 Saskatoon Police files on Mr. Fisher?
12 - Why was Mr. Fisher's sentencing
13 delayed until all Mr. Milgaard's avenues
14 of appeal were exhausted.
15 - Why were Mr. Fisher's charges quietly
16 disposed of in Regina by direct
17 indictment - a highly unusual procedure
18 - and not in Saskatoon? Former chief
19 prosecutor Serge Kujawa told Allan
20 Blakeney, who was acting
21 attorney-general at the time, that the
22 direct indictment was at the request of
23 Mr. Fisher's lawyer, Lawrence Greenberg,
24 but Mr. Greenberg says this was not so.
25 - Why did Mr. Kujawa say that without



1 Mr. Fisher's confession, the Crown would
2 not have had a case, when at least one
3 victim had positively identified him?"

4 So it would be fair to say that you would have
5 become aware of this investigation happening, Mr.
6 Kujawa, or do you have a memory of that?

7 A Not of this, no.

8 Q Mr. Commissioner, I have one final area to cover
9 with Mr. Kujawa dealing with the RCMP
10 investigation, I wonder if maybe we could just
11 take a short break and then we could wrap it up
12 for this afternoon?

13 COMMISSIONER MacCALLUM: Yes, we'll take a
14 break.

15 *(Adjourned at 3:25 p.m.)*

16 *(reconvened at 3:42 p.m.)*

17 BY MR. HODSON:

18 Q If we could call up 032805, and, Mr. Kujawa, this
19 is a report of Alberta Justice, August 15th, 1994,
20 I told you earlier that the Saskatchewan
21 government had asked the RCMP to investigate
22 allegations of criminal offences arising from the
23 David Milgaard case and report to Neil McCrank,
24 Deputy Minister of Justice in Alberta, and Bruce
25 Fraser, the Chief Crown Prosecutor.



1 If we could go to the next page,
2 I just want to go through and show you what it is
3 that they were investigating, it says in late
4 September 1992, Brent Cotter, etcetera, contacted
5 Neil McCrank:

6 "... sought the assistance of the
7 Alberta Attorney General's Department
8 ... concerning allegations of criminal
9 offences arising from the David Milgaard
10 investigation and/or prosecution."

11 And they go on to talk about their work that Mr.
12 Fraser and Mr. McCrank are going to provide.

13 Then by way of background, it
14 talks about the decision of the Supreme Court,
15 and the next page, the Minister of Justice and
16 Attorney General, The Honourable Robert Mitchell,
17 decided not to proceed with a new trial and
18 thereby stayed the charge, and then:

19 "Allegations of criminal wrongdoing were
20 made against the Saskatoon City Police
21 and the Saskatchewan Department of
22 Justice, essentially suggesting a
23 concealment of evidence by the police
24 and prosecutors resulting in a cover-up
25 and a miscarriage of justice relating to



1 David Milgaard."

2 And then:

3 "The referral to the Deputy Attorney
4 General of Alberta was to avoid any
5 potential for a conflict of interest and
6 to ensure an objective opinion."

7 And then if we can go to, just down to the
8 bottom -- actually, just scroll up a bit, they
9 talk about an investigation team of 12 members of
10 the RCMP were assembled under Inspector Sawatzky,
11 a prosecution team of McCrank and Fraser.

12 "The investigation and prosecution teams
13 met on numerous occasions in Regina,
14 Saskatoon, Edmonton and Ottawa between
15 the fall of 1992 and the summer of 1994
16 ..."

17 I think that was wrong, it was almost a two year
18 investigation. February, 1994 the main report
19 was delivered and a concluding and supplementary
20 report in 1994.

21 Now, the report itself is very
22 lengthy, Mr. Kujawa, I'll only refer to parts of
23 it, and it says the report details some 68
24 allegations against a number of people, including
25 you, and if we can go to the next page, as well



1 as Mr. Romanow, and go down to possible *Criminal*
2 *Code* offences, and:

3 "All of the allegations as set out in
4 the RCMP report, involving criminal
5 wrongdoing, suggest only one possible
6 offence, that being an attempt to
7 obstruct justice, pursuant to section
8 139 of the *Criminal Code*."

9 Were you aware, Mr. Kujawa, that as a result of
10 allegations, including the allegations made by
11 Michael Breckenridge, that the RCMP conducted a
12 criminal investigation of your conduct to
13 determine whether or not you committed the
14 *Criminal Code* offence of obstructing justice in
15 your dealings on the David Milgaard file?

16 A I don't know what all the investigator looked
17 into, all I know is I had a session with an RCMP
18 investigator at the hotel and he put out his
19 report, so that's really all I knew.

20 Q If we can go to 032819, and here's where the
21 Alberta representatives outline the allegations
22 and findings, and it says here:

23 "It is alleged that Mr. S. Kujawa sought
24 a direct indictment against Larry Fisher
25 and prosecuted Fisher in Regina to avoid



1 publicity and thereby continue the
2 cover-up of the miscarriage of justice
3 against Milgaard.

4 This allegation stems from the
5 fact that Mr. S. Kujawa arranged for a
6 direct indictment to prosecute Mr.
7 Fisher in Saskatchewan. He also
8 arranged to have this matter dealt with
9 in Regina and agreed to concurrent time
10 to the thirteen year penalty Fisher
11 received for similar offences in
12 Winnipeg.

13 The RCMP investigation reveals
14 that while a direct indictment was
15 unusual, it was appropriate in this case
16 to deal with the Fisher file. Defence
17 counsel for Fisher was in agreement with
18 this arrangement and in fact may have
19 requested it as it was convenient to all
20 concerned. Kujawa agreed to concurrent
21 time as he had some concerns with the
22 evidence available to prosecute Fisher
23 and the fact that the thirteen year
24 penalty in Winnipeg was substantial.

25 There is no evidence that this



1 was done in any way to cover up a
2 miscarriage of justice in the Milgaard
3 file."

4 It is alleged that S. Kujawa, then the director,
5 K. Lysyk, then Deputy Attorney General, and R.
6 Romanow, then Attorney General:

7 "... connected the Milgaard file with
8 the Fisher file and knew that there was
9 a miscarriage of justice.

10 This allegation stems from a
11 former employee of the Saskatchewan
12 Department of Justice, Michael
13 Breckenridge, who alleges there were
14 many closed door meetings between
15 Romanow, Lysyk and Kujawa concerning
16 discrepancies in the Fisher and Milgaard
17 cases. Mr. Breckenridge indicated he
18 delivered these confidential files to
19 these meetings and this could be
20 corroborated by co-worker Dale Wolbaum.
21 Mr. David Wolbaum was interviewed and
22 does not support Mr. Breckenridge's
23 version of events.

24 Two further co-workers,
25 Ms. Styles and Mr. Richter, were also



1 interviewed by the RCMP and reject
2 Breckenridge's version of events.

3 Messrs. Kujawa, Lysyk and
4 Romanow were interviewed and all deny
5 such meetings taking place.

6 Breckenridge worked in the Saskatchewan
7 Department of Justice from October 3,
8 1973, to June 29, 1975. The Milgaard
9 leave to appeal to the Supreme Court of
10 Canada was denied on November 15, 1971,
11 and Larry Fisher pled guilty in the
12 Court of Queen's Bench in Regina on
13 December 21, 1971. It appears extremely
14 unlikely that the Attorney General of
15 Saskatchewan and his senior officials
16 would be interested in these files two
17 or more years after they were concluded.

18 The RCMP investigation fails to
19 uncover any evidence to support this
20 allegation and this allegation appears
21 to be absurd."

22 I'm wondering, that's what the RCMP concluded,
23 Mr. Kujawa. Do you have any comment on their
24 investigation of the allegations against you?

25 A Well, no comment at all, no surprise. There's no



1 basis for any crimes.

2 Q You talked about an interview, if we call up
3 022706, and this is a statement I think that you
4 gave to, I think you were interviewed by Inspector
5 Sawatsky and Constable Jorgenson on June 10th,
6 1993. Does that sound familiar?

7 A I thought it was a little later, but that must
8 have -- there was only one, so you have to have
9 the right one.

10 Q If we can go to the next page, and Mr. Sawatsky
11 starts off saying that he wishes to question you
12 and that you have constitutional rights and then
13 goes on to talk about:

14 "... it was alleged that you're part of
15 cover up or your conduct is in question
16 here in regards to the handling of David
17 Milgaard's appeal ..."

18 Etcetera. Did you view this as being an
19 investigation by the police of criminal conduct
20 on your part or were you aware of what they were
21 doing?

22 A Well, I was aware that they had received some
23 information by this Breckenridge that I had done
24 criminal things and that's what they were looking
25 into. That's my understanding of it.



1 Q Just a couple of points in here. If we could go
2 to 022706 -- I'm sorry, to page 022713 -- and you
3 are asked a couple of questions here, Mr. Kujawa,
4 about whether, what you had by way of a police,
5 what you had by way of a file for Larry Fisher.
6 Do you recall whether, when you were interviewed
7 by the RCMP, would you have had an opportunity to
8 review files, government files to determine what
9 would have been on your file back in 1971?

10 A I don't know if I had the opportunity, but I
11 certainly didn't take one or didn't want one.

12 Q And there's a couple of questions here where you
13 are asked, if we can scroll up, please, and you
14 are asked:

15 "Do you recall what material would have
16 been made available to you for Fisher's
17 charges?"

18 "Here in Regina."

19 "Oh well, we would have the Police
20 reports from the I think it was all
21 Saskatoon I'm not sure of that, but I
22 think it was Saskatoon City Police that
23 we had would the reports of that, and my
24 recall of that is that we, there's a
25 lack of identification as I recall. We



1 have that, and --"

2 Then there's some unintelligible comments,

3 "-- I don't know where it came from ...

4 and then we got the inquiries from

5 Winnipeg."

6 And then if we can go to page 022715, you are

7 asked:

8 "And as far as Mr. Caldwell is concerned

9 with Fisher's charges, would you again

10 have dealt with him at all, or the

11 Saskatoon City Police?"

12 And you answer:

13 "No. I may have dealt with the

14 Saskatoon City Police, but probably not

15 because I would have had the reports or

16 at least something saying that we have

17 these complaints, but no identification

18 or a lack of identification I shouldn't

19 say no identification. But not the kind

20 that you would charge on."

21 And again, I think this morning you told us that

22 you would not have had the police reports on the

23 Fisher files; is that correct?

24 A I don't think we would have.

25 Q And I read you the March 17th, 1971 letter, you



1 recall us going through that, that detailed the
2 offences and some of the evidence the police had?

3 A Yes.

4 Q And here in this interview with the RCMP, at least
5 in the first question you talk about police
6 reports, and then here you say at least something
7 saying that we have these complaints. Are you
8 able to tell us whether, what you would have been
9 referring to when you talked to the RCMP?

10 A I don't really know. I would say that -- I don't
11 really know.

12 Q If we can go to 330061, and in July, 1997 DNA
13 results came back that linked the semen found on
14 Gail Miller's dress and panties to Larry Fisher
15 and there is a press conference here where
16 Mr. Halyk, who was your lawyer at the time, issued
17 a press release, and Mr. Halyk, speaking on your
18 behalf, said that:

19 "... they didn't do anything wrong but,
20 they're still sorry."

21 "We're making the move to apologize
22 because we're satisfied based on the DNA
23 results that there has been a
24 miscarriage of justice and that there
25 has been somebody wrongfully convicted.



1 The thing that every defence lawyer
2 fears when he defends a client. The
3 thing that every Crown prosecutor fears.
4 The thing that every judge fears,
5 happened in this case and for that they
6 apologize."

7 And would you agree, Mr. Kujawa, that Mr. Halyk
8 was speaking on your behalf when he made those
9 statements?

10 A Yes, he was.

11 Q 077516 -- sorry, 077494, this is an article August
12 the 6th, 1997 and it's a comment from Mr. Romanow
13 who I don't think had commented prior to this
14 date. Just scroll up. Let me just pause here,
15 Mr. Kujawa. Back when you dealt with Mr. Fisher's
16 charges in Regina in December of 1971, you recall
17 the guilty pleas, would you have reported back to
18 anybody in Saskatoon on that matter; namely, the
19 city police that you recall or --

20 A I don't recall at all.

21 Q Can you tell us what your practice would have been
22 at the time as far as who you would contact once
23 you had disposed of the charges?

24 A Well, I think we would dispose, we would contact
25 whoever it was that sent these charges to us, so



1 we knew that they existed.

2 Q Would that be Deputy Chief Corey, he was the
3 fellow who sent the letter to Mr. MacKay, would
4 that be --

5 A I think that's where the answer would go, is back
6 to him.

7 Q Now, we do not have any written correspondence to
8 that effect and I can't tell you for certain that
9 there wasn't something that existed. Are you able
10 to tell us whether you would have called him,
11 whether it would have been a phone call, a letter,
12 are you able to shed any light on that?

13 A I just -- I think we would have reported it to
14 him. In what way, when, I don't know, or whether
15 it was done, I don't know.

16 Q And would it have been your practice at the time
17 to notify the victims of these rapes, of the
18 outcome of the Court proceedings?

19 A I don't think it would be the practice of -- I
20 don't think it was ever the practice of the
21 department. The police force involved, yes.

22 Q And here Mr. Romanow says:

23 "It wasn't appropriate 26 years ago for
24 the attorney-general's office to
25 announce that Larry Fisher had confessed



1 to four widely publicized rapes in
2 Saskatoon, says Premier Roy Romanow.

3 In fact, Romanow said Tuesday
4 that's really not even what Justice
5 Departments should be doing today.

6 "The position is you don't put
7 out press releases on prosecutions or
8 direct indictments," said Romanow, the
9 province's attorney-general in 1971 ..."

10 And goes on to say:

11 "This is not a political office that
12 makes pronouncements in political terms.

13 "This is a law enforcement
14 agency that is sworn to do the very best
15 it can in upholding the law. We never
16 put out press releases."

17 And again, would you agree with what Mr. Romanow
18 has stated at that time?

19 A I have no reason to disbelieve it. I know I
20 wouldn't put out any press releases. I guess now
21 I know he didn't either.

22 MR. HODSON: Okay. Mr. Commissioner, I
23 think I'm concluded my questions with Mr. Kujawa.
24 In discussions with his counsel and other
25 counsel, I think we've agreed to start his



1 cross-examination tomorrow. We have the entire
2 day which should be sufficient. I may have just
3 a few questions in the morning to start off, I
4 may not, but I think if we can maybe adjourn for
5 the day and start with cross-examination
6 tomorrow?

7 COMMISSIONER MacCALLUM: Very well.

8 *(Adjourned at 3:58 p.m.)*
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1 **OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATE:**

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18 Official Queen's Bench Court Reporter



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