

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

Transcript of Proceedings

and

Testimony before the Commission
sitting at the
Ramada Hotel at
Saskatoon, Saskatchewan

On Friday, April 21st, 2006

Volume 136

Inquiry Proceedings



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Transcript of Proceedings

(Reconvened at 9:05 a.m.)

COMMISSIONER MacCALLUM: Good morning.

ALL COUNSEL: Morning.

MR. SOROCHAN: Mr. Commissioner, I told Mr. Hodson I wanted to address you on a couple of matters.

Yesterday it was -- two things concerned me when it was mentioned that Mr. Asper was part of the "Milgaard group" --

COMMISSIONER MacCALLUM: Yes?

MR. SOROCHAN: -- and you said you had to call him something. Well, in my respectful submission, Mr. Asper -- and I don't, and I've talked to Mr. Hodson about this, he has said -- I asked him, "why are you asking Mr. Mil -- or Mr. Asper all these questions", and he says "well he's the designated witness for the Milgaard group". Well, not in Mr. Asper's mind, and not in our position.

Mr. Asper is an independent citizen that's been asked to come here to give evidence, and at some considerable inconvenience not only to his own personal business interests, but to other aspects of the public interest. To



1 be able to attend for two weeks in this Inquiry
2 Mr. Asper has had to reschedule board meetings
3 involving matters of civic importance, being on
4 the board of an educational institution, being on
5 the board of -- that's organizing the Grey Cup,
6 every one of these meetings that he has on a
7 daily basis requires the coordination of as many
8 people as are lawyers in this room, and he's
9 not -- it's not appropriate for him to be treated
10 as if he is part of the, of the Milgaard group,
11 so to speak, and as, somehow, their designated
12 spokesman.

13 And that relates also to the
14 issue of whether I, as the clean-up lawyer asking
15 questions of Mr. Asper at the end, would be
16 dealing with issues relating to the Milgaard
17 group, and I can tell you I will not be. I will
18 be addressing issues that touch upon Mr. Asper
19 personally. And so there seemed to be some
20 suggestion that, because I would be the last
21 speaker, that other representatives of
22 Mrs. Milgaard or David Milgaard would not be in
23 their normal position at the end of the
24 cross-examination because I might be doing that
25 job, and I just wanted to make it clear that my



1 job is to represent Mr. Asper's interests, not to
2 deal with issues relating to the Milgaard group.

3 Thank you.

4 MR. HODSON: I might just --

5 MR. SOROCHAN: Oh, there was one other
6 matter I wanted to raise, and that was that the
7 entirety of Mr. Asper's testimony has been in
8 relation to the 690 process.

9 You received a letter from the
10 Federal Government recently that deals with an
11 issue that I have talked to Mr. Hodson about
12 almost within the first ten minutes of our
13 meeting, and that is my experience in commissions
14 of inquiry -- and I've done quite a few of them
15 -- is that the Federal Government will not
16 tolerate any commission of -- in -- with
17 provincial jurisdiction making findings against
18 federal functionaries. And so when Mr. Hodson
19 said that he was going to be questioning Mr.
20 Asper about his relationships with Mr. Williams
21 and the Justice Minister I said, "well, how is
22 that within the jurisdiction of this Inquiry,
23 surely our -- surely the testimony from Mr. Asper
24 can be done in approximately two days", because I
25 had asked him, "is the Federal Government



1 committed that you may make findings with respect
2 to the Federal Government's conduct of the 690
3 process or have you got a joint warrant from the
4 Federal Government giving this Commission
5 authority to inquire into federal aspects", and
6 Mr. Hodson's response was the same thing we heard
7 the other day, that they will have to come to
8 that some day. Well that's all very well and
9 good, but the entirety of Mr. Asper's testimony
10 relates to the 690 process, that's all he did.
11 If the -- in my respectful submission, that's
12 something should have been sorted out right at
13 the start of this Inquiry, whether you're going
14 to be able to delve into the federal matters,
15 because if the Federal Government came out of the
16 woods finally and said, "no, you can't make
17 findings with respect to how Mr. Williams
18 conducted the 690 process, no, we're gonna" --
19 I've heard Mr. Hodson say something about calling
20 Ms. Campbell, the Minister of Justice. In my
21 experience that will be a frosty Friday when that
22 happens.

23 COMMISSIONER MacCALLUM: Well, Mr.
24 Sorochan, surely the Federal Government can speak
25 for themselves.



1 MR. SOROCHAN: Pardon me?

2 COMMISSIONER MacCALLUM: Surely the Federal
3 Government can speak for themselves.

4 MR. SOROCHAN: But they never do, they wait
5 until --

6 COMMISSIONER MacCALLUM: Well, you don't
7 have any standing to do it, do you? I mean we're
8 going to delve into what we think is relevant, if
9 somebody -- unless and until somebody objects to
10 it.

11 MR. SOROCHAN: Well, let me give you, let
12 me tell you why it's my business; because my
13 client has been sitting on the stand for two
14 weeks talking about matters relating to the
15 Federal Government.

16 I was involved in a commission
17 of inquiry in British Columbia, tangentially,
18 because I was special prosecutor. By the, when
19 the notices finally went out -- and that was the
20 *Stupich* case, I prosecuted Mr. Stupich, there was
21 an inquiry that went parallel to it. When the
22 notices finally went out to the RCMP by the
23 Commissioner at the end of the process, after
24 spending millions of dollars the RCMP went off to
25 Court and said that there was no jurisdiction to



1 make findings with respect to the RCMP, and the
2 government disbanded the Inquiry.

3 Now why -- that's what -- I've
4 suggested to Mr. Hodson that, and I'm told by the
5 Federal Government they propose to spend a day
6 cross-examining Mr. Asper, and then -- and yet at
7 the same time, in the letter they sent to you,
8 they didn't just say that they were objecting to
9 producing the documents on the grounds of
10 privilege, they said they objected to producing
11 the documents on the ground that this was a
12 provincial inquiry and that it could not inquire
13 into matters touching upon the Federal
14 Government, and yet that's all that Mr. Asper's
15 testimony has been about.

16 So I -- I -- in my respectful
17 submission, I understand there's going to be some
18 folks that will be cross-examining Mr. Asper
19 today, before Mr. Asper has to be subjected to a
20 full day of cross-examination by the Federal
21 Government you should make them come out of the
22 weeds and tell you whether they will be agreed to
23 you making findings with respect to the Federal
24 Government. Otherwise, my client shouldn't have
25 to waste his time being cross-examined by a party



1 that does not -- that says that you can't make
2 any findings about them.

3 Now that, that's my submission,
4 and it touches upon Mr. Asper, not just upon --
5 it's not -- it's got -- I'm not raising the
6 objection for the Federal Government, I can make
7 arguments against their position. But I think
8 it's, in my respectful submission, it's something
9 that I would have hoped would have been decided
10 at day one of this Inquiry rather than now.

11 COMMISSIONER MacCALLUM: Well, to start
12 with, your objection is not timely, Mr. Sorochan.
13 We've already heard all the evidence relating
14 to -- practically all of it -- relating to the
15 so-called Section 690 issue inasmuch as it
16 relates to Mr. Asper.

17 MR. SOROCHAN: Well, it's not my fault it's
18 not timely --

19 COMMISSIONER MacCALLUM: To deny -- well,
20 it is your fault if you didn't get up and object
21 when you should have.

22 MR. SOROCHAN: That's not -- that is
23 completely not factual.

24 The only time the Federal
25 Government has come out of the weeds in saying



1 that they are not, that they're objecting to this
2 Inquiry is when Mr. Frayer sent Mr. Hodson a
3 letter, which was tendered this week when we
4 started these hearings.

5 COMMISSIONER MacCALLUM: Well I assume that
6 you are trying to be helpful, sir, thank you for
7 your submission.

8 MR. HODSON: I feel compelled to respond, I
9 guess, to all of it, and I'll start at the
10 beginning, and I was not aware that these issues
11 were going to be raised this morning.

12 First I -- Mr. Asper is not the
13 designate for the Milgaard group, Mr. Asper --

14 COMMISSIONER MacCALLUM: No, and as far as
15 the terminology is concerned, I don't know why
16 people see anything pejorative in the word
17 "group". Mr. Asper referred to himself in
18 testimony yesterday as part of the "Milgaard
19 camp", is that any more complementary? It's
20 just, it's just a question of finding a
21 descriptor, surely. If you wish to call it the
22 "Milgaard effort", or if he wished, surely he
23 doesn't wish to dissociate himself from what he
24 did on behalf of the Milgaards all those years
25 ago.



1 MR. HODSON: Yeah.

2 COMMISSIONER MacCALLUM: That's all we're
3 speaking about. He's not appearing as a
4 designated spokesman for the Milgaards today,
5 everybody understands that.

6 MR. HODSON: And I do want to explain that
7 Mr. Asper was present on many occasions, or part
8 of matters that are relevant to the Commission's
9 terms of reference, and he is here to give his
10 evidence. He was present at the Supreme Court
11 and he is the only witness, other than Mr. Wolch,
12 Mr. Wolch is counsel for David Milgaard and is
13 not a witness. So that to the extent that
14 Mr. Wolch is not available as a witness to deal
15 with these matters, yes, Mr. Asper deals with
16 them, but when they are both there I'm certainly
17 entitled to get into Mr. Asper's recollection of
18 that.

19 When I put matters to him in
20 the course of his questioning, many of the
21 things -- and I think he continually used the
22 words "we", and so whether it's his or
23 Mr. Wolch's, or Joyce's, or David's, if something
24 turns on that, he can clarify it.

25 On the Federal Justice issue, I



1 do wish to address that right now, Mr.
2 Commissioner, because it's somewhat bothersome.
3 And with the greatest respect, Mr. Sorochan was
4 not present at the time this Commission started
5 its work, and if he were he would have known that
6 we spent a great deal of time addressing this
7 very issue about our terms of reference and the
8 extent to which a provincial commission of
9 inquiry can inquire into matters, and let me say
10 this, as I've said before: We will inquire into
11 everything that we are required to do and
12 constitutionally able to do. We do not need to
13 ask the Federal Government or Federal Justice to
14 agree for us to say anything. It's not a case of
15 saying, "can we do this, can we not", and I don't
16 know where Mr. Sorochan got that idea that we
17 were waiting for an 'okay' from Mr. Frayer to say
18 anything wrong about Federal Justice. Our Terms
19 of Reference dictate where we go and what we do.

20 The issue is a constitutional
21 issue, and quite rightly, this Commission cannot
22 do matters which is constitutionally prohibited.
23 This was identified very early on, counsel for
24 all of the parties made submissions, the
25 Government of Saskatchewan, the Federal



1 Government, the Milgaard, Joyce Milgaard, David
2 Milgaard, extensive submissions about where is
3 the line drawn, if at all, between a provincial
4 inquiry and Federal Justice.

5 I disagree with Mr. Sorochan
6 when he says that the Federal Justice position is
7 that we can't get into anything related to the
8 Federal Government. That's not true. The issue
9 is from the *Keable* decision, which said that a
10 provincial commission of inquiry cannot inquire
11 into the workings of a federal institution, and
12 the question which I've discussed from Mr. Frayer
13 for some time, and the issue that was squarely
14 put before the Commission before we started, is
15 to what extent might evidence get into the
16 internal workings of a federal institution.

17 The position they took today,
18 and the letter they gave us, is, quite frankly,
19 no different than the position they took at the
20 start of the Inquiry or very near the start of
21 the Inquiry. Number 1, there may be
22 constitutional limits, it's difficult to draw the
23 line and apply it to each witness in each area.
24 It was decided at the start, with the agreement
25 of everybody, that the issue was raised, and then



1 when we got to the phase where we were dealing
2 with their witnesses, we would get a ruling.

3 Secondly, on the issue of
4 privilege, they have maintained that position
5 from day one that they are claiming privilege.
6 They have confirmed it in writing. They have
7 also confirmed, as they confirmed on day one,
8 that to the extent that documents are outside our
9 constitutional boundaries, according to their
10 interpretation, they will not provide them to us.
11 And so all we will do is, at some point very
12 soon, determine that issue. And again, I can say
13 this, it's not so much determining what the law
14 says and where the line is, it's applying it to a
15 witness.

16 I can also say that Mr.
17 Williams will be testifying. I expect that Mr.
18 Williams' evidence may be as long as Mr. Asper's.
19 The Federal Government has produced significant
20 volumes of documents. I am not prepared, today,
21 to say that I agree with their position on either
22 privilege or the constitutional limitation. We
23 will address it.

24 And so, again, I don't think --
25 I don't agree with Mr. Sorochan in saying that



1 this is something that sort of has been thrust
2 upon us, and so I -- and I'm not sure if
3 Mr. Frayer wishes to address this point now or
4 whether he wishes to --

5 COMMISSIONER MacCALLUM: I don't need to
6 hear from Mr. Frayer at the moment, thank you.

7 MR. HODSON: I will proceed, then, with Mr.
8 Asper.

9 COMMISSIONER MacCALLUM: Yes, please.

10 **DAVID ALLAN ASPER, continued:**

11 **BY MR. HODSON:**

12 **Q** 217222, please.

13 I'm sorry, just before I do
14 that, Mr. Commissioner, there's one other point
15 that I should have addressed that Mr. Sorochan
16 said that I must take issue with, that all Mr.
17 Asper is dealing with is the Section 690. I
18 strongly disagree.

19 Our Terms of Reference are to
20 seek to determine whether the investigation should
21 have been re-opened based on information
22 subsequently received by the police and
23 authorities. The authorities have said that the
24 information, in part, put forward by Mr. Asper
25 guided their actions, so it is very relevant for



1 us to hear about Mr. Asper, about what information
2 he gathered, and what he put forward, and to test
3 that.

4 Mr. Asper, this is an article --
5 and I'm sorry I'm going back in time -- this is
6 December 1990, and I forgot to put this to you.
7 This is prior to, a couple months prior to the
8 first application being dismissed. And actually,
9 if you can go, actually just go to the left of the
10 first column. It says:

11 "Convicted murderer David Milgaard's
12 application for a new trial is being
13 bogged down by infighting at the highest
14 level of the federal Justice Department
15 sources familiar with the case say."

16 Do you have any recollection or knowledge of that
17 being an issue at the time, or having any
18 information on that?

19 A Umm, I don't recall this specifically. I do
20 recall having a sense that there was, there were
21 some differences of opinion among the senior
22 officials and Mr. Williams, with whom we were
23 dealing.

24 Q And so, on the first application, you recall
25 learning that there were some internal issues



1 between Mr. Williams and others?

2 A Yes.

3 Q And do you recall what those were?

4 A Umm, I just seem to remember, in a general sense,
5 that some were not as single-minded as Mr.
6 Williams on the interpretation of the evidence.

7 Q And so there was some disagreement or dispute or
8 was it just different views or do you recall?

9 A I think it was different views.

10 Q If we can go to 328015. This is a May 21, 1992
11 news clip and you recall yesterday I went through
12 your recollection of this, your recollection of
13 what the Court had said, the Supreme Court had
14 said about the limits on what could be put forward
15 at the reference. You recall us going through
16 that?

17 A Right, yes.

18 Q And I just want to put this to you. This is a
19 report, again May 21, 1992:

20 "Justice Minister Bob Mitchell
21 steadfastly refused to hold an inquiry
22 into the Milgaard affair saying the
23 recent Supreme Court of Canada review
24 has dealt with the case adequately.

25 Milgaard's lawyer David Asper



1 says he has a Supreme Court transcript
2 of some preliminary proceedings which,
3 clearly layout the scope of what was
4 dealt with in the review.

5 He says the transcript proves
6 there are many aspects of the case which
7 haven't been dealt with."

8 And then the next page, and it quotes you:

9 "It dealt with evidence --"

10 And it says abused, I think that should be
11 adduced,

12 "-- adduced at the trial and it dealt
13 with evidence that we had produced which
14 called into question the evidence
15 adduced at the trial.

16 Crown misconduct, police
17 misconduct, all of those issues were not
18 the subject of the hearing."

19 And as far as the transcript, I put to you
20 yesterday the January 16, 1992 transcript which
21 is 208523, and we don't need to bring it up. Was
22 that the transcript you would be referring to or
23 was there another transcript? Are you able to
24 help us out on that?

25 A Well, I assume I would have been referring to



1 whatever transcript you have, Mr. Hodson.

2 **Q** And that's the January 16, 1992, and I think that
3 was the opening, it was in open court?

4 **A** I would assume so, yes.

5 COMMISSIONER MacCALLUM: Mr. Asper, would
6 that be a typo or can you, the use of the word
7 abused?

8 **A** I think Mr. Hodson is correct, I think it was
9 adduced.

10 COMMISSIONER MacCALLUM: Adduced. It's
11 used there twice. Okay.

12 MR. HODSON: And in fairness to Mr. Asper,
13 these are News Watch reports, so someone else
14 prepared these based on a tape presumably.

15 COMMISSIONER MacCALLUM: Okay.

16 MR. HODSON: And I think adduced is the
17 more correct word.

18 BY MR. HODSON:

19 **Q** Just generally on the issue of media articles,
20 both newspaper articles and videotapes, Mr. Asper,
21 the Commission has received in our database, or in
22 the documents we've received, many, I'm not even
23 sure what the number is, newspaper reports that
24 quote you directly or attribute comments to you
25 and as well there are a number of newscasts or



1 video or audiotapes of media reports, and you told
2 us the other day that you talked to the media
3 frequently and I think you said that you can't
4 remember who you told what and when; is that fair,
5 to go back and try and reconstruct that?

6 A Yes.

7 Q And I guess for our purposes, I do not intend to
8 take you through all of those media reports, I've
9 gone through some of them, but would you agree
10 that -- let's just talk about the newspaper
11 articles. I think you said, when I showed you a
12 couple of articles, that on occasion a reporter
13 might take part of what you said --

14 A Yes.

15 Q -- as opposed to everything you said, but that you
16 were not able to tell us on any given article
17 whether you said more to the reporter or not; is
18 that fair?

19 A That's correct.

20 Q And secondly, can you answer this, did you ever
21 have a newspaper report or something that was
22 attributed to you or quoted to you that you
23 identified as being wrong and identified that and
24 took steps to correct it?

25 A I don't recall taking remedial steps with regard



1 to any specific article. There were some -- there
2 were reports that were of concern to me, I can
3 recall that, and I think we've discussed one in
4 particular.

5 Q And was that the July 17th one, the article
6 regarding the Ron Wilson statements?

7 A Yes.

8 Q And I think your concern there was that you said
9 two different things and I think your words were
10 they got conjoined?

11 A Yes.

12 Q Anything else that comes to mind that was of
13 concern to you?

14 A I am certain that if I went back and looked at
15 everything throughout the life of this case, that
16 I would find things that would have been of
17 concern to me at the time and would certainly be
18 of concern to me now, but I don't recall anything
19 specifically.

20 Q And when you say be of concern, in the sense that
21 the media may have misquoted you or --

22 A Or that I may have gone too far.

23 Q Okay. Sorry, let's just break that down into two
24 things, one where -- I'm just trying to get a
25 sense whether the Commission can generally rely on



1 these media reports when they say that David Asper
2 said A, B, C that you did.

3 A Yes, in the main I would have to accept
4 responsibility for the quotes that appeared.

5 Q And then I think now the second one you are saying
6 is that, are you saying in hindsight looking back
7 at some of them -- I'm not sure what you are
8 saying.

9 A Oh, I'm saying that in the frenzy of the moment,
10 and I suppose with the value of hindsight, there's
11 a lot of things that I would have either not said
12 or said differently, and I think if I went through
13 all of the clippings, I could probably find them.

14 Q Right.

15 A And give you specific examples.

16 Q And so is that with the benefit of hindsight then
17 looking back?

18 A Yes.

19 Q And certainly with respect to the videos of news
20 conferences, and I think you appeared on some news
21 report shows, obviously to the extent that they
22 have video footage and your words, I take it we
23 can rely upon that as being what you said and did
24 at the time?

25 A Yes.



1 Q I now want to turn to the Michael Breckenridge
2 matter, and if we could bring up 156898. You'll
3 recall yesterday I showed you, and maybe we can
4 just bring it up, 159537, I think this is the
5 starting point, and we went through this, this is
6 the March 21, letter that Mr. Breckenridge sent to
7 Mr. Wolch, this was the initial one, and again
8 just to, he talked about Serge Kujawa, and the
9 part that I think is important here that I put to
10 you yesterday was that:

11 "... there were many closed door
12 meetings between Romanow, Ken Lysyk ...
13 and Serge Kujawa all because
14 discrepancies in the two cases. I
15 remember delivering both cases to Serge
16 at the same time."

17 Etcetera. So that this was the starting letter.
18 If I could now go to 156898, and this is your
19 letter to Mike Robinson of Robinson
20 Investigations and I'm assuming, and I may not be
21 correct on this, that -- well, there's certainly
22 reports that suggest that Robinson Investigations
23 was asked to follow up on the Michael
24 Breckenridge letter and I'm assuming that this is
25 the letter asking them to do that. Are you able



1 to confirm that?

2 A It looks like it, yes.

3 Q Do you recall getting Robinson Investigations and
4 a fellow by the name of Bob Perry involved in the
5 matter?

6 A No.

7 Q If we can then go to 213939, this is Mr. Perry's
8 letter back to you, or a letter to you on May 26,
9 1992 addressed to you. You would have still been
10 at the Wolch Pinx Tapper firm at that time? Do
11 you recall when you left the practice?

12 A I believe it was mid June, mid to late June.

13 Q And --

14 A I was getting close to leaving.

15 Q And do you recall -- do you recall much of your
16 dealings with Robinson and Bob Perry on the
17 Michael Breckenridge matters?

18 A I don't recall any specific dealings with them.

19 Q We'll go through this letter and see if this can
20 assist your memory. He talks about receiving a
21 letter, the initial correspondence, he says dated
22 May 1, 1992, from Mr. Mike Robinson of Robinson
23 Investigations. Your letter is May 7th, so I'm
24 not sure, that's why I raised that earlier, but if
25 we assume that you did send a letter. He then



1 goes on and reports to you that:

2 "Mr. Mike Breckenridge contacted me and
3 as a result we met at our office on May
4 14, 1992. We spoke at length regarding
5 his opinion and knowledge of the David
6 Milgaard matter. This interview covered
7 a number of topics relating to this case
8 including Breckenridge's personal
9 history; past and present employment ...
10 and his knowledge of the Criminal
11 Records Department ... during the years
12 1970 and 1971. Mr. Breckenridge also
13 covered topics that were irrelevant to
14 this matter. As the interview
15 progressed he would suddenly remember
16 some other point that he felt relevant.
17 Although he could cover some topics in
18 detail he was vague in others. He
19 seemed "forgetful" when making reference
20 to specific years pertaining to his past
21 and present employment --"

22 A Sounds like me.

23 Q "-- and personal history and yet concise
24 when discussing any political details
25 and motivation."



1 And I'm just wondering, would it be fair to
2 say -- or let me ask you, what was the task that
3 you asked Mr. Perry to do with respect to the
4 Breckenridge statement?

5 A I can't say specifically. I can surmise from this
6 letter, but I don't recall the contact.

7 Q And what do you surmise from this letter?

8 A That we asked him to check out Breckenridge.

9 Q Okay. And why would you ask a private
10 investigator to check out Breckenridge?

11 A Well, again, I can only surmise that Breckenridge
12 had made some fairly serious allegations and we
13 wanted to check him out.

14 Q And was that the task then that Mr. Perry was
15 given in part?

16 A I'm assuming that, yes.

17 Q He says:

18 "During the interview Mr. Breckenridge
19 appeared unable to provide specific
20 details regarding the handling of the
21 Milgaard matter. Much of his
22 information was speculative and based on
23 his opinion and suspicions as well as
24 these of his co-workers."

25 And then goes on:



1 "The following persons were named as
2 co-workers within the Department ..."
3 And goes through a number of people, and then:
4 "Following the interview I asked
5 Mr. Breckenridge to give the matter much
6 thought and to be more specific to the
7 Milgaard matter. I asked that he give
8 more thought to dates and occurrences.
9 I asked that following this he put the
10 information into a Statement form. If
11 he was having problems he should again
12 contact me and I would take a
13 statement."

14 And then Mr. Perry says:
15 "I contacted your office on May 15,
16 1992, however you were not available and
17 as a result you called me on May 19,
18 1992. Some of this information was
19 relayed to you. I advised you that I
20 expected to hear from Breckenridge
21 around May 20, 1992. Mr. Breckenridge
22 was contacted on that date and stated
23 that he was having problems organizing
24 his thoughts but expected to do so in
25 the immediate future. He called me on



1 May 22, 1992. We met and he supplied me
2 with a prepared Statement. I have
3 attached copies of that Statement to
4 this report."

5 According to Mr. Perry's letter to you, he says
6 he called you on May 19, 1992 and says some of
7 this information was relayed to you, presumably
8 what he was talking about here in the letter. Do
9 you have any recollection of that discussion?

10 A No.

11 Q Do you take any issue with what Mr. Perry says in
12 the letter to you, that he would have talked to
13 you?

14 A No.

15 Q And then goes on to provide some further
16 information. If we can go on to the next page, I
17 don't propose to go through all of this, Mr.
18 Asper, but it sets out a fair bit of background on
19 Mr. Breckenridge, and then:

20 "During this interview with
21 Mr. Breckenridge he offered his views on
22 political matters. In one statement he
23 claimed to have proof that the idea for
24 the Reform Party was the brainchild of
25 Mr. Tommy Douglas and Mr. E.C. Manning.



1 Mr. Breckenridge's name was
2 familiar to me. He frequently writes
3 Letters to the Editor expanding his
4 political views. He appeared to be a
5 nervous and excitable person."

6 Does that assist your memory at all as far as
7 information about Mr. Breckenridge?

8 A No.

9 Q And then Mr. Perry says:

10 "Mr. Breckenridge's opinion of
11 wrong-doing and cover-up may be factual,
12 however his zeal to correct the past may
13 be clouded by his past and present
14 personal experiences and state of mind."

15 Do you have any recollection, Mr. Asper, of
16 having concerns about the credibility of what
17 Mike Breckenridge was saying to, either to you or
18 through his statements to Mrs. Milgaard or Mr.
19 Wolch or to people involved on behalf of David
20 Milgaard?

21 A I'm reconstructing, but I'm assuming that this may
22 have shaped my own view as to -- yes, it would
23 have affected my view of his credibility.

24 Q What was your view of his credibility?

25 A I would have doubted it.



1 Q And are you reconstructing or are you telling us?

2 A Well, I'm connecting it with my, what I recall, my
3 unwillingness to join in the advocacy of the
4 allegations made by Mr. Breckenridge.

5 Q And can you elaborate on that a bit?

6 A Well, I was leaving the -- I knew I was leaving
7 the firm and Breckenridge had asserted facts that
8 would support the idea that there had been a
9 cover-up and I wasn't comfortable joining with
10 that assertion.

11 Q And was that because, I think you stated you had
12 concerns about his credibility?

13 A Yes, clearly.

14 Q And what were those concerns?

15 A Well, they would have reflected the concerns
16 articulated in this letter, that there may be some
17 problem with believing what Mr. Breckenridge had
18 to say.

19 Q And so was it your view around this time, and I'll
20 go through a few more documents, was it your view
21 at the time that what Mr. Breckenridge had to say
22 may not be credible?

23 A I would think so, yes.

24 Q If we can go to 004112. Would you have provided
25 your view on that to Mr. Wolch and Mrs. Milgaard



1 and David Milgaard?

2 A I may have.

3 Q Do you have any recollection of that?

4 A Not specifically.

5 Q Do you have any recollection of whether Mr. Wolch,
6 Mrs. Milgaard or David Milgaard had any concerns
7 about Mr. Breckenridge's credibility?

8 A I don't recall those conversations.

9 Q 004012, this is the statement that Bob Perry sent
10 to you with the May 26, 1992 letter, and I think
11 what his letter says is that he had asked
12 Mr. Breckenridge to go away, organize his thoughts
13 and come back and he did and Mr. Breckenridge
14 brought this statement back. Do you have a
15 recollection of reviewing this statement at all?

16 A No, I don't.

17 Q And again if we can, just a couple of points here,
18 he talked about mail being marked "private and
19 confidential" and "eyes only" that was directed to
20 Mr. Romanow. You mentioned yesterday that one of
21 the, and I can't recall your exact words, but on
22 the information Breckenridge brought forward, you
23 had concerns about what he was saying about
24 Mr. Romanow because of what you knew of
25 Mr. Romanow; is that right?



1 A Yes.

2 Q And was that another reason to question the
3 credibility of what he was saying?

4 A I suppose so, yes.

5 Q If we can go to the next page, and what the
6 statement talks about -- actually, if we can just
7 scroll up one line:

8 "We were often aware of these
9 meetings --"

10 He's talking about these closed door meetings,
11 delivering the files, and:

12 "This often happened with the Milgaard
13 and Fisher files. Also there was a
14 paper shredder kept in the ministers
15 office that was used quite
16 extensively..."

17 And:

18 "... I was told that the gov't could
19 claim ignorance of this matter thereby
20 escaping any political heat."

21 Let me pause. Would this information of
22 Mr. Breckenridge, if true, fit with the
23 allegations that Mr. Henderson and Mr. McCloskey
24 had made in August of 1991, the frame and
25 cover-up?



1 A Yes, it could.

2 Q And in fact would be evidence that would support
3 that directly; is that fair?

4 A Yes.

5 Q True?

6 A Yes.

7 Q And secondly, I think after the Supreme Court of
8 Canada decision, we have seen some documents and
9 comments from, I showed one yesterday where you
10 were saying there was a cover-up, Mr. Wolch was
11 saying there was a cover-up, and again would this
12 information, again if true, be evidence that would
13 support the contention that you and Mr. Wolch and
14 others were putting forward after the Supreme
15 Court decision that there was a cover-up?

16 A Oh, certainly, and it pegged to, I believe, Mr.
17 Kujawa's concession that he had actually had the
18 two files, but that he -- now, he said he didn't
19 make the connection, but the concession that he
20 actually had the two files I think may have made
21 this, or may have certainly made the desire to
22 believe this more than it otherwise might have
23 been.

24 Q Okay. And when you say Mr. Kujawa had both files,
25 was it known -- are you referring to the fact that



1 he argued the appeal on David Milgaard's case
2 before the Court of Appeal in the Supreme Court
3 and that he also was the prosecutor who dealt with
4 Mr. Fisher's guilty pleas?

5 A Yes.

6 Q Is that what you mean?

7 A Yes, and that he admitted I believe in an
8 interview that he had actually had the two files.

9 Q Okay. And then if we can go on in this statement,
10 what he says here is:

11 "On the Milgaard case it was brought to
12 my attention by Dave Wolbaum that
13 according to the information we had been
14 receiving it was becoming very evident
15 that the Milgaard case was a mistake."

16 And carrying on. Do you recall whether you or
17 anybody else on behalf of either David or Joyce
18 Milgaard contacted Dave Wolbaum or followed up
19 with Dave Wolbaum to see what information he had?

20 It appears that Mr. Breckenridge is saying that
21 he was informed by Mr. Wolbaum that it was
22 becoming evident that the Milgaard case was a
23 mistake. Do you have any recollection of that?

24 A No, I don't.

25 Q Then go to 156905, this is a June 15, 1992 letter



1 again from Mr. Perry to you, and again just at the
2 start he says:

3 "We were advised on June 12, 1992, by
4 Mrs. Joyce Milgaard that our previous
5 report of May 26, 1992, had not yet been
6 received by your office. Your office
7 confirmed this as of June 12, 1992. A
8 reproduced report was given to Mrs.
9 Milgaard to be hand delivered to your
10 office."

11 And got another copy of that. Do you know if
12 that happened?

13 A I don't know, Mr. Hodson. I'm not even sure I was
14 physically in the office any more at this point.

15 Q And Mr. Perry goes on to report in his letter to
16 you, talks about a meeting between Mr. Perry, Mrs.
17 Milgaard and Michael Breckenridge and that Mrs.
18 Milgaard requested that we set up another
19 interview with -- I'm sorry, let me back up. I
20 think, sorry, that Mr. Perry met with Mrs.
21 Milgaard and discussed various aspects of the
22 Milgaard situation, suggested various avenues of
23 possible investigation, and Mr. Perry says:

24 "We advised Mrs. Milgaard that we felt
25 that it would be in her best interest to



1 fully discuss any future investigation
2 with your office. Mrs. Milgaard
3 requested that we set up another
4 interview with Mr. Mike Breckenridge.
5 We were given to understand that this
6 had been discussed with you or one of
7 your associates in your absence."

8 Do you have any recollection of that?

9 A No, but I think Mr. Rodin may have been involved
10 with the case at this point on the civil
11 litigation component.

12 Q And that's Greg Rodin who was a lawyer in your
13 firm at that time?

14 A Yes.

15 Q And it looks as though an appointment was set for
16 Mr. Breckenridge, and Mr. Perry says:

17 "We picked up Mr. Breckenridge and Mrs.
18 Milgaard and met at our office on June
19 14, 1992. This meeting lasted
20 approximately 2.5 hours. We fully
21 discussed Mr. Breckenridge's involvement
22 in the Milgaard and Fisher matters and
23 the procedures involved.

24 He described the opening of
25 files, the entering into the Master



1 Ledger and the general flow of
2 correspondence. Numerous names were
3 brought up in the conversation. These
4 named by Mr. Breckenridge, other than
5 those previously reported were lawyers
6 Richard Quinney, Ken McKay, Gerry
7 Allbright and Peter Glendenning. Mrs.
8 Milgaard asked what knowledge he may
9 have of Ray Hnatishyn and Bob Caldwell.
10 We also asked about Cal Tallis, Ian
11 Disbury and E.C. Boychuk.

12 Mr. Breckenridge recollected
13 that there was a letter or
14 correspondence from a Saskatoon official
15 to the effect that "they had the wrong
16 man" that triggered the numerous
17 discussions in the Criminal Records
18 Department at that time. He also
19 suggested that the files be gone back
20 through to find his initials - he stated
21 that when correspondence was moved
22 through channels that person involved
23 with the transfer would initial that
24 correspondence. He felt that
25 correspondence with his initials may



1 bring back specific memories as to
2 events, dates, times, etc."

3 And then goes on just down at the bottom:

4 "Mrs. Milgaard will undoubtedly be
5 discussing this particular interview
6 with you and imparting her thoughts and
7 suggestions.

8 This office will not undertake
9 any further investigation unless
10 instructed by your office."

11 Do you have any recollection of your discussions
12 with Mrs. Milgaard or Mr. Perry on this subject?

13 A No.

14 Q If we can go to 054611, this is an RCMP
15 continuation report from 1993 which was part of
16 their investigation and they looked into this
17 issue of Mr. Breckenridge's allegations and they
18 interviewed Bob Perry who was the investigator and
19 I want to read to you part of what he said
20 regarding his dealings with you. If you could go
21 to 054614. Actually, go back to the previous
22 page, please. And this just talks about the
23 interview and how they were retained:

24 "... received a call from David Asper
25 requesting that they interview and



1 obtain a detailed statement from Michael
2 Breckenridge and as well get a feeling
3 for what Breckenridge had to say."

4 Would you agree with that as being the scope of
5 what you asked them to do?

6 A Yes.

7 Q And then it goes on, Mr. Perry says:

8 "During the May 14th interview
9 Breckenridge gave a very confusing
10 employe ment history that was hard to
11 follow and suggested overlapping periods
12 of employment at different jobs.

13 Breckenridge suggested that he was with
14 the Justice Dept., in 1970 or 1971."

15 And then goes on to talk about the meeting and
16 the statement, and then if we could just scroll
17 down, Mr. Perry says to the RCMP:

18 "Beyond being instructed to interview,
19 (two meetings in total) obtain a
20 statement and get a feeling for what
21 Breckenridge had to say, Mr. Perry
22 received no additional instructions to
23 conduct any further
24 inquiries/investigation. Mr. Perry was
25 not asked to interview any further



1 potential witnesses, based on the names
2 provided by Breckenridge, nor was he
3 asked to make any inquiries concerning
4 Breckenridge's period of employment with
5 the A.G.'s Dept. Mr. Perry does not
6 know whether or not Mrs. Milgaard, or
7 anyone else acting on her behalf, made
8 any inquiries to determine the veracity
9 of Breckenridge's claim concerning when
10 he was with the A.G.'s Dept. Mr. Perry
11 also has no idea whether or not Mrs.
12 Milgaard, Mr. Asper or Mr. Wolch were
13 aware of the fact that Breckenridge was
14 not in the A.G.'s Dept., at the time
15 referred to in Mr. Wolch's letter to Kim
16 Campbell and as stated in the referred
17 press conference."

18 Just go back up, Mr. Asper. Do you take issue or
19 do you agree with what Mr. Perry says as far as
20 the scope of what he was asked to do and what he
21 was not asked to do as I've just read to you?

22 A I don't take issue with the scope because I'm
23 assuming that that would be the natural scope, but
24 I can't speak specifically to what he was not
25 asked to do because I just don't recall having any



1 dealings with Mr. Perry.

2 Q Okay. Do you have any reason to think that when
3 Mr. Perry says I was not asked to interview any
4 further potential witnesses based on the names
5 provided by Breckenridge, nor was he asked to make
6 any inquiries concerning Breckenridge's period of
7 employment, do you have any reason to dispute --

8 A No, I don't.

9 Q Then go to 162465, and this is a fax I think
10 September 9, 1992 from you to Mrs. Milgaard; is
11 that correct?

12 A Yes.

13 Q And by this time it appears you are with CanWest
14 Global Communications Corp, so you would have left
15 the practice of law; is that correct?

16 A Yes.

17 Q And if we can just go to the next page, it's a
18 letter to Mrs. Milgaard:

19 "Further to our telephone conversation
20 of September 8, 1992, I attach herewith
21 for your consideration a draft release.
22 Go get them!

23 Best wishes."

24 And just on the next page is a draft news release
25 and I'll go through parts of this with you, and I



1 think this relates in part to a, at that time,
2 planned press conference where Mrs. Milgaard and
3 David Milgaard and Mr. Wolch put forward some
4 information. Do you recall that happening?

5 A Yes.

6 Q And what was your role then in that, preparation
7 for and that press conference?

8 A I don't recall this. I may have been asked by
9 Mrs. Milgaard to draft something for her, which I
10 did, but I don't -- I didn't participate in the
11 news release and I don't think I commented on it.

12 Q And I think that's correct, Mr. Asper, certainly
13 the record we have, and maybe you can confirm
14 this, there was a, I think the press conference
15 was in a park in Winnipeg I think around September
16 19 --

17 A Physically I was in Australia on business either,
18 maybe the day or so after this occurred.

19 Q And when you drafted this news release, were you
20 aware that -- what was being planned by way of a
21 press conference or what was going on at the time?

22 A I may have been in general terms.

23 Q And --

24 A I don't recall.

25 Q And so this would be your draftsmanship, is that



1 right, the news release, the draft?

2 A I may have taken -- yes. I can't say whether I
3 was working with a rough version of it or whether
4 this was an initial version or what it was.

5 Q And just scroll down, it deals with sort of a bit
6 of a background and then as well this issue, and
7 we touched on this yesterday, I think the response
8 of the Government of Saskatchewan to the Supreme
9 Court decision was at odds with what you thought
10 the Supreme Court decision meant?

11 A Yes.

12 Q And so you have a comment here about that issue,
13 and then the last paragraph, you say:

14 "In addition to the letter-writing
15 campaign, the investigation into wrong
16 doing by the Government of Saskatchewan
17 has continued in earnest. The core
18 group of volunteers in the Winnipeg
19 support group have continued the
20 analysis of government files and in
21 addition information has been provided
22 to Mr. Wolch's office covering a wide
23 spectrum including potentially
24 implicating the current premier of
25 Saskatchewan in his former capacity as



1 Attorney General for Saskatchewan."

2 And am I correct that that would be referring to
3 Mr. Breckenridge's letter, statement, and
4 information?

5 A Yes.

6 Q And that:

7 "Investigators have been retained and
8 these matters are being pursued with
9 great vigour."

10 And would that be a reference to Robinson
11 Investigations, and specifically Mr. Perry, and
12 what he was doing?

13 A Umm, there may have been others, I don't know, I
14 can't recall.

15 Q Other investigators?

16 A Yes.

17 Q Do you remember -- do you think someone else was
18 involved in investigating?

19 A I don't know, I wasn't there, I wasn't involved
20 there with the firm.

21 Q And then the next page go on to talk about, and we
22 have been through this before:

23 "Some examples of information obtained
24 as a result of further analysis of
25 government files include:



1 1. A second knife ..."

2 issue, and 2, you say:

3 "(Insert the Sidney Wilson/Eugene

4 Williams information)";

5 do you recall what that was about?

6 A No.

7 Q I think there was, if I may assist, I think we saw
8 a document on the Saskatoon City Police files that
9 reference the fact that Sidney Wilson may have
10 been interviewed, I think by Mr. Caldwell or by
11 the police, and I think that document has now been
12 shown as it was a note in 1990 of a conversation
13 with Eugene Williams. And so the note had the
14 name "Sidney Wilson, interview, Williams", and I
15 think some people viewed that as perhaps being a
16 document suggesting that Sidney Williams was
17 interviewed back in '69-'70, but I think that's
18 been clarified; does that ring a bell at all?

19 A No.

20 Q And right at the end:

21 "The Government of
22 Saskatchewan has become destructive of
23 the ends of justice and it is the right
24 of the people therefore to persuade,
25 alter or abolish it.



1 Saskatchewan Attorney General's
2 Department who has come forward with
3 information concerning activities in the
4 Department shortly after David
5 Milgaard's conviction."

6 And then it encloses a copy of the statement,
7 and:

8 "It is clear from this statement that
9 some information came to the attention
10 of this witness which suggested that
11 there was a mistake made in the Milgaard
12 case. This witness brought this
13 information to Mr. Kujawa's attention,
14 and was told to mind his own business if
15 he valued his job. This witness also
16 indicated that by virtue of the filing
17 which was required in his position, he
18 became aware that meetings were held
19 where both the Milgaard and Fisher files
20 were considered together. These
21 meetings were behind closed doors and
22 involved senior attorneys in the
23 Attorney General's office."

24 And, again, is that -- were you aware of that,
25 Mr. Asper, at the time, or were you part of the



1 decision to put this information forward to Kim
2 Campbell?

3 A Not at all, no.

4 Q And, as well, the letter goes on to talk about the
5 Supreme Court decision and it says:

6 "Accordingly, we know the evidence of
7 Larry Fisher was suppressed. The
8 following, however, has not yet been
9 established:"

10 Do you recall at that time, and I appreciate --
11 maybe I should go back to June or before you left
12 the firm -- do you recall whether you had reached
13 the conclusion that evidence of Larry Fisher had
14 been suppressed?

15 A I think it's fair to say we certainly thought it
16 might have been, yes.

17 Q If we can go to 162471.

18 A I mean I, you know, I'm not sure specifically what
19 Mr. Wolch is referring to there, but to the extent
20 that Mr. Kujawa was prosecuting the Milgaard
21 appeal and was aware of the Fisher prosecution and
22 did not disclose it, you know, he says because he
23 didn't make the connection so that's up to you,
24 Mr. Commissioner, to make that finding, that may
25 be what's being referred to here.



1 Q And so I'm wondering about your view, and I think
2 what you are saying is that you had concerns that
3 it might have been suppressed?

4 A Yes.

5 Q As a -- I mean I don't think there's any factual
6 issue that it was not disclosed, I think the
7 question is, or the question I asked you is did
8 you have the view that it had been deliberately
9 not disclosed?

10 A I might have had that view, yes, I'm pretty sure I
11 probably did.

12 Q 162471. And these are, I believe, the typed
13 remarks for Mrs. Milgaard at the press conference
14 that she read in part; do you recall whether you
15 would have had any part in drafting these?

16 A I don't think so.

17 Q And then 334827. And we have been through this
18 before, I just want to touch on a couple of parts.
19 This is a transcript of the press conference, and
20 I think you said you were in Australia at the
21 time; is that correct?

22 A I think so, yes.

23 Q Do you recall ever reading the transcript, or
24 following up, or -- about what was said, or where
25 was -- what was your role or level of involvement



1 in matters relating to David Milgaard in September
2 of 1992?

3 A Well I, I mean I, my recollection is I kept in
4 touch with the family. I was, I was, you know,
5 keenly interested in what was happening next, but
6 on the other hand our company was in the middle of
7 acquiring a television network in Australia and I
8 was playing a significant role in the due
9 diligence process and, and overseas.

10 Q And as far as this press conference and what was
11 put forward, can you tell for us what role, if
12 any, you played in the decision to disclose this
13 information, the manner in which it was disclosed,
14 and the actual information that was disclosed?

15 A I don't recall playing any role.

16 Q If we can go to 334834, there is a comment here,
17 and again this just touches on, I think,
18 Mr. Perry's letter to you, and where -- what he
19 did and didn't do, and Mrs. Milgaard says:

20 "We made sure that he was employed where
21 he said he was at that time, and that
22 the people he mentioned were also
23 employed and that he in fact did the
24 things that he said he did, ...",
25 and I'm just wondering, Mr. Asper, do you have



1 any knowledge of if that was done, and if so how
2 that was done, to verify his employment?

3 A I don't have any such knowledge.

4 Q If we can go to 160428, a September 21, 1992
5 article by Dave Roberts of *The Globe and Mail*
6 dealing with what came out of the press
7 conference, and I appreciate that you were, as you
8 said, you were out of the country. In this
9 article there is a quote:

10 "A spokesman for Mr. Romanow, John
11 Millar, said Saskatchewan officials
12 believe the file clerk did not work in
13 the department until 1973. In an
14 earlier interview with *The Globe and*
15 *Mail*, the man said he worked in the
16 department in 1972."

17 And then, again, I just want to show you 060923.

18 And --

19 A That's interesting, that's an interesting study.
20 If you go back to the previous thing, the previous
21 article, and I don't want to --

22 Q Sure.

23 A -- sort of go off on a tangent, but if you look at
24 the column in its entirety, --

25 Q Yeah, okay.



1 A -- from a media perspective it's interesting to
2 look at the headline and the subheadline and then
3 look at the last two paragraphs of the story and
4 see how the whole story is played. It could have
5 been played *Romanow and Kujawa deny allegations*
6 could have been the headline, which would have
7 been a factual treatment. Instead, if you go back
8 to look and see how it was played, it's quite
9 different.

10 Q And so what are you saying?

11 A It's, I'm just saying it's illustrative of the
12 risk that when you have to take your case or when
13 you play your case in the media -- and Mr. Kujawa
14 is, you know, I conceded yesterday, his, his point
15 is not, is not wrong, that there is a risk when
16 you engage the media, and this is a good example.

17 Q And so you are saying --

18 A That's all I'm saying.

19 Q Okay. So are you saying that if the last two
20 paragraphs were maybe over here, and the
21 headline -- or what's that called, is that a
22 subheadline, what's the term?

23 A You could call it a subheadline.

24 Q All --

25 A There's trade terms that I don't understand, but



1 --

2 Q And are you saying that the article could have
3 said *Allegations by clerk, clerk didn't work there*
4 *at the time he said he did*, or I'm not sure I'm
5 following?

6 A Well if I took the editorial standard, for
7 example, that we employ in our business now, I
8 might be concerned that the subheadline is there
9 and has editorial effect as opposed to the
10 statement of fact and fair treatment of the body
11 of the story. I'm just, I don't want to go on a
12 tangent, I'm just using it as an example of an
13 interesting --

14 Q If we go to 060923. And, again, this is a
15 November 17th, '92 column by Mr. Roberts and
16 Mr. Appleby in *The Globe and Mail*, and there is a
17 comment here, it says:

18 "Those allegations ...",
19 and, again, they are referring to Breckenridge:
20 "... were 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 my question for you, Mr. Asper, do you
6 recall, it appears from this article that
7 certainly the government stated at the time Mr.
8 Breckenridge didn't work there, *The Globe and*
9 *Mail* says that an independent inquiry by them
10 concluded the same thing; do you recall whether
11 you ever had any of that information prior to
12 September 19, 1992, either that he didn't work
13 there at the time or may not have worked there at
14 the time?

15 A I don't recall. I think the earlier report that
16 you showed me he says that, doesn't it?

17 Q Says what?

18 A Says that he wasn't there.

19 Q Yes.

20 A But I don't recall seeing it.

21 Q And I think the evidence, we have not heard from
22 Mr. Breckenridge, but I think certainly the
23 documentary evidence shows that he started working
24 there I think in mid-1973 and was not working
25 there in -- and, again, do you have any



1 recollection of looking into that issue, being
2 made aware of that issue?

3 A No.

4 Q And 162867. This is a letter September 22, 1992
5 from Mr. Wolch, it may be a draft that was
6 retyped, but in any event this is Mr. Wolch
7 writing to Mr. MacFarlane asking for a federal
8 inquiry, which by the way was turned down. Umm,
9 do you recall whether you would have been any part
10 of this at the time, this is September 22, 1992;
11 would you have been playing any role in the
12 strategy or the decisions that were being made on
13 behalf of David Milgaard?

14 A I don't think so.

15 Q 159542. This is a letter from Mr. Breckenridge
16 December 23, 1992 to Mr. Wolch enclosing part of a
17 book that he has written and marked a section of:

18 "... particular interest to you and
19 David Milgaard. If we can release this
20 information I am sure it will help
21 increase public pressure to secure David
22 a financial settlement.

23 I would hope that I could count
24 on your help to get this book
25 published."



1 Do you recall -- and, again, the next page, I'll
2 just show you the start of the next page, it's a
3 lengthy document:

4 "THE REGINA MANIFESTO...

5 Regina is an illusion.",

6 etcetera. Do you have any, do you have a
7 recollection of receiving this, being aware of
8 it?

9 A I may have seen it. I may have seen it.

10 Q Or been aware that Mr. Breckenridge was going to
11 publish a book or was trying to publish a book?

12 A I don't recall that part, but I may have seen this
13 document.

14 Q And why do you say that? Is there something in
15 the document that catches your attention?

16 A Yeah, the first sentence, it --

17 Q "Regina is an illusion."?

18 A I'm going to use that in football season this
19 year, Mr. Hodson.

20 Q And so again, based on that, do you think that --
21 and I should point out that when they are losing
22 they're the Regina Roughriders, so you are correct
23 on that.

24 Is there something in this
25 document that you think you might have seen it at



1 this point?

2 A Something rings a bell, I just, I don't recall
3 where.

4 Q I want to finish up just on your dealings with the
5 RCMP. And based on the documents, and this
6 relates to the, I think what's been called the
7 Flicker investigation, and in the latter part of
8 1992, based upon the Breckenridge allegations and
9 other information, the Government of Saskatchewan
10 asked the RCMP to conduct a criminal investigation
11 into wrongdoing alleged against Mr. Kujawa, Mr.
12 Caldwell, city police officers for coverup and Mr.
13 Breckenridge's allegations, I think as well maybe
14 Mr. Romanow and others. Were you aware of that at
15 the time, generally, that this investigation was
16 happening?

17 A I may have been. I don't recall.

18 Q And I think, I've only been able to find a couple
19 of documents where they spoke to you, do you
20 recall that? I'll maybe just show it, 046386, the
21 doc. ID is 046385. If we can go to the next page,
22 this suggests February 8, 1993:

23 "Spoke with David Asper.

24 I asked him about the
25 identification made by the victim



1 (V5)---. Asper advises the following.

2 During the investigation of
3 this offence, Det. Weir showed (V5)--- a
4 photographic line-up. From that
5 line-up, (V5)--- identified Larry
6 Fisher. At some point, (V5)--- was told
7 that the guy (Fisher) would never be
8 prosecuted because he was in an asylum.

9 Asper states that the
10 Prosecutor Caldwell was responsible for
11 correspondence that states w/out a
12 confession from Fisher the Crown had no
13 case. Also this memo states that there
14 was no Id of Fisher, Asper states this
15 is incorrect because (V5)--- Ided
16 Fisher.

17 Asper is concluding that Weir
18 was given orders not to further this
19 file and this is part of the overall
20 coverup. And, that most of this file is
21 missing."

22 Again are you -- and this is, and I'm not sure if
23 this is, this may have been Inspector Sawatzky.
24 Two questions; one, do you recall meeting with
25 him, and it may have been by telephone; and,



1 secondly, do you accept what the RCMP have
2 recorded as being accurate, as being what you
3 told them?

4 A I think it was by Inspector Sawatzky, and it was
5 by telephone, and yes I do accept it.

6 Q And so what he has recorded, you accept that
7 that's --

8 A I accept that he would have accurately recorded
9 our conversation, the gist of it.

10 Q And then 046170, and actually if we can go to
11 046174, and this is December 9, 1993. It says he
12 met with you:

13 "... to clarify several issues which he
14 agreed to address on behalf of
15 Mr. Wolch."

16 Do you recall how this meeting came about, Mr.
17 Asper?

18 A No, I -- no, and I was working in Regina,
19 obviously.

20 Q And there's just a couple of points here, and
21 again the same questions, I want to know from you
22 whether you accept that what was recorded was
23 accurate. It says:

24 "Mr. ASPER states ...",
25 sorry, this is an issue that they're looking



1 into, that two witnesses in the alley were not
2 disclosed, and Mrs. Merriman and Mrs. Indyk. Do
3 you remember those people, where they fit in in
4 the case? Mrs. Merriman lived on Avenue N --

5 A Right, she was looking at -- they were waiting for
6 a cab or something?

7 Q Yes.

8 A I can't remember Mrs. Indyk though.

9 Q Mrs. Indyk was the witness who was going to
10 church --

11 A Oh, did she see the woman brush by?

12 Q Yes, yes.

13 A Yes, okay.

14 Q And:

15 "Mr. ASPER states that the two people
16 referred to here are the church
17 'caretaker', Mrs. Indyk, and
18 Mrs. MERRIMAN. He contends the fact
19 that the Crown called Mrs. INDYK, for
20 the defence, to say she did not see
21 anything is proof that both CALDWELL and
22 TALLIS were cognizant the important
23 aspect of her evidence was *that she did*
24 *not see anything.* Therefore, it follows
25 that CALDWELL ought to have made



1 available the other evidence
2 establishing nothing was seen in the
3 area."

4 And I'll maybe just go on to the next. I mean,
5 would you agree that that would be --
6 accurately would record what you had told him?

7 A Yes.

8 Q "Mr. ASPER states 'evidence' refers to?
9 facts relating to (V4)---'S assault,
10 FISHER'S previous crimes, and the fact
11 the police (e.g., Ident officer PENKALA)
12 saw clear evidence based on the modus
13 operandi to suggest the rapist was
14 responsible for the Miller attack. He
15 said the details about police contact
16 with a person who matched the
17 description of the rapist - wearing
18 yellow hard hat should also have been
19 disclosed. (McCorrison checking FISHER
20 at the bus stop)."

21 And, again, would that be an accurate recording
22 of what you told him?

23 A Yes.

24 Q And then the next paragraph, again, --

25 A I mean I don't, I don't recall, I'm accepting this



1 as --

2 Q Yeah, no, and I appreciate that, but if you are
3 taking issue --

4 A No, I don't take issue with it.

5 Q And I'd ask you to just agree with everything
6 that's in here, but in fairness, I think I have to
7 at least --

8 A Right.

9 Q -- put it to you. This is an issue about Milgaard
10 not being in the vicinity and concerns the
11 question of disclosure as set out in the argument
12 on behalf of David Milgaard, and I think that's
13 your argument at the Supreme Court with those four
14 pages of -- if you will recall I showed you
15 that -- of all the people that, in the police
16 reports, were asked about what they saw and saw
17 nothing --

18 A Right.

19 Q -- I think is how it was put. So here:

20 "The statements withheld were those
21 relating to Mrs. GALLUCCI'S evidence
22 (that MILLER took the Ave. O bus), the
23 roommates evidence, and the fact many
24 people interviewed by the police saw
25 nothing around Ave N the morning of the



1 murder."

2 And asked to describe the vicinity, and you said:

3 "... within several blocks of the scene

4 ..."

5 Again, would that be accurate?

6 A Yes.

7 Q And then 046173. It says:

8 "Mr. ASPER agrees that the Supreme Court
9 addressed the issue of disclosure within
10 the trial setting but he believes had
11 the jury heard the facts suggesting some
12 other 'person' may have committed crimes
13 almost identical to the Miller offence,
14 they might well have rendered a
15 different verdict. Unlike the
16 constraints on the Crown insofar as
17 similar fact evidence is concerned, he
18 believes the defence - for the purpose
19 of establishing a reasonable doubt -
20 could bring forward the fact some other
21 person committed almost identical crimes
22 in the same area etc.

23 In terms of similarity, ASPER
24 also feels the circumstances of the Feb.
25 1970 rape ((V5)---) wherein the attack



1 occurred outside in the cold were
2 further proof of a link between the
3 rapist and the murderer."

4 And, again, I think you've mentioned that to us
5 before; would you agree that that accurately
6 records what you would have said?

7 A Yes.

8 Q And that:

9 "ASPER recalled that author Peter GORGE
10 mentioned having seen incident reports
11 in CALDWELLS files and correspondence in
12 which CALDWELL asked the police about
13 the other incidents. This is not
14 supported by our review of the material
15 or our interview with GORGE. ASPER
16 indicated he would confirm this point.
17 No further action will be taken unless
18 verification is received."

19 And do you recall this issue at all, I mean is
20 that accurate?

21 A It may be. I accept it as being accurate. I
22 don't recall having any further contact with him
23 though.

24 Q And then:

25 "ASPER claims there was a definite split



1 in the Dept. between morality and the
2 other investigative units. When queried
3 on the source of such definitive
4 information, he states this information
5 was gathered from a source - not 'the
6 source', but a retired member. He will
7 advise further."

8 Do you know what that relates to?

9 A No. It may relate to a source that had been used
10 by the *Globe and Mail*, it might have been Gus
11 Weir, actually.

12 Q Okay. And so that -- that might -- that's your
13 best recollection as to where that might have come
14 from?

15 A Yes.

16 Q And did you, did you talk to Gus Weir directly?

17 A No.

18 Q And so this would be information; who would, who
19 would have told you about what Gus Weir was
20 saying?

21 A I think either Dave Roberts or Tim Appleby.

22 Q Okay. And then here:

23 "I informed Mr. ASPER that we were still
24 waiting to hear from Mrs. MILGAARD on
25 exactly what files she saw which were



1 later destroyed. ASPER stated that he
2 believed they were shown a list of
3 existing files and then later several
4 files were found purged off the list."

5 Again, is that accurate?

6 A I accept that, yes.

7 Q And again, do you know, when you say a list of --
8 I'm assuming this relates to the Fisher assault
9 files?

10 A I assume so as well.

11 Q And does this, it says:

12 "... a list of existing files and then
13 later several files were found purged
14 off the list."

15 Do you know what that relates to?

16 A No.

17 Q Okay. And then 046172.

18 "ASPER concedes that if (V4)--- was
19 assaulted by FISHER at the time she
20 indicates - 0707 hrs. FISHER could not
21 be responsible for MILLER'S assault. He
22 doesn't disbelieve (V4)--- about FISHER
23 but thinks she could be mistaken on the
24 time. He thinks others he interviewed
25 (eg., Aunt) may be able to establish



1 that (V4)--- was wrong and it could have
2 been later, eg., 0730 when the assault
3 occurred. He will advise."

4 Again, is that accurate?

5 A Yes.

6 Q And then:

7 "Follow-up

8 In addition to his own clarification,
9 Mr. ASPER will be contacting Mrs.
10 MILGAARD to clarify the issue concerning
11 the files she was shown by the 'source'.
12 I also mentioned we were awaiting her
13 response on several other questions as
14 well that being the Breckenridge
15 documents and the fact we were not
16 provided with the Yorkton Psych. records
17 about which Mrs. MILGAARD expressed an
18 interest. ASPER had not seen them
19 himself."

20 And then again:

21 "ASPER will also contact Paul HENDERSON
22 about the question dealing with the
23 split. Again I indicated we are
24 awaiting his response to a letter on
25 another issue. (the tapes)."



1 Again, would that be accurate?

2 A Yes.

3 Q And I don't think there was any further follow-up;
4 do you remember anything else?

5 A I don't recall. I moved on to work in the U.K.
6 shortly after that.

7 Q And did you become aware in 1994, August of 1994,
8 that the RCMP report, or the results, were
9 released by the Alberta Justice Department looking
10 into the allegations; were you involved in
11 following up or reviewing that at all?

12 A I don't recall that, no.

13 Q Those are all my questions, subject to one, Mr.
14 Asper. We have spent a fair bit of time going
15 through what you did on this matter, and I think
16 we have covered, to the extent that there are
17 systemic issues or issues that might be important
18 to this Commission of Inquiry that you identified
19 throughout your work, I think they're in the
20 documents or you may have answered them in
21 specific questions. But I would invite you, if
22 there's anything in addition to what I have not
23 already asked you that you'd like to say about any
24 matter that's relevant to this Commission's Terms
25 of Reference, I would invite you to do so?



1 A Well, I don't know that I have anything new, Mr.
2 Hodson. I just hope that I have conveyed, Mr.
3 Commissioner, that I consider this entire part of
4 my life, and for the Milgaard family from the
5 moment that David was arrested, to be an
6 extraordinarily difficult, difficult period. And
7 the effort to win David's freedom and ultimately
8 to establish his innocence was a process that I
9 regret having to happen, and regret having to have
10 been put in a position where we felt we had no
11 other choice but to do what we did, and it was a
12 messy process, it cost David a lot of years in
13 prison, potentially, and it was -- I know that a
14 lot of people felt swiped on many occasions
15 because it involved many people who were private
16 having their names being made public, it involved
17 torqued headlines and media characterizations that
18 perhaps in hindsight weren't fair, and I just, I
19 just hope that I am conveying that whatever
20 happened, I do sincerely wish that it could have
21 happened a different way.

22 And I want to point out that
23 even though I still have a philosophical
24 difference with the way wrongful convictions are
25 handled today under the *Criminal Code*, I believe



1 that everything that we did has contributed to a
2 better process, and wrongly convicted have a
3 better chance today than David Milgaard had in
4 '92, or in '88 when we started, and I guess for
5 that, some good came of it.

6 Q Thank you, Mr. Asper. And if I could personally
7 thank you for the time that you spent with me in
8 advance of the hearings, and for the time of you
9 and your counsel in appearing here, I appreciate
10 it.

11 Those are my questions, Mr.
12 Commissioner. I'm not sure if you wish to deal --
13 to take a break, or deal with the order of
14 cross-examination now and then take a break?

15 COMMISSIONER MacCALLUM: I think a break
16 would be in order.

17 *(Adjourned at 10:20 a.m.)*

18 *(Reconvened at 10:44 a.m.)*

19 MR. HODSON: Mr. Commissioner, I think we
20 have either deferred and possibly resolved the
21 order of cross-examination, but at least
22 deferred. I think for today -- and one of the
23 issues in the order relates to the time within
24 which some counsel have had to review the tapes
25 and that might solve some of the problems. I



1 think Mr. Gibson on behalf of the RCMP has agreed
2 to go first and Garrett Wilson on behalf of Serge
3 Kujawa has agreed to go second and it's believed
4 that they will take us through the end of the
5 day, and then with a break I'm hopeful that
6 counsel can resolve the order or at least narrow
7 down that, so I think with that, and I think I've
8 talked to all counsel, I think everybody is fine
9 with that, so I will ask Mr. Gibson to start.

10 COMMISSIONER MacCALLUM: Thank you.

11 Mr. Gibson?

12 **BY MR. GIBSON:**

13 **Q** Thank you. Mr. Asper, you and I of course have
14 said hello at the break a couple of times. I
15 don't expect that I will be long with you. A few
16 areas that I want to touch on, some of your
17 dealings obviously with the RCMP in the 1990
18 process through 1992, a couple of points I want to
19 touch on when you dealt with Mr. Pearson, a little
20 bit again, Mr. Hodson touched on some of it this
21 morning dealing with the Flicker investigation or
22 the alleged cover-up by police and Justice
23 officials, so I'll touch on that, and also I want
24 to talk a little bit about some interview
25 techniques, etcetera, with Mr. Henderson and your



1 understanding about that process, and you've been
2 open about that already, so I don't think any of
3 that is going to be overly controversial.

4 The first document that I would
5 like to draw your attention to are the notes of
6 Staff Sergeant Pearson, 056743 at 755. If we
7 could just call up paragraph 54, please, and I
8 know that you've been through this with Mr. Hodson
9 already, and I'm going to try not to belabour the
10 points that he's touched on, but again it says:

11 "Telephone call placed to Asper, further
12 discussion to ensure that Mrs. Milgaard
13 was made aware of developments to date."

14 And I think in your evidence you were
15 complimentary of Mr. Pearson in that you and him
16 were having a fairly open dialogue about what he
17 was doing and he was relaying information to you,
18 to some extent anyways, as to how his
19 investigation was progressing; is that fair to
20 say?

21 A Yes.

22 Q And a little bit further on in that he says:

23 "I also advised Asper that I wished him
24 to have Mrs. Milgaard cooperate with us
25 and permit the authorities to follow up



1 on the Fisher information, as opposed to
2 Mrs. Milgaard making inquiries on her
3 own."

4 And I think again, correct me if I'm wrong with
5 your evidence, that you also shared a little bit
6 of concern about Mrs. Milgaard going out and
7 carrying on an investigation with some of the
8 people that Staff Sergeant Pearson was trying to
9 get to and interview?

10 A Yes, I did.

11 Q And your concern there, and again please tell me
12 if I'm wrong on this, was that Staff Sergeant
13 Pearson was clearly a professional investigator
14 and he would probably be in a better position to
15 get at the truth of matters, and again not being
16 critical of Mrs. Milgaard, but rather than what
17 she would be able to accomplish; is that fair to
18 say?

19 A Yes.

20 Q And was there a concern then from your perspective
21 about some of the evidence that may be gathered,
22 if it's not gathered in the right way, of being
23 either somewhat biased or tainted or not as
24 thorough and complete as it could be?

25 A Well, let me back up a little bit, Mr. Gibson. I



1 think it's easy for you and I to say that Staff
2 Sergeant Pearson is a professional investigator
3 and may provide a more, would provide a
4 professional approach to investigation, taking
5 statements and that's why I would prefer that he
6 be the one doing it. I think the context, though,
7 is important because we had, I had a client who
8 didn't share our faith in the system or in its
9 agents, so I understood what Mrs. Milgaard was
10 doing. I didn't think it was -- I was hoping that
11 Sergeant Pearson would over take her frankly.

12 Q And again, I can't recall the evidence, but did
13 Mrs. Milgaard ever sit down and meet with Staff
14 Sergeant Pearson? I don't think that she ever
15 did --

16 A No, I don't recall.

17 Q -- until much later on?

18 A No, I don't recall that.

19 Q If we can go to another portion of Staff Sergeant
20 Pearson's notes and that was at page 900, so
21 056743 at 900 of that document. I think it's
22 paragraph 712. Maybe just before we leave the
23 other document again, I don't think it's necessary
24 to put it up, but that contact was in about March
25 of 1990 and I believe from your recollection



1 that's roughly around the time when Staff Sergeant
2 Pearson came on the scene so to speak?

3 A Yes.

4 Q Again, his evidence was late February, early March
5 that he started, and I guess your application then
6 was already in the works, so to speak, for about a
7 year?

8 A Yes.

9 Q And your contact prior to that during that year
10 process would have been with someone within the
11 Federal Department of Justice, and I believe you
12 said Eugene Williams, and not necessarily with
13 Staff Sergeant Pearson obviously?

14 A Right.

15 Q If we could just call up paragraph 712 there, and
16 in that portion it says:

17 "Mr. Asper returned my call. He was
18 questioning whether crime stats and
19 analysis were available for sexual
20 offences for 1970 to 1990, and to
21 determine if there was similar crime
22 activity after Fisher left the area. I
23 advised I was sure such info still
24 exists and if he believes this
25 similarity analysis will provide them



1 with something of value, then he should
2 make his request formally to the Federal
3 Justice Department, and I assured Asper
4 that I would assist wherever possible."

5 So in your dealings with Staff Sergeant Pearson
6 were you in a position and was he willing to try
7 and gather up information at your request and
8 provide documentation over to you, and I believe
9 that that information was eventually provided to
10 your office?

11 A It was. I don't recall if I actually received
12 anything directly from Sergeant Pearson, but we
13 certainly had lots of conversations where we
14 brainstormed, if you will.

15 Q Okay. And again, did he express a willingness
16 then to go out and follow up on some things that
17 were raised by yourself?

18 A Oh, sure, and you can see that we talked about the
19 records, the question of whether crime stats would
20 exist, and, you know, he gave me his view on
21 whether they would exist or not.

22 Q I'm going to move over to a later period now,
23 again Mr. Hodson went through in great detail with
24 you the dealings with Staff Sergeant Pearson. If
25 we could go to document 023046, and Mr. Hodson



1 alluded to the Flicker investigation this morning,
2 and I appreciate that you weren't practicing law
3 at that time and had drifted away from doing much
4 work or any work on the Milgaard file, but were
5 you aware that a meeting was held with the RCMP
6 and Mr. Wolch, and I believe you mentioned Greg
7 Rodin of your office, and Robert Bruce I think was
8 a private investigator that was engaged by the
9 Milgaard effort at times?

10 A I wasn't aware of this meeting, no.

11 Q And again in that --

12 A I don't think I was anyway.

13 Q Okay.

14 A It happened on my birthday though.

15 Q If we could just go to the next page of that
16 document, if we could call up that portion, and
17 again in that document, and I won't belabour the
18 point, there is some discussion about what
19 information Mr. Wolch and the people that worked
20 on this case for many years could provide to the
21 RCMP to assist in their efforts, and here
22 Inspector Sawatsky speaks about what it is they
23 are actually trying to establish and he says:

24 " ... we are not really concerned with
25 that aspect."



1 And that's basically reinvestigating the Miller
2 murder, and he goes on to say:

3 "... I think the big thing is that we
4 want to look at is - was there a cover
5 up by anyone from the time it was first
6 reported to the investigator until now."

7 And although you weren't at the meeting, were you
8 aware of the mandate that the 1993 investigation
9 was to follow through on?

10 A I can't say that I was.

11 Q Again, just so we have some background with
12 respect to some later questioning that I'll put to
13 you, if we could call up document 023167, this is
14 the report that was prepared by the RCMP at the
15 end of the 1993 investigation, and if we could go
16 to page 023176, again if we could call up that
17 portion, please, and it talks about the scope of
18 the investigation and I want to spend just a
19 moment on that with you because it will impact a
20 little bit later on on the type of questioning
21 that comes from the RCMP when they touched base
22 with you in 1993 and 1994, and the document goes
23 on to say that:

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



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

8 And I guess, Mr. Asper, were you aware that it
9 was a criminal investigation into those aspects
10 at least?

11 A Yes.

12 Q And then it goes on to say in the next paragraph:

13 "Our purpose was not to reinvestigate
14 the murder of Gail Miller ..."

15 And then the paragraph underneath that, it says:

16 "Any new evidence or information
17 emanating from our inquiries would be
18 directed to the police force with
19 jurisdiction."

20 So as far as the re-opening the investigation
21 into the Miller death, any information that was
22 uncovered by the RCMP was going to be passed on
23 to the city police as to whether that would be
24 re-opened, and of course there would be some
25 involvement from Sask Justice as well, and I take



1 it at that point you weren't involved in it, but
2 were you aware of the reason for the
3 investigation and what could come from that
4 investigation?

5 A I may have been at the time. I can't say that I
6 recall that now though.

7 Q Okay.

8 A I'm sure I was at the time.

9 Q Thank you. If we could call up document 047896.
10 Mr. Hodson touched on a document with you this
11 morning, some limited contact that you had with
12 the RCMP when this investigation was underway.
13 Now, this is 1993, February 18th of 1993, and
14 again we know that you are not practicing law at
15 this time, but you were clearly willing to speak
16 with the RCMP and provide information that may
17 assist in their investigation?

18 A Yes.

19 Q And in that brief portion there you indicate that
20 you contend that Milgaard had no opportunity,
21 obviously this is in relation to the killing of
22 Gail Miller:

23 "... as he wasn't in the vicinity and
24 that Wilson says the boys did not
25 separate."



1 And again I know this is taxing your memory, but
2 do you recall where you would have got that from,
3 that Wilson took the position that they did not
4 separate?

5 A No.

6 Q And again, I know you were present at the Supreme
7 Court and you were aware that at the Supreme Court
8 Mr. Wilson's testimony, he did indicate initially
9 they were separated, then in cross-examination I
10 believe he said that they weren't separated and
11 then on again some re-examination he indicated
12 that they were separated, so your recall of Ron
13 Wilson's evidence in and around that time, would
14 you agree that people generally had some concerns
15 about Ron Wilson? I mean, there were obviously
16 some prospects of perjury charges and again he was
17 a bit of a difficult character to understand.
18 Would you concede that point?

19 A You are being very kind, yes.

20 Q And again --

21 A I don't know -- I don't recall specifically saying
22 that and I don't know -- I don't know what the
23 circumstances of that were or where I got that
24 from.

25 Q Okay. But I guess at that point it wasn't too



1 clear as to what Ron Wilson's evidence was on that
2 point considering the perjury charges?

3 A To say the least, yes.

4 Q Yes. If we could go to document 035951 and then
5 go to 955 of that document, please, and I was
6 going to walk through that with you. Mr. Hodson
7 did this morning, so I won't again belabour that,
8 but he touches on a number of -- sorry, this is a
9 meeting that you had with the RCMP in 1993, you
10 believe it was in person in Regina because you
11 thought you were working there at the time, and it
12 was a Sergeant Dosenberger that was speaking with
13 you at that time. I don't know if you remember
14 him at all or not?

15 A No. Sorry.

16 Q And you again provide what information you can to
17 the RCMP with respect to their investigation and
18 some of the allegations that had been put forth
19 about possible police wrongdoing or prosecutorial
20 cover-up along that line?

21 A That's right.

22 Q Now, Mr. Hodson went through all that with you,
23 some of the areas that you had some concerns
24 about, and if we could go to page 954 of that
25 document and the portion there, you'll see some



1 numbers there beside Mr. Caldwell's name, 16 and
2 17, and those were issues that were identified
3 through various contacts through people involved
4 in the Milgaard effort and those were all
5 catalogued, I believe there were 68 issues all
6 together that were looked at by the RCMP, and a
7 lot of that came from that interview I referenced
8 with Mr. Wolch and Greg Rodin and Robert Bruce,
9 and they were following up on some of those issues
10 with you to get clarification on points, and here
11 you speak about some contact with Peter
12 Carlyle-Gordge and having him seeing incident
13 reports in Mr. Caldwell's files and correspondence
14 in which Caldwell asked the police about the other
15 incidents, and again it was your understanding
16 that that in fact had taken place, I understand,
17 through your discussion with Mr. Gordge; is that
18 fair?

19 A It looks to be, yes.

20 Q And the RCMP indicate in this document that that
21 view is not supported by their review of the
22 material or their interview with Mr. Gordge.

23 "Asper indicated he would confirm this
24 point. No further action will be taken
25 unless verification is received."



1 So that was something you were going to follow up
2 on?

3 A Right.

4 Q And there were a number of points again, all of
5 them which Mr. Hodson went through this tomorrow,
6 where there was going to be further follow-up by
7 yourself to see if you could I guess flush out the
8 concerns or issues that you had that were
9 identified by the RCMP?

10 A Right.

11 Q Okay. If we can go to document 952, and this is a
12 part of this continuation report that Mr. Hodson
13 didn't put to you which is the follow-up about a
14 month later where you tried to assist the RCMP
15 during that time to come up with some more
16 information, and so I'm just going to walk through
17 that with you if I may, and dealing with issue
18 number 9 which again was the split within the
19 Saskatoon Police Service, I think you mentioned
20 this morning already that you could only suggest a
21 source might be Gus Weir?

22 A Bingo.

23 Q And:

24 "This officer was interviewed 93-03-09
25 and he described a relationship between



1 his morality unit and the detectives as
2 good. There is no suggestion of a split
3 in his statement to the investigators.
4 Therefore it does not appear as though
5 he is the source of the information."

6 But that was the best that you could come up
7 with, was Gus Weir?

8 A Yes.

9 Q So the concern about there being a split within
10 Saskatoon police, that was something that you
11 shared, but again, there wasn't anything more that
12 you could assist in sort of flushing that out; is
13 that fair?

14 A That's correct.

15 Q The document goes on to say, issue number 10 just
16 below that:

17 "As to the question of whether the
18 missing files were a list or actual
19 files, Mr. Asper says he has no answer."

20 And again, that was an area that you were
21 concerned about the missing files and the
22 information that came to your attention, whether
23 it was by way of a list of files or actual files,
24 you were going to follow up on that, but again
25 weren't able to gather additional information?



1 A Right.

2 Q Number 23 underneath that:

3 "Mr. Asper discussed the question of the
4 timing of (V4---'s assault with Mr.
5 Wolch and he repeated his theory on the
6 sequence but offered no explanation to
7 account for the problem of time."

8 And I think that's something you acknowledged
9 earlier, there was a problem with the timing of
10 the (V4)--- assault in the sense that if it did
11 occur at 7:07 and if she did identify Fisher,
12 that window of opportunity was perhaps not big
13 enough to do the Miller murder and to assault
14 (V4)---, and I think you shared that concern?

15 A Right.

16 Q And then onto the next page of that document, 951:

17 "Mr. Asper had nothing of his own to
18 offer either, e.g. information from an
19 aunt which might put a different time to
20 (V4---'s departure for the bus."

21 And that's something that you were following up
22 but again weren't able to, I guess to get
23 information that would assist on the timing, and
24 I appreciate that was a fairly cold file at that
25 point?



1 A Yes.

2 Q Pretty difficult to follow up on that?

3 A Yes.

4 Q And the RCMP certainly shared those issues as
5 well. So in this document we've gone through a
6 number of allegations where you were willing to
7 assist the RCMP, but again, for whatever reason,
8 there wasn't an ability to come up with additional
9 information on those particular points?

10 A That's correct.

11 Q And from the perspective of the RCMP, could you
12 understand that there may be some concern about
13 the information that's being passed on in the
14 sense that there are assertions, but there's not
15 much at times to support those assertions and how
16 that may cause some concern for the investigation?

17 A Sure. I assume that's why an investigation was
18 being conducted.

19 Q I just want to deal a little bit with Mr.
20 Henderson and he gave some evidence at this
21 inquiry where he admitted being biased in the
22 sense that he went into each interview with a plan
23 and an objective to get the best statement
24 possible for the Milgaard application, and I think
25 again in your earlier evidence you've indicated



1 that you had some understanding that Paul
2 Henderson was going to go into those interviews
3 with a game plan, so to speak?

4 A Yes.

5 Q And we've gone through some of the documents about
6 the tapes that Mrs. Milgaard recorded in your
7 conversations as you were strategizing, and I'm
8 wondering if we can put up document 335929, and
9 the background on this is Mrs. Milgaard and
10 yourself and then yourself and Mr. Henderson
11 discussed Mr. Henderson's meeting with Dennis
12 Cadrain and the approach that could be taken with
13 both Albert and Ron Wilson in obtaining favourable
14 evidence from them, and if we can go to 335948 of
15 that document, just at the bottom portion of that,
16 and your comment is:

17 "Get Denis to give a statement
18 describing how he believes that Albert
19 was ah, -- "

20 And then Mrs. Milgaard chimes in:

21 "Mentally incompetent."

22 And your response is:

23 "Well, and worked over by the police."

24 A Can I see the earlier part of this page, please?

25 Q You certainly can.



1 A I'm just trying to see if Paul has already spoken
2 with Dennis at this point.

3 Q And forgive me, I was fairly pressed for time to
4 go through all of this, so I can't help you. I
5 wish I could.

6 MS. McLEAN: Check the first page, there's
7 a date on the top of it.

8 BY MR. GIBSON:

9 Q It's May of 1990, so --

10 A No, I'm just trying to determine whether we had a
11 sense already of what Dennis was going to say by
12 virtue of Paul having already talked to Dennis.

13 Q And I believe Mr. Hodson is nodding, that there
14 was a sense on that.

15 MR. HODSON: If I'm not mistaken, I think
16 this tape, it was identified it was after -- if
17 it's the one I'm thinking of, it was after Mr.
18 Henderson's initial contact with Dennis Cadrain
19 on May 26th.

20 A Right. So then if you go to the page where those
21 comments are, and the reason I ask is because I'm
22 trying to determine if this was developing a game
23 plan or simply talking about recording what we
24 knew Dennis was going to say.

25 MR. GIBSON:



1 Q All right. And as far as the question there or
2 the statement by yourself, "And worked over by the
3 police," you are trying to determine if that's
4 something that Mr. Henderson responded back to you
5 in his discussion with Mr. Cadrain?

6 A Right.

7 Q And I think in your evidence in the last few days
8 you indicated that Paul was of the view right from
9 the outset that there was probably police
10 misconduct and there had probably been pressure
11 put on witnesses?

12 A Right.

13 Q Because in his view he had seen that in other
14 cases in the States. Even though he did not
15 necessarily have any evidence in this particular
16 case, that was sort of his mindset?

17 A Right.

18 Q Okay. And again, from your understanding, was
19 there an objective in place by Mr. Henderson to go
20 out and speak with Dennis Cadrain and then speak
21 with Albert Cadrain to establish that point and
22 get that information from them and suggest that to
23 them, that that's a possibility?

24 A It may have been his game plan. We obviously
25 talked about it. I'm not sure we knew exactly



1 where the statements were going to go necessarily.

2 Q Okay.

3 A But clearly, you know, police pressure was one of
4 the explanations if in fact witnesses didn't speak
5 the truth, why not, and police misconduct may be
6 one of the reasons and that's one of the things we
7 wanted to explore.

8 Q And I think if I recall your evidence correctly,
9 you said that that was something that you were, or
10 at least Mr. Henderson was going to put to
11 witnesses and that that gave them an out in the
12 sense that, it gave them an explanation as to why
13 they gave false information and if they could
14 point the finger at the police it gave them an
15 opportunity to save face a little bit?

16 A That's correct.

17 Q If we could go to document 337359 and it's tape
18 176, and again my understanding of this is that
19 it's in or about May of 1990, yourself and Mrs.
20 Milgaard discussing involvement of Paul Henderson
21 and Centurion Ministries and the possible outcome
22 of an interview with Albert. I believe that Mr.
23 Hodson may have put this to you already, I'm not
24 certain if it was or not, but I think he may have,
25 and if we can go to page 337360 and if we can call



1 up that portion, and your comment is:

2 "Okay. Umm, in my view it would be
3 great, and I don't know how open he is
4 to this, but it would be a very positive
5 starting point for them to have a chat
6 with Cadrain and get a statement from
7 Cadrain to the ex -- sort of saying, I
8 mean I was talking to Hersh about this,
9 and, you know, I mean it would be just
10 wonderful if we could get a statement
11 from Cadrain saying, "yeah, I knew it
12 was Fisher, lived in the basement, umm,
13 you know, I didn't want to say anything
14 about it because I figured he'd kill
15 me", you know, something like that, and
16 then "I saw Fisher come home with blood
17 on him"."

18 Mrs. Milgaard says:

19 "Oh yeah."

20 You respond:

21 "You know, something like that."

22 Mrs. Milgaard then says:

23 "Well that would be nice."

24 And you reply:

25 "And then "and that, you know, when the



1 cops came and asked me about Milgaard,
2 you know, it was easy for me to get off
3 the hook with Fisher by just pointing it
4 at Milgaard".

5 And then a ways down you say:

6 "-- I mean you can even lead him to
7 believe that, even if he's lying, you
8 know, you can, you can have a chat with
9 him to plant the story in his mind, you
10 know, to give him an easy out from the
11 questioning with McCloskey and, you
12 know, I'm gonna say that to Jim."

13 So again this is prior to going out and speaking
14 with Albert Cadrain and your having some strategy
15 sessions here, and again was it an objective to
16 plant a possible story or scenario into Albert
17 Cadrain's mind?

18 A We were -- we had been discussing the possibility
19 that Cadrain may have had an encounter with Fisher
20 in the morning and yes, we had discussed the
21 possibility of inquiring about that with him, yes,
22 no question. I mean, as I say, if you accept the
23 proposition from our perspective that witnesses
24 must not have been telling the truth, you've got
25 to go to all kinds of scenarios as to why and this



1 was probably one of them.

2 Q And would there be some concern then with respect
3 to putting that type of a scenario to an
4 individual when you don't know that it's the truth
5 yourself and the witness has some mental issues,
6 as I think everyone came to realize at that point,
7 is there some concern about again tainting the
8 evidence and making it difficult for investigators
9 later on to try and figure out what the truth is
10 if scenarios are visited upon witnesses?

11 A Oh, yes, absolutely, which speaks to the whole
12 question of, you know, I'll just -- I'm not going
13 to say it for critical effect -- that we were
14 doing this on our own and would we have preferred
15 a professional investigator? We asked for it many
16 times.

17 Q If I can go to one more document here with
18 reference to the tapes, 336406, it's tape 49, and
19 my understanding, this is shortly before the
20 Supreme Court reference. Again, I believe that
21 this has been put to you already, I'll have a
22 couple of questions out of that. If we can go to
23 page 443 of that document, please.

24 COMMISSIONER MacCALLUM: What was the doc.,
25 I'm sorry?



1 MR. GIBSON: The document number is 336403
2 at 443.

3 BY MR. GIBSON:

4 Q If you could call that portion up, again I believe
5 this was put to you already, Mr. Asper. It deals
6 with Mrs. Milgaard and yourself discussing
7 Centurion Ministries, and one of their
8 investigators, and whether there is some issue
9 about tainting the evidence with respect to
10 Centurion Ministries; do you recall that portion
11 that was put to you earlier?

12 A I don't recall, but clearly I'm starting to have
13 some concerns.

14 Q Yeah. And I think you echo that right there,
15 'Well the whole thing is tainted by Centurion, if
16 Centurion is the taint, then the whole thing is
17 tainted.'

18 If we can go to the next page,
19 please.

20 A I may -- that may have -- I may have been reacting
21 to something, frankly, that someone in Justice or
22 elsewhere had said to us raising concerns about
23 Centurion Ministries.

24 Q Yes. And if we can go to the next page, please,
25 444 portion there. And you say, 'The statements



1 that have been taken up to this point have been,
2 you know, horrendously biased'. And you commented
3 a little bit on that the other day. And, again,
4 do you think there would be a concern about, from
5 the investigators' perspective looking later on at
6 statements gathered by Mr. Henderson and -- that
7 if those types of scenarios are visited upon a
8 witness, that those statements obtained from those
9 witnesses could be seen as being tainted in the
10 sense that that may not be their recollection, but
11 they may have had that forcibly or forcefully
12 visited upon them by someone that had an objective
13 to go and get that information?

14 A Yes. I will say at the time, I have to say that I
15 would concede my mindset at the time would have
16 been that we would have felt that the same had
17 been done with the witnesses at the Milgaard
18 trial, and rightly or wrongly that we were
19 prepared to probably overlook a smarter approach
20 to the taking of the statements.

21 Q And I think, in fairness to you, you did say that
22 you had some concerns about that, and that if you
23 had to do it differently you would like to be able
24 to do it differently now?

25 A Yes.



1 Q But, again, from an investigator's perspective,
2 and I'm speaking from the RCMP investigation in
3 1993, how that became a very difficult portion of
4 that investigation and made it a much more
5 involved and difficult to discern just what the
6 evidence was because of that type of approach?

7 A I accept that, yes.

8 Q You had some discussion the other day with Mr.
9 Hodson with respect to the dog urine, and Dr.
10 Merry and Dr. Markesteyn and their involvement in
11 that, and you indicated that it challenged a
12 fundamental aspect of the Crown's case and it had
13 a good deal of publicity value for the Milgaard
14 effort?

15 A Yes.

16 Q And then Mr. Hodson inquired of you as to whether
17 you followed up with the RCMP -- when I mean "you"
18 I don't necessarily mean you personally -- but
19 whether the Milgaard effort followed up with the
20 RCMP to make a determination as to whether, in
21 fact, they accounted for that possibility and did
22 tests to determine whether it was a human seminal
23 fluid sample in the snow?

24 A I don't believe we did, I -- my recollection is we
25 submitted the information to Justice.



1 Q Okay.

2 A To Federal Justice.

3 Q Okay. And, again, there was a lot of comment in
4 the media, and certainly Staff Sergeant Paynter
5 with the RCMP was a little bit miffed by those
6 comments, and I take it he wasn't approached with
7 respect to his notes and the testing that he did,
8 morphological testing, to determine whether in
9 fact it was human or animal secretion?

10 A Umm, I'm not aware of that. I recall somewhere
11 along the line Dr. Markesteyn said he had done
12 that, but I gather also that Staff Sergeant
13 Paynter testified that that hadn't happened, so I
14 don't know.

15 Q Yeah.

16 A But I certainly didn't.

17 Q Okay. And the document that was put to you by Mr.
18 Hodson with respect to this point, 030493, and
19 this is the -- if we can just move a page ahead I
20 think we'll identify what I am looking for here.
21 This is the report or sociological paper prepared
22 by Professor Boyd and now Dr. Rossmo, and if we
23 could go to page 030510 of that document and call
24 up that portion. And, again, it indicates:

25 "What Dr. Markesteyn did not consider is



1 the trial evidence from hair and fibre
2 specialist Victor Malchanko of the RCMP
3 Crime Detection Laboratory; Malchanko
4 told the Court that he found seven pubic
5 hairs in the semen stain. Dr.
6 Markesteyn now agrees that it is more
7 probable that this was a human semen
8 stain."

9 And when Dr. Markesteyn and when Dr. Merry were
10 consulted, do you recall if that information was
11 provided over to them?

12 A I don't recall.

13 Q Because it appears from this indication, and the
14 conversation with Dr. Markesteyn was in September
15 of 1991 and obviously there had been some mileage
16 already generated out of the dog urine possibility
17 in the media, and then in 1991 he basically
18 concedes that, "oh, if there had been evidence
19 that had been provided to me about Molchanko on
20 the hair and fibre evidence that was at trial,
21 then I likely would have conceded that it was in
22 fact a human seminal stain and not dog urine", and
23 perhaps that could have been avoided?

24 A I don't recall that being made known to me.

25 Q Okay. Umm, and again, from an investigation



1 perspective from the RCMP, do you see how those
2 kinds of allegations about dog urine being made,
3 and how that could be remedied relatively quickly
4 by consulting with the scientist that did the
5 testing looking at his notes as to what tests he
6 carried out, and looking at the evidence that was
7 available, including other experts, how that would
8 have avoided that kind of a kerfuffle, if I can
9 put it that way?

10 A Yes, it could have, sure.

11 Q And again --

12 A We expected the Department of Justice to do it.

13 Q Okay. And again from an investigation
14 perspective, you appreciate how difficult that
15 makes it, then, in following up with that
16 information because, again, there are positions
17 taken that have to be assessed dealing with false
18 evidence?

19 A I'm not sure I understand your question?

20 Q In essence what happens is there is evidence or
21 positions taken by scientists that are incomplete,
22 and then all of that has to be followed up with a
23 view to, I guess, rehabilitating or re-educating
24 those scientists to try and get them to a more
25 informed opinion?



1 A I quite agree. This was, this was the risk,
2 frankly, in my view, that arose because we felt
3 that we had to do more because the Department of
4 Justice wasn't responding to us. And yes, it did
5 create risks, no question.

6 Q And with respect to the investigation that
7 Mr. Pearson was involved in, was there ever a
8 further request to have him more involved, as
9 opposed to carrying out investigation on your own?
10 My understanding is that at the same time,
11 roughly, that Mr. Pearson was involved in
12 interviewing some of the witnesses like Linda
13 Fisher, he was interviewing them within a matter
14 of days after Mr. Henderson had been there, and
15 was there ever any thought to having him take on
16 more of that investigation, or a request to have
17 him do more of that, and perhaps pulling back a
18 little bit, because it clearly didn't happen even
19 though an investigator was in the field?

20 A I don't recall asking Sergeant Pearson to do more.

21 Q Okay.

22 A Umm, I was very anxious for him to complete with a
23 result I think he knew I hoped for on the Fisher
24 investigation.

25 Q And you indicated that it was difficult for your



1 client to trust the system, and consequently they
2 felt the need to stay in the field, --

3 A Yes.

4 Q -- and consequently they continued to do their own
5 investigation?

6 A Right.

7 Q Those are my questions. Thank you.

8 A Thank you.

9 **BY MR. WILSON:**

10 Q Mr. Asper, my name is Garrett Wilson, and I
11 represent Serge Kujawa.

12 Firstly, sir, in view of the
13 impact that this Inquiry is making upon your life,
14 I'm wondering if perhaps running through your mind
15 is the old adage, "be careful what you wish for"?

16 A I've said from the outset, Mr. Wilson, I wish that
17 none of this, none of what had to happen or did
18 happen, had to happen.

19 Q May I have transcript page 25159, please. In your
20 earlier appearance here you identified certain,
21 quote, "bad guys", in response to an inquiry from
22 the Commissioner -- 159, I'm sorry, I said 95 --
23 and you identified Mr. Caldwell and Mr. Karst and
24 one or two others there, but Mr. Kujawa is not on
25 your list, and was that a deliberate omission or



1 just oversight?

2 A I would say, Mr. Wilson, that, as a result of
3 comments made back and forth, Mr. Kujawa would
4 have to have made that list.

5 Q I rather thought so. Could we look, now, at
6 25153. This is where you identified the "war of
7 liberation", again in quotes, as being:

8 "... against the system, it was against
9 the people who put him ...",

10 being David Milgaard:

11 "... there, and it became against the
12 people who had the power to get him out,
13 so it was pretty much us against
14 everyone."

15 And then you carry on and agree with Mr. Hodson
16 who says:

17 "... did you consider the system or the
18 state or those who had put David
19 Milgaard there, and those who wouldn't
20 let him out, as being your enemy?"

21 And you answer:

22 "A Yes."

23 And so, since Mr. Kujawa was a prominent member
24 of the justice system in Saskatchewan in those
25 days, I assume that your war was against him as



1 well?

2 A I think, yes, I would -- I can't say. I wouldn't
3 say initially, but he joined the fray, clearly.

4 Q He had -- his involvement with the files did not
5 increase, he had completed his work long before
6 you came in the picture, is that right?

7 A Yes.

8 Q 335443, please. Your CV, Mr. Asper, at 45 please.
9 I'm interested a little bit in the, in your
10 background, your legal background. You tell us
11 here that you attended the California Western
12 School of Law from '81 to '84, and graduating
13 there, and then came back to Winnipeg and articulated
14 in the Buchwald Asper firm for a year and a half?

15 A Well, to be specific, the Federation of Canadian
16 Law Societies required, as part of coming back to
17 Canada, that I attend the University of Manitoba.
18 I took five courses prescribed by the Federation.
19 During that time I worked also full-time, or as
20 much as I could, at the law firm, and then
21 articulated in the year following that.

22 Q There would be some criminal law component in
23 those five classes?

24 A Yes sir.

25 Q There would be very little Canadian criminal law



1 content in the studies you did at California?

2 A That's correct.

3 Q You were admitted to the Law Society of Manitoba
4 when?

5 A 1986.

6 Q Tell me more specifically what criminal law
7 studies you had until the time you joined the --
8 Mr. Wolch's firm?

9 A I would have taken, of course, American criminal
10 law, criminal procedure, perhaps criminal
11 jurisprudence. I can't recall the courses in the
12 U.S. I had to take criminal procedure at the
13 University of Manitoba Law School, and I may have
14 had to take the criminal law course as well, I
15 can't recall.

16 Q What about Canadian criminal evidence?

17 A I took evidence, certainly, evidence is one of the
18 five courses.

19 Q That would be civil and criminal, then, would it?

20 A Yes.

21 Q When you were with Mr. Wolch's firm, who held your
22 articles?

23 A Umm, either Mr. Wolch or Mr. Pinx, I can't recall.

24 Q Really?

25 A Yes.



1 COMMISSIONER MacCALLUM: How do you spell
2 Mr. Pinx's name?

3 A P-I-N-X.

4 COMMISSIONER MacCALLUM: P-I-N-X.

5 A I think it was Pinx.

6 BY MR. WILSON:

7 Q I see. And who served as your mentor during your
8 early years there?

9 A I worked for both.

10 Q I see. Both were criminal law practitioners?

11 A Yes.

12 Q So your legal career, which really ran from your
13 admission in 1986 until 1992, a total of six
14 years, minus two years you took a leave of absence
15 and went to work in the television world; is that
16 correct?

17 A Yes. I was doing mostly legal work, but
18 non-criminal.

19 Q Yeah. And you did, I assume, the usual criminal
20 law stuff that an articling student and a junior
21 lawyer does, running to police courts and doing
22 adjournments, and running out to institutions and
23 interviewing locked-up clients, and whatnot?

24 A Yes.

25 Q Were you assigned any clients of your own during



1 that period, or were you working under the
2 direction of seniors?

3 A Yes, I had my -- I was building my own practice.

4 Q I see. And you did some criminal trials then?

5 A Yes, many.

6 Q Police Court?

7 A Yes. Queen's Bench. I was in the Court of Appeal
8 the day I got called to the bar.

9 Q Uh-huh. Alone?

10 A Yes.

11 Q You had handled a criminal jury trial?

12 A Yes.

13 Q When did you do that?

14 A I don't recall specifically.

15 Q Before or after the leave of absence, do you
16 think?

17 A Umm, I think it would have been after.

18 Q Yeah. In any event, you were the junior guy on
19 the David Milgaard file, I think I heard you tell
20 us that earlier?

21 A Yes.

22 Q And you filed the -- you worked on the 690
23 application which was filed in December 1988; is
24 that right?

25 A Yes sir.



1 Asper?

2 A 1958.

3 Q I find that interesting, because it was in 1959
4 that Mr. Caldwell joined the Department of the
5 Attorney General in Saskatchewan and commenced his
6 prosecuting career; Mr. Kujawa joined in 1961
7 although he had been admitted earlier; Mr. Tallis,
8 we know from his appearance here, was admitted to
9 the Saskatchewan Bar in 1955, four years before --
10 three years before you were born. So all of these
11 people who were included in your enemies list,
12 your war, had been practicing law about as long as
13 you had been alive at the time you undertook that
14 war; correct?

15 A Yes.

16 Q In retrospect, Mr. Asper, do you feel that perhaps
17 you were a tad brash in some of your approaches
18 during those years?

19 A I think that's probably fair to say, yes.

20 Q And I'm thinking particularly of the discussion
21 you had with Mr. Hodson about the so-called
22 missing first statement of Ron Wilson and your
23 public statements on that subject, and the
24 reference then to the transcript of the telephone
25 conversation you had with Joyce Milgaard on that



1 subject, do you recall that?

2 A You --

3 Q And Mrs. Milgaard was pointing out to you that she
4 was sure that, actually, Mr. Tallis had had --

5 A Right.

6 Q -- the statement?

7 A Right.

8 Q And you were insisting it couldn't be so because
9 he would have dealt with it differently?

10 A Right.

11 Q He would have physically had it and waved it in
12 front of the witness, etcetera?

13 A That's correct.

14 Q That was your positive view of things at that
15 time?

16 A Yes sir.

17 Q And you were wrong; correct?

18 A Yes.

19 Q And in fact --

20 A Well, I -- well, I want to qualify that, because,
21 as I say, I'm not certain that the context of that
22 conversation was that he didn't have the
23 statement, rather that he didn't physically put
24 the statement, but if the construction of my
25 comment was that he didn't have the statement then



1 I was in error, yes.

2 Q Well that was the impression that anyone would get
3 from reading the news comments that you --

4 A I understand that, but there may be information --
5 and you'll hear from the journalist -- that I had
6 a much broader conversation. I accept the
7 construction, and I accept that that's how it came
8 out, and I take responsibility for that.

9 Q Uh-huh. But it is correct that you took the
10 position that, if Mr. Tallis had had the document,
11 he would have physically waved it in front of the
12 witness?

13 A Yes.

14 Q Did you have --

15 A That's what I meant by "put it to him", put the
16 statement to him.

17 Q Yes. One of the risks in doing that is that the
18 statement might fall into evidence, become an
19 exhibit, and go to the jury room with the jury; is
20 that correct?

21 A Yes.

22 Q And, in Mr. Tallis' view, that might have been
23 something he didn't want to see happen; you
24 understood that?

25 A Yes.



1 Q You have read his testimony here, have you?

2 A I think I was here when he said that.

3 Q Oh, is that --

4 A That was toward the end of his evidence, I think.

5 Q I would commend, if you ever decide to practice
6 criminal law again, that you do read his
7 testimony, it's a -- you will come away very
8 wiser.

9 By the way, when did you learn
10 that Joyce Milgaard was taping your telephone
11 conversations with her?

12 A Umm, I may have been aware, at the time, of some,
13 but certainly not to the extent that is the case.
14 I learned that when this proceeding was under way.

15 Q Uh-huh. How did you feel when that information
16 came to your attention?

17 A I wasn't very happy about it.

18 Q It throws an unfortunate light on the
19 solicitor/client relationship; would you agree?

20 A Yes sir.

21 Q Have you made your feelings on that known to
22 Mrs. Milgaard?

23 A Yes, I have.

24 Q Now, on this collaborative approach, you have told
25 us -- we know the answer -- you didn't do these



1 things, you didn't approach any of the
2 Saskatchewan members of the judicial system who
3 had had anything to do with the Milgaard file
4 until far late in the game; is that correct?

5 A Yes.

6 Q Long after the war had been declared and was fully
7 engaged?

8 A That's correct.

9 Q Did you make any inquiries about these people and
10 the Saskatchewan Justice system who became your
11 enemies at your sole declaration?

12 A Inquiries about them?

13 Q Yes. What was their professional reputation?

14 A Oh, I was well aware. I had been attending, I
15 don't know how many at this point, at least a
16 couple of Federation of Canadian Law Society
17 conferences at which Mr. Kujawa was a faculty
18 member. I had a huge amount of respect for Mr.
19 Kujawa. I think I was aware of Mr. Caldwell's
20 reputation, certainly, by talk in the community.

21 Q And Mr. Tallis likewise?

22 A Yes, oh certainly, he was a Justice on the Court
23 of Appeal. I was aware of the stature of the
24 people we were dealing with.

25 Q And that they had a well-deserved reputation for



1 honour and integrity?

2 A Yes.

3 Q Which would be at odds with the conduct that you
4 concede that you were imputing to them?

5 A Yes.

6 Q Did that not cause you to hesitate before
7 proceeding with the war that you had described?

8 A Yes, I -- I would have to say that it was one of
9 the factors in the balancing act that I think we
10 had to, had to engage in.

11 Q Would you agree with me if I told you that, if you
12 had come to Saskatchewan and inquired among the
13 members of the criminal defence bar in the 1980's
14 about the reputation of Serge Kujawa, that you
15 would have found that the introduction of the
16 *Charter of Rights* and the Supreme Court decision
17 in *Stinchcombe* had no impact whatsoever upon his
18 style of practice because he was years in advance
19 of those new principles?

20 A It wouldn't surprise me, sir, because, as I say, I
21 have heard and I had been taught by Mr. Kujawa at
22 the Canadian Federation of Law Societies
23 conferences.

24 Q Well it didn't occur to you that you might, say,
25 get in the car and drive to Regina and go to Mr.



1 Kujawa's office, as the senior man in the Justice
2 Department, and say "look, we think we have a
3 problem here"?

4 A Well, I don't recall that Mr. Kujawa became
5 actually engaged in this until he made some
6 comments in response to other things that we were
7 saying and he came to the defence of the system,
8 and I, as I recall, that's the only time he got
9 involved.

10 Q But you knew he was there, you knew of him?

11 A Sure.

12 Q My question is why didn't you just throw your file
13 in the car and drive over to Regina and take it to
14 him and say that "we've got a problem"?

15 A Well my recollection is that we decided that our
16 remedy lay with the Federal Department of Justice,
17 and we expected that whatever was going to happen
18 in terms of getting a relief would come through
19 them.

20 Q Could we look at 328015, please. And scroll down
21 a couple of pages, please. Here we are. You have
22 probably heard of Dr. Morris Shumiatcher also?

23 A Yes.

24 Q Who was a very prominent lawyer in Regina?

25 A Yes.



1 Q May I have this? I'm sorry, I'm a little -- up
2 and over. Bottom of the middle column, I think,
3 is where we're going to start. Okay. This is an
4 article that Dr. Shumiatcher authored, and he
5 gives an example of Dr. Kujawa, or Mr. Kujawa's
6 style of practice.

7 "Recently, Kujawa, who
8 criticized extra-judicial remedies to
9 cure adjudicative error, himself
10 participated in an unusual procedure
11 which led to a speedy quashing of a
12 conviction. A client of mine had been
13 found guilty of incest and sentenced to
14 18 months in prison. About five days
15 after sentencing, her 14-year-old son
16 admitted to having falsely accused the
17 mother of the crime and wished to set
18 the record straight.

19 To speed the process of
20 righting this miscarriage of justice,
21 Kujawa agreed to meet the boy, question
22 him and have a transcript of the
23 encounter delivered to the Deputy
24 Attorney General. The next day, counsel
25 appeared before the Court. The evidence



1 was considered and my client was
2 released from custody.

3 Fortunately, the Canadian bar
4 does not lack competent and energetic
5 lawyers who will champion hopeless and
6 unpopular causes and represent hapless
7 and penurious clients."

8 That was Serge Kujawa's style of practice, it was
9 known to the members of the defence bar in
10 Saskatchewan. You will find that Mr. Tallis said
11 the same things about him. In retrospect, would
12 you agree with me that it might have been very
13 advisable if you had taken my suggestion and
14 thrown the file into the car and driven over to
15 Regina?

16 A I don't accept that.

17 Q Sorry?

18 A I don't doubt Mr. Kujawa's integrity and style of
19 practice, but our remedy lay with the Department
20 of Justice and, I'm sorry, but I don't accept
21 that -- I don't accept that I would be confident
22 with the Crown investigating himself.

23 Q Even though I've given you one example?

24 A Yes.

25 Q You don't feel differently today?



1 A No. Probably stronger today actually.

2 Q 25377, please, transcript, here I believe you are
3 telling us that even though it came to your
4 attention that investigators had gone to Mr.
5 Caldwell and been given free access to his
6 prosecution file, that that didn't change your
7 view about asking for the same privilege; is that
8 correct?

9 A Yes.

10 Q Can you explain that to us today?

11 A Explain what?

12 Q Explain why, after you learned that Mr. Caldwell
13 was that co-operative, that you wouldn't take
14 advantage of that knowledge and seek some of that
15 co-operation yourself?

16 A Well, we had actually tried to seek the remedy
17 through the Federal Department of Justice and
18 believed that if that was going to happen, it
19 would happen through the process under 690.

20 Q I see.

21 A I certainly believed that.

22 Q 25316, please, here you talk about -- okay, let's
23 take this first. You talk about the paranoia that
24 pervaded the Milgaard group, if I may use that
25 term.



1 A Yes.

2 Q And did that extend to you?

3 A I have to say my mind was certainly open to it,
4 yes.

5 Q Would you scroll up here a little bit, please,
6 there's a comment here. I'm curious to know what
7 you meant by that remark.

8 A Which remark?

9 Q The one involving Mr. Kujawa:

10 "I think Mr. Kujawa actually said that
11 explicitly."

12 A Said what?

13 Q Does that relate to this?

14 A Well, if I can see the previous page, I'll read
15 the whole -- okay, and then you are asking me
16 what's on the next page?

17 Q Uh-huh. What did --

18 A I think that was -- sorry, I think that was
19 referring to Mr. Kujawa's comments -- I'm guessing
20 here, but this may refer to Mr. Kujawa's comments
21 regarding institutional integrity and the
22 integrity of convictions and the conviction
23 process and the need to not be constantly
24 undermining convictions.

25 Q You are not alleging that he declared that he



1 would never admit it was a mistake?

2 A No, no. Mr. Kujawa I believe around, at some
3 point weighed into the media discussion and talked
4 about the overwhelming systemic need to ensure the
5 integrity of convictions.

6 Q Uh-huh.

7 A And I think what I'm referring to there is my
8 disagreement with that comment.

9 Q Well, we'll come to that comment a little later,
10 it's slightly different than I think you describe
11 it now. Tell me, Mr. Asper, if David Milgaard's
12 conviction had taken place in The Pas, Manitoba,
13 how would you have approached the problem?

14 A I don't understand the question.

15 Q Well, now you are dealing with the Manitoba
16 justice system and the people who are in it who
17 presumably are pretty well known to you, you are
18 in the criminal defence bar and you are operating
19 out of Winnipeg where most of them are housed, you
20 would know these people far more intimately than
21 you knew any of the players in Saskatchewan?

22 A Well, if you are suggesting that I acted because I
23 was dealing with strangers, that's just not
24 correct. I would -- in hindsight I would have
25 done plenty different in this case, but I don't



1 think it mattered whether it was The Pas or Regina
2 at the time.

3 Q You wouldn't have considered walking across the
4 street in Winnipeg with your file to the
5 Department of Justice there and say look, I think
6 we've got a bit of a problem and I would like you
7 to look at this?

8 A I have consulted on 690 cases since this case
9 where, in Manitoba where direct contact was made
10 with the Department of Justice for the very
11 purpose that I don't believe that Crowns or police
12 should be investigating themselves.

13 Q Were you born with that view or where did you
14 acquire it?

15 A Well, to the extent that I think it's a concept of
16 natural justice, I might have been born with it,
17 but somewhere along the way.

18 Q So there was no feeling on your part or the part
19 of the Milgaard group that over here in
20 Saskatchewan in gopher land we haven't fully
21 evolved out of a frontier style of justice where
22 we'll hang 'em today and try 'em tomorrow?

23 A Are you suggesting that's what I thought?

24 Q Yeah. I'm asking if that's what you thought.

25 A No.



1 MR. WILSON: A good place to break for
2 lunch, sir?

3 COMMISSIONER MacCALLUM: Yes.

4 (*Adjourned at 11:53 a.m.*)

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

6 BY MR. WILSON:

7 Q Mr. Asper, you're probably more than well aware
8 that old guys like me are to be avoided because
9 we're garrulous and we tell stories at any excuse
10 at all.

11 A Sometimes they are good stories.

12 Q Well, I've got one for you, you may know it, but
13 it will illustrate where we're going, and it has
14 to do with a British High Court judge and a friend
15 going out to the countryside for the weekend by
16 train and the judge, as judges and even lawyers
17 do, brought along a file and was busy working away
18 and the friend was bored and attempted to make
19 conversation and pointed out the window to a field
20 full of sheep and said, "Those sheep have just
21 been sheared." The judge looked out the window
22 and said, "Yes, well on this side anyways," and
23 went back to his file. That's the sort of
24 standard of proof that is sometimes useful for us
25 in the practice of law, perhaps a tad on the rigid



1 side, but absent I think from some of your
2 handling of matters that came before you on the
3 Milgaard file. Would you agree that you were not
4 quite that vigilant in checking the facts?

5 A Yes, I think that's true, yes.

6 Q For instance, could we look at 004 --

7 A But let me just say, we hoped that the information
8 we were provided was being digested by the
9 Department of Justice and we had asked for
10 assistance many times. I accept that I didn't
11 check the facts, but -- on occasion, but it's
12 within that context.

13 Q Uh-huh. Well, let's look at the matter of the
14 missing files, 004592. Your comment in that
15 second paragraph in quotation marks:

16 "This is unbelievable."

17 "The files did exist prior to Aug. 16."

18 Now, Mr. Hodson queried you about that and the
19 source of your information, we don't know what it
20 is; correct?

21 A Right. I don't recall.

22 Q And I think what you told us was that, well,
23 somebody gave you the information, "someone I
24 relied on"?

25 A Yes. I think I said who I believed it was as



1 well.

2 Q But this morning we saw in your last interview
3 with the RCMP that you weren't sure whether it was
4 files or merely a list of files that had gone
5 missing?

6 A That's correct.

7 Q And it's hard to take that reading out of that
8 paragraph, isn't it, and that talks about files.

9 A Yes.

10 Q So that's an example where the facts were not very
11 carefully checked; is that correct?

12 A Well, as I say, if it came from the source that I
13 think it came from, then I think it would have
14 been safe to have relied on that source.

15 Q But isn't there a problem when the lawyer takes
16 information and regurgitates it as his own, he now
17 becomes the source?

18 A Oh, yes, absolutely. Absolutely.

19 Q You don't say here, well, I am informed that?

20 A That's correct.

21 Q Or my client believes that, you state that as an
22 absolute, uncontrovertible fact?

23 A Yes.

24 Q Bad practice?

25 A Yes. I wouldn't have done that.



1 Q Now, you told me this morning that the reason you
2 didn't make a direct approach to the Saskatchewan
3 Justice people was because you felt your remedy
4 was with 690 and the Federal Justice Department?

5 A Yes.

6 Q But when that didn't go well, you decided to adopt
7 another extra judicial remedy, i.e., the media;
8 correct?

9 A I would call it part of the 690 process, I
10 wouldn't call it another remedy. It was a
11 different way to get the same remedy we were
12 trying to achieve in our application.

13 Q You were trying to pressure the minister, you were
14 also trying to enlist public support?

15 A Well, initially we were trying to pressure the
16 officials in the department to take action and to
17 participate with us.

18 Q Fair to say, though, that when the 690 application
19 wasn't moving as quickly as you wanted it to, you
20 didn't reconsider and at that point make a direct
21 approach to Saskatchewan?

22 A Not that I recall.

23 Q Wouldn't it be correct, Mr. Asper, that when you
24 looked around at the situation you were in with
25 the Milgaard file, you realized you had another



1 valuable asset that could be brought to bear and
2 that was David Asper and his connection to the
3 media world, particularly that part of it
4 controlled by your family?

5 A I've heard that suggestion, Mr. Wilson. It's just
6 blatantly false, utterly false, and I challenge
7 you or anybody else who has made that to show me a
8 link such as that, show me the link.

9 Q Well --

10 A Show me the link between me and *The Globe and Mail*
11 and my family's media interests. What interest do
12 I have in *The Globe and Mail* or the *Toronto Star*
13 or the CBC?

14 Q I'm not suggesting that you owned a media empire
15 and turned it loose on the service of the
16 Milgaards, that's not what I'm saying.

17 A You just suggested it was my asset.

18 Q That you were the asset --

19 A Yes.

20 Q -- because of your knowledge of the media world,
21 and in addition your family, probably because your
22 knowledge came mostly from the fact that your
23 family were involved in the media.

24 A I had knowledge, yes, of media, that's certainly
25 true.



1 Q So you were an asset.

2 A I was an asset to my client, yes.

3 Q So now -- yeah, that's all I'm saying.

4 A Yes, okay.

5 Q So you decided to capitalize on that asset, enlist
6 it to the cause and put you to work?

7 A Absolutely.

8 Q So you became lawyer/media consultant/public
9 relations person?

10 A I was the lawyer, I was the lawyer working on
11 behalf of somebody who was imprisoned wrongly and
12 we chose at one point to utilize the media to help
13 us in our cause. If you want to put labels on it,
14 that's fine with me, I can't help that.

15 Q But you were doing that kind of work in addition
16 to being pure lawyer?

17 A I happen to believe that that was being a lawyer,
18 that that was zealous representation of my client.

19 Q Did you experience any difficulty in riding two or
20 three horses like that at one time?

21 A I don't think I was riding two or three horses.

22 Q And do you see hypothetically, aside from your own
23 experience, a difficulty that lawyers might
24 encounter once they became a public relations
25 person on behalf of their client?



1 A Yes, that has been a subject that has been
2 discussed generally in the context of the practice
3 of law in relations with the media with respect to
4 cases, I've heard that and I'm aware of that
5 problem, yes. I don't believe it creates two
6 horses though.

7 Q No internal conflicts that you could see?

8 A No.

9 Q There's a bit of a built-in bias or temptation in
10 the arrangement though, is there not, that the
11 lawyer might be publicizing himself and perhaps
12 not entirely in the client's interest?

13 A I was concerned about that at one point and
14 offered to step away because of my family's
15 political history and because of the government in
16 office at the time and I offered to step down from
17 this case. I was not in this for myself. I'm
18 insulted you would think so or suggest so.

19 Q I wasn't accusing you, I was talking generally.

20 A But you are asking me the questions.

21 Q Well, yes, I am, you've had experience more so
22 than most. We had some public discussion around
23 the Milgaard case about the role of the media in
24 that case. Do you recollect that?

25 A Yes.



1 Q And it's still ongoing you would agree?

2 A Yes.

3 Q And generally the role of the media and its
4 relationship to the justice system is an ongoing
5 area of concern?

6 A Yes.

7 Q You are familiar with the statue of the scales of
8 justice and the blind goddess and what not?

9 A Yes.

10 Q Equality before the law. It's difficult to get
11 equality in the media world isn't it?

12 A Sometimes, yes. It's risky for sure.

13 Q Tough to get their attention, the media's
14 attention frequently?

15 A Not always.

16 Q Well, look at this situation that you were in with
17 David Milgaard when you decided to turn to the
18 media, and I say that without your skills and
19 knowledge in that area they might have had more
20 difficulty than they did in accessing the kind of
21 publicity they received. Had they been David
22 Milgaard, nobody, in jail, the family have few
23 funds, no political connections, no particular
24 public prominence, it would have been difficult to
25 get the attention of the media on that story



1 wouldn't it?

2 A Without the assistance -- without my assistance?

3 Q Yeah.

4 A I think there were several lawyers who could have
5 gotten the media's attention. I was one of them.

6 Q It wasn't an easy sell in the beginning even for
7 you, though, was it?

8 A No.

9 Q We're going to talk a little later on about Mr.
10 Kujawa's views expressed here on the media and the
11 justice system, you alluded to it this morning,
12 but when he left here after testifying the
13 *StarPhoenix* chose to editorialise on his testimony
14 and cast him as an old school, old school judicial
15 system guy where the media had no place in the
16 system, and your editorial writer went on to say
17 that careful media examination was a boon in the
18 Milgaard case and it's a useful thing to cast the
19 public eye on the judicial system, keep it
20 straight, and I guess we all agree with that, but
21 the catch phrase is "careful media examination",
22 and I was provoked to respond to your editor by
23 saying that the "careful" part of that clause is
24 frequently missing, and you've given us some
25 examples of how you were victimized that way over



1 the course of this Milgaard affair; right?

2 A Oh, listen, I deal with it now in my business,
3 it's my business --

4 Q Yeah.

5 A -- to try to create careful standards.

6 Q It's a difficult problem?

7 A Yes.

8 Q And there's lots of examples, aside from yours,
9 where the "careful" element was missing entirely,
10 that the "sensational" aspect was run with, and
11 that's a temptation you can't blame the media
12 people for having because sensational items sell
13 newspapers; right?

14 A Well, I can walk both sides of the street on that
15 answer. As counsel and as advocate at the time,
16 I've said that the sensationalism served us. As
17 the proprietor of a media business now, I take a
18 more prudent view of the obligation and the duty
19 that the newspaper has to its readers.

20 Q That puts the media -- sorry, puts the justice
21 system though at the mercy of the media; does it
22 not?

23 A Yes, it can, yes.

24 Q And there aren't any safeguards which can rein
25 things in?



1 A Well, you know, I participate with the Canadian
2 Judicial Council in education programs now with
3 journalists, particularly on Charter issues,
4 education can be a safeguard, but in the end it's
5 an editor, it's a journalist and an editor who
6 shepherd a piece of information to the public.

7 Q Yeah, and I know you run a hard-nosed business in
8 the media world because you have to beat your
9 competition, but you can't afford to hire
10 legally-trained people to work as journalists to
11 cover the judicial system because it's just too
12 costly?

13 A Well, I can speak specifically, and look, this is
14 a long process in terms of changing the media, I'm
15 thoroughly enjoying it notwithstanding the
16 difficulties that I face personally, but at the
17 *National Post*, for example, we do have a lawyer by
18 training who generally oversees both strands of
19 our law reporting, we have a third lawyer who is
20 the head of our comment page, and so we are
21 bringing legally trained people in. Does that
22 help the problem? Not always, by any stretch, but
23 I do believe that education and potentially
24 lawyers who are not practicing law can be part of
25 the solution.



1 Q Uh-huh. And of course also, though, there's the
2 problem that complex legal issues don't really
3 lend themselves to the sound byte?

4 A That's true.

5 Q Could we look at 004273, please. This is where
6 Mr. Kujawa got into trouble.

7 "It doesn't matter if Milgaard is
8 innocent. I'm not primarily concerned
9 with his guilt or innocence. What I am
10 concerned with is that the media and
11 lawyers are selling us down the river.
12 The whole judicial system is at issue --
13 it's worth more than one person."

14 Now, I suggest that people who knew Serge Kujawa
15 knew what he was saying. You probably knew what
16 he was saying when you saw that quote?

17 A Probably, yes.

18 Q But he set himself up beautifully for your
19 purposes in the Milgaard publicity campaign?

20 A Yes, he did.

21 Q And you took advantage of it?

22 A Yes, we did.

23 Q And you told me this morning that you knew Serge
24 from his appearances on the faculty of the
25 criminal law seminars, what not, you know he



1 wasn't saying put Milgaard away, it's more
2 important to have the credibility of the system
3 preserved?

4 A I started to wonder because there was another
5 comment at one point, I don't remember where in
6 relation to this quote, but I did start to wonder
7 what was going on.

8 Q But nobody phoned him and said Serge, what did you
9 mean by that; correct?

10 A I didn't, no.

11 Q And you don't know anyone else who did in the
12 Milgaard team?

13 A No, I don't. It was something obviously we felt
14 needed to be responded to.

15 Q Oh, sure.

16 A I will tell you, I will tell you, and I've said it
17 before, and I'll just volunteer this, Mr. Kujawa
18 is not wrong in the sense that if there had been a
19 proper system, a proper systemic structure to deal
20 with this, and if it had dealt with the
21 application as we had hoped, none of this, none of
22 what happened through the Milgaard case would have
23 been necessary and I would have been very happy to
24 respect it.

25 Q But as he explained here, and there's another



1 explanation coming in a minute here, that he
2 wasn't saying to hell with David Milgaard, he was
3 saying that there's a larger issue here and let's
4 not wreck the larger issue in the manner in which
5 we deal with David Milgaard's concerns?

6 A I accept that, and on the one hand you are right,
7 served up a big softball for us to hit. On the
8 other hand, I'm not sure that the systemic issue
9 where the system doesn't work doesn't justify some
10 extraordinary measures.

11 Q Uh-huh?

12 A You can't just say, well, the system is the system
13 and if there's an injustice, too bad, the system
14 has to prevail.

15 Q Do you go far enough back into the legal or media
16 world to remember when it was prohibited that the
17 newspapers, or radio in those days, could comment
18 on matters in Court, sub-judicially, so to speak?

19 A Yes.

20 Q Could run into contempt of Court?

21 A Yes.

22 Q Let's look at 004328. This is where Serge tries
23 to rescue himself. Can you bring up this and
24 we'll have a look and see where it is.

25 "... 'the country is more important than



1 any individual in it.'

2 'Of course I care (if an
3 innocent person is in prison) - it could
4 be my kid. It could be me.'"

5 "'No system is perfect, but we
6 can't, because of the possibility that
7 one person was improperly convicted,
8 ruin our whole justice system and put it
9 in the hands of the prostitute lawyers
10 and media.'"

11 Well, he didn't make a lot of progress with that
12 clarification. And perhaps you took a little
13 umbrage at one of the lines in there, but --

14 A The "media" quote you mean?

15 Q Yeah.

16 A Call me anything but media --

17 Q That should be dealt with "according to law", said
18 Kujawa, and then somewhere in one of these
19 explanations he was giving he talks about what I
20 just referred to, the fact that there was a time
21 when a media comment could be construed as
22 contempt of Court and you just didn't do it. And
23 perhaps, well, obviously we are never going back
24 that far, but as an old-school guy that he very
25 thoroughly is he still believes that that's a



1 better system than the one we're approaching.
2 A I think there -- I think that you've got to --
3 like I happen to agree. There are a lot of
4 examples where I think that media reporting about
5 the courts and the judicial system and the justice
6 system bring the administration of justice into
7 disrepute. I completely agree. And it's part of
8 the education process that I am involved with,
9 with the Judicial Council, to try and contain
10 that.

11 As I've said to you, and I
12 wasn't very happy with the entire process through
13 the *Milgaard* case, it's just what we felt we had
14 to do.

15 Q I understand. But what Serge is saying is we're
16 falling into the American orbit and beginning to
17 do too many things their way, and some of the
18 examples that come out of there are something I
19 hope we never get -- personally, and my client as
20 well -- are things we never get close to such as,
21 as you know in your world, we all know now the
22 prosecution in the States outlining their case in
23 front of the cameras even before an arrest is
24 made, then the defence has to respond with a
25 publicity campaign. The first thing that a



1 defence team in the States does today, I
2 understand, is to hire a good team of publicists;
3 do you know about that?

4 A Oh yes, oh yes, it's a remarkable thing. And I
5 have to say now, wearing my media hat, you can't
6 blame the media for asking. I'm just, I'm just
7 amazed that the media gets a response. You are
8 actually seeing it now at the political level with
9 the Prime Minister --

10 Q Uh-huh?

11 A -- who has just said, "no, we're not going to
12 respond", and the media gets in an uproar, but
13 that's the way that he behaves.

14 Q You commented at one point that, maybe a couple
15 times in your testimony thus far, that if the
16 Federal Justice had employed an effective
17 communications strategy they could have knocked
18 you and your Milgaard campaign out of the park?

19 A Yes.

20 Q Now, by saying that, you're presuming that the
21 Federal Minister of Justice in Canada should
22 employ some of the tactics I've just mentioned we
23 see across the line in the United States?

24 A Not necessarily. I'll give you an example if I
25 may.



1 If the Minister of Justice --
2 and we canvassed the point with Mr. Hodson, where
3 certainly the Deborah Hall, the Eugene Williams
4 statement of Deborah Hall had been taken, and I
5 believe there had been, if I'm not mistaken, some
6 discussion, some review of the forensic evidence.
7 If Mr. Wolch and I had received a letter, a
8 confidential letter not through the media knocking
9 both of those things out and declining the
10 application or certainly giving a clear indication
11 that Justice, you know, the Department of Justice
12 Federal position was thus and so, I suspect they
13 would have stopped us in our tracks at least for
14 the time being until we could find something else.

15 **Q** So it didn't mean that they would have to go
16 public with a response?

17 **A** No, they wouldn't.

18 **Q** Would you agree that it would be irresponsible and
19 improper for them to go public to counter your
20 publicity campaign?

21 **A** I'm not sure about that. I'm not sure I would
22 conclude that as quickly as I know you would.
23 They may have wanted to, just from a political
24 perspective, take it out of the realm of law and
25 take it into politics. The Minister may well have



1 wanted to diffuse some of the reporting that had
2 been going on.

3 Q Well it's difficult for Canadian police
4 departments and Crown counsel to remain mute in
5 the face of public allegations from the defence;
6 would you agree?

7 A Yes.

8 Q Would you agree that it's, even though they have
9 difficulty with it, that it's best they remain
10 mute rather than to start discussing the evidence,
11 so-called, before the public?

12 A I'm not sure I agree with that. I think, once the
13 ball starts to roll, I'm not sure that it's wise
14 to let things go unsaid, unresponded to.

15 Q Are you responding as a lawyer or as a media
16 baron?

17 A The latter I would say. I'm flattered that I'm a
18 baron, that's --

19 Q Were you aware, after you filed your 690
20 application, that at the end of 1988 or shortly
21 thereafter there was another high-profile 690
22 application came out of Saskatchewan, Colin
23 Thatcher?

24 A Yes.

25 Q I want to show you, this is the decision of the



1 Federal Court, a judge by the name of Marshall
2 Rothstein, who I would have expected you would
3 know personally?

4 A Yes.

5 Q And who has been recently in the news?

6 A Yes.

7 Q Would you turn to page 5, please.

8 COMMISSIONER MacCALLUM: Did that have a
9 Bates number, I'm sorry?

10 MR. WILSON: I'm sorry, we can get it back.

11 COMMISSIONER MacCALLUM: That's okay.

12 MR. WILSON: It's 1996, but I can get it
13 back in a minute.

14 BY MR. WILSON:

15 Q You will notice, in paragraph item 2 here, that:

16 "On October 11, 1989, the applicant
17 applied to the Minister of Justice for
18 the 'mercy of the Crown' under section
19 690 of the Criminal Crown."

20 And then in paragraph number 4 down below here:

21 "On April 14th, 1994, the Minister
22 rendered his decision dismissing the ...
23 application."

24 So Thatcher's application was in the department
25 pretty well all the same time that yours was;



1 right?

2 A Looks to be, yes.

3 Q Would you put the cover page back up, please?

4 Have you got what you need, Mr. Commissioner?

5 COMMISSIONER MacCALLUM: Yes.

6 MR. WILSON: Thank you. You can take that
7 down.

8 BY MR. WILSON:

9 Q The interesting thing about the Thatcher
10 application is that it was on almost all fours
11 with your application in that it, as you probably
12 know, was accompanied by claims of new evidence,
13 recanting witnesses, evidence suppressed by the
14 police, non-disclosure by the Crown, all of the
15 same elements, and that the lead investigator on
16 that file, as on your file, was Eugene Williams.
17 But you probably didn't know that was going on
18 when you were dealing with the Minister of
19 Justice?

20 A No.

21 Q You mentioned this morning, and it's been
22 mentioned several times over the course of the
23 Milgaard affair, that Serge Kujawa had both the
24 Milgaard file and the Fisher file on his desk and
25 he should have connected the two of them; right?



1 A I don't know if I said "on his desk", but yes, the
2 effect, yes.

3 Q Well I think, maybe you didn't say on the desk,
4 but others on behalf of your client certainly did.
5 Now did you understand, or what is your
6 understanding of what those files contained?

7 A No.

8 Q You indicated this morning that you were in the
9 Manitoba Court of Appeal the day of your admission
10 to the bar, so you know a little bit about what's
11 before the Court on a criminal appeal. The
12 evidence we have here is that, on the Milgaard
13 appeal, the file before Mr. Kujawa contained the
14 transcript of the trial and the notice of appeal,
15 period. Efforts were made, on behalf of Mr.
16 Milgaard, to claim that Mr. Kujawa had at least
17 Mr. Caldwell's file if not the Saskatoon Police
18 file. He had neither, and that evidence is
19 clearly before us.

20 It's also before this --

21 A As it relates to the Milgaard prosecution?

22 Q As it relates to the Milgaard file.

23 A Yes.

24 Q As relates to the Fisher matter, what he had was
25 some correspondence with Mr. Greenberg of



1 Winnipeg, a letter from the city police in
2 Saskatoon outlining the nature of the offences,
3 and the four indictments. Again, no police
4 reports, no occurrence reports, no investigators'
5 reports, nothing that would make it easy to say
6 "eh, there is a similarity between these
7 incidents" or "there is a connection across these
8 two files"; were you ever aware of that?

9 A I'm -- no, I can't say that I was aware of exactly
10 what Mr. Kujawa might have had, and I don't think
11 my view was ever driven by exactly what Mr. Kujawa
12 might have had. I think my view was driven more
13 by we -- I believe Mr. Caldwell had talked to Mr.
14 Kujawa about the Milgaard appeal, briefed him on
15 the background, and I think we were suggesting
16 that when Mr. Fisher -- when Mr. Kujawa came into
17 the possession of the Fisher prosecution his
18 knowledge, potentially, of the -- what had
19 occurred in the Milgaard prosecution may lead him
20 to wonder whether there might be any connection.

21 Q But you have said that, you have leaped to that
22 assumption without ever having examined the
23 contents of both files to see how reasonable your
24 assumption is?

25 A That's true, I have not seen the content of the



1 files.

2 Q Were you here when Mr. Tallis testified in
3 response to questions from Mr. Hodson about what
4 he would have done if the existence of the Fisher
5 incidents, if we can call them that, had been
6 brought to his attention after the trial and
7 conviction?

8 A I don't think I was.

9 Q He testified that if that information had come to
10 him after the trial and conviction, and before the
11 appeal, what he would have done is go straight to
12 Serge Kujawa and say "we've got a problem",
13 because his experience with Mr. Kujawa convinced
14 him that Mr. Kujawa would immediately direct that
15 the matter be investigated and, if a connection
16 was made out, get the problem fixed. Do you have
17 a comment on that?

18 A No.

19 Q Mr. Hodson also asked Mr. Tallis, "what would you
20 have done if that information had come to your
21 attention after the appeal and the judgement on
22 appeal", he would have done exactly the same
23 thing, gone straight to Serge Kujawa.

24 When Mr. Kujawa testified here
25 he was asked what he would have done if the



1 information had been brought to his attention, and
2 he said exactly as Mr. Tallis said.

3 A I'm glad to hear that. I mean I'm very glad to
4 hear that. I guess my problem is that the
5 information existed but didn't come to anybody's
6 attention. That's my problem.

7 Q But --

8 A I'm glad to hear what they would have done, but
9 the problem is they didn't have the opportunity to
10 remedy the problem.

11 Q But, now that you know that, do you not regret
12 that you didn't do as I suggested this morning,
13 throw your file in the trunk and drive over to
14 Regina and sit down with Serge Kujawa?

15 A No.

16 Q Still don't?

17 A I'm -- no.

18 Q Well, you're nothing if not stubborn. There was a
19 con --

20 A I have to tell you -- can I just expand on that,
21 if I may?

22 Q Sure.

23 A What I would have liked to have happened is,
24 instead of driving over to see Mr. Kujawa, my hope
25 would have been that Mr. Williams, as I've said



1 numerous times, would have administered a 690
2 process at which time Mr. Kujawa, Mr. Caldwell,
3 Mr. Wolch, myself, would have come together and
4 planned out what would come next, that's what my
5 hope would have been, where an independent party
6 would manage the process. That's all I was trying
7 to do.

8 Q Uh-huh.

9 A And if that had happened, if everything that you
10 say Mr. Kujawa believes in is true -- and I have
11 every reason to believe it is true -- we would
12 have avoided a big mess for six years.

13 Q This was the first 690 application you had ever
14 seen; right?

15 A Yes.

16 Q So, once you filed it with Ottawa, did you think
17 about getting on the phone and getting somebody
18 like Eugene Williams on the other side and saying,
19 "look, you got our application", "yeah", "tell me
20 what the process is here, what will happen next?"
21 Did you think about that?

22 A I believe Mr. Wolch did have that conversation
23 with either Mr. MacFarlane or Rutherford.

24 Q I see. And in that, in such a conversation the
25 suggestion could have been made, "well can we sit



1 down with Saskatchewan Justice and see if we can
2 sort this out"?

3 A I believe we were asking for that from the very
4 outset, if not to sit down specifically with the
5 individuals then to gather all the information.

6 Q When the Fisher information began to bubble to the
7 surface you told us the other day you were very
8 reluctant to identify the perpetrator that you
9 were now identifying?

10 A Yes.

11 Q Publicly, that is?

12 A Yes.

13 Q And you made a comment that I have written in my
14 notes that you, you didn't want to be an accuser?

15 A Yes.

16 Q And that was you personally, that wasn't the David
17 Milgaard but that was David Asper speaking; right?

18 A Yes.

19 Q And I fully understand and appreciate that
20 reluctance, and I commend you for it, but I wonder
21 why there wasn't the same reluctance to condemn my
22 client, Serge Kujawa.

23 A I didn't like being an accuser at any point
24 through this whole process.

25 Q Were you doing it because it was a dirty deed that



1 had to be done?

2 A Well, you've put in it comic-book terms, but yes I
3 saw it as necessity.

4 Q Could we look at 160397, please. You were present
5 when that interview with Dan Lett took place? It
6 says 'Milgaard lawyers, Wolch and Asper'.

7 A I suppose so, yes. I don't recall it but I must
8 have been there.

9 Q "Former Saskatchewan chief prosecutor
10 Serge Kujawa was either incompetent or
11 dishonest when he failed to disclose key
12 evidence ...",

13 A I don't know where that -- I can't see it?

14 Q Right at the top paragraph, first, opening line.

15 A Oh, I see. Yes.

16 Q Do you have any comment that you would like to
17 make about those remarks at this point?

18 A Well, I'm not sure who said them, so I'm not sure
19 that -- I'm not sure if you're attributing them to
20 me?

21 Q Well I'm saying that you were there when they were
22 said. I think Mr. Wolch takes credit for having
23 said them.

24 A I'll say this, Mr. Wilson. If Mr. Kujawa did not
25 have information to disclose and did not withhold



1 information deliberately from the Milgaard team,
2 the Milgaard lawyers, either at the time of his
3 appeal or any time thereafter, I regret saying
4 that, and I apologize to him if he did not
5 withhold information.

6 Q Well, there is no evidence that he did withhold
7 anything?

8 A Well, but as I've said, I've said here -- and I'm
9 not prepared to go down the path and I'm not
10 prepared to be an advocate -- but the best
11 evidence that evidence has been withheld is that
12 there is no evidence. If Mr. Caldwell -- if Mr.
13 Kujawa did not withhold information deliberately,
14 then I regret that, and I apologize to him.

15 Q At the time those remarks were made there wasn't a
16 shred of evidence that he did withhold
17 information.

18 A I'm afraid to keep saying this, but for those who
19 were on the other side of this and for those of us
20 who had to try to remedy a horrible, horrible
21 wrong committed, you might be inclined to think
22 that some things went wrong along the way. I'm
23 sorry, but that's the way it is.

24 Q But you do it, you do it without confirming, go
25 back to my sheets or --



1 A You might not be able to confirm it.

2 Q Well, you didn't make a try. Let me, let me speak
3 in the vernacular. Where do you guys from
4 Winnipeg get off making allegations like that?

5 MR. SOROCHAN: Mr. Commissioner?

6 A Why do -- I think you insult the people of
7 Saskatchewan.

8 MR. SOROCHAN: Hold on. There is an
9 objection I want to make.

10 MR. WILSON: Yes.

11 MR. SOROCHAN: I don't, I'm a guy from
12 Vancouver, but even in Vancouver we do not allow
13 counsel to try to engage in argument with
14 witnesses, and I object to this folksy, shucks
15 attempted to try to engage in argument with the
16 witness, and it is not appropriate and I ask you,
17 Mr. Commissioner, to direct the counsel to stop.

18 COMMISSIONER MacCALLUM: All right, Mr.
19 Wilson, I think the lapse into the vernacular can
20 probably be avoided.

21 BY MR. WILSON:

22 Q Do you look at that comment today and agree with
23 me that it was unprofessional and seriously
24 improper?

25 A I don't think I would agree with that.



1 Q You think that it is within the bounds of
2 propriety for a member of the Law Society of
3 Manitoba to accuse a fellow professional,
4 publicly, of incompetence or dishonesty; that's
5 okay?

6 A Yes.

7 Q Do you think that the Discipline Committee of the
8 Manitoba Law Society would have agreed had Mr.
9 Kujawa chosen to take it there?

10 A I don't know.

11 Q There was some concern over the legal question as
12 to whether, even fully known, was the Fisher
13 information evidentially acceptable on the
14 Milgaard defence; do you recall that?

15 A Yes.

16 Q And you did some research on that subject?

17 A Yes.

18 Q Can we look at 157134. This is a letter that came
19 to you from Mr. MacFarlane and Justice Ottawa?

20 A Yes.

21 Q Asking you to give some response to and some
22 authorities how to deal with that question?

23 A Yes.

24 Q And you and Mr. Wolch did respond?

25 A Yes.



1 Q And we saw that this morning. You were aware that
2 Mr. Kujawa was of a different view, that he had
3 expressed that --

4 A I don't recall his view, I'm sorry.

5 Q And, but there were other views, correct?

6 A Certainly, yes.

7 Q Could we look at 016098. This is the internal
8 memorandum from Justice Ottawa that you are
9 probably familiar with.

10 A I --

11 Q You will note that the heading there refers to
12 consultations with W.R. McIntyre, retired Supreme
13 Court Justice?

14 A Right.

15 Q And on page 2, the top paragraph:

16 "... there is no real link between
17 Fisher and Gail Miller's murder. The
18 case against Milgaard remains intact."

19 However, if you are not familiar that Mr.
20 Kujawa's opinion was the same as Mr. Justice
21 McIntyre's, we'll go on. Thank you. I was going
22 to go into the transcript of the debate that you
23 and Mr. Kujawa engaged in.

24 A I'm sorry, I just don't recall what his position
25 was on the Fisher information.



1 Q Uhm?

2 A I just don't recall what his position was on the
3 Fisher evidence.

4 Q Okay. I don't think we'll bother going there
5 then. Other allegations that were made, that he
6 participated in included a cover-up and a frame of
7 David Milgaard; right?

8 A Yes.

9 Q In your criminal practice in Winnipeg you
10 obviously mixed up with a lot of Winnipeg police?

11 A Yes.

12 Q You dealt with them because you were trying to get
13 information on what your client was charged with,
14 what he was up to, statements, confessions, what
15 am I going to have to do to get bail or whatever?

16 A Sure.

17 Q How did you find the level of integrity of the
18 Winnipeg police you dealt with?

19 COMMISSIONER MacCALLUM: Level of what, I'm
20 sorry?

21 MR. WILSON: Level of integrity.

22 COMMISSIONER MacCALLUM: Oh, okay.

23 A Very high generally. Very high.

24 BY MR. WILSON:

25 Q I represented police in Saskatchewan for far more



1 than 30 years and I've often said that I find the
2 integrity level among that group of citizens to be
3 at least as high as it is among the members of the
4 bar. Would you agree with that?

5 A Yes.

6 Q Would you see any reason to think that the police
7 in Saskatoon would fall below that level or
8 standard?

9 A No. In general, no.

10 Q You also dealt in Winnipeg with homicide
11 investigations there?

12 A Yes.

13 Q You would have some idea of how many police
14 personnel are called to bear on such an
15 investigation?

16 A Yes.

17 Q Scores would you agree?

18 A Yes.

19 Q Particularly in the early stages?

20 A Yes.

21 Q Can you give me a scenario in which David Milgaard
22 could have been framed for the murder of Gail
23 Miller?

24 A Give you a scenario?

25 Q Yeah.



1 A Well, I think we call it tunnel vision in modern
2 parlance, but what occurred in my view, and I
3 believe the evidence establishes it, is that the
4 police had no suspect, they had a theory about a
5 perpetrator of sexual assaults committing attacks
6 in the neighbourhood and the name David Milgaard
7 fell into their lap. They essentially abandoned,
8 or it appears they abandoned the inquiry into the
9 activities of the sexual predator in the
10 neighbourhood and went full out on the David
11 Milgaard theory. We have a document that suggests
12 that they formulated a theory, that witnesses who
13 had previously said nothing inculpatory all of a
14 sudden -- sorry, exculpatory became inculpatory,
15 even to the extent that there was an eye witness
16 account of Milgaard committing the murder, that
17 that evidence flew in the face of other credible
18 evidence that had been gathered by the scores of
19 officers immediately following the murder and that
20 that case was put to a jury and resulted in a
21 conviction and -- sorry, and that important parts
22 of the information that had been gathered had not
23 been given to Mr. Tallis in order to make full
24 answer in defence.

25 Q Doesn't the framing of someone imply necessarily



1 that the police present evidence that they know to
2 be false?

3 A Yes. Potentially, yes.

4 Q Not potentially, that's a basic element of the
5 caper; isn't it?

6 A Okay, let's accept that.

7 Q Well --

8 A Yeah.

9 Q What evidence in the Milgaard affair do you claim
10 was presented knowing it was false?

11 A The assertion that -- the taking of a statement
12 from Nichol John who went from saying nothing
13 happened to putting a car parked in a location
14 where Mr. and Mrs. Merriman were staring at it at
15 the very time that the Crown suggested that the
16 murder was occurring and at the very time that
17 Nichol John said she was witnessing David Milgaard
18 commit the murder.

19 Q Okay. But you are saying that --

20 A Those are two pieces of evidence that can't stand
21 together, one of which wasn't disclosed.

22 Q Okay, fine, the Merriman --

23 A No, no, not okay fine.

24 Q I know, but it wasn't presented. The frame
25 involves bringing forth evidence that convicts an



1 accused that you know to be false.

2 A Or perhaps excluding evidence that prevents a
3 conclusion of guilt. If you have evidence that
4 Milgaard committed the murder and you have
5 evidence that he didn't and you don't present the
6 evidence that he didn't, then the evidence that he
7 did is false.

8 Q And what number of police officers do you think
9 would be required to make all this happen?

10 A Make all what happen?

11 Q The scenario you just outlined.

12 A I haven't got the faintest idea.

13 Q It would be necessary that they all be very silent
14 about what they were doing wouldn't it?

15 A Sound about --

16 Q Silent.

17 A Silent about what?

18 Q They couldn't talk about the fact that they were
19 involved in a frame.

20 A They may not have known they were part of a frame.

21 Q Well, then it fails on the grounds that --

22 A What if it was concentrated at the top, what if it
23 was concentrated among a small circle of officers.

24 Q How small a circle?

25 A I couldn't tell you, but it doesn't have to



1 involve every single officer. It doesn't assume
2 that every officer is following the trial, it
3 doesn't assume that every officer, the officer who
4 interviewed the Merrimans even knew whether that
5 statement was tendered at trial or not, or the
6 evidence tendered at trial or the witness called.

7 Q So who would --

8 A The roommates of Gail Miller may have never known
9 the Crown's theory that she was on Avenue N when
10 all of them said that she went to the bus stop on
11 Avenue O, they may never have known that because
12 they went in, did their thing and left.

13 Q Who's orchestrating this?

14 A I don't know.

15 Q But you think it's feasible, possible that
16 somebody in the Saskatoon Police Department was
17 making all this happen and it never came to light?

18 A I wonder about it, yes.

19 Q You wonder about it?

20 A Yeah. Well, the wrong guy got convicted and so
21 something happened, and it might have been
22 innocent and it might not have been, and if it
23 wasn't, I think we should find out, don't you?

24 Q I guess that's what we're about.

25 A Good.



1 Q But I'm not sure how helpful it is to make wild
2 accusations of criminal conduct against the people
3 who were trying to maybe just do the best job they
4 could.

5 A Well, but let me tell you from the other side,
6 from the other perspective, speaking from the
7 perspective of somebody who has done 23 years in
8 prison for something they didn't do, maybe you are
9 prepared to take a risk, maybe you are prepared to
10 take a risk and try to crack something open in
11 order to get your freedom, maybe, maybe.

12 Q Well, I can see David Milgaard doing that, but I
13 wonder why David Asper would do that?

14 A Well, maybe David Milgaard sitting in a prison
15 without any resources needs some help and maybe
16 nobody else was prepared to do that, and maybe
17 until it was somebody who decided to do it that
18 finally some action happened and we got to the
19 truth of the David Milgaard wrongful conviction.

20 Q But you have some obligations and responsibilities
21 as a member of a profession.

22 A Okay, I have a duty to my client and I have a duty
23 to my profession and sometimes, sometimes
24 extraordinary circumstances arise such as I
25 believe was the case in the Milgaard affair.



1 Q So extraordinary circumstances call for
2 extraordinary remedies, so to speak?

3 A Yes. It's a well recognized principle of law.
4 Wouldn't you agree?

5 Q Well, not if it's false and without merit. I'm
6 going back to my sheep.

7 A That's your conclusion.

8 Q So far that's the evidence.

9 A That's not exactly what I said, I said there is no
10 evidence, and that's, and that can be evidence of
11 something well done and not legitimate.

12 Q What's your definition of a cover-up?

13 A Something occurring and the occurrence of that
14 event not being known to others.

15 Q Deliberately suppressed I take it?

16 A Yes.

17 Q And applying that definition to what we know of
18 the Milgaard matter, who would have to be the
19 players involved in that cover-up?

20 A Of what, which part?

21 Q Well, the wrongful conviction, the false evidence
22 deliberately introduced to result in the
23 conviction and then that knowledge suppressed.

24 A It would involve police and Crown. If there was a
25 cover-up, it would have to involve police and



1 Crown.

2 Q It would be the original perpetrators plus a few
3 of the Crown counsel who were involved in the case
4 I take it; is that what you mean?

5 A Yes.

6 Q So that would be Mr. Caldwell over there, my
7 client Mr. Kujawa and others?

8 A Potentially, yes.

9 Q I see. And am I hearing you correctly, Mr. Asper,
10 that you are telling us this afternoon that you
11 were prepared to believe that my client, Serge
12 Kujawa, would in this one case act in
13 contradiction of everything he stood for in his
14 entire professional career?

15 A Say that again, the last part?

16 Q That Serge Kujawa would, to cover up this wrongful
17 conviction, act in contradiction of everything he
18 had stood for his entire public professional
19 career?

20 A I would hope not. I would hope not.

21 Q I'm grateful for that, but you are suggesting that
22 he could have been, you are prepared to --

23 A I don't know. I don't know.

24 Q You were prepared to believe it?

25 A At the time I was.



1 Q My note says that you don't recall having had any
2 concerns about these allegations; is that right?

3 A I believe so, yes.

4 Q As horrendous as they were and still are, they
5 didn't give rise to any concerns on the part of
6 David Asper?

7 A Which allegations are you talking about?

8 Q The ones we're talking about, cover-up, frame.

9 A At the time? No, I was more preoccupied with
10 remedying what I considered to be a more horrific
11 wrong.

12 Q Did you spend any time while on the Milgaard file
13 searching out for evidence to support these
14 allegations of frame and cover-up?

15 A To the extent that we were trying to develop new
16 evidence, new information, get information from
17 the Department of Justice, federal, yes, that
18 would be the information that might support such a
19 claim.

20 Q And that might go to establish the innocence of
21 David Milgaard, but it might not necessarily
22 establish a frame or a cover-up.

23 A That's true, it might not necessarily. It could
24 be helpful though.

25 Q Do you recall searching specifically for anything



1 that would support the allegations of frame and
2 cover-up?

3 A I don't recall anything specific.

4 Q Could we look at 047152, please. You saw this
5 this morning, this is the infamous Breckenridge
6 letter, March 21st, 1992. He alleges there that
7 exactly what you've been claiming in fact
8 happened; is that right?

9 A I would have to read the whole letter before
10 agreeing with that, but I'll accept for the sake
11 of the question that that's what's in the letter.

12 Q Can we have a look at the second page.

13 "Today, I would suggest that there is a
14 cover up by the present administration
15 to hide the sins --"

16 That's impossible.

17 COMMISSIONER MacCALLUM: -- of the Blakeney
18 regime.

19 A I was going to say, this is a broader cover-up
20 than anything we're talking about.

21 MR. WILSON:

22 Q Okay, we won't go there. Can we go back to the
23 first page, this paragraph, Romanow, Ken Lysyk and
24 Serge Kujawa, and then of course he expanded on
25 that when he got into the statement. Now, you



1 followed that up as you saw this morning, you
2 hired an investigator and more information came
3 back. Now, you told us this morning that you
4 don't have a particular recollection of all this,
5 dealing with Breckenridge?

6 A Right.

7 Q Which I find passing strange because of the fact
8 that it would tend to lend credibility to the
9 allegations, rather shaky allegations that you've
10 been making now for a year or two, cover-up and
11 frame.

12 A Well, as I said, I was on my way out, I was
13 leaving the firm, I was no longer as engaged with
14 the file as I had been and it was for others to
15 deal with.

16 Q But you did have some concerns about
17 Mr. Breckenridge?

18 A I recall that, yes.

19 Q And part of the reason you had those concerns was
20 because you wouldn't believe that Roy Romanow was
21 involved?

22 A I found that a stretch. I found the whole thing a
23 stretch frankly, Mr. Wilson, and didn't really
24 want to believe it, don't want to believe it
25 currently.



1 Q You'll notice that letter refers to Ken Lysyk, the
2 deputy in the department. Did you know Ken Lysyk?

3 A I may have met him. I believe he was the dean of
4 the law school at the University of Saskatchewan
5 or British Columbia perhaps.

6 Q British Columbia.

7 A Yes.

8 Q I just wanted to show you --

9 A Of course I can't speak to *The Globe and Mail's*
10 editorial standards.

11 Q "British Columbia Supreme Court Judge
12 Ken Lysyk was, by all accounts, a legal
13 giant, a nation builder who played a
14 major role in one of the country's most
15 pivotal moments, the patriation of the
16 Canadian constitution."

17 A dean of law as you say, former Saskatchewan
18 Deputy Attorney General, a highly, highly
19 regarded member of the legal profession across
20 Canada wound up accused by Breckenridge and
21 investigated along with Romanow and Serge Kujawa
22 of having participated in a criminal conspiracy
23 to obstruct justice. Lovely, right? But in
24 spite of the fact that you thought it so out of
25 character that Roy Romanow would be involved in



1 such a scheme, you did draft, even after leaving
2 the employ of the Wolch firm, a memorandum for
3 use by Joyce Milgaard implicating him; correct?

4 A It appears so, yes.

5 Q We saw that this morning?

6 A Yes. As I say, I don't know whether I had refined
7 something that had been provided to me or whether
8 it was an original document, and you will not find
9 my name on it.

10 Q Uhm?

11 A You will not find my name on it or associated with
12 it other than sending it to Mrs. Milgaard.

13 Q And you told us earlier in your testimony that
14 when you were asked about some of the
15 brainstorming that was going on about how to
16 approach the Milgaard witnesses, that this
17 brainstorming was going on all around the office
18 with the senior counsel?

19 A Yes.

20 Q Did that continue, that group thinking, if I may
21 call it that?

22 A After I left I couldn't tell you that.

23 Q Well, was it still going on when you left?

24 A Yes.

25 Q Did the Breckenridge thing get subjected to that



1 brainstorming around the office?

2 A Probably.

3 Q And as you know, Mr. Wolch and Mrs. Milgaard went
4 forward with the Breckenridge thing even after the
5 Robinson Investigations, that pretty well
6 established the fact that Mr. Breckenridge was
7 devoid of any credibility at all; is that correct?

8 A Yes.

9 Q When David Milgaard got out of jail in April of
10 1992, he was out, he was a free man and there was
11 no likelihood that he was going to be going back;
12 is that correct?

13 A Yes.

14 Q And you told us this morning that there have been
15 a concern raised "but he's not innocent"?

16 A Right.

17 Q Was that a concern to David Milgaard or you and
18 the people around him and his mother?

19 A I think it was probably a concern to David more
20 than anyone else. As I've testified, my own
21 feeling, even though, you know, I wasn't totally
22 satisfied obviously with the outcome, was that
23 certainly I had achieved as much as I could
24 achieve and that was good enough for me.

25 Q Well, you would have been happy earlier to get him



1 out on a pardon wouldn't you?

2 A I believe so, yes.

3 Q Or parole rather?

4 A It certainly would have taken the pressure off,
5 yes.

6 Q But David was happy to be out without leave a
7 couple of times, he just wanted out, he didn't
8 care about the terms did he?

9 A Well, the leaves came during case, during the
10 time, I think after the reference when he was
11 coming to our office and working with us.

12 Q He had gone over the wall a couple of times?

13 A Once I think.

14 Q Yeah, okay. Is it not true that as soon as David
15 was free, the concern and the target now became
16 compensation, money?

17 A I don't believe that's true. I wasn't there, but
18 I don't think that's true. You be very careful
19 there, Mr. Wilson, Mr. Milgaard suffered hugely
20 and to suggest that any part of this or any part
21 of what happened was about money is dangerous
22 ground.

23 Q Okay. In what way?

24 A It's dangerous with me.

25 Q It may be sensitive ground, but I don't think --



1 A Not sensitive.

2 Q -- dangerous ground?

3 A It's not sensitive.

4 Q But the campaign for compensation began almost
5 immediately; did it not?

6 A I believe so. Pretty close, yes.

7 Q And the Breckenridge material was used to that
8 end; was it not?

9 A I wasn't a part of it. I don't know. I don't
10 know what happened to the Breckenridge
11 information.

12 Q Well, but --

13 A I was not part of the compensation claim, I didn't
14 receive compensation, any part of it, I was not
15 part of it.

16 Q But you do know what happened with the
17 Breckenridge claim, it went public and it resulted
18 in the Flicker investigation that Mr. Hodson told
19 you about this morning, cost the public \$2 million
20 to run down something that was never there in the
21 first place?

22 A Well, I'm aware that it was used publicly. I
23 don't know what use it was made to the extent that
24 any use was made of it in terms of compensation.
25 That's I thought what you asked me.



1 Q And people like Ken Lysyk and Roy Romanow and
2 Serge Kujawa were under suspicion of criminal
3 conduct?

4 A David Milgaard spent 23 years in prison for a
5 crime he didn't commit. I'm sure that there are
6 people, certain there are people who were made
7 uncomfortable through this process, but let's not
8 forget the core of this, please.

9 Q None of those people put him there or kept him
10 there.

11 MR. SOROCHAN: I'm sorry, I didn't hear
12 that last remark. What was the remark?

13 MR. WILSON: I said none of those three
14 people put him there or kept him there.

15 MR. SOROCHAN: Innocent people?

16 MR. WILSON: David Milgaard.

17 MR. SOROCHAN: What's the point of that
18 comment?

19 COMMISSIONER MacCALLUM: I understood him
20 to say that none of the people who suffered as a
21 result of the re-opening effort put Mr. Milgaard
22 there or kept him there in prison.

23 MR. SOROCHAN: I thought he was saying most
24 of the people that are put in prison are kept in
25 there. I'm sorry, I didn't hear that.



1 COMMISSIONER MacCALLUM: No.

2 BY MR. WILSON:

3 Q 004204, please, 208. This is a transcript of the
4 press conference that presented the record of
5 these allegations, David Milgaard, Joyce Milgaard
6 and Mr. Wolch. We see Mr. Wolch speaking at the
7 top of page 4:

8 "... simply more evidence of what we
9 know to be a fact... I think the letter
10 simply adds one extra feature of
11 evidence but the coverup was established
12 a long time ago and this is just one
13 more piece in the puzzle."

14 "Time will tell - the coverup was
15 there."

16 210, please.

17 "All I know is that Roy Romanow, Serge
18 Kujawa, and other senior officials met
19 with those two files. Serge Kujawa says
20 we never ever, -"

21 211, Mrs. Milgaard says that she's impressed by
22 him, thinks he's credible. Those comments were
23 made in support of a demand for an inquiry such
24 as we're dealing with here, and also used to
25 support an application to the Saskatchewan



1 Government for compensation, so you do know what
2 was done with the Breckenridge material?

3 A I'm seeing this transcript, I think, possibly for
4 the first time. I'm aware there was a news
5 conference, I'm aware that the Breckenridge
6 information was uttered, I -- these are the first,
7 I think this is the first time that I have seen
8 the transcript, the actual transcript. But you
9 can ask Mrs. Milgaard. I wasn't there.

10 Q Okay. But you were staying in touch, I thought
11 you -- I thought I understood that?

12 A Yes.

13 Q I'm coming to my conclusion, Mr. Commissioner, I
14 wonder if a ten-minute break at this point would
15 be appropriate?

16 COMMISSIONER MacCALLUM: That would be
17 fine, sure.

18 *(Adjourned at 2:57 p.m.)*

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

20 BY MR. WILSON:

21 Q 067343, please. Mr. Asper, to bolster the
22 allegations that were made at the press conference
23 concerning -- arising out of the Breckenridge
24 material Mr. Wolch subsequently delivered to the
25 RCMP what I am going to call his conspiracy



1 theory, and this is a summary of it, and if you'll
2 have a quick look at page 1 you'll see that the
3 RCMP went over to Winnipeg, spoke to Mr. Wolch,
4 and:

5 "... Mr. Wolch took the position that in
6 October of 1970, the Saskatoon Police,
7 the Crown Prosecutor, and Saskatchewan
8 Justice ...",

9 all three agencies:

10 "... were aware of information that if
11 disclosed to the defence could have
12 brought the conviction of David Milgaard
13 into question."

14 And then the next paragraph, he spent six or
15 seven hours outlining all his contentions, and he
16 says:

17 "... the cover up occurred in three
18 principal areas:",

19 the ones I just mentioned, but the third area
20 highlights Mr. Kujawa. Now, if you will note --
21 down a little bit, please -- there are three
22 paragraphs, three itemized allegations here --
23 next page, please -- against the Saskatoon Police
24 Department -- another page full here, next page,
25 please -- a total of 19 against the Saskatoon



1 City Police. And against Crown counsel, against
2 particularly Mr. Caldwell, we have three on this
3 page -- continue, please -- a total of nine.
4 Then he goes on to the, I believe that should be
5 the Saskatchewan Attorney General's Department,
6 and they are responsible for a coverup. They had
7 both:

8 "... Mr. MILGAARD'S file and
9 Mr. FISHER'S file in their possession in
10 October 1970."

11 "... both of these files were on the
12 Chief Prosecutor's desk ...",

13 Mr. Kujawa's.

14 "... Mr. KUJAWA reviewed the MILGAARD
15 file for appeal purposes.

16 (3) That the MILGAARD file was full of
17 references to the FISHER rape and that
18 Mr. KUJAWA should have been concerned
19 about MILGAARD'S guilt in view of the
20 numerous references to Larry FISHER."

21 Now I'm not going to ask you to respond to these
22 allegations, but I am going to ask you if you had
23 any part, before you left the Wolch firm, in the
24 preparation of this list of allegations that were
25 a big part of the conspiracy claim?



1 A No.

2 Q Any part of them come from your file; do you know?

3 A I --

4 Q By the way, did you leave your full file when you
5 left the firm?

6 A Everything, yes.

7 Q Is --

8 A No, I don't recall if there was anything in my
9 file that was used here.

10 Q Has your full file, to your knowledge, made it
11 through to this Commission?

12 A I have no idea.

13 Q Yeah. Did you know that Mr. Wolch was going to
14 make this conspiracy allegation?

15 A I don't recall it, no.

16 Q It wasn't something that was being discussed or
17 brainstormed around the office before you left?

18 A No, not as far as I'm aware.

19 Q Next page, please. Two more allegations against
20 the Attorney General's Department as part of the
21 whole claim, and Mr. Wolch had been very busy and
22 impressed the RCMP investigators with his
23 thoroughness. Now that, of course, was the
24 kick-off of the Flicker investigation that I
25 mentioned and, as we know, they came back and said



1 the whole thing was ridiculous, "absurd" was the
2 word used in the official report; do you know
3 that?

4 A No.

5 Q Now one more comment and we're out of here. You
6 have said, then, to the extent that these
7 allegations, particularly against Mr. Kujawa, were
8 unfounded you regret --

9 A And apologize, yes.

10 Q Have you done anything in that respect before?
11 Have you told Mr. Kujawa that you do regret the
12 pain he was caused by those public allegations?

13 A No.

14 Q I can tell him, when I see him tomorrow, that you
15 now do issue an apology to him?

16 A I said subject to the fact being that he -- that
17 none of the allegations are true, yes, I
18 apologize.

19 Q Thank you, Mr. Asper.

20 MR. HODSON: That is all for today, Mr.
21 Commissioner. If I can indicate for Monday, we
22 will be watching the video taped evidence of
23 David Milgaard that was taken on March 6th, if
24 I'm not mistaken. That should take about 2 1/2
25 hours, and I think that's all that we'll have for



1 Monday, and Tuesday morning we will be starting
2 with Dr. Neil Boyd.

3 COMMISSIONER MacCALLUM: Okay. And now I
4 understand Mr. Asper will be away for some time?

5 MR. HODSON: I think Mr. Asper, Mr.
6 Sorochan and I will negotiate return dates.

7 COMMISSIONER MacCALLUM: Yes.

8 MR. HODSON: And so he will not be back
9 next week and we will look at getting convenient,
10 as convenient dates as possible for Mr. Asper to
11 return to complete his evidence.

12 COMMISSIONER MacCALLUM: And Mr. Asper,
13 just for the sake of the record, you realize that
14 you are in the middle of cross-examination now,
15 and it is not only customary in trial practice
16 but it's part of our rules that you be 'sent to
17 Coventry', which means that you are not to talk
18 to your own lawyer about the testimony which you
19 are going to give.

20 A I am happy not to do that, sir.

21 COMMISSIONER MacCALLUM: I was rather
22 thinking that would be the case. So we'll
23 adjourn until Monday at 1:00. Thank you.

24 (Adjourned at 3:20 p.m.)

25



