

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

Transcript of Proceedings

and

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

On Thursday, April 27th, 2006

Volume 140

Inquiry Proceedings



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Transcript of Proceedings

(Reconvened at 9:04 a.m.)

COMMISSIONER MacCALLUM: Good morning.

ALL COUNSEL: Good morning.

MR. HODSON: A couple things, Mr.

Commissioner. I understand we're still sorting out some power issues, here, that we will continue to work on, and/or Internet.

As far as the cross-examination of Mr. Asper, Mr. Gibson and Mr. Wilson are complete, it's my understanding -- and I'll ask counsel to confirm this or not -- there still is not agreement on the order of cross-examination unless it was reached in the last 30 seconds, and counsel may wish to address that. I think the issue is where in the order Mr. Wolch and Ms. McLean go, whether they go right before Mr. Sorochan at the end, or some earlier part. I think apart from that issue, amongst the remaining counsel I think they have agreed amongst themselves as to an order, so the only issue, I think, is where Mr. Wolch -- and I'm not sure whether Mr. Wolch and Ms. McLean have questions or not -- but maybe, with that, I would ask if I have -- unless there's been some



1 agreement, have I fairly stated it, and if so can
2 counsel who wish to address it please do so, and,
3 Mr. Commissioner, you can then order the order.

4 COMMISSIONER MacCALLUM: May I ask, first
5 of all, who wants to?

6 MR. BOYCHUK: Who wants to cross? I will
7 be cross-examining.

8 COMMISSIONER MacCALLUM: For city police?

9 MR. BOYCHUK: For Mr. Karst.

10 COMMISSIONER MacCALLUM: For Mr. Karst?
11 Just a minute now. Okay, you want to, who else?

12 MR. LORAN: Pat Loran on behalf of the
13 Saskatoon City Police, My Lord.

14 COMMISSIONER MacCALLUM: City police? And
15 who else?

16 MR. WOLCH: I do on behalf of David
17 Milgaard.

18 MS. McLEAN: I don't expect to, Mr.
19 Commissioner.

20 COMMISSIONER MacCALLUM: Thank you. Okay.

21 MR. HOPKINS: Mr. Pringle will be here
22 tomorrow, he expects to do a brief cross.

23 MS. KNOX: And Ms. Knox for Mr. Caldwell, I
24 will be doing cross as well.

25 MS. KROGAN-STEVELY: Mr. Commissioner, if



1 it helps at all, my cross-examination will be
2 very brief and I'm pleased to go next.

3 COMMISSIONER MacCALLUM: Thanks.
4 Mr. Frayer, you will?

5 MR. FRAYER: Yes, I will be
6 cross-examining, Mr. Commissioner.

7 COMMISSIONER MacCALLUM: And of course,
8 Mr. Sorochan, you will be?

9 MR. SOROCHAN: I will be doing -- I don't
10 know if I'll need to do any redirect or not.

11 COMMISSIONER MacCALLUM: And Mr. O'Keefe,
12 do you want --

13 MR. O'KEEFE: No, sir.

14 COMMISSIONER MacCALLUM: Two, three, four,
15 five, six, seven parties then.

16 Well listen, counsel, the
17 spirit of a cross -- of a public inquiry is not
18 adversarial, or at least it's not supposed to be.
19 Jockeying for position for tactical advantage in
20 cross-examination is adversarial. If I must I
21 will -- if you -- up to this point I think,
22 probably with a very few exceptions, through the
23 good offices of Commission Counsel agreement has
24 been reached as to the order of
25 cross-examination. That is not possible, it



1 seems, today, and if it's not possible in the
2 future, this is what I am going to do. I will
3 hear representations, if I must, and then I will
4 set the order of cross-examination without giving
5 any further reasons.

6 So who wants to speak to this?

7 MR. BOYCHUK: I'll -- if you please, Mr.
8 Commissioner, Chris Boychuk for Mr. Karst.

9 I think the issue is primarily
10 where Mr. Wolch fits in the order. I don't view
11 it as purely an adversarial thing, we've had a
12 debate on this before, I think particularly
13 looking at the transcript of Debbie Hall's
14 testimony at the Inquiry. And the issue of
15 order, I know, can be a fluid matter. We look at
16 in terms of, as I understood your ruling at that
17 time, that we would be looking at the parties who
18 are most affected by a witness' testimony.

19 In this case, given the
20 testimony that Mr. Asper has given, at least
21 we've come to an agreement amongst everybody but
22 Mr. Wolch that Mr. Frayer should probably go last
23 before Mr. Sorochan. A lot of Mr. Asper's
24 testimony dealt with the dealings between the
25 Milgaard group and the Department of Justice, the



1 federal Department of Justice, much of which was
2 fairly critical.

3 With respect to the rest of us,
4 leaving aside Mr. Wolch, we don't have a problem
5 sorting out our own order. Some of us, of
6 course, represent clients that have been
7 identified specifically by Mr. Asper as the "bad
8 guys" or "the enemy", I'm thinking particularly
9 of my client, Mr. Caldwell for example, maybe the
10 Saskatoon Police Service, the people who have
11 been identified, and of course Mr. Kujawa, but
12 Mr. Wilson has already gone.

13 And I guess the concern or the
14 issue is, with respect to this witness, I don't
15 know that there's much that can come out of our
16 questioning of Mr. Asper that really has a major
17 impact on Mr. Milgaard. Certainly, nobody is
18 going to be trying to get any information out of
19 Mr. Asper that casts a negative light on Mr.
20 Milgaard, who is Mr. Wolch's client.

21 On the other hand, of course,
22 Mr. Wolch, and who has worked with Mr. Asper in
23 the past as part of the Milgaard group, has made
24 a number of allegations of various -- of varying
25 severity against the bad guys, our clients, and



1 it's more likely, for example, that Mr. Wolch
2 would get something from this witness that might
3 call into question the conduct either of my
4 client, Ms. Knox's client, or Mr. Loran's client,
5 for example. So on that basis, and just on the
6 way of economy, we probably -- the argument is we
7 would go after Mr. Wolch so that we could respond
8 to any of those allegations he might bring out,
9 or any evidence to support those allegations that
10 he might bring out through Mr. Asper.

11 So leaving aside Ms. Krogan is
12 prepared to go first I think the rest of us, and
13 I speak I believe for Ms. Knox, I believe
14 Mr. O'Keefe too -- or it doesn't matter,
15 Mr. O'Keefe doesn't --

16 MR. O'KEEFE: It doesn't matter.

17 MR. BOYCHUK: But certainly for Ms. Knox,
18 Mr. Loran and myself, we feel that it's
19 appropriate, given the way our, the interests of
20 our clients have been engaged by this witness,
21 that we go after Mr. Wolch, and to allow us to
22 respond to any evidence or allegations he might
23 bring out against our clients. Thank you.

24 MR. WOLCH: Mr. Commissioner, the -- or it
25 may be possible to look at this as if there's



1 been lots of debate over this. The only person I
2 have spoken to that I recall is Mr. Frayer, in
3 terms of order of witnesses, and as I understood
4 it he and I reached an agreement yesterday when I
5 explained to him that firstly, the ruling of the
6 Commission has been consistently that those most
7 aligned in interest with the witness go last.
8 That is why I think I went first with every
9 police witness, for example. That has been the
10 ruling, you made that ruling in Deborah Hall, you
11 made it in Tom Vanin, and in several places.

12 The second rule that you made,
13 Mr. Commissioner, was that the people that are --
14 counsel with the same interests should not be
15 split, that is Mr. Lockyer and I, for example,
16 shouldn't be split if at all possible. There may
17 be exceptions but that was the general rule.

18 So, in terms of my
19 cross-examination of Mr. Asper, when Mr. Asper
20 finished direct I had none. I now have some
21 questions arising out of Mr. Wilson's cross.

22 I don't intend to raise
23 anything new, I intend to possibly explain things
24 raised by other counsel in my questioning of the
25 witnesses, and I explained that to Mr. Frayer



1 that, when it comes to his questioning of Mr.
2 Asper, I may have no questions regarding his
3 client unless there is something that arises new
4 out of what he asks of Mr. Asper. So I believe
5 he was content with that, and I think he can
6 speak for himself that that was the agreement we
7 reached yesterday when we talked about it I think
8 for the first time, or the first time seriously,
9 and that's what I thought the order would be.

10 So that at the end of the day,
11 my cross-examination will be brief, I expect, I
12 don't intend to go over anything again, unless
13 somebody raised something new. Mr. Wilson raised
14 a few new things that might take me five or ten
15 minutes to question on, they weren't covered in
16 direct, so I'm simply saying that the same rule
17 that we have had all along should be applied.

18 I wasn't happy going ahead, and
19 I think I voiced it several times, going ahead on
20 certain witnesses, including Mr. Karst, I would
21 have been much happier to go last, but I didn't,
22 I followed the rule. And I submit that (a) the
23 rule should still be followed, and (b) I believe
24 Mr. Frayer and I have an agreement as to the
25 order, so that's our position.



1 COMMISSIONER MacCALLUM: I'm not sure that
2 a rule was ever established. Parties aligned in
3 interest was certainly a consideration, also
4 parties most adversely affected by a witness'
5 testimony was a consideration.

6 Yes, did you have any?

7 MR. FRAYER: Yes, just to observe what
8 Mr. Wolch has said, Mr. Commissioner, he's
9 accurate in terms of the discussions that he and
10 I had yesterday, and I communicated those to
11 Commission Counsel late in the day. And the
12 position that I took at that time as a result of
13 that discussion, bearing in mind your
14 observations with respect to the non-adversarial
15 issue, is that I would go fourth-last, in other
16 words Mr. Sorochan would be last, with Mr. Wolch
17 or Ms. McLean, and myself in fourth position as
18 the fourth-last cross-examiner.

19 COMMISSIONER MacCALLUM: Anybody else?
20 Thank you.

21 The order of cross-examination
22 will be Mr. Wolch, I don't know what to do about
23 Mr. Pringle, I'm not prepared to say that he will
24 be allowed to cross-examine since he is not here
25 to make any representations in that respect.



1 MR. HODSON: I should -- I'm sorry, I did
2 have a discussion with Mr. Hopkins about that.

3 Mr. Pringle arranged to be here
4 tomorrow, he asked whether he needed to be here
5 today, he only had about 20 minutes and had
6 another commitment in Edmonton, and I indicated
7 that since we had Mr. Asper here for two days I
8 didn't foresee a problem with Mr. Pringle doing
9 it tomorrow, and so I -- that, and I think
10 certainly, if Mr. Pringle knew he had to be here
11 today to cross he would have been, so I may take
12 some responsibility for that.

13 COMMISSIONER MacCALLUM: Well, that's fine,
14 we'll just hear him whenever it seems convenient
15 then.

16 Ms. Knox, Mr. Boychuk,
17 Mr. Loran, Mr. Frayer, Mr. Sorochan.

18 MR. WOLCH: Mr. Commissioner, that raises a
19 practical problem for me. Because of the
20 conversation I had with Mr. Frayer, who told me
21 he would be, and I expect he will be, at least a
22 day, I have left my notes back at the hotel. I
23 never dreamt I'd be first, I thought we would be
24 going with the rule that you had established.

25 COMMISSIONER MacCALLUM: Don't argue it



1 again, please, I have had enough of this.

2 MR. WOLCH: I'm not arguing, I'm just
3 telling you --

4 COMMISSIONER MacCALLUM: Yes.

5 MR. WOLCH: -- that my notes are back at
6 the hotel.

7 COMMISSIONER MacCALLUM: Well, if you wish
8 to go back and get them, then somebody else can
9 start.

10 MR. WOLCH: I'd like to hear the
11 cross-examination.

12 COMMISSIONER MacCALLUM: Well, we're not
13 going to adjourn waiting for you to get your
14 notes.

15 MR. WOLCH: That's fine.

16 COMMISSIONER MacCALLUM: Who wants to go in
17 that order?

18 MS. KROGAN-STEVELY: Mr. Commissioner,
19 given that you didn't mention my name I just
20 assume that I'm able to begin first?

21 COMMISSIONER MacCALLUM: Ms. Krogan, I'm
22 sorry, I had you down, I wrote it down here, but
23 it was -- I had you before Mr. Frayer.

24 MS. KROGAN-STEVELY: Okay.

25 COMMISSIONER MacCALLUM: Just before



1 Mr. Frayer.

2 MS. KROGAN-STEVELY: Thanks. Thank you,
3 sir.

4 COMMISSIONER MacCALLUM: Is anybody ready
5 to go, then, right now?

6 MS. KROGAN-STEVELY: Mr. Commissioner, I do
7 have a funeral to attend tomorrow, so if I could
8 get on today, I would certainly appreciate that.

9 COMMISSIONER MacCALLUM: If that's all
10 right with your friends, I have no objection.

11 MS. KROGAN-STEVELY: Thank you, sir.

12 COMMISSIONER MacCALLUM: Go ahead, then.

13 **DAVID ALLAN ASPER, continued:**

14 **BY MS. KROGAN-STEVELY:**

15 Q Mr. Asper, my name is Lana Krogan, I represent the
16 Government of Saskatchewan in these proceedings
17 and I have three short areas to cover with you
18 this morning.

19 The first is, and my apologies
20 to staff, I didn't provide document numbers, I
21 presume it will be all right. The first document,
22 if we could, first area I would like to cover and
23 the first document, sir, is 331961. Sir, this is
24 a January 6th, 1981 letter to Mr. Gary Young who
25 was at that time of course representing Mr.



1 Milgaard and Mrs. Joyce Milgaard as I understand
2 it, the letter is from the chief of police, and if
3 we could just look, if that area could be called
4 up, please, and beginning right about here:

5 "If there is some justification for
6 re-examining this conviction --"

7 And this is in response -- well, perhaps I'll
8 read it:

9 "-- re-examining this conviction I feel
10 that the reasons for that must be
11 presented to the Attorney General's
12 Department and if necessary we will
13 certainly be prepared to discuss our
14 file with a representative of the
15 Attorney General's Department..."

16 That's one piece of correspondence that indicates
17 in response to a request to see their file, yes,
18 we will be co-operative, but please go through
19 the Attorney General's office. There is a
20 further document, I won't ask that it be brought
21 up, but just for the record it's 331932, and
22 again Chief Gibbon is ostensibly saying the same
23 thing to Mr. Young, if you would like to see our
24 file, we would be pleased to, but go through our
25 office.



1 COMMISSIONER MacCALLUM: 331. What was the
2 other one?

3 MS. KROGAN-STEVELY: The other one was
4 331932.

5 COMMISSIONER MacCALLUM: Okay.

6 MS. KROGAN-STEVELY:

7 **Q** There was interest at that time by the Milgaards
8 to see the file and obviously the message was, if
9 you want to see it, please contact the officials
10 from Saskatchewan Justice. I'm just wondering,
11 sir, in the course of your dealings with the files
12 during the time that you did, was there ever a
13 request made, insofar as you know, to Saskatchewan
14 Justice to look at the file?

15 **A** I don't believe directly. I believe we were
16 making our requests through the Department of
17 Justice.

18 **Q** The Federal Department?

19 **A** Federal Justice, yes.

20 **Q** But insofar as you know, nothing directly to
21 Saskatchewan Justice?

22 **A** I don't recall that, no.

23 **Q** All right, thank you. I just wanted to bring up a
24 few other documents if I could, 001637. This is a
25 letter from Mr. Wolch to Mr. Fred Dehm who was a



1 Crown prosecutor in the Saskatoon office. The
2 letter is dated October 6, 1987 and this letter
3 and a few others that I'll just ask be put up were
4 ostensibly conversations or correspondence
5 endeavouring to get the exhibits that were held at
6 the courthouse and this was presumably for the
7 analysis that your experts were to do on it. Now,
8 I raise this, 1987, you'll see that the, this is
9 actually a response from Fred Dehm to a letter of
10 September 22nd, 1987 and Mr. Dehm indicates:

11 "We believe that in a case of this
12 nature, it is only proper that the court
13 be allowed to make the decision..."

14 And:

15 "We will cooperate as far as possible.
16 If you have any questions, please don't
17 hesitate to contact..."

18 That's his response to a request for the
19 exhibits. And if you could call up 001609, a
20 letter shortly after November 9th, 1987, it's
21 from Mr. Wolch back to Fred Dehm. Could you
22 please -- the notice of motion is enclosed and
23 the last sentence reads:

24 "Could you please advise me as soon as
25 possible if you will consent to the



1 granting of the Order for release of the
2 exhibits."

3 And now I'll get to the document that I'll ask
4 the question on, sir, 001608, just call the body
5 of that out. This is the response from Mr. Dehm
6 to Mr. Wolch and the last line reads:

7 "We will certainly not oppose your
8 application. We only want to make sure
9 that the integrity of the exhibits are
10 preserved."

11 Now, I bring that, I raise these documents.
12 During the time of 1987, and in fact after that
13 there was contact with officials from the
14 Provincial Department of Justice and it appears,
15 and I wonder if you will agree with that, that
16 the officials at that time were certainly
17 co-operative with the requests that were being
18 made. Would you agree with me on that?

19 A Yes, for a very limited purpose. Yes, I would
20 agree.

21 Q Absolutely. And my point, sir, is that there was
22 contact, 1987, there appeared to be a favourable
23 response, and albeit in a very limited sense there
24 was one topic that was being dealt with, but
25 appeared to be co-operation; is that right?



1 A Yes.

2 Q Any reason then, sir, why perhaps later in the
3 '80s or early in the '90s that a request wouldn't
4 have been made to Saskatchewan Justice for that
5 information?

6 A Well, I think I've said before that it was our
7 view that it would be inappropriate, and we felt
8 it inappropriate, that Saskatchewan be called on
9 to effectively, or Saskatchewan Justice to look
10 into the conduct of its own agents.

11 Q Well, fair enough, sir, but that's different than
12 asking for information; would you agree with that?

13 A No, I wouldn't agree with it. Our view was that
14 the Federal Department of Justice should be the
15 repository of all of the information requests. I
16 could give you an answer right now that might seem
17 facetious, but Mr. Tallis also had asked for
18 information from justice at the time of the trial
19 and we know that wasn't entirely successful and
20 for the very same reason we went to an independent
21 party, we went to the Federal Department of
22 Justice to try to get everything.

23 Q I'm sorry, Mr. Tallis asked for information from
24 whom?

25 A The Crown attorney, from the department, from the



1 Attorney General at the time of the trial.

2 Q Oh, that's back to the disclosure issue.

3 A Well -- but that's why you ask for an independent
4 third party.

5 Q To make -- I certainly don't want to engage in a
6 debate, sir, but that's, I think, separate than
7 seeking just --

8 A No, the principle is the same.

9 Q Seeking the information from --

10 A The principle is the same.

11 Q And -- but, sir, there was no analysis that would
12 have been done on behalf of Saskatchewan Justice,
13 you were simply asking for documentation; is that
14 not correct?

15 A I understand that, and we went to a third
16 department, the Federal Department of Justice as a
17 neutral, independent party that could investigate
18 the possibility that there was a wrongful
19 conviction rather than having people investigated
20 or gather documents where there may be a conflict
21 of interest in disclosing the documents.

22 Q Sir, how would that be any different than
23 Saskatchewan Justice officials providing the
24 information directly to the federal government,
25 wouldn't the same logic apply?



1 A Well, that's a separate philosophical issue. I
2 happen to believe that the federal government
3 should have an independent -- that the federal
4 government shouldn't be conducting the inquiry
5 into wrongful convictions either, but at least
6 with the federal government we had someone who was
7 one step removed.

8 Q I'll leave that, sir. On April 17th when you were
9 testifying, if I could call up, this is from the
10 transcript of these proceedings, April 17th, 2006,
11 this is at page 26524, your comment on that date,
12 sir -- this is regarding obviously the role
13 Saskatchewan Justice was going to play in the
14 reference, and your comment is:

15 "I wasn't all together clear on the role
16 that Saskatchewan Justice was going to
17 play, and I'm not sure that -- and my
18 recollection may fail here --"

19 And I certainly accept that's a difficulty:

20 "-- I'm not sure that the Supreme Court
21 expected the type of adversarial
22 proceeding that it got."

23 Do you recall that, sir?

24 A Yes.

25 Q All right. If I could, then, ask that document



1 213342 be put on the screen, and actually page 2
2 of that document. Actually, I probably should
3 begin with the front page to identify it. Sir,
4 this is a memorandum from yourself to your client
5 Mr. Milgaard, this is regarding the Supreme Court
6 hearing, and Commission Counsel did cover this
7 with you, this is subsequent to a meeting with
8 Federal and Provincial Justice officials and
9 perhaps others as well. If we could turn to page
10 2 of the document, thank you. One of the topic
11 areas that you did identify to Mr. Milgaard or did
12 convey information about is, were the meetings in
13 Ottawa, and if I could -- I'll begin reading here:

14 "It is the view of the Department of
15 Justice --"

16 And I presume you meant Federal Justice and once
17 we read through this I think you'll agree with me
18 that's what your reference was:

19 "It is the view of the Department of
20 Justice that the proceeding should be
21 "adverse" in nature, meaning that there
22 will be two sides to the argument. This
23 is not surprising since one of the basic
24 principals of the criminal justice
25 system is that truth somehow is more



1 likely to emerge as the result of the
2 testing of witnesses through the
3 adversarial process. Consequently,
4 Saskatchewan will be taking the view
5 that your conviction was safe.

6 It would appear that the role
7 of the Department of Justice will
8 essentially be neutral, bearing in mind
9 that it is they who sought an opinion."

10 And you'll see the reference at the bottom to the
11 Department of Justice, that's what causes me to
12 believe that you were referring to the Federal
13 Department in the first instance. Would you
14 agree with that, sir?

15 A Yes, yes.

16 Q And would it be fair to say that you did have an
17 indication at that time, despite the fact that
18 your memory might have failed you when giving
19 evidence, that there was an indication that, of
20 the roles that would be played and that was
21 discussed prior to the reference; would you agree
22 with that?

23 A Yes, there's no question, and I have refreshed my
24 memory since testifying last week and I think
25 that's pretty clear, yes.



1 Q Certainly.

2 A Where I was confused actually was the Department
3 of Justice actually intervened at one point and
4 Justice Sopinka -- I was mixing metaphors and I
5 understand the roles now, yes.

6 Q Fair enough, and this is a point that I just
7 wished to clarify, Mr. Asper. And would you agree
8 with me that given your version of events, and
9 that's all I'm relying on at this point, it
10 appears as though that the federal government, the
11 adversarial approach taken by Saskatchewan was as
12 a result of a suggestion by the federal
13 government?

14 A Looks to be, yes.

15 Q All right. And might I also, I wonder if you
16 would agree with me, sir, that you appear to be
17 all right with that process just in the letter
18 that, and your reasoning being that if you've got
19 two opposing sides, you might get to somewhere in
20 the middle?

21 A I'm not sure I agreed with it, but I can certainly
22 understand it. I'm not sure I say that I agree
23 with it, I certainly acknowledge it, and explain
24 it. I don't know that I agree with it though.

25 Q Perhaps it's more fairly characterized that you



1 understand why the process was undertaken in that
2 fashion.

3 A Right, right.

4 Q Thank you. You'll be pleased to know that we're
5 into area 3, Mr. Asper, and this is the area of
6 Mr. Michael Breckenridge, and I do certainly
7 understand your view of that information and your
8 view of Mr. Breckenridge was certainly clear. I'm
9 wondering if you would just bear with me while we
10 go over just a very brief part of the information
11 that was available at that time.

12 A Sure.

13 Q 047265, I don't know how familiar you are, Mr.
14 Asper, with this document, it's dated September
15 12th, 1973 addressed to Mr. Breckenridge and this
16 is the offer of his employment with the Department
17 of the Attorney General. You are familiar with
18 that, sir?

19 A I don't think I've ever seen this, but I'm aware
20 of the timing certainly.

21 Q You are now aware of the timing?

22 A Yes.

23 Q Can you advise, sir, when you became aware of the
24 timing of Mr. Breckenridge's employment with the
25 Attorney General's office?



1 A I don't know, and I can't recall if it's in that
2 background report that Mr. Hodson showed me that I
3 don't even know if I ever even saw it, but
4 certainly since the Inquiry began I've certainly
5 learned this information. I can't remember if it
6 was before then, no.

7 Q And you can't remember if it was years before that
8 or not that you became aware?

9 A I don't recall that.

10 Q All right, fair enough, sir. 060923. Before you
11 do that, please, there appears to be a *Globe and*
12 *Mail* article from November 17th, 1992, Mr. Asper,
13 that's just a few months subsequent to the press
14 conference in which Mr. Wolch and Mrs. Milgaard
15 and Mr. David Milgaard participated. If we
16 could -- the paragraph, if that could be called
17 out, beginning here:

18 "An independent inquiry by *The Globe and*
19 *Mail* suggests that the source of the
20 allegations -- a former records clerk
21 who says he saw Mr. Romanow and senior
22 Crown officials meeting to discuss the
23 Milgaard and Fisher cases in tandem --
24 was not in the department at the
25 relevant time."



1 Would you agree with me, sir, it appears as
2 though *The Globe and Mail* at least has had, well,
3 very little difficulty in determining that
4 Mr. Breckenridge wasn't employed with the
5 department at that time?

6 A It would appear so, yes.

7 Q All right. The services of a private investigator
8 were engaged we've seen, Mr. Bob Perry. We see,
9 we understand that he has, after being engaged by
10 your firm, he spoke with Mr. Breckenridge once on
11 his own and then once with Mrs. Milgaard being
12 present; is that correct?

13 A That's what I gather, yes.

14 Q Mr. Asper, you were still around at that time we
15 understand because the report was returned to your
16 attention, is that correct, you have a memory of
17 being there at that time?

18 A That's correct, I believe I was physically in the
19 firm. I don't recall ever seeing that report
20 though.

21 Q Okay. My question, though, based on that, given
22 that he was requested to speak with
23 Mr. Breckenridge, wouldn't it have made sense to
24 do, in addition to what was done, two things, the
25 first of which being to ask him or to --



1 Mr. Breckenridge that is -- to provide some
2 confirmation of when he worked at the department,
3 would that not have been a prudent thing to do?

4 A I would think so, yes.

5 Q And secondly, sir, would you agree with me that it
6 also would have been extremely prudent, given the
7 statement that Mr. Breckenridge provided in which
8 he named other people, he identified other people
9 who were working with him, would it not have been
10 prudent to speak with those people, that is, to
11 ask Mr. Perry to endeavour to speak with those
12 people to get a statement?

13 A That would certainly have been something he could
14 have done, sure.

15 Q All right. 047271, and this is likely not a
16 document that you are familiar with, this is part
17 of Mr. Breckenridge's application to the
18 Department of Justice, provincial, for his
19 employment. He's was in high school, sir, in June
20 of 1972. Would you agree with me that your date
21 of your high school graduation at least, or the
22 time you are in high school is not something we
23 easily forget? Most of us -- let me put it this
24 way, sir. Most of us could recall, if asked, when
25 did you graduate from high school, it's not



1 something we would be counting on our fingers to
2 discern; would you agree with me?

3 A Yes, I would agree with you.

4 Q All right. And I would just like to point out as
5 well, sir, and I should ask you, were you aware of
6 Mr. Breckenridge being in high school in '72 when
7 he claimed to be employed with the department?

8 A No.

9 Q All right.

10 A No.

11 Q And I just would like to bring out that portion as
12 well, he's listing his employment history, which
13 certainly wasn't extensive at that time, and
14 you'll see for a month in 1971, again when he
15 claimed to be employed, he was working in Toronto.
16 Were you aware of that, sir?

17 A No.

18 Q Thank you. 159537, Mr. Asper, I'm asking be
19 brought -- the document that is being brought up
20 is the March 21st letter by Mr. Breckenridge to
21 Mr. Wolch, and this is the document that sort of
22 gets things rolling, if I can put it that way, and
23 if you would kindly bear with me, I would like to
24 just go through some of the contents of this
25 document, and, of course, as we all know,



1 Mr. Breckenridge said he was privy to information
2 about certain things that he passed along and this
3 is ostensibly having to do with the cover-up, and
4 I just wanted to look at this document with,
5 through an eye of, or eyes of common sense, if we
6 could, and ask for your comment on it, and in the
7 area that's been brought up:

8 "I remember delivering both cases --"
9 That is, both the Fisher and Milgaard cases,
10 "-- to Serge at the same time. The
11 general feeling in the Dept. at the time
12 was that these were to --"

13 And I think he's misspelled that, or just a
14 typographical error,

15 -- these were to high profile cases that
16 the N.D.P. could appear to get political
17 mileage from as part of there law and
18 order platform."

19 Mr. Asper, Mr. Breckenridge, his whole point in
20 contacting you was to say lookit, this Fisher
21 information has been suppressed. Is that not
22 incongruous with what he's saying here, these
23 were high profile cases, the government wanted to
24 get mileage from them, that's entirely contrary
25 it seems to me, and I'm asking whether or not you



1 agree with his view, that the government was
2 trying to suppress the information.

3 A I can't imagine what was in his mind.

4 Q Neither can I, sir, but I just wanted to go
5 through this document with you.

6 A I can't imagine what was in his mind.

7 Q And I certainly, and let me say again, I certainly
8 understand your position with respect to
9 Mr. Breckenridge and I appreciate your patience in
10 going through this document which is what I fully
11 intend to do.

12 A Sure.

13 Q And my other comment or question perhaps is that
14 Mr. Breckenridge is claiming that there was a
15 cover-up and yet there were a number of people,
16 and he expands the number of people who were aware
17 of this we'll see in the documentation. Can you
18 comment on how wise it would be, if there was a
19 cover-up, to include this many people in
20 conversations, including people who were carrying
21 files back and forth?

22 A That's an awkward question. My answer would be --
23 I'll give you one answer which is, doesn't make a
24 whole lot of sense to me. On the other hand, we
25 get to know about cover-ups, think of Watergate,



1 for example, where too many people knew about it
2 and it gets exposed, so I'm not sure that wisdom
3 always prevails in a cover-up, but if you are
4 asking if it makes sense? It doesn't make sense
5 as to me.

6 Q Would you agree with me that it's not wise to
7 include a whole bunch of people in a cover-up
8 situation?

9 A Sometimes there's a lot of people involved by
10 necessity. I'm not saying that's the case here,
11 but, you know, I'm just saying in the general
12 sense, and Watergate is a pretty good example of
13 that. The sponsorship scandal is a pretty good
14 example of that.

15 Q If we continue:

16 "They figured that since they were the
17 gov't nobody would ever question the
18 findings of their court system. Since
19 then, like now, their only objective was
20 to govern at any cost."

21 Is this starting to sound like a controversy
22 theory to you created by Mr. Breckenridge?

23 A Oh, I wouldn't say the only objective was to
24 govern at any cost in and of itself.

25 Q Perhaps I'm looking more at the statement before



1 that, sir.

2 A Yes. As I look at it now, it's a bit smelly, yes.

3 Q Thank you for that honest answer, sir. If we
4 could turn to the next page, then, and the first
5 paragraph:

6 "Today, I would suggest that there is a
7 cover up by the present administration
8 to hide the sins of the Blakeney
9 regime."

10 And here he includes more people.

11 "I would also suggest that the main
12 motivation is political as opposed to
13 legal. With people like Ned
14 Shillington, Louise Simard and Serge
15 Kujawa all part of both the present and
16 past regimes they have too much to
17 lose..."

18 And presumably the only reason that they would
19 have anything to lose is if they were part of his
20 alleged cover-up; would you agree with that?

21 A Yes.

22 Q And can you see how he's widening, there's sort of
23 a wide swath, a wider swath that's being cut in
24 this conspiracy theory; would you agree with that?

25 A Yes.



1 Q And further down:

2 "All of these people have deep rooted
3 beliefs that the system is more
4 important than any individual rights and
5 they will now do everything they can to
6 change the law to eliminate those
7 rights."

8 Does that sound suspiciously reminiscent of
9 something that Mr. Kujawa said publicly?

10 A I'm not going to get Mr. Wilson jumping up and
11 down here.

12 Q I'm sure he won't.

13 A In fact, as I read it now, the last three or four
14 words, "change the law to eliminate those rights,"
15 you know, I can just tell you, I know that that's
16 contrary to certainly the thinking of Blakeney and
17 Romanow and the other major politicians at the
18 time who were in fact actively engaged in the
19 Victoria constitutional discussions that would
20 have patriated a Charter of Rights.

21 Q Thank you, sir. And could we go back, does this
22 sound to you perhaps like the comment that Mr.
23 Kujawa had made publicly?

24 A Oh, in the first part, yes.

25 Q Yes.



1 A The first part, yes.

2 Q Thank you. And based upon that, I mean, again,
3 would there, should there have been, could there
4 have been a concern that this was being parroted
5 to gain the attention of yourself, Mr. Wolch, Mrs.
6 Milgaard?

7 A As I say, I don't recall dealing with this
8 material directly, but yes, I mean, certainly
9 it -- as you read it now, absolutely.

10 Q And that's all I'm asking, sir.

11 A Absolutely.

12 Q Given that you don't recall reading that --

13 A If you are asking as I read it now, the only thing
14 missing, frankly, for a certain file that I would
15 put it in are, you know, capital letters.

16 COMMISSIONER MacCALLUM: As you read it
17 now -- I'm sorry, your question was?

18 MS. KROGAN-STEVELY: My point being,
19 Mr. Commissioner, that if one analyses this
20 letter, and I'm going to use Mr. Asper's term,
21 it's smelly, if one looks at it through the eyes
22 of common sense right now, and the same could
23 have been the case in 1991 and two when this came
24 to light.

25 COMMISSIONER MacCALLUM: I wonder if you



1 could just repeat the question.

2 MS. KROGAN-STEVELY: Absolutely. Thank
3 you, Mr. Commissioner.

4 A Do you want me to --

5 BY MS. KROGAN-STEVELY:

6 Q No, I'll say the question again. Looking at this
7 now, because I appreciate you have no recall of
8 doing the analysis in 1992, pardon me, when this
9 was received, looking at this now through the eyes
10 of common sense, does it make much sense to you?

11 A No.

12 Q Thank you. And just -- thank you for bearing with
13 me, the last part of that letter:

14 "I would suggest you use all the
15 resources at your disposal to push for
16 an inquiry held by anyone outside the
17 N.D.P. system in Sask., B.C., Ont.,
18 otherwise it will never receive an
19 impartial hearing."

20 Again, he just seems to be expanding the
21 conspiracy theory; would you agree with that?

22 A It looks like it, yes.

23 Q Very briefly, 004012, it's dated -- it's a
24 statement by Mr. Breckenridge dated May 22nd,
25 1992, and as I understand the way the events



1 unfolded, Mr. Asper, is that Mr. Perry went to
2 speak with him and then requested a further
3 statement and I understand this is the product of
4 that request. If we could turn to the second page
5 of that, and again I'm just seeking your comment
6 on the internal soundness of this, of this
7 statement, if that could be called out, please:

8 "Also there was a paper shredder kept in
9 the ministers office that was used quite
10 extensively in cases of very sensitive
11 material that would do damage to the
12 gov't, in such cases, I was told that
13 the gov't would claim ignorance of this
14 matter thereby escaping any political
15 heat."

16 Sound like the conspiracy theory is growing, Mr.
17 Asper?

18 A Looks to be, yes.

19 Q Okay. I think, if you could go up a bit more,
20 please, beginning there. Thank you. I probably
21 put the line in the wrong spot.

22 "From the correspondence we were filing
23 our section was convinced that there was
24 error made in the Milgaard case and this
25 was brought to ..."



1 Serge's:

2 "... attention."

3 Now, Mr. Asper, it appears as though part of his
4 conclusion is based on materials that were
5 presumably being filed on both the, well
6 either/or both of the Milgaard, the David
7 Milgaard and the Larry Fisher files; would you
8 agree with that?

9 A I don't, well, I don't read necessarily that
10 there's information being filed on the -- by --
11 I'm not sure I understand your question, could you
12 repeat it again? It looks like they're getting
13 some correspondence that relates to the *Milgaard*
14 case.

15 Q "From correspondence we were filing ..."

16 A Right.

17 Q "... our section was convinced there was
18 an error made in the *Milgaard* case ..."?

19 A Right.

20 Q So they're getting, they're --

21 A Something.

22 Q He purports to be informed by information that is
23 going onto the files?

24 A Right.

25 Q Do you agree with that?



1 A Right.

2 Q Now, when you received disclosure from the
3 province in 1990, or just prior -- 1991, it would
4 have been December 1991, just prior to the
5 reference; and you did receive that from the
6 province, is that correct?

7 A Yes, yes.

8 Q When you looked at the files, did you see any such
9 correspondence that might remotely relate to what
10 he is referring to?

11 A I don't think so.

12 Q Okay. And without referring specifically -- and I
13 certain can, Mr. Asper -- to Mr. Perry's interview
14 or interviews of Mr. Breckenridge, would you agree
15 with me that he had some concerns about
16 Mr. Breckenridge's credibility?

17 A Based on the documents I've seen, yes.

18 Q Yes. And that's what I --

19 A Yes, oh yes.

20 Q And I could call those up, --

21 A Yes.

22 Q -- but I won't, if you are prepared to agree with
23 that statement?

24 A Yes. Yes, --

25 Q Okay.



1 A -- no question.

2 Q The last document is the document that begins
3 162465. And Mr. Asper, this is going to be the
4 draft press release, this was the cover letter
5 that attached, the next page, please, is your
6 letter to Mrs. Milgaard, and the next page of
7 course is the draft news release, and Commission
8 Counsel did go through that with you?

9 A Yes.

10 Q I just have a few questions, if we could go to
11 that:

12 "In addition to the letter-writing
13 campaign, the investigation into wrong
14 doing by the Government of Saskatchewan
15 has continued in earnest."

16 Do you have a memory of what you meant by that,
17 what investigation you refer to?

18 A No, I don't, I -- that may be the Robinson
19 investigation, I don't know. It may have been
20 some people associated with Mrs. Milgaard who were
21 doing -- continuing to do research. There was a
22 whole group of people that were assisting at the
23 time.

24 Q All right.

25 "The core group of volunteers in the



1 Winnipeg support group have continued
2 the analysis of government files ..."

3 Can you tell me, sir, what government files
4 members of the public might be viewing?

5 A I'm assuming that this would relate to some of the
6 disclosure from the Supreme Court, the Supreme
7 Court hearing.

8 Q And this disclosure provided by Saskatchewan
9 Justice was provided to members of the public?

10 A No, I would -- as I say, there was a core group of
11 people who were working with the firm to continue
12 the research associated with the case.

13 Q And were they volunteer persons or were they
14 being -- were they employed by the firm?

15 A I believe they were volunteers.

16 Q So they were members of the public, then, as
17 opposed to anyone, you know, perhaps a lawyer in
18 your firm or -- if I could make that distinction?

19 A No, they were non -- there were non-lawyers
20 working on the research, yes.

21 Q Okay. And finally:

22 "Investigators have been retained and
23 these matters are being pursued with
24 great vigour."

25 Mr. Asper, insofar as you knew, there were



1 interviews conducted by Mr. Perry; where is the
2 rest of the vigour?

3 A Well I don't know, as I say, this -- I don't
4 actually recall whether I had received something
5 and had toned it down and sent it back, or whether
6 this was an original version, but -- you know, and
7 no one -- and you can tell by the end of it where
8 I quote the Declaration of Independence, I don't
9 think I was attempting to be precise on this.

10 Q You weren't attempting to be precise?

11 A To be absolutely precise as though it was a
12 document that was going out for public
13 consumption. It was a draft.

14 Q Mr. Asper, what would the purpose of being
15 imprecise be?

16 A Well I, now having said that:

17 "... being pursued with great vigour.",
18 if you want to focus on that, I can tell you that
19 the attitude of Mrs. Milgaard, and certainly
20 Mr. Wolch, was to continue to keep the pressure
21 on this Government of Saskatchewan to call an
22 inquiry, and they were doing -- and they were
23 looking into every avenue that they could to
24 bring that pressure. So, if that's the 'vigour'
25 that you are referring to, that's what we were



1 doing. I wasn't involved with it, but that's
2 what they were doing.

3 Q No, I think the 'vigour' referred to the
4 investigator, sir, based on that document?

5 A Well, no, it says:

6 " Investigators have been retained and
7 these matters ...",
8 which I assume refers to the previous paragraph:
9 "... are being pursued with great
10 vigour.",
11 and I -- and they were.

12 Q Oh, well, sir, oh, then we have a difference on
13 the structure of that sentence. I took it to
14 mean, sir, that the investigators were pursuing it
15 with great vigour, but I could be in error on
16 that.

17 A "Investigators have been retained and
18 these matters ...",
19 "and these matters" can't really refer to
20 "investigators have been retained", because then
21 it means that it -- retaining investigators "are
22 being pursued with great vigour", it has to refer
23 to the previous paragraph, and that's what they
24 were trying to do. They were trying to put
25 pressure on the Government of Saskatchewan to get



1 an inquiry.

2 Q Even though the information might not have been
3 precise? I'm using your --

4 A Well, and they were trying to, I assume, to get
5 other information.

6 Q All right. By the time this press conference
7 occurred, Mr. Asper -- this was September of
8 1992 -- Mr. Perry has concerns -- and again I'm
9 basing it on the review of the documentation -- he
10 has concerns about Mr. Breckenridge's credibility
11 -- and stop me if you disagree with any of these
12 points -- Mr. Breckenridge's letter and statement
13 might not -- well, is kind of 'smelly', --

14 A Yes.

15 Q -- and thank you for that term; persons named by
16 Mr. Breckenridge, and those included Patricia
17 Styles, David Wollbaum, there was no follow-up
18 with them; fair enough?

19 A Yes.

20 Q And, finally, his employment status wasn't
21 checked?

22 A Right.

23 Q Is that fair?

24 A Right.

25 Q So on that basis, sir, can you comment on the



1 wisdom, then, or the propriety of holding a press
2 conference to advance Mr. Breckenridge's
3 allegations in light of these problems?

4 A Well, I wouldn't have done it.

5 Q You would have done it?

6 A I would not have done it.

7 Q You would not have done it? All right, that's
8 fair. And given -- and my last, this is my very
9 last comment -- given that you were seeking, if I
10 can put it this way, the assistance of the public
11 at large, Canadians, to get involved and to
12 support Mr. Milgaard in his plea to be released or
13 to be declared -- the innocence declaration, can
14 you tell me about how responsible it is then, on
15 that basis, given the objective, to be providing
16 them with information that might not be accurate?
17 How responsible is that?

18 A It's irresponsible and can backfire, and you can
19 see the -- if you go back to the *Globe and Mail*
20 column or article that, the news article that you
21 cited to me, you know, I can give you an example,
22 I can -- if you want to pull it up I can show you
23 how that could have played in a completely
24 different way and been horrendously damaging.

25 Q That's fine, sir, you did answer my question. And



1 I appreciate you answering my questions, thank
2 you.

3 **BY MR. WOLCH:**

4 **Q** Mr. Asper, I am Mr. Wolch for David Milgaard.

5 **A** I knew you when you were younger.

6 **Q** Hmm. I was your age.

7 I want to follow up on some of
8 the last questions, because I want to take you
9 back to the time, because I think you are looking
10 back at things now, perhaps, and not feeling what
11 was going on back then.

12 The Supreme Court hearing, that
13 was set very quickly, was it not?

14 **A** Yes.

15 **Q** In fact, we were swamped with information that we
16 hadn't had before, with all sorts of issues to
17 cover, witnesses to cross-examine, case to put
18 together, it was -- and this was all over
19 Christmas -- while divesting ourselves of other
20 commitments?

21 **A** Yes.

22 **Q** It was really a short leash?

23 **A** Yes.

24 **Q** And was it not also brought to your attention --

25 COMMISSIONER MacCALLUM: Excuse me,



1 Mr. Wolch, there's --

2 MR. LORAN: Mr. Commissioner, Pat Loran for
3 the Saskatoon Police Service.

4 The concern I have is Mr. Wolch
5 appears to be giving evidence in his
6 cross-examination. He's here as counsel and not
7 as a witness, and I just -- there's nothing
8 particularly concerning about the area he's
9 touching on but, generally speaking, I think
10 that's an area we have to be concerned about.

11 COMMISSIONER MacCALLUM: Thank you, sir.
12 Please continue, Mr. Wolch?

13 MR. WOLCH: My last question was?

14 COMMISSIONER MacCALLUM: The Supreme Court
15 hearing was set very quickly and we were pressed.

16 MR. WOLCH: But I said something about
17 "you", whether "you" --

18 COMMISSIONER MacCALLUM: Yeah, just be
19 cautious now. I'm sure there will be other
20 objections of that nature if you seem to be
21 testifying indirectly through the witness, if you
22 know what I mean.

23 MR. WOLCH: Yes. I wonder if the reporter
24 could read back the last question, I've lost my
25 train of thought, if it's possible?



1 BY THE COURT REPORTER:

2 "Q It was really a short leash?

3 "A Yes.

4 "Q And was it not also brought to your
5 attention --"

6 BY MR. WOLCH:

7 Q Yes. It was brought to your attention that the
8 time in the Supreme Court was exceptionally
9 precious?

10 A Yes, the Chief Justice made it abundantly clear
11 that this was going to be an expeditious hearing.

12 Q And you -- and it was clear you had to choose your
13 evidence carefully, to go with the more important,
14 as opposed to the less?

15 A There was no question about that.

16 Q That is, some witnesses here, perhaps even
17 yourself, have -- will have been on the stand
18 longer than the entire hearing was?

19 A Yes.

20 Q Time was really precious?

21 A Yes.

22 Q And it was also made clear that it wasn't a Royal
23 Commission, and even if misconduct was proved, it
24 didn't necessarily go to the guilt or innocence?

25 A That's correct.



1 Q If disclosure was not given, unless the disclosure
2 had importance in its own right, it didn't matter,
3 it had to have substance, and even if it had
4 substance, that's what was important, not the fact
5 that it wasn't given?

6 A I think that's correct, yes.

7 Q And that The Court would, under no circumstance,
8 made an adverse finding against Larry Fisher?

9 A That's absolutely correct, yes.

10 Q And this was the third Supreme Court reference in
11 history; correct?

12 A Yes.

13 Q The first was Mr. Coffin, who got executed, and
14 there are still many who think he was innocent?

15 A Yes.

16 Q There was, the second was Steven Truscott, which
17 was turned down eight to one with the Saskatchewan
18 judge being the one, and that matter is currently
19 under review with the current -- the previous
20 Minister of Justice feeling that it was a likely
21 miscarriage of justice?

22 A That's correct. It's a unique process.

23 Q Yes. So there had never been a successful one in
24 that Court?

25 A Yes, you are -- yes, that's correct.



1 Q And was there a time, do you recall, where you
2 raised the fact that you thought there might have
3 been police misconduct and you were chastised for
4 raising it, or do you recall?

5 A Yes, I believe when the infamous Mackie document
6 was disclosed I may have spoken with the media,
7 and the Chief Justice chastised me for doing that.

8 Q You were told that the police conduct wasn't an
9 issue?

10 A That's right.

11 Q So when the Supreme Court judgement came out, and
12 was interpreted to be a clearance of the police,
13 that was quite disturbing to you?

14 A It was very disturbing to me, yes.

15 Q It wasn't even investigated?

16 A That's correct.

17 Q Right?

18 A That's correct.

19 Q And, as far as the fairness of the trial, the
20 taker of the Nichol John statement wasn't even
21 called?

22 A Yes.

23 Q How Nichol John's statement effected the Milgaard
24 conviction wasn't even canvassed?

25 A That's correct.



1 Q It just simply wasn't an issue there?

2 A That's correct. Or more disturbingly, frankly, to
3 me, the non-disclosure of credible evidence that
4 directly contradicted it.

5 Q Yes. There was a comment in the judgement about
6 the disclosure practices of the time, but were the
7 disclosure practices of the time ever addressed?

8 A No.

9 Q Insofar as the parties were concerned, the
10 Department of Justice was represented by two
11 lawyers of whom I have the highest respect, but in
12 your opinion were they impartial in terms of what
13 side they were on?

14 A I actually think that I can rely on Justice
15 Sopinka's intervention, which I do recall, it was
16 quite a flash point during the proceedings. I
17 believe Mr. Fainstein was questioning one of the
18 witnesses, and Mr. Justice Sopinka interrupted the
19 proceedings and chastised the federal Department
20 of Justice for being so overtly partisan, and it
21 did surprise me at the aggressive nature of the
22 feds.

23 Q Well, Mr. Fainstein cross-examined David Milgaard?

24 A Yes.

25 Q Which, perhaps, is something you wouldn't expect



1 from the unbiased, or a party just marshalling
2 things?

3 A Well, there was some fast and loose with
4 semantics, I would call it. It was questioning,
5 not cross-examination, in the eyes of the
6 Department of Justice federal.

7 Q And did you take that to be just a continuation of
8 the attitude of Williams and Campbell and the
9 entire department, and Corbett?

10 A Oh, absolutely, yes.

11 Q It was quite clear, was it not, in your view, that
12 there was an alignment between Saskatchewan
13 Justice, the Federal Justice, and counsel for Mr.
14 Fisher, all there to uphold the conviction?

15 A There is no question that's what my impression
16 was.

17 Q So, at the end of the day, the decision of the
18 Supreme Court did free David Milgaard?

19 A Yes.

20 Q He was released from custody, and at that time you
21 had counsel for Fisher saying his client was
22 exonerated, and you had counsel for the police
23 saying they had been cleared, and counsel for the
24 Government of Saskatchewan saying they're all fine
25 too; everybody is fine?



1 A Yes.

2 Q Did it appear that anybody cared that there was a
3 killer on the loose?

4 A No.

5 Q Did it appear that anybody cared that a wrong man
6 may have spent 23 years in jail for a crime he
7 didn't commit?

8 A Perhaps even less so.

9 Q The attitude was appalling; was it not?

10 A Yes, in many ways remains so, in my opinion.

11 Q I note that counsel for Saskatchewan talks a lot
12 about Breckenridge, but let's talk about the
13 Minister of Justice, Mr. Mitchell.

14 A Yes.

15 Q Do you recall what he said about Mr. Milgaard?

16 A Yes I do.

17 Q What did he say?

18 A He said that he remained convinced of Milgaard's
19 guilt.

20 Q So the authority who spoke on behalf of the
21 government, even after the Supreme Court hearing,
22 said he believed that Milgaard was guilty even
23 though he wouldn't prosecute, and do you recall
24 the reason?

25 A I don't recall specifically.



1 Q Do you recall him, or at least the government,
2 saying "the witnesses aren't available"?

3 A Yes I do.

4 Q But of course --

5 A As the reason for not being able to prosecute?

6 Q Yes.

7 A Yes, yes. I found that ridiculous.

8 Q They're even available here, all these years
9 later, --

10 A Yes.

11 Q -- for the most part?

12 A Yes.

13 Q So it appeared that he was not telling the country
14 the truth?

15 A That was my impression, yes.

16 Q And he was doing what no Minister of Justice
17 should ever do, and that is offer a personal
18 opinion on the guilt of a person who has not been
19 convicted of a crime?

20 A I agree.

21 COMMISSIONER MacCALLUM: And how was he
22 doing that, sir?

23 BY MR. WOLCH:

24 Q He said Milgaard was guilty.

25 A He said -- he said -- he came out and publicly



1 declared his --

2 Q After staying the charge.

3 A -- he publicly declared his belief in the guilt of
4 David Milgaard.

5 Q And he was sued for defamation?

6 A Yes.

7 Q The bottom line was you were convinced, beyond any
8 doubt, that Larry Fisher did the crime; were you
9 not?

10 A Yes.

11 Q You were convinced that Larry Fisher was a
12 horrific danger to the community?

13 A Yes.

14 Q You were convinced that David Milgaard had been
15 horribly treated?

16 A Yes.

17 Q And yet everybody in government -- or not
18 everybody, but nearly everybody -- didn't seem to
19 care?

20 A Well it was, it was, Mr. Wolch, it was worse than
21 didn't care. There was gloating and declarations
22 of victory by certain sectors of the actors who
23 put David in jail wrongly and who missed Fisher.

24 Q Do you know what information Mitchell had to offer
25 an opinion that David was guilty?



1 A No I don't.

2 Q Do you know if he ever attended the Supreme Court
3 hearings?

4 A I don't believe he did, no.

5 Q So, if the government had its way and the police
6 had its way, the situation today would be David
7 would be walking around with a cloud over his
8 head, and the killer would be free, and the murder
9 never solved?

10 A I, you know, I -- Mr. Wolch, in -- as I think
11 about this over the years I find that really
12 shocking, especially the part about Fisher walking
13 free, but that's what the state of affairs was at
14 the time.

15 Q And the fact of the matter is Joyce Milgaard and
16 yourself, and people associated with the entire
17 case, were not prepared to let it fall down and
18 die, so to speak?

19 A That's true, although I was out of gas,
20 personally.

21 Q The real concerns at that time, based on the
22 Supreme Court decision in part that said the
23 information was available in October of 1970, was
24 that there had been some form of coverup?

25 A That's right.



1 Q Correct? And let me go back a step, because
2 previous counsel has asked you about disclosure
3 and how you should have gone here for disclosure
4 or there for disclosure and things like that; are
5 you aware that there was significant important
6 disclosure not even provided at the Supreme Court
7 level? And I'm talking about the RCMP
8 investigation into the -- into what turned out to
9 be Larry Fisher.

10 A Yes. I'm aware of, I believe, a report signed by
11 Inspector Riddell dated March 20th, '69.

12 Q There was Riddell, there was Rasmussen, there was
13 a whole bunch --

14 A And Rasmussen and Edmondson were the operatives.

15 Q Yes. Would that not have been extremely important
16 in the Supreme Court?

17 COMMISSIONER MacCALLUM: So your answer was
18 you were not aware of that?

19 A I was not aware of that. I became aware of that
20 after this Inquiry began, sir.

21 BY MR. WOLCH:

22 Q Do you know why Saskatchewan managed to provide it
23 here, but not to Mr. Tallis, and not to us at the
24 Supreme Court?

25 A No, I don't know why.



1 Q Would that have been, in your view, important for
2 the Supreme Court to hear?

3 A Yes.

4 Q It would have added tremendous credibility to the
5 assertion, the correct assertion, that Larry
6 Fisher was the killer?

7 A Well, and also, I think Inspector Riddell was the
8 one who took the statements, the original
9 statements from Ron Wilson, and so you've got the
10 same person who seems to be -- believe Wilson in
11 the sense that he is also now overseeing a
12 separate path of investigation.

13 Q So, when you are being asked questions here by
14 various counsel "why didn't you come and ask for
15 this and ask for that", they didn't even provide
16 it at the --

17 A Well --

18 Q -- Supreme Court level.

19 A Well, Mr. Wolch -- and I'm sure I'm going to get
20 into this with the counsel for Mr. Caldwell -- the
21 scope of non-disclosure -- and I appreciate that
22 the Supreme Court spoke on it -- as I look back on
23 it, just stuns me.

24 Q There was significant non-disclosure at the
25 Supreme Court level?



1 A I'm learning that.

2 COMMISSIONER MacCALLUM: How are you
3 learning that, that, sir?

4 A Well I'm going back and refreshing my memory of
5 the, of what the evidence was at the Supreme
6 Court, and then to find out that there was this
7 other RCMP report --

8 COMMISSIONER MacCALLUM: Oh.

9 A -- just sort of adds another layer to it.

10 BY MR. WOLCH:

11 Q So we turn, now, to that time after the Supreme
12 Court where you see what's going on, and you can
13 see the real killer going free, David being
14 smeared, and then along comes Breckenridge who
15 appears to be a testament to Saskatchewan
16 Government's hiring practices, he comes along --

17 MS. KROGAN-STEVELY: I hope Mr. Wolch
18 wasn't pointing at me when he says that?

19 MR. WOLCH: No, you're a good hire. I
20 wasn't, no. Mr. Hodson maybe.

21 BY MR. WOLCH:

22 Q In any event, he comes along and the focus seems
23 to be, here, "let's jump on Breckenridge" when,
24 really, the complaint was, was it not, all this
25 happened, how did it happen, let's have an



1 inquiry, Breckenridge is one more reason to look
2 in, if he's not valid, dismiss him?

3 A Yes, that's, I think that's the general approach.

4 Q It wasn't just Breckenridge in isolation, it was
5 "please explain how Mr. Karst went to Winnipeg for
6 both Milgaard and Fisher and couldn't put the two
7 together, how Mr. Kujawa couldn't put the two
8 files together even though he helped on the
9 Milgaard prosecution, how Mr. Caldwell got letters
10 about Fisher", all that was the real allegation,
11 with Breckenridge just being an addition?

12 A Yes. There is no question.

13 Q The desire was to open it up and have somebody
14 with half an impartial brain say "here's the real
15 killer"?

16 MR. BOYCHUK: Excuse me, Mr. Chairman. I
17 think Mr. Loran raised the issue, and we have
18 been fairly patient, I think we're -- we have
19 been listening to Mr. Wolch give evidence for the
20 last 10 or 15 minutes now.

21 COMMISSIONER MacCALLUM: Thanks.

22 MR. BOYCHUK: And all I'm hearing Mr. Asper
23 do is confirm everything he says.

24 MR. SOROCHAN: Mr. Commissioner, can I have
25 that mike left live, because I can't hear what



1 his objections are.

2 MR. BOYCHUK: It was just that Mr. Wolch
3 was giving evidence and Mr. Asper was --

4 COMMISSIONER MacCALLUM: Is the mike
5 working?

6 MS. KNOX: I'm not sure. Yes, it's
7 working.

8 COMMISSIONER MacCALLUM: Yes. It's one of
9 those mikes that you should keep close to your
10 mouth when you speak, so can you hear it now back
11 there, Mr. Sorochan? Say something, please.

12 MR. SOROCHAN: I'll speak up if I can't
13 hear it, but I can hear it now.

14 COMMISSIONER MacCALLUM: Yeah, okay.

15 MS. KNOX: Mr. Commissioner, I rise, and it
16 will reflect on this same point that Mr. Boychuk
17 makes, but it's an additional point, and it may
18 be that I am not hearing right and it may be that
19 in his listing or in his chronology of events
20 Mr. Wolch misstated himself, but he, I thought he
21 said about letters that Mr. Caldwell got about
22 Mr. Fisher, and there's no evidence in the record
23 anywhere -- if I'm hearing him right, and -- that
24 there were ever any letters sent to Mr. Caldwell
25 about Mr. Fisher. There was one telephone



1 request he received that generated a letter from
2 Chief Corey back to Mr. Kujawa, but there was
3 never any correspondence to Mr. Caldwell about
4 Mr. Fisher, if I'm recalling correctly.

5 MR. WOLCH: There's a letter that says, I
6 think, on instructions from Mr. Caldwell, so he
7 obviously had some involvement.

8 MS. KNOX: Yeah, and the evidence was that
9 Mr. Caldwell received a call saying is there
10 anything in your office about Fisher, he checked,
11 he didn't, he phoned the deputy chief or somebody
12 over at the police department, said I've got a
13 call, if you have any information on a person by
14 the name of Larry Fisher, send it to Mr. Kujawa,
15 but certainly no correspondence on his file or
16 anywhere.

17 MR. WOLCH: That was what was on my mind
18 when I raised that.

19 COMMISSIONER MacCALLUM: Yes. Now deal
20 with the objections if you wish to.

21 MR. WOLCH: I'm asking the witness
22 questions, he's answering the questions. If he
23 can't answer them on his own behalf, he'll say
24 so.

25 COMMISSIONER MacCALLUM: Yes, I think



1 that's the key. Mr. Wolch can hardly avoid
2 asking questions which are in the knowledge of
3 both he and the witness if they are relevant
4 questions and have been raised in evidence
5 before. However, it is incumbent upon both him
6 and the witness to make sure that the witness'
7 replies stem from his own knowledge and not from
8 any suggestion of Mr. Wolch.

9 MR. WOLCH: Absolutely.

10 COMMISSIONER MacCALLUM: Right.

11 BY MR. WOLCH:

12 Q What I'm saying is at that time in your mind and
13 Mrs. Milgaard's mind in particular was a feeling
14 of frustration and a feeling that something had to
15 be done to get this matter re-opened?

16 A Yes, I think that's fair. We were -- I was -- I
17 think we were all very, very frustrated at the
18 outcome of the Supreme Court hearing and we were
19 insistent that somebody do something to get to the
20 bottom of what happened.

21 Q And possibly determine that Fisher was guilty?

22 A Absolutely.

23 Q Or at least there was a case against him?

24 A Absolutely.

25 Q You were of the view he could be prosecuted; were



1 you not?

2 A I was.

3 Q You were of the view that based on the evidence,
4 that is, the similar act evidence, the location
5 and plus maybe three confessions in jail, that
6 there was a case against him?

7 A Yes.

8 Q And you were flabbergasted that the authorities
9 didn't seem to grasp that?

10 A It amazed me, that's true.

11 Q And then Breckenridge came along with allegations
12 that could be disproved or not as time went on?

13 A Yes.

14 Q His statement is certainly, I would suggest, on
15 the face of it, more credible than Nichol John's
16 statement.

17 A We're comparing items that are best both discarded
18 in my view.

19 Q Yeah. And as a result, there was somewhat of an
20 inquiry into what occurred?

21 A I understand that, yes.

22 Q And I don't know, are you aware of, I don't know
23 the timing of it, but Ms. Campbell wrote a book
24 around then I think. Are you aware of that? I'm
25 not sure of the date, I really don't know.



1 A I understand she wrote a book. I have not looked
2 at it.

3 Q Okay. If you didn't look at it, there's no point
4 in my asking you questions. Were you able to come
5 to grips as to why you and a number of others,
6 including media, could look at this case and say
7 we know Fisher did it and the case against David
8 is nothing to the authorities, from the Provincial
9 Minister of Justice to the Federal Minister of
10 Justice all saying basically either he was guilty
11 or we're not sure, or all these damning comments.
12 Do you have any idea or can you help us as to why
13 people, supposedly all looking at it coming from
14 reasonable positions, can be so diverse on
15 something like that that to you seem so obvious?

16 A Well, I think what we saw, as I've said before, I
17 think in a nation forum that we now have a word
18 for, is tunnel vision. What we saw from the
19 authorities was an absolute commitment to an
20 outcome that had occurred irrespective of the
21 propriety of that outcome, because the
22 consequences of departing from that outcome
23 require the admission of fallibility and mistakes
24 and we all too often see in the case of wrongful
25 convictions where the state and its actors are



1 unwilling, absolutely unwilling to do that, and I
2 just don't understand it, but I think that's what
3 happened.

4 Now, having said that, I will
5 also tell you that I believe that the flawed
6 process that we felt we had to engage in made it
7 more difficult because of all the publicity for
8 the people who were involved to step up and take
9 responsibility. Now, that may be illusory because
10 if you step up and take responsibility, there's
11 going to be lots of publicity anyway, but it may
12 have been an inhibiting factor.

13 MR. WOLCH: Mr. Commissioner, I'm happy to
14 keep going. It's a natural place for a break,
15 but I don't mind continuing. I'm in your hands.

16 COMMISSIONER MacCALLUM: Oh, you can go
17 until 10:30 if you like.

18 BY MR. WOLCH:

19 Q I want to turn a bit to some of the questions that
20 Mr. Wilson asked you, and I recall he told you or
21 mentioned the story about some sheep and a train
22 going by. Do you recall that?

23 A Yes.

24 Q That the sheep goes by --

25 A The train goes by.



1 Q The train goes by and the other side of the sheep
2 is shorn on one side, but you can't presume it's
3 shorn on the other side. Do you remember that?

4 A Yes.

5 Q Now, that might be a very glossy way of looking at
6 something, sort of a black and white kind of
7 thing, but would you agree with me that those
8 sheep would have to stay still for weeks to have
9 that happen, they couldn't move around?

10 A Well, actually, Mr. Wolch, there's a more simple
11 explanation, is how many times have you seen a
12 half shorn sheep.

13 Q Well, that's part of it, and also, they also have
14 to face the same direction and for weeks they have
15 to stay firmly planted on the ground, they can't
16 even move around and face the other way?

17 A I could have been far more argumentative.

18 COMMISSIONER MacCALLUM: See what you've
19 started, Mr. Wilson.

20 MR. WILSON: Obviously the example was far
21 too profound for Mr. Wolch.

22 BY MR. WOLCH:

23 Q What I'm saying is one has to look a little closer
24 and use their heads to figure something out.

25 A Yes.



1 Q Right?

2 A Yes.

3 Q And you can go a little further than just closing
4 your eyes?

5 A Yes.

6 Q Mr. Wilson on several occasions talked to you
7 about your experience?

8 A Yes.

9 Q And how much you knew and whatever, and that also
10 comes into play earlier when you mentioned you had
11 certain views of how to approach the Department of
12 Justice and others in the firm had different?

13 A Yes.

14 Q Correct?

15 A Yes.

16 Q The fact of the matter is, you had considerable
17 guidance in the firm?

18 A Yes, absolutely.

19 Q Even though you were relatively young and even
20 though you had been to the Court of Appeal, you
21 had done jury trials, you had available in the
22 office, for example, helping you on this would
23 have been the current director of constitutional
24 law for the Province of Manitoba?

25 A Yes.



1 COMMISSIONER MacCALLUM: Mr. Wolch, this
2 gets to be a point of some importance and I think
3 I would feel better if you asked him what
4 resources were available to him in the firm
5 rather than listing them yourself and asking him
6 to agree. Would you do that, please?

7 BY MR. WOLCH:

8 Q Yes. I may have to help you in terms of
9 professing yourself, but go ahead.

10 A Well, look, I mean, we had what I considered to be
11 a great team of top-flight lawyers, so Heather
12 Leonoff, who I believe is now the director of
13 constitutional law for the Province of Manitoba,
14 was clearly involved with our top level advisory
15 group; John Scurfield, who is now a justice of the
16 Court of Queen's Bench in Manitoba, was also quite
17 involved; Sheldon Pinx, who I believe is a former
18 president of the Criminal Defence Lawyers
19 Association of Canada --

20 COMMISSIONER MacCALLUM: Would that be
21 P-I-N-X or P-Y?

22 A Yes, sir, P-I-N-X -- was actively involved. Tim
23 Killeen who is I think a former president of the
24 Law Society of Manitoba was activity involved, I
25 think Robert Tapper assisted as well, and a legion



1 of everyone else, all the juniors and everyone at
2 my level in the firm. You know, everybody was
3 busy, but certainly this was a case that was very
4 topical.

5 Q I'm not sure, but did the current chief judge of
6 the Provincial Court help you at all?

7 A He did actually. He was a Crown attorney at the
8 time and was of some assistance.

9 Q So you had considerable people to --

10 A I was not out on my own.

11 Q Right.

12 COMMISSIONER MacCALLUM: You haven't
13 mentioned Mr. Wolch.

14 MR. WOLCH: He's not supposed to mention
15 me.

16 A His arm came out of the office plenty.

17 BY MR. WOLCH:

18 Q So you had the, for example, the -- you thought
19 that the first application to the minister should
20 put in virtually everything?

21 A I did.

22 Q Correct?

23 A Yes.

24 Q But the conventional wisdom was don't?

25 A You guys did a Garrett Wilson on me.



1 Q Well, what I'm saying is --

2 A Yes, I had a view and it went through Ms. Leonoff,
3 it went through yourself, it went through, I
4 believe, Mr. Killeen, and more experienced people
5 made the decision.

6 Q In order to get the attention, it had to be
7 something new --

8 A Yes.

9 Q -- right, to re-argue the case? They will say you
10 are re-arguing the case, it has been heard; right?

11 A Do you want to have this debate again?

12 Q They are going to come back and say you've argued
13 it before?

14 A This is the debate that we had.

15 Q Right. And the hope was you put in the new and
16 they come back and ask you for the rest?

17 A Right.

18 Q Simple as that?

19 A Right, and I think I've described that to Mr.
20 Hodson, the hope was we could find some new and it
21 would open the door.

22 Q And then they come to you asking for stuff and
23 then they can take credit for showing how bad the
24 case is?

25 A Well, that's -- that was the theory.



1 Q Yeah, that's what was hoped to happen?

2 A That was the theory, yes.

3 Q But if you put it all in at once, the new gets
4 buried in the old, that was the theory, right or
5 wrong?

6 A Right, that was the prevailing view, yes.

7 Q But getting back to Mr. Wilson's question, it
8 wasn't like you were just fresh out of law school
9 left on your own devices, you did tons of work,
10 but you had all sorts of people helping you?

11 A Without a doubt, yes.

12 Q And this was all being done for nothing?

13 A Yes.

14 Q Better your time than somebody else's.

15 A Thanks.

16 COMMISSIONER MacCALLUM: If you are through
17 damning your former associate by faint praise,
18 we'll take our break.

19 *(Adjourned at 10:30 p.m.)*

20 *(Reconvened at 10:47 a.m.)*

21 BY MR. WOLCH:

22 Q Mr. Asper, there have been a number of questions
23 directed at you and at other witnesses bringing in
24 the word conspiracy theory and the word conspiracy
25 and the word cover-up has been used. In order for



1 there to be a cover-up, how many people are
2 required?

3 A Well, I guess you need the original actor and one
4 other person who knows what happened.

5 Q And if no other person knows what happened, it
6 requires one person?

7 A That's right.

8 Q So that when we talk about conspiracy theories and
9 all that, we're not really focusing where we
10 should be focusing I would suggest here, when all
11 it would take is one person to knowingly do it or
12 others to not notice?

13 A Right.

14 Q Or -- it doesn't require people to sit down and
15 have a big meeting and say we're going to cover up
16 or we're going to do this or that?

17 A I think I said that in response to questions from
18 Mr. Wilson or Mr. Hodson, it could be a very small
19 number of people in this case, if it happened.

20 Q Yeah. For example, I'm not going to go through it
21 all, but you had Detective Karst who may or may
22 not have deliberately not brought information to
23 others' attention or made a connection, you have
24 other people that may or may not have put it
25 together either, some may be deliberate, some may



1 not be deliberate?

2 A That's correct.

3 Q But the end result is vital information didn't get
4 out?

5 A No question.

6 Q And Mr. Wilson spent some time with you on
7 reputation, the reputations of various people, and
8 we've heard it from other counsel as well in
9 talking about their clients and great reputations,
10 good reputations, etcetera, etcetera. Now, I hope
11 I'm not misquoting him, or the evidence, but as I
12 understand it, Mr. Kujawa's position is that on
13 the Milgaard case he only had the transcript and
14 the indictment, this is what -- I think I'm right.
15 I'll sure he'll rise if I'm wrong.

16 A I think that's correct.

17 MR. HODSON: Notice of Appeal.

18 MR. WOLCH: Sorry?

19 MR. HODSON: Notice of Appeal.

20 BY MR. WOLCH:

21 Q Notice of Appeal, sorry, Notice of Appeal and
22 transcript. And in the Fisher case he did not
23 have any police files?

24 A I think that's what he said, yes.

25 Q Now, you as the young lawyer looking at that,



1 would you expect that to be the case back then?

2 A No.

3 Q That is, I'm suggesting --

4 A No, I would have thought that if Mr. Kujawa was
5 prosecuting Mr. Fisher's guilty plea, that he
6 would have police files on Mr. Fisher's conduct or
7 certainly police files for prosecutor -- not
8 necessarily all the files, but the prosecution
9 part of the police files, and potentially more
10 regarding the Milgaard appeal.

11 Q Well, you would expect him to have Nichol John's
12 statement?

13 A For the appeal I'm not sure.

14 COMMISSIONER MacCALLUM: What are we
15 talking about here now, Fisher guilty pleas or --

16 BY MR. WOLCH:

17 Q I'm sorry, for the Milgaard case. When he's doing
18 the Milgaard appeal, you would expect him to have
19 the police reports?

20 A I'm not sure I can say that, Mr. Wolch.

21 Q All right. If Nichol John's statement was an
22 issue, would you not expect him to have that and
23 the surrounding circumstances?

24 A I would do it probably, but I can't say --

25 Q You are a junior. Would you expect the senior,



1 highly reputable, hard working lawyer to have that
2 material?

3 A Not necessarily.

4 Q You were asked by Mr. Wilson several times why you
5 wouldn't just hop in your car, drive down to
6 Regina, walk in, see Mr. Kujawa and say here it
7 is, help me out; correct?

8 A Yes.

9 Q And having looked at the entire case, what do you
10 think would have happened if you walked in and saw
11 Mr. Kujawa and said here's Debbie Hall, here's Dr.
12 Ferris, what would you expect to have happened if
13 you did that?

14 A I don't want to sound facetious, but I suspect Mr.
15 Kujawa would have probably put his lengthy arm
16 around me and given me a father and son like chat
17 about how the criminal justice system works and
18 tell me about the integrity of the conviction.

19 COMMISSIONER MacCALLUM: Having seen the
20 entire case, I think that was the question, but
21 it seems to me the more apt question is what
22 would you have expected then, back in 1991, when
23 you got working on it, or 1990.

24 A What would I have expected them?

25 COMMISSIONER MacCALLUM: Uh-huh, yeah,



1 we're interested in why you didn't go to see him,
2 at least somebody was interested, so it really
3 doesn't matter what you think might have been his
4 reaction, it's your state of mind at the time.

5 A No, that is what I think his reaction would have
6 been at the time.

7 COMMISSIONER MacCALLUM: Okay.

8 BY MR. WOLCH:

9 Q I just want to draw your attention, for example,
10 to document 033005. This is a memo from Murray
11 Brown, the director of appeals, and a person you
12 know, to the Deputy Minister of Justice, and if I
13 can just highlight, and this is July of '97 after
14 the DNA, where it says:

15 "Apparently, Serge's view is that you
16 can get experts to say anything you want
17 and this is just another case of that.

18 Sy thinks he has Serge under control for
19 the time being and will stay in touch
20 with him to ensure he remembers to keep
21 his mouth shut."

22 What I'm pointing out to you is this is after the
23 DNA and all the evidence that went before it, so
24 what I'm suggesting is that this was his attitude
25 after DNA and all the circumstances that you



1 really wouldn't expect, back in the early days, a
2 Debbie Hall and Ferris would have had very much
3 of an impression?

4 A I suspect that's correct, but, you know, I just go
5 back to -- frankly, I guess it was the underlying
6 rationale, but as you well know, my view was that
7 our remedy lay with the Federal Department of
8 Justice, period, end of discussion.

9 Q Yeah, and they would be able to get disclosure
10 better than you could or anybody else?

11 A That was --

12 Q They would have the access to it?

13 A That was the hope, yes, and as I've said, it puts
14 the actors from Saskatchewan, and it creates a
15 conflict of interest, in a potentially very
16 difficult position.

17 Q We heard a fair bit about reputation and good
18 reputations, I think you said you had the highest
19 regard for the Winnipeg police and the Saskatoon
20 police and it may be that I share your view.

21 A Yes.

22 Q But that doesn't mean that mistakes don't happen?

23 A That's correct.

24 Q And you said you had the highest regard for the,
25 for example, for the Winnipeg police you were



1 asked?

2 A Yes.

3 Q Okay. Are you familiar with the, perhaps the
4 leading case on fresh evidence called *Stoler*?

5 A Yes.

6 Q And is it not a fact that was a Winnipeg police
7 officer convicted of murder?

8 A Yes.

9 Q And there have been inquiries in Winnipeg as to
10 the police department, there was the Hughes
11 Inquiry?

12 A Yes.

13 Q The Frampton Inquiry into police misconduct?

14 A Yes.

15 Q The Inquiry into the J.J. Harper shooting?

16 A Yes.

17 Q Mr. Wilson said maybe go to Dauphin, or The Pas I
18 think, that was the *Betty Osborne* case; right?

19 A Yes.

20 Q Right?

21 A Yes.

22 Q Those are all examples where police misconduct was
23 found to be occurring?

24 A Yes, and I think I've also indicated I provided
25 one of the early opinions on the *Driscoll* case



1 which, for Mr. Wilson's edification I guess,
2 involves perhaps the most senior prosecutor in
3 Manitoba at the time and currently.

4 Q There's not only *Driscoll*, there's *Sophonow*?

5 A And *Sophonow*.

6 Q And there soon will be Unger?

7 A Yes.

8 Q And those are all cases in Winnipeg?

9 A Yes.

10 Q And you can still hold the police department in
11 high regard as we do?

12 A Absolutely.

13 Q But people do bad things?

14 A And the department of prosecutions and the
15 Department of Justice. My view, and I've said it,
16 is that openness and honesty in these wrongful
17 conviction cases on everybody's part, including --
18 and particularly police and prosecution, fosters a
19 positive view of administration of justice rather
20 than the opposite, which is too often the feeling,
21 that if you admit a mistake, people will have less
22 respect for the system.

23 Q There are thousands and thousands of police
24 officers and prosecutors, all of whom deserve
25 kudos for how they carry on their jobs?



1 A Yes.

2 Q There are some that don't?

3 A But the people who make a mistake who own up to it
4 are worthy of forgiveness and so they can join the
5 first class of people you talked about.

6 Q What I'm saying is that just to say somebody has a
7 good reputation is not an answer to specific --
8 specifics of possible wrongdoing?

9 A Not at all.

10 Q The final area that I wish to pursue with you is
11 the one touching on your current status, I guess
12 it is, as a media baron, whatever that means. I
13 think you fairly pointed out that when this case
14 was evolving, you weren't connected really with
15 the media; would that be fair?

16 A That's correct. My experience at that point was
17 purely on the technical and operations side.

18 Q That is, you know, those media outlets that took
19 up the cause such as the *Winnipeg Free Press*, *The*
20 *Globe and Mail*, *Toronto Star* -- I'm probably
21 missing some.

22 A CBC.

23 Q CBC. That was a big miss.

24 A CTV.

25 Q CTV. If anything, if you -- they would either be



1 negatively drawn to you if they knew you were
2 going to be involved in what you are involved now,
3 they are not -- they are your competitors?

4 A That's true.

5 Q And --

6 A People at Global were furious with me because they
7 were deliberately, I deliberately did not want to
8 put them under any pressure.

9 Q And I want to talk a little bit about media
10 because it's not very often we have this
11 opportunity. It seems -- I think the suggestion
12 has been made that it's easy to use the media and,
13 with respect, I think that's absolutely not true.

14 A I agree with you, and I've said in my evidence it
15 is a huge risk.

16 Q More than a risk, if you come with a story, you
17 are not going to get front page.

18 A That's right, you can simply be rejected.

19 Q I mean, for example, if a Larry Fisher today
20 decided to mount a campaign, what's there to do,
21 come to a reporter and say give me front page?
22 You have to have something to bring.

23 A That's correct.

24 Q And the media aren't going to go investigating
25 unless there's a story there?



1 A That's correct, and it goes through, certainly in
2 the print side, at least two levels of review
3 before, you know, the journalist is assigned, you
4 know, to do any significant work on the story.

5 Q But a number of people in the media got, the word
6 obsessed is too strong perhaps, with the case
7 because they believed they were seeing an
8 injustice?

9 A I believe that's true, yes.

10 Q And it wasn't persuasion, it was reading facts?

11 A Yes.

12 Q So I really have difficulty with 'using the media'
13 concept. What I am saying is, if there is a
14 story, the media will publish it?

15 A Well, okay, but to be fair the difference is --
16 and, you know, I mean Mr. Wilson showed us the
17 Minister's decision in the Thatcher application.
18 You can employ, as a tactic, the attempt to try to
19 get the media interested, or not, and in our case
20 we made a decision. We didn't have to, and this
21 case could have never been covered, which in my
22 opinion was not serving the best interests of our
23 client, and I think that was your view as well.

24 Q Without the media it would appear the 690 never
25 would have gone ahead?



1 A That is true.

2 Q Because it needed public pressure?

3 A That is correct.

4 Q And that's a shame, but a fact?

5 A Yes, it is a -- yes, it's a shame.

6 Q But the fact is if, tomorrow, the media find out
7 about a possible wrongdoing they will publicize
8 it?

9 A That's true.

10 COMMISSIONER MacCALLUM: What does that
11 question mean? I just don't understand?

12 BY MR. WOLCH:

13 Q Well, it's not like it's solely up to the accused
14 or his counsel, if the media get the story from
15 whatever source they're gonna do it. If there is
16 somebody in jail right now who is wrongly
17 convicted -- and I could name several -- if the
18 media catches onto it they're gonna publish it?

19 A Well I -- you can give -- you can use the example,
20 *60 Minutes* for example, the American investigative
21 journalism program has, I believe, done programs
22 on at least one that I can recall, I believe it
23 was a robbery case in the United States, where the
24 person who was wrongly convicted contacted a
25 producer and they did a story and actually broke



1 the whole case open. I mean it's a journalistic
2 decision.

3 Q Because part of the problem is that most people
4 who profess to be wrongly convicted, and some are,
5 have no resources?

6 A That is true.

7 Q And the media will go out and investigate, get
8 information, and perhaps even break the case open?

9 A That's what happened with our case. It's not a
10 very clean way to do it, but that's, that's what
11 happened.

12 Q Right. And, just turning that around a little
13 bit, I'm gonna say to you and suggest to you, that
14 it is somewhat hypocritical for the authorities to
15 come down on the media when they spot a wrongful
16 conviction given how much the authorities use the
17 media to their own benefit?

18 A Yes, that -- yes, there is no question about that.
19 I find it somewhat amusing.

20 Q Well, when somebody is arrested it's trumpeted all
21 over the paper?

22 A Well, look, I mean don't -- you don't even need to
23 resort to hypothetical examples. Look at David
24 Milgaard's preliminary inquiry, look at the
25 reporting of David Milgaard's preliminary inquiry.



1 The new law regarding the ban on publications had
2 been adopted, just had not been proclaimed, and
3 the theory behind the law obviously was that
4 publication of the evidence at a preliminary
5 inquiry might taint the jury pool. Parliament had
6 spoken on it, but the ban was not levied during
7 David's preliminary inquiry, notwithstanding the
8 fact that it was law, or about to be proclaimed as
9 law. In fact, I think it became law in the middle
10 of the preliminary inquiry. So you've got a
11 series of headlines through the preliminary
12 inquiry in a fairly small community, fairly
13 sensational headlines, talking about all of the
14 evidence at the preliminary inquiry.

15 COMMISSIONER MacCALLUM: But, Mr. Asper, I
16 think the question turned on what the questioner
17 really saw as hypocrisy. He is suggesting to you
18 that the authorities actively sought the
19 coverage; do you know that to be the case?

20 A Oh, I see. Oh, I see. Oh, I'm not suggesting
21 they did during the preliminary inquiry. But yes,
22 it's true, generally. Absolutely, when there is a
23 major arrest, --

24 COMMISSIONER MacCALLUM: Well --

25 A -- it's called a "perp walk".



1 COMMISSIONER MacCALLUM: It's called a
2 which?

3 A Perp walk. When the authorities catch somebody
4 they very often make sure that the media get lots
5 of camera access to the suspect as the person is
6 in handcuffs and being paraded from a vehicle to a
7 building.

8 BY MR. WOLCH:

9 Q Well that was the Hughes Inquiry, was it not, that
10 was the inquiry into the arrest of a lawyer when
11 the police advised the media that they were coming
12 to his office, "have your cameramen there"?

13 A Yes.

14 Q And most police forces -- and you will know this
15 better than I -- have media spokespersons?

16 A Yes.

17 Q That, actually, their full-time job is to -- I
18 think, or close to full-time job -- is to advise
19 the media on behalf of the press?

20 A Yes.

21 Q And the --

22 COMMISSIONER MacCALLUM: But Mr. Wolch, you
23 have to ask why they're doing that, is that
24 because they want to or because they feel that
25 they have to manage the requests that are coming



1 in from the media for coverage all the time.

2 MR. WOLCH: I go back --

3 COMMISSIONER MacCALLUM: In any case, it's
4 not something that we have any evidence that
5 happened here.

6 BY MR. WOLCH:

7 Q No, but what I am saying is that you go with that,
8 and the Crown attorneys have spokespeople, at
9 least I see them in Vancouver all the time?

10 A Yes.

11 Q And so they're all media conscious; agree?

12 A There is no question about that. I work with the,
13 with various law societies and judicial councils
14 to deal with that issue.

15 Q But what I'm getting at is why there is suddenly
16 such a, "oh my goodness, the accused is
17 proclaiming innocence", why is there so much --

18 A Well, look, I --

19 Q -- backlash on that when the prosecution many
20 times, or the authorities, have somebody convicted
21 in the media before they even come close to the
22 courtroom?

23 A I will tell you that, in my opinion, the state,
24 which of course never goes to jail, gets pretty
25 much a free run against accused persons, whether



1 it's the police or the prosecution, and I don't
2 think it's surprising that the state doesn't like
3 it when the accused person achieves parity or
4 superiority in combatting and rebutting what the
5 state is saying about him or her. I don't think
6 the state likes that.

7 And if you want to get into a
8 philosophical discussion, I don't like the state,
9 I think the state can be a bully.

10 **Q** Well, I think you're getting -- what I am saying
11 to you is this; there's all this discussion about
12 use of media in this case to get the accused's
13 story out that he is wrongly convicted, people can
14 judge for themselves, here are the facts, and you
15 have all this backlash about, "oh you shouldn't be
16 doing that", or whatever, when obviously it
17 achieved a noble purpose. And there is no talk
18 about printing so and so was arrested for
19 molestation, so and so was arrested for this,
20 putting the name all over the paper and having a
21 press conference or, in Winnipeg, having a
22 Ticketgate press conference?

23 **A** Well, you've got me in a conflict of interest.

24 **Q** Okay.

25 **A** I mean my business is I like that kind of stuff.



1 Q Yeah.

2 A Okay? That's my business interest.

3 Q Yes.

4 A I will tell you, though, that, just in the
5 *Milgaard* case, I think that it hypocrisy to assert
6 that the media was somehow improperly used, and my
7 view is that the root of that claim may well be
8 not sort of the broad philosophical role of the
9 media, but the fact that we were able, as I said,
10 to achieve parity or superiority in advancing
11 David's case and getting to the bottom of it, and
12 getting to the bottom of this case was not very
13 comfortable for some people, and I include myself
14 in that by the way.

15 Q Mr. Asper, I believe that concludes my questions,
16 and I just wanted to thank you for all the years
17 you spent not only undoing a terrible miscarriage,
18 but assisting in bringing the right killer to
19 justice. Thank you.

20 A Thank you.

21 MR. HODSON: Mr. Commissioner, you had
22 indicated, I think, the next order would be Knox,
23 Boychuk and Loran, and I think amongst the three
24 of them I am advised that they organized their
25 examination to minimize overlap, so that Boychuk



1 would go first, followed by Pat Loran, followed
2 by Ms. Knox. So, if you're okay with that, I've
3 been asked to raise that, that they would --

4 COMMISSIONER MacCALLUM: So Mr. Boychuk,
5 then Loran, and then Knox?

6 MR. HODSON: Yeah, on behalf of Ed Karst,
7 Mr. Loran on behalf of the city police, and then
8 Ms. Knox on behalf of Mr. Caldwell.

9 COMMISSIONER MacCALLUM: All right. Okay.

10 **BY MR. BOYCHUK:**

11 **Q** Morning, Mr. Asper.

12 **A** Morning.

13 **Q** For the record, my name is Chris Boychuk, and I
14 represent Eddie Karst. And I want to start off
15 firstly with some of the things that Mr. Wolch
16 raised with you.

17 Firstly, you made a statement
18 that you felt that some of the actors, at least
19 after the Supreme Court decision, took the view
20 that there was a victory or were gloating? I
21 think I heard you right there, is that --

22 **A** Yes.

23 **Q** And, can you tell me, did you ever read anything
24 that suggested that my client was -- somehow
25 thought that the Supreme Court decision was some



1 sort of ultimate vindication or that he was
2 gloating?

3 A Give me a moment. I believe I saw it in the
4 transcript where he referred to the Supreme Court
5 as sort of vindicating his conduct.

6 Q And I'll get into that.

7 A If that's better?

8 Q Okay, I didn't mean, well stay away from
9 'vindication' then. In terms of gloating, let's
10 just stick with gloating, that he was in any way
11 gloating about the decision?

12 A I don't recall seeing that Mr. Karst was gloating.

13 Q Okay. And, in fact, would I be fair to say that,
14 of a number of the actors involved, Mr. Karst was
15 at least one person that was fairly communicative
16 with the media?

17 A Oh yes.

18 Q There were a number of interviews, he was talking
19 to the CBC, Mr. Roberts and Appleby from *The Globe*
20 *and Mail*, Mr. Fuller from the *StarPhoenix*, and in
21 particular the gentleman that you had a connection
22 with, Dan Lett; is that right?

23 A Well, yes.

24 Q And you were aware that Mr. Lett, for example, had
25 an extensive, or a lengthy interview with Mr.



1 Karst --

2 A I think at one point, yes.

3 Q -- at one point? And that was sometime in August
4 of 1991 I believe?

5 A I don't recall specifically.

6 Q Maybe if we could pull up 039366. And I don't
7 know if this refreshes your memory, it's a
8 transcript of an interview between Mr. Lett and
9 Mr. Karst of 21 August, 1999?

10 A I don't know if I've ever seen this, but --

11 Q I don't know if you've seen the transcript. I
12 think there was some indication in the tapes that
13 you may have had a discussion with Mr. Lett and he
14 informed you that he had had a sit-down with
15 Mr. Karst?

16 A Oh, I'm sure he did.

17 Q Okay. And for example, if we could go to page 398
18 of that, I believe. And just in terms of dealing
19 with your client, if we could just pull up this
20 piece, they're talking about Mr. Milgaard having
21 served his time. And Mr. Karst makes this
22 comment:

23 "Well, like I said a long time ago, as
24 far as I was concerned he has paid his
25 dues to society and if there's ever a



1 chance for a rehabilitation, I mean
2 he's, he's due to try it. And you know,
3 then I've seen so many crimes are just
4 as bad as that or worse, for a - you
5 know, and adults murder somebody and,
6 you know, they end up with six or seven
7 years and they're out in four or five -
8 and there is no justice sometimes in
9 what's happening but ..."

10 And Mr. Karst at that time, before the Supreme
11 Court reference, is suggest that Mr. Milgaard
12 should be let out of jail; do you agree with me
13 that's his position there?

14 A That's what he is saying, yes.

15 Q And if we go to --

16 A That he's guilty, but that he should get out, --

17 Q And do you --

18 A -- yes.

19 Q And do you doubt that Mr. Karst had an honest
20 belief, at that time, in Mr. Milgaard's guilt,
21 that he expresses that, no doubt, in the
22 interview?

23 A He expresses no doubt about his belief in
24 Milgaard's guilt.

25 Q Right. Now if I can go to page 408 of that, and



1 at the bottom you will see Mr. Lett and Mr. Karst
2 are -- if I can just -- are discussing a
3 possibility of having the conviction and the trial
4 and conviction of Mr. Milgaard be subject to some
5 form of review?

6 A Right.

7 Q Do you see that?

8 A Yes.

9 Q And you see Mr. Karst, if we -- he starts at the
10 bottom:

11 "As I say, I have no objection ...",
12 if we can go to the next page:

13 "... to it."

14 And:

15 "I would welcome it."

16 So Mr. Karst himself at that time, although he
17 took the position that Mr. Milgaard -- that he
18 was open to some form of review to see if
19 something happened that may have led to a
20 wrongful conviction; do you agree with me there?

21 A That's what he is saying, yes.

22 Q Okay. And let's just touch on the -- Mr. Wolch
23 talked about the proceedings at the Supreme Court,
24 and I think you said that you felt that your
25 recollection, at least, was that the Chief Justice



1 had fairly significantly limited the scope of the
2 inquiry that was gonna happen at the Supreme
3 Court?

4 A That's my recollection, yes.

5 Q Okay. But you attended the Supreme Court
6 yourself, you were in person throughout the
7 hearing?

8 A Yes.

9 Q And do you recall that one of the witnesses that
10 was called was Mr. Karst?

11 A Yes.

12 Q And that he was subjected to a fairly lengthy or a
13 complete cross-examination by Mr. Wolch; remember
14 that?

15 A Not specifically.

16 Q So you don't remember the specifics?

17 A No.

18 Q But, for example, do you recall -- we talked a
19 little bit about the Mackie summary -- do you
20 recall that Mr. Wolch, during his
21 cross-examination of Mr. Karst, that's when the
22 Mackie summary was brought into the Supreme Court?

23 A Yeah, I, you know, I don't -- I did not have any
24 recollection of it. I've been reading some of the
25 transcripts from the Inquiry that do refresh some



1 of my recollection, but --

2 Q Okay. And I, I'll just put it to you this way,
3 I've recently reviewed Mr. Wolch's
4 cross-examination of Mr. Karst at the Supreme
5 Court, and at the risk of having Mr. Wolch stand
6 up and say I'm giving evidence now, it seems to me
7 from the transcript that Mr. Wolch, in his usual
8 thorough way, discussed with Mr. Karst basically
9 all aspects of his involvement in the
10 investigation, including his interviews with
11 Cadrain, Wilson, and John, his contact with those
12 three, the statements he took from those
13 individuals, the Mackie summary, and his dealings
14 with Larry Fisher in Winnipeg; does that sound
15 that that's fair?

16 A Sounds like a good scope of cross.

17 Q Right. And so, although you say that there was no
18 -- and maybe I'm mis -- I'm misquoting you -- that
19 there wasn't really a thorough examination of
20 police conduct, there was, would you agree with me
21 there was a fairly thorough examination, largely
22 through Mr. Wolch's cross-examination, of Mr.
23 Karst's conduct at the Supreme Court?

24 A I think that's fair, yes.

25 Q And that in terms of their findings, I know that



1 you disagree with the scope of their findings,
2 would it be fair to say that, at least with
3 respect to Mr. Karst, that the Supreme Court felt
4 that he was not guilty of any misconduct?

5 A The Supreme Court felt that, yes.

6 Q Okay. Now another thing that Mr. Wolch raised
7 was, as an example of coverup, he gave an example
8 that, potentially, information, it doesn't take
9 very many people, one person doesn't disclose
10 something to someone else and that can constitute
11 coverup?

12 A Yes.

13 Q And he mentioned Mr. Karst, and I'm assuming he
14 was dealing with the two statements that Mr. Karst
15 took from Mr. Fisher, umm --

16 A I don't, I --

17 Q Do you have any information, for example, that --
18 we know that Mr. Fisher, those statements went up,
19 he was prosecuted, he pled guilty, so do you have
20 any information that Mr. Karst withheld that
21 information from anybody that should have received
22 it, at least within the system, whether at the
23 police station or at the prosecutorial -- in the
24 prosecutor's office?

25 A I don't have any information that he actively



1 withheld it, no.

2 Q Okay. Thank you. And I'll tell you, Mr. Asper,
3 I'm hoping I do half as well as Mr. Wolch with
4 notes as he did without notes this morning, and
5 you'll be happy to know my client has told me if I
6 go too long he's going to pull the hook on me, so
7 to speak. The way you got the hood from Mr.
8 Asper -- or from Mr. Wolch, I may get the hook
9 here.

10 A Mr. Karst and I may have more in common than you
11 can imagine.

12 Q Okay. And I want to start off, this is not in any
13 kind of chronological order, but with respect to
14 some of the evidence that you've given here today,
15 or not today but during the course of the Inquiry,
16 and if I could have transcript page 27,274,
17 please? And this is a, this is your
18 examination-in-chief by Mr. Hodson on the 20th of
19 April, and Mr. Hodson puts the question to you --
20 and I'll just have this question and answer
21 brought up, please -- and Mr. Hodson puts to you:

22 "Q Are you suggesting that Mr. Caldwell and
23 Mr. Karst knew that the real killer was
24 at large?"

25 And your response, and I'm just going to read



1 this in for the record:

2 "A No, I think that -- I don't think --"

3 Excuse me, I'll back up.

4 "A No, I think that -- I don't think -- my
5 suggestion is that if you put aside the
6 question of whether there was a coverup
7 or whether there was some evil motive,
8 you might be able to say to Mr. Karst or
9 Mr. Caldwell and to the original actors
10 in this system, "you know what, maybe a
11 mistake occurred". I don't believe that
12 those people -- I think it's ... the
13 true killer out on the street, but
14 that's what happened, because certain
15 things were missed."

16 A No, you missed a line, it's:

17 "... I think it's possible that those
18 people actually didn't want the true
19 killer out on the street, but that's
20 what happened, because certain things
21 were missed."

22 Q Oh okay, sorry, I missed that and that's fair
23 comment. And then, going on, you talk about
24 talking to the people. And am I -- I don't
25 disagree with you, and nobody disagrees with you



1 that the killer was on the street and that an
2 innocent man was in jail, but in terms of we're
3 talking about conspiracy and coverup, which is a
4 deliberate, a deliberate attempt to keep -- put an
5 innocent man in jail and cover up the fact that a
6 killer is out on the street; isn't that right?

7 A Yes.

8 Q That's what you were talking about?

9 A Yes.

10 Q And then on the next page, at 27,275, and Mr.
11 Hodson asks you for some clarification and he's,
12 of your answer, and he says:

13 "Q You talk about saying, and you referred
14 to Mr. Karst and Mr. Caldwell, about
15 them not wanting to have the real killer
16 out there, and is what you are saying is
17 that you don't think that they would
18 have -- are you saying that they
19 wouldn't have deliberately convicted an
20 innocent person so that the real killer
21 is out there?"

22 And your answer is:

23 "A I think that's, I think that's probably
24 fair to say."

25 A That's correct.



1 Q And that's your position today?

2 A Yes.

3 Q And, based on the evidence that you have seen to
4 date, are you satisfied that my client, for
5 example, Mr. Karst, did not deliberately set out
6 to put an innocent man in jail?

7 A I think it's fair to say that he did not
8 deliberately set out that way, but I think that --
9 I -- and, Mr. Commissioner, you will obviously
10 make these determinations -- my view overall is
11 that this thing that we have talked about, and Mr.
12 Karst even talked about it in his own evidence,
13 called tunnel vision took over and --

14 Q I'm sorry, I want to make a distinction, sir,
15 between 'deliberate misconduct' and 'mistake',
16 because you did refer to 'mistake' back in your
17 previous answers, --

18 A Right.

19 Q -- and right now I want to restrict you. I'll
20 talk about --

21 A Well, tunnel vision can lead to deliberate action.

22 Q Okay.

23 A I mean the problem is, with tunnel vision, is that
24 it can lead all over the place, and it can lead to
25 deliberate action that may be well-intentioned



1 but, nevertheless, results in the wrong result.

2 Q Okay. And when I speak of 'deliberate' I'm
3 speaking deliberate in the sense that there is a
4 knowledge that the person -- or you think it's
5 likely he's innocent and you still try to get the
6 conviction.

7 A Well, I'm concerned, I will tell you that I am
8 concerned. And I can't be definitive, because
9 you've got on the one hand I think a good-faith
10 belief that you want to get the right person, you
11 want to get the true perpetrator, but on the other
12 hand there is a whole bunch of stuff that says the
13 person you are going after may not be the right
14 perp, may not be the true perpetrator, but you
15 don't -- but you ignore that. And so I want to
16 give everybody the benefit of the doubt, and I've
17 come to this Inquiry giving everybody the benefit
18 of the doubt, and I'll leave it at that.

19 Q Okay. In terms of giving the benefit of the
20 doubt, though, isn't it true, though, that you and
21 others in your group didn't, when you went to the
22 media you didn't present it, at least when you
23 started going to the media after you made the
24 first application it wasn't presented that it was
25 a mistake, it was presented that it was -- that



1 there was a frame-up or a coverup; isn't that how
2 you presented it though?

3 A I'm not sure that we -- I don't think we started
4 that way. It certainly evolved, it evolved to
5 something more sinister, yes.

6 Q Okay. And, in terms of your expectation, one of
7 the things you said during the course of the
8 Inquiry, that your hope was that everybody would
9 sit down, get around a table, and that in that
10 context we could deal with it as a mistake;
11 correct? That was --

12 A Yes, yes.

13 Q And that at least there was a recognition that the
14 justice system, whether it's police officers or
15 Crown prosecutors, they're human beings?

16 A Absolutely.

17 Q And therefore they're not infallible?

18 A Absolutely.

19 Q And that -- and wrongful convictions happen
20 without someone intentionally going out to frame
21 someone and then cover up; isn't that right?

22 A Yes.

23 Q Do you agree with that?

24 A Yes.

25 Q And I think if I, if we just go back to, you



1 expressed that at page 27,272 of the transcript,
2 and if I just look at the bottom, and this is just
3 --

4 A I want to, you know, just on that subject -- and I
5 don't mean to -- I'm a student of wrongful
6 convictions, and in the course of studying it I
7 came across something that Ms. Knox said, because
8 she had a similar -- she had a situation of her
9 own, and I want to -- and I'll give you an example
10 of exactly what you said, the difference of
11 something she said in a different inquiry versus
12 what has happened here, okay? If I can, Ms. Knox
13 started, at the Inquiry into Greg Parsons in
14 Newfoundland said, she went on the record and
15 started her evidence by saying:

16 "I want to go on the record to state
17 that I accept that Greg Parsons was
18 wrongly convicted of this offence, that
19 he is innocent of causing the death of
20 his mother. I would grant that I was
21 part of the process in the system that
22 led to his wrongful conviction. I
23 apologize to you, Mr. Parsons, to his
24 family, and to all others who were
25 affected by this tragic outcome."



1 That is the spirit that you've just described
2 that I think needs to pervade this process.

3 Q Fair enough. And, for example, my client, Mr.
4 Karst, we talked about how he was open to the
5 media. In fact we hear, we heard a considerable
6 amount of, some evidence from Dr. Boyd and Dr.
7 Rossmo that he was prepared to sit down with
8 people and look at the case, and in terms of Dr.
9 Boyd and Dr. Rossmo, he was one of the people that
10 did give them a considerable amount of time to
11 look at what he did in the case, what he thought
12 of the overall case; fair to say? And that shows
13 an open mind, that maybe, eh, he's, he's prepared
14 to consider that maybe he made a mistake?

15 A I don't recall. My recollection of Mr. Karst's
16 interaction was that he had a willingness to
17 interact but that he was, he was defending, and
18 defending the -- you know, his belief that
19 Milgaard was guilty.

20 Q Right. And I hope you admit that people can have
21 an honest disagreement on things like this?

22 A Yes.

23 Q Okay. And for example, you talked about
24 potentially having a meeting, you've seen how open
25 Mr. Karst was, Mr. Karst tells me he had no



1 problem with you people trying to free Mr.
2 Milgaard and that he had no problem with you
3 people being critical of him if you felt he made
4 some mistakes or errors in the course of the
5 investigation, but there is a big difference
6 between that and saying to him, "You deliberately
7 set out to get an innocent man convicted, you
8 deliberately covered up the fact that the real
9 killer was out there". Do you understand the
10 distinction there?

11 A Well, okay, but I want to go back to -- and let's
12 go back to that, the period of time.

13 Q Uh-huh?

14 A In fact, let's go back to 1969-1970, as David
15 Milgaard is packaged up and shipped off and he is
16 convicted and sent to prison. If you look at --
17 and I, you know, and we all have a better sense of
18 what all the evidence was and what all the
19 statements were, and I certainly now have a better
20 sense of the separate divisions within the
21 department of who was doing what and it was
22 possible that the left hand didn't know what the
23 right hand was doing, nevertheless, I'm sorry, but
24 I take the view that -- and I think Mr. Karst has
25 testified he had doubts about these witnesses, the



1 core witnesses that ultimately convicted Milgaard,
2 Wilson and Nichol John and Cadrain, he had his own
3 doubts. When you couple those doubts with the
4 presence of this possible other perpetrator that
5 was floating around in the minds of investigators
6 at the time, and you layer that with information
7 that was, that Mr. Karst may not have known -- and
8 I accept that he may not have known that -- that
9 evidence that directly, credible evidence that
10 directly refuted what was coming from the mouths
11 of John and Wilson, and not disclosed, I don't
12 know what to think, Mr. -- I just don't know what
13 to think.

14 Q Well, I -- you are going to have to give me some
15 specifics here.

16 A Well was --

17 Q Because, for example let's go back to every
18 witness in a criminal case, especially when you
19 look at these people. You referred to them as
20 'unsavoury', for example. It's pretty rare that a
21 police officer in a major crime is, apart from the
22 victim, when you are dealing with someone who is
23 related or involved with the suspect they tend to
24 be unsavoury people; isn't that right?

25 A Not necessarily.



1 Q But often?

2 A Oh, yes.

3 Q You called these people 'unsavoury'?

4 A Oh, yes, I did.

5 Q And for example, to be fair, it was a crowd that
6 Mr. Milgaard himself was running with; right?

7 A No question, yes.

8 Q And, any time you interview a witness, there is
9 always issues with credibility; would you agree?

10 A Well I --

11 Q You are always alive to those issues as an
12 investigator?

13 A Yes. And what I am saying is when you get -- when
14 you have these --

15 Q Why don't we just say you agree with me, but we'll
16 just say "do you agree with me there", and I'll
17 just walk you through --

18 A That credibility is an issue?

19 Q Right?

20 A Yes.

21 Q And that, when you run across things that might
22 give you doubts, that you track them down, for
23 example?

24 A Yes.

25 Q For example, Mr. Karst, you say you had doubts.



1 Let's start with Mr. Cadrain, for example,
2 Mr. Cadrain came into the police station, we know
3 that now?

4 A Right.

5 Q You agree there?

6 A Right.

7 Q The story about the blood on the pants was not
8 planted by Mr. Karst or anybody else at the
9 Saskatoon Police Service; correct?

10 A It appears so, yes.

11 Q Because we know he came in with that story?

12 A Right.

13 Q He told his parents that story, you know that?

14 A Right.

15 Q You know from the interviews that Mr. Henderson
16 did that he told his brother Dennis Cadrain that
17 story and possibly his sister Celine and that they
18 advised him to go to the police?

19 A Right.

20 Q So, for example, one of the allegations against
21 Mr. Karst, and we can go to the media, and the way
22 you dealt with it in terms of Mr. Cadrain being
23 tortured, for example -- now, of course Mr. Karst
24 denies that, but he put Mr. Cadrain under some
25 fairly close questioning; agreed?



1 A Apparently, yes.

2 Q And wouldn't you expect that from a police officer
3 when someone walks in off the street and gives you
4 evidence that potentially implicates someone else
5 in a murder, particularly Mr. -- your client?

6 A Yes.

7 Q And that's what you would want him to do?

8 A Yes.

9 Q Isn't that right?

10 A Yes.

11 Q And, for example -- and there's no doubt that
12 Mr. Cadrain was questioned a number of times on
13 that and at the end of the day, with that intense
14 questioning, he never did change his version, with
15 respect to the blood on the pants, from the time
16 he walked in in 1969 to the day he died, he
17 maintained he saw blood on Mr. Milgaard's pants?

18 A That's correct.

19 Q Rightly or wrongly?

20 A That's correct.

21 Q And that through the years, for example, Mr.
22 Carlyle-Gordge questioned him, you would have had
23 that information when you got the file from Mrs.
24 Milgaard?

25 A Yup.



1 Q He didn't move off of that?

2 A Yup.

3 Q When he was requested by Mr. Henderson and all the
4 stuff came out on the, on how aggressively he was
5 questioned, he never moved off it then?

6 A Right.

7 Q And when he went to the Supreme Court he didn't
8 move off it; right?

9 A Right.

10 Q So at some point the police officer has to make an
11 assessment, we've pushed this guy and he still
12 says it happened?

13 A Right.

14 Q We've tested his credibility. We may have other
15 issues, there were issues about whether he had
16 smoked dope the night before, whether he had been
17 questioned in Regina, and they checked those out;
18 isn't that right? Fair to say?

19 A I think so, yes.

20 Q Okay. So in terms of Mr. Cadrain, do you have a
21 problem that Mr. Karst felt that that, on that
22 issue he resolved the credibility issue, he
23 believed Mr. Cadrain?

24 A I think that's fair, yeah.

25 Q Okay.



1 A Yeah.

2 Q And I just, before I leave this whole area --

3 A I still haven't been able to respond though to
4 your question about the deliberateness.

5 Q I thought we had an answer there, but --

6 A Well, Mr. Karst was far more involved in the
7 investigation.

8 Q Oh, I plan to go into --

9 A Okay.

10 Q -- you with that.

11 A Okay. As long as we can get to it.

12 Q Yeah. But even today, like, I want to get back,
13 one of the other things you said, in terms of
14 these allegations of cover-up and conspiracy you
15 are quite, I think, fair in saying, and, you know,
16 there's a number of examples where you were of the
17 position that at best you had suspicions, but no
18 evidence, if I quote you correctly from the
19 transcript?

20 A That's true.

21 Q Now --

22 COMMISSIONER MacCALLUM: That was with
23 respect to Fisher's guilt, viability as a
24 suspect?

25 BY MR. BOYCHUK:



1 Q No, I think it was in response to a general
2 question regarding whether -- Mr. Hodson put to
3 him, for example, because around the time of the
4 Supreme Court reference the allegations of
5 cover-up and a frame-up were coming fast and
6 furious from Centurion and from Mrs. Milgaard.

7 A Right.

8 Q Fair enough?

9 A And that's what it refers to, Mr. Commissioner.

10 COMMISSIONER MacCALLUM: Okay, thank you.

11 BY MR. BOYCHUK:

12 Q And I can refer you to the transcript pages,
13 27172, we might as well pull it up just as one
14 example I think you said, and it's a question from
15 Mr. Hodson about:

16 "Q Did you ever express the view publicly
17 or state in the media that you believed
18 or alleged that there was a cover-up or
19 a framing?"

20 And your answer is:

21 "A I don't think I ever did, and I'm still
22 not convinced of that to this day."

23 Correct?

24 A That's right.

25 Q Okay, fair enough. Now -- but it's fair to say,



1 and I'm just, and if you think I'm unfairly
2 summarizing your evidence, please let me know, but
3 once you got into the process, you were
4 disappointed with the way the Federal Department
5 of Justice was dealing with the application; is
6 that fair to say?

7 A Yes.

8 Q In a mild way?

9 A Yes.

10 Q And at that point you started -- as you said, it
11 became a war?

12 A Yes.

13 Q And people like Mr. Karst became the bad guys and
14 the enemy; fair?

15 A Yes.

16 Q And I'm just quoting from you, there are no rules
17 in war, the gloves are off, so to speak?

18 A Right.

19 Q That's the approach you took?

20 A Right. Now, I did, I think I qualified that
21 saying that I felt that, you know, the rules of
22 professional conduct were in play, but no
23 evidentiary rules and no other rules.

24 Q Fair enough. But in terms of, say, going to the
25 media with something, you know, those rules, and



1 you acknowledged really it's a free for all?

2 A It was a free for all.

3 Q I think you called it a circus too at one point in
4 time?

5 A It got to that point too.

6 Q Yeah, but I want to focus a little bit on the time
7 period before the application was made to the
8 Supreme Court in December of 1988, and Mr. Wolch
9 touched on it a little bit, he said although you
10 were a junior in the office at the time, you had a
11 fair bit of assistance from people like Mr. Wolch,
12 experienced criminal defence counsel, but -- so I
13 want to go back to that time. Before -- because
14 there wasn't much in the way of dealings with the
15 Federal Department of Justice in the period of
16 time when the file came into the Wolch office in
17 January of 1986.

18 A That's right.

19 Q To the time the application was filed.

20 A Right.

21 Q So I want to talk a little bit about what you were
22 doing in that time period that might have, and how
23 you could have done some things differently that
24 may not have led to the war, if I can be fair.
25 One of the things you did, March of 1986 you



1 joined the firm as an articling student; right?

2 A Right.

3 Q Mr. Wolch, the hook came out and you were involved
4 in the file?

5 A Right.

6 Q And so you are fully engaged by the Milgaards
7 hoping to prove his innocence, but also primarily
8 you said to get this application on and hopefully
9 get him either a new trial or get him out of jail,
10 that was the, that was what you were doing?

11 A Yes.

12 Q That was your primary focus?

13 A Yes.

14 Q And as I look at it, there was about three full
15 years that expired from the time that the file
16 came into the Wolch office to the time that the
17 application was filed; fair enough, almost exactly
18 three years? I think it came in in mid January,
19 '86.

20 A That's right, that's right.

21 Q And you were getting advice from senior counsel.
22 Did, for example, because we were dealing with a
23 conviction, and I understand from your evidence
24 you were aware Mr. Tallis was the defence counsel
25 for Mr. Milgaard at the trial, that previously



1 Mrs. Milgaard had hired Tony Merchant, for one, to
2 do the same thing in '82, '83; correct?

3 A Right.

4 Q And you were aware of that?

5 A Yes.

6 Q And likely -- and likewise Gary Young, for
7 example, was also retained. You also knew -- you
8 also had Peter Carlyle-Gordge's material early on,
9 I think I saw a letter where you wrote to him
10 sometime in June of '86, that you had material,
11 you were reviewing the transcripts and those kinds
12 of things; does that sound right?

13 A Yes. I will tell you, though, I don't know when
14 we got it all.

15 Q Not much turns on it.

16 A Yeah. I'm really -- you are right.

17 Q Fair enough. It's 20 years --

18 A It's driving me crazy because --

19 Q That's okay, it's 20 years ago.

20 A Right.

21 Q But at some point you would have been aware that
22 not only did Mr. Carlyle-Gordge conduct some
23 interviews of people like Albert Cadrain, I think,
24 and Leonard Cadrain, but that he also had a tape
25 of a lengthy interview that he had with the



1 prosecutor Mr. Caldwell; fair? You were aware of
2 that sometime in the process?

3 A Yeah.

4 Q And that also that Mr. Caldwell had given to Mr.
5 Carlyle-Gordge basically unfettered access to his
6 prosecution file, you were aware of that sometime
7 early in 1986?

8 A Yes, yes.

9 Q And with this advice you were getting, did not one
10 of the lawyers in your firm say, look, we're
11 investigating, we're trying to find grounds to get
12 Mr. Milgaard freed on this section 617
13 application, that it's a good idea maybe to talk,
14 go back to the original defence counsel, see if we
15 can get his file and speak to him about what
16 happened at the trial and how the evidence was
17 handled, did you get that suggestion from him?

18 A There may have been that discussion. I just
19 remember the overriding mantra was what's new,
20 what's new, something new, something new,
21 something new.

22 Q Right, but something new can be a new piece of
23 evidence; correct?

24 A Yes.

25 Q It can be a recantation from an existing witness?



1 A Right.

2 Q Or it might be something that was on someone's
3 file that wasn't raised at trial; right?

4 A That's true.

5 Q And likewise, and from the record that Mr. Hodson
6 put, I think the first time I can see a contact
7 with Mr. Tallis was after the application had been
8 filed in December of 1988; fair enough?

9 A I think that's true, yeah.

10 Q Sometime -- I think it was April, 1989.

11 A Yeah.

12 Q But I think the other thing that happened is you
13 didn't request the files of Mr. Merchant or Mr.
14 Young either; is that right?

15 A That's true, I believe.

16 Q During that three year time period?

17 A I believe that's true, yeah.

18 Q And that had you got those files, you would have
19 actually seen that, for example, Mr. Merchant
20 phoned Mr. Tallis and had a face-to-face interview
21 with him at the courthouse in Regina?

22 A If that's in the file, that's in the file.

23 Q That's in the file. I'll just pull that up.
24 Because you had Mrs. Milgaard's material. Let's
25 go to 162821 -- or 162821, yeah, please.



1 COMMISSIONER MacCALLUM: The question was
2 you would have seen that Merchant interviewed
3 Tallis in January?

4 MR. BOYCHUK: Yeah, he would have.

5 COMMISSIONER MacCALLUM: Uh-huh.

6 BY MR. BOYCHUK:

7 Q And I don't want -- and I don't know if you've
8 ever seen this note before at all, Mr. Asper.

9 A I don't recall seeing it, no.

10 Q Okay. I can tell you that through the evidence
11 that has been given before, this is Mr. Merchant's
12 notes of his meeting with Mr. Tallis back on
13 November 29, 1982, and I just want to run through
14 it because I think some of the information that's
15 there would have been important. For example, he
16 starts off of course questioning, and I know that
17 the notes won't be complete, but one of the issues
18 they obviously talked about is, if you look right
19 at the top here, the issue of whether David should
20 testify at the trial; fair enough?

21 A Right.

22 Q It looks like?

23 A Right.

24 Q And one of the concerns you had, for example, with
25 Mr. Tallis, is that he didn't call David Milgaard



1 at the trial?

2 A I don't recall that being a concern --

3 Q That wasn't an issue?

4 A -- of mine.

5 Q Okay.

6 A I don't recall that being a concern of mine.

7 Q Okay. Another issue, and you can disagree with
8 me, was the issue of where the notebook ended up,
9 for example, that's discussed there too?

10 A Right.

11 Q And in terms of whether Mr. Milgaard got out of
12 the car, that's discussed; right?

13 A Right.

14 Q And that the testimony from Nichol John that Mr.
15 Milgaard was away from the car, which is an issue
16 that was a major issue for you people where you
17 said Mr. Wilson and Miss John lied when they said
18 that, --

19 A Right.

20 Q -- Mr. Tallis here is saying that David confirmed
21 that he was away from the car?

22 A Right.

23 Q And then he confirmed that he changed his clothes
24 at Mr. Cadrain's; right?

25 A Yes.



1 Q Do you see that?

2 A Yes.

3 Q You see at the bottom there?

4 A Yes, yes, I see where you are -- yes.

5 Q And then he also confirmed that David threw out
6 the compact, that was another point that you were
7 indicating that the witnesses may have been lying
8 about; fair enough?

9 A Uh-huh, yes.

10 Q If we go to the next page, he also said, at the
11 top there regarding the testimony, and I think
12 you'll agree with me this refers to Mr. Melnyk and
13 Mr. Lapchuk, that Mr. Milgaard is admitting to
14 Mr. Tallis back -- or did in 1969, that yeah, it
15 could have happened?

16 A Could have happened, yes, could have happened.

17 Q But you always took the, you took the -- am I fair
18 to say with respect to Mr. Melnyk and Lapchuk, it
19 has been fairly consistent, you and Mr. Wolch in
20 particular have claimed that they lied and
21 continue to lie to this day?

22 A Right.

23 Q Even though your client says it could have
24 happened?

25 A Okay, there's a distinction here between the



1 admissions of Melnyk and Lapchuk, and I'm not sure
2 why this is so difficult, the admission that
3 Melnyk and Lapchuk claim occurred versus what is
4 either said there or what Debbie Hall describes.

5 Q Okay.

6 A All of which is different by the way. Melnyk and
7 Lapchuk are inconsistent.

8 Q Fair enough, but actually you filed an affidavit
9 of Bob Harris at the Supreme Court yourself?

10 A Right.

11 Q Out of your office?

12 A Right.

13 Q His version is a little different and you brought
14 that forward?

15 A Right.

16 Q But he still said that Mr. Milgaard, his
17 recollection was that he climbed up on the pillow,
18 made the stabbing motion and said words to "I
19 killed her, I stabbed her", to that effect?

20 A Right.

21 Q I just read the affidavit last night.

22 A Right.

23 Q And I don't want to get off track here, my view
24 has always been those are distinctions without a
25 difference. I can see where you disagree with Mr.



1 Lapchuk and Mr. Melnyk on the interpretation they
2 put on the incident.

3 A And the conduct, I mean, if someone has just
4 admitted to committing a murder and reenacting it,
5 it's a little unusual, I would think, for them to
6 continue to carry on.

7 Q Oh, fair enough, I have -- I'm not taking issue
8 with the reasons that you say that their
9 interpretation may be wrong.

10 A Right.

11 Q But do we have agreement, generally speaking, that
12 what happened in that room, we've got Ute Frank's
13 testimony, we've got Deborah Hall's testimony,
14 another one of your witnesses, who in many ways,
15 and I don't want to repeat it here, what she said
16 was maybe even stronger than what Mr. Melnyk said?

17 A Let me -- I guess my problem with this is that
18 before this evidence even arose, if you completely
19 excise this evidence, I would suggest that it was
20 well within the capacity of the authorities to
21 know that it was ludicrous for David to admit to
22 committing the murder because he hadn't committed
23 it, which makes this whole episode insane.

24 Q I don't want to get into --

25 A David didn't, David Milgaard can't reenact --



1 Q -- what he -- Mr. Asper --

2 COMMISSIONER MacCALLUM: Just a minute.

3 BY MR. BOYCHUK:

4 Q Just back up. We're here today, we all know that
5 David is innocent.

6 A Right.

7 Q I'm not arguing for his guilt here, do not get me
8 wrong.

9 A Okay.

10 Q Because my point is here, is that at some point,
11 and you even said you got a little bit paranoid?

12 A Yes.

13 Q For example?

14 A Yes.

15 Q And some of the things we're identifying here from
16 Mr. Merchant's note are things that you accused
17 people of lying about through the years; fair
18 enough?

19 A I'm not sure which.

20 Q Well, let's talk about the compact.

21 A Right.

22 Q Let's talk about --

23 A Who did I accuse of lying about that?

24 Q You --

25 A You just said I lied, I accused someone of lying.



1 Tell me who.

2 Q Let's stop there.

3 A Tell me who.

4 Q Let's go the Milgaard group then --

5 A No, no, wait a minute.

6 Q -- accused people of lying.

7 A Wait a minute, wait a minute. You accused me, you
8 said that I accused people of lying about the
9 compact. Who? When? Where?

10 Q Nichol John and Ron Wilson.

11 A Your concern --

12 Q And you're saying you never did make that
13 accusation?

14 A You are concerned that I said that Wilson and John
15 were wrong about the compact?

16 Q Yeah. I'll tell you what, I'll back up. Let's
17 say it was a position that the group took, that
18 these people lied about being apart from the car
19 particularly, the compact being thrown out of the
20 car; isn't that fair to say?

21 A At varying times.

22 Q I think we've heard it?

23 A I think that's fair to say, at varying times --

24 Q I'll tell you what, I'm doing the thing that
25 happened before that you objected to.



1 MR. SOROCHAN: Mr. Commissioner, can we
2 just have the witness and counsel talking one at
3 a time? Who knows what the transcript is going
4 to look like, but I find it difficult to follow,
5 and Mr. Asper is entitled to answer questions
6 that are put to him without being talked over by
7 counsel.

8 COMMISSIONER MacCALLUM: Well, he's being
9 allowed to answer questions put to him so long as
10 he's responsive to the question.

11 MR. SOROCHAN: Well, then you can rule
12 they're not responsive, but --

13 COMMISSIONER MacCALLUM: Well, I'm trying
14 to. I asked Mr. Asper to allow the questioner to
15 repeat his question, to put him back on the line
16 he wanted him to be on.

17 MR. SOROCHAN: With respect,
18 Mr. Commissioner, a very pointed question was put
19 to Mr. Asper, he started to answer it and then
20 counsel started talking over him. He should be
21 allowed to answer.

22 MR. BOYCHUK: If I did that, I apologize
23 certainly, and to some extent I have. I will say
24 in response to Mr. Sorochan, there are a number
25 of times where Mr. Asper has, I think, gone off



1 my question and I've let him answer because I
2 think it's fair we want to get everything out
3 here, I want to hear your point of view, sir,
4 okay.

5 COMMISSIONER MacCALLUM: I think what
6 precipitated this was Mr. Asper disputed your
7 suggestion that he had accused Melnyk and Lapchuk
8 of lying. Your counter to that was, well, if not
9 you, the Milgaard group has done that in the past
10 and then things kind of deteriorated.

11 So, Mr. Asper, is that your
12 position, that you personally did never make,
13 never made such an accusation?

14 A No. Actually, Mr. Commissioner, I think we were
15 focusing on the compact.

16 COMMISSIONER MacCALLUM: Well, we moved to
17 the compact.

18 A Right.

19 COMMISSIONER MacCALLUM: But one thing at a
20 time.

21 A I believe that Melnyk and Lapchuk either did not
22 speak the truth or embellished what happened, that
23 is my position. As for the compact, it may have
24 been the case that I said and had suggested that
25 John and Wilson had lied about that and had not



1 spoken the truth about that, it may have been my
2 position that there was no compact, I give you
3 that.

4 BY MR. BOYCHUK:

5 Q Okay. And I apologize, in some instances I'm
6 summarizing what the group did and I'll try to
7 distinguish when I'm picking up what the group did
8 and so you can understand that it might be an
9 allegation made by Mrs. Milgaard or Mr. Henderson
10 or Mr. Wolch as opposed to you personally.

11 A All right.

12 Q And the confusion results from the way I drew the,
13 asked the question. But would it be fair to say
14 when you talked about things like the paranoia
15 that set in, that it might have been helpful to
16 you and that paranoia might have not set in in
17 terms of, if you had got this information, say,
18 from Mr. Tallis back in 1986?

19 A I'm not sure about that, I'm just not sure about
20 that. We were dealing with a client who -- well,
21 we were dealing with two different versions of a
22 client; one, Mrs. Milgaard who, you know, had no
23 faith in the system whatsoever, and we had another
24 part of the client who was in prison saying I
25 didn't do it and I'm innocent, get me out of here,



1 so I'm not sure that -- I'm not sure it would have
2 been any different.

3 Q Well, and to move to a more concrete example of
4 maybe some of the things that might not have
5 happened that were unfortunate, and I'm sure
6 Ms. Knox will be taking you up on this of course,
7 is that you would have learned early on from
8 Mr. Tallis that not only did he get the Ron Wilson
9 statement, the first Ron Wilson statement, which
10 you accused Mr. Caldwell of not providing, but
11 that he also had all the other statements
12 relatively early on in the prosecution from Mr.
13 Caldwell; fair enough?

14 A Well, I will accept responsibility, but I'm
15 looking forward to talking about the other
16 non-disclosure.

17 Q Oh, I appreciate that.

18 A And I think as I've said, I think as I've
19 explained, the newspaper --

20 Q But let's just go back to my question.

21 A No, the newspaper report that you referred to
22 which relates to the non-disclosure, as I say, I
23 think is a good illustration of the risk of the
24 media, because I think my recollection was it
25 conjoined two things and came out looking bad and



1 I don't think I intended it that way.

2 Q Well, I think --

3 A It came out that way and I've accepted
4 responsibility for it and I've apologized for it,
5 but I don't think I intended it that way.

6 Q Well, I don't want to get into an argument about
7 your intention, I think we can let the words in
8 the newspaper article speak for themselves, but on
9 that point, though, that takes me to another
10 thing.

11 One of the things you did know
12 is of course that Mr. Carlyle-Gordge, a journalist
13 working with Mrs. Milgaard, got complete access to
14 the prosecution file, that's something you are
15 aware of early on?

16 A A file. I'm not sure I could say it was the
17 complete prosecution file. He certainly had lots
18 of access.

19 Q Okay. And that, for example, having that file in
20 1986 would have been of great assistance to you in
21 the bringing of the application?

22 A I'm not sure it would have.

23 Q Okay.

24 COMMISSIONER MacCALLUM: Is that your
25 feeling in retrospect or did you think that at



1 the time, sir?

2 A No. At the time, as I say, there was this mantra,
3 something new, something new.

4 COMMISSIONER MacCALLUM: Uh-huh.

5 BY MR. BOYCHUK:

6 Q But, for example, some of the things you might
7 have found were, and we don't have to go through,
8 those items that you picked out that might have
9 been helpful that weren't disclosed by Mr.
10 Caldwell, I think inadvertently, which is
11 acknowledged, for example, the Merriman evidence,
12 the couple across the street; fair enough?

13 A I don't know when I learned about that, I have a
14 feeling it might not have been until the Supreme
15 Court. I'm certain it wasn't until the Supreme
16 Court.

17 Q Of course my point is that there's a possibility
18 had, say, Mr. Wolch said, hey, they got access to
19 the prosecution file, why don't we get access to
20 it; fair enough?

21 A Possibly, yes.

22 Q Okay. And the other thing is -- we're moving on
23 to another area, Mr. Commissioner. Would you like
24 to take the noon break now?

25 COMMISSIONER MacCALLUM: We could.



1 (Adjourned at 11:56 a.m.)

2 (Reconvened at 1:32 p.m.)

3 BY MR. BOYCHUK:

4 Q Good afternoon, Mr. Commissioner and Mr. Asper.

5 One of the things we left off
6 with, we had a bit of a discussion about the
7 compact, and if I could ask you to -- and I guess
8 this is the unfortunate thing about having the
9 noon-hour break, lawyers can do some work. If you
10 can pull up document 301675, please. There it is.
11 And I understand that this is an affidavit that
12 you prepared, Mr. Asper, for Mr. Milgaard, and if
13 you look at the bottom of the page you can see
14 your name down there at the bottom?

15 A Right.

16 Q And if we could go to -- and this was for use, I
17 think, in the Supreme Court reference that you --
18 that would -- that you made application for;
19 correct?

20 A Umm, well it looked -- it was sworn in '86.

21 Q Right.

22 A So that was long before the reference.

23 Q Long -- but wasn't it prepared in anticipation
24 that it would be filed with the reference, because
25 it says up top "an application" --



1 A With the application? Sorry, right.

2 Q Yeah.

3 A Yeah, okay, I understand, yes.

4 Q Sorry, I asked the question poorly.

5 A Right.

6 Q And if we could go to page 680 of that, please.

7 And I just wanted to, because we had a bit of a
8 discussion about the compact, if you could just

9 look at that paragraph 18 there. This is Mr.

10 Milgaard stating:

11 "That I deny throwing a woman's compact
12 out of the car in between Saskatoon and
13 Rose Town or anywhere else."

14 That's, that appeared in the affidavit, correct?

15 A Right.

16 Q And then just under that, paragraph 19, he further
17 denies the -- he states:

18 "That I deny ever re-enacting the crime
19 in a hotel room in Regina in May, 1969
20 or anywhere else at any other time."

21 That's in the affidavit too?

22 A Yes.

23 Q And if we could just go to the next page, 681, and
24 that's you, your signature there, --

25 A Yes.



1 Q -- commissioning the affidavit?

2 A Yes.

3 Q And I'm not raising this, because I know this was
4 20 years ago, sir, and I -- just to bring and put
5 on the record that there was a fairly express
6 denial of the fact that the compact was thrown out
7 the window, and I certainly don't fault you for
8 not remembering who or where it came from 20 years
9 later.

10 The other thing that I wanted to
11 raise with you, though -- and this will be my last
12 question, I promise, on the re-enactment -- is
13 that we did discuss that, at times, Mr. Milgaard
14 would deny it to you, or I heard -- I should say
15 it was something that came out in your earlier
16 evidence with Mr. Hodson -- that sometimes he
17 would say he couldn't deny it but that, if he did
18 do it, it was a joke; that was basically his
19 position?

20 A Yes.

21 Q And am I fair to say that your position with
22 respect to Mr. Melnyk is that, whatever the
23 conduct was, it wasn't meant to be a re-enactment;
24 fair enough?

25 A I guess I could shave a little bit on what the



1 conduct was, but essentially yes, I think you've
2 captured it.

3 Q Fair enough. And one thing I did look at at noon
4 hour was Mr. Melnyk's trial testimony. As I read
5 the testimony, he was never asked how he
6 characterized the conduct, he was just simply
7 asked to describe the conduct; is that fair?

8 A I think that's true, yes.

9 Q And in terms of Mr. Melnyk, we've heard evidence
10 that in terms of how he got to the trial, they did
11 not come forward to the police, they were put on
12 -- they -- they were put on by Mr. Wilson, put the
13 police on to Mr. Melnyk and Lapchuk?

14 A I think that --

15 Q Were you aware of that?

16 A Yes, I think that's true.

17 Q And that they were subpoenaed to testify at the
18 trial?

19 A Yes.

20 Q Fair enough. Now one of the things you said this
21 morning was, and in your earlier testimony, is
22 that you felt you had to find something new --

23 A Yes.

24 Q -- in order to bring the application forward to
25 the Minister under Section 617, as it was?



1 A Well, I -- that was the firm view, yes, that was
2 the view that prevailed.

3 Q Okay. That was not your view?

4 A But I agreed, I mean I agreed to some degree.

5 Q Generally?

6 A Yes.

7 Q So I take it to mean that you thought that the
8 Justice Minister should look at the evidence that
9 was presented at trial and could make a -- could
10 grant relief under Section 617 without finding any
11 new evidence; is that where you differed maybe?

12 A No, I just felt that anything new had to be put
13 into greater context of what had happened at the
14 trial.

15 Q Yeah, fair enough. And one of the things, I think
16 you testified that in terms of coming to your own
17 view as to Mr. Milgaard's innocence, primarily you
18 read the transcripts of the trial and the prelim;
19 correct?

20 A Yes.

21 Q Talked to Mr. Milgaard?

22 A Yes.

23 Q And whatever other information that Mrs. Milgaard
24 might have provided to you from the earlier
25 lawyers' files and the interviews with Peter



1 Carlyle-Gordge, for example?

2 A Right.

3 Q Okay. And one of these things, this idea that you
4 needed something new -- and I'll show you a
5 document, if you can bring up 010143. And this
6 is, and I appreciate this is not something you
7 would -- you may have not seen, I don't know if
8 you're familiar with this, do you recognize this?
9 It's a letter from Mr. Merchant.

10 A I may have seen it. I don't recall it.

11 Q Yes. And in the second paragraph he's writing to
12 David Milgaard in terms of what they need to do
13 for him, and he says, and I quote:

14 "More than ever, I believe that unless
15 we can persuade some witness to recant
16 their story, then very little can be
17 done. Obviously, the most crucial
18 evidence came from Nichol John, from
19 Wilson, and Codraine, and recanting from
20 one of the other people would at least
21 start us in the proper process."

22 Fair enough?

23 A Yes.

24 Q And that was sort of an idea, in terms of new
25 evidence, that you were thinking of pursuing; is



1 that fair?

2 A Well, that was not me writing that.

3 Q Okay. I --

4 A But this, yes, that --

5 Q With the concept, I should say?

6 A Yes.

7 Q Okay.

8 A Yes.

9 Q And, similarly, there was a -- I'll put up a --
10 I'll ask you to put up 162433, please. And this
11 is a letter to Mr. Wolch from Peter
12 Carlyle-Gordge, I -- dated 28 April, 1986, and I
13 -- were you familiar with this; do you remember
14 seeing this letter?

15 A I probably did.

16 Q And I'd just pull up the one line, there, and he
17 says:

18 "The key to the case is to get one of
19 the three young Crown witnesses --
20 Cadrain, Wilson or Nicol John -- to talk
21 and admit they were leaned on to change
22 their testimony. *Fifth Estate* has been
23 trying to do exactly that -- without
24 success ..."

25 And that, was that something, that concept, that



1 you were thinking of pursuing in 1986 then?

2 A Well I think I testified, and my recollection is
3 that we discussed it, and I -- my recollection is
4 that we came to the view that these people,
5 because of what had happened since the trial and
6 since -- with Mrs. Milgaard's interaction with
7 them, and Mr. Merchant, that they may have been
8 tainted or, you know, turned off from talking to
9 us.

10 Q Okay.

11 A That's my recollection.

12 Q And can you tell me what happened between 1986 and
13 1990 that made you change your mind with respect
14 to those three witnesses?

15 A Umm, well --

16 Q Or the group's mind, so to speak, as a strategy?

17 A Well I guess we had gotten the Ferris and the
18 Deborah Hall information, we hadn't received what
19 we thought was the proper attention from the
20 department, federal Department of Justice, and set
21 out to do what we thought they should have done.

22 Q Okay. And but in terms of the delay, I know
23 that's why in 1990 that you decided, I just want
24 to make sure why you waited the four years before
25 you went out and tried to contact these three



1 people to see what they would say now?

2 A Well, look, I -- as I've also testified, I think
3 in 19 -- when we filed the original application in
4 1988 we -- I certainly thought that this would be
5 almost step one for what would be a
6 reinvestigation of the case.

7 Q Okay. In terms of that, though, how did you
8 convey that expectation to the Department of
9 Justice?

10 A Well, as I say, the first step we had to do was to
11 try to open the door, which was, we thought, to
12 provide something new, and if we could find
13 something new then, you know, the discussion would
14 occur as to what else needed to be looked at, and
15 as I've said, it would be a collaborative process.
16 That occurred, I would say, mostly in, I would
17 think in telephone conversations with senior
18 Justice officials.

19 Q And would you be involved in those, or would those
20 be between Mr. Wolch, for example, and someone at
21 Justice?

22 A I may have been in some of those conversations,
23 but primarily Mr. Wolch.

24 Q Okay, well, maybe I'll leave that area for
25 Mr. Frayer. One of the things that you indicated,



1 though, is, in terms of not doing anything let's
2 say from '86 to the time that the application is,
3 that you thought, because of the contacts that
4 Mrs. Milgaard had made, that the witnesses might
5 have been tainted? I'm not sure what you meant by
6 that, if you could --

7 A Yes. Well I think you've also got to remember, I
8 was away for a year during this period --

9 Q Right.

10 A -- and my recollection is the feeling was that
11 Mrs. Milgaard's attempts to contact these
12 witnesses and Mr. Carlyle-Gordge and Mr. Merchant
13 and others, including media, may have scared them
14 off, basically.

15 Q Okay. But in fact, and I think you would have had
16 some of these transcripts, for example, that the
17 contacts and interviews were conducted, for
18 example with Nichol John, through her lawyer
19 sometime, I think, in '81 or '82?

20 A Right, but --

21 Q Do you recall that?

22 A Right, but I think I -- I have a recollection that
23 that was followed up with an unfortunate
24 confrontation, I think, with her and Mrs. Milgaard
25 and --



1 Q Okay. Well, if I could have document 048643,
2 please.

3 A Or Mr. Carlyle-Gordge had tried to contact her or
4 something.

5 Q I think you are probably right, I think he did try
6 to contact her, I believe. Doug will jump up and
7 let us know if we're wrong -- or Mr. Hodson,
8 sorry. And if you could go to page 662. And this
9 is a transcript of a conversation between Nichol
10 John, her lawyer Larry Leslie, Mrs. Milgaard's
11 lawyer Mr. Merchant, and Mrs. Milgaard. Do you
12 recognize that, did you see that as part of the
13 material you had sometime after the retainer in
14 1986?

15 A I don't recall seeing this.

16 Q Okay. Well one of the things I will just bring to
17 your attention is that Mrs. Milgaard is doing the
18 question here and she asks the question to Nichol
19 John specifically with respect to police conduct,
20 and she says:

21 "Did the police ever suggest to you at
22 any time that well you know you were
23 there, you were involved with it, you
24 could, you know, you could be charged
25 with this ...",



1 basically asking -- and I won't put you through
2 reading the whole thing -- but whether the police
3 had done anything to plant the evidence in
4 Ms. John's mind. And her answer is:

5 "My impression of my to to do with the
6 police was that they treated me good,
7 O.K.? That ah they no. I don't think
8 they ever believed that I had anything
9 to do with it."

10 So would part of the reason you wouldn't be going
11 to them is that at that time, at least with
12 respect to the dealings with the police, Ms. John
13 was taking the position that she was well
14 treated, or "treated me good", so to speak,
15 that's what she says?

16 A I don't recall that being the reason. It may have
17 been, but I don't recall that being the reason.

18 Q You don't recall?

19 A No, I -- no.

20 Q Okay. And, similarly, were you also aware that
21 Mrs. Milgaard was successful in doing a -- in
22 conducting an interview with Ron Wilson sometime
23 in 1980-'81; were you aware of that?

24 A Is that the one with the Kool-Aid?

25 Q Umm, could be.



1 A Yeah, there was one.

2 Q Could be. I think it is.

3 A Yeah, I became aware of it, but I don't know when.

4 Q Okay. If we could have doc. ID 046761. And this
5 is the, it's not dated, but this is the transcript
6 of conversation between Mrs. Milgaard and Mr.
7 Wilson sometime in '88, and if we can go to 775,
8 please. And just at the very bottom, again
9 this -- Mrs. Milgaard puts to Mr. Wilson the idea
10 that maybe the police had something to do with his
11 testimony, and she says -- she questions him:

12 "Did the police ever offer to, to uhm,
13 make a deal with you if you
14 co-operated?"

15 And Mr. Wilson's answer is:

16 "Nope."

17 Do you see that there?

18 A Yes.

19 Q And then at page 777, please. And again on the
20 police, she says:

21 "Okay, now they never threatened you or
22 told you what to say or anything like
23 that?",

24 and Mr. Wilson answers:

25 "Nope."



1 A Right.

2 Q Okay. And in terms of that, again, is that maybe
3 a reason why you didn't think it would be
4 worthwhile following up with either Wilson or
5 Nichol John in '86, or you just don't recall?

6 A I don't recall. I don't know why we didn't.

7 Q Okay. And likewise with Mr. Cadrain, I won't go
8 through the transcript, there's a -- there's
9 transcripts with Mr. Peter Carlyle-Gordge, he did
10 talk to Mr. Cadrain. Whatever else Mr. Cadrain
11 was saying, he was standing firm by his, his
12 statement that he saw blood on David Milgaard's
13 pants?

14 A Right.

15 Q And you were aware of that too?

16 A Right.

17 Q And --

18 COMMISSIONER MacCALLUM: And do you have
19 the doc. number, just for --

20 MR. BOYCHUK: Actually, I don't, I just
21 pulled it out of my binder.

22 COMMISSIONER MacCALLUM: All right.

23 MR. BOYCHUK: Isn't there a tape between
24 Mr. Peter Carlyle-Gordge and Shorty Cadrain?

25 MR. HODSON: Yeah, there is, I will obtain



1 that and provide it to you.

2 MS. KNOX: I can actually provide it, if it
3 helps.

4 MR. HODSON: 048447 is the conversation
5 between Albert Cadrain and Peter Carlyle-Gordge
6 and unknown male at Dalmeny.

7 COMMISSIONER MacCALLUM: And he is
8 suggesting this as an example where the subject
9 of mistreatment was -- arose, or simply that he
10 stuck to his story about blood?

11 MR. BOYCHUK: Well Mr. -- I specifically
12 said, with Mr. Cadrain, he had issues with the
13 police treatment but there was never -- it was
14 never his position, and it wasn't in his
15 statement, that the statement that he saw blood
16 on David Milgaard came as a result of any police
17 conduct.

18 COMMISSIONER MacCALLUM: All right. Thank
19 you.

20 MR. BOYCHUK: That's the point.

21 COMMISSIONER MacCALLUM: Uh-huh.

22 BY MR. BOYCHUK:

23 Q And at least in 1990 though, Mr. Milgaard -- or
24 Mr. Asper, you will agree that the thought was to
25 go and re-interview those three witnesses; fair



1 enough?

2 A Yes.

3 Q And that with the specific intent of trying to get
4 them to recant their evidence?

5 A I don't know that we were trying to -- we wanted
6 them to recant, certainly.

7 Q Okay. And part of that strategy, if I might call
8 it that, was to offer them a reason for recanting,
9 which was that somehow the police had either
10 coerced or threatened them or planted the evidence
11 with them; isn't that fair to say?

12 A Yes. The enormity of the recantation, we felt,
13 might require an exit --

14 Q And --

15 A -- an exit strategy for each individual.

16 Q And I don't, I don't intend to walk through those
17 transcript portions of the discussions that you
18 had with Mrs. Milgaard and Mr. Henderson again on
19 that, but clearly part of the strategy also, I
20 think we saw from your earlier evidence and from
21 the transcripts, was to -- for Mr. Henderson to go
22 out there, tell these people that the -- that Mr.
23 Fisher was the murderer and was or is likely to
24 confess in the near future; fair enough?

25 A I think that's what we talked about, yes.



1 Q Right, and that if they did so, that they would be
2 facing problems possibly with perjury charges and
3 things like that?

4 A I think that's what we said, yes.

5 Q Yeah, and that's -- and essentially, I don't want
6 to walk through the -- I could -- that's
7 essentially the approach that Mr. Henderson took,
8 I think we saw from --

9 A Yes, it was.

10 Q Okay. And with respect to Mr. Cadrain, we'll go
11 back to Mr. Cadrain, of the three witnesses,
12 Wilson, John and Cadrain, John was not prepared to
13 talk to Mr. Henderson; is that -- that's correct?

14 A That's correct.

15 Q So you didn't get any information or recantation
16 from Nichol John?

17 A Correct.

18 Q And in terms of Ms. John, whether it was -- we've
19 heard from her at this Inquiry and, consistent
20 with her statement to Mrs. Milgaard back in
21 1980-'81, she still maintains that the police
22 treated her fairly well; did you read that or see
23 that?

24 A I haven't read her evidence at the Inquiry, no.

25 Q Okay. You haven't heard otherwise, it's fair to



1 say?

2 A No.

3 Q And with respect to Mr. Wilson -- or Mr. Cadrain,
4 rather, Mr. Cadrain, oddly enough, was the one
5 that, in a sense, did think that he had been
6 treated poorly by the police?

7 A Right.

8 Q The difficulty with Mr. Cadrain though, I guess
9 from your point of view, is that regardless of his
10 view of how the police treated him he always
11 maintained that he saw blood on Mr. Milgaard's
12 pants?

13 A Right.

14 Q And that that was information, those were
15 statements he made before he got to the Saskatoon
16 Police Service, --

17 A Right, sorry.

18 Q -- to his family and --

19 A Yes, correct.

20 Q And just running through it, again I think I may
21 have touched on this this morning, but part of the
22 reason that the police were close questioning Mr.
23 Cadrain was because he was implicating your
24 client; fair enough?

25 A Correct.



1 Q And you accept that?

2 A Yes.

3 Q When someone comes in and makes an allegation of
4 murder it's not something that you want to just
5 accept?

6 A Yes.

7 Q Okay. And in fact, in terms of that, Mr.
8 Henderson did do a report back to you on his
9 dealings with Mr. Cadrain; fair enough?

10 A Yes.

11 Q And if we could just have document ID 154605. And
12 this is a memo to you dated 28 May, 1990 from, it
13 looks like, Paul Henderson to David Asper, and you
14 would have received this around that time, sir?

15 A I assume so, yes.

16 Q Yes. And if we can go to page 605, please -- or
17 I'm sorry, 606, sorry. And I'm just focusing on
18 the bottom half there, you can see Mr. Henderson
19 is consistent with the approach that we just
20 discussed, was setting out for Mr. Cadrain the
21 idea that Mr. -- there is a strong case for Mr.
22 Fisher's guilt and that, you will agree with me,
23 that a confession would be coming, fair enough? A
24 summary of the paragraph rather than my reading
25 it.



1 A Yes, yes, could be coming, yes.

2 Q And at the bottom there, if you look at
3 Mr. Henderson, he is telling you what happened.
4 He says:

5 "After spending a lot of time with both
6 brothers, I would have to agree with
7 Dennis that Albert is not likely to see
8 the situation any other way - even in
9 the face of a confession from the real
10 killer. For Albert to recant his
11 testimony would be for Albert to lie."

12 Fair enough? That's what --

13 A That's correct.

14 Q -- Mr. Henderson reported back to you?

15 A That's correct.

16 Q Now when you got this information from Mr.
17 Henderson, and you also got a statement from Mr.
18 Cadrain -- and I apologize, I just don't have it
19 handy, Doug, if you could get that number? Sorry.

20 MR. HODSON: The statement?

21 MR. BOYCHUK: The statement of Albert
22 Cadrain.

23 A To Henderson, aren't you referring?

24 MR. BOYCHUK: To Paul Henderson, I think
25 it's 24 June.



1 MR. GIBSON: It's 000229.

2 BY MR. BOYCHUK:

3 Q And I don't need to go through the statement, I
4 don't believe. What I'm interested in is how you
5 dealt with the statement in the context of the 690
6 process now, and would I be fair to say that where
7 the statement went first was to the media, through
8 Mr. Lett?

9 A I think that's --

10 Q Or about the same time?

11 A I think contemporaneously, yes.

12 Q Yeah. And if I could have you pull up 039118?
13 And I think you've seen this, this is an article
14 in the *Winnipeg Free Press* written by Dan Lett on
15 26 June, 1990, and I note, I keep in mind what you
16 told us about headlines and who chooses them,
17 although the word "tortured" was used, but it was
18 a word that Mr. Cadrain used; correct?

19 A Right.

20 Q And I think we've heard a fair bit of evidence
21 that you had a fairly, I won't say unique, but a
22 relationship with Mr. Lett in terms of he was
23 somebody that you were somewhat, say,
24 preferentially feeding information to on the file
25 as compared to other media outlets; that was the,



1 at least --

2 A Yeah, maybe for a while, yes.

3 Q Yeah. And as I read the story though, when you
4 look at the story, from your point of view the
5 story doesn't really make it clear, does it -- and
6 you can read it if you like, you may be familiar
7 with the article -- that the evidence in question,
8 though, the blood on the pants, was not evidence
9 that came out of this treatment of Mr. Cadrain, it
10 existed before he went to the police; fair enough?

11 A I think you are right, yes.

12 Q And isn't that the spin that you wanted Mr. Lett
13 to put on this --

14 A Umm --

15 Q -- with respect to media?

16 A Which spin; to ignore the evidence of blood on the
17 pants?

18 Q Right?

19 A I'm not sure we were actually, quote unquote,
20 "spinning" this, I think that we were providing
21 the information and putting it out there, because
22 at this point Mr. Lett certainly had the trial
23 transcripts and everything else.

24 Q Okay. But in terms of getting the background
25 information, Mr. Lett, I take it that you were



1 primarily providing him with that background?

2 A Which background?

3 Q You know, in terms of what your view was arising
4 out of Mr. Cadrain's statement that he was
5 mistreated by the police?

6 A You know, the only, the only thing I recall
7 specifically coming out of this was the visions.

8 Q Was what?

9 A Was the visions.

10 Q Okay.

11 A I'm not sure that there was any background because
12 Dan Lett, you have to remember, knew the
13 transcripts almost better than the rest of us,
14 knew the -- knew what the witness had said.

15 Q But in any event, from your point of view, the
16 slant of the article would be positive?

17 A Umm, yes, I think so. Yes, that's fair to say.

18 Q Okay. So we've been through, out of the three
19 witnesses you didn't get a recantation from Nichol
20 John; you didn't get a recantation from Mr.
21 Cadrain, but you got some sort of allegation with
22 respect to the police; with respect to Mr. Wilson,
23 though, you did get a statement, Mr. Henderson was
24 able to obtain a statement of 4 June, 1990, I
25 believe. And I apologize again, I removed some of



1 these documents from my binder, Mr. Commissioner,
2 and maybe someone could get it.

3 MR. HODSON: The Wilson statement?

4 MR. BOYCHUK: Yeah.

5 MR. HODSON: June 4.

6 MR. BOYCHUK: Yeah. Do you have the
7 number?

8 MR. HODSON: No. I'll get it.

9 BY MR. BOYCHUK:

10 Q And what I want to do is, then, follow Mr.
11 Wilson's progress after that point. And we spent
12 the last day, two days listening to Drs. Boyd and
13 Rossmo?

14 A Yes.

15 Q And you are familiar with those two gentlemen?

16 A Yes.

17 Q And they are both criminologists?

18 A Yes.

19 Q And at the time Dr. Boyd was a, I think he was
20 teaching in British Columbia, he was a professor,
21 and Mr. Rossmo, or now Dr. Rossmo, was a Ph.D.
22 candidate of Dr. Boyd's; correct?

23 A Correct.

24 Q And can I ask you, I'm not sure, were you
25 approached by Dr. Boyd and Mr. Rossmo or did you



1 approach them to do their study of the *Milgaard*
2 case?

3 A My recollection is they approached us.

4 Q Okay. But in any event you, in a sense, welcomed
5 their set of professional eyes to take a look at
6 the evidence that you had gathered?

7 A Yes.

8 Q Fair enough?

9 A Yes.

10 Q And whatever other evidence was out there that
11 dealt with the trial and conviction of Mr.
12 Milgaard?

13 A Correct.

14 Q And that the hope is that would assist you in your
15 690 application with the minister?

16 A Yes.

17 Q And I think, I don't know that there's much
18 controversy here, but I think a lot of the
19 material that they relied on in preparing the
20 report eventually, that we heard so much about
21 over the last couple of days, came through your
22 office?

23 A I believe that's true, yes.

24 Q And of course they did their own research in terms
25 of conducting interviews of people; fair enough?



1 A Yes.

2 Q And one of the people that they did interview was
3 Ron Wilson?

4 A I don't recall that, but yes.

5 Q Okay. But you recall reviewing the report, it was
6 something that you were putting forward in the
7 Supreme Court application?

8 A Yes.

9 Q And in terms of Mr. Wilson, there was a transcript
10 generated of his interview which took place on 7
11 October, 1991, and that's at document number
12 154640, if I could have that pulled up, please,
13 and that's a transcript of the interview I was
14 referring you to, and if you could go page 660,
15 please, and the part of the transcript I want to
16 draw your attention to is right here, and I'm
17 just, I'm sorry if I forgot your answer, did you
18 see this transcript as part of the report or do
19 you think you might have?

20 A I haven't seen that report since it was published,
21 so I don't know.

22 Q So 15 years, so you don't know whether you got
23 this particular --

24 A That's correct, I don't remember.

25 Q -- transcript or not. Now, the question that NB,



1 whom I'm assuming is Neil Boyd, puts to Mr.

2 Wilson:

3 "How do you feel about how the police
4 dealt with you before the trial? Ed
5 Karst, for example."

6 And Mr. Wilson's response is:

7 "I was talking to Ken earlier today.
8 They all treated me nice. What I tried
9 to get across to Williams, which I never
10 could, was that, like when you are
11 watching TV ...you've got this bad cop
12 that wants to beat this out of you and
13 stuff...it doesn't happen that way.
14 Like I had... later on in my dealings,
15 bad cops. But these guys were nice. I
16 think, now that I look back on it...
17 being nice gets them further ahead than
18 being nasty to you."

19 Do you recall at least getting that information
20 from Drs. Boyd and Rossmo back then, that --

21 A I didn't say I remember, but I obviously got the
22 information.

23 Q And the follow-up question from Dr. Boyd is:

24 "So there wasn't anything about the way
25 in which they conducted the questioning



1 that..."

2 And Wilson answers:

3 "I mean, they were questioning me like I
4 was a suspect also and that part always
5 scared me."

6 That's what Mr. Wilson said?

7 A Correct.

8 Q Now, in terms of Mr. Wilson's, the issue of
9 recantation, and I think he's, for the most part,
10 stayed with his recantation, portions of his
11 evidence that implicated David Milgaard, but one
12 of the things he backed away from was that this
13 evidence had been in any way planted or brought
14 out of him improperly by the police; correct?

15 A Well, I can't say that definitively. I mean, the
16 portion of the transcript you've shown me shows
17 that he was scared.

18 Q Okay, fair enough, but --

19 A But I don't think he offers that as the
20 explanation.

21 Q Right. But that being scared is a lot different,
22 a young person in the presence of police often
23 will be nervous or scared, but that's a lot
24 different than being threatened, coerced or having
25 evidence planted; do you agree with me, or do you



1 say there's not much distinction there?

2 A Well, I think there's, I think if you look back at
3 Mr. Karst's cross-examination, it wasn't simply a
4 young person in the presence of police officers,
5 there was a long list of factors that doesn't
6 necessarily include yelling and typical TV style
7 interrogation techniques, but I'll accept what you
8 are saying.

9 Q Right. For example, in terms of the interviews,
10 other than the other police officers, you have Mr.
11 Wilson there, you have Mr. Karst there, fair
12 enough, you don't know what went on during the
13 interrogation?

14 A That's correct.

15 Q And just following up on that, if I could have
16 transcript page 7211, and I just want to -- again,
17 we're -- and I won't take you all the way through
18 his Inquiry testimony, suffice it to say I think I
19 fairly summarize it by saying he didn't think he
20 was mistreated by police in any way, but I'll just
21 highlight a couple of these, there's a question
22 here, this is Mr. Hodson doing the examination, or
23 Mr. Fox, sorry, and he says:

24 "Q Okay. Having said that, as I understand
25 it, you felt as though you were treated



1 fairly by the police?"

2 He answers:

3 "A Yes."

4 And then if you could just shrink back to the
5 page there, and he asks him specifically with
6 respect to being afraid, he says, the question
7 is:

8 "Q You weren't scared of Mr. Karst or
9 Officer Short?"

10 And the answer is:

11 "A No.

12 Q And I take it as well, from your
13 recollection, Officers Karst and Short
14 didn't mistreat you in any way?

15 A No.

16 Q There were no threats?

17 A No.

18 Q They didn't put any words in your mouth?

19 A No."

20 That's the exchange that took place at this
21 Inquiry.

22 A Well, I'm afraid -- I accept that's what Mr.
23 Wilson said. I'm afraid at this point I don't
24 really accept anything Mr. Wilson says about
25 anything.



1 Q Okay, fair enough, but in terms of --

2 A Whether it's good or bad, for whoever, whatever
3 side.

4 Q But would you agree with me now, given what Mr.
5 Wilson has said, both to Drs. Boyd and Rossmo, who
6 are an independent set of eyes, they are not
7 police officers -- for example, Mr. Hodson in the
8 course of this Inquiry -- that, for example,
9 there's strong evidence here that Mr. Karst wasn't
10 involved in any way in improperly getting
11 information out of Mr. Wilson.

12 A In terms of his physical interrogation, I think
13 that's correct.

14 Q Okay.

15 A I think that's correct, you know. I've said to
16 you, you and I could probably debate a long time
17 about the nature, the information that was
18 obtained and its context in the rest of the
19 investigation maybe another day.

20 Q Fair enough. And the one thing I do, we did spend
21 a fair bit of time looking at the report of Drs.
22 Boyd and Rossmo, is the conclusion they came to
23 themselves, that Mr. Wilson was not mistreated by
24 police or that evidence was coerced out of him or
25 that there was any, there wasn't any police



1 misconduct in terms of obtaining Mr. Wilson's
2 evidence?

3 A Well, I just -- again, I take the position that if
4 you've got --

5 Q I'm going to give you a chance --

6 A I'm answering.

7 Q I'm going to give you a chance, but in terms of
8 the report itself, you recognized that was their
9 conclusion; fair enough?

10 A I understand that was their conclusion, but my own
11 view is, and you've asked me, is you've got kids
12 who say nothing happened, that's where it starts,
13 and you wind up with kids who inculcate David, and
14 we know that that's false now because he didn't
15 commit the murder, so something happened along the
16 way. I accept, and I've read more than I thought
17 I could ever read from this Inquiry, that -- and
18 again, I've had the benefit of actually learning
19 from Ms. Knox in her own inquiry about this notion
20 of being a consumer of information, whether you
21 are a prosecutor or a police officer, and I accept
22 that Wilson may feel that he wasn't brought along,
23 but he changed his story, he conformed his story,
24 he became aware of information that only somebody
25 who had been provided with information could know,



1 and that implicated and supported a theory that
2 David Milgaard committed the murder. I don't know
3 how that happened, but it did, and as I've said to
4 you, I'm not going to advocate one way or the
5 other as to what happened to make that occur.

6 Q Okay. And I don't want to duel with you either
7 because I certainly take issue with the argument
8 that he conformed his story, for example, and I'll
9 just give you a quick example, and you are
10 familiar with it because you referred to it in
11 your own evidence about what Mr. Tallis said and
12 how he had been walked through. This is what Mr.
13 Wilson said in the first get-go, no mention of the
14 break-in for example, no mention of the compact,
15 no mention of being apart, those kinds of things
16 weren't in the first statement; fair enough?

17 A I think that's true, yes.

18 Q And that evidence came out later through
19 questioning, and some of that evidence, by your
20 client's own admission, was accurate; fair enough?

21 A It would appear to be, yes.

22 Q Okay. And then, for example, and I'll just give
23 you an example because we heard, we had the
24 benefit of hearing Mr. Milgaard on Monday
25 afternoon and one of the things he said that I



1 found surprising that made me sit up was he said
2 that when he was at the Danchuks', he has a
3 recollection of looking, asking her for a bandage
4 and, for example, the immediate thing that popped
5 into my head is that might be an innocent
6 explanation as to Mr. Cadrain and Mr. Wilson
7 testifying that they saw blood on Mr. Milgaard.
8 Do you follow?

9 A I can't believe we're still getting new facts in
10 this case.

11 Q Yeah.

12 A Stop it, stop it.

13 Q Fair enough, but I'm saying in some of these cases
14 there might be an innocent explanation, that might
15 be one of them?

16 A There's no question.

17 Q Fair enough. But can I honestly summarize your
18 evidence, going back now, the statements you said
19 the other day, that really all you can say is that
20 you have some inkling or suspicion that there
21 might be some sort of wrongdoing but you can't say
22 definitively that there's any hard evidence for;
23 is that fair?

24 A That's true.

25 Q Okay. And one of the things I wanted to close on,



1 and, for example, another example, there's a
2 couple of things I touched on that were
3 significant events, for example, what happened in
4 the Supreme Court, Mr. Wilson's statement to
5 Mr. Boyd, or Drs. Boyd and Rossmo, things that you
6 don't have a recall of some 20 years later; fair
7 enough?

8 A Right.

9 Q And so can you accept that a one-time interview
10 for Detective Karst on a file he wasn't involved
11 in, that he may have honestly not remembered
12 meeting Mr. Fisher in Winnipeg in 1970?

13 A I accept that.

14 Q Okay. And I'm not going to ask you -- I'm going
15 to ask you, in terms of Mr. Karst, I talked about
16 how the allegations against him started coming out
17 in the media about the time that the Cadrain,
18 Wilson statements, that he might have been
19 involved in a frame-up in terms of coercing
20 evidence came up?

21 A Right.

22 Q From the Milgaard group?

23 A Right.

24 Q Not necessarily yourself. Also, the allegation of
25 a cover-up; fair enough? One of the things I



1 thought that you said was quite fair was to Mr.
2 Wilson, that at the end of the day the
3 Commissioner is here to determine these issues.
4 For example, if Mr. -- if the finding is that Mr.
5 Karst wasn't involved in a cover-up or a frame-up,
6 and that's his finding, would you say that you
7 would apologize to Mr. Karst for those kinds of
8 allegations that were made against him?

9 A I find it difficult that the people who get David
10 Milgaard out of prison are the ones apologizing
11 here, I find it very bizarre, I find that very
12 strange.

13 Q I'll tell you what --

14 A Let me ask you a question, has Mr. Karst --

15 Q I get to ask the questions.

16 A No, you raise questions.

17 COMMISSIONER MacCALLUM: Just a minute,
18 both of you, please.

19 BY MR. BOYCHUK:

20 Q But I'm only asking you to give --

21 COMMISSIONER MacCALLUM: Mr. Boychuk, it is
22 obvious from this uproar that the witness isn't
23 about to apologize to anybody. Leave it at that.

24 MR. BOYCHUK: Okay.

25 A No, Mr. Commissioner, that's not fair, because I



1 have said all along, to the extent that things
2 happened during the course of getting David out of
3 prison through the course of this application, to
4 the extent that things were said and done that
5 were incorrect and that I did on my part --

6 MR. BOYCHUK: Fair enough.

7 A -- and that were wrong, I apologize for it.

8 COMMISSIONER MacCALLUM: I realize that,
9 sir. I'm was thinking about Karst. I shouldn't
10 have said anything.

11 A And to the extent that applies to Mr. Karst, I
12 apologize.

13 COMMISSIONER MacCALLUM: All right.

14 A I just find it bizarre that we're the ones doing
15 the apologizing.

16 BY MR. BOYCHUK:

17 Q Well, I will say, that's all I wanted from you,
18 sir, and I want to say to you that there is, from
19 my client's point of view, in terms of asking him
20 or looking at his conduct, he has no problem in
21 terms of looking at the conduct and pointing out
22 if you have fair criticisms or a mistake, the
23 exception was that he may have somehow been
24 dishonest in the doing of his job, that's all, Mr.
25 Asper. Do you understand?



1 A Well, that's not my understanding of what your
2 client has said.

3 MR. BOYCHUK: Fair enough. Anyway, thank
4 you, Mr. Asper, I appreciate your time.

5 **BY MR. LORAN:**

6 **Q** Good afternoon, Mr. Asper.

7 **A** Good afternoon.

8 **Q** Pat Loran on behalf of the Saskatoon Police
9 Service. I'm going to be asking you some
10 questions today about a number of things,
11 including the evidence that led to David
12 Milgaard's conviction in 1970 for a crime he did
13 not commit.

14 I want to be clear from the
15 outset that we're of the position that it's a
16 tragedy any time somebody spends 23 years in
17 prison for a crime they didn't commit. I think
18 that the police, prosecutors, Provincial and
19 Federal Departments of Justice would all agree
20 with that. One of the reasons we're here today,
21 however, is that you've taken the position what
22 happened to David Milgaard was something more than
23 a failure of the justice system and it's that
24 individual actors from police, prosecutors or
25 Provincial or Federal Departments of Justice



1 engaged in wrongdoing either individually or in
2 concert and those are some of the issues I want to
3 address.

4 I think you answered this
5 earlier in Mr. Boychuk's, he probably asked the
6 question more eloquently than I can, but perhaps
7 I'll ask for a confirmation. Do you believe it's
8 possible for our legal system to convict an
9 innocent man without individual wrongdoing on the
10 part of either police or the Crown?

11 A Yes.

12 Q Thanks. Just as a preliminary matter, I want to
13 determine exactly what position it is that you are
14 asserting with regard to the Saskatoon Police
15 Service in particular. Is it your assertion that
16 members of the police service worked together with
17 either another police force or the Crown to
18 suppress evidence or to wrongfully convict --
19 let's just say to wrongfully convict David
20 Milgaard, or is it your position that it was
21 merely individuals?

22 A My position today?

23 Q Yup.

24 A My position is that from reading as much of the
25 evidence as I've been able to read, the Saskatoon



1 Police Department undertook a good faith
2 investigation into the murder of Gail Miller that
3 led them down a possible two paths; one was the
4 rapist that had been working in the area, and the
5 other, according to the information, fell into
6 their lap in the form of Albert Cadrain. I don't
7 know a lot about what happened on the Larry Fisher
8 side of the investigation, but what I have gleaned
9 was that on the David Milgaard side of the
10 investigation a whole number of officers were
11 involved. It appears to me that not all officers
12 were always informed as to what other officers
13 were doing and that a wealth of information, and I
14 think Mr. Karst even said that there wasn't sort
15 of a reader, somebody quarterbacking all of the
16 police information as it was coming in, a wealth
17 of all this information at some point landed at
18 some, let's call it a choke point, either at Mr.
19 Caldwell's desk or someone's desk before then, and
20 that that's where, in my view, it broke down, that
21 nobody was able to distill and look at the
22 entirety of the information to evaluate, for
23 example, Merriman versus Nichol John saying a car
24 was stuck where Merriman was looking, so that I
25 don't know where the breakdown occurred, but I do



1 say that up until the point that that breakdown
2 occurred, it was a regular, normal, good-faith
3 investigation and I have no doubt that the
4 Saskatoon police wanted to get the right person.

5 Q Thank you for that. You talked about a breakdown.
6 Is it possible for a breakdown to occur, in other
7 words, the right result, the right conclusion
8 doesn't come out of it, is it possible for that
9 breakdown to occur without anybody intending to
10 have the breakdown occur?

11 A Yes.

12 Q Is that what you are saying?

13 A Yes.

14 Q Thanks. I'm going to ask to have document number
15 000263 pulled up, please. This is the report the
16 Saskatchewan Police Commission prepared, I guess
17 we'll have to go to the next page, it was -- we
18 don't have a date on it here until I suppose the
19 end of the document, but it was prepared in
20 response to allegations that there was some
21 wrongdoing in terms of police files relating to
22 Larry Fisher that couldn't be found by the
23 Saskatoon police. Are you familiar with this
24 report?

25 A Yes.



1 Q Okay. The question I have for you is are you
2 aware of any new facts which were not made
3 available to our Chief Justice at the time he
4 prepared this report?

5 A No.

6 Q Do you know what prompted the preparation of this
7 report?

8 A Well, as I've said, I felt pretty confident that I
9 would not -- I mean, I think what prompted the
10 report was a comment or a report that I may have
11 responded to in *The Globe and Mail*, I can't
12 remember what the sequence was, sort of raising
13 the alarm bell that these files had gone missing.
14 I feel very confident that I would not have done
15 that unless somebody that I had been dealing with
16 told me that, but that's what prompted it as far
17 as I know.

18 Q Okay. And it's fair to say that at that time you
19 were engaged in your, as you've termed it, war of
20 liberation?

21 A Yes.

22 Q Okay.

23 A And I would say in a hair-trigger state of mind
24 and chasing down Mr. Fisher's information and very
25 nervous.



1 Q And this report, is it fair to say that it
2 resulted from allegations which originated from
3 you or your office or generally?

4 A Yes. As I say -- yes. I mean, the gist is yes.

5 Q Thanks. Now I'm going to ask to call up document
6 number 066949. Are you familiar with this
7 document or this report?

8 A I don't believe I've seen this.

9 Q Are you aware of what it was that prompted the
10 preparation of this report?

11 A I think I am, yes. This is Breckenridge and the
12 allegations of cover-up?

13 Q I think it's fair to say that that's part of it,
14 yes. And would you agree that this is an
15 investigation by the Attorney General's office
16 from a different province, an independent third
17 party?

18 A Yes, I think that's what happened, yes.

19 Q And even Mr. Breckenridge would be satisfied
20 because it's not an NDP government. Now, would
21 you agree that the allegations which prompted it
22 are that police coerced witnesses, police hid
23 evidence, Crown prosecutors failed to make
24 disclosure and that a number of parties, including
25 police, Crown, Roy Romanow, all knew that Larry



1 Fisher was the guy who really committed the Gail
2 Miller murder?

3 A I think that's the general pattern, yes.

4 Q Now, you indicated you were engaged in a war of
5 liberation?

6 A Yes.

7 Q Is it fair to say that to some extent during that
8 period of time, from 1986 through to about '92, it
9 became your *raison d'être*?

10 A Personally?

11 Q Yes.

12 A No. I think that it became a single focus for me
13 I think sometime in about 1991, I had to stop the
14 rest of my practice. Until then I was trying to
15 build my own practice and I was trying to make a
16 living.

17 Q Maybe then *raison d'être* is putting it a little
18 too high. Would it be a very important issue for
19 you at the time?

20 A It was extremely important to me, yes.

21 Q David's been out of prison for over 10 years now
22 and the DNA evidence has conclusively established
23 his innocence?

24 A Yes.

25 Q I think you probably recognize that a number of



1 the parties who have standing here take exception
2 with some of the tactics you employed in that war
3 of liberation. Would you say that that's
4 accurate?

5 A I'm aware of that, yes.

6 Q If it was necessary prior to David Milgaard's
7 release to justify the tactics that you employed
8 to achieve your goals by saying under those
9 circumstances the end justified the means, would
10 it be fair to say that that's no longer the case
11 as of today, the tactics --

12 A The media tactic?

13 Q The means -- yeah. You wouldn't be adopting those
14 tactics any longer?

15 A Vis-a-vis this case or a different case?

16 Q Yeah, vis-a-vis this matter now that David is out.

17 A No.

18 COMMISSIONER MacCALLUM: Why would he need
19 to now that David is out? I don't understand the
20 question.

21 MR. LORAN: That's the point, My Lord.

22 COMMISSIONER MacCALLUM: It is?

23 MR. LORAN: Now, aside from -- sorry,
24 that's the point I was trying to make, My Lord.

25 COMMISSIONER MacCALLUM: The point that



1 interests me, though, is whether his view of the
2 propriety of adopting such tactics has changed.
3 Would you do the same thing in similar
4 circumstances?

5 A I might do things a little differently, but if I
6 was faced with the same facts, the same process?

7 COMMISSIONER MacCALLUM: Uh-huh.

8 A Yes, I would do it over again. I might do some
9 things differently, but essentially I would not --
10 I would not do it differently.

11 BY MR. LORAN:

12 Q Okay. What sort of things would you do a little
13 differently?

14 A Oh, it's clear, I would be much tighter with the
15 flow of information, much crisper. Probably
16 instead of sort of ad hoc, off-the-cuff commentary
17 that was going on, I would probably use more
18 issuing of statements and controlled messaging.

19 Q For example, not making yourself available for
20 interviews, but issuing a release, something like
21 that; is that what you are saying?

22 A Yes.

23 Q Anything else?

24 A In terms of the entire application process? I'm
25 not sure what you are asking. What would I do



1 differently in terms of the whole application?

2 **Q** I guess I'm responding to your comment that there
3 are some things you would do differently and I'm
4 just wondering what those things are.

5 **A** Oh. Well, I do have some recent experience and I
6 think that some of the issues that have been
7 raised in terms of the communication with previous
8 counsel; in other words, look, I think what I
9 would have done, what I would do differently is to
10 have come to the Department of Justice with
11 substantially more than we did and I think we've
12 made reference to a lot of it today.

13 **Q** Okay.

14 **A** Now, if we were met with the same reaction from
15 the Department of Justice, I don't think my
16 tactics would change. Execution of the tactics
17 might be different, but I think the duty of
18 counsel, the duty of a lawyer, if you've got
19 someone you think is innocent, calls for action.

20 **Q** Is there anything else that you'd add to that list
21 of things you would do differently, tighter
22 information, control, maybe approaching Justice;
23 anything else to add to the list?

24 COMMISSIONER MacCALLUM: Well I thought his
25 answer related to the content of the application



1 and not approaches to Justice officials?

2 MR. LORAN: Oh, sorry, yeah.

3 COMMISSIONER MacCALLUM: Is that true?

4 A Yes.

5 BY MR. LORAN:

6 Q I think that's true, I've misstated it, Mr.
7 Commissioner.

8 A I, well, I'm not sure other things that we would
9 have done differently were feasible. I mean,
10 obviously we would have loved to have had the
11 resources to retain professional investigators
12 from the get-go, there's another example. We
13 would have preferred to --

14 Q Have a wealthier client; is that the suggestion?

15 A Well, that's -- but that's the problem with
16 wrongful conviction cases is you don't get that.

17 Q Yeah. Yeah. My last question on this issue,
18 referring back to document 066949, aside from the
19 DNA evidence which conclusively links Larry Fisher
20 to the Gail Miller murder are you aware of any new
21 evidence which was not available to the RCMP at
22 the time they prepared this report?

23 A I don't think so.

24 Q The next issue I have is with regard to Albert
25 Cadrain, and Mr. Boychuk has covered a lot of this



1 so I think we can move through it fairly quickly,
2 I think it was your evidence that you thought the
3 police did have a duty to follow up on the Albert
4 Cadrain statement. When he showed up in March of
5 19 -- March 2nd, I think it was, of 1969, and said
6 "my friend David Milgaard showed up at my home on
7 the morning of the murder, shortly after the
8 murder occurred, and he had blood on his pants and
9 his shirt", the police had an obligation to check
10 into his statement to determine whether it was
11 credible or not?

12 A Yes.

13 Q And the persistent questioning they engaged in, to
14 the extent it was unsuccessful it didn't operate
15 to the benefit of David Milgaard but it was
16 engaged in for reasons that generally accrue to
17 the benefit of the accused; would that be fair?

18 A I'm not sure I understand the question.

19 Q Well if a witness shows up at the police station
20 and says -- gives an inculpatory statement, and
21 the police merely accept that --

22 A Oh, I see what you are saying.

23 Q -- and then proceed on the basis of that, it
24 doesn't operate to the benefit of the accused. To
25 the extent that they followed up and were pretty



1 persistent in their questioning, it in fact
2 operated to the benefit of the accused in this
3 case, didn't it?

4 A It did to the extent that, you know, the police
5 officers followed it up. But I guess my, and I
6 may misstate the evidence, and if I do chop me
7 off, but my understanding is that through the
8 process of questioning the police officers
9 themselves started to wonder about Cadrain, and
10 I'm not sure that that later appeared in their
11 assessment of the case, and certainly not -- it
12 wasn't something that, other than cross-examining
13 on the statement, that Mr. Tallis was able to
14 avail himself of. Now I may be wrong, that may
15 have come later, so --

16 Q Okay. So, but the question is doesn't it operate
17 to the benefit of the accused if the police are
18 appropriately skeptical about inculpatory evidence
19 and --

20 A Yes.

21 Q -- question the witness to make sure that that
22 evidence is reliable?

23 A Yes.

24 Q I think Mr. Boychuk covered this but I'll just ask
25 the question. In terms of Albert Cadrain's



1 evidence specifically, you can't say that the
2 Saskatoon Police did anything improper to make him
3 change his evidence because it never changed,
4 would that be fair?

5 A I think that's fair, yes.

6 Q This morning, Mr. Asper, in your examination by
7 Mr. Wolch you referred to a document, or I think
8 it was one document that was not disclosed at the
9 Supreme Court reference, which was prepared by the
10 RCMP?

11 A Correct.

12 Q Can you tell us what document that is? I --

13 A Yes, I can.

14 Q Okay.

15 A I believe it's 065399.

16 Q Okay. Can I ask to have that called up. And I
17 don't think we saw the document this morning, did
18 we?

19 A I don't think so.

20 Q And where is the reference to Larry Fisher in this
21 document that you --

22 A Well if you --

23 Q -- were talking about?

24 A Well if you looked at paragraph 10, --

25 Q Okay.



1 A -- Fisher is not referred to specifically, but his
2 offences are referred to.

3 Q And when you described it as "the document
4 referring to Larry Fisher", that's what you were
5 talking about, is that this report details the
6 theory that police were working on that the rapist
7 who had committed offences in the area might be
8 the same individual --

9 A Right.

10 Q -- that attacked Gail Miller?

11 A Right.

12 Q I'm gonna ask to circle in on paragraph 3 of that
13 same document. Can we agree that this report was
14 prepared as a result of a meeting with Saskatoon
15 Police?

16 A I believe it was the chief, yes.

17 Q Umm, chief of the Saskatoon Police?

18 A Well it says in the first paragraph that Chief
19 Kettles requested assistance. Oh, maybe it was --
20 maybe that led to the meeting with Woods and
21 Edmondson and Rasmussen.

22 Q I think if we -- actually I'm gonna, just by way
23 of explanation I'm going to ask to call up another
24 document for a moment, 250609. And I guess we'll
25 have to turn to page 2 of this document. If we



1 look at paragraph 1 it appears that there was a
2 request from Saskatoon City Police to get help
3 from the RCMP; can you agree with that?

4 A Right.

5 Q And that I believe the date, I believe the date on
6 this document was -- I thought this was a March
7 document, it says May 21st, but --

8 A And it's stamped May 27 I think.

9 Q All right.

10 A The document I referred you to, sir, is the March
11 document, --

12 Q I see.

13 A -- it's March 28th, it's received March 28th,
14 dated March 20th.

15 Q Right, all right. Well let's go back, then, to
16 065399. Now I think in paragraph 1, if you review
17 that, it suggests that the chief contacted the
18 RCMP and asked for assistance?

19 A Right.

20 Q And that this summarizes, the balance of the
21 report summarizes the results of the investigation
22 to that point?

23 A I think so.

24 Q Would that be fair analysis?

25 A I think that's fair.



1 Q And, at that point, there were no suspects?

2 A That's what paragraph 3 says, yes.

3 Q Yeah, all right. Now I'd like to turn to 250609,
4 then.

5 A I guess you have to interpret paragraph 10 as not
6 being a suspect, but I -- they have clearly looked
7 at the rapist who was operating in the area,
8 they're just not far enough along it seems.

9 Q Yeah.

10 A And I don't know at what point you become a
11 suspect or not, but they were certainly thinking
12 about it.

13 Q And at paragraph 2 of this document it would
14 appear that -- I'm not sure of his rank, Inspector
15 Riddell perhaps --

16 A Yes.

17 Q -- is indicating that the RCMP will be
18 withdrawing from further support in terms of the
19 investigation; is that fair?

20 A Yes.

21 Q And if we go over to the next page it looks like
22 paragraphs 5 and 6 summarize the results of the
23 meeting that the RCMP held together with Saskatoon
24 City Police; would you say that's fair?

25 A I'm not sure which meeting we're referring to, but



1 it looks like they're writing it in first person,
2 so they --

3 Q All right. I guess perhaps we should go back to
4 the previous page.

5 A See, paragraph 4 describes that they come to the
6 conclusion that Milgaard is the prime suspect.

7 Q Okay. Let's look at paragraph 3 of 610. It would
8 appear that there was a meeting on May 16th?

9 A Right.

10 Q Would you agree with that?

11 A Right.

12 Q Okay. And that it would appear it was a joint
13 meeting, RCMP and Saskatoon City Police, --

14 A Right.

15 Q -- does that seem reasonable? And then, if we go
16 over to paragraphs 5 and 6 on the following page,
17 it looks like David Milgaard's on the radar screen
18 at this point and they're following him up as the
19 prime suspect in this investigation; would you
20 agree with that?

21 A Yes.

22 Q And it looks like the Saskatoon City Police are
23 going to follow up by questioning Ronald Wilson
24 and Nichol John further?

25 A Correct.



1 Q And there's already a plan in place to bring in a
2 polygraph expert?

3 A Correct.

4 Q Okay. Now I'm not sure if you're aware or not,
5 but in Saskatchewan the RCMP have a policing
6 contract, or did at the time, with the province,
7 and pursuant to the terms of that contract they
8 have to supply certain reporting information to
9 the Department of Justice; does that sound
10 reasonable?

11 A Yes.

12 Q And as a result a copy of this report apparently,
13 it's my understanding that it made its way onto
14 the Attorney General's file, the Sask. Justice
15 file?

16 A Yes.

17 Q Okay. I'll come back to this perhaps a little bit
18 later in terms of some evidence from the, one of
19 the other documents with regard to what apparently
20 took place at that meeting.

21 I want to refer your attention
22 now to document number 006799. This is a document
23 consisting of five pages, the first four pages are
24 all numbered; and have you seen this document, are
25 you familiar with it?



1 A I believe I have, yes.

2 Q And I'm gonna draw your attention to page 3 of the
3 document down at the bottom. Would you agree that
4 this document appears to summarize the results of
5 the investigation up to a certain point in time?

6 A Looks to do that, yes.

7 Q And I've looked through the document for dates and
8 the latest date I can find is May 6th, 1969?

9 A Look, it looks to be a summary, yes.

10 Q Yeah. And would you agree, then, that the
11 document must have been prepared, at the very
12 least, sometime after May 6th, 1969?

13 A I would think so.

14 Q Now I'm gonna draw your attention to the last page
15 of that document; you've seen this page, haven't
16 you?

17 A Yes.

18 Q Okay. Now would you characterize this page as
19 theorizing, putting together potential scenarios
20 which would explain all of the evidence that's
21 been collected to date?

22 A Yes. I mean it's -- well I -- it's not
23 necessarily based on the evidence, there's --
24 there's hypothesis in here.

25 Q Absolutely. It's theorizing?



1 A Right.

2 Q And, to some extent, it includes evidence that's
3 already been collected; doesn't it?

4 A Umm, I believe so, yes.

5 Q Let's look at the first line:

6 "Milgaard alleges he could not find
7 Cadrain's house ...",
8 I presume that came out of David Milgaard's
9 statement to police?

10 A I think, I think so, yes.

11 Q And:

12 "On his travels he seems to have no
13 problem finding any particular address
14 to obtain drugs or other things he
15 wants.";
16 that's editorialization?

17 A Yes it is.

18 Q The following line, again speculation, fair
19 enough?

20 A Yes.

21 Q "All were out of funds and may have gone
22 driving with a view to getting money."
23 Well part of that:

24 "All were out of funds ...",
25 is based upon the statements that they have taken



1 already; would you agree with that?

2 A I think so, yes.

3 Q Yeah:

4 "... may have gone driving with a view
5 to getting money.",

6 that's speculation at that point because they
7 don't know, at that point I don't think they had
8 got the statements yet that they had considered
9 trying to steal a purse or anything like that?

10 A Yes.

11 Q Would you agree?

12 A Yes, yes.

13 Q Okay.

14 A It relates to the next one.

15 Q Yeah. So, again, that's speculation:

16 "On seeing ... (Miller) she was
17 approached on pretence of getting
18 directions with a view to stealing her
19 purse."

20 A Yes.

21 Q And in fact that's not blind speculation, is it?
22 By that point they already knew, there was
23 evidence which had been collected, including Gail
24 Miller's wallet and a couple of cards which were
25 found somewhere between where her body was found



1 and the Cadrain household?

2 A Yeah, but does --

3 Q Is that correct?

4 A I think that's true, but by this point Milgaard, I
5 believe, has referred to an old lady, not a young
6 lady.

7 Q Yup, but --

8 A And at this point the police officers -- and this
9 is what I said to you before about left hand and
10 right hand. I'm not, and what I am going to say
11 to you is not accusatory in any way, but while
12 this hypothesis is being constructed you know full
13 well that there is a raft of other information
14 that's been obtained from the neighbourhood where
15 they're about to put Milgaard that would, or
16 should, guide their hypothesis and their theory,
17 and it apparently didn't. I mean this is my
18 concern.

19 I mean you can take me through
20 this point by point, and I agree it's all theory,
21 some of it is based on the evidence, but it exists
22 independent of everything else that the police had
23 is my concern.

24 Q I guess I won't debate the issue with you.

25 I'm gonna ask to call up



1 document number 066949 at 066958. It reads:

2 "The RCMP investigation indicates this
3 summary ...",

4 and I believe they are referring to the document
5 that we were looking at a moment ago:

6 "... was prepared during a meeting of
7 the investigators, and a member of the
8 RCMP, after Cadrain had made his
9 statements to police. This summary
10 appears to be an attempt to put together
11 all of the known information from the
12 investigation and a theory of how the
13 murder occurred."

14 Would you agree that the first four pages
15 represent a summary of information collected to
16 date, and the fifth appears to include a theory
17 of how the murder occurred?

18 A I -- it is a summary. I think it doesn't include
19 a whole bunch of information that might well have
20 better been in there.

21 Q Okay.

22 A But it is a summary, there is no question.

23 Q Okay. And that -- I'm going to ask to scroll
24 down, perhaps over to the next page, I'm gonna
25 read to you a conclusion:



1 "It is more an indication of good police
2 work than it is coercion of witnesses."

3 I take it that I am not gonna get you to agree
4 with that?

5 A What, you are getting me to agree with what, that,
6 that the statements obtained on the basis of the
7 Mackie summary --

8 Q Well, wait a minute, no, no.

9 A What is the question?

10 Q I think that this -- this is a conclusion drawn in
11 this report saying that the Mackie summary, I
12 believe, is:

13 "... more an indication of good police
14 work than it is coercion of witnesses."

15 A I --

16 Q Will you agree with that?

17 A No. No.

18 Q Okay.

19 MR. SOROCHAN: Mr. Commissioner, Mr. Asper,
20 both with the last questioner and this one, has
21 said on several times that he has reference he
22 wants to make to matters that were not put but
23 included in documents, and people keep saying
24 they're gonna come back to him on it and then
25 they don't, and this report is being put to the



1 witness as -- to ask if he agrees that it's --
2 with the conclusion in it. Just before that he
3 had said, well, he had some concerns about things
4 that were left out of the summary. It's implicit
5 in the RCMP report that they think it's an
6 accurate summary.

7 I submit that, to fully answer
8 the questions, Mr. Asper should be permitted to
9 do what he was promised to be allowed to do, and
10 that is to list, or tell, testify as to matters
11 he believes were left out.

12 MR. LORAN: I don't remember giving Mr.
13 Asper that undertaking.

14 COMMISSIONER MacCALLUM: I don't
15 remember -- no, I don't think he asked to provide
16 that information, if he -- I took it it related
17 to the Fisher, the rapes and so on.

18 MR. SOROCHAN: It's actually the last --
19 A No, no, no, I was -- no, sir. There's other
20 information, non-Fisher related --

21 COMMISSIONER MacCALLUM: Yeah?

22 A -- that Saskatoon Police had as a result of the
23 canvass of the neighbourhood --

24 COMMISSIONER MacCALLUM: Okay.

25 A -- that was not included in the summary and that



1 could have affected the theorizing that then went
2 on among the investigators. And as I said, I
3 thought I was being quite, I conceded quite
4 clearly that that's not necessarily sinister, it
5 may be part of the left hand not knowing what the
6 right hand was doing, but it could have been of
7 enormous value to the investigators sitting in
8 that meeting trying to come up with the theory of
9 what happened if they knew a whole bunch of other
10 facts that they may not be aware of, and that we
11 now know about.

12 MR. LORAN: Yeah, I think you gave that
13 evidence when I was talking to you earlier.

14 COMMISSIONER MacCALLUM: Hmm.

15 A Well, and there is a lot of it. Would you like me
16 to recite it?

17 BY MR. LORAN:

18 Q No, I haven't asked for that, --

19 A Okay.

20 Q -- but it would appear your counsel has.

21 A Well, you have it.

22 Q I don't believe I did ask for it.

23 A You have it, you have it, you all have it on
24 record.

25 Q I want to turn, now, to Nichol John. We agree



1 that she was in the car?

2 A Who was in the car?

3 Q Nichol John?

4 A Yes.

5 Q Okay. You can understand police coming to the
6 conclusion that her evidence would be important?

7 A Which evidence?

8 Q As to what happened on the morning in question?

9 A In terms of witnessing Milgaard commit the murder?

10 Q No, if --

11 A I don't -- like there is a whole bunch of pieces.

12 Q Okay. Albert Cadrain comes to the police and says
13 "David Milgaard showed up at my house shortly
14 after the murder and he had blood on his pants",
15 so the police say, "well we should investigate
16 further", and I think you agreed that that seemed
17 to make sense?

18 A Yes.

19 Q And I guess I'm suggesting to you, wouldn't it
20 make sense that the next thing you do is you
21 interview the three individuals who were in the
22 car, Ronald Wilson, Nichol John, and David
23 Milgaard?

24 A Makes sense to me.

25 Q So it makes sense for the investigation to also



1 include a statement from her?

2 A Yes.

3 Q Okay. Now the only issue I have with regard to
4 Nichol John is the suggestion you have made that
5 her evidence was coerced from her as a result of
6 her being locked up in the cells until she told
7 the story that everybody wanted to hear. Is it
8 fair to say that characterizing what happened in
9 that fashion played very well in the media, that
10 it was quite a sensational kind of a revelation,
11 *Witness locked up in jail over night?*

12 A Well, she was.

13 Q She was, she was in the jail over night, but can
14 we agree that --

15 A Was she --

16 Q -- that played very well in the media?

17 A Yes.

18 Q Okay. It grabbed headlines, and that was one of
19 your objectives at that point, is that fair?

20 A Probably, yes.

21 Q If, however, the witness said "I don't want to go
22 to a hotel, I'd like to stay here", there are no
23 other prisoners in the women's quarters and she
24 stays there at her request, it doesn't lead to the
25 conclusion of coercion; does it?



1 A If those were the facts, that's true.

2 Q Okay.

3 A Mind you by this point, you know, it's -- given
4 the kind of witnesses you were dealing with, I
5 wouldn't even venture a guess what was in their
6 minds.

7 Q Okay. I'm gonna turn to the serological evidence
8 for --

9 COMMISSIONER MacCALLUM: After the break,
10 okay, Mr. Loran?

11 MR. LORAN: Thank you, My Lord.

12 *(Adjourned at 2:58 p.m.)*

13 *(Reconvened at 3:17 p.m.)*

14 BY MR. LORAN:

15 Q Mr. Asper, before I move on to the serological
16 evidence, there's one issue perhaps I'll --
17 somebody brought to my attention at the break.
18 Can I ask for document 336360 to be brought up.
19 Sorry, scroll down, please, down here. Do you
20 recall, this is a transcript prepared of a
21 conversation taped between yourself and Joyce
22 Milgaard. Do you recall having a telephone
23 conversation with her?

24 A Over six years, yes.

25 Q Okay. Do you recall having a telephone



1 conversation with her about Neil Boyd's
2 conversation with Ron Wilson?

3 A No specifically, no.

4 Q Are you prepared to acknowledge that it did take
5 place?

6 A Sure.

7 Q Okay. Scroll over to the next page, please. Can
8 we agree that you got a transcript of that
9 conversation between Neil Boyd and Ron Wilson?

10 A Yes, that appears to be the case.

11 Q Okay. Just an illustration of the unreliability
12 of memory, I think Mr. Boychuk questioned you
13 about whether or not that had happened and you
14 were unable to say you had ever seen a transcript
15 of that conversation. Would you agree in light of
16 this that you had?

17 A Apparently I had, yes.

18 Q Thanks.

19 COMMISSIONER MacCALLUM: That was a
20 conversation, which one?

21 A I'm not -- what are you referring to with Mr.
22 Boychuk?

23 BY MR. LORAN:

24 Q I believe that you had previously indicated you
25 couldn't recall whether you had ever seen the



1 transcript of a conversation between Mr. Boyd and
2 Mr. Wilson.

3 A I see, yes.

4 Q And it would appear from this telephone
5 conversation, would it not, that you have seen a
6 copy?

7 A It would appear so, yes.

8 Q Thanks. Turning now to the serological
9 evidence --

10 A It's bizarre, I have to say, in a wrongful
11 conviction inquiry where, when we're talking about
12 the fallibility of memory of me as a witness as
13 opposed to the wrongful conviction itself. I know
14 that's an editorial comment, but you raised it.

15 Q Okay.

16 A As opposed to Wilson or John or people who put
17 David in jail. I find it a little odd, sorry.

18 COMMISSIONER MacCALLUM: It's not your
19 memory that they are trying to condemn, sir, it's
20 the reference to the, something that happened, a
21 conversation that took place, and it would be the
22 substance of that conversation which is relevant
23 to our Inquiry.

24 A Well, I know, but Mr. Loran referred to the
25 fallibility of memory, but let's move on I guess.



1 BY MR. LORAN:

2 Q Is it your position that the serological evidence
3 which was produced at trial had no probative
4 value?

5 A Yes. That's one interpretation.

6 Q Now, there's more than one reason for that isn't
7 there?

8 A For it not having probative value?

9 Q Yes.

10 A Yes.

11 Q And what's your understanding of the reasons?

12 A As at trial or raised subsequently, because
13 there's the whole issue that was raised
14 subsequently about, you know, whether the
15 integrity of the sample was sufficient to warrant
16 introduction as evidence.

17 Q Maybe I'll ask you to start chronologically, let's
18 start with at trial.

19 A Well, at trial the sample failed to link David to
20 the crime unless it had, according to the
21 information that was presented at the trial,
22 unless it had blood in it as such as opposed to
23 the antigens, and there was no evidence of blood
24 as such and therefore it didn't link David to the
25 crime.



1 Q And there were other reasons why the serological
2 evidence had no probative value as well weren't
3 there?

4 A I'm not sure I follow.

5 Q The one thing they had, and this of course came up
6 later, but for one thing, they had David's
7 secretor status wrong?

8 A Oh -- oh, sure, absolutely. Subsequent to the
9 trial, yes, we learned a whole bunch of things.

10 Q And I think what you've said to this Commission is
11 that you don't think any of that serological
12 evidence should have gone in; is that fair?

13 A That's my view, yes.

14 Q Now, at one point I've got a document I think that
15 says, where you say you know the file cold. Is
16 that a fair characterization of your knowledge of
17 this file, you knew the file pretty well back in
18 the late '80s and early '90s when you were working
19 on the file?

20 A I think that's fair, yes.

21 Q Now, did you know that there was a human pubic
22 hair in the semen samples that were presented at
23 trial, that there were several human pubic hairs?

24 A It's probable.

25 Q Is it fair to say that --



1 A It's probable I would have read a report, let's
2 put it that way.

3 Q Okay. And is it fair that you didn't, to say that
4 you didn't pass this information along to the
5 experts you retained who came to the conclusion it
6 was dog urine, or could very possibly be dog
7 urine?

8 A I don't know whether I did or I didn't.

9 Q I'll leave that then. In terms of the collection
10 of these two samples, when the police came across
11 these samples, can we agree that it was important
12 they be taken into police custody and analysed and
13 not simply discarded?

14 A The semen samples in the snow?

15 Q Yes.

16 A Yes.

17 Q And it was correct, the right thing to do was to
18 turn it over to experts for analysis?

19 A Yes.

20 Q Once they received the results of that expert
21 analysis, is it fair to say that it was also
22 important for them to advise the Crown of the
23 results they had received and the fact that they
24 had collected the sample?

25 A Yes.



1 Q And the Crown in turn can use that to make full
2 disclosure to the defence?

3 A That's correct.

4 Q And Mr. Caldwell in this case did disclose this
5 evidence to Mr. Tallis?

6 A Yes.

7 Q Mr. Tallis wanted the evidence to go in; didn't
8 he?

9 A Yes.

10 Q I know you've been critical of Mr. Caldwell for
11 putting the serological evidence forward, but if
12 Mr. Tallis wants it to go in, he really has no
13 choice does he?

14 A I'm not sure what the answer is to that, I don't
15 think Mr. Tallis leads the evidence, Mr. Caldwell
16 does. Now, I understand there may have been an
17 agreement between the two, and I understand Mr.
18 Caldwell may have thought that he was assisting
19 Mr. Tallis with what would have been exculpatory
20 evidence, I understand the context.

21 Q Okay. All right. So you do understand he's being
22 accommodating, it's just like the evidence of the
23 Danchuks, it's exculpatory, but Mr. Caldwell puts
24 it in, it gives Mr. Tallis a chance to cross with
25 regard to it?



1 A That's correct.

2 Q Now, I think if I understand your position
3 correctly, your criticism relates to Mr.
4 Caldwell's position taken at trial that the
5 serological evidence didn't necessarily exclude
6 David Milgaard; is that fair?

7 A I think that's true, yes.

8 Q And yet at the end of the day when you had it
9 analysed by your own experts, that's the same
10 conclusion they came to, that it really had no
11 probative value?

12 A Who came to that conclusion?

13 Q Didn't your experts come to the conclusion that
14 the sample had no probative value?

15 A That's correct.

16 Q Now, in terms of the dog urine issue and the media
17 campaign, is it fair to say that it played very
18 well into your media campaign to have your experts
19 characterize this evidence as dog urine, it made
20 for good headlines didn't it?

21 A Yeah. I didn't have -- I hope you are not
22 suggesting that I asked them to do that, to
23 characterize it as dog urine.

24 Q No, no.

25 A When we got the result, yes, no question.



1 Q And you'll agree that when you gave them the
2 information, they didn't know that there were
3 human pubic hair in it?

4 A I'll accept whatever -- I haven't seen the
5 documentation, but I'll accept that.

6 Q Thanks. I'm turning now to the motel room
7 reenactment. I think your evidence earlier was
8 that David Milgaard vacillated in his evidence
9 with regard to the motel room reenactment. Is
10 that a fair characterization?

11 A I think so, yes.

12 Q At times he said it was just a crude joke, on
13 drugs, other times he said it didn't happen?

14 A Right.

15 Q Now, when we turn to Mr. Milgaard's affidavit
16 filed in support of the Supreme Court application,
17 there's really no indication of vacillation with
18 regard to his evidence, he merely says it didn't
19 happen doesn't he?

20 A Right.

21 Q And you had drafted that affidavit for him and you
22 took the affidavit from him?

23 A That's correct.

24 Q Since Mr. Boychuk covered this I'm going to try
25 and shorten things up a little. Just to be clear,



1 I think I understood you to give this answer to
2 Mr. Boychuk, but in terms of what Lapchuk and
3 Melnyk said they saw David Milgaard do in the
4 motel room, essentially they are describing the
5 same words being said approximately and the same
6 motions, it's a matter of what they thought he was
7 attempting to convey by saying those words and
8 making those motions. Is that the difference
9 between what Deborah Hall had to say and what
10 Melnyk and Lapchuk had to say?

11 A Well, my recollection is that Melnyk and Lapchuk
12 were inconsistent between the two of them and
13 Debbie Hall was inconsistent as between Melnyk and
14 Lapchuk, but in essence, I would say you are
15 probably correct.

16 Q Okay. Now, Deborah Hall, if she was unavailable
17 and couldn't be found at the time, say she was in
18 Vancouver at the time of the trial, then it's
19 understandable her evidence wouldn't have been
20 called at the trial; is that fair?

21 A That's -- yes.

22 Q When this file came to your office, I think it was
23 early 1986; is that correct?

24 A Yes.

25 Q I think it was your evidence to Mr. Hodson earlier



1 on that you sat down with the file and basically
2 ploughed through the whole file and Mrs. Milgaard
3 brought in boxes and you wound up having to go
4 through it all; is that correct?

5 A Yeah. I believe it was transcripts was the first
6 wave.

7 Q And then other documents came in as well?

8 A Yes, correct.

9 Q And it was your evidence I think that after taking
10 kind of a preliminary look at the evidence, you
11 were convinced of David Milgaard's innocence, you
12 didn't see how the Crown theory could fit?

13 A I wouldn't say it was a preliminary view, Mr.
14 Loran. I studied this thing up and down for
15 months, including visiting the site, walking it
16 through myself.

17 Q Okay.

18 A It wasn't a preliminary view.

19 Q How long would it be before you came to the
20 conclusion that David Milgaard had been wrongfully
21 convicted?

22 A I can't give you a specific time frame. It would
23 be probably several months.

24 Q Okay. Under a year?

25 COMMISSIONER MacCALLUM: Mr. Loran, I don't



1 want to quibble with language, but you framed
2 your first question in terms of a conviction, a
3 belief of innocence, and the second one was a
4 belief in wrongful convictions, so wrongful
5 conviction is --

6 MR. LORAN: Fair enough, Mr. Commissioner,
7 there's a distinction there and I should be
8 careful.

9 BY MR. LORAN:

10 Q I think it's fair to say, Mr. Asper, that you
11 believed David Milgaard to be innocent; is that
12 correct?

13 A At some point I came to that view. It would be
14 later than the first threshold I would say.

15 Q And from that point forward you weren't troubled
16 by doubts of did or didn't he, you were convinced?

17 A Oh, I was second guessing myself constantly.

18 Q Okay.

19 A I mean, look, I was very concerned, I believed
20 that David was innocent, but I would be not
21 totally truthful if I wasn't telling you that
22 given the magnitude of what we've got, what we had
23 gotten into, that I better be really sure.

24 Q That's fair.

25 A Yeah.



1 Q That's a fair answer, thank you. But in terms of
2 the efforts you were putting forward, is it fair
3 to say that you were hired, your firm was hired
4 for the purpose of proving David Milgaard's
5 innocence or perhaps a lesser -- certainly to get
6 him released from jail and the brass ring, if you
7 will, would have been to have a declaration that
8 David Milgaard was innocent?

9 A No. I think that the Milgaard family consistently
10 wanted us to find a path to innocence. I
11 certainly appeared with David on parole hearings
12 and applications for parole, I begged him to
13 govern himself accordingly, as the Parole Board
14 often said in its reports, to try and get him out,
15 I would have preferred that he were out of prison.
16 As I've said in my evidence, notwithstanding that
17 we were dissatisfied with the decision in 1992, I
18 considered that to be a success, but the Milgaard
19 family consistently wanted innocence.

20 Q Okay. So success would have been measured by
21 David's release, it was that much better --

22 A Complete exoneration.

23 Q -- when you reached the point when you proved his
24 innocence?

25 A Yes.



1 Q And, I mean, I applaud your efforts, you certainly
2 worked hard, that's apparent, that you worked hard
3 on David Milgaard's behalf. Now, it's fair to
4 say, I think, that one way of attacking the
5 Crown's theory in terms of the case is to provide
6 an alternative suspect who could also have
7 committed the Gail Miller murder, that's one way
8 of attacking the Crown's case; is that correct?

9 A That's correct, yes.

10 Q And that's the one that was ultimately successful
11 here in terms of establishing David Milgaard's
12 innocence?

13 A That's correct.

14 Q And if in -- if a possibility such as this
15 presented itself to you in any way, you would have
16 tracked that down, you would have pursued that
17 possibility because it would have led you to your
18 ultimate goal?

19 A I believe so, yes.

20 Q And that's what you did?

21 A Yes.

22 Q I'm going to just ask for a couple of documents to
23 be pulled up, 039527, this is a newspaper article
24 just prior to the Gail Miller murder, and 039068,
25 and this is following the Gail Miller murder.



1 A Yes.

2 Q And as I understand it, this newspaper article
3 that's here was part of the file that you got when
4 the file came to you?

5 A I don't think I said that definitely. What I said
6 was that I'm haunted by the possibility that it
7 was.

8 Q Okay.

9 A I'm not sure when it -- I think that's what I
10 said. I just don't recall seeing it. I mean, I
11 do recall seeing it, I just don't recall when.

12 Q I'm going to draw your attention to page 25284 of
13 the transcript, down at the bottom here, I think
14 what Mr. Hodson asks you is:

15 "Q And again, is this something, I think
16 you said when you went back and looked
17 at your file it would have been
18 something you -- is this something you
19 would have got back in 1986, in the set
20 of documents you received?

21 A Yes."

22 A I can't be that definitive.

23 MR. WOLCH: Mr. Commissioner, if I may,
24 just on that point, that document has handwriting
25 on the side of it, that is, the newspaper



1 clipping. I expect, although I'm not certain,
2 that that will be the handwriting of Bob Bruce I
3 think, I don't know if Mr. Hodson has talked to
4 him or not, and if that be the case, I don't
5 believe Mr. Bruce became involved until after
6 Larry Fisher was identified, that he can testify
7 to, but I'm not sure of that.

8 COMMISSIONER MacCALLUM: All right, thanks.

9 MR. HODSON: I think in fairness, the
10 article that was referred to in that handwriting,
11 I think I arbitrarily selected one version of
12 that article and whether that -- there's other
13 versions in our database that don't have the
14 handwriting. I can tell you I've talked to
15 Mr. Bruce, I don't expect him to testify, but
16 there's a whole bunch of other versions of that
17 article in the database, so --

18 A Sir, I thought I testified that I couldn't recall
19 seeing it, but that having seen it in preparing to
20 testify, it kind of sickened me.

21 COMMISSIONER MacCALLUM: Mmhmm.

22 BY MR. LORAN:

23 Q You do make that comment further along in the
24 transcript. The first question is was it part of
25 the '86 package and then further down I think you



1 say essentially what you are relating now. I
2 think if you --

3 A I just -- then, you know, I just don't feel
4 comfortable being as definitive as I was there.
5 It may have been there, but -- if it was, that's
6 what bothers me.

7 Q I'm going to ask to have document number 333013
8 called up and this is a conversation between Peter
9 Carlyle-Gordge and Albert Cadrain and I don't
10 have, I'm sorry, I don't have the exact date, but
11 I'm guessing we're somewhere back in the early
12 '80s, prior to your involvement on the file of
13 course. Mr. Carlyle-Gordge was apparently gone to
14 England by the time you were involved in '86.

15 So it's Peter Carlyle-Gordge
16 talking to Albert Cadrain asking about Larry
17 Fisher, he says:

18 "I'm still doing some research and
19 trying to trace anybody who was involved
20 back in '69. One of the names that I've
21 come across is uh, he was interviewed by
22 police, is a Larry Fisher."

23 "... and he's given the same address as
24 yours. Do you know where he is now?"

25 Albert says he doesn't have any idea. Can we



1 scroll down. Peter Carlyle-Gordge asks if he was
2 a lodger or something, then he says a border:

3 "Yeah, he was a, didn't even know the
4 guy, like he lived down in the basement
5 with his wife and kid, I guess."

6 So Peter Carlyle-Gordge goes on to talk about
7 them interviewing him, wondered if you had
8 anything to add, Albert says they interviewed
9 quite a few people, and then Albert goes on to
10 say:

11 "... I guess he was just a suspect hey."

12 Peter asks:

13 "I'm wondering if you had any memories
14 of that time, and after..."

15 And it's Albert's answer after that that really
16 caught my attention:

17 "I wouldn't know, I wouldn't have
18 nothing to do with the guy, he's a, a
19 real uh, gangster type."

20 And then over to the next page:

21 "Is he?"

22 "Oh, yeah, from what I hear, from what I
23 hear, hey."

24 "You mean, you mean like, a criminal?"

25 "Yeah."



1 "Oh, really."

2 "Yeah, I suppose uh, I guess they caught
3 him years later, or, I don't know how
4 much longer, later, in uh, rapes and
5 shit like that, hey?"

6 And he goes on to talk about him being a real
7 weirdo. Was this transcript of the Peter
8 Carlyle-Gordge conversation part of your file?

9 A I can't recall. I don't recall seeing it. I may
10 have, but I don't recall.

11 Q Now, Mr. Asper, I appreciate that this is, you
12 said it's difficult for you, you were working very
13 hard to try and free David Milgaard, but what
14 you've got is evidence on the file which relates
15 to Larry Fisher and him being a rapist and being
16 in the Cadrain household and there's this police
17 theory as evidenced by the newspaper clipping, and
18 like I say, I'm not being critical of you in any
19 way, I know you were trying your level best, but
20 you didn't make the connection between the two and
21 I guess my point is, isn't it perhaps unreasonable
22 to expect police, where you've got a number of
23 different individuals working on different files,
24 to have made the connection between the Larry
25 Fisher conviction for rape and the Gail Miller



1 murder?

2 A I suspected this question was going to come and I
3 find it astonishing, I really -- Mr. Loran, I find
4 it astonishing to suggest or equate or to place
5 moral equivalency or legal equivalency --

6 Q I'm not talking about moral or legal equivalency
7 at all, Mr. Asper.

8 A Well, you've just suggested --

9 Q No, no --

10 COMMISSIONER MacCALLUM: Just let him
11 finish the question, Mr. Asper. Yes?

12 MR. LORAN: Pardon?

13 COMMISSIONER MacCALLUM: Go ahead and say
14 what you were about to say.

15 BY MR. LORAN:

16 Q What I'm asking is it's got nothing to do with
17 moral, I'm just saying isn't it understandable
18 that maybe the people investigating this file
19 didn't make the connection?

20 A Okay, that's right, and what you've done is you've
21 said, okay, assuming all these facts to be true
22 and assuming that I'm in possession of the
23 information that you provided, which is an
24 assumption because I can't recall, assuming that
25 to be the case, isn't it reasonable because I



1 missed it that they missed it at the time of the
2 original investigation, right?

3 Q Yeah.

4 A And I don't agree, I'm sorry. I'm not a
5 professional police officer, I haven't been to see
6 Mr. Fisher, I haven't been involved with the
7 Milgaard investigation directly, I haven't been
8 the RCMP task force that's obviously met with the
9 Saskatoon police and discussed the possibility and
10 the details of the rapes and attempted rapes that
11 had occurred with (V5)---, (V2)----- and (V1)-
12 that appear in the prosecution file, I was at a
13 complete disadvantage compared to the police.
14 It's totally, totally inappropriate to suggest
15 that I was in the same position as the police
16 officers at the time.

17 Q In fact, you had -- you are one individual who had
18 all of this material before you?

19 A Pardon me?

20 Q You are one individual whose got charge of the
21 file, and I appreciate you are saying you don't
22 know whether it was on your file or not, I suspect
23 we can establish that subsequent to this.

24 A Okay.

25 Q But if it was on your file, the fact is you didn't



1 make the connection either, and I'm not being,
2 like I said, I'm not being at all critical, I know
3 you were trying your level best.

4 A But, Mr. Loran, there's a chart that we submitted
5 as part of our argument for the Supreme Court and
6 I'm sure that you've seen it in these proceedings.
7 The police officers in Saskatoon at the time had
8 the information that was available that came into
9 the chart that ultimately walked David Milgaard
10 out of prison. I didn't have that, I didn't have
11 that information. The only difference I had was
12 from -- the only difference you say I had was
13 Larry Fisher's name. They had Larry Fisher's name
14 in October, 1970. Why didn't they do something
15 about it? Why did -- why didn't the Saskatoon
16 police say, because you say if I've got the
17 information why don't I do something about it, why
18 didn't they say hey.

19 Q I'm not saying why didn't you do something about
20 it, Mr. Asper, quit trying to recharacterize the
21 question, I'm saying isn't it understandable that
22 the police missed this connection?

23 A And I say no. I say no.

24 Q It's not fair to try and pretend that I'm asking
25 you a question I'm not.



1 A But I don't agree with your -- I don't agree that
2 it's --

3 Q You don't agree --

4 A I don't agree that it's fair that the police
5 missed it. What I believe happened, and I've said
6 to you that I don't believe it's necessarily for
7 nefarious or wrong-headed reasons. There's a
8 syndrome that comes over in wrongful conviction
9 cases that occurred, in my opinion, in this case.
10 The police had this fellow, they had him in their
11 sights at the time of investigation.

12 Q The Winnipeg police in 1970 you mean?

13 A Saskatoon police. Saskatoon police --

14 Q Did the Saskatoon police arrest Fisher; is that
15 your understanding?

16 A Saskatoon police were aware of three, and more,
17 incidents of rape and sexual assault; were they
18 not? I'm --

19 Q I'm not here to answer questions.

20 COMMISSIONER MacCALLUM: Just a minute.
21 Counsel and witness, I have the point, I
22 understand both of your positions, and the
23 witness is saying that the Saskatoon police had
24 the information about the rapes and we know that
25 they interviewed a man who turned out to be the



1 rapist, but they didn't have anything to connect
2 him with either the rapes or the murder at the
3 time, so Mr. Asper simply is saying that it's not
4 fair to compare his investigative opportunities
5 in 1986 with those of the police in 1969 and '70.
6 Mr. Loran says, well, yes, but he shouldn't fault
7 the police for having missed it in 1969 and '70,
8 so there we are, I understand the situation.

9 MR. LORAN: Thank you, Mr. Commissioner.

10 A Thank you.

11 BY MR. LORAN:

12 Q In relation to the missing files, I'm going to ask
13 to have document number 000263 pulled up, please.
14 Can I turn to page 11 of this report? Were you
15 aware, Mr. Asper, that -- actually, I'm going to
16 -- just here.

17 COMMISSIONER MacCALLUM: What was this,
18 Mr. Loran, I missed it?

19 MR. LORAN: This document is the Robert
20 Laing report --

21 COMMISSIONER MacCALLUM: The Laing report?
22 Okay.

23 MR. LORAN: -- of the Saskatchewan Police
24 Commission --

25 COMMISSIONER MacCALLUM: All right, yes.



1 MR. LORAN: -- with regard to the missing
2 files.

3 COMMISSIONER MacCALLUM: Yes.

4 BY MR. LORAN:

5 Q All right. And this talks about the investigator
6 who attended in Winnipeg with the inspector in
7 charge of morality to interview Fisher in October
8 of 1970, he only finds out that Fisher had pled
9 guilty to the offences as well as six other
10 offences during a social occasion, the
11 investigator was very surprised and somewhat angry
12 he'd never been advised of the fact that the file
13 had been concluded. This investigator states that
14 at the time, somewhere between '76 and '79, he
15 went to central records to retrieve the file on
16 one of the occurrence numbers -- oh, and the other
17 three files as well, he couldn't locate them at
18 that time.

19 Were you aware that this was a
20 conclusion reached by the Saskatchewan Police
21 Commission in its report?

22 A I would have been at the time, I'm sure.

23 Q Can I ask that we turn to page 16 then.

24 COMMISSIONER MacCALLUM: And the report was
25 what date, please?



1 MR. LORAN: Umm, that report, My Lord, is
2 dated November 29th, 1991.

3 COMMISSIONER MacCALLUM: '91?

4 MR. LORAN: Yes.

5 COMMISSIONER MacCALLUM: Thank you. And
6 when were you aware of this, Mr. Asper?

7 A I'm sure I would have been aware of it at the time
8 of its release.

9 COMMISSIONER MacCALLUM: All right.

10 BY MR. LORAN:

11 Q At page 16 it indicates that lack of knowledge on
12 the part of the investigators involved of the
13 Fisher convictions accounts for the fact that the
14 victims were not notified, and further, in the
15 following paragraph it concludes that the handling
16 of the pleas in the City of Regina was made for
17 routine administrative decisions and it wasn't a
18 decision made by the Saskatoon City Police
19 department. Were you aware of these conclusions?

20 A I believe so, yes.

21 Q And at the top of page 17 it indicates that Larry
22 Fisher was never in the custody of the Saskatoon
23 City Police; were you aware of that?

24 A As I say, I -- I must have been, but I -- I'm --

25 Q And in fairness, Mr. Justice -- Mr. Laing, as he



1 was at that time, was somewhat critical of
2 record-keeping procedures generally, and what he
3 said is that those had been substantially improved
4 since 1969 when the Gail Miller murder occurred,
5 and there were regulations in place with regard to
6 record keeping, that sort of thing?

7 A Okay.

8 Q He finishes his report that way. Now I think you
9 indicated in your evidence earlier that you had a
10 man on the inside, so to speak, in the form of Tom
11 Vanin; --

12 A Yes.

13 Q -- is that correct? And he was, I think if I
14 heard correctly, he was the only man on the inside
15 you had?

16 A Yes.

17 Q Okay. We've heard him characterized in -- on
18 other occasions here as a disillusioned but fairly
19 senior member of the Saskatoon Police Service.
20 Now Mr. Vanin's evidence suggests that he was
21 unable to find files when he went looking for them
22 and, as I understand it, he did so at your
23 request; is that correct?

24 A That's probably true.

25 Q Now he found some documents but he couldn't find



1 complete files, that's --

2 A I would assume that's true.

3 Q Yeah. Now he, Mr. Vanin, can I ask you to confirm
4 that Mr. Vanin didn't tell you anything different
5 than he told the Commission in that regard?

6 A I have not read his evidence.

7 Q Okay. Did he tell you that he found files --

8 A I --

9 Q -- at any occasion in the past?

10 A I, as I say, I have to assume that at some point
11 Mr. Vanin told me that there was something in the
12 repository, wherever that was, and then there
13 wasn't something there, and that we -- and that we
14 rang the alarm bell.

15 Q You are assuming that --

16 A Yes.

17 Q -- or do you recall that?

18 A I'm assuming that. I don't recall the dealings
19 with Vanin at all.

20 Q Okay. So, to the extent your evidence differs
21 from Mr. Vanin's, we have to choose between the
22 two of them?

23 A Yes, you do.

24 Q Can I ask that we call up document number 039314.
25 Now can I ask to have that enlarged? Thank you.



1 "Asper has said he has heard that only
2 Fisher's files are missing, and that
3 there has been no large-scale loss of
4 older police files in Saskatoon."

5 Can you tell us who you heard that from?

6 A As I say, I have to assume that would be Vanin.

7 Q And, again, it's just an assumption?

8 A Yes.

9 Q Okay. Because it's, that's directly contradicted
10 by the same Laing report, which indicates that a
11 number of older files are missing.

12 A Oh, I understand that, yes.

13 Q "He has his own sources who say the files
14 were in the computer system before
15 Milgaard requested a retrieval Aug. 16
16 ..."

17 Now it couldn't possibly have been anyone but
18 Vanin who was your source on that?

19 A As I say, I'm assuming, because I don't recall
20 anybody else providing -- feeding me information.

21 Q I'm going to ask to have document number 016079
22 called up. This letter is dated August 14th,
23 1991, and the letter is from your office, says:

24 "When we first made our application the
25 suggestion that Larry Fisher was the



1 perpetrator was not the main thrust and
2 we were at that time advised by your
3 Department that there were no police
4 reports available on past offences of
5 Mr. Fisher."

6 Now I think your evidence to Mr. Hodson was that
7 you must have, therefore, heard from your source
8 between August 14th and August 30th; is that
9 correct?

10 A I have to assume that.

11 Q And that source has to be Mr. Vanin; is that
12 correct?

13 A That's what I'm assuming.

14 Q Okay. Can I ask to have document number 163101
15 called up, please. Do you recognize this
16 document, Mr. Asper?

17 A I do.

18 Q And did the events which you relate in this
19 correspondence occur?

20 A In terms of meeting Mr. Penkala?

21 Q I'm --

22 A Yes.

23 Q -- just asking you to confirm the accuracy of the
24 letter at this point.

25 A Well, let me just look through it. Well, yes, I



1 accept the letter.

2 Q You sent the letter to Hersh, you --

3 A Of course, of course.

4 Q Okay, thank you. And is it fair to say that Chief
5 Penkala offered to try and be of assistance if you
6 wanted help?

7 A I would say we had a very polite conversation, and
8 he sent me his business card and a copy of the
9 Court of Appeal decision, it was a cordial
10 conversation but not much more.

11 Q But he did offer to help, and why did he send the
12 business card if he wasn't offering to provide
13 further help if you requested it?

14 A I -- well, maybe he did, I -- I'll accept what I
15 wrote there.

16 Q Okay. And did you avail yourself of that
17 opportunity by making a request to him?

18 A I don't think so.

19 Q Okay. Did you ever make any requests directly to
20 Saskatoon Police Service for documents?

21 A I don't think so.

22 Q For files?

23 A I don't think so.

24 Q Did you ever, and I think you spoke to this issue
25 when Ms. Krogan was examining you this morning,



1 but did you ever make any requests indirectly
2 through Saskatchewan Justice?

3 A Don't think so.

4 Q And she asked you this but I'm going to ask it
5 again because I've got a couple of other
6 questions; why not?

7 A Well, as I say, I -- the decision had been made
8 that we were going to pursue our remedy through
9 the federal Department of Justice, and that's the
10 way we were proceeding.

11 Q And I think one of the things you said is that
12 you -- probably, in hindsight, one of the things
13 you would try to do is give more to Justice, get
14 as much as you could collected and try to give
15 Justice more if you had it to do over again, and
16 would it be fair to say that one way, one possible
17 way of getting there, so that you can reach that
18 critical point where Justice gets interested,
19 Federal Justice gets interested and starts to
20 help, is to try and collect documents from
21 whatever source you can, perhaps the provincial
22 Department of Justice?

23 A I think that, in a very general sense, is true. I
24 think you'd have to play a little bit with the
25 personalities you are dealing with and get a sense



1 of whether that's even remotely feasible or not,
2 but look, if you can get credible and official
3 documentation why wouldn't you.

4 Q Okay. And why wouldn't it be credible? What
5 would --

6 A What?

7 Q Why would you have questions with regard to the
8 credibility of the documentation if you made a
9 request?

10 A I wouldn't.

11 Q Okay.

12 A I mean the problem always, Mr. Loran, is are you
13 getting all of it. You know, I mean you can get
14 one document that looks perfectly credible and
15 another document standing beside it makes it not
16 credible, so --

17 Q Your concern is that you would get just a portion
18 of the file?

19 A Yes.

20 Q And I guess, fair enough, if you --

21 A We've evolved, look, we've all evolved,
22 prosecutorial agencies, police agencies,
23 applicants for 690 have all evolved. There is a
24 better exchange of documents now, Federal Justice
25 has evolved, the system is working a heck of a lot



1 better.

2 Q I'm going to ask -- now you will be pleased to
3 know I'm on my last folder. How are we doing for
4 time here, I don't have a watch?

5 MS. McLEAN: Five after.

6 BY MR. LORAN:

7 Q Okay. The transcript page is 26,884, and I'm
8 going to ask to go back to the previous page to
9 find the document that's being discussed there, I
10 guess we'll have to go to the page prior to that.
11 The page number is 050419, I'm afraid I don't have
12 the document number here. This appears to be a
13 conversation between --

14 COMMISSIONER MacCALLUM: Can I have the
15 doc. number, please, Mr. Loran?

16 MR. LORAN: I'm sorry, Mr. Commissioner, I
17 don't have the document number.

18 COMMISSIONER MacCALLUM: Well, I think we
19 can --

20 MS. BOSWELL (Document Manager): 050419.

21 COMMISSIONER MacCALLUM: Thank you very
22 much.

23 MR. LORAN: Now I'm going to ask to turn
24 over to the next page, here, the page following.

25 MS. BOSWELL (Document Manager): That's the



1 end.

2 MR. LORAN: No, I'm sorry, this is the
3 page.

4 BY MR. LORAN:

5 Q Now this is a conversation between Dennis Cadrain
6 and Paul Henderson, they're talking about a
7 strategy to get Albert Cadrain to change his
8 evidence, the comment Paul Henderson makes is
9 that:

10 "But he's going to, we think, down the
11 line, ah', because the R.C.M.P. is
12 convinced that he's the person. Now,
13 when he does, what that means is, that
14 all the witnesses against David Milgaard
15 suddenly become liars. Now here is
16 Albert's chance to beat them to the
17 punch."

18 And they are talking about Larry Fisher as the
19 alternate suspect --

20 A Right.

21 Q -- it would appear?

22 A Right.

23 Q Now turning now to the transcript at 26,884 from
24 this morning's (sic) evidence, that transcript
25 quotes the previous paragraph, or quotes the



1 paragraph which follows in the previous document:

2 "Come forth and say, the bastards made
3 me do to. And I feel badly about it and
4 I want to clear my conscience and help
5 this guy that I've been worried about,
6 heartsick about all these years. He was
7 my pal, the pricks made me do it."

8 COMMISSIONER MacCALLUM: This is Henderson
9 again?

10 MR. LORAN: Yeah, they're once again
11 quoting from Henderson in the conversation.

12 BY MR. LORAN:

13 Q Now Mr. Hodson says to you:

14 "Again, is that the type of strategy
15 then or questioning technique that had
16 been discussed amongst the collective
17 group as a method to give these
18 witnesses an out on a recantation?"

19 And your answer is:

20 "A In a general sense, yes."

21 By that I assume you were a party to those
22 discussions?

23 A I would assume so, yes.

24 Q And now I understand your position to be that this
25 was war, the gloves were off, and the only



1 limitation I think that you expressed so far in
2 terms of tactics was the Rules of Professional
3 Conduct, you felt yourself bound by those?

4 A That's correct.

5 Q Is it fair to characterize the approach that's
6 being discussed in this conversation as sort of a
7 carrot and stick approach, "we'll say, we'll make
8 the threat that he's going to be exposed as a
9 liar, and we'll offer him a chance to be the hero
10 by being the first to recant"?

11 A Yes, I -- yes, that's part of it. I think that I,
12 I do recall discussions about the psychology of
13 witnesses who have lied and the angst and the
14 heavy weight that may be upon their conscience,
15 and how to release it, so I guess that's part of
16 the same thing.

17 Q In Albert's case it didn't work because, and I
18 think it's Paul Henderson himself as we saw
19 earlier, came to the conclusion that in Albert's
20 case it would have been a lie to recant; is that
21 fair?

22 A Yes.

23 Q Okay.

24 A I mean we obtained other evidence, I mean other
25 information, but yes.



1 Q Document number 336443. Now here's where I was
2 planning to have the tape played, and I guess I'm
3 wondering how I go about having that happen?

4 MS. BOSWELL (Document Manager): The whole
5 tape?

6 MR. LORAN: I have a portion of the tape I
7 would like to see played.

8 COMMISSIONER MacCALLUM: What is this,
9 please?

10 MR. LORAN: This is tape 49 of the
11 recently-released documents.

12 COMMISSIONER MacCALLUM: Yes?

13 MR. SOROCHAN: Mr. Commissioner, I
14 understood that parties were to be restricted in
15 their cross-examination to matters that touched
16 upon their particular clients. We seem to be
17 going quite far afield here, and now we're gonna
18 have a tape played that's been transcribed. Mr.
19 Asper has already told the Commission he has no
20 independent recollection, other than in the
21 transcripts, of what's in there. Other than to
22 take us to the half-past 4, what can possibly be
23 the purpose of listening to a tape, and I would
24 ask that counsel be restricted to the areas that
25 touch upon their clients.



1 COMMISSIONER MacCALLUM: Well I think
2 Mr. Loran knows that. Would you respond to the
3 objection, please?

4 MR. LORAN: Well I believe that the
5 allegation, one of the allegations is that the
6 Saskatoon Police conducted improper interviews of
7 witnesses, and I'm trying to call evidence with
8 regard to what the appropriate standard for
9 interviewing witnesses was.

10 COMMISSIONER MacCALLUM: You mean in the
11 terms of them being suggestive and so forth?

12 MR. LORAN: Yes, Mr. Commissioner.

13 COMMISSIONER MacCALLUM: Yes?

14 MR. HODSON: Just on a technical basis, we
15 do have the tape, it's an hour and 30 minutes,
16 it's obviously on there. If it needs to be
17 played, it's a question of finding it on the tape
18 and can play it, and so I don't know how long an
19 excerpt Mr. Loran wants?

20 COMMISSIONER MacCALLUM: Mr. Loran, I
21 wonder if you could do this for me, just point
22 out the salient portions, as you see them, of the
23 transcription, and then if I think it's of
24 sufficient relevance and importance I'll --

25 MR. LORAN: They're in fact --



1 COMMISSIONER MacCALLUM: -- get the tape
2 and listen to it, because it may be a matter of
3 some difficulty to do it on the spot like this.

4 MR. LORAN: Fair enough. Perhaps -- I have
5 the documents, I've actually got I think three
6 excerpts here, and they're just a couple of pages
7 of transcript each, --

8 COMMISSIONER MacCALLUM: Okay.

9 MR. LORAN: -- and my proposal was to have
10 all three played. Perhaps what I can do is have
11 them copied, they -- I indicate a start and end
12 location for each of those three excerpts.

13 COMMISSIONER MacCALLUM: Well I want to
14 make sure that, if I'm gonna listen to them,
15 everybody has opportunity to do the same, of
16 course.

17 MR. HODSON: If, subject to Mr. Sorochan's
18 objection -- and I'm not sure how you are dealing
19 with that -- if the tapes are part -- are to be
20 played I can suggest that we could have them for
21 tomorrow morning, those excerpts, again subject
22 to those --

23 COMMISSIONER MacCALLUM: Well I haven't
24 agreed, yet, that they can be. It depends upon
25 their relevance.



1 MR. SOROCHAN: I haven't heard any
2 explanation for what is to be added by the
3 playing of the tapes rather than the transcript?

4 COMMISSIONER MacCALLUM: Yes, they've been
5 transcribed, what's missing? Is there anything
6 missing in the transcript?

7 MR. LORAN: I have not heard the tapes, My
8 Lord, and I believe that sometimes it's possible,
9 when listening to an actual conversation, to
10 determine more from the perspective of the
11 inflection of voice --

12 COMMISSIONER MacCALLUM: Well sometimes the
13 tone of questioning, for example, can be a
14 strident or importunate, or whatever, however you
15 wish to describe it, which doesn't turn up on the
16 printed page. But before embarking on an
17 endeavour like this I would expect you to have a
18 reason and not just a possibility. What you are
19 seeking to do now is kind of a fishing
20 expedition, and a very expensive one at that.

21 MR. LORAN: Okay.

22 COMMISSIONER MacCALLUM: You can listen to
23 them yourself, and if you are still of the
24 conviction that they should be heard then you can
25 apply again in the morning to me, please. In the



1 MR. LORAN: And perhaps I can go through
2 the transcript at this point, then.

3 COMMISSIONER MacCALLUM: Well, I wonder if,
4 if it might be better use of time if the witness
5 -- have you seen this before?

6 A I saw the first one, we've -- we've referred to
7 the first one as you've indicated, Mr.
8 Commissioner.

9 COMMISSIONER MacCALLUM: Yes, yes.

10 A I don't know if I have seen the one that's on the
11 screen right now, and I can't read it.

12 COMMISSIONER MacCALLUM: If it involves
13 much reading it may be quicker to have him read
14 it over night and then --

15 MR. LORAN: Yes, Mr. Commissioner.

16 A I could very quickly read it, I can scan it right
17 now, Mr. Commissioner.

18 COMMISSIONER MacCALLUM: You want to do it
19 now?

20 A Sure.

21 COMMISSIONER MacCALLUM: All right, go
22 ahead.

23 A If you can enlarge it a little bit, that would be
24 helpful.

25 COMMISSIONER MacCALLUM: So the first one



1 we'll turn to is 336443.

2 MR. LORAN: Thank you, My Lord.

3 MS. McLEAN: That's not the document.

4 MR. HODSON: 336443.

5 MR. LORAN: The document number is 336391,
6 and it's at page 336443, that's the first of the
7 documents I was hoping to examine on.

8 COMMISSIONER MacCALLUM: Okay. If you'll
9 just read that, and then you can put your
10 questions to him on that first one, you said
11 there were three areas.

12 A (Witness reading) I'm familiar with this.

13 COMMISSIONER MacCALLUM: Okay.

14 BY MR. LORAN:

15 Q Perhaps I can draw your attention on the first
16 page to:

17 "Well the whole thing is tainted by
18 Centurion, if Centurion is the taint,
19 then the whole thing is tainted."

20 A Yes.

21 Q What -- can we agree that you were a party to this
22 conversation and that it took place?

23 A Yes.

24 Q What were you referring to when you said the whole
25 thing is tainted by Centurion?



1 A I have a feeling I was referring to my concern
2 vis-a-vis the Department of Justice's view of the
3 statements taken by Centurion and I expect it was,
4 I was expressing my own concern as well.

5 Q Okay. Over on the next page --

6 A Federal Justice. Federal Justice.

7 Q Over on the next page, just about a third of the
8 way down it says:

9 "You know, I mean, I have, I, I you know
10 anybody, ah you know ... the statements
11 that have been taken up to this point
12 have been you know, horrendously
13 biased."

14 A And did you say that at that time?

15 A Yes.

16 Q I'll ask you to move over to the next document
17 which is 336592 at 336639.

18 A I think you want the page before.

19 Q Down at the bottom here, we can start there.

20 MR. SOROCHAN: Surely My Friend isn't going
21 to be asking -- I keep worrying about tripping on
22 these wires as I come running up here. Can we
23 get one of these hand-held mikes so I can yell
24 from the back?

25 Surely My Friend isn't going to



1 be asking about a conversation between Mrs.
2 Milgaard and her daughter. This whole line of
3 questioning, in my respectful submission, has,
4 it's shown to be of little or no relevance to any
5 issue before the Inquiry and has nothing to do
6 with the Saskatoon Police Department and there's
7 no basis for questioning Mr. Asper upon a
8 conversation between two other parties.

9 COMMISSIONER MacCALLUM: What is the basis,
10 Mr. Loran, please?

11 MR. LORAN: It appears that they discuss
12 advice given to them.

13 COMMISSIONER MacCALLUM: Yes.

14 MR. LORAN: At the bottom, I guess it is,
15 of 640, they talk about the advice David Asper
16 has given with regard to what Cal Tallis said.

17 COMMISSIONER MacCALLUM: That's relevant.

18 A Can we enlarge this a little bit?

19 BY MR. LORAN:

20 Q I think to get the full flavour of it, one has to
21 read the page before as well, down there.

22 A Okay, yes, I'm familiar with the exchange, or I
23 accept that the exchange occurred and I've scanned
24 it.

25 Q So is it fair to say that Tallis by now, someone



1 had spoken to Mr. Tallis?

2 A Right.

3 Q And he talked about what David had told him and it
4 included things which contradicted the material in
5 the affidavit?

6 A Right.

7 Q Now, over to the bottom of page 640 it says:

8 "David Asper is going to have him down
9 at the office, apparently ... down to
10 have lunch with him at noon ... David
11 Asper says there's no way we can tell
12 him what Cal Tallis has said, but I said
13 to him, well you know David, on more
14 than one occasion, David has told me,
15 that um, ah not about the compact, he's
16 never said that to me, about he's often
17 said about the re-enactment that he
18 could have done it. You know, it's
19 quite possible, he said I don't know but
20 I, I could have, but I don't
21 remember..."

22 I guess my question for you is what Joyce
23 Milgaard says to you in this conversation, is it
24 true, or what she says that you told her, is that
25 true?



1 A It's possible. I'm sorry, what's the date on this
2 again?

3 Q If one looks at the front, and of course I'm just
4 relying on somebody else's interpretation of the
5 date there, the first page of the document says
6 January, 1992.

7 A Yeah, I suspected that. We were concerned about
8 affecting David's evidence. Well, my recollection
9 is one of two things, either we were concerned
10 about affecting David's evidence because we were
11 not telling him a whole bunch of things about what
12 we had gotten through the discovery process
13 because we wanted him to recall as precisely as
14 possible. The other issue we had, and I can't
15 remember whether I had been fired at this point by
16 him, he was very insistent about what Mr. Tallis
17 said, and I don't recall if there is the
18 conversation that she's referring to, Mrs.
19 Milgaard is referring to, but I thought it would
20 be -- I was trying to manage being fired about
21 what Mr. Tallis might be saying at the Supreme
22 Court.

23 Q Over onto the top of page 641:

24 "... when I talked to him and got him to
25 do that Affidavit I said if you don't



1 know, don't put anything you don't know,
2 and he put that."

3 I take it this is talking about David Milgaard or
4 is that talking about you?

5 A I don't know.

6 Q Okay. So --

7 MS. McLEAN: Excuse me. Since my client
8 was a party to that conversation, the David who
9 put it in the affidavit is David Milgaard, her
10 son.

11 COMMISSIONER MacCALLUM: Thank you.

12 BY MR. LORAN:

13 Q And the following passage specifically refers to
14 David Asper:

15 "So I said well, the point is that's
16 just gonna show that he's as confused as
17 he is. And as I explained to David
18 Asper, I said I used to be a
19 pathological liar and David was and is,
20 to quite a degree a liar."

21 Did you have a conversation to that effect with
22 Joyce Milgaard?

23 A No. This is a conversation where Joyce is saying
24 to Susan that she, Joyce, "used to be a
25 pathological liar and that David was and is, to



1 quite a degree a liar"?

2 Q "As I explained to David Asper, I said
3 I used to be a pathological liar and
4 David was and is, to quite a degree a
5 liar."

6 Did Joyce Milgaard ever have a conversation with
7 you where she talked about David Milgaard and
8 said:

9 "I used to be a pathological liar and
10 David Milgaard was and is, to quite a
11 degree a liar"?

12 A I can't say that I remember, but I think,
13 Mr. Loran, if that happened, I would remember it.

14 Q I'll now turn to document number 336755.

15 A Again we have new facts. Stop it.

16 COMMISSIONER MacCALLUM: This is the third
17 of the --

18 MR. LORAN: Yes, it is, My Lord. We're at
19 336793, part of document number 336785.

20 COMMISSIONER MacCALLUM: 755 I think you
21 said, or I must have heard you wrong. So the
22 doc. ID is 33678 --

23 MR. LORAN: The doc. ID is 785, My Lord.

24 COMMISSIONER MacCALLUM: 785?

25 MR. LORAN: Yes.



1 COMMISSIONER MacCALLUM: All right.

2 MR. LORAN: And we're at page 336793. Do
3 you recall --

4 A I need it enlarged, please.

5 BY MR. LORAN:

6 Q Do you recall having a telephone conversation with
7 Joyce Milgaard to this effect?

8 A I believe this is the conversation I'm talking
9 about, two Winnipeg police detectives that we
10 might use as questioners.

11 Q Yes. The date given at the beginning, on the
12 first page of the document, is May 17th, 1990.
13 Would that be about the date when this
14 conversation took place?

15 A I couldn't even guess. I don't know.

16 Q Do you acknowledge that you were a party to this
17 conversation?

18 A Yes, I recall discussing this matter.

19 Q Now, at the very bottom of the page you say:

20 "And they can play the game any way --"

21 And Joyce Milgaard says:

22 "It has to be played?"

23 And you finish saying the same words:

24 "And they can play the game any way --
25 it has to be played."



1 A Yes.

2 Q When you put that together with what follows, I'm
3 looking now at the following page up in the
4 corner:

5 "Even if what they're getting is a lie,
6 they'll get it."

7 It sounds, when you put these together, like you
8 are saying that you don't care if it's a lie.

9 A Well, I think you go to the next thing that I say:

10 "Well listen, umm, we don't know that
11 it's a lie, first of all."

12 And, I mean, I can recall generally these
13 conversations and I want to be clear that the use
14 of the statements, you know, we were not
15 necessarily looking for statements for truth, but
16 potentially for other uses. If a witness lies or
17 gives us information that contradicts earlier
18 information, then maybe the purpose is to
19 establish credibility or lack of credibility, so,
20 I mean, we were exploring a complete wide range
21 of options with the statements.

22 Q Okay. Now, further down the page, right there,
23 Mrs. Milgaard responds by saying:

24 "I don't think we make any -- mileage
25 for ourselves by lying."



1 And then she adds:

2 "Or taking lies."

3 A Yes.

4 Q Why was she arguing with you about what you had
5 said earlier?

6 A She had clearly misunderstood me because the next
7 notation I say:

8 "No, no, I'm saying if we get a
9 statement from these people --"

10 She says:

11 "Uh-huh."

12 "-- we don't know whether they are
13 telling the truth or not."

14 I mean, that's the problem we had, Mr. Loran,
15 through this entire case, we had no idea where
16 the truth lay.

17 MR. LORAN: I don't know where we're at for
18 time, but --

19 COMMISSIONER MacCALLUM: Out of it.

20 MR. LORAN: I can simplify things in terms
21 of my request. I think the only passage that I
22 would like to hear a tape of is at 336793. If we
23 could limit the playing of the actual tape to
24 these passages, 336793 and 336794, I would
25 certainly be satisfied with that.



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COMMISSIONER MacCALLUM: All right, and I
want you to listen to them first though and make
sure that we're not wasting our time.

MR. LORAN: Thank you, My Lord.

COMMISSIONER MacCALLUM: Nine o'clock.

(Adjourned at 4:34 p.m.)



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OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATE:

We, Karen Hinz, CSR, and Donald G. Meyer, RPR, CSR,
Official Queen's Bench Court Reporters for the Province of
Saskatchewan, hereby certify that the foregoing pages
contain a true and correct transcription of our shorthand
notes taken herein to the best of my knowledge, skill, and
ability.

_____, CSR
Karen Hinz, CSR
Official Queen's Bench Court Reporter

_____, RPR, CSR
Donald G. Meyer, RPR, CSR
Official Queen's Bench Court Reporter



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