



City of
Saskatoon

Office of the City
Solicitor

222 - 3rd Avenue North ph 306•975•3270
Saskatoon, SK S7K 0J5 fx 306•975•7828

April 6, 2004

Hand Delivered

The Commission of Inquiry Into the
Wrongful Conviction of David Milgaard
1020 - 606 Spadina Crescent East
Saskatoon, Saskatchewan
S7K 3H1

Attention: Douglas C. Hodson

Dear Mr. Hodson:

Re: Inquiry Into the Wrongful Conviction
of David Milgaard
Our File No. 124.0229

Please find attached the Saskatoon Police Service's Application for
Standing and Funding in this matter.

Trusting the above to be in order.

Yours truly,

A handwritten signature in black ink, appearing to read 'B. H. Rossmann'.

B. H. Rossmann, Q.C.
Solicitor

BHR:saj
Enclosures

cc - Office of the Chief of Police
Attention: Russell L. Sabo, Chief of Police

Commission of Inquiry Into the Wrongful Conviction of David Milgaard

Honourable Mr. Justice Edward P. MacCallum, Commissioner

Application for Standing by the Saskatoon Police Service

Few cases in Saskatchewan have generated as much public and legal interest as that of David Milgaard's conviction for the 1969 murder of Gail Miller.

A recent search of the name David Milgaard in the popular internet search engine "Google" generated nearly 2,700 "hits" occupying more than 68 pages of article summaries. Newspaper clippings from the 1988 to 1992 Saskatoon StarPhoenix yield dozens of articles, a small sampling of which are attached simply for the purpose of illustrating some of the issues, controversy, opinions, allegations and responses by various persons and parties.

Central to much of this is the investigation of the murder of Gail Miller by the Saskatoon Police Service in 1969, and the reaction of the Saskatoon Police Service in the years following as the matter of Mr. Milgaard's conviction was reviewed by the Minister of Justice, and ultimately the Supreme Court of Canada.

Indeed, the role of the Saskatoon Police Service will be scrutinized in each of the three areas that this Commission has been directed to examine by the Order-In-Council creating it.

The Saskatoon Police Service recognizes that the confidence of the public is an absolute necessity for a police service to fulfill its duties to the public, and for the proper and efficient functioning of our system of criminal justice. Given the

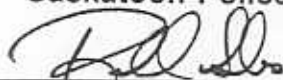
seriousness of this matter and the huge amount of publicity surrounding it, much information relating to which has been provided to the public piecemeal over a period of many years, the Saskatoon Police Service is of the view that it is only through an exhaustive examination of the entire matter, from beginning to end, that the true and accurate facts can be fully known, published and understood by the public. It is only through the public airing of the same that the confidence of the public in the Saskatoon Police Service and the criminal justice system can be maintained or regained.

In the circumstances, it is submitted that the Saskatoon Police Service has a direct and substantial interest in this Inquiry. The Saskatoon Police Service wishes to do whatever it can to assist in putting full and proper information and evidence before this Inquiry so that this Inquiry can make a proper determination based upon the facts and evidence. The Saskatoon Police Service, with respect, is the only body which has full and proper access to all the documentation, procedures, policies and history of the Saskatoon Police Service. It occupies a unique situation in that respect, as well as being the body that is in charge of and is responsible for the conduct of its members and the carrying out of their occupation of police officers, including that of investigating crime. It is the body that creates, administers and updates policies and procedures of the Service, and arranges for the proper training of its members. It is the only official "spokesperson" for the Saskatoon Police Service *vis-a-vis* handling of criminal matters.

In summary, the Saskatoon Police Service respectfully submits that it is both a proper and a necessary party to this Inquiry, and respectfully asks that it be granted full standing as such.

All of which is respectfully submitted this 05 day of April, 2004.

Saskatoon Police Service



Russell L. Sabo, Chief of Police

A look back at evidence

Evidence implicating David Milgaard:

- Although not actual evidence, part of Nichol John's police statement saying she saw Milgaard stab a girl in an alley was read aloud in the courtroom. In his charge to the jury, the judge warned the information could not be viewed as evidence.
- A cosmetics bag discovered by John in the glove compartment of Ron Wilson's car was heaved from the vehicle by Milgaard as the foursome travelled from Saskatoon to Calgary.
- Milgaard was near the scene of the crime at the time.
- Wilson and "Shorty" Cadrain testified they saw blood of Milgaard's clothing at Cadrain's house.
- Eleventh-hour Crown witnesses Craig Melnyk and George Lapchuk testified they were with a drugged-up Milgaard in a Regina motel room when a television news item about the Gail Miller case spurred Milgaard to act out a stabbing attack on a pillow, and state: "I killed her" and "I stabbed her 14 times, and then she died." Lapchuk said he had been bugging Milgaard about the murder, for which Milgaard was under investigation.
- Wilson testified Milgaard told him: "I hit a girl" and "I got a girl" in Saskatoon, as the two were talking at a Calgary bus depot. Wilson said at the time, he believed it was a joke.
- Wilson and John said they saw a knife in Wilson's car as the trio travelled to Saskatoon — Wilson in court described it as "a short paring knife with a reddish brown handle."
- A broken paring knife with a maroon handle, thought to be the murder weapon, was discovered by police beneath Miller's body.
- On the morning the trio searched for Cadrain's house, they pulled up to a woman walking in their direction and Milgaard asked her for directions. Wilson said Milgaard called her a "stupid bitch" after talking to her through his passenger's side window or door.
- When the Pontiac got stuck attempting a U-turn less than a block up the avenue, Milgaard set



GUILTY OR NOT?

Star-Phoenix reporter Dave Yanko looks at the David Milgaard case, a prisoner who insists he's not guilty of murdering nursing assistant Gail Miller in 1969.

off for help in the direction of the woman while Wilson went in the opposite direction, Wilson testified.

• John "was pretty well in a hysterical state — screaming," when Wilson returned empty-handed from seeking help.

• Milgaard came back to the car five or six minutes after Wilson and said "I fixed her," Wilson testified.

• Milgaard got a city map from a nearby motel shortly after 7 a.m., according to at least two witnesses.

• Blood-type "A" antigens, or blood components, were found in semen samples retrieved from the crime scene four days later by then-Lt. Joe Penkala. Milgaard's blood type is "A."

• While there is absolutely no onus on the accused to prove he is not guilty, it is believed jurors are wary of people who choose not to testify in their own defence. Milgaard did not testify.

Since Milgaard's lawyer, Calvin Tallis, called no evidence at the trial, the following are factors that bring into question Milgaard's guilt:

• Timing: Crown witness Adeline Nyczai, who lived in the same rooming house as the victim, testified she saw Miller in her work uniform, hair combed but without shoes or boots on, between 6:35 and 6:45 a.m. on the morning of her death. Nyczai said Miller normally left the rooming house

around 7 a.m. Milgaard was motel getting a man shortly after 7 a.m.

• Craig Melnyk's credibility has been questioned because was facing a charge of armed robbery at the time he made the allegations to Regina police.

• George Lapchuk's credibility has been questioned because was facing charges of forgery, uttering and possession of stolen goods when he told police of Milgaard's pillow fight.

• Ute Frank and Debbie Frank who were in the Regina rooming room with Melnyk and Lapchuk when Milgaard allegedly made the stabbing motions on a pillow were not called to testify. Frank says in a sworn statement Milgaard was fluffing a pillow not using it to act out a stabbing. She said she was high on drugs but her memory of the event is clear. Frank told Saskatoon police Milgaard looked at her "smiled oddly" when she asked him whether he killed the nurse. Frank told police she was "high" at the time.

• Nichol John's credibility has been questioned because she denied, in court, recalling anything about the stabbing scene related in her police statement.

• "Shorty" Cadrain said in a June 1990 statement that Saskatoon police put him through "mental torture" and that detectives "pushed me over the edge and I cracked," when they questioned him about the crime. The allegation was denied by former detective Eddie Karst. Cadrain's 1990 statement says he did, however, recall seeing blood on Milgaard's pants.

• Wilson recanted his testimony, also in a June 1990 statement to the Milgaard family's private investigator, Paul Hender. Wilson said he "was manipulated by police into lying and giving false testimony against Milgaard."

Contrary to his testimony, said he did not see Milgaard with a knife during the car ride to Saskatoon; he did not see Milgaard act hysterically when he returned to the stuck car; and Milgaard did not tell him "I got her" during

Murder trial of Milgaard

...in the Calgary bus
...and Olesia Danchuk,
who spent more than an hour with
the trio after the crime would
have occurred, noticed nothing
unusual about Milgaard's behav-
ior and noticed no blood.

• Unlike 65 per cent of the popu-
lation, Milgaard is not a secretor
and therefore the semen sample
cannot be used to link him to the
scene of the crime, according to
Vancouver forensic pathologist
Dr. James Ferris.

• Dr. Peter Markesteyn, chief
medical examiner for Manitoba's
justice department, agreed with
Ferris about the lack of a link, but
suggested the semen samples
were likely useless in any event.
Markesteyn, who was also asked
to review the evidence, says the
test used to find "A" antigens can
provide positive findings if con-
taminated by material as com-
mon as bacteria, soil, enzymes
and even spermatozoa.

• When Miller's purse was
found by police, it contained a

cosmetics bag.

• Sperm mixed with what
appeared to be blood, found in
Miller's vagina, was not typed as
to the presence of blood antigens
and was discarded.

• Milgaard bought a paring
knife in a Rosetown grocery store
after the trio and Cadrain left
Saskatoon for Alberta.

• A man who was later convict-
ed of three rapes and an attempt-
ed murder lived on the same ave-
nue as Miller and took the same
bus in the morning.

Thursday, March 5, 1992



Former prison guard Jack Hewitt leaves Supreme Court after testifying

Testimony by Tallis, Milgaard in conflict

By Vern Greenshields
SP Ottawa Correspondent

OTTAWA — David Milgaard's original lawyer testified Wednesday he recommended the young man not take the stand in his 1970 murder trial because his testimony could do him more harm than good — and in fact confirm much of the Crown's case against him.

The wisdom of that recommendation became apparent Wednesday as Cal Tallis, then Milgaard's lawyer and now a Saskatchewan Appeal Court judge, outlined what he considered would be damaging.

Much of what Tallis said conflicts with testimony Milgaard has given to the Supreme Court of Canada in recent weeks during its review of his conviction for the murder of Saskatoon nursing assistant Gail Miller.

Tallis said that, while he recommended against Milgaard testifying, he left the option up to the accused and his parents. Milgaard signed a paper saying he did not want to testify but he has maintained his inno-



cence throughout and has long lamented the fact that he did not take the stand in 1970.

"I wish I had the opportunity to stand up and talk then," he told the Supreme Court.

Tallis's testimony was a rare occurrence in a judicial proceeding, although the Milgaard review is developing a reputation in legal circles of being a string of rare occurrences.

Lawyers normally are bound by absolute privilege not to reveal conversations with their clients, but in Milgaard's application to Justice Minister Kim Campbell for this special review, he waived any solicitor-client privilege.

MORE ON PAGE A2

Milgaard review turning into string of rare occurrences

CONTRADICTION

...sisted the two never became separated on that fateful morning of Jan. 31, 1969, when the murder took place. ... I knew that would be proved."

In cross-examination if Milgaard took the stand, said Tallis. ... He also said Milgaard told him he and his companions had stopped their car by an "elder" woman and asked directions — as Milgaard testified — but said the youth also told him they actually were checking her out with the idea of robbing her.

As well, Milgaard has denied throwing a makeup case out of the car when they left Saskatoon, something others have testified he

did. However, Tallis said his client told him of the event but was at a loss to explain where the makeup case had come from.

Despite these discrepancies, Tallis said Milgaard maintained his innocence in all their conversations. There had been speculation about whether the youth had confessed to Tallis and that was the reason he was not called to testify.

There were other conflicts: Milgaard has insisted the trio that left Regina for Saskatoon, and then continued on to Calgary, did not have a knife in the car until they stopped in Rosebush to buy some food and bought a knife to

cut it. However, Tallis said Milgaard told him he had a flexible knife that could be used for breaking into buildings, and may also have had a jackknife.

As well, Milgaard has claimed the trio stopped at a garage to fix the car's heater upon arriving in Saskatoon and bought chicken soup from a dispenser at the garage.

He said he urged Tallis to find the garage and the "chicken soup man" but there is no testimony from others suggesting such a stop, and Tallis said Wednesday he never received any such instructions from his client.

Wednesday turned out to be a day of contradictions, mixed messages and lost documents — not all of them bad for Milgaard.

While Tallis was unable to locate any records or his notes from the original trial, a prison employee who testified that Milgaard had confessed to the crime was at a loss to explain what had happened to the file in which he inserted that information.

Ben Dozenko, who was Milgaard's living unit supervisor in Stony Mountain Penitentiary, was

at a loss to explain much of his testimony, including opposite versions he gave the Supreme Court and his own superiors over an incident in 1960 when Milgaard escaped from his custody while on a temporary absence.

He testified Milgaard told him in 1960 that his mother was working on getting him a new trial, that he had his mother "wrapped around his little finger," and that when he was found innocent, he would be compensated by the government — as had been Donald Marshall in Nova Scotia — and never have to work again.

Dozenko was at a loss to explain why he never reported that in Milgaard's general file, didn't know what happened to his personal file where he had noted it, and couldn't explain the reference to Marshall, who had not yet been freed when Milgaard allegedly made the statement.

And Jack Hewitt, another former guard, said Dozenko once told him: "David has never killed anybody at all."

DAVID MILGAARD
.. contradictory evidence

'Unstable' juror may have convicted wrong man in 1970

*Friday
October 20, 1989*

WINNIPEG (CP) — A member of the jury that convicted David Milgaard of first-degree murder in the 1969 death of a Saskatoon nurse said he was mentally unstable during the trial and not emotionally strong enough to pass judgment on Milgaard's guilt or innocence.

Fernley Cooney, a part-time janitor in Saskatoon, said he has come forward 20 years after the trial because he feels guilty that his mental state at the time may have resulted in Milgaard not getting a fair trial.

Milgaard has served 20 years of a life sentence in Manitoba's Stony Mountain Penitentiary for the rape and murder of Saskatoon nurse Gail Miller.

Since his conviction in 1970, he has maintained his innocence and the federal Justice Department now is investigating the possibility of reopening his case.

Cooney said he had a physical and mental breakdown in 1962 and, between then and 1969, was in and out of mental hospitals.

In 1970, while he was out of hospital but on medication, he was informed he had been picked for jury selection at Milgaard's trial.

Cooney said he tried to get out of serving before the jury was selected but was told by Saskatoon sheriff's officers he was too late to request an excuse and there was no way for him to avoid jury duty.

Cooney said, because he was embarrassed about his illness, he never told anyone he wasn't mentally competent to serve.

He said, even though he had a history of mental illness and medication, he understood all the evidence provided during the trial



DAVID MILGAARD
... 1980 photo

someone persuade me. At that time, I could be persuaded."

Cooney said he waited so long to come forward with his concerns because he has struggled all his life to hide his mental illness from his friends.

"I talked with my wife and we decided we should come forward because, if he's innocent, he shouldn't be in jail.

"I know I'm going to suffer from this probably, from my friends and business dealings, but for his sake I'll give it up and I'll take it.

"I don't think he got a fair trial."

David Asper, Milgaard's Winnipeg lawyer, said he was shocked when he first learned of Cooney's revelations



Media promoting controversy, city police chief charges

Saskatoon Police Chief Joe Penkala broke his silence about convicted murderer David Milgaard with a blast at the media Wednesday.

Penkala, who investigated the stabbing death of nursing assistant Gail Miller 21 years ago, is upset that the "media continues to promote the controversy which doesn't require to be proven."

"My disappointment lies with the fact of the insensitivity of the media for the victims of a very heinous crime that occurred in 1969."

Milgaard was convicted a year later of the brutal stabbing death of nursing assistant Gail Miller, whose half-naked body was found in a Saskatoon snowbank on the morning of Jan. 31, 1969.

A recent forensic review of the case indicates a key piece of evidence used to convict the 17-year-

old may be worthless.

Alleged semen found by Penkala in the snow at the scene four days after the murder could have been contaminated by dog urine, the report says.

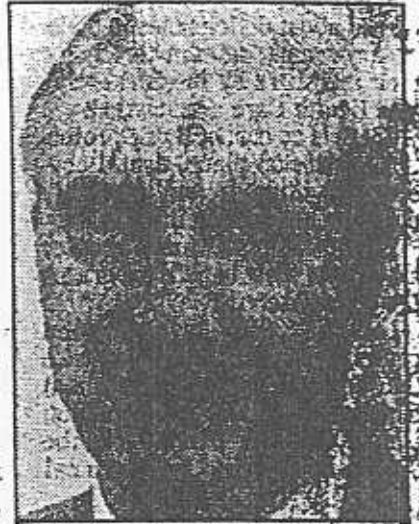
"The victim in this crime was not only Gail Miller. It also lies with her immediate family who are reliving their grief each time the controversy is raised by the media," the news release said.

Miller's parents and at least three sisters now live in and around Saskatoon.

When one sister, a Pike Lake resident, was contacted Wednesday night, she declined comment.

"I have no comment about anything," she said.

Penkala said he can "excuse the convicted murderer who has the legal right to employ the rules of Canadian justice to have his fate reviewed. However, it disap-



JOE PENKALA

... media 'insensitive'

points me that the media has allowed itself to be used in promoting his cause.

"I'm not prepared to defend or comment on any matters relative to the media's Milgaard controversy. If there is an established need for a judicial review, I will be available at such a call."

Investigator says witness recanted after 'prodding'

S-P Services

Getting a key witness to recant testimony used to convict a man of a 1969 murder took about eight hours of gentle prodding, an American private investigator probing the case said Friday.

The convicted man — David Milgaard — has served 21 years of a life sentence in the brutal rape-murder of Saskatoon nursing assistant Gail Miller. He insists he is innocent.

Investigator Paul Henderson of Seattle says he tracked down a key witness in the Milgaard case — Ron Wilson — last weekend in the Vancouver area.

Henderson said Wilson eventually recanted the testimony that had helped convict Milgaard. Wilson told Henderson he lied when he told a Saskatoon jury in 1970 that he saw Milgaard holding a paring knife before Miller's murder and that he saw blood on Milgaard's clothes afterward.

Wilson said police threatened to turn the tables on him if he didn't co-operate.

"I just sort of parachuted into Ron Wilson's life Sunday night," Henderson said in an interview Friday.

"I talked to him Monday. His recantation was evolutionary

over the course of the whole day."

Wilson telephoned Milgaard at Stony Mountain penitentiary north of Winnipeg Monday night to apologize for the damaging testimony.

"There's no doubt in my mind this has been on his conscience all these years," Henderson said.

Henderson, a former newspaper reporter, is one of two investigators retained by Centurion Ministries, an advocacy group based in Princeton, N.J., that probes cases in which it doubts a prisoner's guilt.

A spokesman for the group says the Milgaard case is the first to be investigated in Canada.

Since 1980, Centurion Ministries has succeeded in overturning the convictions of eight U.S. inmates, including one death-row prisoner in Texas.

The Milgaard case was raised Friday in the House of Commons by Liberal MP John Harvard, who accused Justice Minister Kim Campbell of delaying her review of the matter.

Milgaard first submitted an application to the Federal Justice Department to have his case reopened in December 1988.

Campbell told the Commons she cannot review Milgaard's file un-

til all evidence is gathered by his lawyers and her own officials.

"It's important that the findings be brought before me in a fair and most dispassionate way and not in a kind of media circus," Campbell said.

Justice Department officials say they plan to talk to Wilson, possibly as early as next week.

In recent months, Milgaard supporters have succeeded in gathering a number of medical opinions which question forensic evidence used to link the 37-year-old Winnipeg man to the crime.

A former juror in Milgaard's trial has said he was mentally incompetent at the time.

And RCMP have recently interviewed a multiple sex offender at Saskatchewan's Prince Albert penitentiary in connection with the murder.

The man lived in a basement suite near Miller in Saskatoon in 1969.

Saskatoon police chief Joseph Penkala, the chief investigating officer in the Milgaard case, has refused to comment on Wilson's allegations of police pressure.

Earlier this week the National Parole Board refused Milgaard's request for unescorted day passes from penitentiary.

Saturday June 23/1990

Ex-husband killed Miller, woman says

By Cam Fuller
of the Star-Phoenix

Joyce Milgaard has known about a possible second suspect in Gail Miller's murder for months, but never publicized it because she wanted to protect the man's wife, she said Thursday.

"We thought she was doing a very courageous thing," Milgaard said of Linda Fisher.

She visited Fisher in March and obtained a signed statement in which Linda Fisher says she believes her ex-husband Larry is responsible for the rape and murder in 1969 of Saskatoon nursing assistant Gail Miller.

The statement was sent to the Justice Department as part of David Milgaard's application to have his case re-opened.

Milgaard — Joyce's son — was convicted in 1970 of killing Miller.

Milgaard travelled through Saskatoon on the day of the murder after picking up a friend who lived near the spot where Miller's body was found.

By coincidence, a man who would later be convicted of three rapes was living in the basement suite of Milgaard's friend's house, CBC TV reported Thursday.

That man was Larry Fisher, now doing time at the Prince Albert Penitentiary.

In her statement, Linda Fisher said her husband hadn't come

home on the night before the morning of the murder. Out of anger, Linda accused him of it.

"He looked at me like a guilty person who had just been caught. The color drained from his face and he looked shocked and scared. I will never forget his expression," the statement reads.

Linda Fisher also said her paring knife was missing from the kitchen. Miller was stabbed with a paring knife.

A year after the Miller murder, Fisher was arrested for rape in Winnipeg. He ended up admitting to four previous rapes in Saskatoon, according to the CBC report. One of his victims lived less than two blocks from the scene of the Miller murder.

"Certainly they have a lot more against this man than they ever had against my son," Joyce Milgaard said.

Someone in the Saskatoon police department should have made the connection between Fisher and the Miller murder, she added.

"My God, they must have known."

RCMP have interviewed Fisher twice in connection with the Justice Department's review of the Milgaard case.

"If this doesn't light a fire under the (justice) minister, I don't know what we need," said Joyce Milgaard.

June 26, 90

Milgaard witness accuses city police of 'mental torture'

By Dave Yanko
of the Star-Phoenix

Another key Crown witness from the David Milgaard murder trial has lashed out at the treatment he received 20 years ago at the hands of Saskatoon detectives.

"They put me through hell and mental torture," Albert (Shorty) Cadrain says in a written statement released Monday by Joyce Milgaard, mother of David.

"It finally reached the point where I couldn't stand the constant pressure, threats and bullying any more."

"... Those detectives pushed me over the edge and I cracked."

Cadrain, of Port Coquitlam, B.C., is the former Saskatoon resident Milgaard was coming to visit on the day in 1969 when nursing assistant Gail Miller was murdered.

He told police he saw blood on Milgaard's pants after the crime had taken place.

Cadrain's new statement follows one about two weeks ago from Ron Wilson, one of two people who accompanied Milgaard on his trip from Regina to Saskatoon that day.

Wilson said he was "manipulated by police into lying and later giving false testimony against Milgaard."

Milgaard's mother says the "voluntary" statement was made Sunday to private investigator Paul Henderson.

While she says it's not a recanting of his testimony, it does serve to show the entire case for the Crown has been disassembled.

"The walls are coming tumbling down around the Saskatoon police, pure and simple," says

**"Those
detectives
pushed me over
the edge and I
cracked."**

— Albert Cadrain

Milgaard.

"We have taken every aspect of the Crown's case and it's totally in ruins. The forensic evidence is gone. The witnesses are gone."

Cadrain says he became paranoid during the investigation — he recalls being interviewed "15 or 20 times."

"At one point, I had told the detectives about David Milgaard bragging about being in the Mafia."

When police finally were finished with their interrogation, "they advised me I was their star witness and I better find some place to hide because they didn't want the Mafia to kill me."

After the trial and at the urging of his brother Dennis, Cadrain says he committed himself to the psychiatric ward at Royal University Hospital.

He said he was drugged 24 hours a day and subjected to repeated shock treatments.

Milgaard says an accompanying statement from Dennis Cadrain says Albert was the kind of young man "who could easily have been coerced and manipulated by police." Both statements have been sent to the federal Department of Justice.

Justice minister rejects Milgaard case review

By Vern Greenshields
S-P Ottawa Correspondent

OTTAWA — Justice Minister Kim Campbell has refused to intervene in the murder conviction of David Milgaard, but the MP championing his case has pledged to fight on.

Milgaard is serving a life sentence for the stabbing death of Saskatoon nursing assistant Gail Miller in 1969, but his family and lawyer have been fighting for more than two years to have the justice minister intervene.

That fight has been based on evidence presented over several months to the

minister, including testimony from witnesses that they lied in the original court case, and two forensic reports that had criticized several aspects of the evidence presented in the original trial.

After reviewing evidence submitted, "I have concluded there is no reason to believe a miscarriage of justice is likely to have occurred in this case," Campbell said Wednesday in announcing there will be no ministerial intervention.

However, Liberal MP John Harvard (Winnipeg-St. James) said he is "very,

very disappointed" and will be raising the matter in the House.

He said it's up to Milgaard's lawyer to try to appeal Campbell's decision or take the new evidence she apparently rejected to a court of appeal.

Milgaard's lawyer, David Asper of Winnipeg, once accused Justice Department lawyer Eugene Williams of completely misconstruing evidence he obtained in his two-year review of the application for a new trial.

A background note accompanying the minister's decision stated: "That suggestion was simply unwarranted."

The background said, besides hir-

ing former Supreme Court justice William McIntyre to review the case, the department interviewed more than three dozen persons, and forensic evidence presented by Asper was reviewed by experts.

Campbell said she decided not to intervene because there were no reasonable grounds to believe the evidence would have affected the jury's guilty verdict, and that some information provided by Milgaard was simply unreliable.

Milgaard demoralized
Page A3

Milgaard devastated by rejection of review

By Cam Fuller
of The Star-Phoenix

David Milgaard was devastated by Wednesday's decision not to review his 1970 murder conviction, says his lawyer David Asper of Winnipeg.

Milgaard is serving a life sentence for the 1969 murder of Gail Miller, a Saskatoon nursing assistant who was stabbed repeatedly and raped in an alley near her Avenue O home.

"He's pretty demoralized, but he'll be OK," Asper said Wednesday.

He and Joyce Milgaard, David's wife, thought they had enough evidence for Justice Minister Kim Campbell to review the conviction. That belief was shattered by the minister's announcement that his intervention is they either the application, or they understand the substance Asper said.

"When you completely dismowled the Crown's case, what more does an applicant have to do?"

Campbell's decision, said Asper, "is saying our Justice Department is utterly closed-minded."

Asper plans to apply to the Federal Court of Canada to have the decision reviewed. He also may seek to have the Saskatchewan Court of Appeal rule whether evidence recently uncovered could have affected the verdict.

Milgaard's mother said the minister's decision is "just so unbelievable."

"Campbell might think she's God, but she's not. God is just," Joyce Milgaard said in an interview late Wednesday from her Winnipeg home.

"David won't be given another chance in court because a mess worse than the Donald Marshall affair would be uncovered," said

Joyce, who plans to visit her son today.

In 1988, Milgaard applied to have his case reviewed. A key part of the original application was an evaluation by Dr. James Ferris, head of pathology at Vancouver General Hospital, of the forensic evidence presented at the trial.

Among his conclusions, Ferris said semen found at the scene by police officer Joe Penkala, now Saskatoon's police chief, could not have been Milgaard's.

After the application was sent, Joyce Milgaard enlisted the help of a private investigator to find further evidence. It was discovered that a man who was later charged with three rapes and admitted to murder lived on the same block as Miller and took the same bus in the morning. That man is in prison now.

Joyce Milgaard tracked down his wife, who gave a signed state-

ment saying she believed her husband killed Miller. The woman said she told Saskatoon police the same thing in 1980, but nothing was done.

A flurry of further revelations last summer further damaged the Crown's case, Milgaard supporters believed. Two key Crown witnesses said they made incriminating statements at the trial because police forced them to.

Ron Wilson said he was lying when he said he saw blood on Milgaard. Albert Cadrain said investigators "put me through hell" to extract damaging testimony.

Asper also sought another forensic evaluation, this time by Dr. Peter Markestejn, Manitoba's chief medical examiner, who suggested the "semen" found at the scene could have been dog urine. The evidence "was on shaky scientific grounds, if indeed not erroneous," Markestejn said at the time.

FRIDAY, 16, 1991

Milgaard framed, group contends

By Dan Zakreski
of The Star-Phoenix

Saskatoon city police framed David Milgaard for the murder of Gail Miller in 1969, alleges the head of a U.S. group which investigates suspected cases of wrongful conviction.

City police Sgt. Dave Scott denied the charge Thursday and refused to comment further.

Jim McCloskey, founder of the New-Jersey based Centurion Ministries, says the Saskatoon police department coerced testimony from witnesses to manufacture a case against Milgaard. The department needed a scapegoat because the murder followed a series of brutal rapes in the city and they had no suspects, he said.

McCloskey's non-profit group is dedicated to investigating cases where individuals may have been wrongly convicted of a crime. Since 1983, the group has freed eight death row or life prisoners in the U.S.

McCloskey has called a news conference in Toronto today to detail his allegations.

"Of all the cases we've worked on in the past 10 years, I've never had such a case where the original conviction against the defendant has completely unravelled as it has against David," McCloskey said Thursday.

"On the other side of the same coin, we've also been able to, in clear and convincing terms, identify the real killer."

McCloskey said an 18-month investigation revealed "a staggering amount of information" that pointed to a man named Larry Fisher — a convicted rapist whose victims included women in Saskatoon — as the person who murdered nursing assistant Gail Miller. Fisher lived two blocks away from Miller at the time of her murder.

In an interview with CBC-TV last year, Fisher said: "I had nothing to do with that murder."

Joyce Milgaard, who sought the group's help for her son in 1989, says Centurions got involved last year after she approached it with Fisher a possible connection to the case.

McCloskey said a Centurion investigator interviewed the Fisher rape victims earlier this year.

"In each of those incidents, five or six characteristics that Larry Fisher did with each of these was also done with Gail Miller. It's a clear modus operandi."

The series of rapes in Saskatoon before the Miller murder had placed incredible pressure on the city police to solve the crime, he said. Newspaper reports at the time confirm that, immediately following Miller's murder, police were exploring the possibility the serial rapist had also killed Miller.

"When you know what happened to those three rape victims, and compare them to what happened to Gail Miller, it doesn't take a rocket scientist to figure

Witnesses weren't pressured, retired detective says

COVER STORY
From Page A1

stand, she said she recalled nothing about the morning of the murder. But her statement to police was read aloud to the jury.

Karst said witness Ron Wilson, another of Milgaard's Regina travelling companions, was billeted at a hotel when he was in town for questioning.

Wilson, who told Milgaard's trial at he saw blood on the accused's pants and a knife on his person, since has sworn he lied in court because he felt police were trying to pin the murder on him.

"There was no evidence to charge (Wilson)," says Karst.

Albert "Shorty" Cadrain, the young man Milgaard, Wilson and John were coming to see in Saskatoon, still claims he, too, saw blood on Milgaard's pants the morning of the murder. But Cadrain, who picked up a \$2,000 reward for information leading to the conviction of Milgaard, also says police put him through months of mental anguish preceding the trial.

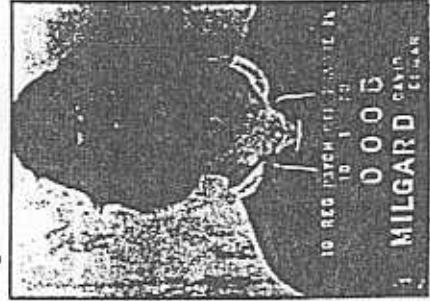
He says the ordeal forced him into a mental institution.

Although Cadrain's brother, Dennis, says Shorty was not mentally fit to testify at the trial, Karst says Shorty didn't go into an institution until two years after it.

Jack Parker, also a detective at the time, says he was the man who introduced Cadrain to Karst.

"Some time after the murder, one of my flunks (informants) came in," says Parker, now retired. He turned him over to Karst.

Parker, who was the first officer on the scene of Miller's murder, says he was not notified of the



—OPPOSITE PAGE
MILGARD in 1979

David Milgaard in 1979. Karst, expressing concern about Cadrain's trustworthiness.

"He didn't want to get burned," Cadrain told Karst about the blood on Milgaard's pants. The information amounted to a big break in the investigation and directed the attention of Karst and his partner, Charlie Short, to Milgaard and his companions.

Short declined to discuss the investigation; other than to say Milgaard is "guilty as hell" and "I'm fed up with it."

Fisher's four victims were never told he was apprehended because the morality department officers, investigating the four assaults were not notified themselves.

"I heard about the file being opened and I was just flabbergasted," says Gus Weir, a retired officer.

"We usually tried to send our best man (to take important statements), even if it wasn't assigned to him."

Parker, too, recalls nothing about Fisher.

But Ivan Lindgren, Weir's morality division partner at the time, questions Karst's Winnipeg assignment.

"Why the hell wouldn't they send a morality detective down?" says Lindgren, now retired.

Harry Henschel, another retired morality officer, said "it wouldn't be too uncommon" for Karst to take a sexual assault statement.

But he also allowed, "It certainly doesn't make too much sense that they would draw on somebody from detective division."

In any event, Henschel says he would "see no reason in the world for a coverup."

Karst, who says any trip out of town would have been approved by chief Jim Kettles, says his inability to recall taking one statement should surprise no one.

"I look thousands of statements,"

In spite of the fact most officers interviewed remain convinced Milgaard is guilty, most also said they are not displeased the Supreme Court will be rendering a final say on the issue.

"If those learned judges feel there's not enough evidence to convict him, he should go free," says Karst.

Weir, who notes it was a jury and not Saskatoon police who convicted Milgaard, believes misleading information about Fisher is indicative of the incompetence found in the upper echelons of all Canadian police forces at the time.

"You had to be there to know what was going on," he says.

The problem had much to do with the calibre of officer attracted to the force decades earlier, when wages were low and the work was drudgery.

Their promotion through the ranks was accelerated when the post-war boom saw police forces expand as fast as their citizenry across Canada.

Friday December 20/1991

Sunday January 17/1992

COVER STORY

Milgaard to testify Tuesday

Court enters uncharted water

By Vern Greenshields
SP Ottawa Correspondent
OTTAWA — For the first time, David Milgaard will testify in court Tuesday that he did not kill Saskatoon nursing assistant Gail Miller in 1969.

The Supreme Court of Canada decided Thursday it will call Milgaard as its first witness when it begins work next week trying to answer a directive from federal Justice Minister Kim Campbell: Was the conviction of Milgaard 22 years ago a miscarriage of justice and, if so, what are the possible remedies?

At Milgaard's murder trial, Cal Tallis, then a Saskatoon lawyer representing Milgaard and now an appeal court judge, never called his client to testify to his innocence.

As the Supreme Court plows virgin legal ground in the coming weeks, Tallis may also be called to explain why he chose that route at the original trial.

Milgaard's current lawyer, Hersh Wolch, said Milgaard has waived his client-lawyer privilege and Tallis has agreed to answer any questions put to him by the court.

The Supreme Court has never undertaken such a role before, according to lawyers at the proceedings Thursday as they discussed how to proceed to help answer Campbell's request.

Federal attorney-general counsel Ron Fainstein said the closest comparison is the Steven Truscott case, but in that issue, the court was asked what would have happened if an appeal had been launched, and the court followed the rules applying to an appeal proceeding.

In this case, the court can look at anything it considers relevant, based on logic and common sense.

This also puts the case on the cutting edge of forensic medicine: Lawyers revealed Thursday they are going to try the latest in DNA match-

MILGAARD



SP Ottawa correspondent Vern Greenshields will be covering the Supreme Court review of the David Milgaard murder conviction. The hearings begin Tuesday.

ing to see if evidence compiled in the original murder case — samples of what is thought to be semen taken from the scene of Miller's murder — match up with Milgaard's.

MORE ON PAGE A2

Hypnosis may be used at Milgaard hearing

COVER STORY

They are also going to try to "medically revive" — possibly using hypnosis — the memory of one of the key witnesses from Milgaard's original trial. Nichol John, a passenger in the vehicle used by Milgaard on the day of the murder, told Saskatoon police after days of questioning she saw Milgaard stab a woman. During his trial, she said she couldn't remember.

John, along with the other person in the car that day, Ron Wilson, also will be called as witnesses next week.

Fainstein said a laboratory in England is the pioneer in DNA fingerprinting — identifying individuals by their own DNA structure. A process not developed even two years ago might now be able to determine whether the bodily fluids taken from the murder scene match Milgaard's.

The federal Justice Department will attempt to "jump the queue" to get the tests completed, otherwise it might take several months.

Both Milgaard and Larry Fisher, a confessed serial rapist, have been asked to supply samples of bodily fluids for comparison. Milgaard has complied, but Fisher's lawyer Brian Beresh said while Fisher has not refused, he had not yet agreed, deciding to wait to see what the evidence is against him.

In the campaign to free Milgaard, Fisher has been identified in media reports, a book on the case, and by Centurion Ministries — a U.S. group that works on behalf of people it believes are



David Milgaard inside Stony Mountain Penitentiary in 1990

wrongfully convicted — as a likely suspect in the Miller slaying.

In court Thursday, Beresh expressed concerns that some material about his client never before made public, such as police files, might be tendered as evidence and violate Fisher's rights.

Fisher was convicted of several violent rapes in Saskatoon, North Battleford and Winnipeg that followed a similar pattern as the attack on Miller, although none of those victims were murdered.

Also in court Thursday, Wolch tried to get Milgaard's testimony delayed because he said his client is suffering from anxiety and depression.

However, he was overruled by

the chief justice of the Supreme Court, Antonio Lamer, who said he wanted to hear Milgaard testify as to his innocence before proceeding any further.

"He has not yet told the court he did not commit the crime," said the chief justice. "It seems to me that's Step 1."

"You wanted the end of March," he told Wolch. "I thought that was too late. Your client's in jail. (Let's) get on with it, get it done."

Besides next week, the Supreme Court has slotted the third week in February and more than a week in March — interspersed among the court's regular docket — to conduct the hearing.

Milgaard admitted murder: former guard

OTTAWA (CP) — A former prison guard claims David Milgaard privately confessed to the 1969 murder that he has always publicly denied.

Bernhard Dozenko, in a statement filed by the federal Justice Department at the Supreme Court of Canada, says Milgaard admitted he was responsible for the slaying of Saskatchewan nursing aide Gail Miller.

But Milgaard's lawyer, Hersh Wolch, challenged the claim Saturday and predicted Dozenko will be discredited when he appears in court to be questioned about the story.

"There's nothing that can come forward that we fear," Wolch said. He sees "obvious problems of credibility" with the story, suggesting

Dozenko is trying to get even because he was once reprimanded for letting Milgaard escape his custody on a day pass.

The dispute won't be resolved until Dozenko testifies in person, later in the hearings, he says. Milgaard, who has served more than 22 years of a life sentence for the killing, has always publicly maintained his innocence. The Supreme Court begins hearings Tuesday to decide whether the conviction was a miscarriage of justice.

Dozenko served as a living-unit officer, working with inmates at Stony Mountain penitentiary from 1976 to 1982.

In his statement, he recalled that Milgaard was confident his mother, Joyce,

eventually would succeed in a campaign to overturn his conviction.

After winning release, "I'll never have to work again a day in my life," Milgaard allegedly boasted.

Dozenko said he asked Milgaard point-blank whether he was innocent or guilty.

"And without a blink of an eye, he just looked at me and said: 'Yeah, I killed her. I stabbed her'."

Dozenko claims Milgaard made similar admissions on three or four occasions. He also says he entered handwritten notes about the conversations in Milgaard's prison file.

But Wolch said no such comments have been found in the file.

Federal officials sent an RCMP offi-

cer to get a statement from Dozenko after the former guard was quoted in a newly published book, entitled "When Justice Falls," by journalists Carl Karp and Cecil Rosner.

Karp and Rosner describe Dozenko as having a good reputation among fellow workers at Stony Mountain, but also say he left the prison after expecting personal problems.

Dozenko was reprimanded by his superiors after Milgaard slipped away from him during an outing on a day pass and escaped in 1980. He remained at large for several months before being recaptured in Toronto.

Related story

Page C8

C8 Local

Monday, January 20, 1992 Saskatoon, Saskatchewan The StarPhoenix

Milgaard family nervously await Tuesday's hearing

By Vern Greenshields
SP Ottawa Correspondent

OTTAWA — "It's a dream come true," Joyce Milgaard said as she sat in a Winnipeg lawyer's office with her son, David, poring over mounds of documents.

David, out of prison on a temporary pass, and his mother spent the weekend going over court information in preparation for Tuesday, when he gets to tell his story to the Supreme Court of Canada.

David has spent the last 22 years in prison, ever since he was

convicted of murdering Saskatchewan nursing assistant Gail Miller in 1969. He has consistently maintained his innocence, and his mother has been waging a campaign to have him proved innocent and freed.

Tuesday's court appearance by David represents a crucial part of that campaign. Late last year, Justice Minister Kim Campbell asked the Supreme Court to determine if Milgaard's conviction was a miscarriage of justice, and, if so, what remedies are available.

"He's nervous — we all are. No question about that," Joyce said

in an interview. "Don't forget, we went through one session with the court (in 1970, when he was convicted) and that didn't turn out well."

At a moment, she added: "And I think of Steven Truscott. That worries me." Truscott, a

teenager from southern Ontario, had been convicted of a rape and murder of a girl, much like David Milgaard. A similar campaign was waged through the 1960s and the Supreme Court was asked for an opinion of what would have

happened had an appeal of his conviction been held, in the end, the court ruled there was no evidence to suggest a mistrial, and upheld the conviction.

It is the only similar case to Milgaard's that has been handled in such a manner.

Still, Joyce is elated she has made it this far and is putting all her energies into the home stretch — and she won't be the only one in the David Milgaard silently cheering section of the Supreme Court on Tuesday: David's two

assistants are coming down, as are the wives of David Asper and Hersh Wolch, his two Winnipeg lawyers. His father is in the midst of a business reversal and unable to make the trip.

In court Thursday, when Chief Justice Antonio Lamer and his colleagues tried to organize this unique hearing, they depended on call David as the first witness so he could proclaim his innocence.

However, Joyce said her son is feeling better and is up to the trip and the court case.

hearing

Lamer said David's parents from Wolch that he would expect more time to go over the myriad documents with his lawyer. "I've had," Wolch also said, "Milgaard had been suffering from depression and, wanting to help his son, maybe when he was in court, adding that being escorted by guards to Ottawa and being in a holding cell for weeks, might harm his ability to testify."

However, Joyce said her son is feeling better and is up to the trip and the court case.

Saturday
Jan 18 / 1992

'I didn't do it'

Milgaard testifies 22 years later

By Vern Greenshields
SP Ottawa Correspondent

OTTAWA — "I did not kill Gail Miller," were David Milgaard's first words to the Supreme Court of Canada when he appeared Tuesday.

He said later he was sorry he had waited 22 years to say that in court.

In the trial when he was convicted of murdering Miller, a Saskatoon nursing assistant, in 1969, Milgaard followed his lawyer's advice and did not take the stand in his own defence. His lawyer, Cal Tallis, now an appeal court judge, has refused to explain his reasons.

At a special hearing ordered by Justice Minister Kim Campbell, Milgaard told the Supreme Court Tuesday he wanted to testify after the two people who had been in a car with him on the day of the murder — Nichol John and Ron Wilson — implicated him in the case. "I couldn't believe it. They basically were just standing there and lying, (I felt) really frustrated that I couldn't jump up and say I didn't do it," he told his lawyer, Hersh Wolch. "I felt sorry for Nichol but, with Ron, it was just lie after lie after lie."

Still, he said Tallis told him if he testified, he would be offering just one more conflicting story to the jury and it might not be believed. "I had difficulty accepting that," said Milgaard but, with his parents urging him to follow his lawyer's advice, he agreed not to testify. "I wish now I had the opportunity — I'm glad to have the opportunity to tell everybody now," he said.

Milgaard also testified Tuesday that he was devastated when he was found guilty in 1970. He recalled looking back at his father, who had been a foundation of strength in his life.



INSIDE:
Wild sex life A12
"Sorry, no room" ... A12

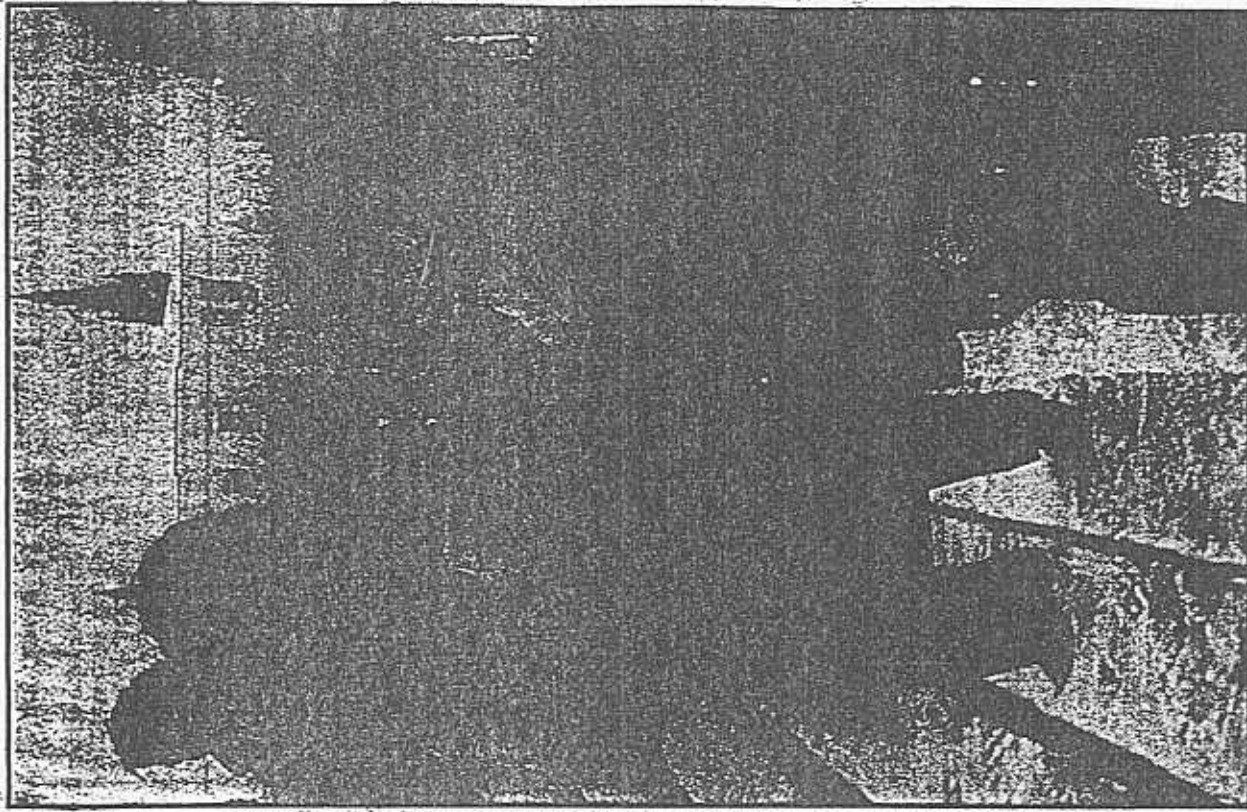
"He looked just totally weak, and that made me feel totally scared."

Milgaard's family sat in the Supreme Court Tuesday as he testified and his mother and sisters wept openly as he recalled hearing the verdict.

It was the official beginning of a life behind bars for Milgaard, although it had physically started when he went to a police station in British Columbia after hearing he was wanted in connection with Miller's murder. He said he surprised the police by showing up.

"Are you David Milgaard?" he recalled them asking. "Don't move — you're under arrest."

"They put me in a cage and I've been in cages ever since — and I shouldn't have been."



David Milgaard (right) arrives at Supreme Court in Ottawa.

Underway January 23/1992

2661/1992
Sunday

Friday, January 24, 1982

C10 Local

Wilson fiasco not end of Milgaard case

Supreme Court may wonder how credible witness was during actual trial in 1970

ANALYSIS
By Dave Yanko
of The StarPhoenix

A man who says he lied to help convict David Milgaard, and admits he lied to the Supreme Court while retracting his damning evidence, may not have harmed Milgaard's case.

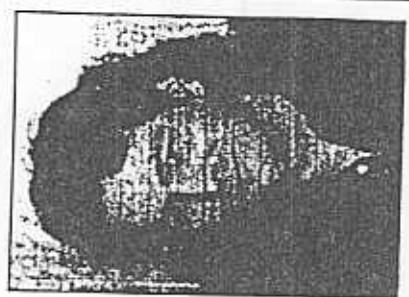
Ron Wilson, who was travelling with Milgaard and Nichol John when Saskatchewan nursing assistant Gail Miller was murdered in 1969, testified at Milgaard's 1970 trial he saw his companion bearing a knife before the murder, and sporting bloodstains on his pants later the same day.

Wilson also testified Milgaard told him he "hit a girl" when Milgaard returned to the snow-stuck car after he and Wilson had left to seek help.

His testimony was damaging in the extreme because he was the only Crown witness to set out details of the 10-minute timeframe during which Milgaard is said to have murdered Miller.

John testified she recalled virtually nothing of the trip. Some months ago, Wilson recanted his testimony in a statement sworn before a private in-

It was Milgaard lawyer Hersh Wolch who pressed the inconsistencies in Wilson's testimony.



Until Thursday, at least, Wilson was expected to be an exonerating influence in the Milgaard case at trial. While he was called to testify by the Supreme Court, he'd be viewed as a witness for the defence in a regular court proceeding.

But it was Milgaard lawyer Hersh Wolch who pressed the inconsistencies in Wilson's Supreme Court testimony. It was Wolch who discredited Wilson while asking him leading questions about leaving the car: "You lied yesterday, you lied this morning, the fact is, it didn't happen."

Wolch later denied to reporters He said rules of court allow cross-examining lawyers to ask leading questions and press harder for answers.

He set out to destroy Wilson's credibility. He said he and his partner David Asper "have no strategy" other than "to go for the truth."

About two weeks ago, federal Justice Department spokesman Bruce MacFarlane said preliminary discussions among all parties involved in the Milgaard hearings indicated some of the lawyers would be seeking cross-examination status for witnesses they would otherwise call themselves.

He said rules of court allow cross-examining lawyers to ask leading questions and press harder for answers.

Key witness at trial recalls little at hearing

By Vern Greenshields
SP Ottawa Correspondent

OTTAWA—Nichol John, who after repeated questioning by police in 1969 said she saw David Milgaard stab a woman, testified Thursday she has flashbacks of a stabbing.

She doesn't recognize the figures in the flashbacks — she's not even sure it is an actual stabbing — but she told the Supreme Court that she often sees the same "picture," usually when she's under stress, and has seen it "for a long, long, long time."

John was in the car with Milgaard and Ron Wilson the day Saskatchewan nursing assistant Gail Miller was murdered, but in 1970, she testified she could not remember seeing the murder, despite her statement to police.

Miller has had problems with her memory, and in preparation for her appearance before the Supreme Court, she was interviewed by hypnotists and psychiatrists in Vancouver, southern Ontario and even Philadelphia to try to revive her memory.

However, from testimony Thursday, there appeared to be little positive result. Under questioning from Mil-

gaard's lawyer, Hersh Wolch, she testified she "might have" agreed with Wilson to corroborate with him on incriminating testimony against Milgaard back in 1970, but said she could not remember.

She testified Thursday she could remember almost nothing of the day of the murder, and agreed to spend the evening going over statements she had given to police in 1969 in preparation for her appearance.

However, she said she still gets flashbacks of being beside a back yard garage and seeing a figure on the ground with another straddling it "going like this," — making stabbing motions.

She does not see a knife and there is no sound. John said she has been contacted many times over the years, mainly by reporters, about the case, but has consistently refused to be interviewed.

During Joyce Milgaard's campaign to get a review of her son's conviction, she contacted John, and thought John had agreed to take a sodium penitentiary test to try to jog her memory. However, she refused on the advice of her lawyer, who said there was no guarantee she would not have mental damage, said John.

Witness cited for contempt

Wilson charged with lying to Supreme Court

By Vern Greenshields
SP Ottawa Correspondent

OTTAWA — The man who might have become the first to take a lie-detector test for the Supreme Court of Canada has become the first person cited for contempt by Canada's highest court — for lying to it.

Ron Wilson, one of the key witnesses in David Milgaard's murder conviction review, testified Wednesday he lied at Milgaard's trial when he implicated him in the murder of Saskatoon nursing assistant Gail Miller in 1969.

On Thursday, he testified that part of his recanting was also made up — prompting Chief Justice Antonio Lamer to cite him for contempt.



Court observers could not recall anyone — much less a witness, a rarity at the Supreme Court — being cited for contempt. The court normally hears appeals of lower court rulings.

In this case, however, the court has been asked by Justice Minister Kim Campbell whether Milgaard's 1970 con-

viction constitutes a miscarriage of justice and if so, what remedies are available.

On Wednesday, Lamer said he might call for a polygraph test of Wilson to see if he was telling the truth back in 1970, or in his recanting of that evidence. The next day, however, Lamer announced he had decided against it.

Wilson testified at the murder trial that he, Milgaard and Nichol John were in a vehicle that got stuck on the west side of Saskatoon in the early hours of Jan. 31, 1969 — the time Miller was brutally raped and murdered.

The car was near the murder scene, and Wilson testified he and Milgaard left the stuck vehicle and went in opposite directions seeking help. It was dur-

ing this time the prosecution said Milgaard committed the crime.

Wilson originally said they were gone for about 15 minutes, but he has since recanted that, saying Milgaard was only gone for about a minute. During Wednesday's testimony, he also said he lied when he saw blood on Milgaard's clothes and that Milgaard said he "hit a girl" when he returned.

However, in dramatic testimony Thursday, Milgaard's lawyer Hersh Wolch suggested Wilson made up the story about the two leaving the car to cover for John's statement to police that she had witnessed the murder. (John claimed she could not recall seeing the murder at the trial.)

Wolch noted that Wilson's original statement to police had not mentioned him leaving the car — and if he were still in the car, he would have seen the murder as well as John.

"So you would have to invent — with a little bit of guidance (from police) — an embellished statement," said Wolch. "The simple truth is, if (leaving the car for help) never happened," the lawyer suggested.

"That's right," Wilson responded. "You lied yesterday, and you lied this morning. The fact is, it never happened," said Wolch.

"I believe you're right," said Wilson. "And all your problems are, when you start telling lies, you get all tangled up," Wolch concluded.

Chief Justice Lamer interrupted to complain about Wolch's method of questioning, but agreed that Wilson "lied through his teeth all along. He lie to me today."

"How do you want us to believe you're telling the truth now?" Lamer asked Wilson.

"Because I am, your honor."

"You lied to us yesterday, you've lied to us in recanting, you've lied in the recant, and it's to a point where Lamer did not finish his sentence, but after a lunch break, cited Wilson for contempt and broke the hearing.

Ex-cop doesn't remember saying Milgaard innocent

Retired Saskatoon detective Eddie Karst doesn't recall saying David Milgaard was likely innocent of the Gail Miller murder six weeks before his 1969 arrest.

"(But) I wouldn't doubt that I would say that, prior to having gained enough evidence," he said in an interview Thursday.

Reports out of Milgaard's Supreme Court hearings indicate Karst made the comments in a previously unreleased police report dated April 18, 1969.

After interviews with one of two Milgaard travelling companions, Karst, then a homicide detective, wrote: "Although there are very many unanswered questions with regard to Mr. Milgaard's activities, if one is to believe the girl Nichol John, and it appears she is very convincing in her story, there is no way in which Milgaard can be connected to this case."

Karst is impressed with what he read about Milgaard's testimony at the Supreme Court, saying he "put up a pretty good defence."

He's not suspicious about Milgaard's assertion the travelling trio were having their car heater repaired the morning Miller was



murdered. It's the first time any court has heard the car heater evidence, which may touch on the critical timeframe of the crime.

"It's possible. I can believe that. I know there's certain things that fasten to my mind."

Karst is "surprised," however, that Milgaard's two travelling mates never mentioned the heater, nor did Shorty Cadrain, a Saskatoon friend who paid for other repairs to the trio's car.

Paul Henderson, a Seattle private detective who gathered new evidence for the Milgaard family, declined comment Thursday on allegations by Saskatchewan's lawyer that he "skillfully" manipulated Milgaard trial witnesses to recant their testimony.

—YANKO

Surprise attack by Milgaard lawyer led to lies: Wilson

By Vern Greenshields
SP Ottawa Correspondent

OTTAWA — A key witness in the David Milgaard review says he gave contradictory evidence to the Supreme Court of Canada because he let his guard down with whom he thought was a friendly lawyer.

Appearing Monday before the Supreme Court to answer charges of being in contempt of it for lying, Ron Wilson said he was taken off-guard by lawyer Hersh Wolch when he suggested Wilson had made up some of his statements in Milgaard's 1970 murder trial in Saskatchewan.

Milgaard was convicted of murdering Saskatchewan nursing assistant Gail Miller.

Wilson said he saw the Supreme Court review of that murder conviction as made up of "lemons" — Saskatchewan Justice lawyers trying to uphold the original conviction and Milgaard's side trying to get him freed.

In 1960 Wilson recanted evidence he gave at the murder trial implicating Milgaard — evidence which had suggested Milgaard had sufficient time to commit the murder when he and Wilson left a stuck car, going in opposite directions to get help.

During the review, Wilson first claimed there was insufficient time, and then later agreed with the suggestion from Wolch that he had made up the entire incident about the car being stuck.

At that point, Chief Justice Antonio Lamer suggested that Wilson had "lied through his teeth" and cited him for contempt.

Wilson's lawyer, Ken Watson, on Monday portrayed his client as a heavy drug user who was, in fact, stoned the day before his testimony at the Milgaard trial. He said Wilson spent the late 1960s and 1970s in a haze of LSD, marijuana and speed. Wilson said a heroin addiction followed, but he turned his life around in 1980.

He revealed to a private investigator in 1990 that he had lied in his incrimination of Milgaard, and talked to Milgaard's other lawyer, David Asper, after his revelation.

He said it was like talking to his own lawyer, and had several emotional discussions with Asper in going over how he had lied about Milgaard.

His recanting of his original story was a key part of the submission to Justice Minister Kim Campbell, who asked the top court to undertake the review.

Wilson said he thought he and Wolch were "on the same side" in the review of Milgaard's conviction.

He agreed with Lamer that during his testimony last month he was agreeing with Wolch when he seemed to want an affirmative response. It was only when he returned to his hotel room that he realized he had agreed to something that was not true.

On Monday, he said the evidence he had given while under questioning by Saskatchewan lawyer Eric Neufeld was true — that the car had become stuck for about 10 minutes — and was the accurate portrayal of events.

The Supreme Court reserved decision on the contempt charge.

Wolch said later Wilson's flip-flopping doesn't hurt his case, because Wilson was the prosecution's chief witness at the original murder trial, and suggested he was even less credible then.

As to the idea that Wilson was just being a team player, Wolch said, "A witness's obligation is to tell the truth. This concept of being a team player under oath is, to my mind, ludicrous."

Wilson ordered to appear for rehearing of evidence

By Vern Greenshields
SP Ottawa Correspondent

OTTAWA — Ron Wilson will be back before the Supreme Court on Feb. 17 for another stab at telling his story at the David Milgaard murder conviction review.

Supreme Court Chief Justice Antonio Lamer told Wilson to appear before the court for a rehearing of his evidence after Wilson tried to explain Monday how he gave contradictory evidence before the court.

Wilson, a key witness at Milgaard's 1970 murder original trial who has since recanted some of his testimony, was charged with contempt over his contradictory statements to the Supreme Court last month.

The court may have reached a decision on Wilson's contempt of court case by Feb. 17, said Lamer, and suggested it was a good time to aim for because that's when Milgaard's review resumes.

The court is to reveal at that time the grounds Milgaard's lawyers must meet to have the court decide whether his conviction in 1970 was a miscarriage of justice. Lawyers associated with the review have so far been operating at a certain disadvantage, because they didn't know what they had to prove or disprove.

Saskatchewan lawyers have suggest-



Miller in Saskatoon in 1969. Lamer at one point had offered to write a letter to the laboratory, which is associated with the British government, to speed the process, but Fainstein said Monday that turned out to be unnecessary.

"I think they're sympathetic to our case," he said, but added it will still be at least a few weeks until the results are known.

Milgaard supporters are hoping the tests will show conclusively the sam-

Three former city police officers to testify

By Vern Greenshields
SP Ottawa Correspondent

OTTAWA — A psychiatrist, three former Saskatoon police officers and four other witnesses will be on deck when the Supreme Court of Canada resumes its review of the David Milgaard murder conviction Feb. 17.

The Supreme Court issued an order this week for their appearance, following agreement among lawyers for Milgaard, the Saskatchewan government and Larry Fisher, a serial rapist who has been fingered by media reports and others as a likely suspect in the murder of Saskatoon nursing assistant Gail Miller in 1969.

Milgaard has been in prison since 1970 after being convicted of that murder, but federal Justice Minister Kim Campbell has asked the court to review the original conviction to see if a miscarriage of justice occurred.

Ron Wilson, a companion of Milgaard on the day the murder occurred, is also to reappear in court Feb. 17. His testimony is to be reheard by the court after he provided conflicting testimony to the court about his original evi-



dence, and earned the distinction of being the first witness to be cited for contempt by the Supreme Court.

Milgaard's other companion on the day of the murder, Nichol John, told the Supreme Court in earlier testimony she can remember almost nothing about the fatal trip from Regina to Saskatoon with Milgaard and Wilson, nor of the events on the day of the murder. After a series of interroga-

tions by the Saskatoon city police months after the murder, she gave a statement saying she saw Milgaard stab a woman, but during his trial, she said she could not recall the incident.

The psychiatrist called to appear when the Supreme Court hearing resumes Feb. 17, Dr. Russell Fleming, is to testify about John's loss of memory.

Former police officers Raymond Mackie, Charles Short and Eddie Karst are also ordered to appear at the resumption of the trial.

Also on the witness list are Craig Melnyk, George Lapchuk, Deborah Hall and Ute Frank, all of whom were at a party in a hotel room with Milgaard days after the murder. Melnyk and Lapchuk have testified that Milgaard reenacted the murder after an item about it appeared on the evening news, pretending to stab his pillow and saying he had killed her. Hall has said she thought he was fooling around.

A recent addition to the Milgaard file at the Supreme Court is a statement from Regina resident Ron Stichel, taken late last year.

In it, he says he knew Milgaard back in 1969 when he was under suspicion for the murder and asked him why he killed her. Stichel said Milgaard replied, "Did she ever scratch my back, which Stichel said he took to be an admission of guilt."

It remains unclear whether Cal Tallis, Milgaard's lawyer at his original trial and now a judge of the Saskatchewan Court of Appeal, will testify at the hearing. In his submission to Campbell for the review, Milgaard had waived his right to testify, but his lawyer, Ron Fahnstain, says in a letter to the Supreme Court that Milgaard's lawyers are now balking at a total waiver on Milgaard.

Tallis could explain why he never called Milgaard to testify on his own behalf. However, federal Justice lawyer Ron Fahnstain says in a letter to the Supreme Court that Milgaard's lawyers are now balking at a total waiver on Milgaard.

Thursday, February 6/1992

New evidence in Milgaard review supports and contradicts his case

By Vern Greenshields
SP Ottawa Correspondent

OTTAWA — Doubt has been cast on some material gathered by Centurion Ministries to support David Milgaard's case.

New evidence was submitted Friday in the Supreme Court's special review of Milgaard's murder conviction.

Milgaard's mother, Joyce, and detective Paul Henderson of Centurion Ministries, the organization that worked on her campaign to free her son, had interviewed a woman they believed had been attacked by serial rapist Larry Fisher. Fisher has been fingered by Centurion and others as a likely suspect in the Miller murder.

"She looked at Larry Fisher's picture and said it could be him, but she especially remembered his hair longer, dirtier and not so clean-cut as in the picture," they reported from their investigation.

However, the victim made a statement to Saskatoon RCMP Sgt. R. A. Pearson last October, which was tabled in the Supreme Court Friday. In it she states of the interview by Joyce Milgaard and Henderson: "I asked Joyce if she had pictures of David. She showed me a picture. I looked at it, turned away and said, 'This is not the person.'"

"Joyce said, 'Yes, this is the man who attacked you,' and said that he was a serial rapist and that he had admitted to attacking other women and killing Gail Miller.

"When I looked at the picture, turned away and said it was not him, Paul Henderson said something like, 'Yes, I think she recognized him.'"

The victim also told Pearson that Joyce Milgaard made excuses to keep her from seeing her son, and did not show her pictures of him, as she had promised.

She added: "The fellow who assaulted me was fine-featured, somewhat like David Milgaard. Also, I heard David Milgaard's voice on the Shirley Show and it had a sound that I relate to the person who assaulted me."

In the volume of new evidence submitted Friday, there were items helpful to Milgaard: Roderick McIvor, a prisoner who says he was sexually assaulted by Fisher, said Fisher threatened him by saying he had killed a woman before "like this," making stabbing motions.

Another prisoner, Brett Morgan, quoted Fisher as saying, "I killed somebody in Saskatoon but I never got any heat, because I

confessed to some other crimes in another city, and it happened at the same time or near the same time as the murder in Saskatoon."

Also entered in evidence was a statement from Jack Hewitt, a corrections officer at Stony Mountain penitentiary where Milgaard is serving his sentence. He said he was told by Ben Dozenko, Milgaard's living-unit officer at the time, that he believed Milgaard was innocent.

Last month, Dozenko claimed Milgaard had confessed to him that he murdered Miller. However, Hewitt said that is the opposite to what Dozenko told him, adding he finds that difficult to believe, since Dozenko would be duty-bound to report any confession.

And a new submission from Dozenko says he wouldn't have told Hewitt that "because of the previous conversations I had with Milgaard, who said he did it."

The Supreme Court resumes its efforts of trying to sort out the case Monday.

Saturday February 15/1992

New evidence surfaces

Forensic analysis blow to Milgaard's case

By Vern Greenshields
SP Ottawa Correspondent

OTTAWA — New evidence, much of it damaging to David Milgaard's special review of his murder conviction, has been filed with the Supreme Court of Canada.

A sexual assault victim whom Milgaard supporters had used to bolster the argument that the murder might have been committed by someone else, has sworn that Milgaard's voice "had a sound that I relate to the person who assaulted me."

And forensic analysis of Milgaard's saliva has neutralized other arguments at his original conviction.

Forensic analysis of Milgaard's saliva



va indicates he secreted blood into his body fluids, contrary to findings during his 1970 trial for the murder of Saskatoon-nursing assistant Gail Miller.

Ron Fainstein, the federal Justice Department counsel in the review, said Friday that Milgaard's lawyers had used the belief that Milgaard did not se-

crete blood groupings in their plea to have the case reviewed — and those arguments are now nullified.

Federal Justice Minister Kim Campbell referred the case to the Supreme Court to advise whether a miscarriage of justice occurred in the conviction of Milgaard, following two applications from his lawyers.

The Supreme Court resumes hearing the Milgaard case on Monday.

Days after Miller's murder in Saskatoon in 1969, police found yellowish lumps in the snow near the murder scene, one of which was identified to contain human semen and that it came from a person with Type A blood.

Most people secrete blood-group antigens into their body fluids, which al-

lowed for this identification, but testing at the time indicated Milgaard was among the 20 per cent of the population who are non-secretors.

His lawyers have argued that should have been enough to eliminate him as suspect, while prosecutors said Milgaard's actual blood could have been secreted during the rape and murder of Miller if he had a genital cut or sore something which was never proved.

However, test results from the RCM Ottawa forensic lab, tabled in evidence Friday from new samples provided by Milgaard for this hearing, show he actually is a secretor of blood grouping into his body fluids.

Other new evidence
Page A2

Art. February 15/1992

ANALYSIS
By Dave Yanko
of The StarPhoenix

On the top of it, it seems silly the Supreme Court is spending so much time on a 1969 motel-room party where David Milgaard is said to have re-enacted Gail Miller's murder.

After all, the five people in the room apparently were on strong drugs at the time, and they're being asked to recall their interpretations of an event that occurred almost 23 years ago.

Two witnesses have told the court they believed Milgaard was confessing, two say they think he was joking, and Milgaard says he doesn't recall the incident.

But whether Milgaard's antics amounted to a confession may not be what the court is seeking here. Perhaps more important to the justices is the fact there are now two Supreme Court witnesses who claim lies were told at Milgaard's trial.

The first is Ron Wilson, who aptly demonstrated witnesses are capable of lying, has said police coerced him into lying at trial. He's expected to make another appearance before the Supreme Court review, to tender his final version of events. Whatever his credibility, he claims he lied at trial.

Now there's "surprise witness" Launa Edwards, who claims her estranged husband, George Lapchuk, told her he lied when he told Milgaard's trial the motel-room

incident was a confession. Edwards says Lapchuk told her he "gave them what they wanted."

Moreover, she says another person heard Lapchuk's admission. But she says she's too frightened to tell the court the name of that other person because she fears repercussions. Lapchuk calls her a liar.

Chief Justice Antonio Lamer's seemingly determined efforts to elicit from Edwards the name of the person she says also heard Lapchuk's admission, demon-

strates the court's interest in the object.

And that suggests the Supreme Court has decided it must weigh the significance of the allegations when it comes around to determining whether Milgaard's continued conviction represents a miscarriage of justice.

In the end, the Supreme Court will have to look at these alleged lies within the context of a theory proffered by Milgaard lawyers Hersh Wolch and David Asper. They argue a Saskatoon police

document, submitted by Saskatchewan Justice, amounts to evidence police worked out a theory on the Miller murder, and then plugged in available witnesses "to connect the dots."

It's a startling theory. And to date, there's been at least as much evidence that suggests Milgaard is the murderer.

But since the purpose of the review is to determine whether Milgaard is wrongly convicted, the justices are obliged to consider the theory and weigh its value.

Should the fr — up theory fail — by itself — the scrutiny of the highest court in the land, Milgaard's conviction is not necessarily confirmed.

Milgaard's lawyers may argue, in the alternative, that Saskatoon police made an honest mistake and got the wrong guy.

In either alternative, they believe their trump card is Larry Fisher, a convicted rapist. Miller's supporters claim could have killed Miller. Fisher has denied the allegations.

Milgaard back at Stony Mountain Pen

WINNIPEG (CP) — David Milgaard returned to Winnipeg on Thursday and was put back behind bars at the Stony Mountain penitentiary, a prison official said.

Milgaard flew to Winnipeg on a charter flight from the Joyceville prison near Kingston, Ont. He was taken to Joyceville after he disappeared from an Ottawa half-way house for about five hours on Monday night.

Irv Hildebrand, Stony Mountain's assistant warden, said Mil-

gaard arrived at the prison, near Winnipeg, at 3 p.m. on Thursday.

"He'd come in just like any other inmate," he said.

The Supreme Court is reviewing Milgaard's conviction for the murder of Gail Miller, a nursing aide who was raped and stabbed to death in Saskatoon in January 1969. He has maintained his innocence for the last 23 years.

His lawyer, David Asper, said Milgaard would likely be admitted to the prison's hospital for a medical assessment.

Corrections officials over-reacted to Milgaard's brief disappearance, Asper said.

"The reaction is a joke. It's just not warranted," he said.

The incident has sent Milgaard — who takes lithium for a condition that often leaves him depressed — into a "major psychological tailspin," Asper said.

"When I saw him at the Ottawa jail (Tuesday) he just didn't understand what was happening. They're treating him like a terror-

Feb 21/92

Conflicting stories told of Milgaard's 'confession'

Feb 21/92

By Bob Cox
OTTAWA (CP) — David Milgaard was probably joking when he stabbed a pillow in a motel room and admitted to murder, says a man whose description of the incident helped convict Milgaard 22 years ago.

Craig Melnyk, under questioning Thursday at the Supreme Court of Canada, acknowledged he didn't immediately report the incident to police when it occurred.

Asked if that was because he thought it was a joke, Melnyk replied: "Probably, yeah."

A five-judge panel of the Supreme Court is reviewing Milgaard's conviction for the murder of Gail Miller, a nursing aide who

Saskatoon in January 1969.

Melnyk, a former motorcycle gang member, was a key witness in the case.

He said he told the truth about the motel-room incident at Milgaard's trial in 1970 — but no one asked him then if Milgaard was joking.

Melnyk's version was the latest in a confused series of stories about what transpired during the motel party in Regina in May 1969, four months after Miller's murder.

George Lapchuk, who also testified at the original trial, told the Supreme Court he thought Milgaard was serious when he made stabbing motions at the pillow and said he had killed the young woman

"it scared the bejesus out of me," said Lapchuk, also a former motorcycle gang member. "I look it very, very seriously."

Lapchuk also denied claims by his former wife, Launa Edwards, who says he later admitted to her on at least three occasions that he lied at Milgaard's trial.

"If perchance I had lied I would not have been stupid enough to

tell anybody," said Lapchuk, whose former wife testified under police protection because she feared for the safety of herself and her son.

The judges now have heard five accounts of the alleged confession in the motel room where Milgaard and other teenagers went to take drugs and have sex.

Two people say he was joking and two say he was serious. Milgaard claims no such incident occurred.

Melnyk and Lapchuk — the only two who testified at Milgaard's trial — both faced criminal charges at the time. Both denied to the Supreme Court that they made a deal for their testimony.

But shortly after he gave evi-

dence against Milgaard, Lapchuk received a suspended sentence for forging cheques, even though he had already served time in jail for similar offences.

Melnyk got six months in jail for armed robbery, which a newspaper described at the time as the lightest sentence ever handed out in Regina for such a crime.

Lapchuk attributed his light sentence to having "a better lawyer than they did a prosecutor."

Melnyk maintained he was innocent of the robbery charge.

Lapchuk, in his testimony Thursday, admitted he was "not a choir boy" but scoffed at his former wife's concern for her safety.

"I haven't seen her in two years and I hope with any luck I won't see her ever again," he said.

He said Edwards was upset over their divorce and was out to "do me dirt" by coming to court and claiming he had lied at Milgaard's trial.

Edwards claimed a third person was present on one occasion when Lapchuk admitted to lying. But she refused to reveal the person's name, despite repeated pleas from Chief Justice Antonio Lamer.

Part of the name was contained in the transcript of an interview, Edwards gave to a private investigator.

Lawyers used a full name in court as they questioned witnesses Thursday. But it was not officially confirmed that the person, who was named the same one Edwards had in mind.



MILGAARD HEARING

Edwards claimed a third person was present on one occasion when Lapchuk admitted to lying. But she refused to reveal the person's name, despite repeated pleas from Chief Justice Antonio Lamer.

Part of the name was contained in the transcript of an interview, Edwards gave to a private investigator.

Lawyers used a full name in court as they questioned witnesses Thursday. But it was not officially confirmed that the person, who was named the same one Edwards had in mind.

Monday, March 12/97

Fisher denies murdering Miller

By Vern Greenshields
SP Ottawa Correspondent

OTTAWA — Serial rapist Larry Fisher admitted to a tortured childhood and a string of brutal rapes Wednesday, but not to killing Gail Miller.

"I most certainly did not" kill the Saskatoon nursing assistant in 1969, he told the Supreme Court, after days of testimony from others suggesting Fisher had made reference to a Saskatoon murder.

It was a day of denials for Fisher, who took the stand to rebut the case that has been built against him by supporters of David Milgaard, the man who has served 22 years of a life sentence after being convicted of murdering Miller. Milgaard has steadfastly proclaimed his innocence and a campaign spearheaded by his mother has culminated in this review.

That campaign has focused largely on recanted testimony of others from his 1970 trial and on suggestions that Fisher, who committed a string of brutal rapes which bore a similarity to the attack on Miller, is the more likely suspect.

Fisher has denied it in the past and denied all suggestions Wednesday from others that he made references to a Saskatoon rape and murder.

However, he did admit to a history of sexual abuse from a female when he was a child, as well as physical abuse — abuse he once confessed to nurses in a hospital but was not believed.

Under questioning by Milgaard lawyer Hersh Wolch about rapes in Saskatoon near the date of the Miller murder, Fisher said his motive in raping the women was not primarily sexual but to seek power and to control.

"I was looking for that power," he told Wolch, and the sex was "to fulfil it all."

He admitted some of his victims were stalked on buses, but said he had no particular reason for when he would strike. Asked about one of the Saskatoon victims, he said: "It was just one of those nights."

He said a pounding would begin in his head and the only way to get relief from it was to exert power over a woman.

Wolch also took Fisher to task on his suggestions he had confessed to several rapes when he was arrested in Winnipeg to "clean his slate." Fisher admitted he gave other excuses for the crimes and only admitted to them after



MILGAARD HEARING

an eight-month period.

He told his own lawyer, Brian Beresh, that when he heard stories linking him to the Miller murder he voluntarily took a lie-detector test, but its results were inconclusive because of his emotional and physical state.

He also said he provided blood, semen and saliva samples when he arrived Sunday in Ottawa. Although DNA testing turned out not to be possible at this time — something that was known by the time Fisher gave his samples — Beresh said the specimens will be kept by RCMP for use if technology advances to the point when such small samples from the Miller murder site can be analysed.

Among Fisher's denials:

- He did not tell a North Battleford woman he raped and whose throat he slit that he had slit another woman's throat before;
- He did not assault a woman the morning of Miller's death, as the woman testified this week;
- He did not tell an inmate he had had sex in a snowbank, or that he had escaped being linked to a more serious crime by admitting to a lesser one at another location, as the inmate testified;
- He did not threaten to "shank" another prisoner and leave him in the snowbank until spring, saying he had done it before, or brag of killing a woman while raping her, as another inmate testified.

Fisher's wife also testified to his reaction when she accused him of killing Miller, saying the color drained from his face and he stopped arguing. Fisher said Wednesday he recalled the accusation, and that he was shocked that his wife would make it. "I couldn't believe it, coming from her," he said.

Fisher also said the publicity of the Milgaard case has "put my life in danger and brought havoc and harassment onto my family," and that since arriving at an Ottawa institution for this review, he had received a death threat.

Fisher's testimony is to conclude today.

Hegged in Milgaard review

Free Press clearly indicates Caldwell wrote to the board on a number of occasions recommending that Milgaard not be released.

Asper also said he found it ridiculous that Williams claimed he needed Caldwell to track down people involved in the original case. Almost every piece of major evidence in Milgaard's application was brought forward through work done by Joyce Milgaard, David's mother, and a Seattle-based private detective.

Among that evidence was testimony from two key Crown witnesses who now claim they were pressured and psychologically manipulated by Saskatoon police in 1969.

Asper said Williams is clearly in a conflict of interest by involving Caldwell in the investigation instead of interviewing him "as a witness" who might have information about Milgaard's claims of innocence.

Asper said Caldwell has exhibited extreme prejudice in relation to the case, going so far as to correspond with the National Parole Board, sending it photographs of the body and recommending that Milgaard never be released.

A National Parole Board

Department is investigating a possible wrongful conviction, Williams said there is no reason to treat Caldwell as a witness and investigate his involvement in the case.

Williams said Caldwell has been ruled out as a witness because in Milgaard's application to the Justice Department, there was no specific allegation of prosecutorial misconduct.

However, Williams agreed he could have found much of the information himself by contacting the Saskatchewan Crown prosecutor's office.

Despite the perception that a conflict might have taken place, Williams said the suggestion is

ridiculous.

"I'm grateful for his assistance," Williams said. "But I will not dignify any comments about conflict of interest by commenting on it further."

Asper said Williams is clearly in a conflict of interest by involving Caldwell in the investigation instead of interviewing him "as a witness" who might have information about Milgaard's claims of innocence.

Asper said Caldwell has exhibited extreme prejudice in relation to the case, going so far as to correspond with the National Parole Board, sending it photographs of the body and recommending that Milgaard never be released.

A National Parole Board

**Commission of Inquiry Into the
Wrongful Conviction of David Milgaard**

Honourable Mr. Justice Edward P. MacCallum, Commissioner

Application for Standing
by
the Saskatoon Police Service

Affidavit of Russell L. Sabo

I, Russell L. Sabo, of Saskatoon, Saskatchewan, make oath and say as follows:

1. I am the Chief of the Saskatoon Police Service, and as such have personal knowledge of the matters and facts herein deposed to, except where stated to be on information and belief, and where so stated, I verily believe the same to be true.
2. I have reviewed the Standing and Funding Guidelines in this matter.
3. I have reviewed the attached Application for Funding by the Saskatoon Police Service, and it bears my signature.
4. That all matters in the said Application stated to be fact, or stated to be on information and belief, I verily believe to be true.

5. That all submissions by or opinions of the Saskatoon Police Service contained in the said Application are my submissions and opinions, which I respectfully make and truly hold.

6. I make this Affidavit in support of the Application by the Saskatoon Police Service for funding of the costs of its legal counsel, Mr. Barry Rossmann, Q.C., in this matter, as set out in the said Application.

Sworn before me at the City of
Saskatoon, in the Province of
Saskatchewan, this 5 day of

MAY 14 2007



A Commissioner for Oaths in and for
the Province of Saskatchewan.

My Commission expires

JULY 31 2006

(or) Being a Solicitor. 2007



Russell L. Sabo

Commission of Inquiry Into the Wrongful Conviction of David Milgaard

Honourable Mr. Justice Edward P. MacCallum, Commissioner

Application for Funding by the Saskatoon Police Service

As Chief of the Saskatoon Police Service, I have read and considered the criteria for funding set out in Part III of the Standing and Funding Guidelines, and hereby make Application pursuant to Part IV for funding on the following grounds:

With respect to Criteria III(1)(a):

This Application is made on the assumption that the Saskatoon Police Service will be granted status to appear in this matter. If status is not granted, this Application should be considered withdrawn.

With respect to Criteria III(1)(b):

The Applicant relies upon the matters set out in its Application for Standing, which is being submitted concurrently with this Application. It is respectfully submitted, as it is in the Application for Standing, that the Saskatoon Police Service is directly and substantially affected by the Inquiry, and accordingly is both a proper and necessary party to this Inquiry.

With respect to Criteria III(1)(c):

The Applicant does not and cannot suggest that it "cannot afford" to appear or to be adequately represented without funding. The fact is that, if status is granted, the Saskatoon Police Service would intend to appear whether or not funding is granted.

The Saskatoon Police Service respectfully submits that the real issue as to funding turns upon a matter of basic fairness. It is significant that neither the Saskatoon Police Service, nor the Saskatoon Board of Police Commissioners, asked for this Inquiry to be established. It was established by the Government of Saskatchewan, without any consultation with the Saskatoon Police Service.

Also significant and telling is that this Inquiry has been created pursuant to *The Public Inquiries Act*, not pursuant to the provisions of Section 88 of *The Police Act, 1990*, which gives jurisdiction to the Minister to call an inquiry into matters relating to a **local police service**.

The Saskatoon Police Service submits that this is the case because despite the fact that the matters subject of this Inquiry occurred in the City of Saskatoon, those matters, and this Inquiry, are of provincial, national and international concern, and the fact that the Saskatoon Police Service is not the only body whose conduct will be examined.

Given the breadth of this Inquiry, the Saskatoon Police Service will be required to dedicate significant resources to fully and properly address the issues raised. This is expected to include staff time to research various issues that will arise, research past policy and practice, research various background facts as may be necessary,

coordinate the Service's undertakings, a member or members to attend the hearings to keep the Chief up to date and to instruct counsel, as well as the costs of counsel. In this respect, the Saskatoon Police Service wishes to emphasize that the Saskatoon Police Service, and accordingly, the citizens of Saskatoon, will be faced not only with the actual expenses of counsel and police officer wages dedicated to this Inquiry, but will also suffer the loss of the use of the services of such persons which would otherwise be dedicated to other areas, such as active policing or other work, while such persons are occupied in this Inquiry.

Thus, it is submitted, that given the breadth and importance of the issues to be examined by this Inquiry, the costs of this Inquiry to the citizens of Saskatoon, as represented by the Saskatoon Police Service, should not be borne by the citizens of Saskatoon alone, but all the citizens of Saskatchewan.

Accordingly, the Saskatoon Police Service would respectfully suggest that each party granted status should be provided funding to cover, or at least subsidize, the costs of obtaining legal counsel, and perhaps expert witnesses, if necessary.

With respect to Criteria III(1)(d):

If funding is granted, the Applicant proposes to apply it to the cost of legal counsel. The Saskatoon Police Service has already requested and been given use of the services of Mr. Barry Rossmann, Q.C. of The City of Saskatoon, City Solicitor's Office. A brief resumé of Mr. Rossmann's qualifications and experience is attached.

The City Solicitor, Ms. Theresa Dust, Q.C., has advised me that the approximate cost of a senior solicitor such as Mr. Rossmann is \$130.00 per hour, which is the amount that the City Solicitor's Office bills to outside clients on the occasions it does work for outside clients, for example, the Saskatoon Airport Authority, and on occasions, the insurers for The City of Saskatoon.

The City Solicitor also advises me that a junior solicitor may be assigned to assist Mr. Rossmann in the preparation and, perhaps, conduct of this matter. The City Solicitor proposes that the Office would charge only for Mr. Rossmann's services, and the Saskatoon Police Service and The City of Saskatoon would absorb the costs of the junior solicitor.

The Saskatoon Police Service proposes that the solicitor(s) from the City Solicitor's Office assigned to this matter would keep track of all time spent preparing for and attending the Commission hearings, and render a detailed account to the Saskatoon Police Service in respect of the same outlining the nature of the work performed, and number of hours spent. The Chief of the Saskatoon Police Service, after approval of the accounts, would then arrange payment of the same through the office of its Director of Finance, Mr. Don Bodnar, telephone number 975-8336.

All of which is respectfully submitted this 5 day of April, 2004.

Saskatoon Police Service



Russell L. Sabo, Chief of Police

Barry Rossmann, Q.C.

- Born and raised at St. Gregor, Saskatchewan. Attended high school at nearby Muenster, Saskatchewan, and first year of Arts and Sciences at St. Peter's College, also at Muenster, Saskatchewan. Thereafter attended the University of Saskatchewan.
- Received Bachelor of Laws degree, with distinction, in 1979.
- Articled with the firm of McKercher, McKercher, Stack, Korchin and Laing, in 1979. Called to the bar in 1980. Remained in private practice with McKercher & Co. until November 1986. Main areas of practice were insurance/civil litigation, and to a lesser extent in criminal litigation and general solicitor's work.
- November 1986 joined the Office of the City Solicitor in Saskatoon, Saskatchewan and currently practice in that office. Main areas of concentration have been in insurance/civil litigation and administrative law, focusing primarily in labour, employment and police law.
- Longtime CBA member, active in many sections over the years.
- Member of the CBA Saskatchewan Branch Legislation and Law Reform Committee since its inception in 1988, and continuing to 2001.
- Chair of CBA Saskatchewan Branch Legislation and Law Reform Committee 1998-2001.
- The CBA nominee on Small Claims Court Revision Committee.
- Served on Executive of Saskatoon Bar Association from 1989 to 1998 including positions of Secretary, Treasurer, Vice President and President (1996-1997).
- Member of the Board of Directors of Regional Employment Development Committee, a nonprofit corporation providing employment training and job finding skills to unemployed persons 1999 - 2003.
- Qualified as mediator in 1997.
- Presenter on construction law, Continuing Legal Education Seminar.
- Presenter at 12th Annual National Mediation Conference.
- Presenter at Canadian Public Relations Saskatchewan Inc. seminar.
- Presenter at CBA Administrative Law Section - CBA National Annual meeting.
- Presenter at Saskatchewan Police College Child Exploitation Seminar.

- Presenter at Bar Course
- Presenter at provincial municipal administrators conferences, as well as at various in-house training seminars for municipal employees and Saskatoon Police Service members.
- Presenter at CBA Section Meetings.
- Author of various CBA Bar Notes articles.
- Member of organizing committee CBA National Annual Meeting, Saskatoon 2001.
- Member of Saskatchewan Police Commission Code of Ethics Committee.
- Elected Treasurer of the CBA Saskatchewan Branch in 1999. Elected Vice President of CBA Saskatchewan Branch in 2000.
- President of CBA Saskatchewan Branch 2001 - 2002.
- Member of CBA National Board of Directors 2001 -2002
- Appointed Queen's Counsel 2001.
- Married to Donna. We have two children, Christine age twelve, and Michael age four.
- Enjoy walking, bicycling, squash, skiing, sailing, music, woodworking.