

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

\*\*\*\*\*

Transcript of Proceedings

and

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

\*\*\*\*\*

On Monday, April 17th, 2006

Volume 132

Inquiry Proceedings



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**Appearances :**

*Mr. Hersh Wolch, Q.C.,*                 **for** Mr. David Milgaard  
*Ms. Joanne McLean,*                 **for** Ms. Joyce Milgaard  
*Ms. Lana Krogan,*                 **for** Government of Saskatchewan  
*Ms. Catherine Knox,*                 **for** Mr. T.D.R. (Bobs) Caldwell  
*Mr. Garrett Wilson, Q.C.,*         **for** Mr. Serge Kujawa  
*Mr. Pat Loran, Esq.,*                 **for** the Saskatoon Police Service  
*Mr. Chris Boychuk, Esq.,*         **for** Mr. Eddie Karst  
*Mr. Bruce Gibson, Esq.,*             **for** the RCMP  
*Mr. David Frayer, Q.C.,*             **for** Minister of Justice  
   (Canada), The Hon. Vic Toews  
*Mr. Donald J. Sorochan, Q.C.,*       **for** Mr. David Asper



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DAVID ALLAN ASPER, REAFFIRMED, CONTINUED

- BY MR. HODSON

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Transcript of Proceedings

(Reconvened at 1:00 p.m.)

COMMISSIONER MacCALLUM: Good afternoon.

ALL COUNSEL: Good afternoon.

MR. HODSON: Good afternoon, Mr.

Commissioner.

I believe the next witness is David Asper, who will be resuming his evidence from February 24th.

DAVID ALLAN ASPER, reaffirmed, continued:

BY MR. HODSON:

Q Good afternoon, Mr. Asper. When we adjourned on February 24th, 2006, we had been making our way through a chronology -- and I'll just call up the document 335465 -- and we had covered the first items. So if we go to the next page, we were in the time frame December 28th, 1988, which was the date of your first application, through until February 28th, which is when you learned of the Larry Fisher information, and I think we were in about October of '89. So just to put people back to where we were when we broke, umm, I will carry on from that point. I will try not to cover areas we have already covered, Mr. Asper, although there may be some overlap in some of the areas.



1                   If we could go to 333322,  
2                   please. And this is a memo of October 23rd, 1989  
3                   from Mr. Williams to his file, and presumably you  
4                   would not have seen this, it relates to a  
5                   discussion between Mr. Williams and Mr. Wolch  
6                   about meeting with Mr. Tallis. And I take it --  
7                   and we did cover this a bit earlier -- about your  
8                   efforts to talk to Mr. Tallis, and I think you  
9                   explained for the Commission what your thinking  
10                  was at the time about when and why you did  
11                  approach Mr. Tallis, but is it fair to say at this  
12                  time, October of 1989, that you or the Milgaard  
13                  group, if I can call it that, did not object to  
14                  Mr. Williams talking to Mr. Tallis?

15           A           Umm, that would be my recollection, is no, we  
16                        would not object.

17           Q           And, in fact, I think you provided a waiver of  
18                        privilege to Mr. Williams to allow that to take  
19                        place?

20           A           That's correct.

21           Q           Did you have any concern that -- and I think the  
22                        evidence reflects, or the record reflects that Mr.  
23                        Williams would have had the first in-depth  
24                        discussion with Mr. Tallis before either you or  
25                        Mr. Wolch did; did you accept that? And, again, I



1 think what the evidence of Mr. Tallis was is that  
2 he was interviewed by Mr. Williams, a lengthy  
3 interview I think in, or an extensive discussion  
4 in March of 1990, and that he may have had a  
5 conversation or two with Mr. Wolch, but very  
6 brief?

7 A I'm inclined to say that this is the kind of thing  
8 we had hoped Mr. Williams would have been doing  
9 from the outset.

10 Q That he would talk in detail to Mr. Tallis?

11 A And to everyone else, yes.

12 Q And did you have any concerns about the fact that  
13 you did not talk to Mr. Tallis first or you didn't  
14 know what he would say to Mr. Williams?

15 A I don't recall, actually. I think if we -- I  
16 assume, if we had some concern, we would have  
17 raised it.

18 Q And I think, and we'll see a bit later when we get  
19 closer to the Supreme Court reference, there's  
20 some memorandums where you learn what Mr. Tallis  
21 has told Mr. Williams about what Mr. Tallis says  
22 David Milgaard told him in 1969, and in some cases  
23 it differed than what, I think, Mr. Milgaard had  
24 told you in the 1986 to 1989 period; do you recall  
25 that, learning of that?



1 A Yes, I -- in the pre-reference period?

2 Q Yes.

3 A Yes, I recall that.

4 Q And, again, just the question goes back at this  
5 point; had you considered or did you have any  
6 concerns with Mr. Wilson -- or Mr. Williams  
7 getting the information from Mr. Tallis about what  
8 David may have told him back in 1969 before you  
9 got that information?

10 A I don't recall. I -- we may have had those  
11 concerns, I -- it seems logical that we should  
12 have, but I don't recall it.

13 Q If we could just -- and we may have touched on  
14 this a bit last day, and I apologize if you've  
15 already covered this, but what was your  
16 understanding -- and, again, let's take the entire  
17 Section 690 process, both applications -- what was  
18 your understanding of the role that Saskatchewan  
19 Justice or the Attorney General of Saskatchewan  
20 would play, if any, in your applications?

21 A Umm, I guess what we, or certainly what I thought,  
22 was that the Department of Justice would acquire,  
23 through the Department of Justice in Saskatchewan,  
24 all of the information regarding the *Milgaard*  
25 case, and that would have been the extent, other





1 than perhaps some questions, that Saskatchewan  
2 Justice would play. My view was, and I think I  
3 stated it publicly, that Saskatchewan Justice, as  
4 was the Saskatoon Police Department, were by  
5 definition in a conflict of interest and the  
6 Federal Department of Justice was the  
7 "independent", quote, unquote, third party,  
8 neutral party that we hoped would be the case. So  
9 the department, the Saskatchewan Department of  
10 Justice, would gather and pass along the  
11 information.

12 Q And so, apart from providing information to  
13 Federal Justice, did you anticipate or understand  
14 that they would play any other role in the  
15 decision-making process, or any role in that  
16 decision-making process?

17 A No. No.

18 Q And do you recall whether you would have had any  
19 direct or significant contact with the Attorney  
20 General prior to the November 1991 order to send  
21 the matter to the Supreme Court, prior to that  
22 time do you recall if there would have been any  
23 significant contact between you and Mr. Wolch or  
24 anybody on behalf of the Milgaards, with Justice?

25 A Other than, I believe, the preservation and



1 release of exhibits, umm, and, umm, there may have  
2 been one other small procedural matter, but  
3 nothing substantive, no.

4 Q Yeah. And I think, again at the time of the  
5 Supreme Court reference, the Attorney General for  
6 Saskatchewan became a party; correct?

7 A Right.

8 Q And I think their position to the Court was to --  
9 and maybe 'uphold' is the wrong word -- but to  
10 defend the conviction; is that a -- is that your  
11 understanding of the role they were playing?

12 A Umm, I wasn't very -- I wasn't altogether clear on  
13 the role that Saskatchewan Justice was going to  
14 play, and I'm not sure that -- and my recollection  
15 may fail here -- I'm not sure that the Supreme  
16 Court expected the type of adversarial proceeding  
17 that it got.

18 Q So, at the Supreme Court, is it your evidence that  
19 the Attorney General for Saskatchewan, you viewed  
20 them as an adversary of David Milgaard's interest;  
21 is that a fair characterization?

22 A Yes.

23 Q And so then just again prior --

24 A Although, on a relative scale, I'm not sure they  
25 were the biggest adversary.



1 Q And who would the biggest adversary have been?

2 A Umm, I think the Federal Department of Justice  
3 showed its colours, often, more than the  
4 Saskatchewan Department of Justice did.

5 Q As an adversary of David Milgaard's interests?

6 A Yes.

7 Q And I'll get you to expand on that when we get  
8 into the reference. So, again, just back to  
9 pre-reference. Based upon my review of at least  
10 the documents we have there does not appear to be  
11 -- and I stand to be corrected -- but I could not  
12 find anything in the form of direct -- a request  
13 by David Milgaard or by your office on his behalf  
14 to the Attorney General for Saskatchewan to look  
15 into this matter, inquire into the matter, give us  
16 a remedy, things of that nature; is that fair?

17 A That's fair.

18 Q November 6th, 1989 is when Eugene Williams  
19 interviewed Deborah Hall, and we touched on some  
20 of this when we went through your -- when you took  
21 her statement in 1986, and I think the evidence  
22 that we heard from Deborah Hall was that -- and  
23 this came out of her examination with Mr.  
24 Williams, but as well her evidence before the  
25 Commission -- that she had not reviewed the entire



1 trial transcript of Melnyk and Lapchuk when she  
2 gave the affidavit and that in her interview with  
3 Eugene Williams in November of 1989 there were  
4 additional words that she attributed to David  
5 Milgaard that she had not mentioned in her  
6 affidavit. And do you recall us covering that  
7 back when you testified in February, and what was  
8 in her affidavit, I think she said David said,  
9 "oh, yeah, sure" or, "oh, yeah, right"; when she  
10 was examined by Mr. Williams she had, I think,  
11 much stronger language attributed to Mr. Milgaard;  
12 do you recall that?

13 A Yes.

14 Q Now do you remember if you -- I think the record  
15 reflects that after Deborah Hall was questioned by  
16 Mr. Williams, that you may have had contact with  
17 her, do you remember that; did she call you after  
18 the interview?

19 A I -- I can't be certain, but I believe so, yes.

20 Q And --

21 A I either called her or she called me, there was  
22 contact.

23 Q And would it be within days, weeks, months of the  
24 examination?

25 A Yes.



1 Q And what do you recall of that discussion?

2 A She was angry.

3 Q And what was she angry about?

4 A She felt that Mr. Williams had been, umm,  
5 aggressive and, umm, cynical with her, and had  
6 made her feel, I think she described it as  
7 belittling her.

8 Q And did she discuss with you any of the details of  
9 what -- what she said at her examination?

10 A I don't recall that, no.

11 Q And did she tell you that, in the questions by Mr.  
12 Williams, that she gave a different or a broader,  
13 different or broader -- and maybe 'broader' is not  
14 -- a different answer to him about what was  
15 attributed to Mr. Milgaard in the motel room than  
16 what she had told you she got the affidavit and  
17 signed it?

18 A I don't believe she did that. I have to believe  
19 that, if she had done that, there would have been  
20 some record of me having told somebody about it.

21 Q And so the words, and I can't recall them  
22 verbatim, but I think it was that, "yeah, I think  
23 I stabbed her in a snowbank" or "fucked her in a  
24 snowbank", or words to that effect, that's what  
25 she said to Williams that was not in the



1 affidavit; is that right?

2 A Right.

3 Q And would it be fair to say that those words, if  
4 she would have told you that, that that would have  
5 been something that you would have recalled --

6 A I --

7 Q -- at the time?

8 A I'm not -- I probably would have made note of it  
9 and asked somebody about it.

10 Q And I think you told us when you testified  
11 previously that those words would have changed, if  
12 she would have told you that in 1986 what she had  
13 told Mr. Williams in 1990, that that might have  
14 changed the way you used that evidence; is that  
15 fair?

16 A I think that's fair, yes.

17 Q And actually, just for the record Mr.  
18 Commissioner, it's -- the Deborah Hall transcript  
19 is 001285, it's at page 001320, and what she says  
20 in answer -- if you go to page 001320, and I think  
21 this is where she first brings it up with Mr.  
22 Williams because he said something about:

23 "... - excuse my language but I remember  
24 it as such - 'fucking her brains, oh  
25 yeah, right. I stabbed her I don't know



1                   how many times and then I fucked her  
2                   brains out. Right.'"

3                   End of quote. And again, if that information had  
4                   been provided to you by Deborah Hall and -- when  
5                   she spoke to you after her interview with Eugene  
6                   Williams, is that something you think you would  
7                   have either made a note of or record of or done  
8                   something with?

9           A           I'm going to ask you a question.

10          Q           Yes.

11          A           May I see the -- what -- the words that follow  
12                   this?

13          Q           Yes, sure.

14          A           Because in looking at -- let me see the words.

15          Q           Sure. And she did go on to say, if you scroll  
16                   down, she did say she took it as a joke.

17          A           Well, okay, I -- what I, if she had said this to  
18                   me in the first instance I think I probably would  
19                   have pursued the words at line 236, roughly 'You  
20                   know, something like that -- like in that  
21                   respect.'

22                                "You know, something like in that  
23                                respect."

24                   is what she said. Umm, I, you know, I don't want  
25                   to sort of get into the debate here, but I would



1 read this as though Mr. Williams got what he  
2 needed as opposed to pursuing the qualifying  
3 language that followed. Having said that, if she  
4 had said this to me in 1988 or '86, I would  
5 probably have used it differently.

6 Q It was, it was suggested to Ms. Hall when she  
7 testified before the Commission that -- to the  
8 effect that one of the reasons she may have been  
9 upset with Mr. Williams is that she gave  
10 information to him that was possibly harmful to  
11 Mr. Milgaard's position that she had not  
12 previously disclosed to you, and that that might  
13 have been one of the reasons she was upset at Mr.  
14 Williams. Did you ever inquire with her about  
15 that?

16 A No, I -- I had very limited contact with Debbie  
17 Hall. I had advised her to tell the truth, umm,  
18 there was this contact following her interview,  
19 and then the next time I think I had any contact  
20 with her was at the Supreme Court.

21 Q And then I think you, as far as when you found out  
22 about what she said to Mr. Williams, the part that  
23 I just read to you, I think you said in February  
24 you couldn't recall, but certainly before the  
25 Supreme Court reference; is that correct?





1 A Right.

2 Q Now we will be getting to a meeting with Federal  
3 Justice officials in October of 1990. I  
4 understand that there was a meeting where you and  
5 Mr. Wolch met with Mr. Corbett, Mr. Williams and  
6 Mr. Rutherford, I believe, is that right, in  
7 Ottawa?

8 A Yes.

9 Q Before, I think about the time that their report  
10 went up to the Minister?

11 A Yes.

12 Q Is it possible that, at that meeting, you would  
13 have been informed of what Deborah Hall had to  
14 say?

15 A May have. No -- I don't think in detail, though.

16 Q Okay. If we can then go November 7th, 1989, the  
17 next day, Eugene Williams interviewed Nichol John.  
18 And I think earlier in your evidence you said you  
19 took no issue with him doing so, in fact you  
20 expected him --

21 A Right.

22 Q -- to interview Nichol John, is that right?

23 A Yes.

24 Q And why was that?

25 A Why did I expect him to?



1 Q Yes?

2 A We had -- we had applied to the Department of  
3 Justice to look into the case and one -- I -- it  
4 would be pretty difficult to look into the case  
5 without talking to and evaluating the original  
6 witnesses.

7 Q And I think we saw, in the original application  
8 that was filed, reference to -- I think there was  
9 a comment about demonstrating that Nichol John's  
10 statement could, factually couldn't happen, and I  
11 think some follow-up information. So I think it's  
12 fair to say that your application to the Minister  
13 was at least in part saying "Nichol John's  
14 evidence and/or statement are not reliable"; is  
15 that fair?

16 A Yes. And as I've said before, my view was that  
17 irrespective of the evidentiary value of her  
18 statement, there was a significant piece of  
19 information in the form of her May 24th  
20 inculpatory statement that had to be addressed.

21 Q Now, we've heard evidence that on May 9th, 1981  
22 Nichol John was interviewed or questioned by both  
23 Tony Merchant and Joyce Milgaard. The doc ID for  
24 that, you don't need to bring it up, is 048643,  
25 and I think you told us last time you testified



1           that you were aware that Nichol John had been  
2           interviewed and that there was a tape and  
3           transcript of that; is that correct?

4           A           I believe so, yes.

5           Q           And you talked generally about what was sent to  
6           the minister and what was not sent to the minister  
7           and I think the record shows that that tape  
8           recording of the 1981 interview was not sent to  
9           the Federal Justice Minister; is that correct?

10          A           Yes.

11          Q           And was that a deliberate decision not to send it  
12          or can you shed some light as to why that would  
13          not have been sent to the Federal Justice  
14          Department?

15          A           Again, I don't have an answer other than in a  
16          general sense the feeling was for the first, in  
17          the first instance to be as lean as possible.

18          Q           And when you say first instance, that's the first  
19          application?

20          A           Yes.

21          Q           And then what about, I think the record shows that  
22          you supplemented the application with information  
23          from time to time; is that correct, in both  
24          applications?

25          A           Right.



1 Q And again was there any, I'm trying to find out,  
2 was there a decision, we have this Nichol John  
3 interview, let's not give it to them for this  
4 reason, or was it a case that it just wasn't done?  
5 I'm trying to get behind what --

6 A I'm partly, and, you know, I have to be careful  
7 here, I do recall, we expected that if the  
8 Department of Justice was going to be interested  
9 in our case, that there would be some sort of, and  
10 I said this in my earlier evidence, this idea of a  
11 case conference where sort of everything that  
12 everybody had would get shared and as far as I'm,  
13 my recollection goes, I think we would have been  
14 prepared to give everything over. We found  
15 ourselves in a very different game.

16 Q And would the taped interview of Nichol John by  
17 Mrs. Milgaard's and David's former counsel, Mr.  
18 Merchant, again, would you view that as being  
19 information relevant to assessing your evidence or  
20 relevant to the issue of re-opening the  
21 investigation?

22 A Well, there you've got an interesting problem  
23 because this case was such a pack of lies upon  
24 lies upon lies that it was very difficult to know  
25 what information would be relevant to anything.



1 Q Let me phrase it a bit differently. Did you  
2 consider whether that taped interview might be of  
3 assistance to Federal Justice when they went to  
4 interview Nichol John to know what she had said  
5 nine years earlier?

6 A I don't know that we knew, I'm not sure that we  
7 knew in advance, or certainly not long in advance.

8 Q Of what, I'm sorry?

9 A Of the interview with Nichol.

10 Q Okay. But again I think you said, and correct me  
11 if I'm wrong, when you filed the application you  
12 expected that Mr. Williams or somebody would go  
13 out and interview her?

14 A Right, right.

15 Q And again, did you consider the 1981 interview of  
16 Nichol John, that that might be of some  
17 assistance, good or bad, to whoever went out and  
18 interviewed Nichol John?

19 A Oh, absolutely, but we would have considered it of  
20 some importance in the context of what we thought  
21 would be a collaborative effort to prepare the  
22 Department of Justice for its interview.

23 Q And so again at some point then was there a  
24 decision not to give it or did it -- I'm trying to  
25 understand, was it not given because there was



1 never a case conference or at what point --

2 A I don't recall, I don't recall specifically --

3 Q Okay.

4 A -- why it was ever given.

5 COMMISSIONER MacCALLUM: Why it was not  
6 given?

7 A Right. As I say, I mean, I will say, and you have  
8 to appreciate the context, within the advocacy  
9 process in the absence of sitting with someone who  
10 we thought would be a collaborator, as I say, we  
11 were very concerned from an advocate's perspective  
12 about the big, huge pile of lies that had been  
13 built over the years and lies upon lies don't  
14 necessarily help you.

15 COMMISSIONER MacCALLUM: It doesn't help me  
16 very much either, sir, to hear this, you saying a  
17 big, huge pack of lies upon lies unless you tell  
18 me what the lies are. I just want to warn you  
19 that this is the sort of thing that gets reported  
20 for what it's worth without any factual  
21 background for it and this is a public inquiry  
22 and if there were lies, I want to know what they  
23 were.

24 A I'm referring to the interviews that Joyce had and  
25 others had conducted after David's conviction.



1 She had gone to Ron Wilson. We were of the view  
2 that Wilson's evidence at the trial was lies, we  
3 were of the view that Nichol John's evidence at  
4 the trial was lies, we were of the view that most  
5 of what was said subsequent to the trial in the  
6 investigation that was conducted was either  
7 perpetuation or embellishment or deviation from  
8 those lies with other lies and the reason -- and I  
9 understand your concerns, sir, I understand that  
10 people are accused of lying here. I don't think  
11 there's any question in the case of Wilson, in  
12 fact, the Supreme Court found that he was lying,  
13 it was very difficult from an advocacy perspective  
14 to try to have the case re-opened where we were  
15 looking for recantations, for example, from people  
16 who are just chronic liars and in the case of  
17 Wilson that was painfully evident at the Supreme  
18 Court.

19 BY MR. HODSON:

20 Q And so just again onto the interview, the 1981  
21 interview of Nichol John, did you view that as  
22 being unfavourable then to your position, was that  
23 a reason that it was not provided to Mr. Williams?

24 A Which interview?

25 Q The 1981 interview by Mr. Merchant of Nichol John?



1 A I don't recall why that wasn't used.

2 Q Okay.

3 A I do not have a specific recollection of why that  
4 wasn't used.

5 Q Now, do you recall when and how you became aware  
6 that Mr. Williams had interviewed Nichol John?

7 A I think it might have been at one of the meetings  
8 in Ottawa.

9 Q Or would it perhaps have been in a phone call with  
10 him? Do you remember hearing that he had talked  
11 to Nichol John at some point?

12 A At some point, yes.

13 Q And again, did you -- just for the record, we'll  
14 call up the first page, I don't propose to go  
15 through it, 125206, and this shows, if we can  
16 maybe just call out the top part, just shows the  
17 date, November 7, '89, Mr. Williams and Sergeant  
18 Tidsbury interviewed her. Did you get a copy of  
19 this transcript at some point, and in particular  
20 let's look at the October 1, 1990 meeting with  
21 Federal Justice, do you remember getting it at  
22 that meeting?

23 A I don't recall.

24 Q Or at least becoming aware of its contents?

25 A I don't recall specifically.





1 Q Go to 153494 and this is a December 6, 1989 letter  
2 from Mr. Tallis to you. I think the October 18th,  
3 1989 letter we looked at previously was just a  
4 letter looking for files, so at this point I think  
5 the record shows that you were communicating with  
6 Mr. Tallis to have him check for his files; is  
7 that correct, but nothing further at this time?

8 A Right.

9 Q It wasn't until later that you interviewed him; is  
10 that fair?

11 A Yes.

12 Q Then go to 004819 and this is an article December  
13 8th, 1989 and there's a quote here, just at the  
14 bottom, attributed to you, it says:

15 "There were officers at the time who  
16 felt they had the right guy. They  
17 don't, but they think they did."

18 And then:

19 "Saskatoon's police department was split  
20 at the time, according to Asper. Some  
21 were convinced of Milgaard's guilt,  
22 others thought he was innocent."

23 And then it goes on to talk about information  
24 about Jack Wood. Do you remember what  
25 information you had in that regard at that time?



1 A Not specifically.

2 Q We have heard evidence, I think Mr. Carlyle-Gordge  
3 had interviewed Mr. Caldwell in 1983 and there's  
4 some reference in that interview about, similar to  
5 what's phrased here. Is it possible that your  
6 information on the subject came from Mr.  
7 Carlyle-Gordge or at least from his notes?

8 A It's possible. I think by this time a lot of  
9 information started coming our way, so I can't be  
10 sure.

11 Q Are you able to tell us whether that was any  
12 individual police officer at this time that would  
13 have told you that there was a split in the  
14 department?

15 A I can't recall.

16 Q If we can go to 333331, please, and go to the next  
17 page. This is a letter December 22, 1989 from  
18 David Milgaard to the Justice Minister and just  
19 talking about again this family presentation, it  
20 talks about:

21 "The video segment of it is yet to be  
22 completed. It will be in two parts.  
23 Part one is a reenactment according to  
24 the evidence in the case and part two is  
25 my family and myself talking to you."



1           And I think we touched on this in your previous  
2           testimony about the fact that in addition to what  
3           you and Mr. Wolch had put forward, the Milgaard  
4           family was also, had communicated to the minister  
5           that they were going to put their own  
6           presentation; is that correct?

7           A           Yes.

8           Q           And at this stage it looks like a video  
9           reenactment is part of that?

10          A           It looks like it, yes.

11          Q           And then we're going to touch on this a bit later  
12          today about the Markesteyn report and here there's  
13          a question about:

14                    "Have you enpaneled any forensic experts  
15                    to qualify James Ferris report? If you  
16                    do not plan to do so, we will do so  
17                    immediately."

18          And I think we'll see in June of 1990 that you in  
19          fact did go to Dr. Markesteyn, is that right, to  
20          get an opinion?

21          A           Yes.

22          Q           And at this time, I appreciate I'm asking you to  
23          go back 15 years and try and put in some order  
24          what your knowledge was, but are you able to tell  
25          us at this time, December, 1989, you would have



1           been a year in with your application, had you  
2           heard anything from the Department of Justice  
3           about any concerns they would have had with Dr.  
4           Ferris' report?

5           A           I don't believe so, no.

6           Q           And then 164584 -- at some point did you hear from  
7           them, and either at the October 1, 1990 meeting or  
8           at some other time before the Justice Minister  
9           dismissed the application on February 27, 1991, do  
10          you recall whether you heard anything from them  
11          that cast doubt on Dr. Ferris' opinion or the  
12          value of it from their perspective?

13          A           I don't recall the timing. I know -- there was a  
14          report that they had commissioned, that the  
15          Justice Department had commissioned. I don't  
16          recall when I saw it though.

17          Q           At some point, though, before Kim Campbell's  
18          letter of February 27th, 1991, did someone from  
19          Federal Justice tell you or perhaps Mr. Wolch that  
20          lookit, we have concerns with Dr. Ferris' report  
21          and here's what they are?

22          A           I believe so, but I'm a little fuzzy on that.

23          Q           Okay. And here, this letter, and it's a letter  
24          seeking Legal Aid again, I don't propose to go  
25          through it for that purpose, there are a number of



1 letters that we have seen on the record that I  
2 think show from time to time you would be applying  
3 for Legal Aid in Saskatchewan and Manitoba and I  
4 think you told us that every time you applied  
5 either it was dismissed or it was sent to the  
6 other provinces and ultimately there was no Legal  
7 Aid funding other than maybe a small disbursement;  
8 is that correct?

9 A Yes.

10 Q And here, this is again January 4, 1990, I think  
11 in your letter to Mr. Fineblit you talk about the  
12 Ferris evidence and so that would have been your  
13 view at the time, his report indicated that the  
14 evidence tendered at trial not only failed to link  
15 Milgaard with the scene of the crime, but also  
16 tended to exclude him as the perpetrator?

17 A Yes.

18 Q 001140, and this is a letter January 10, 1990 from  
19 Mr. Wolch to Eugene Williams, and I'll just go  
20 through parts of it, and I think it's expressing  
21 some concern about the proceedings and the  
22 expenses incurred and then if we can just scroll  
23 down to the next paragraph, it says:

24 "It has always been our wish to provide  
25 your Department with as full and



1 complete information and evidence as  
2 possible under the circumstances.  
3 However, it may well be the case that  
4 our application should be augmented by  
5 other materials such as the reports of  
6 other experts and a videotape  
7 re-enactment of the Crown's theory to  
8 demonstrate the implausibility of the  
9 Crown's case. Unfortunately, we simply  
10 cannot afford to embark on these  
11 potentially expensive matters."

12 And then scroll down:

13 "If you are contemplating re-opening the  
14 case, then we might be able to apply for  
15 legal aid pursuant to Section 684 of The  
16 Criminal Code."

17 And then I think if you go on here:

18 "If, however, there is still some doubt  
19 as to whether your Department will take  
20 action on this matter, we would  
21 appreciate your giving consideration to  
22 providing Mr. Milgaard with some  
23 financial support so that he can provide  
24 you with further information that could  
25 be critical to your decision."



1           And from the correspondence, this correspondence  
2           and -- actually, let me just go to the next page  
3           before I ask you the question because there's a  
4           point here, it says:

5                        "We too are increasingly concerned that  
6                        there might be more that we can do to  
7                        more forcefully present Mr. Milgaard's  
8                        position in this matter. If there is  
9                        any assistance that your office can  
10                      offer, we would be most anxious to hear  
11                      from you."

12           And just from the documents, Mr. Asper, it looks  
13           as though at this time you are saying to Justice  
14           we firmly believe in his innocence, we've given  
15           you a number of pieces of information to date,  
16           but if that's not enough, for whatever reason,  
17           there's more we can get, that we simply need some  
18           help, some money to go out and get it. Is that a  
19           fair, rough characterization of the position you  
20           are taking?

21           A           Yes.

22           Q           And Justice seems to be saying in response, tell  
23           us what you have and we'll look at it and tell us  
24           when you are done giving your information so that  
25           we have a final point so that we can make a



1 decision?

2 A Yes.

3 Q And it seems, and we'll see this in some other  
4 correspondence, that this continues to come up,  
5 where Justice, Federal Justice says have you given  
6 us everything you have so that we can consider  
7 your application, and your response is we think  
8 so, but if we haven't satisfied you yet, we can  
9 get more, but we need some help?

10 A Yes, and by this time, certainly by this time I  
11 would say much, I would probably say six months  
12 before this correspondence, perhaps even more, it  
13 became pretty clear to us what the nature of the  
14 relationship is going to be.

15 Q And we touched on this previously, but I think,  
16 correct me if I'm wrong, I think you testified  
17 that before the Larry Fisher information came out,  
18 which was February 26, 28 of 1990, that you either  
19 believed or speculated that your application was  
20 going to be dismissed, did I -- is that correct?

21 A Yes.

22 Q Was that based on discussions you had with Justice  
23 officials or just a sense of what was happening?

24 A I would say that yes, yes.

25 Q Which one?





1           A           It was -- I would say that the perception that we  
2                       were getting from Justice made it obvious we  
3                       weren't getting anywhere.

4           Q           I anticipate that we will hear some evidence that  
5                       suggests towards the end of 1989, perhaps early  
6                       1990, that Federal Justice was, had completed the  
7                       investigation stage, if I can call it that, it was  
8                       in the process of sending a report up to the  
9                       minister for a decision and that the new  
10                      information from Larry Fisher caused that to sort  
11                      of go back to the starting point, if I could call  
12                      it that. Were you aware of that at the time or is  
13                      that consistent with your recollection of events?

14          A           I can't say that we were aware of any specific  
15                      time frame. I do -- I can say, though, that we  
16                      were pretty, judging on the interaction with Mr.  
17                      Williams in particular, we did not have, we were  
18                      not very optimistic.

19          Q           And again, I apologize if we covered this before,  
20                      but what was your understanding of the mechanics  
21                      of how Federal Justice, how the Justice Minister,  
22                      how it would get from Eugene Williams dealing with  
23                      your application and his interaction with you, Mr.  
24                      Wolch, and some of the witnesses up until the  
25                      minister rendering a decision, what was your



1 understanding of what happened or what the process  
2 was? Not specifically, but what was the process?

3 A From application forward?

4 Q Yes.

5 A My understanding was that in discharging the  
6 duties under Section 690 as it then was in order  
7 to determine whether an extraordinary remedy was  
8 warranted, the Minister of Justice, through his or  
9 her agents, would respond to an application and  
10 upon achieving some undefined threshold of  
11 credibility of an application would conduct a  
12 thorough investigation into the merits of whether  
13 the application was true. If it -- and in that  
14 process it would utilize the resources of the  
15 state in a neutral, on a neutral basis not taking  
16 the side of the applicant nor the original  
17 prosecuting agency, but taking the position of the  
18 Minister of Justice, that that reasonably would  
19 include the applicant, the representatives of the  
20 applicant, the original prosecuting authority, the  
21 original police investigative authority and that  
22 upon reviewing all of the information that each of  
23 those parties could provide, including any new  
24 information that might be developed or offered by  
25 the applicant, the agents of the Minister of



1 Justice would provide an analysis, a review,  
2 would, we hoped, involve the applicant certainly  
3 in the process and provide a recommendation to the  
4 Minister of Justice for action or no action.

5 Q And so again at the, and let's assume it's Mr.  
6 Williams at this stage, the Federal Justice lawyer  
7 who is leading up that investigation, that your  
8 understanding was that ultimately he would do  
9 whatever work was appropriate or what he felt was  
10 necessary and then he would prepare a report up  
11 the line, if I can call it that, that would then  
12 get to the Federal Minister and he or she would  
13 then make their decision; is that correct?

14 A Yes.

15 Q And did you have any understanding, again 1988 to  
16 1991, at that time, about what happened within the  
17 Department of Justice between Eugene Williams and  
18 the minister, whether there was a process that it  
19 had to go through?

20 A I was aware that there were a senior assistant  
21 deputy minister level, I'm not sure what all the  
22 titles were, but senior people who were  
23 communicating certainly with Mr. Wolch and were  
24 involved to some extent or aware, I'm not sure --  
25 there seemed to be some higher level committee



1 that was between Mr. Williams and the minister.

2 Q And what was your understanding then of what that  
3 committee did or who it was or how it dealt with  
4 the application, if you know at all?

5 A I don't. I don't know.

6 Q Would it be fair to say that at least from your  
7 understanding, that between Mr. Williams and the  
8 minister, that the report would either have to  
9 pass through or be dealt with by some other senior  
10 justice officials before it got to the minister,  
11 were you aware of that?

12 A I'm not sure I was aware that it would pass  
13 through. There would certainly be shape and  
14 influence by the senior people, but I wasn't aware  
15 of whether it would actually go through and be  
16 vetted and a secondary recommendation be provided  
17 to the minister or whether Mr. Williams'  
18 recommendation would be the one.

19 Q And again, just generally, would you have been  
20 aware then that some of the names we've heard like  
21 Mr. MacFarlane, Mr. Corbett and Mr. Rutherford,  
22 the Justice officials more senior to Mr. Williams  
23 at the time, did you have an understanding that  
24 they would have some involvement or some dealings  
25 with the file?



1 A Oh, yes, they clearly had involvement. I just  
2 wasn't sure what the process or structure was.

3 Q And was that something that Mr. Wolch dealt with  
4 then more than you did?

5 A I would say so, yes.

6 Q Go to 157037, and I had showed you the January  
7 10th, 1990 letter where I had gone through your, I  
8 think it was Mr. Wolch's letter about doing some  
9 more work, and here's Mr. Williams' response and  
10 says:

11 "The fact gathering aspects of Mr.  
12 Milgaard's Section 690 application to  
13 the Minister of Justice has been  
14 completed. However, if there are  
15 additional relevant facts that you wish  
16 to bring to the Department's attention,  
17 kindly do so within the next 2 weeks.  
18 You may wish to identify to us specific  
19 sources of information you believe are  
20 relevant to the application. If  
21 necessary, the appropriate action can be  
22 undertaken."

23 And so it appears at this time you would have  
24 been informed by Mr. Williams that the fact  
25 gathering aspect was done and that the process to



1 send the report up to the minister was being  
2 undertaken and that you were given two weeks to  
3 provide further information?

4 A Yes.

5 Q And again was there anything with this type of  
6 response that caused you concern?

7 A Yes.

8 Q And what was that?

9 A We were excluded.

10 Q And could you elaborate on that?

11 A Well, as I say, we had hoped that prior -- the  
12 stakes are so high, I'm not saying that we had  
13 these hopes on some Pollyannaish basis, we had  
14 clearly achieved this, a threshold that had  
15 resulted in an investigation occurring and where a  
16 person's liberty is at stake we had hoped that at  
17 a critical stage in the process we would be  
18 involved in a human, personal way and this sort of  
19 letter epitomized the relationship which was  
20 anything else, you know, give it to us in a couple  
21 of weeks and we're just going to carry on at our  
22 office. We wanted the opportunity, and it came in  
23 due course, to listen to how the information was  
24 being interpreted to see all the information that  
25 the Department of Justice may have gathered that



1 we weren't aware of that may need addressing and  
2 to provide an interpretation in a light favourable  
3 to our client.

4 Q And when was that, was that the October 1, 1990  
5 meeting?

6 A We wanted -- we were looking for that from the  
7 outset and got a chance in October of 1990.

8 Q I'm sorry, you said that you ultimately got it?

9 A Right.

10 Q And was it the October 1, 1990 meeting?

11 A Yes, that was the first part, but it was a  
12 recurring theme in all the correspondence --  
13 sorry, in all the communication, and certainly  
14 with the senior level Justice people.

15 Q And so again with this letter, is your position  
16 that at that time you wished to have that type of  
17 meeting, that before the minister decided you  
18 would have a chance to do, as you say, put forward  
19 your position and hear what they had?

20 A Yes.

21 Q Go to 212960, and this is a letter January 16th,  
22 1990 from John Harvard who was a Winnipeg,  
23 St. James member of parliament to The Honourable  
24 Doug Lewis, and I don't propose to go through the  
25 letter, but we see in the record from this point



1 on where Mr. Harvard becomes involved and I think  
2 he questions Ms. Campbell in the house and  
3 committee and writes some letters and talks to the  
4 media. Can you tell us just generally how  
5 Mr. Harvard came to be involved in this matter and  
6 what role if any he played in your efforts to  
7 communicate information to the authorities?

8 A Yes. As the letter states, Mr. Harvard, who is  
9 now the lieutenant-governor of Manitoba, was Mrs.  
10 Milgaard's member of parliament and we, by  
11 January, 1989, had a pretty good feel for how we  
12 were being received at the Department of Justice  
13 and the Milgaards had already initiated a number  
14 of collateral paths of approach and resort to her  
15 member of parliament became one of them and  
16 Mr. Harvard became interested.

17 Q And so would it be fair to describe him as -- was  
18 he someone who was advocating on behalf of David  
19 Milgaard or the family to provide information and  
20 put pressure on the minister, Minister of Justice?  
21 Maybe pressure is the wrong word, but to  
22 communicate information to the Minister of  
23 Justice?

24 A Yes, he wanted to -- I believe his effort here was  
25 to draw attention to the minister that the case





1 had been in her department for some time.

2 Q And at some point, Mr. Asper, and I think you  
3 touched on this, I think at some point you said  
4 that --

5 A Sorry, this was, Doug Lewis was the Minister of  
6 Justice. This is pre Kim Campbell.

7 Q I'm sorry, I think at some point you said that you  
8 started to focus your attention beyond Mr.  
9 Williams, I think what you said to the effect that  
10 we felt we had to go directly to the minister or  
11 to senior people and at some point I think you  
12 said you shifted your focus to the minister rather  
13 than to the Department of Justice lawyer; is that  
14 correct?

15 A Yes.

16 Q And so is it fair to say that it might have been  
17 an evolutionary process that you started to give  
18 more information directed at the minister instead  
19 of the Department of Justice?

20 A I don't think we were giving anything to anybody  
21 outside the process that we weren't giving to the  
22 Minister of Justice through her officials.

23 Q Okay. I didn't ask that very well. I think what  
24 the record shows, and please tell me if I'm wrong,  
25 is that initially you dealt directly with Mr.



1 Williams, you gave all the information to him?

2 A Yes.

3 Q And when you were dealing with the Federal  
4 Minister of Justice under 690, Mr. Williams was  
5 the person who you gave everything to?

6 A Yes.

7 Q And it appears at some point you started to go I  
8 guess above him, for lack of a better word, to  
9 more senior officials in the Department of  
10 Justice, and in fact directly to the minister  
11 either by direct contact or communication or to  
12 try and get people who might influence her  
13 directly. So in other words, instead of dealing  
14 just with Mr. Williams, you started to deal with  
15 people above him in the chain; is that correct?

16 A That's correct.

17 Q And my question was is that something that sort of  
18 happened over time, that initially you started out  
19 with Mr. Williams and then, as matters progressed,  
20 you started passing more information to others  
21 above him?

22 A Yes.

23 Q And would Mr. Harvard be part of that, and that he  
24 was in the House and I think we'll see later, in  
25 May of 1990, he in fact I think is the individual



1           who made public the fact that the police were  
2           investigating another suspect, namely Mr. Fisher,  
3           although he didn't name him at the time?

4           A       There is a pretty lively Question Period sequence,  
5           yes.

6           Q       Yes. You will have an opportunity to review  
7           that --

8           A       I'm sure I will.

9           Q       -- later on.

10          A       I'm sure I will.

11          Q       So that at this time then, around January of 1990,  
12          again I think you said by this time you felt that  
13          the Justice officials you did not think were going  
14          to be favourable to your application; is that  
15          fair?

16          A       I would say that, by this time, we were concerned  
17          enough that we felt that it was time to start  
18          laying some groundwork beyond the Department of  
19          Justice itself.

20          Q       If we can then go to 333549.

21          A       You don't just, I mean Mr. Hodson, you don't just  
22          take a Member of Parliament and flick a switch.  
23          It takes some time to brief them, they're  
24          intelligent people, they want to know what the  
25          case is all about, they don't want to go out on a



1           limb, and so this was the beginning of what I  
2           would call the cultivation of collateral attack.

3           Q       And maybe you can just expand on that. So at this  
4           point, when you say "cultivation" then, did you  
5           seek out -- and when I say "you" I'm talking to,  
6           I'm talking about the Milgaard group -- seek out  
7           and say, "okay here, Mr. Harvard could be an ally,  
8           let's cultivate him, let's give him information,  
9           because we may be able to use him in our  
10          application"; is that what you are saying?

11          A       Essentially, yes.

12          Q       And him and others, and I think --

13          A       Yes.

14          Q       -- as we go through the documents, and certainly  
15          some people in the media, would they be in the  
16          same category; is that people that may be able to  
17          assist you in communicating information to  
18          authorities?

19          A       Yes, and to potential witnesses.

20          Q       Right, and so publicizing the matter so that  
21          potential witnesses would come forward, I think  
22          that's what you told us previously?

23          A       Yes.

24          Q       This is a media report of January 22nd, 1990,  
25          *Canada Live, CBC Newsworld*, and I think this is



1 one of the earlier ones, Mr. Asper, where you are  
2 expressing your thoughts about the case and the  
3 re-opening. And I certainly do not propose to go  
4 through all of the media articles where you have  
5 been quoted and where you provide information, but  
6 maybe we can just take a look at a couple of them  
7 as we go through, but maybe at the outset you  
8 could tell us where, if anywhere, this fit in with  
9 -- and let me rephrase that -- the fact of you  
10 telling the media "here are the facts of the case,  
11 here is the basis of our re-opening and here's why  
12 we think he's innocent and here is what Justice is  
13 doing or it's not doing", things of that nature,  
14 when you would communicate them in the media; and  
15 my question is was that part of your efforts to  
16 communicate information to the authorities to  
17 re-open the investigation and, if so, can you just  
18 elaborate on that?

19 A I want to -- there may have been occasions where I  
20 got myself wound up and talked about David's  
21 innocence. David's innocence, umm, David's  
22 innocence was my opinion. It was an opinion  
23 shared by people on our team but it was only my  
24 opinion, and what we -- what we -- we never asked  
25 anybody else in the media or the political realm



1 or the public to reach that conclusion. We were  
2 asking -- we were telling people about the facts  
3 that we had developed around the case on the basis  
4 that it was sufficient to justify a new hearing  
5 and a fresh look and investigation into the case.  
6 As I say, there may have been occasions where I  
7 got wound up, umm, and went a little further, but,  
8 umm, that was generally the position that we were  
9 trying to advance.

10 Umm, and I will say that once --  
11 the story began as a local story in Winnipeg, in  
12 local media, and, umm, once we were able to  
13 attract -- and I don't recall because I will tell  
14 you, sir, that once you light the fuse of this  
15 media blizzard that occurred it came at me fast  
16 and furious, relentlessly, for probably two  
17 straight years, and once it became national I  
18 can't tell you specifically what I said in any  
19 specific interview. If you want to show me this  
20 interview, great, I'll try to help you, but it  
21 became -- yes, it was part of a strategy, there is  
22 no question, it became a part of a strategy to  
23 bring pressure on the Minister herself. We were  
24 not only talking to the senior officials in the  
25 Department of Justice, we were also talking to the



1 constituents of the government at large across the  
2 country, we were generating a huge amount of  
3 support across the country, letters to the  
4 Minister of Justice, call-in shows, letters to the  
5 editor of the local newspapers, and it became a  
6 political campaign in the broadest sense.

7 Q If I can just take a step back, is it fair to say  
8 that your efforts on behalf of Mr. Milgaard were  
9 to, at a minimum, re-open the investigation; is  
10 that fair?

11 A Yes.

12 Q That you were trying to get the authorities to  
13 re-open the investigation; correct?

14 A We -- yes.

15 Q At the starting point. And the Section 690, I  
16 think what you have said is you wanted a hearing,  
17 a reference hearing, and that would be a remedy  
18 under Section 690 to either have the Appeal Court  
19 hear an appeal to either have a new trial, to have  
20 a reference to the Court, some remedy that would  
21 allow the matter to be put before a Court for some  
22 remedy; is that correct?

23 A Right, right.

24 Q And would it be fair to say that that was part of  
25 your efforts to have the investigation re-opened,



1 and I think you said 690 was the only avenue you  
2 could go, that was the only place you could get a  
3 remedy; is that correct?

4 A Yes.

5 Q And so again, just back if we can narrow it down  
6 on the media issue, is it your evidence that in  
7 your efforts to have the authorities re-open the  
8 investigation, whether it be before, during, or  
9 part of the Section 690 process, you were  
10 providing them with information both directly, as  
11 we have seen on the record and we'll see some  
12 more, but as well by communicating it publicly  
13 through the media, hoping that they would hear it  
14 and be persuaded by it and to do something; is  
15 that fair?

16 A Yes.

17 Q And then back when you were, when you were talking  
18 in the media then, and again where I started is  
19 where you would publicly state, "here's the Ferris  
20 report, here's the motel room re-enactment  
21 evidence, here is Ron Wilson's recantation,  
22 etcetera, the details", I want to go back. When  
23 you, David Asper, spoke to the media about those  
24 matters was that part of your objective, to  
25 communicate that information to the authorities to





1 assist in the re-opening efforts?

2 A I'm not sure I follow your question?

3 Q Okay. Well when you're -- in this interview you  
4 talk about the Ferris report -- let me give you an  
5 example.

6 A Right.

7 Q You say "lookit, the Ferris report says David is  
8 excluded, that should be enough to re-open the  
9 investigation." When you go into the media and  
10 say, "here's this piece of information", am I  
11 right that you want that information published,  
12 you want to get it to the authorities so the  
13 authorities say, "well lookit, the public is now  
14 saying we have this scientific report that says  
15 he's innocent, this is information we should maybe  
16 act on"?

17 A No, no. The authorities had the report at this  
18 point. This is talking to the people. This is  
19 going around and over the politicians and the  
20 officials. This is politics.

21 Q And so, again, can you explain, then, when you,  
22 David Asper, would go talk to the media and give  
23 them specifics about the case and about why you  
24 thought it should be re-opened, what was the  
25 purpose of that then?



1           A           As I say -- umm, well let me say first of all,  
2                        umm, most of the, umm, most of the media that  
3                        reported the most extensively on the case wouldn't  
4                        report on it until they had gotten transcripts and  
5                        a very comprehensive package of material about the  
6                        case itself, they were not prepared to take what I  
7                        was saying at face value, umm, so it was -- so --  
8                        and I think that's, that was, you know, that was a  
9                        measure of the best journalists who followed the  
10                      case. But to then have the conversation with them  
11                      on the record to create coverage was not designed  
12                      to provide new information to the Minister of  
13                      Justice or Justice officials, this was designed to  
14                      speak to people across Canada who felt that, umm,  
15                      that we were being stonewalled and that something  
16                      wasn't fair, and to bring pressure on the  
17                      politicians to do something about it.

18          Q           Is it fair to say this, then -- and tell me if I'm  
19                      wrong -- that at least in part the information  
20                      provided to the media, one of the objectives was  
21                      to have that information in the media and the  
22                      public support, and the other things you talk  
23                      about, influence the authorities to favourably  
24                      deal with the information you had already provided  
25                      them, to them, to re-open the case?



1 A It favourably -- to favourably deal --

2 Q Yes.

3 A -- in terms of giving us a remedy under 690?

4 Q Right.

5 A The answer is "yes".

6 Q Yeah, to --

7 A That's what it was designed to do.

8 Q So you gave the authorities, you didn't think they  
9 were acting in a way you had wished, is it fair  
10 then you go to the media and say, "here's the same  
11 information, or some information we've already  
12 provided to the authorities" to create some  
13 pressure, I think were your words?

14 A Right.

15 Q To influence the authorities to act favourably on  
16 the information you gave them; is that fair?

17 A Yes, absolutely. And I think we talked last time  
18 that I was quite amazed, umm, at the way that the  
19 Department of Justice reacted in terms of not  
20 reacting and, essentially, let us get away with  
21 what we were doing.

22 Q And what do you mean, "get away with what" --

23 A Well we know now that when this information was  
24 being imparted to the public, the Department of  
25 Justice had a different report that discredited or



1           took a different view about the Ferris report, we  
2           knew that Deborah Hall had said something  
3           different to Mr. Williams, and, first of all if we  
4           had known that we may not have been able -- we may  
5           not have gotten into the whole media campaign; and  
6           secondly of all, even if we had known that, the  
7           Department of Justice, with an effective  
8           communications strategy, could have shut it down.

9           **Q**       So, and then as far as, let us talk about Ferris,  
10           are you saying at some point you realized that  
11           Federal Justice was saying "we don't think the  
12           Ferris report helps you at all"?

13           **A**       At some point they advised us of that, sure.

14           **Q**       And, at some point, did you reach that conclusion  
15           as well?

16           **A**       Umm, I don't -- I don't recall. I mean, prior to  
17           the reference?

18           **Q**       Yes. At some point did you come to the conclusion  
19           that, "lookit, I don't think the Ferris report,  
20           opinion, proves David's innocence or helps him"?

21           **A**       Umm, I have a recollection that they gave --  
22           Justice provided us with a written document that  
23           challenged Dr. Ferris' findings, but I don't  
24           recall when that was.

25           **Q**       Yeah, but did you accept that? I mean did you, at



1           some point, change your views about the value of  
2           Dr. Ferris' opinion?

3           A           I think I only changed my view of Dr. Ferris'  
4           report when we found out what David's secretor  
5           status was.

6           Q           And that, I think, was in March of '92?

7           A           I believe so.

8           Q           And at that point, what did you change, what was  
9           your conclusion then?

10          A           Well, that the findings by Dr. Ferris as to  
11          David's secretor status were physically wrong.

12          Q           And so that, if the sample were not contaminated,  
13          then it would tend --

14          A           Right.

15          Q           -- to implicate Mr. Milgaard --

16          A           Right.

17          Q           -- as opposed to exclude him?

18          A           Right.

19          Q           So, at that point, you changed your views about  
20          the value of Dr. Ferris' --

21          A           Sure.

22          Q           And just back to your comment, just so that I  
23          understand, I think you said you later learned  
24          that Federal Justice had a different view about  
25          the value of Deborah Hall and Dr. Ferris than what



1 was in the media?

2 A Right.

3 Q And can you explain? I'm not sure what you were  
4 trying to say on that, I --

5 A Well, Mr. Williams had interviewed her, --

6 Q Yes.

7 A -- he had gotten a statement quite different or  
8 quite, --

9 Q Yeah?

10 A -- you know, that they viewed to be quite -- more  
11 damning.

12 Q Yeah, no, and I guess my question is what role, if  
13 any, did that play in your re-opening efforts? I  
14 mean where did that figure in the fact that --

15 A It didn't.

16 Q -- Justice --

17 A Oh, it didn't. I'm saying that from a  
18 communications perspective, if the Department of  
19 Justice had released information that it had  
20 regarding the statement that Deborah Hall had  
21 provided to Mr. Williams, it would have vitiated,  
22 it would have eliminated, potentially, the value  
23 that we were ascribing to the value -- to the  
24 statement given by Deborah Hall in 1986.

25 Q So if we can just go -- and again at this time,



1 and we'll see it in a number of reports and I  
2 don't plan on putting them all to you, Mr.  
3 Asper -- but on a number of occasions you state  
4 through the media, number 1 on the Dr. Ferris  
5 report, that it proves David's innocence; is that  
6 fair, that it exonerates him, correct?

7 A It can be, yes, that was one of his findings.

8 Q Yeah, I -- well I --

9 A He had two findings, either the evidence had no  
10 value, or that it excludes him.

11 Q And my, my question relates to what you said in  
12 the media or what the media reported you saying.

13 A Right.

14 Q And what the media reported you saying on a number  
15 of occasions is words to the effect that, "David  
16 Asper says Ferris' report exonerates or proves  
17 David's innocence", or words to that effect?

18 A Right.

19 Q And you are aware of those being in the media from  
20 time --

21 A Absolutely.

22 Q Yeah.

23 A Absolutely.

24 Q And, again, do you take issue with that type of  
25 reporting? I mean, would you have said those



1 things to those reporters?

2 A Well as I say, Mr. Hodson, you know, you -- as you  
3 well know, a conversation with a journalist is far  
4 more than the quotes that actually appear, and I  
5 would have certainly, I would expect, have  
6 referred to the portion of Dr. Ferris' report  
7 where he concludes that the evidence may exclude  
8 or can exclude. Did I say more? I don't know.  
9 I'm sure I did but I don't know.

10 Q So, again, just -- just so that I'm clear on this,  
11 so when you state through the media, "David Asper  
12 says that Ferris' report proves David Milgaard's  
13 innocence", that type of comment, and again the  
14 purpose there, as it relates to the re-opening,  
15 was to communicate information to the public so  
16 that the public would put pressure or influence  
17 authorities to act on the information that you  
18 already provided and to provide you a remedy in  
19 re-opening the investigation, is that a fair --

20 A Yes.

21 Q -- way to put it?

22 A Yes.

23 Q And similarly with Deborah Hall, when you gave  
24 that information, and I think on a number of  
25 occasions you stated publicly or through the media





1           that, "Deborah Hall says Melnyk and Lapchuk lied  
2           at trial, the motel re-enactment didn't happen,  
3           and again there was perjured evidence at trial",  
4           or words to that effect, would that -- would you  
5           have the same answer again, the same reason you  
6           would put that forward is so that the public would  
7           put pressure on the authorities and influence the  
8           authorities to act favourably on that information?

9           A        Yes.

10          Q        Were there times -- and again as far as the  
11           information that you put forward, and we'll see  
12           this as we go through some of the other grounds,  
13           if I can call it that -- let's talk a bit about  
14           Deborah Hall. At some point I think you said you  
15           became aware that what Deborah Hall told you and  
16           put in the affidavit was different than what she  
17           said to Eugene Williams; did that cause you to  
18           change in any way what you would say to the media  
19           about her evidence?

20          A        Well, as I say, I don't recall when we found out  
21           what she had said. I suspect that you'll find me  
22           not talking too much about her after we find out  
23           what she said.

24          Q        And I guess that's my question. So once you  
25           became aware that Deborah Hall said, "okay, there



1           were words said by David Milgaard that could be  
2           construed as a re-enactment", even though she took  
3           them as being a joke, and similarly with motions,  
4           did that cause you to change what you said in the  
5           media about that matter?

6           A       As I say, I suspect I stopped talking about it.

7           Q       And similarly about Dr. Ferris, at some point,  
8           again I think you said at the time you realized  
9           that, or learned that David was a secretor, at  
10          that point that information, I think you said,  
11          "okay, well that doesn't help David's case  
12          either"; is that right?

13          A       I -- that's true. But, Mr. Hodson, I think by  
14          then Dr. Ferris had been far superceded by a whole  
15          bunch of other things that were --

16          Q       You --

17          A       -- developing in the case.

18          Q       Other unrelated pieces of information?

19          A       Yes, yes.

20          Q       But again, as far as the first two, then, pieces  
21          of information, or the grounds of the first  
22          application, being Ferris and Deborah Hall, are  
23          you saying at some point you learned that the  
24          value of that evidence may not have been -- the  
25          value of that evidence, as far as convincing the



1 authorities to re-open the investigation, the  
2 value wasn't what you initially thought it was?  
3 Is that fair, it wasn't as good as you thought it  
4 was?

5 A Yes.

6 Q And, just, if we can go to the next page here.  
7 And as I say, I'm not gonna go through countless  
8 media articles with you, Mr. Asper, but there are  
9 some that I have some specific questions, and this  
10 is an interview January of 1990 with *CBC Newsworld*  
11 and it just talks about -- and I think this is  
12 where, I think this is one of the early reports  
13 where you talk about the Ferris report and you say  
14 here, umm:

15 "And the evidence that we have now is  
16 that the evidence used at the trial to  
17 convict Milgaard... you know, the Crown  
18 at the time tried to suggest that the  
19 semen belonged to Milgaard. But the  
20 evidence that we have now says that in  
21 fact what we know today excludes  
22 Milgaard."

23 And as far as this part here, about the semen  
24 belonging to Milgaard, was that your  
25 understanding of what the Crown's case was



1           against Mr. Milgaard at trial, that their theory  
2           or their case was that the semen belonged to  
3           David Milgaard?

4           A           Yes.

5           Q           And what was that based on?

6           A           That was based on the attempts by Mr. Caldwell to  
7           put David's blood in the semen in order to explain  
8           the A antigens on the basis that David was a  
9           non-secretor and so how else could the antigens  
10          get into the semen at the scene. I think that's  
11          how it went.

12          Q           And would that be based on your reading of the  
13          trial transcript; is that -- or --

14          A           Yes, that's Sergeant Paynter's evidence, I  
15          believe.

16                    COMMISSIONER MacCALLUM: Was the doc. ID,  
17                    547 there, Mr. --

18                    MR. HODSON: The doc. ID is 333547.

19                    COMMISSIONER MacCALLUM: Yes.

20           BY MR. HODSON:

21          Q           And this is page 550.

22          A           I mean that specific line, the Crown at the time  
23          tried to suggest, you will recall there was an  
24          exchange with Justice Bence and Mr. Caldwell where  
25          Mr. Caldwell is attempting to advance this



1 position and Justice Bence keeps interrupting him  
2 and saying "but there is no evidence of blood in  
3 the semen."

4 Q Right. I think Mr. Caldwell's evidence before the  
5 Commission -- and I stand to be corrected on  
6 this -- was that the, that Mr. Milgaard was not  
7 eliminated as a suspect, in other words that he  
8 couldn't be excluded as being a donor but that I  
9 think he, at least in his closing address to the  
10 jury was that it did not -- it was not established  
11 that it was his, it just couldn't exclude him. Do  
12 you recall that at all? And, again, I appreciate  
13 that's his view.

14 A I don't recall. I do recall him fighting for the  
15 point during the trial evidence though.

16 Q And so your -- and I guess none of us know what  
17 the jury was thinking at the time, but are you  
18 telling us that your sense from reading the  
19 transcript was that the Crown was saying the semen  
20 found at the scene was somehow linked to David  
21 Milgaard forensically?

22 A If it wasn't, my view was that if it was -- if the  
23 Crown wasn't attempting to link it to David, it's  
24 not relevant at the trial then.

25 Q Mr. Tallis testified that he wanted that evidence



1 in because he said it was relevant because it  
2 exonerated Mr. Milgaard.

3 A I understand that.

4 Q And had you -- and again, that's just, I'm telling  
5 you what his evidence was at the Inquiry -- did  
6 you ever contemplate that or consider that the  
7 evidence may have been put in for -- as  
8 exculpatory as opposed to inculpatory?

9 A Umm, I don't recall, I -- Mr. Tallis said he  
10 wanted the evidence in?

11 Q Yes.

12 A I don't recall that.

13 Q Okay. Well Mr. Tallis told this Inquiry that he  
14 felt that that evidence, the frozen semen, was  
15 favourable because it tended to exculpate Mr.  
16 Milgaard on the same reasoning as Dr. Ferris said  
17 in his opinion, if it had not been contaminated.

18 A Oh I don't doubt that, that would make sense to  
19 me, but my point was that Mr. Caldwell had tried  
20 to implicate Mr. Milgaard with it.

21 Q Okay.

22 A And so I, my comment you referred me to here:

23 "... the Crown at the time tried to  
24 suggest that the semen belonged to  
25 Milgaard.",



1 I believe that was the case, and if you look at  
2 the trial transcript that's exactly what Mr.  
3 Caldwell was trying to do.

4 Q So if you can go to the bottom, or the bottom of  
5 the next page, and again this might assist us in  
6 putting things in a time frame. So this is  
7 January, 1990, so this is about a year and a bit  
8 after you filed the application, and at this point  
9 you say, I think you're talking about the Ferris  
10 report:

11 "We don't know what they're doing. We  
12 don't know for example, whether they  
13 have assessed the opinion of Dr. Ferris,  
14 and determined whether it's true."

15 So does that assist you, in January of '90, would  
16 that have been your knowledge at that time --

17 A Yes, --

18 Q -- as far as what --

19 A -- obviously, yes. I think it shows you, you  
20 know -- and, as I say, I -- there may have been  
21 examples to the contrary, but I really tried, in  
22 dealing with the media, to not -- I would -- I  
23 could state my own conclusions, but I was trying  
24 to keep the public not have -- not trying to get  
25 the public to reach a conclusion --



1 Q Okay.

2 A -- other than there's enough questions that maybe,  
3 maybe there should be a second look at this.

4 Q And if we can call up 163078. The CBC report that  
5 I had read from, *CBC Newsworld*, was January 22nd,  
6 this is the next date, I don't know if this is the  
7 same division of CBC that did the interview, but  
8 you then send them Dr. Ferris' CV and the two  
9 reports; --

10 A Yes.

11 Q -- is that correct?

12 A Yes.

13 Q Do you know if that related to, the interview that  
14 I just read you was the day before, would this  
15 have been a follow-up to the reporter, "here is  
16 Dr. Ferris' reports"?

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

18 Q But again, as far as Dr. Ferris' report to you, I  
19 think we've seen various letters where you would  
20 have provided the complete report to the media; is  
21 that correct?

22 A No question, yes.

23 Q If we can go to 226241. Now this is again January  
24 23, and you will recall I read you the January  
25 16th, 1990 letter from Mr. Williams, which said,





1 "we've done our investigation, you have two weeks  
2 to give us further information", and this is  
3 actually your letter back. And I think what you  
4 say here, in your January 10th letter:

5 "... we raised the possibility of  
6 augmenting the application ...",  
7 and then you say:

8 "In general, it is virtually impossible  
9 to know what might be uncovered, had we  
10 been provided with funds that would have  
11 enabled us to broaden the scope of our  
12 investigation to date."

13 Let me just pause there. And I think you had  
14 asked, you had looked for funds from Legal Aid,  
15 and I think as well you had asked Federal Justice  
16 for some as well; is that correct?

17 A I believe so, yes.

18 Q And can you tell us what, what did you have in  
19 mind had resources been made available, what were  
20 you looking for resources, what were you looking  
21 to do with resources?

22 A I think in a general sense, I can't comment  
23 specifically, but in a general sense we wanted to  
24 investigate our case and to have professional --  
25 hire professional investigators.



1 Q And how do you respond to the suggestion from  
2 Federal Justice or from the authorities that said,  
3 "well, when you filed your application we thought  
4 that was your case", and I'm paraphrasing there?

5 A I want to -- I want to -- well I'm, if I may, I'd  
6 like --

7 Q Yeah?

8 A -- to give you a philosophical answer. The  
9 applicant in this case, as in most wrongful  
10 conviction cases, is sitting in a prison cell, and  
11 who is personally impecunious and in most cases as  
12 is his or her family, so in our case we took what  
13 we could get and we created an application and we,  
14 in truth, got lucky along the way in terms of  
15 the --

16 Q Could you elaborate on that?

17 A -- in terms of the ultimate outcome. But we  
18 needed and we would have preferred to have had  
19 professional investigators funded by the -- by the  
20 state, and we may have, we may have saved a lot of  
21 time and effort, especially if we were -- had been  
22 working collaboratively or if the Department of  
23 Justice had brought us into the tent where we  
24 wouldn't have had to have been, you know, doing  
25 our own investigation.



1 Q But when you say "we got lucky along the way" can  
2 you elaborate on that?

3 A In the end we got lucky with a phone call tipping  
4 us to Larry Fisher, and lucky that the media had  
5 been cultivated such that it could do the  
6 investigation into Larry Fisher that ultimately  
7 resulted in an uproar across this country that  
8 stopped the Minister of Justice in her tracks, in  
9 my opinion, and forced her to re-open this case.

10 Q Okay.

11 A We got lucky.

12 Q And so had you not got lucky and not had that,  
13 what, do you have any views on what would have  
14 happened?

15 A I don't think David Milgaard had a chance.

16 Q And, again, if you go back to, let's go back to  
17 the resources, then, can you tell us then, if  
18 resources had been made available, just generally  
19 what types of things had you contemplated? When  
20 you asked for them here and earlier, what are the  
21 things that you felt you could have or should have  
22 done, if you had resources, that you didn't?

23 A Well I think, with Dr. Ferris, we had been at  
24 least tipped to the idea advances in scientific  
25 technology that might be applied. We were



1           certainly interested in, as we ultimately got  
2           with -- when we -- again, Lorne Huff volunteered  
3           his services, a former Winnipeg police officer.  
4           Having a professional police-minded, or former or  
5           current police officer to look at the evidence and  
6           help us, umm, strategize would have been very,  
7           very helpful, there is no question, including  
8           tracking down some of the witnesses.

9           **Q**       And again that's something that -- let me go back  
10           to the question of, that I posed earlier about  
11           Justice saying, okay, but you filed your  
12           application. Were you not done the investigation  
13           at the time you filed your application, and again  
14           I'm just putting that forward as, trying to -- let  
15           me rephrase it this way. When you filed your  
16           application December 28, 1988, was it still a work  
17           in progress from your perspective?

18           **A**       We believed -- the answer is yes and we believed  
19           that we would file this application, as I said I  
20           think in my previous evidence, to get the door  
21           open, and that once the door was open, this case  
22           involved substantially more than the evidence that  
23           Dr. Ferris spoke about and that Deborah Hall spoke  
24           about and we thought that we would open the door  
25           and work with the Department of Justice to find



1 out whether there was anything behind the door.

2 Q So at this stage then when you are talking about  
3 had we been provided with funds it would have  
4 enabled us to broaden the scope of our  
5 investigation to date, those are the things that  
6 you just described then, that's what you were  
7 hoping for, that once you opened the door, you  
8 would have either access to Federal Justice  
9 investigators or to some resources so that further  
10 investigation could be done?

11 A Yes.

12 Q And then down at the bottom, and again we maybe  
13 touched on this earlier in the earlier letter, but  
14 you say:

15 "Other than the aforementioned, we  
16 cannot be more specific except to say  
17 that if your Department requires more  
18 information in order to favourably  
19 consider the application under Section  
20 690, we would certainly want the  
21 opportunity to submit same with funding  
22 provided by your office."

23 And is really what you are saying lookit, if we  
24 haven't convinced you yet that we should get a  
25 remedy, we want an opportunity, tell us what more



1 we need and give us some resources because we'll  
2 go get it?

3 A We just wanted them to talk to us and help us.

4 Q And how do you respond to -- let me put forward,  
5 and again I'm paraphrasing a bit from their  
6 response, which is the act, or the section of the  
7 code says it's an application for an extraordinary  
8 remedy, you make your application and we'll  
9 consider it, tell us when your application is  
10 done, tell me what the materials are, we'll review  
11 it and exercise the minister's discretion. Would  
12 that seem to be a bit at odds with how you  
13 perceived that the section would be operating?

14 A Yes, I think that's a -- yes. I will not  
15 editorialise.

16 Q And so when you filed the application, did you,  
17 and I think you said that you expected things to  
18 happen differently, but what about the minister's  
19 position, and I think we'll see it in Kim  
20 Campbell's February 27th letter which is your  
21 application, we'll look at what you put forward  
22 and if you put forward grounds suggesting a  
23 miscarriage of justice, we'll grant a remedy and  
24 nothing you put forward met the threshold and  
25 therefore we didn't do anything, and again, is



1           that -- was there a different understanding on  
2           your part about what you thought would happen  
3           under Section 690 than what ultimately did happen?

4           A       Very much so, and I think you only have to look at  
5           the outcome of this case to see the problem.

6           Q       Again, I just want to -- if you could call up  
7           054119, and this is Peter Leo, CBC Sunday Morning,  
8           and we've touched on this in Mr. Carlyle-Gordge's  
9           evidence. The date of this I think, it's not  
10          listed here, but it's February 4th of 1990, so  
11          this is a couple of months after Deborah Hall is  
12          interviewed by Mr. Williams, and she's quoted  
13          here, if we can go to 054129, and it looks at this  
14          point she's asked about the reenactment, she goes,  
15          "you know, as he was fluffing up his pillow, yeah,  
16          right, I, you know, stabbed her and whatever, but  
17          I didn't feel at all like it was a serious remark  
18          at all," and then the next page she goes on to say  
19          here, "Like these guys would say that he had  
20          enacted this horrible murder and admitted to it  
21          and everything else when it was just a joke. He  
22          was, he was stoned on drugs and thought he was  
23          being funny." And it appears at this point that  
24          Deborah Hall, at least in her statements to  
25          Mr. Leo, is saying okay, he did make some remarks



1 to reenactment the murder, but I took it as a  
2 joke. Would you have been aware of this  
3 information at the time, are you able to -- does  
4 this assist you at all in --

5 A What information?

6 Q Of Deborah Hall's, of what Deborah Hall said on  
7 February 4th, 1990 about the reenactment? I think  
8 you told us earlier at some point you learned it.  
9 Here in February of 1990 there's a news report on  
10 it. I'm wondering if that assists you in  
11 determining when you became aware of her different  
12 version of the incident?

13 A I would not -- I would have seen this or heard  
14 this, I'm not sure if this is radio, but I would  
15 have heard this when it aired or seen it when it  
16 aired.

17 Q So is it fair to say that in February of 1990 then  
18 would this have been when and how you may have  
19 heard about Deborah Hall elaborating I guess on  
20 what she had told you about the motel room  
21 incident?

22 A I wouldn't equate this version with what she said  
23 to Mr. Williams.

24 Q Okay.

25 A I would not equate the version that you are





1 showing me to what she said to Mr. Williams.

2 Q And why is that?

3 A Because what she said to Mr. Williams was far more  
4 graphic.

5 Q Right. And I suppose it's possible that on the  
6 radio she didn't want to say the graphic words?

7 A Well, that's why -- that may be the case, but I  
8 would not take from this interview that she had  
9 said what she said to Mr. Williams.

10 Q Now if we can go to 157044, this is a letter  
11 February 23rd, 1990 from Bruce MacFarlane to  
12 Mr. Tallis, and we've heard evidence from  
13 Mr. Tallis on this subject, but I think, and maybe  
14 I can just summarize a bit what we've heard, that  
15 when he interviewed Eugene Williams I think  
16 sometime in 1990 solicitor/client privilege was  
17 waived and at that time the Department of Justice  
18 or the lawyers gave an undertaking to Mr. Tallis  
19 that they would not disclose the contents of his  
20 interview to anybody else without his consent, or  
21 words to that effect, and I think later at the  
22 time of the Supreme Court of Canada the  
23 undertaking was displaced and the information was  
24 shared. Does that accord with your recollection?

25 A Yes.



1           Q           And again at this time, and I think -- and we  
2                       haven't heard from Mr. Williams on this point, but  
3                       I think Mr. Tallis, I'm not sure if the idea of  
4                       the undertaking came from Mr. Tallis or from  
5                       Federal Justice, but the question for you at this  
6                       time, notwithstanding the fact that Justice,  
7                       Federal Justice was undertaking to Mr. Tallis that  
8                       we won't tell anybody what you tell us including,  
9                       including Mr. Milgaard, that that didn't preclude  
10                      Mr. Tallis from telling you everything he told Mr.  
11                      Williams. Do you follow? Do you agree with that?

12          A           Yes.

13          Q           So notwithstanding the fact there was an  
14                      undertaking, that did not preclude you from saying  
15                      to Mr. Tallis lookit, tell me everything you told  
16                      them?

17          A           Yes.

18          Q           And as far as you were aware, Mr. Tallis was  
19                      prepared to share with you any information he had  
20                      about the case and what he had shared with Mr.  
21                      Williams?

22          A           That was my understanding.

23          Q           I now want to turn to late February, 1990 and the  
24                      information relating to Larry Fisher and we've  
25                      heard evidence, seen documents that suggest -- not



1 suggest, that state that an anonymous call was  
2 received I think on February 26th, 1990 by Mr.  
3 Wolch from someone identifying himself as Sidney  
4 Wilson. We've actually heard from Bruce  
5 LaFreniere who was the individual who phoned Mr.  
6 Wolch, although he said he didn't give the name  
7 Sidney Wilson, but he's the fellow that phoned on  
8 that day.

9 A I thought it was Bud at CJWW.

10 Q I was going to ask you about that. There was some  
11 suggestion that contact information was the name  
12 Bud through CJWW and I think we went through some  
13 of that with Mr. LaFreniere and I'm not sure that  
14 anything turns on that, he acknowledged that he  
15 was the fellow that gave the information.

16 A I certainly phoned CJWW and looked for Bud, I can  
17 tell you that much.

18 Q And I take it, and I think the documents suggest  
19 that you were away out of the country on vacation  
20 at the time this came in; is that correct?

21 A Yes.

22 Q And that had dealt with it remotely; is that a  
23 fair way to put it?

24 A Yes.

25 Q Now, we've heard, the Commission has heard some



1 evidence from a number of witnesses that, or in  
2 different forms, that Peter Carlyle-Gordge had, in  
3 1983, identified Larry Fisher as an individual  
4 living in the basement of the Cadrain house at the  
5 time of the murder and that he was in jail for  
6 rapes and as well that he had made, Mr.  
7 Carlyle-Gordge had made efforts to locate Linda  
8 Fisher in 1983. Were you aware of that  
9 information prior to Mr. Wolch getting the call  
10 from Sidney Wilson on February 26th, 1990?

11 A I really wracked my brain on that question and I  
12 don't know. I can't recall.

13 Q And is it possible you would have reviewed that  
14 information in Mr. Carlyle-Gordge's files but that  
15 it didn't stick out for some reason? Are you able  
16 to help us out at all on that?

17 A I can't answer that. The consequences of having  
18 reviewed it and not done anything bother me and I  
19 can't say whether I did or not.

20 Q And do you recall when you learned of this  
21 information, was it something that was initially  
22 viewed as very significant or was it another piece  
23 of information that we have to follow up on? Can  
24 you give us some sense of your initial reaction to  
25 this information?



1 A Well, I don't know when I saw it. It's entirely  
2 possible -- I do recall that after we got the tip  
3 Joyce and I and others really sprang into action  
4 to find out where that name, where we had seen  
5 that or read that name before.

6 Q Larry Fisher?

7 A Yes, Larry Fisher, and my recollection was that we  
8 had read it in a police report or a summary of a  
9 police report as having been interviewed as one of  
10 the people interviewed in the canvass of the  
11 neighbourhood in the days following, immediately  
12 following the murder.

13 Q Right. And to assist you on that, Mr. Asper,  
14 Peter Carlyle-Gordge testified and we have his  
15 typed notes in 1983, he reviewed Mr. Caldwell's  
16 file and on there there was a police report that  
17 Mr. Carlyle-Gordge reviewed that identified the  
18 police had interviewed Larry Fisher I think on  
19 February 3rd at 6:49 a.m. at the bus stop?

20 A Right, yellow hard hat.

21 Q Mr. Carlyle-Gordge I think typed out verbatim what  
22 was in that report in his notes, and is that what  
23 you -- and I think what he said, I'm sorry, is  
24 that he listed his address as 334 Avenue O South  
25 and I think that's why he put some significance on



1           it.

2           A       Well, as I say, I can't say that I had seen that  
3                   before, or certainly not consciously made note of  
4                   it prior to the tip. Following the tip we found  
5                   that piece of information.

6           Q       And so, and I think I saw reference in some media  
7                   report where you stated that after you got that  
8                   name, I think you said that Joyce Milgaard had,  
9                   and I'm not sure if you said immediately, but that  
10                  Joyce Milgaard remembered the name and remembered  
11                  the address or remembered some piece of  
12                  information and it may well have been Peter  
13                  Carlyle-Gordge's report?

14          A       Could have been, yes.

15          Q       And again is there anything else you recall about  
16                  that when you learned the name about any other  
17                  information you had on your files or with your  
18                  documents other than the Peter Carlyle-Gordge  
19                  note?

20          A       I don't recall, no.

21          Q       At what point, at least in your mind, at what  
22                  point did this tip become a significant piece of  
23                  information, and let me back up, I think you said  
24                  earlier that you would get, and we've seen  
25                  documents of this, information suggesting A is the



1 killer, B is the killer, and I take it you had  
2 received previous tips or information that  
3 suggested other people were responsible and you  
4 followed them up and they didn't, they proved not  
5 to be credible; is that fair? Maybe not a lot,  
6 but --

7 A I don't recall any -- no, I don't recall any tips  
8 about who -- as to the identity of the true  
9 killer, true identity of the killer. You know, I  
10 don't recall -- I really don't recall anything  
11 that really floored me, let's call it, in terms of  
12 the Fisher evidence, until seeing the report that  
13 CBC, the investigative report that CBC had done  
14 and I got a call just before it had aired, I think  
15 in June of 1990.

16 Q Yes.

17 A Where CBC had deployed, and I may be missing  
18 something here, but CBC really deployed a lot of  
19 resources to it, they did a very thorough  
20 investigation as to who Larry Fisher was and I got  
21 a phone call just before they -- and they kept a  
22 very tight lid on it. We provided them with some  
23 information to help them, but they wouldn't tell  
24 us what they were doing, and as I say, I got a  
25 call just before the program aired urging me to



1 watch the program and I recall being quite stunned  
2 and I don't recall information prior to that  
3 knocking me out the way that information did.

4 Q And I'll go through some of the documents and some  
5 of the interviews. So initially when you got the  
6 name Larry Fisher, was it let's follow it up, it  
7 might be helpful, as opposed to we have found the  
8 real killer?

9 A Yes, that's true, and information we received  
10 along the way certainly suggested that Mr. Fisher  
11 had a troubled criminal past, but the CBC report  
12 seemed to tie it up for me.

13 Q And I think that's the report where Mr. Fisher's  
14 name for the first time was publicly disclosed, I  
15 think that was June 21, 1990 in the CBC report; is  
16 that correct?

17 A Yes.

18 Q If we can just go back, and I want to just  
19 generally go through the Larry Fisher information,  
20 some general questions, and then I'll take you  
21 through the documents on that. Let's just talk  
22 initially about, at the time, February 28th, 1990,  
23 I think when we looked at January, 1990 it  
24 appeared that Federal Justice had completed their  
25 investigation of facts and may have been starting





1 the process to have the minister render a  
2 decision; is that correct? I mean --

3 A It seems like it, yes.

4 Q That was your understanding, and I think you said  
5 he felt it was not going to be favourable?

6 A Right.

7 Q And so when this information came along about  
8 Larry Fisher, I think the documents suggest that  
9 two things happened, one, you immediately  
10 contacted Mr. Williams and gave him the  
11 information; is that correct?

12 A Yes.

13 Q And two, Mrs. Milgaard and Mr. Henderson and  
14 others followed up on the investigation itself; is  
15 that correct?

16 A Yes.

17 Q And can you tell us about why you went about it  
18 that way, why did you not just rely on Federal  
19 Justice to go and investigate the matter?

20 A We had no trust or faith that the Department of  
21 Justice would act on the information expeditiously  
22 or at all.

23 Q And so at this time is it fair to say, February  
24 28th, 1990, that the relationship between the  
25 Milgaard group and Federal Justice was at the



1 point I think where you said there was no trust,  
2 at least on your side, that they would be doing  
3 what you asked them to do?

4 A Yes.

5 Q Had you contemplated just following it up on your  
6 own and not giving it to Federal Justice or what  
7 prompted you to share the information?

8 A As much as we were playing our own game, so to  
9 speak, in terms of mobilizing the public on the  
10 political side, I think it would have been  
11 inappropriate for us to not provide the Department  
12 of Justice with the information as to the identity  
13 of the true killer. We still, crazy as it may  
14 sound, hoped and knew in the end that if this were  
15 going to be the identity of the killer, that the  
16 officials would have to be involved and therefore  
17 had to be notified.

18 Q And again would it be, if we contrast it with  
19 another information witness, if I can call it that  
20 way, someone who might have information, are you  
21 telling us that because this involved possibly the  
22 true killer at that time, that the authorities  
23 would be the appropriate ones to investigate and  
24 deal with that?

25 A Yes.



1 Q And what about, and I think it was termed the  
2 parallel investigation, and I will go through some  
3 of the documents with you, and I know Mr. Pearson  
4 testified about discussions he had with you and  
5 concerns back and forth about what impact Mrs.  
6 Milgaard and Paul Henderson's investigation of  
7 Larry Fisher might have on their investigation and  
8 vice versa, but can you tell us just generally,  
9 did you have any concerns about conducting your  
10 own investigation into this matter while the  
11 authorities were doing so as well?

12 A Well, I'm not sure -- I've seen some of the  
13 documents and I think you can see, and I read with  
14 interest Sergeant Pearson's evidence and I think  
15 you can see how I was being torn in two different  
16 directions. I was not entirely happy with the  
17 idea of a parallel investigation into a murder  
18 suspect. I fully recognized that there needs to  
19 be professionalism and a certain, or a large  
20 degree of finesse about how to go about doing  
21 that. It was so profoundly important to our case  
22 that I was even more concerned about ensuring that  
23 a top quality investigation be done.

24 Q And you had a fair bit of interaction with  
25 Sergeant Pearson of the RCMP, did you, over this



1 time frame?

2 A Yes, I suppose.

3 Q And again his evidence on the timing, and again  
4 I'll take you through some of these documents, Mr.  
5 Asper, I don't mean to be putting you on the spot  
6 without looking at them, but there seemed to be,  
7 at least Mr. Pearson's evidence was that there was  
8 a great deal of pressure to get this done  
9 immediately and there were some deadlines provided  
10 by the Milgaard group to get this done and I think  
11 Mr. Pearson's evidence was lookit, I was going as  
12 fast as I reasonably could, and I think he said as  
13 well he thought, in the circumstances, as quick as  
14 one could expect, and I think he was asked the  
15 question about the fact that some of the  
16 impatience, if I can call it that, of the Milgaard  
17 group at this time may have been unrelated to Mr.  
18 Pearson's speed of investigation, but rather  
19 previous matters; is that fair?

20 A Without a doubt, without a doubt.

21 Q And let me go back. If this information had come  
22 to light on December 29th, 1988, the day after you  
23 filed your application, would it be fair to  
24 conclude that you might have been, you might have  
25 given, allowed more time or been less impatient --



1 or pardon me, more patient with them, allowing  
2 them to do the investigation than how it unfolded?

3 COMMISSIONER MacCALLUM: Is that the tip  
4 you speak of as the information?

5 MR. HODSON: Yes.

6 COMMISSIONER MacCALLUM: Okay.

7 BY MR. HODSON:

8 Q Do you understand where --

9 A I'm itching to provide you with an answer that  
10 says something along the lines of the information  
11 was in fact there if we had complete disclosure to  
12 Justice when our first application was made, but I  
13 won't say that. Yes, by the time the Fisher  
14 information came to light through the tip and  
15 through the Pearson investigation, the Milgaard  
16 group was at wit's end and was not inclined to be  
17 patient.

18 Q And is it fair to say that when Sergeant Pearson  
19 then was investigating the Fisher matters and Mr.  
20 Williams was dealing with matters, that the  
21 Milgaard group was far less accommodating than it  
22 would have been a year earlier because of the  
23 events that transpired from December of '88 to  
24 February of 1990?

25 A Yes.



1 Q And I'll take you through some of the documents,  
2 we've already talked about Mr. Harvard, and I  
3 think that's when information first came at least  
4 to the public's attention through the media --  
5 well, this was actually through a House of Commons  
6 committee, that the police were actually  
7 investigating another suspect, and I think it was  
8 May 10th that that came about, and I'll take you  
9 through the documents, but generally was there  
10 some desire on your part to keep this  
11 investigation out of the media for a time to allow  
12 the investigation to happen?

13 A Yes, there was -- yes. Personally you mean?

14 Q Yes.

15 A Yes.

16 Q And why was that?

17 A I had spoken with Sergeant Pearson and I accepted  
18 his bona fides that he was going to investigate  
19 and do his best and I was well aware of the  
20 difficulty police officers, particularly  
21 associated with this case given the publicity that  
22 had preceded the tip, how difficult it might be to  
23 conduct the kind of investigation he was going to  
24 have to conduct under the glare of a spotlight.

25 Q And so you, David Asper, felt that in those



1           circumstances you did not want the fact that there  
2           was an investigation in the media or in the public  
3           until Mr. Pearson had a chance to do his work; is  
4           that fair, because it might have an impact on his  
5           work?

6           A       Yes. I was also, though, as I've said I think  
7           several times, once you start the media ball  
8           rolling, so to speak, it's very -- it's impossible  
9           to stop it, particularly to the extent that it  
10          had, the media had gotten onto our case.

11          Q       And I think prior to Mr. Harvard making the  
12          statement or asking the question of the minister  
13          and the House of Commons committee, had you or  
14          Mrs. Milgaard or others in your group disclosed  
15          the fact that there was this investigation to the  
16          media either on an off the record or on some  
17          conditions?

18          A       I believe we had in an effort to try to calm  
19          everything down.

20          Q       And so you would share that information with some  
21          media saying lookit, here's what's happening, but  
22          you can't print it, or you would make an  
23          arrangement with them that --

24          A       Yeah. I can't say exactly how we would have said  
25          it. I think we would have been very careful about



1           what was going on.

2           **Q**       And then the next issue comes about, and we'll see  
3                    this in the documents, when, about the disclosure  
4                    of the name of the suspect and I think that was  
5                    June 21, 1990 when the CBC I believe was the first  
6                    to publicly identify him as the target of the  
7                    investigation; is that correct?

8           **A**       Well, it was the name, the criminal record, the  
9                    location.

10          **Q**       Yes, I appreciate that, but --

11          **A**       Yes.

12          **Q**       -- certainly up until that point I think there was  
13                    some media reports that said there is an  
14                    investigation of a suspect, he's at the Prince  
15                    Albert Penitentiary, he committed rapes --

16          **A**       Right.

17          **Q**       -- but not here's who he is?

18          **A**       Right.

19          **Q**       And again can you tell us generally, did you have  
20                    concerns about the identity of the suspect being  
21                    made public? Can you tell us what went into your  
22                    thinking there?

23          **A**       Without a doubt we had very, very serious concerns  
24                    about the identity of the suspect. I can tell you  
25                    that the most, most vocal concerns came from David





1 Milgaard himself who was wildly insistent that we  
2 not, in his words, in David Milgaard's words, do  
3 to Larry Fisher what was done to him, David  
4 Milgaard, and he was very, very insistent that we  
5 not disclose and pillory Larry Fisher.

6 Q And when you say done to David, to do to Larry  
7 what was done to David, are you saying that David  
8 Milgaard did not want to convict Mr. Fisher in the  
9 media before the Court had done so?

10 A Yes.

11 MR. HODSON: This might be an appropriate  
12 spot to break.

13 *(Adjourned at 2:53 p.m.)*

14 *(Reconvened at 3:19 p.m.)*

15 MR. HODSON: Before we resume with Mr.  
16 Asper's evidence there's one housekeeping matter  
17 I should have brought up earlier, Mr.  
18 Commissioner, and that relates to a matter that I  
19 raised when we adjourned back in February.

20 There -- the Commission has  
21 received 50 new audio tapes from counsel from  
22 Joyce Milgaard, being audio tapes prepared in I  
23 think basically 1990, 1991, and 1992. Those were  
24 provided to the Commission on the basis that --  
25 to allow me to listen to the tapes and for me to



1           determine whether I felt they were relevant. I  
2           think there was an issue raised last fall when  
3           the position taken was that they were not  
4           relevant. I listened to either all of the tapes,  
5           and ended up having them transcribed, which was a  
6           lengthy process and went through most if not all  
7           of them, and in my view a significant part of the  
8           tapes are relevant to at least be in the  
9           Commission database, and relevant to be put to  
10          witnesses in some cases. I've advised Ms. McLean  
11          of my views on that.

12                   I have removed -- there are  
13          portions of the tapes that contain personal  
14          matters or matters unrelated to the work of the  
15          Commission, and those I have culled out. I  
16          provided them to Ms. McLean to review the  
17          transcripts, I think they also did their own  
18          review at an earlier stage, and so we've managed  
19          to cull out that.

20                   The transcripts refer to a  
21          number of conversations pertaining to Mr. Asper.  
22          I've provided, with Ms. Maclean's consent, those  
23          transcripts to Mr. Sorochan about a week or so  
24          ago, and I have received confirmation today from  
25          both Ms. McLean and Mr. Sorochan that they have



1 no objection to these transcripts being a part of  
2 the database.

3 We will -- and I think I've  
4 advised or shared this with some counsel today --  
5 up until today I was not in a position to release  
6 them; they will go up on CaseVault, which is a  
7 process that we -- when we put them up on  
8 CaseVault they don't always become available for  
9 a day or two, I can't control that, so we are  
10 arranging to have compact -- or CDs made of the  
11 transcripts and available to the parties either  
12 tonight or tomorrow morning, and perhaps after we  
13 adjourn today I can talk to counsel and give them  
14 some idea of what's there.

15 So I just thought I would raise  
16 that matter. Some of the transcripts I will be  
17 referring to possibly even today with Mr. Asper,  
18 certainly tomorrow.

19 COMMISSIONER MacCALLUM: Okay. Continue  
20 then?

21 BY MR. HODSON:

22 Q Back when we adjourned, Mr. Asper, we were talking  
23 about the disclosure of Mr. Fisher by the CBC in  
24 June of 1990. Do you know how they learned of Mr.  
25 Fisher, how that came about that they -- that they



1 published that information and others had not?

2 A I don't recall specifically who provided them with  
3 the information. Umm, my recollection is that  
4 they came to us with an offer to commit resources  
5 to investigate and the information was provided to  
6 them. I can't remember who though.

7 Q And so information about Larry Fisher was provided  
8 to them. And, again, was that -- was there any --  
9 you talked earlier about restrictions placed on  
10 other media not to publish it, was there some --  
11 I'm just trying to get a general sense of how it  
12 was in June rather than May and why it was the CBC  
13 and not someone else that published this  
14 information; are you able to shed any light on  
15 that?

16 A I don't recall.

17 Q Again, I think you -- and we'll go through some of  
18 the documents that reflect your dealings with  
19 Sergeant Pearson -- can you tell us generally what  
20 was your relationship like with Sergeant Pearson  
21 on this matter and your, and your dealings with  
22 him?

23 A I thought we had a pretty good relationship.

24 Q And, again, I'll take you through some of the  
25 documents. Did he provide information to you from



1           time to time and you provide information to him  
2           from time to time?

3           A           Yes.

4           Q           And did you have any concerns about the manner in  
5           which he was approaching the work he was doing on  
6           the investigation?

7           A           No, I thought we both were as candid with each  
8           other as we could be.

9           Q           And what about the time it took Sergeant Pearson  
10          to do what he was doing; did you have any concerns  
11          about that?

12          A           Would I have preferred that Sergeant Pearson could  
13          wave a magic wand and get results faster, yes, so  
14          I had concerns because I was managing the Milgaard  
15          family and a media hoard that had been unleashed  
16          and a public that was growing increasingly  
17          interested in the case, and I -- so yes, I was  
18          concerned, umm, but not because of anything  
19          Sergeant Pearson was or wasn't doing. I was  
20          concerned that the natural pace of an  
21          investigation may not coincide with the pace of  
22          the publicity that we had generated and the  
23          expectations of the family, the Milgaard family.

24          Q           And so is it fair to say that although you would  
25          have, you would have liked to have had him move



1           quicker because of these other demands and other  
2           issues, would you agree that he was doing -- going  
3           as quickly as he could in the circumstances, or  
4           did you have concerns about, about the timing of  
5           his work?

6           A       No. As far as I was aware I think he was -- I was  
7           satisfied that he was working as hard and as fast  
8           as he could.

9           Q       And again just generally, as far as his  
10          objectivity, did you have any concerns, based on  
11          your dealings with him, about how he was  
12          approaching the work he was doing?

13          A       No. As I say, I thought I had a pretty good  
14          relationship with him. It was quite refreshing,  
15          actually.

16          Q       And page 016133. And this is a memorandum of Mr.  
17          Williams to his file February 28th, 1990, and it  
18          looks as though he is referring to a phone call  
19          you made from Florida providing the information  
20          from Mr. Wolch -- that Mr. Wolch had received; is  
21          that right?

22          A       Yes.

23          Q       And, again, was there any reason that Mr. Wolch  
24          didn't call him, or were you -- Mr. Williams, or  
25          were you the one dealing with him?



1 A I -- I -- I don't know.

2 Q And here, if we can just scroll down, so what  
3 happened Mr. Wolch gets the call, he phones you in  
4 Florida and says "here's what we've learned", and  
5 then you phoned Mr. Williams?

6 A Yes, I assume that's what happened.

7 Q And did you ever talk to Sidney Wilson, Bud, or  
8 Bruce, the informant?

9 A No.

10 Q And here there is reference to being contact made  
11 via a radio station; what do you recall about  
12 that?

13 A Well, as I say, I -- umm, somewhere along the way  
14 some -- at some point I recall the contact point  
15 being to call radio station CJWW and ask for Bud.

16 Q And was that information you received from  
17 Mr. Wolch, then, based on his call with this  
18 fellow?

19 A I don't recall exactly where I got that  
20 information.

21 Q And did you make efforts to try and contact this  
22 individual?

23 A Several, yes.

24 Q If we can call up 025656. This is your February  
25 28th, 1990 letter to Mr. Williams, and first



1 paragraph I won't go through, it just confirms the  
2 telephone conversation. And then, as well, you  
3 say:

4 "Our information is that an individual  
5 named Larry Fisher and his wife rented  
6 the basement portion of the Cadrain  
7 residence in Saskatoon for a period  
8 covering the date of the death of Gail  
9 Miller."

10 And I don't believe that this was information  
11 that Sidney Wilson, or the informant, provided  
12 Mr. Wolch. Umm, do you know where this  
13 information; where you would have obtained this  
14 information?

15 A Well as I say, as soon as we got the tip the  
16 information was shared with me and with  
17 Mrs. Milgaard, and we scrambled to find out  
18 where -- where -- because the name rang a bell,  
19 certainly with Joyce, and we scrambled, and it  
20 may -- from what you have told me today, it may  
21 have come from Mr. Carlyle-Gordge's notes.

22 Q Now Mr. Carlyle-Gordge's notes in '83 simply  
23 recite the police report that they interviewed  
24 Larry Fisher that lived at that address, it made  
25 no mention of the fact that he lived with his wife





1 in the basement portion of the residence, it just  
2 gave his address. And, again, would that other  
3 information, would that be from Mrs. Milgaard or  
4 Peter Carlyle-Gordge or from the file, do you  
5 know? Do you know where that information came  
6 from?

7 A I don't. I'm assuming it came from our files  
8 somewhere in the archives.

9 Q And then you say:

10 "Obviously, this could be very important  
11 in the development of the Milgaard  
12 s. 690 application, and one which we  
13 respectfully believe ought to be fully  
14 investigated. As we have indicated in  
15 our earlier correspondence, we have no  
16 funds with which to retain an  
17 investigator. We would very much  
18 appreciate your considering making  
19 sufficient funds available to us in  
20 order that we might take the appropriate  
21 steps, failing which we would very much  
22 like to be advised as to the status of  
23 any investigation that your office might  
24 undertake."

25 And I think it was this, this information, I



1 think shortly after Sergeant Pearson became  
2 involved; is that right?

3 A I believe so, yes.

4 Q And then the next page, I think you told Mr.  
5 Williams:

6 "If we learn of any other matters  
7 relating to this new development we will  
8 advise you in due course."

9 And, again, was that the approach you took, then,  
10 with Federal Justice as far as information  
11 relating to Larry Fisher?

12 A Yes.

13 Q And who would you provide that information to?

14 A Who would I provide?

15 Q Yes, which individual, was it Mr. Pearson,  
16 Mr. Williams, or -- at this stage you don't know  
17 about Mr. Pearson, but --

18 A In terms of who would I contact in relation to the  
19 last paragraph?

20 Q Yes?

21 A Last sentence? It could be, I would assume, Mr.  
22 Williams.

23 Q Okay. And once Sergeant Pearson was appointed did  
24 you start to have more contact with Mr. -- or  
25 Sergeant Pearson than you did with Mr. Williams?



1 A Yes.

2 Q If we can go to 009086. And this appears to be,  
3 it looks like, and I'm not sure; did the letter --  
4 I'm trying to sort this out. It looks as though  
5 you had a telephone conversation on February 28th,  
6 you then sent the letter, and then it looks like  
7 there was a second telephone conversation with the  
8 following additional facts; does that -- is that  
9 correct, am I reading those documents right?

10 A It looks to be so, yes.

11 Q And this is Mr. Williams' note about what he says  
12 you told him on the phone, he says:

13 "Apparently Larry Fisher was married to  
14 Linda Fisher when Gail Miller was  
15 murdered. They had a daughter named  
16 Tammy."

17 And, again, would that be information, on  
18 February 28th, 1990, that you would have got from  
19 the files?

20 A I have no idea.

21 Q Well, would Mrs. Milgaard have provided that to  
22 you, do you think?

23 A I have no idea.

24 Q Would it be someone in your group, as opposed to  
25 an external source, that would have provided that



1 information?

2 A I would -- I assume so, yes. I don't, I just  
3 don't recall where any of this information came  
4 from.

5 Q And then it says:

6 "Apparently Larry Fisher took the bus at  
7 approximately 6:30 a.m. on January 31,  
8 1969."

9 Again, any idea where that came from?

10 A No.

11 Q Number 3:

12 "Linda Fisher was interviewed by T.D.R.  
13 Caldwell about this matter at or shortly  
14 after the event in 1969."

15 Do you have any recollection of that information?

16 A No.

17 Q Now Linda Fisher and Mr. Caldwell have both  
18 testified and both have said that that -- that she  
19 was not interviewed by Mr. Caldwell back in 1969,  
20 and do you know where this, do you have any  
21 explanation as to why that would have been in the  
22 memorandum?

23 A Nope.

24 Q Do you have any recollection whether you, whether  
25 you told Mr. Williams this, is it possible he



1           misconstrued something?

2           A           I don't remember that piece of information ever  
3           being part of anything that I had to do with.

4           Q           Yeah.

5           A           I don't recall ever being told or informed or  
6           advising anybody that Mr. Caldwell would have met  
7           Linda Fisher in 1969.

8           Q           I think there's some follow-up documents that I  
9           think suggest that this was an error, either --  
10          somewhere along the way, that -- and would that  
11          accord with your recollection?

12          A           Yes.

13          Q           Now, again, at this point, Mr. Asper, was there  
14          some point -- and you talked about earlier the CBC  
15          show in January, or June of 1990 that highlighted  
16          Mr. Fisher's activities. At what point, or what  
17          was the information that led you to conclude that  
18          "lookit, this person, I think, is the person  
19          responsible for Gail Miller's murder", or was it  
20          an evolutionary process?

21          A           It was partly evolutionary, and I'm -- and I'm not  
22          sure, umm, I'm -- I'm a bit jumbled on when  
23          certain things happened. But I was very, umm,  
24          nervous about jumping to the conclusion that  
25          Fisher was the true perpetrator, umm, and I was



1 nervous a long way down the path as the  
2 information got developed until, and I can't  
3 remember whether it was Jim McCloskey or Paul  
4 Henderson gave me the, "if it walks like a duck,  
5 talks like a duck, it's a duck" speech, and talked  
6 about -- I remember talking about Akim's razor, it  
7 being a rule of logic, umm, and then that sort of  
8 tipped me over. But I was very, I was very leery  
9 about being an accuser.

10 Q And I think, and we'll see some documents later, I  
11 think that discussion with Mr. Henderson may have  
12 been around May of 1990; does that --

13 A It may have been.

14 Q -- sound right?

15 A It was, it was -- I got -- it was like a revival  
16 meeting in the boardroom at our law firm, I just  
17 remember that.

18 Q And so prior to that, again, can you elaborate a  
19 bit on what were your concerns about being an  
20 accuser?

21 A Umm, I didn't like being an accuser, I just did  
22 not feel comfortable accusing anybody of murder.

23 Q And, again, to the extent --

24 A I mean much as I wanted to, as much as I wanted to  
25 solve the case, because by implication it would



1 take care of David's problem, it's just -- it's,  
2 umm, it's wearing a different hat and I didn't  
3 like it.

4 Q Now I think the earlier memo indicated that you  
5 were in -- no, I'm sorry, I should have finished  
6 up this memo. It says:

7 "These details apparently emanate from  
8 Joyce Milgaard who mentioned the name of  
9 Larry Bryan Fisher as Gail Miller's  
10 assailant."

11 So do I take it, from that, that the information  
12 that you provided to Mr. Williams that didn't  
13 come from Sidney Wilson and the phone call to  
14 Hersh Wolch, that that would have come from Joyce  
15 Milgaard?

16 A Yeah. It's an odd notation, the fourth one, the:  
17 "... details ... emanate from Joyce  
18 Milgaard who mentioned the name of Larry  
19 Bryan Fisher as Gail Miller's  
20 assailant."

21 Q Yes.

22 A In fact she -- that didn't come from Joyce  
23 Milgaard, that came from the tip.

24 Q Okay. And I think --

25 A It's odd language, it's odd wording.



1 Q Yeah. And again, this is Mr. Williams' language,  
2 I think what he's saying is these details about  
3 Larry Fisher and Linda Fisher come from Joyce, who  
4 mentioned the name Larry Fisher as Gail Miller's  
5 assailant, and I think you are saying "I take  
6 issue" -- do you take issue with whether Joyce, at  
7 this date, said Larry Fisher was the assailant?

8 A No. I think it's odd that he is positioning Joyce  
9 as the accuser when, in fact, the tip was the  
10 accuser.

11 Q Okay.

12 A So it's just odd language.

13 Q Okay. Now --

14 COMMISSIONER MacCALLUM: What about 1, 2,  
15 and 3; did that come from Joyce Milgaard?

16 A I don't know. I don't recall.

17 COMMISSIONER MacCALLUM: Don't know? Okay.

18 A I don't recall, no.

19 BY MR. HODSON:

20 Q Now I think an earlier document suggested that you  
21 were in Florida until March the 8th, and we know  
22 from Mr. Henderson's evidence and other documents  
23 that on March 9th, 10th and 11th Joyce Milgaard  
24 and Paul Henderson went out and located Linda  
25 Fisher and interviewed her, and as well Larry's





1 mother and aunts and uncles, Cliff and Roy  
2 Pambrun, around that time frame. Did -- are you  
3 able to tell us how that came about, were you  
4 involved in that decision to go out and, or have  
5 them go out and interview these people?

6 A Umm, I'm -- I'm -- I don't recall. I'm sorry but  
7 I really don't recall.

8 Q Would it be -- would it have been the practice at  
9 the time, would you and Joyce Milgaard have kept  
10 fairly close in touch on matters around this time?

11 A Oh, there is no question, and there is no question  
12 that I would have participated in the discussions  
13 about finding Linda and interviewing her. Umm,  
14 I'm not placing Sergeant Pearson in that, though,  
15 and I -- so I'm fuzzy on the details.

16 Q Yeah. I will assist you. I think that about  
17 March 14th you call Sergeant Pearson, I think  
18 that's -- around that date is your first contact  
19 with him, but -- and again, let me just back up,  
20 and this appears to be the first the time that  
21 Paul Henderson got involved.

22 A Okay.

23 Q What is your recollection of how Centurion  
24 Ministries and Paul Henderson became involved?

25 A Umm, well, Joyce had had several or numerous



1           conversations, I believe, with Centurion  
2           Ministries over the years. The disclosure of the  
3           Fisher tip convinced Jim McCloskey, the head of  
4           Centurion Ministries, to deploy a resource to the  
5           case, and he did so, in the form of Paul  
6           Henderson.

7           Q       And what did you understand, who did you believe  
8           Paul Henderson to be, or what information did you  
9           have about him and the role he would play?

10          A       I -- my understanding was he was a journalist, or  
11          a former journalist with the Seattle newspaper who  
12          had won a Pulitzer Prize, I believe, for his work  
13          on the *Bundy, Ted Bundy* case, or had done some  
14          investigative work on murders before, that he was  
15          a venerable and well-trusted colleague of Jim  
16          McCloskey, and that he could help us.

17          Q       And would that be as an investigator, to go out  
18          and interview witnesses, --

19          A       Yes.

20          Q       -- was that the role you saw for him?

21          A       Yes.

22          Q       And at this point was there any reason, again you  
23          mentioned lack of resources in some earlier  
24          letters, was there any reason that you had not  
25          engaged a private investigator prior to this time?



1 A We didn't have the funds.

2 Q And again, with Mr. Henderson, I think he  
3 testified that there was an arrangement made for  
4 him to come and provide some time I think just  
5 covering his expenses; is that -- was that one of  
6 the reasons that he was hired, because he was  
7 free?

8 A My understanding is Centurion Ministries was  
9 paying for him.

10 Q I'm sorry, yeah, I'm sorry. I don't mean to say  
11 that you took him because he was free, but that he  
12 was an investigator that became available at no  
13 cost or little cost to the Milgaards, and that  
14 therefore he was utilized?

15 A That's correct.

16 Q If we can go to 333339, please. And this is a  
17 document I think from Mr. Williams, and if we can  
18 go to the next page, it is a -- it's not a very  
19 good copy, and we don't need to spend much time on  
20 it, but I think it is Larry Fisher's criminal  
21 record.

22 A Uh-huh.

23 Q I think it's the CPIC, and I will show you a bit  
24 later some other copies. The evidence that we've  
25 heard to date is that, when Larry Fisher's name



1           came to light, that I think up to three different  
2           people got a CPIC for him, Mr. Williams,  
3           Mr. Pearson, and you, all of which showed his  
4           offences, the rape offences in 1971 having  
5           occurred in -- or having Regina listed; do you  
6           recall that?

7           A           Yes.

8           Q           And I think, and correct me if I'm wrong, that for  
9           from February until about early July 1990  
10          everybody, and when I say "everybody" I mean the  
11          Milgaard groups, you, Mr. Pearson, Mr. Williams,  
12          operated on the basis that Mr. Fisher had  
13          committed the rapes in the 1968 to '70 period in  
14          Regina because the CPIC showed Regina, which is  
15          where he entered the pleas as opposed to committed  
16          the crimes; is that a fair statement?

17          A           Yes.

18          Q           And then I'll show you the document a bit later  
19          when it's discovered. And I think Sergeant  
20          Pearson's evidence was that he doesn't know who,  
21          umm, sort of where it started, it appears that  
22          there's three different criminal records. You got  
23          your own CPIC, or your own record, is that  
24          correct?

25          A           Yes.



1 Q And then that listed Regina as the location where  
2 he entered the plea?

3 A Yes.

4 Q And based on that, and I'll show you a letter in a  
5 moment to Mr. Williams where you, I think, suggest  
6 the crimes were committed in Regina; --

7 A Yes.

8 Q -- was that based upon the CPIC that you got?

9 A Yes.

10 Q If we could go to 182126. And this is a memo, I  
11 think, to Hersh from presumably somebody in, in  
12 his or your office at the time, and it's got a  
13 letter attached that I think was sent to Kim  
14 Campbell from David Milgaard. It appears --  
15 sorry, if we can just go back to the previous  
16 page -- it appears that he called and asked you to  
17 send a letter, and then the next page I think is  
18 the letter. And I'm not sure that it was sent, I  
19 believe it was, but in any event this appears to  
20 be what David Milgaard wanted to be sent to the  
21 Minister at the time. And he says here, there's  
22 just a couple questions, and again this is March  
23 2, 1990 so it would be a couple days after the  
24 Larry Fisher information came about; do you know  
25 whether David Milgaard would have been aware of



1           this new information around the time it was  
2           received, or do you have any recollection as to  
3           when he would have been told about this new piece  
4           of information?

5           A        The Fisher information?

6           Q        Yes?

7           A        Umm, I -- my recollection is he would have been  
8           told contemporaneously because, as I say, David  
9           Milgaard was, umm, the most insistent that we not,  
10          as I said before, improperly accuse Fisher of  
11          anything.

12          Q        And so here, this letter I think expresses his  
13          frustration about the time it takes, this says:

14                    "My whole family and myself do not  
15                    understand why this has all taken so  
16                    long. It is my hope that you are able  
17                    to do what should have been done some  
18                    time ago. The scientific opinion  
19                    expressed by Dr. James Ferris needs to  
20                    be evaluated. We asked for that a long  
21                    time ago. The improper police  
22                    procedures are a matter of record too.  
23                    There is so much more."

24                    And it goes on to ask that this be done quickly  
25                    and talks about:



1                    "... all of us are very frustrated."

2                    And I think we touched on this a bit earlier. At  
3                    the time that the Fisher information came to  
4                    light I think you said that you felt that a  
5                    decision from the Minister was imminent, or at  
6                    least the investigation was done and a decision  
7                    was coming, and it was likely going to be  
8                    unfavourable was your sense; is that right?

9                    A                    Yes.

10                  Q                    And, at this time, would it be fair to say that  
11                    David and Joyce Milgaard were frustrated with the  
12                    amount of time it was taking to get an answer from  
13                    the Minister?

14                  A                    Yes.

15                  Q                    And as well, and I may include you in that group  
16                    as well, frustrated in not getting feedback on the  
17                    information you provided, in other words  
18                    commentary on -- I mean this talks about the  
19                    Ferris report, tell us what you think about it,  
20                    have you evaluated it, is it good, is it bad,  
21                    those types of things; would that be fair that you  
22                    were looking for that feedback and not getting it?

23                  A                    Well this letter -- and I'm not sure if it was  
24                    ever sent -- but this letter, in a very clear way,  
25                    establishes or shows the basic problem; is that



1 the Department of Justice had in its hands, as I  
2 recall at this point, their own report  
3 discrediting Dr. Ferris, and they had the Deborah  
4 Hall statement and whatever else they had  
5 investigated, and had not communicated to us. So  
6 feedback, absence of feedback absolutely was a  
7 very important problem in trying to understand  
8 where Justice was headed, and in trying to manage  
9 and inform our client.

10 Q Did -- were you ever informed, by Mr. Williams or  
11 anybody else at Justice, that their role was to  
12 investigate and advise the Minister and that they  
13 could not speak on behalf of the Minister, in  
14 other words it was his or her decision and until  
15 they made it they couldn't comment on the  
16 information being good or bad, or anything of that  
17 nature?

18 A I would be very disheartened to hear that that was  
19 their view.

20 Q And --

21 A Nobody ever told me that view.

22 Q So as far as --

23 A And, in fact, their conduct belied that in the  
24 sense that they did in fact have meetings with us  
25 and off the -- sort of informally, in





1           conversations, did in fact give us information.

2       **Q**       And so did you get feedback, then, at some point?

3       **A**       Snippets occasionally, yes.

4       **Q**       So again as, your evidence is as far as a reason  
5           as to why Justice could not give you feedback on  
6           Ferris, Hall and other matters, I think your  
7           reason is you were not made aware of any internal  
8           reason why they couldn't do so; is that fair?

9       **A**       Absolutely not.

10      **Q**       And then, again, 333356. And this is a letter  
11           from, dated March 9th -- or sorry -- March 4th,  
12           1990 from Mrs. Milgaard directly to the Minister  
13           of Justice, and again just providing information,  
14           I think there is a video tape, and then the next  
15           page:

16                        "Isn't the new information terrific?",  
17           which I'm assuming is relating to the Fisher  
18           information. At this point, Mr. Asper, did  
19           you -- I think you talked earlier about starting  
20           to go beyond dealing with just Mr. Williams and  
21           dealing directly with the Minister, and I'll show  
22           you a letter a bit later where Mrs. Milgaard  
23           writes to the Minister in stronger terms, but was  
24           this -- was this the time frame, then, when you  
25           started to go around or over the head of Eugene



1 Williams, I think was your evidence earlier?

2 A Yes.

3 Q And then 157051. And this is Mr. Williams, again  
4 March 5, asking you for information, or an  
5 opportunity to speak to Mr. Williams directly, and  
6 I think you told us you couldn't find him; is that  
7 right?

8 A I believe so, yes.

9 Q If we could go to 076270. This is the first page  
10 of the interview between Joyce Milgaard, Paul  
11 Henderson, and Linda Fisher, and I think it's  
12 around March 9th. And we've heard evidence from  
13 Linda Fisher and Paul Henderson on this, and I  
14 don't propose to go through it with you, but can  
15 you tell us -- and again, I had mentioned earlier  
16 that I think you had got back from, at least the  
17 documents suggest you got back on March 8th from  
18 Florida; do you recall what information would have  
19 been provided to Mr. Henderson or what  
20 instructions, or anything of that sort, prior to  
21 him going to see Linda Fisher?

22 A No, I don't recall.

23 Q And do you recall what his, his mandate would have  
24 been or his objective, did you have -- play any  
25 role in that saying, "lookit, here's what we'd



1           like you to get from Linda Fisher"?

2           A           I may have. I probably spoke to him on the  
3           telephone but I don't recall specifically.

4           Q           Now the evidence of Mr. Henderson and Linda  
5           Fisher, and what the documents suggest, is that  
6           over the weekend of March 9th, 10th, and 11th of  
7           1990 Mrs. Milgaard and Mr. Henderson interviewed  
8           Linda Fisher, I think they tried to contact  
9           Larry's mother, Larry Fisher's mother, although  
10          that may have been a few days earlier, Cliff and  
11          Roy Pambrun, and there -- in this transcript, I'm  
12          going to show you parts of it, but it appears that  
13          one or both of them have been in touch with you by  
14          telephone to discuss what they have learned and to  
15          discuss some strategies; do you recall that  
16          generally happening?

17          A           I -- probably, but I don't recall. It probably  
18          happened, I don't recall it though.

19          Q           And was Mrs. Milgaard in the habit of taping  
20          interviews with witnesses; were you aware of that?

21          A           Yes.

22          Q           And, once she got back from the interview would  
23          you have had an opportunity to either listen to  
24          the tape or review a transcript of it?

25          A           I would assume so, yes.



1 Q Now this transcript is the initial interview of  
2 March 9th, and I think the evidence is from Mr.  
3 Henderson that the next day they went back, took a  
4 statement from Linda, and had some further  
5 discussions, and there's some references to phone  
6 calls about how to approach Linda and how to get  
7 her assistance to try and get some information  
8 from Larry Fisher.

9 And if we can go to 043662, this  
10 is day two, and so this is Joyce, Paul Henderson,  
11 Linda Fisher, and if we can go to the next page,  
12 and at the bottom I think this is Mr. Henderson  
13 and Mrs. Milgaard talking while Linda Fisher was  
14 either in the back seat, or I'm not sure if she  
15 was listening to this part or not, and Henderson  
16 says:

17 "I've got to ask you something, did ...  
18 did.. when you were talking to your  
19 lawyer last night, or this morning, did  
20 he go into detail with you about his  
21 plan about maybe getting Larry a deal?"

22 And then the next page:

23 "Ya. I mentioned that to her ...",

24 and then:

25 "To her..."



1                   And I think that's maybe referring to Linda  
2                   Fisher.    And:

3                   "I mentioned to her today... I said to  
4                   her when we were talking, I said you  
5                   know it may be that they want to ...  
6                   will want to put someone in undercover  
7                   to talk to Larry."

8                   Henderson:

9                   "No what he's talking about is is is..um  
10                  uh... you and he going into prison and  
11                  telling Larry if he would give us the  
12                  truth he might... letting Larry  
13                  think..."

14                  "that he might get a deal..."

15                  Henderson:

16                  "Well letting him think, number one that  
17                  we're going to catch him on it..."

18                  "Ya, that we already know."

19                  And then Henderson:

20                  "We know and we've got the proof.  
21                  Umm... but telling him basically look,  
22                  we can prove it, at least in the minds  
23                  of the public, but umm... and you're  
24                  going to be in hot water if we go public  
25                  with this.  On the other hand, the



1 lawyer saying to him."

2 "Are you recording?"

3 "Ya."

4 And then skip down here:

5 "But saying to him, if you want to  
6 co-operate with us and admit to this, we  
7 will be your liaison between you and the  
8 Justice Department and see what kind of  
9 a deal they might be willing to work  
10 out. And his... you know his rationale  
11 for that was the Justice Department  
12 would go for this because it gives them  
13 a chance to look good. Um... like  
14 they've discovered it, maybe on their  
15 own. They've got this... they talked to  
16 him, he confessed. Uh... it makes them  
17 look better ...",

18 and then down, Mrs. Milgaard:

19 "Well maybe we should discuss that with  
20 Linda. Um.. with the idea that we uh...  
21 because at one time he talked about  
22 uh... David Asper going up with Tammy."

23 Q And then the next page:

24 "Ya well he was considering doing that.  
25 Um... it's not a bad idea, it's worth a



1 try. In which case, what you're holding  
2 is... what you're doing is holding back  
3 on the publicity. In other words,  
4 you're not going to besmirch Larry  
5 Fisher, label him a killer all over  
6 mainland Canada on every T.V. screen in  
7 the entire country, giving him a chance  
8 to admit it first, with the possibility  
9 of getting a deal. He says... I said  
10 what do mean..."

11 That's just maybe not recorded very well,  
12 "... are you talking about plea  
13 bargain... um... where he would only get  
14 so many years. He said I'm talking  
15 about the possibility of him not even  
16 being prosecuted. I can't imagine that  
17 that they would do something like that  
18 though."

19 And I think Mr. Henderson, and I stand to be  
20 corrected, but I think he was saying this related  
21 to information he got from you. Do you have any  
22 recollection of this type of discussion with Mrs.  
23 Milgaard and Paul Henderson about going to Linda  
24 and utilizing her or getting her assistance and  
25 then going to see Larry Fisher in prison either



1 with Linda or the daughter and somehow getting a  
2 deal for him?

3 A Yes, I remember we were brainstorming, how a  
4 co-operative Linda and potentially Tammy might  
5 assist us, and I don't recall specifically the  
6 conversation, but one of the concepts that we  
7 talked about was the possibility that a Fisher  
8 confession or admission done in concert with  
9 potentially some arrangements with the Department  
10 of Justice to David's benefit might be discussed  
11 with Fisher. I seem to also recall at one point  
12 we were looking at me potentially going with Tammy  
13 to try to get some cigarette butts from Larry  
14 Fisher as evidence that we would later test for  
15 DNA. Those are the kinds of things we  
16 brainstormed. I mean, we were never able to -- I  
17 mean, the reality is some of the things that you  
18 brainstorm aren't feasible or doable, but you  
19 certainly brainstorm them.

20 Q And as far as cutting a deal with Larry Fisher,  
21 were you contemplating involving then the  
22 Department of Justice or the Saskatchewan Attorney  
23 General on that or had you progressed to that  
24 stage?

25 A Well, I think there are a couple of ways to





1 approach it, you know, you can certainly lead him  
2 to believe that you can do that without ever  
3 having them involved, which is misleading him to  
4 some degree, or to a large degree, or actually do  
5 it, or actually try to negotiate a deal.

6 Q So you would go see Larry Fisher in prison, say  
7 lookit, we've got the goods on you, if you don't  
8 co-operate we're going to go public, and I think  
9 the words were besmirch your character or  
10 whatever, but if you cut a deal, we'll then go to  
11 Justice and see what we can do if you confess?

12 A I actually recall -- I mean, I don't recall those  
13 exact words, but I remember having the discussion  
14 with Joyce about the coercive effect of  
15 besmirching the reputation of a serial rapist by  
16 calling him a murderer, whether that's going to be  
17 leverage to get him to confess to a murder, and I  
18 remember explaining to Joyce that it wasn't likely  
19 going to happen.

20 Q And what about, did you consider the prospect that  
21 if you did get a confession from Larry Fisher  
22 under those circumstances where you would either  
23 say you could get him a deal or the threat that  
24 you would make his name public if you didn't, that  
25 somehow you would either taint his confession or



1           render any subsequent confession of little or no  
2           value?

3           A       That would never -- that did not cross my mind and  
4           I recall actually having that discussion as well  
5           at some point. We were trying to liberate David  
6           Milgaard, not prosecute Larry Fisher, and so  
7           information that could liberate David was of value  
8           to us. I was not concerned about the evidentiary  
9           value in strict terms of what we might get from  
10          Fisher.

11          Q       So in other words, if you got a confession from  
12          Mr. Fisher under, let's say, misleading  
13          circumstances, you could use that confession to  
14          liberate David Milgaard and you weren't concerned  
15          with whether or not the authorities could use that  
16          against Larry Fisher; is that fair?

17          A       That would describe my position at that time. It  
18          evolved.

19          Q       To what?

20          A       Well, because in discussing with Sergeant Pearson,  
21          I think I became more aware of the possibility  
22          that there may actually be a prosecution, a  
23          subsequent prosecution.

24          Q       Were you concerned, again if you've got a  
25          confession from Larry Fisher under circumstances,



1 and, you know, let's say misleading information or  
2 put pressure on him, were you concerned that that  
3 confession might not be of assistance in your  
4 efforts to free David Milgaard? In other words,  
5 someone would say, well, it's tainted, not only is  
6 it tainted for Larry Fisher's prosecution, it's  
7 tainted for our use?

8 A I have to confess, I may not have been as  
9 concerned as I should have been.

10 Q Go to page 667.

11 A But as I say, my mindset was not Fisher.

12 Q I think what you said is your mindset was what can  
13 this individual give us that will help free David  
14 Milgaard; is that fair?

15 A Yes.

16 Q And so here, again this is just carrying on with  
17 the same discussion, and this is Mr. Henderson,  
18 and I think the he he's referring to is you and  
19 this is what he is saying to Linda Fisher:

20 "Well basically what... what he's saying  
21 is that... is that here's Larry in  
22 there. This Justice Department  
23 investigation is going on. The Justice  
24 Department is under no small amount of  
25 public pressure to get to the bottom of



1 this, plus we're sitting here holding  
2 some cards of our own, developments that  
3 they don't even know about. If I were  
4 the lawyer, now he didn't quite get into  
5 this kind of detail but what I would do  
6 if I went up there is say look Larry, in  
7 addition to the fact that uh... the  
8 Justice Department is hot on you, we've  
9 got more information and... and the  
10 national press is salivating over this  
11 case. You're going to be smeared all  
12 over Canada television and in... in  
13 the... in the press and that's going to  
14 put the Justice Department under even  
15 greater pressure to let David out and to  
16 prosecute you. I wonder if he's smartly  
17 say... well he agreed with me, he said,  
18 there is enough evidence here,  
19 circumstantially to convict. Now that  
20 may, or may not be true. But in other  
21 words, and then he says, alright look,  
22 if you will confess to this. Admit the  
23 crime, what we might be able to do is  
24 work out a deal where you're not even  
25 prosecuted."



1           Again, is that the type of discussions you would  
2           have had with Mr. Henderson at the time?

3           A           Yes, it's familiar. I mean, we were, as I say, we  
4           were brainstorming all kinds of plans.

5           Q           And so here he's talking about developments that  
6           they don't even know about. Are you able to shed  
7           any light on that?

8           A           I don't know what he's talking about there.

9           Q           Okay. And then here there's a reference here that  
10          there's enough evidence circumstantially to  
11          convict you, and I think I asked Mr. Henderson,  
12          you know, and I think at this time what, when I  
13          say you, I think what was available was Linda  
14          Fisher, what she had told the day before. Do you  
15          recall telling Mr. Henderson at this time that  
16          lookit, I think there's enough evidence to convict  
17          Mr. Fisher?

18          A           I don't think I said that.

19                    COMMISSIONER MacCALLUM: Don't what?

20          A           I don't think I said that.

21                    COMMISSIONER MacCALLUM: Okay.

22          BY MR. HODSON:

23          Q           Again, would that have been your view at the time  
24          or did you --

25          A           No, I don't think I had that view at that time.



1 Q And this idea about going public with -- yeah,  
2 you're going to be smeared all over Canada  
3 television and the press, can you elaborate on  
4 that, and again, what were you thinking there, how  
5 did you think that might assist you in getting  
6 something from Mr. Fisher that would assist David  
7 Milgaard?

8 A I don't actually recall that being my view, that  
9 somehow going public was, would have some coercive  
10 effect on Fisher, I don't recall my thinking  
11 there, if I had it.

12 Q Okay. Now, these are Mr. Henderson's words --

13 A Right.

14 Q -- that may well be his, so you are saying you  
15 don't think that was something that was part of  
16 your thought process in the brainstorming, that  
17 you could use the threat of going public to  
18 influence Mr. Fisher?

19 A I don't recall that being in my thinking.

20 Q Now, as well, and I don't need to call them up,  
21 but I think they, they being --

22 A I mean, I have to say, like, I think this is  
23 before I start with Sergeant Pearson, even the  
24 discussion with Mr. Williams, my thinking at this  
25 point was to keep everything as quiet as possible.



1 Q And once you started talking to Sergeant Pearson,  
2 which I think is a few days later, did your  
3 thinking change about how you might want to  
4 approach Mr. Fisher?

5 A Well, my thinking was that we shouldn't approach  
6 Mr. Fisher.

7 Q And leave it to Sergeant Pearson at least for a  
8 while?

9 A Yes.

10 Q Again at that time Cliff Pambrum -- do you  
11 remember the name Cliff Pambrum?

12 A Yes.

13 Q -- who I think was Linda Fisher's uncle, was  
14 interviewed at the time about a vehicle and Larry  
15 Fisher, whether he had access to the vehicle. Do  
16 you recall at this time it being an important fact  
17 to try and find out whether Larry Fisher had a car  
18 on the morning of the murder?

19 A Yes, it was an important fact in the sense that we  
20 were trying to solve the crime, we were trying to  
21 figure out how the crime was committed and had  
22 come to the view that a car had to have been  
23 involved and I seem to recall that Linda had told  
24 Joyce and Paul that there was, that they didn't  
25 have a car, so therefore the quest became to find



1 out whether Larry had access to a car and this led  
2 us to Cliff Pambrum.

3 Q And what do you recall about what Cliff, what  
4 information Cliff Pambrum provided you on this  
5 subject?

6 A I seem to recall that Fisher had occasional access  
7 to Pambrum's car.

8 Q And again when you say you believe at that time  
9 that Fisher had committed the crime, that he would  
10 have had to have a car I think was your view; is  
11 that right?

12 A It was certainly a strong working theory.

13 Q And would that be based on Mr. Diewold's evidence,  
14 he was the church caretaker, or was there some --  
15 was it just a combination of everything that  
16 reached that conclusion?

17 A It was the -- it was driven, Mr. Hodson, by, and  
18 I'm not being facetious, standing outside at 40  
19 below actually at the murder scene when I first  
20 took the case on and imagining committing rape in  
21 that weather and wondering if it was physically  
22 possible.

23 Q So in your view you felt that whoever, at that  
24 time whoever committed the crime had to have  
25 committed at least part of it in a vehicle; is





1           that right?

2           A           Needed some warmth.

3           Q           And again just generally, and we'll touch on this  
4                   when we go through some of the documents, I think  
5                   at this point both Sergeant Pearson and as well  
6                   you and Mr. Henderson and Mrs. Milgaard started to  
7                   try and gather information about Larry Fisher; is  
8                   that correct?

9           A           Yes.

10          Q           And I think you said that your quest was to find  
11                   out whether he had access to a car?

12          A           Yes.

13          Q           And so this would be 1990, so 20 years, 21 years  
14                   after the event. Did you have some challenges in  
15                   trying to find information about Larry Fisher that  
16                   might assist you in your efforts to try and show  
17                   that he was the killer?

18          A           Yes.

19          Q           And can you just tell us generally what some of  
20                   those were?

21          A           I seem to recall that we made an effort to find  
22                   out, and I think Sergeant Pearson also made an  
23                   effort to find out if we could confirm that Fisher  
24                   didn't go to work the morning of the murder, but  
25                   that the employer's records I think had been



1 destroyed. People's recollections generally,  
2 including Pambrum, it was not particularly  
3 reliable.

4 Q And why do you say that?

5 A Well, just because of the lapse of time. One  
6 can -- I'm experiencing it myself right now, it's  
7 a very difficult thing to ask people to start  
8 remembering did Larry Fisher have this car on that  
9 morning in order to try to prove a murder.

10 Q And let's just talk about that, trying to prove a  
11 murder, because you have I think on a couple of  
12 occasions, and we see it in the documents, said we  
13 were trying to gather information from Larry  
14 Fisher that would assist David Milgaard, I think  
15 that was your primary motivation; correct?

16 A Yes.

17 Q And is it fair to say that if you could gather  
18 evidence that showed that Larry Fisher was either  
19 the killer or likely the killer, that that would,  
20 by necessity, assist David Milgaard?

21 A Yes.

22 Q You also said lookit, it wasn't our job to solve  
23 the murder even though that's what we were doing.  
24 Can you elaborate on that a bit, did you end up in  
25 your efforts to assist David Milgaard in basically



1           trying to prove that Larry Fisher was the killer?

2           A       Yes.  It's quite a remarkable thing actually, we  
3           got, as I said earlier, we got lucky with a tip  
4           which opened a series of doors and led down a  
5           path, but you have to remember that with that  
6           information the Minister of Justice still declined  
7           our application, so we then had to take the Fisher  
8           information and catapult ourselves from advancing  
9           the proposition that there was another more likely  
10          perpetrator, which is what we basically did at the  
11          end of the first application, into essentially  
12          laying the ground work for a prosecution of the  
13          true killer as identified as Larry Fisher and  
14          that's when we began to build the similar act  
15          evidence chart and become far more aggressive in  
16          actually trying to prove that Fisher was the true  
17          killer.

18          Q       And did you believe that that would be necessary  
19          for you to get relief from the minister?

20          A       Never in a million years.

21          Q       At some point did you?

22          A       We believed after the first -- yes, after the  
23          first application was turned down, we believed  
24          that that was the only thing that was going to  
25          move them.



1 Q Go to 010050, and again this is Mr. Williams' memo  
2 of March 12th, 1990 of a discussion with you, and  
3 just to assist you, this would be the day, or one  
4 or two days, I think one day after Joyce Milgaard  
5 and Paul Henderson completed their interview of  
6 Linda Fisher, and so here you provide to Mr.  
7 Williams more information and then:

8 "Asper provided additional details,  
9 related to him by Joyce Milgaard as  
10 follows: Apparently Linda Fisher went  
11 to the Saskatoon police in 1980 and told  
12 them what she knew about the Gail Miller  
13 killing in a one page statement."

14 Pause there. Do you recall -- I take it that  
15 would have been from the interview that previous  
16 weekend?

17 A Yes.

18 Q And what do you recall about that information,  
19 what did you do with that?

20 A What did I do with it?

21 Q Yes, or how did that fit into matters?

22 A Well, Mrs. Milgaard had in 1980, I believe prior  
23 to Linda Fisher going to the police, distributed  
24 fliers throughout Saskatoon asking for information  
25 and I believe offering a reward for information



1 leading to the identification of the true killer I  
2 believe of Gail Miller or information leading to  
3 the exoneration of David. My recollection is that  
4 Linda was prompted by that and went to the  
5 Saskatoon police to tell them what she knew;  
6 essentially, if I recall correctly, what she told  
7 Joyce in 1990.

8 Q So around this time you would have become aware  
9 that Linda Fisher had gone to the Saskatoon City  
10 Police in 1980?

11 A Yes.

12 Q Do you recall at what point you would have  
13 received that, the information about her, I think  
14 there was a statement, police report for her 1980  
15 visit. Is that something you obtained shortly  
16 after do you remember? Are you able to --

17 A I don't recall seeing the actual police report.

18 Q Down at the bottom, again this is Mr. Williams'  
19 memo to his file with his notes of what he says  
20 you told him, talks about:

21 "Linda Fisher had two uncles Roy and  
22 Clifford. Larry Fisher habitually  
23 borrowed Clifford's car. That car  
24 apparently matched the description of a  
25 car that Miller's date observed outside



1 Miller's residence when he took her  
2 home, the night before she was killed."

3 And that date was Dennis Elliott. Did you  
4 recall, did this information come from Joyce  
5 Milgaard? Do you recall any of this?

6 A I assume it did, but I don't recall it  
7 specifically, no.

8 Q And I think once, at least the evidence before the  
9 Commission is to the effect that the vehicle that  
10 Linda, or that Cliff had described was different  
11 than the one that Dennis Elliott had described.  
12 Again, can you shed any light on this comment in  
13 Mr. Williams' memo?

14 A No.

15 Q Would you have simply been passing on information  
16 that had been given to you?

17 A Yes.

18 Q And then the next page, Mr. Williams writes:

19 "Somewhat disturbing is Mr. Asper's  
20 revelations that Mrs. Milgaard has been  
21 conducting her own investigation and has  
22 interviewed Linda Fisher, and attempted  
23 to interview Larry Fisher's mother in  
24 North Battleford, Sask."

25 Do you recall whether Mr. Williams ever expressed



1 to you directly concerns that Mrs. Milgaard and  
2 Mr. Henderson and others not be investigating  
3 Larry Fisher while they were investigating?

4 A I'm tempted to say yes and that we had a very  
5 testy exchange about that, but I don't -- I  
6 believe we did, yes, at that point.

7 Q Over whether or not -- sorry, did he express  
8 concern to you that lookit, her involvement might  
9 interfere with what we're doing?

10 A Yes.

11 Q Words to that effect?

12 A Yes.

13 Q And did you disagree with him?

14 A Vehemently.

15 Q And why?

16 A Based on the track record of his engagement in the  
17 process up to that point.

18 Q So there would have been a discussion or  
19 disagreement at some point between you and Mr.  
20 Williams; is that right?

21 A Yes.

22 Q Now, when you talked to Sergeant Pearson about  
23 this subject, did you have a different view?

24 A Yes.

25 Q And why was it different, or was it?



1 A Because he and I had cordial and frequent  
2 conversations. I felt that there was a level of  
3 dialogue that was informative and trustworthy.

4 Q So when Sergeant Pearson told you lookit, I don't  
5 think it's a good idea for Mrs. Milgaard to be  
6 investigating this, that was enough to satisfy you  
7 that okay, at least for the time being that's a  
8 good idea?

9 A Yes, and I have a huge amount of respect for the  
10 RCMP and he was a senior member of the RCMP and I  
11 was prepared to work with him.

12 Q But again when Mr. Williams told you presumably  
13 something similar, you had a different view; is  
14 that right?

15 A Yes.

16 Q And so the fact that it came from Sergeant  
17 Pearson, that meant more to you than when it came  
18 from Mr. Williams; is that right?

19 A Yes.

20 Q And that was because of what you alluded to, your  
21 dealings with Sergeant Pearson and your dealings  
22 with Mr. Williams?

23 A Yes.

24 Q And again 045168, this is March 13th, 1990, the  
25 next day, and this is Mr. Williams' note where he





1           says you called:

2                           "... announcing that he was calling from  
3                           Saskatoon. He indicated that he had  
4                           just left Mrs. Joyce Milgaard. He led  
5                           me to believe that as a result of his  
6                           conversation with Mrs. Milgaard, she  
7                           would refrain from attempting to  
8                           interview the individuals who are  
9                           connected with the Larry Fisher  
10                          allegations."

11                        Again, do you recall that information being given  
12                        to Mr. Williams?

13           A           Not particularly.

14           Q           Now, again he says he was led to believe that she  
15                        would be refraining. Was there a point in time  
16                        where you and Mrs. Milgaard agreed that lookit,  
17                        she won't investigate Larry Fisher for a time  
18                        period?

19           A           Yes.

20           Q           And then was there an abeyance then for a while  
21                        where she didn't investigate it?

22           A           Briefly, yes.

23           Q           How brief?

24           A           I don't recall.

25           Q           And what prompted her to start investigating



1           again?

2           A       Neither Joyce nor other members of the team around  
3                   her were prepared to give much slack to anybody,  
4                   nor accord any trust to anybody associated with  
5                   the federal authorities given what had gone on  
6                   since the original investigation and prosecution  
7                   of David and at this point with a sniff of light  
8                   at the end of the tunnel it was pretty hard to ask  
9                   these people to stand pat.

10          Q       There's some reference in the documents, Mr.  
11                   Asper, where I think you indicated that they may  
12                   not be taking your advice on this matter, that  
13                   notwithstanding your view, that your client and  
14                   others would be carrying on; is that correct?

15          A       Yes.

16          Q       And so around this time, despite what you said to  
17                   them based on what Pearson told you, they chose to  
18                   carry on with their investigation for the reasons  
19                   you stated; is that correct?

20          A       Yes. I would say with a greater degree of  
21                   discreetness though.

22          Q       And by that do you mean so that --

23          A       So that I wouldn't know.

24          Q       So that you wouldn't know or the feds would  
25                   wouldn't know, Justice?



1 A Both, which actually if you have to choose an evil  
2 here, probably worked to the extent that it was  
3 more below the radar screen, whatever Joyce was  
4 doing.

5 Q And, I'm sorry, I don't understand that.

6 A Well, to the extent that she was continuing her  
7 investigation knowing that I had advised and  
8 begged and pleaded with her to just stay calm and  
9 let the RCMP do their job and to the extent that  
10 the RCMP were working and that I was informing her  
11 to the extent that I felt I could as to what the  
12 RCMP was doing, that out of respect for that,  
13 Joyce was not going to stand still, but she wasn't  
14 also going to flaunt it by continuing the  
15 investigation openly, and that I think yielded as  
16 good a result as we could have hoped for.

17 Q And so at some point though did you find out that  
18 the investigation had been continuing?

19 A Yes.

20 Q And what happened then?

21 A Nothing.

22 Q Was that something that came up to Sergeant  
23 Pearson though, did that affect -- I'm not sure I  
24 understand --

25 A Yes, Sergeant Pearson would hear information that



1           Joyce was out investigating and would ask me to  
2           please ask my client to stop getting in his way  
3           and he would explain the consequences and the  
4           risks and I would then try to explain to Joyce and  
5           to others and we would kind of block that avenue  
6           of pursuit that was being undertaken and, you  
7           know, she would try another avenue.

8           Q       If we can go to 056743 is the doc ID and, Mr.  
9           Asper, this is the first time I think I've called  
10          this document up for you. These are Sergeant  
11          Pearson's continuation report and he prepared  
12          basically a running diary of what he did on the  
13          matter and his discussions and so from time to  
14          time I'll be referring to items here where he  
15          details some of his conversations with you, but  
16          this is his notes that I think his evidence was he  
17          took it from his notebook and prepared on a fairly  
18          regular basis. If we can go to page 056750 and  
19          again down at the bottom. There's not a date on  
20          this page, but the previous page shows March 14th,  
21          1990, and I think based on my review of this, I  
22          think this is the first contact, and I think you  
23          telephoned Sergeant Pearson and had a discussion  
24          with him. Does that sound right as far as the  
25          time frame, about two weeks after the Fisher



1 information came to light?

2 A Yes.

3 Q And again we see here:

4 "Mr. Asper explained he'd been to  
5 Saskatoon within the past couple of days  
6 to see Joyce Milgaard, to tell her to  
7 let authorities investigate the new  
8 evidence, and to share her information  
9 with everyone."

10 Let me just pause there on that. Was that  
11 another concern that Sergeant Pearson and Mr.  
12 Williams expressed about not only were they  
13 concerned about Mrs. Milgaard doing her own  
14 investigation, but secondly, that she was not or  
15 may not be sharing the fruits of her  
16 investigation with the authorities?

17 A Yes, that was a concern.

18 Q And was that a concern to you?

19 A Yes.

20 Q And again how did you deal with that?

21 A I simply implored her team to turn over whatever  
22 they were finding and to keep us abreast as to  
23 what they were doing.

24 Q And again, did that happen?

25 A Yes.



1 Q In the sense that you did become aware of what  
2 they were doing?

3 A Yes.

4 Q And did you then turn that over to Sergeant  
5 Pearson or Mr. Williams?

6 A I don't recall if there was anything.

7 Q And here you say:

8 "Asper was expressing concern that Mrs.  
9 Milgaard has become very mistrusting of  
10 everyone and has become somewhat of an  
11 independent investigator, and is  
12 reluctant to turn information over to  
13 even her lawyers. She is particularly  
14 mistrusting of the Saskatoon City  
15 Police, and in fact believes there is a  
16 cover-up conspiracy by them regarding  
17 her son's murder charge."

18 Again, would that be an accurate recording of  
19 what you would have told Sergeant Pearson at the  
20 time?

21 A Yes. I was trying to give him as detailed a  
22 background briefing on what he was walking into as  
23 possible.

24 Q If we can go to 178850. And this is a memo March  
25 15th, 1990, presumably from you to Mr. Wolch, and



1           you talk about the Linda Fisher statement and you  
2           say:

3                       "... and Joyce insisted on retaining the  
4                       originals. She insists that the  
5                       statement not be forwarded to Fisher  
6                       until she gets answers to the following  
7                       questions:".

8           Now I'm not sure whether that should be Eugene  
9           Williams or whether that's Linda Fisher but, in  
10          any event, she wants to know:

11                       "Whether Fisher is right-handed?"

12          And secondly:

13                       "Whether Fisher owned any knives.  
14                       Police found a bone-handled hunting-type  
15                       knife that was double-edged at the scene  
16                       on the morning that the body was  
17                       discovered. Mysteriously, this knife  
18                       went missing from a policeman's locker,  
19                       and never played any role in the  
20                       proceedings. Some of the evidence  
21                       suggested that the wounds may have been  
22                       inflicted by a different weapon; one of  
23                       which was double-edged."

24          Do you know where this information came from  
25          about the knife going missing from a policeman's



1 locker, etcetera?

2 A I seem to recall there was some evidence about  
3 this at the preliminary inquiry, umm, about a  
4 bunch of knives that had been found at in or  
5 around the scene of the murder, umm, umm, but I  
6 don't recall anything specifically other than  
7 that.

8 Q And, again, if we can go to 004815. This talks,  
9 again, a bit more about the knife, and I won't  
10 enlarge the photograph for you there, Mr. Asper,  
11 but if we could go into the --

12 A You don't like the hair?

13 Q It says:

14 "There is also the question of a missing  
15 knife."

16 And, again, this is the same date:

17 "A double-edged, bone-handled knife ...  
18 was found near Miller's body on the day  
19 of the murder. But it disappeared  
20 before the preliminary hearing."

21 "Asper said it would be  
22 'helpful' if it could be shown that the  
23 second knife presented by the Crown  
24 wasn't the murder weapon."

25 And it was taken to Court, it was not put in as





1 an exhibit, I think Mr. Tallis, his evidence was  
2 "I was aware of it but I didn't want it to go in  
3 because I didn't want another knife in", and it  
4 was returned to the police. And there's mention  
5 in some of the materials back in the early '90s  
6 suggesting that somehow the knife was involved,  
7 that the knife went missing mysteriously, that  
8 there was some cover-up or some deliberate  
9 attempt to hide the knife because it may have  
10 been involved; do you have any recollection, or  
11 what is your recollection about the significance  
12 of this hunting knife?

13 A Umm, I don't recall. Umm, I seem to remember,  
14 umm, there may have been some evidence -- I'm  
15 speculating -- I -- there may have been some  
16 evidence that the murder weapon was a double-edged  
17 knife, and I -- we were looking for knives other  
18 than the paring knife that had been found at the  
19 murder scene, and I think that's how this came up.

20 Q And was that, was that in any way related to the  
21 fact that Linda Fisher, when she described her  
22 missing paring knife, that that description was  
23 different than the maroon-handled paring knife? I  
24 mean was that the genesis of that, that --

25 A No, no, no. This had -- the issue of the knife,



1 as I say, I think had arisen on early reading of  
2 the preliminary inquiry transcripts. Umm --

3 Q That there was a second knife?

4 A That there were other knives, there were clearly  
5 other knives.

6 Q And do you have any recollection of where the,  
7 what the source was for the information that this  
8 knife had gone missing?

9 A I don't recall, I --

10 Q Or that it had disappeared?

11 A -- I don't recall.

12 Q That would be an appropriate spot to break for the  
13 day, Mr. Commissioner.

14 (Adjourned at 4:26 p.m.)

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<p><b>3</b></p>	<p><b>3</b></p>	<p><b>2</b></p>	<p><b>7</b></p>	<p><b>6</b></p>
<p><b>3</b></p>	<p><b>3</b></p>	<p><b>2</b></p>	<p><b>7</b></p>	<p><b>6</b></p>
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<p><b>3</b></p>	<p><b>3</b></p>	<p><b>2</b></p>	<p><b>7</b></p>	<p><b>6</b></p>
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<p><b>3</b></p>	<p><b>3</b></p>	<p><b>2</b></p>	<p><b>7</b></p>	<p><b>6</b></p>
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