

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

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Transcript of Proceedings

and

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

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On Wednesday, May 3rd, 2006

Volume 144

Inquiry Proceedings



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Mr. Hersh Wolch, Q.C.,           **for** Mr. David Milgaard  
Ms. Joanne McLean,           **for** Ms. Joyce Milgaard  
Ms. Lana Krogan-Stevely,   **for** Government of Saskatchewan  
Ms. Catherine Knox,       **for** Mr. T.D.R. (Bobs) Caldwell  
Mr. Jay Watson, Esq.,       **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  
Ms. Jennifer Cox,           **for** Minister of Justice  
  (Canada), The Hon. Vic Toews  
Mr. Marshall Hopkins       **for** Justice Calvin Tallis  
  (Retired)  
Mr. Timothy J. Killeen, Esq., **for** David Asper



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Transcript of Proceedings

(Reconvened at 9:01 a.m.)

COMMISSIONER MacCALLUM: Good morning.

ALL COUNSEL: Good morning.

MR. HODSON: Just an update as to where we are at with Mr. Henderson and what's planned for the rest of the week. I understand from Mr. Loran who was questioning yesterday that he is done, so we have Ms. Knox who is left. Then -- we may be getting some materials from Centurion Ministries this morning, or Mr. Killeen may, so we might just have to take a break to deal with that issue, but hopefully we will be done with Mr. Henderson perhaps even by noon. The read-ins that we have scheduled, we had a couple of witnesses and read-ins for tomorrow that we've moved up until today, so assuming everything goes well with Mr. Henderson today, we get the read-ins in, we will not sit tomorrow which makes up for the last two Fridays that counsel obliged us by sitting, so assuming we can get through everything today with Mr. Henderson, the read-ins that Mr. Hardy will be doing that relate to Bob Perry and Breckenridge, we will not sit tomorrow and then we will start on Monday with Joyce



1 Milgaard. So with that, I think Ms. Knox --

2 COMMISSIONER MacCALLUM: Just before you  
3 start, Ms. Knox, Ms. McLean, do you have any  
4 instructions from your client relative to these  
5 press articles?

6 MS. McLEAN: Mr. Commissioner, no, I do not  
7 have instructions. I can only say Mrs. Milgaard  
8 was very upset yesterday and she was, the press  
9 was there when she left yesterday and she was  
10 very, very upset.

11 COMMISSIONER MacCALLUM: I see. Thank you.  
12 I want you to take instructions -- you can sit  
13 down there for a minute, please.

14 Yesterday the CBC reported her  
15 saying she was not sure she will return to the  
16 Inquiry:

17 "It's been obvious almost from Day 1  
18 what's been happening here."

19 She said. And this morning the *StarPhoenix*  
20 quotes her:

21 "Our group, we don't seem to be being  
22 listened to by the commissioner at all  
23 in any of the things that he's been  
24 doing. To me it's just an exercise in  
25 futility to be here. If I'm not seeing



1 justice and fairness from this man, why  
2 be here?" she said."

3 And, Ms. McLean, to me this is a thinly-veiled  
4 accusation of bias and I want you to take your  
5 client's instructions and if she means bias, I  
6 want her to say bias and then I expect her to  
7 show it.

8 Last October when we were in  
9 the discussion about whether or not David  
10 Milgaard should testify, she bolted from the room  
11 at one point, went straight to a TV camera and  
12 said every Canadian should be ashamed of what's  
13 going on here. I let that pass, but I'm not  
14 going to let it pass any more. She has been  
15 warned before that if she wishes to be a part of  
16 the Inquiry as a party with standing, she is not  
17 to subvert it by going out in the hall and  
18 casting broadsides against the work of the  
19 Commission. That is her right to do so as a  
20 private citizen and if she wishes to persist in  
21 that, she will do so as a private citizen and not  
22 as a party with standing, so please speak to her  
23 about this and we can return to the subject after  
24 this witness is finished his testimony.

25 **PAUL HENDERSON, continued:**



1 BY MS. KNOX:

2 Q For the record, Mr. Henderson, my name is  
3 Catherine Knox, we haven't met, but I am appearing  
4 at the Inquiry as counsel for the prosecutor, the  
5 trial prosecutor T.D.R. Caldwell.

6 A Very good.

7 Q Okay. And before I start, I want to apologize to  
8 you and to the Commission as well, I absented  
9 myself yesterday for a matter in Provincial Court  
10 that I had expected would take no more than a half  
11 hour, 40 minutes, I ended up being in a bail  
12 hearing that didn't end up finishing until about  
13 25 to five and as a consequence was not able to  
14 make it back, but I did take time last night to  
15 read the transcript of the evidence that was done,  
16 the answers -- the questions asked and the answers  
17 that you gave yesterday afternoon and made sure  
18 that I crafted the time that I want to spend with  
19 you today to avoid any duplication caused by my  
20 absence from the room, so hopefully I will be  
21 successful in achieving that.

22 A All right.

23 Q Now, Mr. Henderson, yesterday in response to  
24 questions in particular from Mr. Boychuk, you  
25 talked a bit and explained the role that Centurion





1 Ministries normally plays and that was an  
2 expansion on information you had given to Mr.  
3 Hodson, but you talked about the length of time  
4 that ordinarily goes into preparing a case before  
5 Centurion Ministries steps in to the public arena  
6 and makes statements, assertions or allegations of  
7 wrongful conviction, misconduct or any acts of  
8 that nature against professionals. Am I correct  
9 in understanding that to be the case?

10 A I explained to the best of my ability the length  
11 of time, the procedure that takes place before we  
12 are ready to petition the court for an evidentiary  
13 hearing and the length of time, the average length  
14 of time that it takes to get us to that point.

15 Q And if I may summarize what I heard you say, is  
16 that it's a process that Centurion Ministries  
17 undertakes very carefully because you have a duty  
18 to be prudent about what you do, to be fair about  
19 what you say and to make sure that you're well  
20 documented, well founded when you step forward to  
21 petition the court?

22 A Our primary concern is to be well armed with  
23 evidence before we file.

24 Q Okay. And you talked about, in response to some  
25 questions, that you would get transcripts, you



1 would get the Crown record, you would get what we  
2 in Canada call disclosure, but you would look at  
3 the whole background to a case before you, first  
4 off, make a decision as to whether or not you  
5 would take it on, and if you did decide it take it  
6 on after that screening, you would document a  
7 really well done case of reasons to present to the  
8 court as to why you believed, you being Centurion  
9 Ministries, that a wrong had occurred here?

10 A That's correct. We would attempt to, we would  
11 collect everything, every document that was  
12 available.

13 Q Okay.

14 A Plus all of the court record of course.

15 Q Okay. Now, sir, a number of times in the course  
16 of your evidence, and in particular yesterday in  
17 cross-examination when you were asked questions  
18 about the knowledge base that you had that caused  
19 you, number 1, to conclude that David Milgaard was  
20 innocent and, number 2, that professionals,  
21 including police and prosecutors, had to have  
22 engaged in misconduct, you repeated a number of  
23 times that we should remember that you had a  
24 limited commission?

25 A I had been -- I was on a limited assignment



1 mission by mission shall we say.

2 Q In your professional capacity, and in particular  
3 when you stand up in a public forum and you say I  
4 am a representative of Centurion Ministries, do  
5 you in any way communicate that in this particular  
6 case though we're not doing a full job, we're only  
7 doing a little bit of work? Do you put a caveat  
8 on the statements that you make or the analysis  
9 that you bring to the arena?

10 A Are you talking about this case in particular?

11 Q Well, I don't know, is this the only case that  
12 you've ever done that?

13 A It's the only one where I'm involved where there  
14 was not a full-blown process involved before.

15 Q Okay. Well, then yes, we're talking about this  
16 case, we're talking about your actions and  
17 reactions in this case.

18 A I don't -- in answer to your question, I don't  
19 feel that despite our, the unusual nature of this  
20 particular case and our involvement in it, I  
21 personally did not feel that we were at much of a  
22 disadvantage in terms of understanding the picture  
23 before we formed our opinions.

24 Q Mr. Henderson, with respect, if you didn't take  
25 the time to know what the picture was, how could



1           you assess whether you were at a disadvantage with  
2           respect to the picture?

3           A           Well, I think you're going to have to be more  
4           explicit than that. I don't quite understand what  
5           you are alluding to.

6           Q           You said --

7           A           I think we had a pretty good idea of the picture  
8           and that was that there was a miscarriage of  
9           justice.

10          Q           Okay. Well let's talk about some of the evidence  
11          that you've given here. You've stated repeatedly  
12          and you continue to repeat that you were strongly  
13          convinced of David Milgaard's innocence?

14          A           Of course. I think any reasonable person would  
15          have the same feelings.

16          Q           Okay. Now, sir, you have the benefit, and we all  
17          have the benefit of knowing that you are right  
18          because DNA evidence exonerated him in 1997?

19          A           That's right. It was no surprise to me.

20          Q           Well, be that it may be no surprise to you, may I  
21          ask you to take yourself back to when you came to  
22          the file in 1990.

23          A           Uh-huh.

24          Q           You first appear on the scene when you went with  
25          Mrs. Milgaard to interview Linda Fisher --



1 A Uh-huh.

2 Q -- in March of 1990. What did you have in your  
3 information portfolio that you had obtained from  
4 others that allowed you to state with absolute  
5 certainty the belief that David Milgaard was  
6 innocent?

7 A Where do I start. Do you want everything?

8 Q It would be helpful.

9 A All right. Number 1, we had a serial rapist.

10 Q You didn't have that when you first came to the  
11 file and when you went to see Linda Fisher in  
12 1990.

13 A That's not true.

14 Q What you had at that point in time is you had an  
15 anonymous phone call from somebody who said that  
16 the real person was Larry Fisher who had done the  
17 murder and that his wife had seen blood on his  
18 clothes and he had been convicted of other rapes,  
19 that's all you had in 1990 when you came to the  
20 file.

21 A Well, my understanding is, my recollection is that  
22 when we, when we decided to come to Canada and  
23 accompany Linda Fisher -- I'm talking about myself  
24 accompany Joyce Milgaard to see this woman, we  
25 knew a great deal about her former husband, and I



1 can't tell you exactly what we knew, but as I  
2 recall, we knew that the person who we were  
3 inquiring about had been arrested and convicted of  
4 rape. I would be very much surprised if I'm  
5 incorrect about this.

6 Q Sir, the information that was in, or the belief of  
7 all of the professionals involved with this file  
8 and Mrs. Milgaard herself, the record indicates,  
9 was that Larry Fisher had committed rapes in  
10 Regina. There was no information available --

11 A That may be true, but nonetheless, he was still a  
12 rapist.

13 Q Yes, okay, but in terms of being a serial rapist,  
14 it was information that he committed some rapes,  
15 he had gone to jail after Gail Miller had been  
16 killed, that he lived in, and you did know, and  
17 I'll refresh your memory on this one, you did know  
18 that he lived in the Cadrain basement, that was  
19 known in March of 1990?

20 A Yes.

21 Q So when you came on the file you had those pieces  
22 of information, you have a rapist who's living in  
23 the basement of the same house that David Milgaard  
24 went to, that a trail of exhibits led to and you  
25 have a woman who you are told saw blood on her



1 husband's clothes; correct?

2 A Okay.

3 Q So that's March of 1990. You do the interview  
4 with her on March 9th and continue to have contact  
5 with her March 9th, March 10th. Can we agree on  
6 that?

7 A Yes, the dates sound right.

8 Q Okay. If I'm wrong on any of these, somebody will  
9 jump on me, and I do have a list, so in the  
10 interests of time I won't do all the document  
11 numbers unless, you know, you want reference to a  
12 specific one, please ask me. Now, the file  
13 indicates that it was some weeks later, March  
14 26th, 1990, when David Asper wrote to you and sent  
15 you a copy of the early draft of the application  
16 that they had made to the Minister of Justice,  
17 that's the one with an affidavit from Deborah Hall  
18 who was in the motel room and a forensic scientist  
19 Dr. Ferris?

20 A All right.

21 Q You remember receiving that, and,  
22 Mr. Commissioner, for the record, document number  
23 158345 and 157552 would reflect that  
24 correspondence of March 26th, 1990.

25 A You are asking me if I recall getting that?



1 Q Yeah.

2 A No, I don't.

3 Q Okay. But what was attached to that application  
4 we know from the record was a limited amount of  
5 material, it was very limited, it did not, I  
6 suggest to you, contain anything that would  
7 constitute court documents, police disclosure,  
8 police reports, witness statements or anything  
9 like that. Can we agree on that?

10 A Well, you are helping me with some questions that  
11 I have and for all these years I wasn't sure  
12 exactly what information I had regarding the  
13 evolution of the evidence of the witnesses.

14 Q That's what our documentary database would  
15 indicate, that you came up and did interviews on  
16 March 9th, you had discussions with Mrs. Milgaard,  
17 you went with her on the interviews, you had  
18 discussions with Mr. Asper before going on the  
19 interviews, but the actual formal draft, early  
20 application was sent to you after you went back to  
21 Seattle.

22 A All right.

23 Q Are we okay so far?

24 A Yeah, we're fine, thank you.

25 Q Okay. Now, sir, I want to ask you to reflect back





- 1 on some statements that you've made and ask you if  
2 it's possible -- and I appreciate this is a very,  
3 very difficult exercise to go back in time, even  
4 to 1990 -- but if you can remember where you got  
5 the information and when in the process you got  
6 it. You've made various assertions about things  
7 that the police and the Crown have done in this  
8 case. At one point you've referenced a belief  
9 that the police had gone to the three principal  
10 witnesses in the early '80s, being Nichol John,  
11 Albert Cadrain, and Ron Wilson, and told them not  
12 to talk to Mrs. Milgaard; do you remember having  
13 that information or being of that belief? I'm --  
14 A Umm, no, I don't. Can you give me a time frame on  
15 that, that is for the statement, the purported  
16 statement --  
17 Q Okay.  
18 A -- made by myself.  
19 Q I --  
20 A When did I say this, and who did I say this to,  
21 and in what publication did it appear in?  
22 Q That's the one I don't have in front of me in all  
23 my documents.  
24 A Okay.  
25 Q But I will find it for you, and if anybody can



1 assist me with it, sometimes counsel do assist in  
2 that regard. But there was an assertion made by  
3 Mrs. Milgaard, at various points in time, that the  
4 police interfered with her efforts to talk to  
5 witnesses; do you remember becoming aware of that  
6 before I just said it to you?

7 A I have a recollection of Joyce Milgaard expressing  
8 her anger or her annoyance with what she perceived  
9 to be efforts by the government to hamper her  
10 investigation of her son's conviction.

11 Q And do the specifics of that memory include a  
12 memory of her saying that the police had gone to  
13 witnesses and told them not to talk to her?

14 A I -- I have a vague recollection of her telling  
15 me, or sharing that information with me, yes.

16 Q Okay. And if I may ask -- and, again, I  
17 appreciate it's a difficult task -- in your  
18 formulation of your opinion that David Milgaard  
19 was innocent, and that the police and the state  
20 had engaged in wrongful acts here, would  
21 information like that, coming from Mrs. Milgaard,  
22 saying "they tried to stop me from talking to the  
23 witnesses" contribute to your overall sense that a  
24 wrong had been perpetrated here?

25 A Yes, I would have to say that that would be part



1 of the picture.

2 Q Okay. I'm going to ask to have brought up  
3 document 331953. Sir, you probably haven't seen  
4 this, and I'll do a quick summary for the record.  
5 The Commission obtained the file of a lawyer who  
6 acted for Mrs. Milgaard in the early -- late  
7 1980s-early 1990s, his name was Gary Young. Did  
8 Mrs. Milgaard at any time, to your best memory now  
9 -- and I'll have this brought up closer for you to  
10 read -- but did she at any time when you first met  
11 with her, when you and she were getting together  
12 to go to Saskatoon in March 1990, say to you that  
13 back in the early '80s she'd hired a lawyer to  
14 help her get access to the Crown file, talk to  
15 police officers, talk to witnesses; do you  
16 remember that?

17 A No, I don't.

18 Q Okay. Then this is a letter dated June -- January  
19 12th, 1981, it's directed to the then-chief of the  
20 Saskatoon Police Service, and it's -- it will, the  
21 second page will show it's signed by Mr. Young,  
22 who was then her lawyer. And he references a  
23 letter that he had sent to the police chief on  
24 January 6th, he, as you can see in the second  
25 paragraph, talks about the reason why he and the



1 Milgaard families were looking to have contact  
2 with the police, was that they hoped to obtain  
3 information that might ultimately lead to the  
4 exoneration of Mr. Milgaard; okay?

5 A Okay.

6 Q And the important part here, in terms of the  
7 questions that I'm asking you, is the paragraph --  
8 and if I stop scratching up their screen they'll  
9 get this clean for you -- but you see this  
10 paragraph where he tells the chief that he wants  
11 to confirm their telephone conversation of that  
12 day, July 12th, where he inquired into the  
13 possibility of obtaining the assistance of  
14 Saskatoon Police Service in locating Ron Wilson,  
15 Nichol John, and Albert Cadrain?

16 A I see, yes.

17 Q Okay. So the three principal witnesses, the  
18 people you identified as the witnesses who were  
19 key to the wrongful conviction, were brought to  
20 the attention of the chief of police and -- by Mr.  
21 Young; do you see that, January 12th, 1981?

22 A I, what I see here is that an attorney for  
23 Mrs. Milgaard is asking for information --

24 Q It's --

25 A -- or some help from the Saskatoon Police



1 Department in locating these three witnesses.

2 It's as far as I've gotten.

3 Q All right. Do you want to read the rest of it?

4 A *(Witness reading)* All right.

5 Q All right. And if we can go to the next page,  
6 please. If you could read the next paragraph,  
7 please.

8 A *(Witness reading)* I see this. Okay. I  
9 understand.

10 Q Okay. Now I can indicate -- and we can bring up  
11 the documents if you want but I'll try to  
12 summarize in the interests of time -- as a result  
13 of that inquiry that was directed to the police,  
14 the police did make contact with Nichol John,  
15 Albert Cadrain, and Ron Wilson, they reported back  
16 to Mr. Young that these individuals had requested  
17 that Mrs. Milgaard not contact them; okay?

18 A All right.

19 Q And, I mean, would you like to see the letter?

20 A No. A letter from the police department  
21 expressing -- with this advisory doesn't surprise  
22 me a bit.

23 Q Okay. And I'll allow you to do your editorial  
24 comment in due course as to what your opinion of  
25 this is, but does it assist you to know that, or



1 does it offer any insight to you, is a better way  
2 to phrase it perhaps, to know that when the police  
3 contacted these witnesses in the early '80s about  
4 this case it was as a result of a contact made by  
5 the lawyer for Mrs. Milgaard?

6 A Okay, you've helped me understand that.

7 Q Okay. Now the report back to Mr. Young was that  
8 these individuals, as I said, didn't wish to talk  
9 to Mrs. Milgaard, and you may suggest, well, what  
10 would you expect when the police go out to  
11 interview them. That would be what I will expect  
12 to hear from you, and I'm okay with that, but,  
13 sir, I want to bring up document 025337 next. And  
14 you see this is a letter written by the office of  
15 the chief of police, and it's going to a lawyer by  
16 the name of Larry Leslie, and it's dated February  
17 11th, 1981?

18 A Can you blow that up, please?

19 Q We will.

20 A Thank you.

21 Q If we could have the first paragraph, please. Now  
22 I'm not bringing up all the letters. In our  
23 document database we have a letter that this  
24 Mr. Leslie wrote to the Saskatoon Police Service  
25 complaining that the police had breached the



1 privacy interests of his client, that they -- she  
2 had told them she wanted nothing to do with  
3 Mrs. Milgaard, Mrs. Milgaard had come and found  
4 her in spite of that, and essentially he was  
5 accusing the police of having given that  
6 information to Mrs. Milgaard. And please, if  
7 you'd like to read it, perhaps we can skip the  
8 second paragraph because it's not on point --

9 A Uh-huh.

10 Q -- but just, if we could scroll down to the last  
11 statement in the letter. And there's his letter  
12 of January 23rd where he told Mr. Young that all  
13 of the witnesses were most emphatic they didn't  
14 want their whereabouts made known. If we could go  
15 to the next page, please. And then he talks about  
16 the issue of whether, despite her request, their  
17 request, the name was given out, and basically  
18 what the police chief is doing is he's defending  
19 his officers and saying "we didn't do that, you  
20 know, what -- however Joyce Milgaard found her, it  
21 wasn't our fault"?

22 A I see.

23 Q Do you see that?

24 A Yeah.

25 Q Okay. Did Mrs. Milgaard report to you that these



1 events had happened and that the Saskatoon Police  
2 force in 1981, when she was saying they went out  
3 and told witnesses not to talk to her, in fact got  
4 in a little bit of trouble very briefly because  
5 they were accused of giving out address and  
6 whereabouts information for Nichol John?

7 A I don't remember that element, I just -- what I do  
8 recall is that Joyce Milgaard told me that she'd  
9 made attempts to talk with one or more of the key  
10 witnesses and that they wouldn't talk with her.

11 Q Okay. Now, sir, can you appreciate that when  
12 allegations are made, or suggestions are made by  
13 individuals who hold themselves out in the  
14 capacity that you do as a member of a reputable  
15 organization engaged in fairly investigating  
16 complaints of wrongful conviction, that it would  
17 -- might be kind of important that, as you talked  
18 about doing an exhaustive review, if you had had  
19 this full picture before you bought into that  
20 suggestion -- and I don't mean "bought in" in a  
21 disrespectful kind of way -- before you accepted  
22 that suggestion from Mrs. Milgaard about the  
23 conduct of the Saskatoon Police in 1981?

24 A I geared up for this assignment, the initial phase  
25 of this assignment, in about, I'm gonna guess, a





1 week, I read what was available to me, and I  
2 proceeded from there. At various points along the  
3 way, as we continued the investigation, I would  
4 have had the benefit of additional documents, but  
5 there were a lot of things that I didn't know.

6 Q Okay.

7 A And I'm not saying that that is -- I don't know  
8 the reason for that, but I suspect that a lot of  
9 it, a lot of the documents that would have been  
10 helpful to me, simply were not available.

11 Q Okay. Now, Mr. Wolch is going to make an  
12 objection, if you can wait for a minute.

13 MR. WOLCH: Okay.

14 MS. KNOX: And I probably misstated  
15 something so I'll listen to it.

16 A All right.

17 MR. WOLCH: Well firstly, Mr. Commissioner,  
18 I do have some concern. I don't know how any of  
19 this affects Mr. Caldwell, that is the police  
20 going to see witnesses? My Friend's interest is  
21 Mr. Caldwell, and how that affects the  
22 prosecutor, I cannot see.

23 This is part of the concern  
24 that I have raised about order of questioning. I  
25 could not, never in a million years, foresee that



1           counsel for Mr. Caldwell is going to be arguing  
2           that -- about how police dealt with witnesses.  
3           And I know we're in a bit of a problem because I  
4           was supposed to follow Ms. Knox, who wasn't here  
5           yesterday, but if I was following her, or as was  
6           supposed to be the case, I would point out a  
7           document, 106840, which indicates that this  
8           characterization of police cooperation in finding  
9           witnesses is not accurate to begin with. So I  
10          don't want to necessarily go there, because I  
11          don't know why we are there, that is -- that is  
12          why we are going to go through this exercise of  
13          -- with this witness as to whether the police  
14          restricted or hampered the finding of witnesses.  
15          He can't add anything to it, it takes up a lot of  
16          time, it doesn't affect Mr. Caldwell. The  
17          document, you see for yourself on the screen,  
18          reflects a police attitude to contacting  
19          witnesses, and so that we --

20                    COMMISSIONER MacCALLUM: I remember the  
21                    document.

22                    MR. WOLCH: Yes. So we don't have to  
23                    relitigate this through the mouth of this  
24                    witness, who doesn't know anything about it, he's  
25                    learning it for the time first time, it's



1 time-consuming, that's all it really is.

2 COMMISSIONER MacCALLUM: Yes, Ms. Knox?

3 MS. KNOX: Mr. Commissioner, if I may  
4 respond. If you will recall the prefacing to  
5 this, my moving into this area, was to begin to  
6 talk to Mr. Henderson about the information base  
7 that he had that -- when he came to the case and  
8 during the course of the case when he made  
9 certain allegations against my client, which I  
10 will get to, and, whether Mr. Wolch believes it  
11 or not, in fairly short order. But I'm just  
12 attempting to look, or to give the witness a  
13 grounding into the questions that I want to take  
14 him to, and unfortunately while it is correct to  
15 say that what the police may have done with the  
16 witnesses in 1983 doesn't -- he doesn't -- it  
17 doesn't directly impact on my client, it did lead  
18 to the ultimate conclusion by this client, based  
19 on what I will suggest to him was wrong  
20 information or not complete information that he  
21 was operating on that caused him, in very public  
22 forums as this matter proceeded forward, to make  
23 serious allegations of misconduct against Mr.  
24 Caldwell.

25 MR. WOLCH: Well, Mr. Commissioner, my



1 feeling is that we've gone -- we've heard it  
2 often enough ourselves that we end up sitting  
3 here having witnesses be educated, so to speak,  
4 on all we've heard, and we'll never agree on what  
5 the bases is for the education, and it just seems  
6 to me that if this witness made an allegation  
7 against Mr. Caldwell we can see it, he can be  
8 questioned on it, and we can learn from it. If  
9 he needs to be educated, then he can be,  
10 specifically related to whatever accusation we're  
11 talking about, but surely we should get there.

12 COMMISSIONER MacCALLUM: It seems to me,  
13 Mr. Wolch and Ms. Knox, that this is part of the  
14 larger question of the Terms of Reference, or  
15 should the Inquiry have been re-opened based upon  
16 information which came to the attention of the  
17 authorities. Part of the, very much, a lot of  
18 information came to the attention of the  
19 authorities through Mrs. Milgaard, as well as  
20 that which was generated through the efforts of  
21 this witness, and the next step I have to make is  
22 deciding upon the reliability of such  
23 information, and it goes without saying, of  
24 course, that the authorities could not be  
25 expected to have acted on information which they



1           knew to be unreliable. And so, as part of that  
2           determination we have to know not only what this  
3           client said publicly, and therefore that which  
4           came to the attention of the authorities, but was  
5           he justified in saying it, and the examination of  
6           the witness thus far has demonstrated that he  
7           made certain accusations publicly, that is  
8           through the press, dealing with the authorities'  
9           refusal to allow Mrs. Milgaard access to  
10          witnesses, trial witnesses, and Ms. Knox is in  
11          the process of trying to demonstrate to the  
12          witness that he didn't have the whole picture.  
13          Now that determination, of course, goes directly  
14          to the reliability of the information, which I  
15          want to know about, so the questioning is  
16          appropriate.

17                 MR. WOLCH: Okay. Well then I would  
18                 suggest that perhaps the entire, whole picture  
19                 should be put, because that memo right there  
20                 indicates, clearly, a police desire that --

21                 COMMISSIONER MacCALLUM: Well, yes, yes,  
22                 we -- as you justly point out, this has been gone  
23                 over before, but if I want to get any different  
24                 perspective about it I'll have to hear it from  
25                 the witness here, if he wants to look at it.



1 MR. WOLCH: My final comment is then let's  
2 properly educate the witness and not give him  
3 half the story.

4 MS. KNOX: Well, Mr. Commissioner, I've  
5 already apologized for my absence yesterday, and  
6 I apologize again, particularly to Mr. Wolch, if  
7 he feels that my not being here, and him being  
8 able to go after me, impaired him. If there's  
9 any document that he wishes me to put to this  
10 witness, he can simply pass it to me, and I will  
11 do it, I will review this document with the  
12 witness. With 12 counsel here in the room, I'd  
13 be very surprised if somebody didn't check me if  
14 I do something or miss something here, or that  
15 you yourself, or your counsel, with the  
16 familiarity you have with the file, wouldn't do  
17 it. I will take the witness through this  
18 document, and I will take him through anything  
19 else that Mr. Wolch may suggest to me he would  
20 have put to him had he had the opportunity to go  
21 after me, that's -- and I make that with every  
22 intention to honour that. So I will do this, and  
23 I, if there's anything else, pass me a note and  
24 I'll deal with it.

25 MR. WOLCH: I appreciate that, Mr.



1 Commissioner, but I might just indicate -- I'm  
2 not saying that I will -- but I may be asking for  
3 permission to ask some questions arising out of  
4 My Friend's examination, given the fact that it  
5 is only because she couldn't make it here  
6 yesterday that I didn't follow her, your ruling  
7 was that I should follow her. So I will try not  
8 to, but if something arises, --

9 COMMISSIONER MacCALLUM: All right.

10 MR. WOLCH: -- I will ask permission.

11 MS. KNOX: I have absolutely no problem  
12 with that.

13 BY MS. KNOX:

14 Q But Mr. Henderson, if we could get back on track a  
15 little bit, and just so you can understand the  
16 document that's on the screen right now, have you  
17 had an opportunity to look at it?

18 A I saw it, yes, I --

19 Q This is a document from chief -- a senior police  
20 officer, Mr. Penkala in fact if we look up in the  
21 corner up here, who was the identification officer  
22 on Mr. Milgaard's investigation file in '69-'70,  
23 you will recall it's a document dated January  
24 19th, '81, it's directed to Staff Sergeant Karst  
25 as he then was at the time, and it says, as you



1 see, it's regarding the *Milgaard* case, and it's a  
2 request to Mr. Karst or Staff Sergeant Karst to:

3 "... contact Ron Wilson and Nichol John,  
4 if possible and confirm whether or not  
5 they wish their names and addresses  
6 released to Lawyer for the Milgaard  
7 family. I'm sure they won't, however,  
8 the chief would like to know that  
9 specifically so that he can tell the  
10 lawyer."

11 Okay. So you see that that was the direction  
12 given to Karst, and I think what Mr. Wolch is  
13 concerned about is that you understand that,  
14 prior to the interviews being done, the --  
15 Officer Penkala made the comment that he was sure  
16 they wouldn't want to -- their addresses given  
17 out, so in effect he prejudged what would be the  
18 outcome of the request to them to have their  
19 whereabouts made known to Mr. -- to  
20 Mrs. Milgaard?

21 A I'm following every bit of this, and if it will  
22 help expedite these, this questioning, I will  
23 stipulate to the fact, as far as I know, that the  
24 police department made it clear to a lawyer  
25 representing Joyce Milgaard that these witnesses





1 did not want to be contacted. Is that where  
2 you're going with this?

3 Q Yes. And they're -- you know, some, like  
4 Mr. Wolch, may question whether it was a *bona*  
5 *fides* inquiry, but are you aware that these  
6 witnesses have testified in various forums, and  
7 including at this Inquiry, that in fact the police  
8 did not tell them not to make contact and not to  
9 cooperate with Mrs. Milgaard?

10 A Oh, I wasn't aware of that, no.

11 Q Okay. So take the memos from '81, take the  
12 information out of the mouths of the witnesses  
13 under oath that no such wrong act occurred, would  
14 you agree that it would have been helpful and it  
15 might have impacted on your formulation of the  
16 possible -- your -- your formulation of the theory  
17 that there had to have been police/Crown  
18 misconduct in order for a wrongful conviction to  
19 have occurred here?

20 A No, that wouldn't make a bit of difference.

21 Q Okay. Now, sir, in response to questions from  
22 Mr. Boychuk yesterday you confirmed that your  
23 practice -- and you've confirmed for me this  
24 morning -- Centurion Ministries' practice would be  
25 to get the police file, Crown file, Court



1 documents, and all kinds of stuff like that?

2 A Yes.

3 Q When you came to the file in March of 1990 did you  
4 inquire of Mrs. Milgaard, do you recall, or Mr.  
5 Asper, indeed, whether or not they had obtained  
6 that very important material, the police file, the  
7 Crown file?

8 A I don't recall. I remember -- what I do remember  
9 is that I had a transcript of the testimony of  
10 certain individuals, a copy of the transcript, I  
11 don't remember any other documentations or any  
12 explanation from anyone as -- for the lack of  
13 documentation of other things.

14 Q Okay.

15 A I don't know whether I had police reports, I know  
16 I had transcripts, but I don't -- I have no  
17 recollection of having any -- having benefit of  
18 knowing about the evolution of the testimony or  
19 the evidence of these witnesses.

20 Q I'm going to suggest to you that what you had at  
21 that point in time was, if you had anything, was  
22 the trial transcript of certain witnesses because  
23 they weren't -- their statements and other  
24 information, police reports and so forth, had not  
25 been obtained either by or on behalf of



1 Mrs. Milgaard at that time?

2 A Well, that's very helpful, thank you.

3 Q Okay. Now, sir, again, and Ms. Cox suggested to a  
4 number -- you a number of times yesterday that she  
5 wanted you to put on your Centurion Ministries  
6 hat, and I'm gonna ask you if you wouldn't mind  
7 indulging me as well, and put on your Centurion  
8 Ministries hat?

9 A I have had my Centurion hat on the entire -- as  
10 long as I've been here.

11 Q Okay. Well then I won't ask you to do it again.

12 A All right.

13 Q I'm mindful that you have it on. Sir, you've  
14 described your background and you've provided us  
15 with your CV, you've described your many years as  
16 an investigative reporter, and you've described  
17 the work that you've done as an investigator with  
18 Centurion Ministries and you've, again without  
19 unduly emphasizing it, you've talked about the  
20 importance of the objectivity and completeness of  
21 the role and function of your organization in  
22 bringing forward petitions to the Court; we're  
23 agreed on that?

24 A Yes.

25 Q Okay. Given that you didn't have the material,



1 i.e. the police report, Court reports other than  
2 transcript, lab reports, witness statements; did  
3 you, at any point in time in March 1990, either  
4 before you got to the company of Mrs. Milgaard,  
5 during your travels with her in Saskatoon when you  
6 were looking into the Larry Fisher issue, did you  
7 at any point in time, do you remember, stop for a  
8 minute and say "okay, we've got to talk about the  
9 information base that you are working from, tell  
10 me what you've done and tell me what you have"?

11 A Did I ever ask Joyce Milgaard these questions?

12 Q Uh-huh?

13 A I'm sure I did. I was trying, attempting,  
14 throughout the course of this investigation, to  
15 learn as much as I could about the case, --

16 Q Okay.

17 A -- and I had a number of discussions with Joyce,  
18 and she undoubtedly provided me with a great deal  
19 of background information.

20 Q Okay. Now, sir, if she -- if you asked her those  
21 questions, I'm going to suggest to you if you  
22 asked them in March of 1990, what she would have  
23 had to say to you is "no, we don't have that  
24 information". Do you remember being told that she  
25 didn't have the information?



1       A       It's been 16 years. I don't remember her telling  
2                   me that, no.

3       Q       Sir, if he had told you that, would you likely --  
4                   or would you likely have, or should you have said  
5                   to her, "well, we need to get that information  
6                   before we go any further with this"?

7       A       Would I have said that to her? Certainly not.

8       Q       Why not?

9       A       Well because we were out -- we were up here, I was  
10                  sent up here to, if we're talking about the  
11                  initial investigation, I was sent up, initial  
12                  phase I was sent up here to check out a story  
13                  about a woman who had information on the real  
14                  killer, and that's what I did. Subsequent  
15                  investigation was, again, one step at a time.

16      Q       Uh-huh.

17      A       And it would have been nice if we had had this  
18                  background information, the police reports, that  
19                  is a history of the evolution of the evidence of  
20                  the witnesses, but apparently it wasn't available  
21                  to us, so that didn't stop us in our tracks, we  
22                  proceeded with what we had and did the best job we  
23                  could, I did the best job I could, to find out the  
24                  truth.

25      Q       Sir, you said apparently you couldn't have it; do



1           you know what it was that causes you to say or to  
2           reflect, today, that you had a belief that those  
3           kinds of important materials, police files, Crown  
4           files, weren't available to you?

5           A        I can't explain that. You've just told me that  
6           they weren't available, and that was enlightening  
7           to me, I don't remember.

8           Q        Mr. Henderson, if I may, I didn't say to you that  
9           they weren't available, I said to you that the  
10          Milgaard family and Mr. Asper didn't have them.

11                    If I could bring up document  
12          331926, please. Sir, this is another document  
13          taken from Mr. Young's file when he was counsel  
14          for Mrs. Milgaard in early 1981, and I want to  
15          refer you to the second paragraph of this memo in  
16          his file.

17          A        I'm gonna need an interpreter to understand this.

18          Q        Well, I'll help you.

19          A        Thank you.

20          Q        It says "Caldwell", phone number, which is the  
21          phone number of the trial prosecutor's office and  
22          the name of the trial prosecutor, Mr. Young  
23          records:

24                    "... he says he gave copies of material  
25                    ...",



1 underlined:

2 "... material statements to Tallis ...",  
3 and you know, of course, that Mr. Tallis was the  
4 defence lawyer?

5 A Yes.

6 Q And when he underlines "material" statements, as  
7 an investigator with an -- background and  
8 experience in criminal investigations, you would  
9 know he is referring to key witnesses, i.e. we can  
10 assume Cadrain, Wilson, John and others, but he is  
11 talking about key witnesses and he is saying "I  
12 gave those to his lawyer"?

13 A Can I interject this question? This memo is from  
14 Mr. Caldwell, your client?

15 Q Pardon me?

16 A Is the memo --

17 Q That memo is from Mr. Young.

18 A Mr. Young?

19 Q Mrs. Milgaard's lawyer in 1981.

20 A Okay. And Mr. Young is the author of this memo,  
21 and he is telling who that he gave what to whom?

22 Q He did a memo to his file, as counsel often do,  
23 saying --

24 A Right, okay, a file memo.

25 Q -- saying that he talked to Mr. Caldwell, Mr.



1 Caldwell told him this information, however he  
2 also documented Mr. Caldwell told him:

3 "... he is prepared to go over his file  
4 with me ...",

5 being Young:

6 "... but will not release copies to  
7 Mrs. Milgaard."

8 Okay? So this is what Mr. Caldwell, if I may, my  
9 client, told the lawyer. He said "you can have a  
10 look at my file, I already gave material  
11 statements to defence counsel but you're  
12 Mrs. Milgaard's lawyer, if you want to look at my  
13 file come on in"; do you see that?

14 A Yes.

15 Q Okay. Now there is the part where he said he  
16 wouldn't release copies to Mrs. Milgaard, and I'm  
17 gonna ask you whether that -- and keep in mind  
18 we're talking a criminal murder file and practices  
19 of prosecution offices, government agencies -- I  
20 take it it wouldn't be a surprise to you that a  
21 Crown attorney, or a district attorney in your  
22 neck of the woods, would say "but I'm not gonna  
23 give copies of witness statements to the mother of  
24 the accused"?

25 A Yes, I -- that's -- that's the way it works,





1 usually.

2 Q That's prudent practice, I mean, nobody would want  
3 those statements to go to an individual who  
4 doesn't have a professional and ethical obligation  
5 with respect to how they're used in the course of  
6 work that may be being undertaken?

7 A If a person like Mrs. Milgaard was in the United  
8 States and attempting to have -- get copies of  
9 documents involved in her son's trial she would  
10 first go to the defence counsel --

11 Q Uh-huh.

12 A -- and attempt to obtain his or her cooperation.

13 Q Uh-huh.

14 A So this --

15 Q But this would be -- there's nothing improper  
16 about this, this is prudent practice, --

17 A It --

18 Q -- it's what you would expect to happen?

19 A We wouldn't expect a great deal of cooperation  
20 from a prosecutor, no.

21 Q But what you have in this case, don't you though,  
22 if Mr. Young, if Mrs. Milgaard's lawyer documented  
23 it properly, is you have full cooperation from the  
24 prosecutor. He's saying, "eh, I gave it out once  
25 but come on in, look at my file"?



1 A Look at it? Sure. Okay.

2 Q So you do have, contrary to your supposition that  
3 the file wasn't available, in 1981 he offered that  
4 Mr. Young could come in and look at it?

5 A Okay. Mrs. Milgaard's lawyer is being informed,  
6 as I understand this memo, that the prosecutor,  
7 Mr. Caldwell, has invited Joyce's lawyer, and  
8 Joyce, to come in and take a look at his files; is  
9 that correct?

10 Q Well, just to be clear, I'm not sure that he was  
11 inviting Joyce to come in, what Mr. Young said is  
12 he said he wouldn't give her copies.

13 A Yeah.

14 Q The document doesn't say whether he said she could  
15 or couldn't come in, so I don't want to overstate  
16 the content of the memo.

17 A Okay.

18 Q Maybe if Mr. Young had wanted to take her in she  
19 could have gone, but the memo doesn't say that, to  
20 be fair.

21 A Okay.

22 Q But okay, so we're 1981 in terms of the  
23 information base that you could have asked about,  
24 might have asked about in 1990, and in 1981 the  
25 prosecutor said, you know, come on, take a look at



1           it, it's yours.

2           A           What's the date of this memo?

3           Q           January -- February 2, 1981, if we go to the top  
4           up here.

5           A           Okay. And you just stated that the offer would  
6           have been open, the same offer would have been  
7           valid in 1991, or 1990 when we got involved?

8           Q           Certainly, sir, there were no indications that  
9           offer didn't continue to be extended up until the  
10          time a media attack was launched on my client and  
11          others, if I could say that, and --

12          A           All right. Well, you know, there's more to this  
13          story. You'll have to explain more for me to  
14          understand the picture and where you are going  
15          with it.

16          Q           Trust me, I'm going to.

17          A           Okay.

18          Q           In your contact with Mrs. Milgaard in 1990, the  
19          initial contact and in the context thereafter, did  
20          she talk to you about another reporter, and I  
21          appreciate by 1990 you are an investigator, but  
22          you had been, you know, a respected reporter. Did  
23          she talk to you about another, this time Canadian  
24          recognized reporter who had attempted to assist  
25          her in 1982, 1983, a gentleman by the name of



1 Peter Carlyle-Gordge?

2 A I heard a lot about that gentleman.

3 Q From who?

4 A The name came up a number of times.

5 Q From who, sir?

6 A From Joyce.

7 Q And what did you hear about him?

8 A That he was an advocate, that he believed strongly  
9 in Joyce's mission, that he was an advocate for  
10 David Milgaard and that he was, had provided a  
11 great deal of assistance to her. I don't remember  
12 exactly though the nature of what he had been  
13 doing with Joyce.

14 Q Sir, did Mr. --

15 A I think he -- could it be that he had written  
16 something, published something on the Milgaard  
17 case? I'm just not sure.

18 Q Okay. Sir, do you --

19 A I never met the man.

20 Q Do you recall being told by Mrs. Milgaard that in  
21 fact Mr. Carlyle-Gordge had attended upon my  
22 client Mr. Caldwell by telephone initially under  
23 the subterfuge, and I use subterfuge because  
24 that's how he would describe it --

25 A Uh-huh.



1 Q -- that he was writing a book on western Canadian  
2 murders and that the Milgaard case was one that  
3 was of great interest to him and that he requested  
4 my client's assistance in giving him some  
5 background to the file and indeed met with my  
6 client on at least two occasions? Did Mrs.  
7 Milgaard tell you that?

8 A I can't say that she didn't, but I can't say that  
9 she did.

10 Q Okay. Sir, do you have any memory of being told  
11 that upon soliciting the assistance of my client,  
12 that my client in fact invited Mr. Peter  
13 Carlyle-Gordge to his office on at least two  
14 occasions, that he placed before him six volumes  
15 of files, seven volumes of files if we include the  
16 preliminary inquiry transcript, that was the  
17 entire Crown trial file?

18 A Uh-huh.

19 Q That he gave him unlimited access and time with  
20 that file, that he permitted him to dictate from  
21 the file information that he considered to be of  
22 importance to him and that he also gave him  
23 physical copies of his opening and closing address  
24 to the jury, the scene plan and things like that  
25 in 1983?



1           A           I was not aware of that. I would have to say that  
2                           that was very generous of your client.

3           Q           Very generous indeed, particularly since what Mr.  
4                           Carlyle-Gordge did not tell him was that the story  
5                           about writing a book was a ruse and that he was  
6                           actually working for and with Mrs. Milgaard in her  
7                           ad campaign to free her son, but Peter  
8                           Carlyle-Gordge has testified here, we have letters  
9                           he sent back to Mr. Caldwell saying thank you very  
10                          much for your kind assistance, thank you for  
11                          coming in on the weekend to let me go through your  
12                          file, I didn't quite have enough time with it, is  
13                          it okay with you if I come back another time. You  
14                          didn't know that?

15          A           I didn't know that, and I'm sure that your client  
16                           felt betrayed by Mr. Carlyle-Gordge, but what does  
17                           this have to do with me?

18          Q           It has to do with the information base that you  
19                           operated from with what you were told by Mrs.  
20                           Milgaard given that you didn't do the exhaustive  
21                           review of the file that would have been your  
22                           normal practice.

23          A           You mean -- are you implying that I should have  
24                           known about all this?

25          Q           No, I'm asking you did you know.



1 A No, I didn't know it.

2 Q Okay.

3 A Well, I heard about this character, I knew about  
4 him, I knew -- you know, I don't recall Joyce  
5 telling me that she had, she and Carlyle-Gordge  
6 had been involved in a ruse, but I knew that he  
7 was, that she had had a great deal of, she had  
8 worked with him on her son's behalf.

9 Q Did she show you the notes that he gave her based  
10 on his review of and dictation of my client's  
11 file?

12 A One more time, please?

13 Q Did she show you the notes that Mr. Carlyle-Gordge  
14 had made when he transcribed the dictation that he  
15 did when he was sitting in my client's office for  
16 hours at a time with a Dictaphone going through  
17 the file?

18 A No, I didn't see the note.

19 Q Okay. Did she -- or did you become aware that  
20 additional to the review of my client's file, that  
21 Mr. Carlyle-Gordge had done an extended tape  
22 recorded interview with my client wherein my  
23 client discussed his approach to the file, his  
24 belief that he had, or the police had done a fine  
25 job in very difficult circumstances of cracking a



1 murder and that they had done an excellent job of  
2 getting the perpetrator, and a belief that is  
3 wrong, no question, but what would appear from the  
4 tape to be an honestly held belief at that time?

5 A Are you asking me if I'm aware of this minutia?

6 Q Did that -- was that information shared with you  
7 before you made your determination that you would  
8 go on the public record and that your boss, Mr.  
9 McCloskey, would go on the public record accusing  
10 my client of misconduct?

11 A Well, if it was shared with me by Joyce or anybody  
12 else, I wouldn't have considered it significant  
13 enough to try to retain it.

14 Q Would it might have caused you to say for a  
15 minute, well, in light of this, in light of the  
16 co-operation that he extended in 1981 to Mr.  
17 Young, to Mr. Carlyle-Gordge in 1983 and  
18 subsequent co-operation extended including to  
19 members of the news media as late as 1988, that  
20 there was no reason for counsel or for you not to  
21 have asked to look at his file?

22 A For me to have looked at the file, for me to have  
23 knocked on Mr. Caldwell's door and said may I look  
24 at your files?

25 Q Uh-huh.





1 A Well, that again would have been very, very  
2 helpful, but I didn't have time to do that.

3 Q Okay. Now, sir, did you obtain from Mrs. Milgaard  
4 before you went out to interview Dennis Cadrain or  
5 Albert Cadrain the transcript of an interview that  
6 Dennis Cadrain had done with Mr. Carlyle-Gordge in  
7 1983?

8 A No, I didn't know about that.

9 Q Okay. Were you aware that in the extended  
10 interview that Dennis Cadrain did with Mr.  
11 Carlyle-Gordge in 1983, that he didn't make any  
12 mention of Albert being mentally unstable at the  
13 time he gave his evidence at trial?

14 A I didn't know that, no.

15 Q Okay. Sir, when you went to B.C., Coquitlam, Port  
16 Coquitlam and you interviewed Dennis Cadrain and  
17 Albert Cadrain, you reported back to Mrs. Milgaard  
18 and Mr. Asper that Dennis had told you that Albert  
19 was mentally unstable at the time of trial, and do  
20 you recall discussing with them that this was a  
21 very important piece of information and the fact  
22 that the Crown hadn't disclosed his mental illness  
23 at the trial was yet another indication of the  
24 lack of bona fides of the Crown?

25 A I'm not sure whether -- yes, in fact I did of



1 course report back to David Asper and Joyce  
2 Milgaard about the outcome of my interview with  
3 Dennis and Albert Cadrain. I don't recall whether  
4 the, I read the transcript of the conversation I  
5 had with both of them, but I don't recall whether  
6 the commentary on the possibility of the Crown  
7 withholding evidence from the defence was brought  
8 up by myself or David Asper or Joyce.

9 Q Okay. I'll find it for you during the break and  
10 show it to you just in fairness to you, but I'm  
11 going to suggest to you that there was a  
12 discussion and it was important, more -- you were  
13 recording it, Mr. Asper and Mrs. Milgaard seized  
14 on it as yet another indication of bad faith on  
15 behalf of the Crown, if I could characterize it  
16 that way.

17 A You know, I'll go along with that if you want to  
18 save some time, you don't have to bring that  
19 document up.

20 Q Okay. Sir, and we do have the tran -- that inter  
21 -- not intercept, sorry, I'm coming out of a bail  
22 hearing with drugs yesterday -- we do have that  
23 recorded conversation by Mrs. Milgaard as part of  
24 our materials.

25 A Sure.



1 Q But, sir, as I was reading that transcription and  
2 as I was reading your report to them, that you had  
3 found out that at the time of the trial Albert was  
4 unstable as all get-out and should never have been  
5 used. I went back and I looked at the work that  
6 you did with Albert, the work that you did with  
7 Dennis. Do you remember whether you asked Dennis,  
8 and I'll put the question very simply, did you say  
9 to him, "listen, guy, this is important stuff, did  
10 you or your mom or your dad or anybody tell the  
11 police or the prosecutors in 1969 before  
12 preliminary inquiry or in 1970 that you thought  
13 your brother was not mentally stable"?

14 A I don't remember if I asked Dennis that or not.

15 Q Before one would --

16 A I may have.

17 Q Okay. If I may, before one could or should impute  
18 impropriety to the Crown for failing to disclose  
19 what you were identifying as a critical piece of  
20 information, don't you think it would have been  
21 prudent to inquire whether the Crown could have,  
22 would have or might have known that back in 1969,  
23 '70?

24 A Well, again, the interpretation of this  
25 information I obtained from Dennis and Albert



1 Cadrain was left to the attorney and to the mother  
2 of the Defendant.

3 Q Okay. If we can back the train up though, you are  
4 a trained investigator, you've been doing this for  
5 years, you are interviewing a critical witness in  
6 your opinion who contributed to the wrongful  
7 conviction of an innocent man --

8 A Yes.

9 Q -- and you are being told, and I mean no  
10 disrespect to the deceased Mr. Cadrain, you are  
11 being told that at the time of the trial he was  
12 nuts, he wasn't stable, he wasn't reliable?

13 A I was being told that by his brother -- by Dennis.

14 Q And are you saying to me that it wouldn't occur to  
15 you or it shouldn't have occurred to you as a  
16 prudent investigator to say to Dennis Cadrain,  
17 "good Lord, did the Crown know that"?

18 A Well, I can't say -- I can't rule out the  
19 possibility that I did bring that up with him,  
20 that question. However, the first thing to do in  
21 my opinion was to verify the reliability of this  
22 information and I suggested immediately in that  
23 same phone call, I made it clear to Mr. Asper and  
24 to Joyce that the next step was to contact  
25 University Hospital in Saskatoon and find out



1           whether there was any truth to this, and for that  
2           matter also I made some other suggestions, I said  
3           you guys have to get on Albert and Dennis' sister  
4           Celine and see what she has to say about this  
5           because she may have, she may have some  
6           information on, that sheds more light on Albert's  
7           apparent claim to have seen blood on Milgaard's  
8           trousers on the morning that he visited their  
9           home, but as far as -- you know, I left that in  
10          the hands of Joyce and David Asper.

11        Q       Okay. Sir, I'm going to, I've lost -- I pulled  
12           out a page and lost my spot, but when you made  
13           those suggestions to Joyce and Mr. Asper about  
14           what needed to be done, what was your thoughts as  
15           to why this needed to be done and why were you  
16           giving them that caution or that suggestion?

17        A       Why was I suggesting, telling them that this had  
18           to be?

19        Q       Uh-huh.

20        A       Well, it was no surprise to them, they realized  
21           this was an important investigation and that, you  
22           know, I was not assigned, I was not on a full-time  
23           assignment on the Milgaard case and that, you  
24           know, that they would have to be doing some  
25           following up on the information that I developed.



1 Q Okay. And you did your interview with Mr. Cadrain  
2 about May -- sorry, no, June, and that's where I  
3 lost my spot, is the exact date of that interview,  
4 but --

5 A There were two trips to Port --

6 Q One when you got the recording with Dennis, May,  
7 May 26th, and then there was, you saw Ron Wilson  
8 in June and later in June you saw Albert Cadrain.  
9 Do you remember that?

10 A Yes, I saw Albert and Dennis again.

11 Q The first time, but you actually took a statement  
12 from him on the second trip?

13 A Yes.

14 Q Okay. The first time you talked with him, but you  
15 didn't take a statement from him?

16 A I'm not sure whether I got statements from Albert  
17 and Dennis, both of them on the second trip, but I  
18 know I got statements from both of them. I might  
19 have gotten the statement from Dennis the first  
20 trip and then returned to get a statement from  
21 Albert, but I'm not sure.

22 Q Okay. Between the time you talked to Dennis and  
23 got the first statement on May 26th and when you  
24 went back the second time and got the statement  
25 from Albert, and when I say statement, I'm meaning



1 a written document that we have as a Commission  
2 document, did you inquire or did you keep contact  
3 with Mr. Asper and Mrs. Milgaard to make sure they  
4 followed up on what you say were suggestions you  
5 made to them based on Dennis' information that you  
6 need to contact Celine, you need to get in touch  
7 with Royal University Hospital, you need to get  
8 records to confirm whether or not this is true?

9 A Uh-huh.

10 Q Do you know whether all of that was followed up  
11 and done before you went back to Port Coquitlam  
12 for the second time and you took the statement  
13 from Albert?

14 A No, I don't know whether they followed up on that.

15 Q Okay. Sir, you said, or you've said a number of  
16 times, but I believe it was yesterday, that you  
17 talked about the surprise that it was to you that  
18 there was so much media attention around this  
19 ongoing questioning of the review of David  
20 Milgaard's conviction.

21 A Yes.

22 Q Do you remember saying that?

23 A I do.

24 Q You said it was very unusual that, and in fact if  
25 I can, and I don't have an exact quote, but you



1           said that -- you made the statement, I must say,  
2           that this ongoing complicity -- publicity we  
3           consider to be very unusual, Mr. Fisher was being  
4           tried in the paper, no doubt about it, and you  
5           went on to say when we -- quite often when we have  
6           done a petition I do not recall any investigation  
7           where we were feeding the press, it's quite an  
8           unusual phenomenon that was going on up here.

9           A       Yes. I'll stick with that.

10          Q       Sir, given that again as a professional with many  
11               years of experience, not only were you an  
12               investigator, you were a man of the media, you  
13               knew both the good and the bad that the media can  
14               do in terms of people, their reputations,  
15               processes like getting to truth, you would be  
16               aware that there's some pretty good upsides, but  
17               there's some pretty bad downsides to media  
18               involvement especially at inappropriate times  
19               wouldn't you?

20          A       Did I -- are you saying --

21          Q       As a professional, that would have been a  
22               knowledge base you had when you came to Canada to  
23               assist Mrs. Milgaard in 1990; would it not?

24          A       Well, the train had already left the station as  
25               far as the publicity was concerned, so yeah, I





1           jumped on the train along with everybody else  
2           because of the publicity that was being generated,  
3           the interest that was being shown by the press in  
4           this case.

5           **Q**       But, sir, step back for a moment and answer for me  
6           why you decided to jump on a train that, as you  
7           characterize it, if I could paraphrase, in some  
8           ways you would considered to be a run-away train?

9           **A**       That's your word. I didn't use the word run-away  
10          train.

11          **Q**       No, no, I'm summarizing when you said that it was  
12          a phenomenon that you were not familiar with, this  
13          idea of feeding the media was quite an unusual  
14          phenomenon, so I'm using run-away train, that's my  
15          word, to describe what you said was an unusual  
16          phenomenon, that there would be so much media feed  
17          going on between the parties making the petition  
18          and significant people in the media world.

19          **A**       I sensed that, yes, I'll stick with that word,  
20          phenomenon, but I did not say it was a negative  
21          phenomenon. It's my feeling that this was working  
22          out to the benefit of David Milgaard and was also  
23          perhaps essential, an essential element of, in  
24          terms of having the truth come forward, having the  
25          truth, finding out what happened.



1 Q Sir --

2 A There seemed to be, at the time there seemed to  
3 be, based on what I understand, there was -- the  
4 authorities were stonewalling and public sentiment  
5 seemed to be helping the cause that we were  
6 involved in and the publicity, yes, was unusual,  
7 but as I say, when in Rome --

8 Q -- do as the Romans do?

9 A Yeah.

10 Q Sometimes --

11 A I couldn't have stopped this train anyway if I had  
12 wanted to. If they weren't -- you know, of course  
13 I was, when I was talking to the press it was with  
14 the endorsement of my boss Jim McCloskey.

15 Q But, sir, my question, if I may try to summarize  
16 it very simply, is this, you are a professional  
17 representative of Centurion Ministries --

18 A Yes.

19 Q -- appearing in Canada, you are an investigator  
20 with many years of experience in preparing  
21 petitions for the court?

22 A Uh-huh.

23 Q You've described an assessment and an appreciation  
24 that you have of the importance of the role and  
25 function of Centurion Ministries and their staff



1 playing square as it were?

2 A Uh-huh.

3 Q And you are a reporter of many, many years  
4 experience?

5 A Yes.

6 Q Okay. Now, when you came to Canada in March of  
7 1990 and you first met with Mrs. Milgaard, when  
8 you came back in May of 1990 and you talked to  
9 Dennis Cadrain and Albert Cadrain, you came back  
10 in June and you talked to Ron Wilson and fairly  
11 soon after you talked to these people your name is  
12 appearing in the media, you are identifying  
13 yourself as a representative of Centurion  
14 Ministries?

15 A Yes.

16 Q You are giving a profile of your organization and  
17 you are lending your name to the Milgaard cause;  
18 correct?

19 A Yes, right.

20 Q Okay. Now, you said earlier that it was your view  
21 that the information you got from Dennis about  
22 Albert needed to be checked out, that they needed  
23 to talk to Celine, they needed to go to the  
24 University Hospital, and I take it those would be  
25 the investigative reporter in you coming out, it's



1           like cover your story, make sure you've got  
2           accurate information, okay, and that's laudable  
3           and I'm not criticizing you for that, I admire  
4           that you had the thoughts at least. My question  
5           to you was whether there was any follow-through  
6           done and I believe your answer is that you are not  
7           sure. Did you, before you actually went on the  
8           public record, and I have you on the public record  
9           as early as June, 1990 after you talked to Ron  
10          Wilson, did you, before you actually went on the  
11          public record, take time to assess whether any of  
12          the information that you were putting out as a  
13          result of the statements that you took from Dennis  
14          Cadrain, Albert Cadrain, Ron Wilson, any of the  
15          information was verified at all by anybody? You  
16          hadn't done it. Did you check to see if anybody  
17          else had done it?

18          A           All right, can you be more specific?

19          Q           Did you check to see whether Albert Cadrain had  
20          been in Royal University Hospital and when he had  
21          been in there?

22          A           Did I check?

23          Q           Yeah.

24          A           No, I didn't check.

25          Q           Did you check to see if anybody else had checked



1 to see of Albert Cadrain, to quote Dennis, had  
2 been put in Royal University Hospital right after  
3 the trial was over?

4 A I don't recall whether I conferred with Mr.  
5 Asper's office to find out if they had followed up  
6 on that or not.

7 Q Okay. Did you come to know that he hadn't gone  
8 into the hospital right after the trial was over,  
9 that he didn't go in -- I think it was about 1972.

10 A He went into the hospital in 1972?

11 Q Yeah, two years, and somebody can correct me if  
12 I'm wrong on that, but I think it was about two  
13 years after the trial, or getting up on two years.

14 A Well, no, I didn't realize there was a discrepancy  
15 in the dates that Dennis had given me and the  
16 information I got from Albert, no, I didn't know  
17 that.

18 Q Would you agree with me that that was easily  
19 verifiable information?

20 A Well, not for me it wasn't easily verifiable, not  
21 when I'm on a limited assignment and I'm back in  
22 Seattle. I mean, I left that in the hands of  
23 other people. I don't know how easy it would have  
24 been, I don't know what disclosure, what  
25 disclosure limitations were in Canada at that



1           time. I assume in this day and age we would have  
2           to have had permission from Albert Cadrain to have  
3           got his hospital records.

4           Q       Sir, when you sat with Albert Cadrain and when you  
5           sat with Dennis Cadrain in May and June of 1990,  
6           you were a fairly sophisticated investigator,  
7           weren't you, and I don't mean that in a  
8           disrespectful way, I think you're, at basic  
9           instinct, a fairly smart man, you won a Pulitzer  
10          Prize after all. I'm offering you a compliment,  
11          that, you know, you think on your feet, you are  
12          good on your feet. Would you agree with that?

13          A       I wouldn't disagree with it.

14          Q       Okay. Would it have been very difficult for you  
15          to have said to Albert Cadrain, "listen, this is  
16          really important and it would be helpful if you  
17          would let us verify when you were in the hospital,  
18          will you sign a consent that Mr. Asper can go to  
19          the hospital and get that information"?

20          A       Well, you know, in hindsight that would have  
21          probably been a --

22          Q       Really smart?

23          A       -- prudent thing to do, yeah. We would have saved  
24          my friends some time perhaps and perhaps set this  
25          follow-up investigation in motion, but I didn't.



1 Q Just like it would have been really helpful if you  
2 had said to Dennis or to Albert as a by the by,  
3 did anybody tell the police or the Crown back in  
4 1969, 1970 that Albert was starting to experience  
5 some mental health problems?

6 A You know, every time you talk with somebody,  
7 there's always -- there's always -- there are  
8 always second thoughts where you say dang, I wish  
9 I had asked them that, so this was no different  
10 than other interviews that I've had through the  
11 years.

12 Q Sir, may I suggest to you that it was a lot  
13 different because within a short time after you  
14 had done, taken those statements without asking  
15 those questions and getting those authorizations,  
16 you were appearing in the local and national media  
17 accusing the police and the Crown of misconduct?

18 A Was I accusing the Crown? Do you want to bring  
19 that up and let me look at it?

20 Q If you'll bear with me I'm going to take you  
21 there.

22 A Sure, all right.

23 Q But you were basically saying that the police had  
24 put forward witnesses who gave false testimony and  
25 by implication the Crown had put those witnesses



1 on the stand and tendered their false testimony to  
2 a jury.

3 A Yes. Again, whatever I said to the press, any  
4 accusations that I have been -- any accusations  
5 associated with me in the press were based on what  
6 these witnesses told me, and in Cadrain's case  
7 information that I had gotten from his brother,  
8 and when I'm talking about witnesses being coerced  
9 or being under a great deal of pressure, I'm  
10 referring to Albert Cadrain and Ron Wilson.

11 Q But you know that those -- well, not Albert of  
12 course, Albert testified in the Supreme Court of  
13 Canada, but you know that Ron Wilson, for example,  
14 has said despite what he put in his statement to  
15 you, under whatever circumstances he used that  
16 language, that in fact he wasn't coerced, he  
17 wasn't pressured by the police.

18 A I don't believe that.

19 Q Whether you believe it or not, that's the sworn  
20 evidence that --

21 A Well, okay, that's fine, but that isn't what he  
22 told me.

23 Q Okay. Sir, and I won't go to the circumstances of  
24 him telling you, that's been well canvassed by  
25 others --





1 A Sure.

2 Q -- and will bring Mr. Wolch to his feet again, but  
3 if I may, in your opinion or in your mind when you  
4 came to Canada in 1990 and you met with Joyce  
5 Milgaard and you talked with her about her son and  
6 what she believed to be, properly to be his  
7 wrongful conviction, were you of the view that if  
8 an innocent person in the adversarial system that  
9 operates in our courts and our society in North  
10 America happens, that it means that there had to  
11 have been police and/or Crown misconduct?

12 A In my long experience dealing with wrongful  
13 convictions, I can tell you that there are a  
14 number of reasons why these things occur.

15 Q Would you agree with me that sometimes  
16 miscarriages of justice can occur where everybody  
17 does their very best to do their job right and  
18 it's just unfortunate reality --

19 A Where everybody does their best?

20 Q To do their job right.

21 A I would say that's extremely rare.

22 Q But would you agree with me that it can and does  
23 happen?

24 A I would agree with you that it can and does  
25 happen, it's possible, but I don't think it



1           happened in Saskatoon.

2           **Q**       Sir, whether you think it happened or it's  
3           possible it hadn't in Saskatoon, in 1990 did you  
4           have any independent evidence, independent of what  
5           you were being told by Joyce Milgaard, by David  
6           Asper and the pieces that you with your limited  
7           assignment did, did you have any other  
8           independent, verifiable evidence to suggest that  
9           there was acts of wrongdoing on the part of, and  
10          I'll skip the police, that's been asked by others,  
11          but on the part of my client T.D.R. Caldwell?

12          **A**       My statements alluding to the conduct of Saskatoon  
13          police in investigating this case were based on my  
14          knowledge, my background knowledge of Larry  
15          Fisher, my knowledge of what the police knew about  
16          Larry Fisher -- let me back up and say that when I  
17          was referring to misconduct by the police  
18          department, it was what I considered to be a body  
19          of misconduct starting with their handling of the  
20          witnesses and continuing on to the way they  
21          responded to the emergence of Larry Fisher. My  
22          comments in the press which echoed the comments of  
23          Joyce Milgaard and the law firm that was  
24          representing her son were based on, primarily  
25          based on what I learned from the witnesses, the



1 two witnesses I just referred to, Albert Cadrain  
2 and Ron Wilson.

3 Q Sir, picking up on part of that answer, you were  
4 -- you said you were echoing the comments of Joyce  
5 Milgaard. Did you ever, for a moment, have a  
6 second where you thought to yourself Mrs. Milgaard  
7 is a lovely woman, she absolutely believes to the  
8 depths of her soul in the innocence of her son,  
9 but she's a mum; am I safe to rely on her  
10 interpretation, as a mum, of the actions, conduct  
11 of others, particularly when I have no record that  
12 she can pass to me to show me "I'm saying this and  
13 I know it to be true because"?

14 A Of course I wouldn't have relied on her, her  
15 feelings about what happened to her son, of course  
16 not. I relied on my gut feelings, my own  
17 feelings, based on information that I had  
18 obtained.

19 Q But, sir, does it bother you or do you see a  
20 conundrum in the fact that you are saying to me  
21 you are not -- you didn't -- of course you didn't  
22 rely on Mrs. Milgaard because she might be  
23 emotional, you relied on your own gut feelings,  
24 when everywhere you went and every step you took  
25 was as a result of the direction or information



1           you were getting from Mrs. Milgaard, who might be  
2           less than objective, understandably so?

3           A       Umm, I don't quite understand -- I don't quite  
4           agree with what you have just said. I wasn't -- I  
5           wasn't becoming -- I didn't become enlightened by  
6           Joyce Milgaard and David Asper, I learned what I  
7           learned from these witnesses, not Asper and Joyce.

8           Q       Okay.

9           A       So --

10          Q       Sir, I'll leave that, it's for the Commission to  
11          judge --

12          A       Okay.

13          Q       -- what you learned and what you relied on.

14          A       If I can clarify that for you for a minute, for  
15          just a minute, I went out and I interviewed  
16          witnesses and I left those witnesses with  
17          impressions based on what they told me. The  
18          impressions of, that I left with, were consistent  
19          with the feelings that David Milgaard -- or that  
20          David Asper and Joyce Milgaard had, and there we  
21          are.

22          Q       I'm just skipping ahead to, in my notes for a  
23          minute, but when you say you didn't rely on -- if  
24          I'm summarizing correctly -- you didn't rely  
25          entirely on her, you went with your own gut; did



1 any alarms go off for you in your own gut, as you  
2 were dealing with and working with Mrs. Milgaard,  
3 that caused you to say "I think I need to step  
4 back a minute and do some sober second-thinking  
5 here"?

6 A Yes, absolutely. I had some problems with Joyce  
7 and, on occasion, over the period of two years  
8 that I was involved in this case.

9 Q And --

10 A I took exception to some of her ideas and some of  
11 her strategies.

12 Q And an example of that would be how you perceived  
13 she handled the (V14)- (V14)- situation in the  
14 sense of showing, maybe doing a, I think you  
15 referred as --

16 A You know, I was not excited about the results of  
17 the (V14)- venture, I -- I would have just written  
18 it off as a bad idea and never given it a second  
19 thought, but I think that Joyce made, made more of  
20 it than it deserved.

21 If you want another example, I  
22 had -- I was opposed to bringing the press into  
23 George Lapchuk's apartment in an attempt to catch  
24 him telling us that he'd been advised not to talk  
25 about the case, and I expressed my feelings of



1           that to Joyce about it in no uncertain terms.

2           **Q**       Did you express any --

3           **A**       Particularly after we got caught.

4           **Q**       Well, before you got caught did you express any  
5           concern to her, after she suggested the -- or she  
6           gave the description of the murder weapon that  
7           killed Gail Miller to Linda Fisher in that first  
8           interview that you were doing with her?

9           **A**       I didn't catch that, to be honest with you.

10          **Q**       Okay. Sir, I've gone through an extensive review  
11          of the file, you may say regrettably, --

12          **A**       Yeah.

13          **Q**       -- but I can't find anywhere that you ever voiced,  
14          in the public record -- and you were very much, as  
15          you say, you got on the media bandwagon -- I can't  
16          find any time when you voiced on the public record  
17          a reservation or a hesitation about anything that  
18          was being said, anything that was being done by  
19          Mrs. Milgaard, her lawyers, or anybody on her  
20          behalf, that imputed bad conduct, improper  
21          conduct, eventually criminal misconduct, to people  
22          like my client.

23          **A**       You are absolutely right, you won't find anything  
24          on the record like that.

25          **Q**       Sir, given that you were the investigator from



1 Centurion Ministries, you weren't a friend of the  
2 family, you weren't supposed to be part of the  
3 Milgaard group, --

4 A Uh-huh.

5 Q -- or you weren't holding yourself out to be a  
6 member who might come with bias, you were holding  
7 yourself out to be a representative of this fine  
8 organization from the United States; how was it  
9 that you never voiced the reservations that you  
10 came to have over the course of your conduct and  
11 involvement in this file?

12 A Are you suggesting that I should have mentioned to  
13 the press that I objected to, or that I  
14 disapproved of this or that, or that I thought  
15 that Joyce was a zealot, or what are you saying  
16 that I --

17 Q I'm saying to you that you've indicated here over  
18 a number of days, both in January and in the last  
19 few days, that sometimes you had hesitations.  
20 What I did is I did a fairly exhaustive review of  
21 the record of your involvement in this  
22 investigation, --

23 A Uh-huh.

24 Q -- in particular the public record, and I don't  
25 find anywhere that you, in your personal capacity,



1           you on behalf of Centurion Ministries or Mr.  
2           McCloskey on behalf of Centurion Ministries --

3           A           Right.

4           Q           -- being briefed by you, ever said "eh, we're not,  
5           you know, we're not comfortable with this one  
6           because we didn't do an exhaustive review, we  
7           didn't do all the legwork, we're relying on  
8           information from potentially an emotional mum who  
9           might come with a bias", never saw that anywhere.

10          A           You know, the point you're making is valid. This  
11          could have been a -- we could have done a lot more  
12          if we'd had the time, but, you know, I'm -- I can  
13          only -- I was given limited assignment, limited  
14          time, and I was following my instructions, and I  
15          was developing evidence that was beneficial to the  
16          client and heading in the direction that we had  
17          hoped it would. It would have been nice if we  
18          could have had five times as much time, which it  
19          would have taken to do everything that we would  
20          normally do in the course of a like investigation,  
21          but we didn't, I didn't have that luxury, I made  
22          the best use of the time that I had and, as it  
23          turned out, we developed information that was  
24          valid, and ultimately effective, and ultimately  
25          vindicated as *bona fides*. Now there was





1           absolutely -- I don't think that you can look back  
2           on any aspect of this investigation and take fault  
3           with it, I -- you know, there are some things that  
4           were said about the conduct of the police that, I  
5           don't say that I regret saying them, but that I  
6           would wish I would have given some more thought  
7           to. But I still subscribe strongly to the feeling  
8           that something happened to these witnesses, and  
9           based on what they told me, and the record may not  
10          support that but we didn't have benefit of the  
11          record.

12          Q       Mr. Henderson, I'm gonna suggest to you that when  
13          you hold yourself out as a representative of an  
14          organization, when you hold yourself out as an  
15          expert, and you fail to say, as you hold yourself  
16          out, "but this time I'm operating with a limited  
17          mandate, and this time, members of the public of  
18          Canada, please understand we haven't been able to  
19          do that wonderful, thorough job that gives us  
20          confidence when we step up to the mike and we slag  
21          somebody", that failure to do that on your part  
22          was an abdication of your responsibility to your  
23          organization, and it was one hell of an abdication  
24          of your responsibility to people like T.D.R.  
25          Caldwell, may I suggest?



1           A           I've never had any problem with your client, Mr.  
2                       Caldwell, in fact I've never even envisioned your  
3                       -- you know, it's my understanding that your, that  
4                       your client, Mr. Caldwell, did not have benefit of  
5                       all of the information from the police department,  
6                       that he may have proceeded with the prosecution of  
7                       David Milgaard without knowing everything that he  
8                       should have. I have never leveled any accusations  
9                       against Mr. Caldwell, to my knowledge. My  
10                      complaints, voiced in the press along with -- in  
11                      unison with David Asper's office, Hersh Wolch's  
12                      office, and Joyce Milgaard, has been against the  
13                      police department, again based on what I learnt  
14                      from these witnesses.

15           Q           Mr. Commissioner, I'm gonna move to a new area  
16                       that requires me to enlist the support of the  
17                       staff, perhaps it would be the appropriate time to  
18                       break so we can set up for this next line of  
19                       questioning.

20                      COMMISSIONER MacCALLUM: Very well, thank  
21                      you, 15 minutes.

22                      *(Adjourned at 10:26 a.m.)*

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

24           BY MS. KNOX:

25           Q           Mr. McCloskey, before the break -- or Mr.



1 Henderson, sorry, before the break you expressed  
2 the view that you don't recall ever accusing my  
3 client, Mr. Caldwell, of misconduct?

4 A I have no, no independent recollection of saying  
5 anything critical about Mr. Caldwell.

6 Q Okay. If we could bring up document 008481,  
7 please. Sir, this is an article that appeared, it  
8 actually appeared in *The Toronto Sun* on April 5th,  
9 1991, this is the Justice text of it for purposes  
10 of doing a media watch, I think, is how this comes  
11 to be on the text of the Justice of Canada. But  
12 do you remember, after the Minister of Justice,  
13 Ms. Campbell, announced her decision that there  
14 wouldn't be a review of Mr. Milgaard's case, that  
15 you did some media interviews about her decision?

16 A Yes, I have, I have a recollection of that, yes.

17 Q Okay. And do you recall this area being canvassed  
18 with you during the course of the examination that  
19 Mr. Hodson did with you when you were here in  
20 January, specifically on January 26th?

21 A Excuse me, could you --

22 Q Mr. Hodson, when Mr. Hodson was questioning you  
23 all those months that must seem so long ago to you  
24 now in January this year, do you recall him taking  
25 you through this article and some comments that



1 are attributed to you in the article?

2 A Yes, I think the -- we were -- we were -- the  
3 issue was a certain word that had been attributed  
4 to me in the press.

5 Q Mr. Commissioner, for the record -- and I won't  
6 ask to have it brought up -- that portion of the  
7 transcript begins at about page 22,915 and follows  
8 through for a number of pages. And, sir, do you  
9 recall stating to the media, and included in this  
10 article, that it was your belief in April 1991  
11 that there had been a coverup?

12 A I --

13 Q Do you recall very publicly taking the position,  
14 after the Minister's decision, that there had been  
15 a coverup in this case?

16 A A coverup of what by whom?

17 Q A coverup by Justice, by the police, by everybody  
18 involved with David Milgaard, of -- first off,  
19 there had been actions that led to his wrongful  
20 conviction, and then a coverup of their knowledge  
21 that they had caused a wrongful conviction?

22 A Yes, I recall. Are you asking me if I recall  
23 making reference to a coverup or --

24 Q In this, when you talked to the me media -- and  
25 I'll show you some other articles --



1 A Yes, I'll to have look at it to be fully reminded  
2 of it.

3 Q -- okay -- do you recall telling Mr. Hodson in  
4 response to his questions -- and this is  
5 specifically at page 22,919 of the transcript, and  
6 perhaps we could bring that up -- that you did  
7 express the view, in this article and others, that  
8 there had been a coverup and that, as you were  
9 testifying on January 26th, 2006, that you  
10 remained convinced, you remain convinced even to  
11 this day, or that day, that there had been an  
12 egregious coverup of wrongdoing by the -- by  
13 police and justice?

14 A Umm, a coverup in general, yes.

15 Q Okay. And you were attributing that to the police  
16 and to justice -- being small j -- but the justice  
17 system, I take it, you were taking --

18 A 'The justice system'? My criticism, whether I  
19 expressed it correctly or in a manner that was  
20 understood correctly, was -- my criticism was  
21 leveled primarily at the police department as the  
22 agency which initiated, and in my opinion  
23 orchestrated, the wrongful conviction of an  
24 innocent man.

25 Q Okay. Would it surprise you to know that, when



1           you make the kind of statements about there being  
2           a coverup and about justice not having the decency  
3           to do the right thing, that my client --

4           A       Did I use the word "failure to have the decency";  
5           is that right?

6           Q       Let me see. I'll have to look at my note here.  
7           If we could go to page 22,918, please. If we  
8           look, this is a quote from you where you say:

9                        "'It's obvious what they're trying to  
10                       do,' Henderson says. It's a coverup.  
11                       We see the same thing in the United  
12                       States. The justice people should have  
13                       the decency to admit they've made a  
14                       terrible mistake. No doubt they know  
15                       it's a despicable tragedy and a travesty  
16                       . . . They refuse to accept their  
17                       crucial responsibility to remedy a  
18                       miscarriage of justice. They're acting  
19                       like small-time prosecutors in Texas."

20           Does that help you?

21           A       Yes, and I think that was very well put.

22           Q       Sir, secure in the belief that it was very well  
23           put, do you think maybe there might be some  
24           feeling by my client that you might have been  
25           taking a slam at him when you talked about him



1           this way?

2           A       Well, I wasn't referring to Mr. Caldwell. Like I  
3           said before, it was my -- it is my understanding  
4           that Mr. Caldwell was denied access or knowledge  
5           of critical documents, that information was  
6           withheld from him that he should have had access  
7           to before he decided to proceed with the  
8           prosecution of this client -- of this defendant.

9           Q       Sir, given that you had -- if we could go, track  
10          up that same page, please, I'm being offered some  
11          assistance here. If we could go to the top of  
12          this page, and again we're quoting here:

13                    "'Henderson accuses the police  
14                    investigators of mistreating witnesses  
15                    during the original investigation and of  
16                    coercing statements from them. He  
17                    accuses prosecutors of standing by at  
18                    the trial while witnesses gave evidence  
19                    that wasn't supported by actual facts.  
20                    But above all, he directs his wrath at  
21                    the Canadian government ...'"

22          Do you see how here, again, there's very clear  
23          imputation to you -- by you in 1981 in the --  
24          1991, I'm sorry, in *The Toronto Sun* of knowledge  
25          and certainly a failure to act on knowledge of



1                   wrongdoing perpetrated by the police at this  
2                   trial.

3           A           Let's dissect this paragraph. First of all, I see  
4                   a quote in front of Henderson, but this is not a  
5                   direct quote from me. There are three accusations  
6                   represented in this paragraph, one is that the  
7                   police investigators of mistreating witnesses,  
8                   that's one of the, one of the things that is  
9                   attributed to me.

10          Q           Uh-huh.

11          A           I don't take exception to that. Mistreating  
12                   witnesses and coercing statements from witnesses:

13                               "... accuses prosecutors of standing by  
14                               at the trial while witnesses gave  
15                               evidence that wasn't supported by actual  
16                               facts.",

17                   umm, that's a statement, a very vague statement,  
18                   in my mind, that I don't recall making. This is  
19                   not a direct quote, although there is a quotation  
20                   mark, but if you want to move the screen up a  
21                   little bit let's read further.

22          Q           We can go to the previous page if you'd like?

23          A           That's fine. When I refer to "Justice people" I'm  
24                   not referring to Mr. Caldwell or whoever was  
25                   involved with him in the prosecution of David





1 Milgaard.

2 Q Sir, when you were making your accusations on the  
3 public record in Canada did you ever say, as a  
4 by-the-by, "I'm not including the trial prosecutor  
5 in this slam"?

6 A No, I never, I never said that. We're talking --  
7 I --

8 Q Can you think of any way the public in Canada  
9 would know, or my client would know, that you  
10 weren't including him in your slam?

11 A Well, you know, to be perfectly honest with you  
12 what we're talking about here is the prosecution  
13 of an innocent teenager, a kid who spent 23 years  
14 in prison for something that he didn't do. We're  
15 also talking about the spectre of a very dangerous  
16 sexual psychopath who became known to police a  
17 year after the conviction of David Milgaard. All  
18 of this, these two elements, coupled with the,  
19 coupled with the tragic results of Larry Fisher's  
20 release from prison in 1980, in my way of mind,  
21 overshadow any embarrassment or chagrin that  
22 public officials, from police to prosecutors to  
23 justice officials, may have been subjected to and  
24 may be taking exception to at this point.

25 The point is that there was a



1 big mistake made, it had tragic results, and our  
2 job, my job, was to rectify this wrong as best I  
3 could, and express my opinions as to why this  
4 travesty occurred, and --

5 Q And you didn't hold yourself accountable to at  
6 least a minimum standard of trying to be accurate  
7 when you were making these allegations?

8 A 'A minimum standard'?

9 Q A minimum standard.

10 A Well actually, as it turned out, we were accurate,  
11 completely accurate.

12 Q Sir, you were accurate that David Milgaard was  
13 innocent, I suggest to you, you weren't accurate  
14 in many other things that you said about my client  
15 and others, and the evidence at this Inquiry shows  
16 that?

17 A Ma'am, I didn't say anything about your client,  
18 I've never used Mr. Caldwell's name. I'm -- I'm  
19 surprised that you're belabouring this because  
20 it's you who is putting him in a suspicious light,  
21 not me.

22 Q I see. Well, perhaps we'll proceed with the next  
23 article that I have for you that might assist you  
24 in wondering why I'm belabouring it, if I may  
25 borrow your term. Document number 327590. This



1 is an article that was published in the  
2 *Leader-Post* on June 25th, 1991, and it's published  
3 out of Sydney, Nova Scotia, the east coast of the  
4 Country of Canada almost. And I -- Mr. Hodson  
5 asked you about this article, again, when you were  
6 testifying on January 26th last, and Mr.  
7 Commissioner that reference again is found on page  
8 22,929 of the transcript of that day.

9 Did you attend a conference in  
10 Sydney, Nova Scotia with Mrs. Milgaard, for the  
11 record, that was about cases of wrongful  
12 conviction?

13 A No, I didn't.

14 Q Okay. I ask you that because this is an article  
15 that starts with referring to statements that she  
16 made at this conference, but if you go to the  
17 second paragraph or the second column it segues  
18 into a discussion about you; do you see that?

19 A I see it, yes. Let me read it here if you will?

20 Q Okay. If we could bring it up so that it's closer  
21 to you, please, and we need to bring it up to  
22 here. Yes, that's good.

23 A *(Witness reading)* I've read it, yes.

24 Q And just as an aside, given our discussion and my  
25 question to you this morning about your -- the



1 repeated occasions when you respond here by saying  
2 you had a limited engagement, when you made -- or  
3 when the press is quoting you as a person who  
4 investigated this case they say that you are a  
5 Seattle, Washington detective who spent more than  
6 a year investigating the case. I take it, by  
7 that, you are referencing a calendar year and not  
8 365 days of the year, given you had a limited  
9 engagement?

10 A You're referring to the author of this article's  
11 description of my involvement being -- describing  
12 my involvement, the length of my involvement, as  
13 more than a year; is that correct?

14 Q Uh-huh?

15 A Okay.

16 Q Uh-huh?

17 A Well, those are his words, not mine.

18 Q But in fact, if we look at the record, you spent a  
19 small number of days over the period of a year  
20 involved?

21 A Seemed like a very long time to me.

22 Q The practical reality of it, sir, was it not, was  
23 it was a small number of days?

24 A Well, I don't know if it was a small number of  
25 days, we'd have to count them up and then take it



1 from there.

2 Q Trust me, if you want me to I will, and it will be  
3 less than a month.

4 A Less than a month? If you say so.

5 Q The record says so, sir, with respect.

6 A Well, you have benefit of my expense accounts?

7 Q Sir, we have benefit of the contacts that you made  
8 with various witnesses, the dates you did all --

9 A How long I was actually in Canada? Well this is,  
10 I think this is senseless debate, but go ahead.

11 Q Sir, --

12 A I don't see Mr. Campbell's name here anywhere in  
13 this article.

14 Q It's Mr. Caldwell.

15 A Excuse me.

16 Q And, sir, if I could take you beyond that, you  
17 recall telling the press that, expressing your  
18 view on Ms. Campbell's decision, you recall, and  
19 this is in quotation marks:

20 "Given what we've developed on this,  
21 there is simply no reasonable  
22 explanation for refusing to act  
23 favorably on this for the defence," he  
24 said at the time."

25 He being you?



1 A Uh-huh.

2 Q He goes on not in quotations:

3 "Henderson says the only possible  
4 explanation is political."

5 And again attributing a quote to you:

6 "They don't want to admit they screwed  
7 up ... the whole thing is a sham."

8 -- is your quote; right?

9 A Yes, that's right.

10 Q And you didn't specify that it was the Saskatoon  
11 Police Service who don't want to admit they  
12 screwed up did you?

13 A Well, if you want to include your own client in  
14 this indictment, go right ahead, it sounds to me  
15 like that's what you are doing. I wasn't  
16 referring to Mr. Caldwell however.

17 Q So with respect, would it surprise you to know  
18 that many people in Canada included him because of  
19 these kinds of interviews and statements made by  
20 you, many colleagues in his own community included  
21 him?

22 A Well, he was a part of a miscarriage of justice.  
23 I'm not surprised that he would have to bear some  
24 of the onus.

25 Q Even if he didn't intentionally do anything wrong,



1           sir, would it surprise you that he should have to  
2           bear the onus of wrongful accusation?

3           A           It's unfortunate.

4           Q           Too bad, so sad in other words?

5           A           Well, it's unfortunate that somebody who, a man  
6           like Mr. Caldwell had the misfortune of being  
7           involved in a miscarriage of justice like this.

8           Q           Would you agree with me there's a big distance  
9           between misfortune and misconduct?

10          A           I certainly would agree, but I've never accused  
11          your client of any misconduct.

12          Q           I wonder, sir, if we could bring up --

13          A           To my knowledge, I have never uttered Mr.  
14          Caldwell's name to the press. Now, I could be  
15          corrected, again, it's been a long time, but I had  
16          no axe to grind with him in terms of his  
17          misconduct, in terms of his conduct at trial.

18          Q           Did you ever tell the press you had no axe to  
19          grind with him?

20          A           Did I ever tell the press?

21          Q           Anyone in the media, your friends in the media,  
22          Mr. Lett, for example, who you came to know and  
23          work with so well, did you ever say to him "from  
24          what I'm looking at here, I don't see anything  
25          that we can pin on that prosecutor Caldwell, or



1           whatever his name is"?

2           A           I wouldn't have gone so far as to sanitize Mr.  
3           Caldwell to that degree.

4           Q           Sir, if you'll bear with me, there is a clip, and  
5           everybody in the room is going to groan, there is  
6           a clip from a panel that you participated in in  
7           September, 1991, it was referenced by Mr. Hodson,  
8           it was referenced earlier this week, it's the  
9           *Shirley Show*, and for your edification, we in  
10          Canada would have to say that Shirley was Canada's  
11          answer to Oprah Winfrey in terms of public  
12          following.

13          A           Okay.

14          Q           And I've asked the staff to cue it up to a point  
15          in the tape where Mr. Asper is talking about the  
16          application that they had submitted to the justice  
17          minister and in particular the information or  
18          statement he or others had obtained from Deborah  
19          Hall. And before we start the tape, yesterday or  
20          the day before when you were asked about this, do  
21          you recall saying that there were, you had a vague  
22          memory of it, there were about 12 people on the  
23          panel?

24          A           Yes, I do.

25          Q           I'm going to suggest to you, we haven't gone to





1 the front of it, but the people on the panel were  
2 yourself, Neil Boyd, Joyce Milgaard and David  
3 Asper, those were the four people, and Shirley of  
4 course is the host.

5 A Uh-huh, right.

6 Q If we could go to that part of the tape, please.

7 **(Excerpt of the Shirley Show played)**

8 SHIRLEY: Deborah Hall, tell us a little  
9 bit about Deborah Hall, David Asper and the motel  
10 room.

11 DAVID ASPER: It was alleged by a couple of  
12 the witnesses at the trial that in May of '69,  
13 during a party in a motel room in Regina, a local  
14 news segment came on about 11:15 and there was a  
15 story about the Gail Miller murder not being  
16 solved. At that point David had been interviewed  
17 and provided various samples, bodily fluids,  
18 etc., to the police and had been telling his  
19 friends about it. When the news story came on  
20 some of them started bugging him or ribbing him  
21 about it and it's at this point that two of the  
22 people in the room testified that David, in a  
23 very wild, grand gesture, reenacted the murder of  
24 Gail Miller. One said he did it on the bed, the  
25 other said, uh, it was on the floor. Uh, the



1 jury never heard any evidence to contradict that.  
2 We located a lady named Deborah Hall who was at  
3 that motel room and participating and watching  
4 the events unfold. She says that the people who  
5 said that Milgaard reenacted the crime were  
6 liars. She said there was no reenactment. We  
7 learned that the Crown Attorney had in his  
8 possession the statement of another girl who was  
9 in the room who, when asked to, to tell the  
10 police about what had happened that night, makes  
11 absolutely no mention of David Milgaard  
12 reenacting a murder. None of these, or neither  
13 of these people were called to testify at the  
14 trial and that's the reenactment.

15 SHIRLEY: And what was Kim Campbell's  
16 response?

17 DAVID ASPER: Well, she concluded that  
18 Deborah Hall corroborated the evidence given by  
19 the people who said that Milgaard reenacted the  
20 crime. Don't ask me, I -- I can't explain it.

21 NEIL BOYD: Well, I think she, I think she  
22 said, though, that if the, if the evidence had  
23 been introduced there would have been not a  
24 different result, but that had Deborah Hall been  
25 able to give that testimony, we, we would have



1 had the same kind of result and so, uh...

2 SHIRLEY: So, it wasn't significant?

3 NEIL BOYD: Yeah, it wasn't really  
4 significant. I think that at trial there was one  
5 significant point that came out and that was that  
6 after making this alleged reenactment, um, David  
7 Milgaard fell to his side and started laughing  
8 hysterically and that one interpretation that  
9 seems to me most plausible is that this was black  
10 humor, this was a tasteless, a tasteless comment,  
11 juvenile humor, if you like, but, but um... Well,  
12 having read the transcript I was surprised that  
13 uh, that the judge admitted the testimony in the  
14 first instance.

15 DAVID ASPER: You have to understand this,  
16 and this has never been sort of reported, David  
17 has given his sworn word to the Department of  
18 Justice by way of affidavit, in which he denies  
19 committing the murder, denies reenacting the  
20 murder, denies having blood and everything else  
21 and he's given his sworn word about that and uh...

22 DAVID MILGAARD: The event never took  
23 place, Shirley. I was there. The event never  
24 took place.

25 SHIRLEY: Were all of you, all of you in



1           that room, were you on drugs, David?

2                     DAVID MILGAARD: We were.

3                     SHIRLEY: Were you having sex with someone  
4           at that time?

5                     DAVID MILGAARD: I was.

6                     SHIRLEY: It was the '60s and the '70s,  
7           David.

8                     DAVID MILGAARD: It was.

9                     SHIRLEY: Um, and there was a lot of free  
10          love and a lot of drugs going on, was that ev...,  
11          was that day, that evening a blur to you because  
12          you were taking drugs? You seem to be very clear  
13          about it and yet I understand everybody in that  
14          room was doing drugs, so I don't understand how  
15          anyone can be that clear about it.

16                    DAVID MILGAARD: I'm not ashamed of those  
17          times that, uh, I was young. I considered myself  
18          uh, free and it was, uh, it was hippies and uh,  
19          and uh, some places people didn't like hippies,  
20          Uh, but I felt myself free. The drugs were a  
21          mistake, I don't do drugs now. Uh, I don't know  
22          what else I can say, Shirley.

23                    PAUL HENDERSON: Let me -- let me make one  
24          point here I think is very important. Uh, a  
25          great deal of significance is being attached to



1           *this, this motel scene, But keep in mind that*  
2           *both of these witnesses came in at the very last*  
3           *minute. The trial was actually in, in progress*  
4           *when they brought these people...*

5           SHIRLEY: *Which witnesses are you talking*  
6           *about, Paul?*

7           PAUL HENDERSON: *Melnyk and Lapchuk, the*  
8           *two witnesses attesting to the reenactment in the*  
9           *motel room. Now, in the United States we see, we*  
10          *see this same type of thing happen quite*  
11          *frequently, at the last minute the prosecution,*  
12          *to put the icing on the cake, will bring in a*  
13          *jailhouse informant. Now, jailhouse informants*  
14          *have been proven to be notoriously unreliable, a*  
15          *prosecution ploy quite often in the United*  
16          *States. I don't consider this thing, this motel*  
17          *reenactment to be anything other than a*  
18          *prosecution ploy to put the icing on, on the cake*  
19          *for their case.*

20          DAVID ASPER: *And the other thing, the*  
21          *other thing that the jury never heard was that*  
22          *six days after David Milgaard was convicted,*  
23          *Craig Melnyk got the lightest sentence ever*  
24          *handed down in Regina for armed robbery and, uh,*  
25          *Lapchuk was pending on charges, I believe it was*



1           uh, forgery or uttering or fraud or something, a  
2           crime involving dishonesty, and had been  
3           previously convicted of conspiring with others to  
4           take David Milgaard's identification so they  
5           could go and pass cheques.

6           DAVID MILGAARD: It's very important,  
7           Shirley, for --

8           SHIRLEY: Yeah?

9           DAVID MILGAARD: -- for the people of, of  
10          everywhere to, to see Saskatoon and the police  
11          there for what they are. They actually held  
12          Nichol John, who was just a young kid at the  
13          time, inside a prison cell, inside a jail cell,  
14          without any arrest and anything, until she  
15          finally wrote a statement condemning me.

16          SHIRLEY: So we're talking now about  
17          coercion?

18          JOYCE MILGAARD: Pressure, definitely.

19          SHIRLEY: This whole issue of pressure and  
20          coercion on the part of the Saskatoon Police  
21          Force has also been looked at by the Minister of  
22          Justice and Ron Wilson was supposed --

23          **(Excerpt of the Shirley Show stopped)**

24          MS. KNOX: We can stop there.

25          COMMISSIONER MacCALLUM: Do you have a



1 number to go with that tape?

2 MS. KNOX: Yes, I do. The transcript of  
3 the tape is 335029. The actual tape --

4 MS. BOSWELL: 335020.

5 MS. KNOX: 020, that's the transcript, and  
6 the actual physical video tape itself, the number  
7 for that?

8 MS. BOSWELL: 230110.

9 MS. KNOX: 230110.

10 COMMISSIONER MacCALLUM: Thanks.

11 BY MS. KNOX:

12 Q And, Mr. Henderson, this interview or this talk  
13 show went on, I'm advised by staff, for 56  
14 minutes, there are other pieces in it where you  
15 are involved, and I played the pre and some of the  
16 post to give you a context, but you can appreciate  
17 that this was a national TV program?

18 A Yes, I understand it was.

19 Q And that within the context of that national TV  
20 program you are attributing to the prosecution  
21 what could, at it's best, in it's best  
22 interpretation be characterized as engaging in  
23 shady practice in the course of the trial, the  
24 ploy to put the icing on the cake of a wrongful  
25 conviction that was happening here?



1           A           I had, quite frankly, forgotten about comments  
2                       that were made on this show. As we all have seen,  
3                       my comments were prompted by comments that were  
4                       made by Mr. Asper. I apologize for misstating,  
5                       stating absolutely, that there was, that I said  
6                       nothing uncomplimentary towards the prosecution.  
7                       Again, though, I repeat that I did not mention Mr.  
8                       Caldwell's name on this show. Please accept my  
9                       apologies for having been wrong.

10          Q           I will pass on your apologies, sir, but I have to  
11                       say, do you think there was anybody in that  
12                       audience who didn't know, certainly within the  
13                       Province of Saskatchewan, that you were talking  
14                       about T.D.R. Caldwell, a practicing prosecutor of  
15                       some 30 odd years in the public service of this  
16                       province?

17          A           Let me -- having said that, I didn't answer your  
18                       question. I'll agree with you I'm sure that Mr.  
19                       Caldwell's name and his profession and his job was  
20                       quite well known in this province and an  
21                       association likely was made by any number of  
22                       viewers who watched this program. However, the  
23                       point I'm going to make is that I consider, I  
24                       shared the opinion of a number of people that the  
25                       evidence presented by Mr. Lapchuk and Mr. Melnyk





1 was highly questionable in terms of its integrity  
2 and again this was evidence that was generated by,  
3 I believe, Saskatoon police and presented to the  
4 prosecution and utilized or used with, presumably  
5 with the understanding that it was valid and had  
6 not been fabricated and these witnesses were  
7 genuine. This could be a case of your client  
8 having trusted in the integrity of the police  
9 department's good faith and been misled by them.

10 Q Sir, the evidence --

11 A Once again, we consider the -- I consider the  
12 police department the primary offender responsible  
13 for the Milgaard mistake and the subsequent or  
14 related consequences.

15 Q Sir, you'll feel like I'm picking on you, and  
16 trust me, I am. I want to go back to the  
17 questions I asked you earlier as to the failure on  
18 your part to be properly briefed with respect to  
19 the background to this case in the sense that  
20 through the constraints of time, the point where  
21 you came on the scene, you did not examine and you  
22 did not ask to examine the police files, the  
23 prosecutor's files, we'll agree that you didn't do  
24 that, and timing was certainly an issue, and I'm  
25 not putting that aside, but you didn't do it and



1           you know now that although the offer was on the  
2           table from 1981 forward, Mrs. Milgaard didn't do  
3           it and counsel on her behalf didn't do it?

4           A           I don't know that. I've seen documents that would  
5           indicate that, that that is the case, but --

6           Q           Trust me, if I was putting something to you that  
7           wasn't correct, Mr. Hersh (sic) would be up at the  
8           microphone by now.

9           A           That's fine, okay.

10          Q           And there were explanations offered by Mr. Asper  
11          as to why they didn't do it, but the bottom line  
12          is Mr. Asper and other counsel in his firm did not  
13          request to see the prosecutor's file just like  
14          they did not request or talk to the defence lawyer  
15          before they began to formulate the theory that you  
16          became party to that there was wrongdoing and  
17          misconduct that led to the conviction of David  
18          Milgaard; okay? Can we -- can you accept that  
19          that's a fair summary of where we are in terms of  
20          the evidence before this Inquiry?

21          A           I was kind of spacing out. Would you repeat that,  
22          please?

23          Q           The evidence before this Inquiry, and it has been  
24          confirmed by Mr. Asper who you worked closely with  
25          on this file, that when they took on the



1 instruction to carry this file forward from Mrs.  
2 Milgaard in about March, 1986, they did not  
3 request to be given access to the Crown file, they  
4 did not request to be given access to the police  
5 file, okay? Are you with me so far?

6 A Oh, I am.

7 Q And this of course is contrary to how Centurion  
8 Ministries would have done it, but they offer  
9 reasons for that, and I'm not asking you to pass  
10 judgment on the fact that they didn't do it, but I  
11 want you to acknowledge that you realize they  
12 didn't do it for whatever reasons. Okay?

13 A You are saying that they didn't do it. I don't  
14 know that they didn't do it. I have only your  
15 word on that.

16 Q Okay.

17 A Frankly, it surprises me that they would not want  
18 to have the benefit of every document that was  
19 available.

20 Q Okay. Sir, you made your statement earlier, and I  
21 want to go back to that clip from the *Shirley Show*  
22 which you've apologized to my client for, and I  
23 will pass on, as I said, and appreciate that  
24 apology. What I want to do, however, is bring up  
25 a number of documents from his file because at the



1 end of the day he has to stand by the record of  
2 the work he did in '69, '70 and the first one I'm  
3 going to ask to bring up is a document number  
4 007069. Sir, these are the -- and I'll take you  
5 through and bring up parts of it -- these are  
6 handwritten notes contained in the prosecutor's  
7 file which are in the possession of the Commission  
8 which were on his file at the time, they were on  
9 his file in 1981 when he offered it to Mr. Young,  
10 the lawyer for Mrs. Milgaard, they were on his  
11 file in 1983 when he let Mr. Carlyle-Gordge on  
12 behalf of Mrs. Milgaard look at his file and they  
13 continued to be on his file to the point it's  
14 turned over to the Commission, and in the original  
15 they are in a very nice, or a colour photocopy,  
16 they are in a very nice fountain pen ink that sort  
17 of stands out in the file, and if I could bring up  
18 the top and number 1, please, you see he has notes  
19 "re: new witnesses Lapchuk, Melnyk and Frank,"  
20 and you recognize these to be the motel room kids;  
21 right?

22 A Uh-huh.

23 Q And he documents how he came to be aware of them,  
24 and do you see he documents that the first time  
25 the Saskatoon police learned of them was the night



1 before the trial, January 18th, 1970?

2 A Yes.

3 Q And in fact the record shows that the police were  
4 driving Ron Wilson to Saskatoon from Regina  
5 because the trial was starting the next day and  
6 he, out of the blue effectively, offered this  
7 information to them, so are we okay so far?

8 A Yeah, I've heard about the evolution of Ron Wilson  
9 as a witness to this motel scenario, yes.

10 Q Okay. I want you though to look at the evolution  
11 for my client. He documents in number 2, if we  
12 could bring that up, "same date they advised me  
13 and same date I advised T", being Mr. Tallis, "by  
14 telephone as to what I knew of this, and that  
15 depending on interviews, I might call them." So  
16 that very night, the minute he gets the  
17 information in his hands, he passes it on to  
18 counsel for Mr. Milgaard. Were you aware of that  
19 when you made your statements on the *Shirley Show*?

20 A No.

21 Q Next number, number 3, "the same day I asked for  
22 investigators to go to Regina, Monday, January  
23 19th and interview these persons." The next  
24 number in the summary, "this done Monday, January  
25 19th, and on Tuesday, January 20 --" sorry, "this



1 done on Monday, January 19th and on Tuesday,  
2 January 20th I received three statements from  
3 these persons." The next number, "Wednesday,  
4 January 21st, I delivered copies, all three  
5 statements to T", being Mr. Tallis, "and advised I  
6 would interview them A.S.A.P. and may call  
7 evidence from one or more at the trial." Do you  
8 see that as part of the summary?

9 A Okay.

10 Q And then number 6, "had two to Saskatoon Friday,  
11 January 23rd, to interview, and advised T",  
12 Mr. Tallis, "Saturday, January 24th I would plan  
13 on calling these two late in Crown's case." You  
14 see that?

15 A Yes.

16 Q Okay. The next document in his file that's of  
17 significance, 006298, and you'll see the same  
18 handwriting, same colour ink, he has notes about  
19 the third witness, Ute Frank, who Mr. Asper  
20 complained on the *Shirley Show* wasn't called. You  
21 see his notes, and it's a background. The  
22 evidence is that partway through the interview she  
23 ran out of the room on him, he didn't get to  
24 finish the interview. Okay?

25 A Okay. This is quite an education I'm getting, but



1 I don't think it has -- it sounds to me like it's  
2 more of a forum, that you are putting on a forum  
3 for the benefit of Mr. Caldwell and, you know, you  
4 are kind of wasting your breath on me. I'm  
5 sitting here hearing stuff that I didn't know  
6 before and I don't really care about.

7 COMMISSIONER MacCALLUM: Mr. Henderson,  
8 perhaps you'll leave the relevance of the  
9 evidence to me and just answer the questions.

10 A All right. I apologize, Your Honour.

11 BY MS. KNOX:

12 Q You see the notes with respect to Ms. Frank?

13 A Yes.

14 Q And, sir, the evidence before this Commission from  
15 Mr. Tallis in particular is that not only was he  
16 made aware of Ms. Frank and given an opportunity  
17 to review her statement, but he actually  
18 personally interviewed her and he made a decision  
19 he didn't want her called as a witness because  
20 she, what she would say would be more damning to  
21 David Milgaard than what Lapchuk and Melnyk would  
22 say. You weren't aware of that. Again, contact  
23 hadn't been made up to the point you became  
24 involved with Mr. Tallis?

25 A I was not aware of that, that's correct.



1 Q Okay. If we could bring up 007070, please. Now,  
2 sir, this is a letter directed to Mr. Tallis,  
3 defence counsel, on January 21st, 1970 from Mr.  
4 Caldwell with respect to the very issue and  
5 outlining or confirming in the letter what he put  
6 in his list of five points that we just went  
7 through, that basically he was documenting why  
8 these witnesses were coming so late to Mr. Tallis  
9 because indeed they had come so late to the Crown.  
10 Do you see that?

11 A Okay. May I take a minute to read this?

12 Q Absolutely.

13 A *(Witness reading)* Okay, thank you.

14 Q Okay. So basically you'll see it's just  
15 confirming what was in his list, his summary that  
16 he kept on his file in his fountain pen ink that  
17 would have been available to anyone on behalf of  
18 Mr. Milgaard had they gone to look at his file.

19 A Okay.

20 Q Okay?

21 A Sure.

22 Q We're okay so far? The next document, 006886,  
23 and, sir, if we could bring up the top of this,  
24 please, you'll see this is a Government of  
25 Saskatchewan, Department of Attorney General





1 document that's headed report on completed cases.  
2 We can skip through the basic summary of the  
3 information that Mr. Caldwell provided to his  
4 superiors after the case was completed in January,  
5 1970, and if we could go to the, and it just does  
6 the summary, if you want to scroll down, a list of  
7 witnesses -- if we could go to the next page,  
8 please, right here, if we could bring out this  
9 paragraph for you. Again, you'll see this is just  
10 summarizing the information that we've reviewed  
11 with respect to how these new witnesses came and  
12 why they were called at the trial, okay,  
13 information belabouring the point I know, but  
14 information that was on the file had anybody taken  
15 the step of going to check it out.

16 A Okay.

17 Q Information, I suggest to you, that would have  
18 prevented you perhaps from making the statements  
19 or the allegation that you made on national TV  
20 against the prosecutor on September 19th, 1991.

21 A Okay.

22 Q Would you agree that had you had all of this  
23 information, it might have tempered, if not  
24 completely changed your view with respect to that?

25 A It may have.



1 Q Okay. Would it have perhaps tempered your view  
2 even more if you had been aware or provided by  
3 Mrs. Milgaard with a transcript of a telephone  
4 conference call that was done in January, 1981  
5 between David Milgaard at the prison he was in,  
6 Gary Young, the lawyer who was acting for her at  
7 the time, Mrs. Milgaard and Peter Carlyle-Gordge  
8 where, on that date, David did not deny that the  
9 motel room incident had happened, he said if it  
10 happened, he didn't remember it, but he was on  
11 drugs?

12 A Would that have changed my --

13 Q Tempered was my view.

14 A Tempered.

15 Q If you took that piece of information with all of  
16 the information that was available had it been  
17 sought on the prosecutor's file, all the  
18 information that would have been available had  
19 Mr. Tallis been interviewed prior to this media  
20 campaign kicking in and you jumping on the train,  
21 would any of that, or would you not agree that any  
22 or all of that information could have been  
23 significant in tempering your view of misdeeds by  
24 people like my client?

25 A Perhaps.



1 Q Sir, when I was reviewing last night the  
2 cross-examination and answers you gave to Ms. Cox,  
3 you stated at page 29155 of the transcript that no  
4 one in law enforcement or the courts involved in  
5 this prosecution wanted the prime witness to  
6 change his story and give the defence a statement  
7 that he lied at trial and that his testimony was  
8 coerced. Do you recall saying that?

9 A Is that on the screen here? I would like to read  
10 it again.

11 Q Line 10. Maybe I've got the wrong page number.  
12 It was very late when I was doing this. No, I've  
13 got the wrong page number. 29155, line 10?  
14 Sorry, I must have the wrong page number, but do  
15 you recall saying yesterday to her that it was  
16 your belief, and it appeared as I read the  
17 transcript that it was still your belief, that the  
18 police didn't want the truth to come out?

19 A I recall saying that and that's what I believe.

20 Q Sir, a number of times during the course of  
21 questions that were asked of you both by Mr.  
22 Hodson and by others on behalf of their various  
23 clients, you have basically made the statement,  
24 and I say basically because I'm going to summarize  
25 some answers you've given in a very short kind of



1 way, but you've made the statement that by the  
2 time, and the allegations that you, Mrs. Milgaard,  
3 David Asper, Mr. Wolch and others had made against  
4 people in this process, the Saskatoon Police  
5 Service, my client and others, but by the time  
6 there was an objective, and I'll use the word  
7 objective, an investigation ordered by the RCMP in  
8 1993, that you were out of the loop pretty much.  
9 Do you remember --

10 A Yes.

11 Q And you seem to indicate that you were out of the  
12 loop so you didn't really do any follow-up, you  
13 didn't keep yourself appraised of what the outcome  
14 of the RCMP investigation was, for example,  
15 because the police, the RCMP investigation was  
16 about criminal misconduct, collusion, conspiracy,  
17 pretty horrible things for professional people  
18 like my client to have engaged in; remember that?

19 A Do I remember what?

20 Q Do you remember saying that by the time the RCMP  
21 came around --

22 A Yes, I can remember saying that I have -- I don't  
23 believe that I, that I closely followed the  
24 developments that occurred after I finished up the  
25 active part of my investigation here.



1 Q Sir, can I ask you, given that you were the  
2 spokesperson for some of these various serious  
3 allegations, given that you are a professional  
4 engaged in, formerly in journalism and now in  
5 investigative work to which you say you are held  
6 to a high standard --

7 A Uh-huh.

8 Q -- and to which you hold yourself to a high  
9 standard, it wouldn't have been worth your time to  
10 try to find out whether, in fact, the terrible  
11 things that you said about people like my client  
12 might or might not be true?

13 A 'Terrible things I said about your client'?

14 Q Terrible from his point of view.

15 A Did I -- you are asking me what, again, I'm -- you  
16 kind of threw me on that?

17 Q You, for a number of years, from March of 1990, at  
18 various points in time you appeared on the stage  
19 in Canada, "I'm the representative of Centurion  
20 Ministries, Centurion Ministries is an  
21 organization that works to convict the -- to  
22 exonerate the innocent who have been wrongfully  
23 convicted"?

24 A Uh-huh.

25 Q You repeatedly show up in the Canadian public eye



1 and you repeatedly make statements about people  
2 like my client, a less number of times but  
3 nonetheless an intent, you make some pretty broad  
4 statements of wrongdoing or bad dealings by my  
5 client and others, and I'm saying to you that, as  
6 a professional that you hold yourself out to be,  
7 don't you consider it to be passing strange that  
8 you never bothered to worry yourself about what  
9 the truth might be?

10 A Well I think we had a pretty good grasp on the  
11 truth as a matter of fact. I, again, I apologize  
12 for any embarrassment or unwarranted aspersions  
13 that might have effected, been embarrassing for  
14 your client, but I have a question for you. I  
15 have apologized to Mr. Caldwell; did Mr. Caldwell  
16 ever apologize to David Milgaard?

17 Q He certainly has, sir. The day that the DNA  
18 results came out he arranged and participated in a  
19 press conference the following day where he  
20 extended a full apology for any part that he  
21 contributed in the wrongful conviction, if that  
22 answers your question?

23 A Well, I think that is commendable. If I can ask  
24 one more question?

25 Q I'll ask the Commissioner if I should be answering



1 questions or asking them?

2 COMMISSIONER MacCALLUM: You should be  
3 asking questions, you should be answering them,  
4 if you want to hear his questions you are free to  
5 do so, but you don't have to do so.

6 BY MS. KNOX:

7 Q Yes, sir?

8 A You are inviting me to ask a question?

9 Q I'm inviting you to ask a question.

10 A Okay. Well my question would be this: When Larry  
11 Fisher was arrested in Winnipeg in August 1970 and  
12 subsequently admitted to a series of rapes in  
13 Saskatoon, all but one of them occurring during  
14 the same period of time that the Miller rape and  
15 murder occurred and in the same neighbourhood and  
16 with the same modus operandi, for the most part,  
17 did Mr. Caldwell and his office ever question the  
18 possibility that they might have convicted the  
19 wrong person based on the emergence of a suspect  
20 who was certainly -- that is the emergence of a  
21 sexual psychopath who most people would view as  
22 a -- having been -- as a far more likely person to  
23 have committed the Miller murder than David  
24 Milgaard? When Mr. Fisher emerged and everything  
25 became known about him did your client, Mr.



1 Caldwell, ever question the validity of the  
2 Milgaard conviction, did he ever have second  
3 thoughts about that, did he ever do anything about  
4 it?

5 Q Mr. Henderson, let me answer that question  
6 happily, and I'll answer it this way. Had you,  
7 wearing your hat that you told me you keep on of  
8 Centurion Ministries, had Mrs. Milgaard, had David  
9 Asper, had others done the exhaustive review of  
10 the records that were available you would have  
11 learned, as the evidence shows in this case, that  
12 there was no file in Mr. Caldwell's office on  
13 Larry Fisher, you will know -- you would have  
14 found out that Mr. Caldwell didn't know about  
15 Larry Fisher except to the extent that he took a  
16 phone call in 1971 saying "do you have any files  
17 on a guy named Larry Fisher"?

18 A Uh-huh.

19 Q He had no knowledge, that knowledge first came to  
20 him in 1990.

21 A 1990?

22 Q Does that help you?

23 A Well, Mr. Caldwell never learned anything about  
24 Larry Fisher until 1990, never found out that a  
25 serial rapist had been operating in the same





1 neighbourhood where the Miller murder-rape  
2 occurred, never found that out, never learned  
3 that?

4 Q Mr. Commissioner, that's a finding that you will  
5 make, but if I may summarize the evidence that is  
6 what the record appears to show is that he never  
7 learned it.

8 A All right. Well, I find that somewhat strange,  
9 but that's just my viewpoint.

10 Q Sir --

11 A You answered my question.

12 Q Well, now that I've answered your questions and  
13 given you the answers, if you could put aside for  
14 the moment that you find it somewhat strange, and  
15 consider that sometimes truth is stranger than  
16 fiction, had you done the work or had you ensured  
17 that the work was done that you would normally do  
18 in this type of file would it have helped you  
19 ratchet down the slams against my client, or  
20 perhaps prevented slams against him, --

21 A 'Ratchet down the claims'?

22 Q -- if you had known it?

23 A Well, perhaps.

24 Q And sir, with respect, I will convey your apology  
25 to Mr. Caldwell and I'm quite certain he will tell



1 me to tell you that he appreciates it, but do you  
2 appreciate that an apology made in this small room  
3 today, with the people sitting in this room, is  
4 far, far short of the forum, the national forum in  
5 which you made the allegation of misconduct  
6 against him on TV in Canada on September 19th,  
7 1991?

8 A I apologize again, and I hope that Mr. Caldwell  
9 has not suffered permanent damage from the  
10 comments that I made about his office.

11 Q May I say, sir, that Mr. Caldwell is a kind man  
12 and I suspect he'll forgive you.

13 A Thank you.

14 COMMISSIONER MacCALLUM: Yes, Mr. Wolch?

15 MR. WOLCH: Mr. Commissioner, may I have  
16 permission to question the witness somewhat?

17 COMMISSIONER MacCALLUM: Well in view of  
18 what you told me this morning, of course had not  
19 Ms. Knox been occupied yesterday you would have  
20 followed her anyway, so I think your request is  
21 reasonable so long as it is confined to matters  
22 raised by Ms. Knox.

23 MR. WOLCH: Yes, certainly, I think I  
24 certainly am.

25 **BY MR. WOLCH:**



1 Q I have a few questions, Mr. Henderson, and I'm  
2 fairly optimistic I'll conclude before lunch.

3 Ms. Knox, on numerous occasions,  
4 used the term "if you were properly briefed, if  
5 you had more information, you may have", I think  
6 her word was, "ratcheted down your accusations",  
7 or whatever the word might be. Now I'm gonna  
8 suggest to you that if you were properly briefed  
9 and you had more information you may have been  
10 more assertive in your accusations and may have  
11 raised more serious accusations against her  
12 client?

13 A That wouldn't surprise me.

14 Q Yeah. So not being properly briefed works both  
15 ways, there might be much you don't know about  
16 that would cause serious accusation?

17 A I think we saw the tip of the iceberg here in  
18 terms of -- I'll let it go at that.

19 Q Right. Having said that, I want to deal with one  
20 point that came from Ms. Knox and might impact on  
21 some earlier questioning, but I hope the  
22 Commissioner will bear with me. There's been  
23 comparison between a petition to the Court and, I  
24 presume, an application to the Department of  
25 Justice, and you said it was apples and oranges,



1 and I'm gonna suggest to you that they are  
2 different things; that is, in terms of having all  
3 your information together, you certainly need that  
4 to go to Court. Do you follow me?

5 A Yes. I --

6 Q I guess what I am saying is it's better to compare  
7 the petition in the United States to the hearing  
8 in the Supreme Court here?

9 A Uh-huh.

10 Q That's the comparison that -- I mean that's why  
11 you are saying "apples and oranges"?

12 A Well what I was saying was that the attorney who  
13 was questioning me yesterday was referring, in my  
14 opinion she was comparing the initial petition  
15 submitted by your office on behalf of David  
16 Milgaard to the kind of petition that we submit  
17 after years of investigation, and she was talking,  
18 I think she was trying to point out how timely the  
19 Justice Department, or whoever it was, how timely  
20 they -- they -- that is they issued a decision on  
21 that, and the purpose being to show that there was  
22 no foot-dragging whatever. But she was comparing  
23 that, in my -- the way I understood, she was  
24 comparing that to our type of application, which  
25 takes much longer, and I said "it's, they're just



1 different types of petitions, you know, one is the  
2 culmination of many years of work and the one that  
3 you are referring to was a preliminary application  
4 based on limited information" --

5 Q I see.

6 A -- "that was available at the time". Am I  
7 correct?

8 Q My point is, Mr. Henderson, the evidence here is  
9 clear that, before the Supreme Court reference,  
10 there was a furnishing of a great deal of police  
11 reports and material --

12 A Uh-huh.

13 Q -- before the Supreme Court reference, and after  
14 it was ruled to -- it was ordered to take place.  
15 So I'm saying comparing the application to the  
16 Minister of Justice and a petition in the States  
17 is, as you say, apples and oranges", is what I am  
18 getting at. But, anyway, I'll move on.

19 Ms. Knox was talking about  
20 thorough investigation and looking into things,  
21 and we've heard it mentioned here that this was a  
22 complicated, complex case, and I'm gonna suggest  
23 to you just the opposite, it's an extremely simple  
24 case. It's about a -- is it not a fact that, when  
25 you look at the Milgaard component, the real issue



1 is did witnesses lie; that's not a complicated  
2 thing, is it?

3 A No, in fact it was, in terms of the evidence that  
4 was presented against your client, it was a very  
5 simple case that hinged entirely on the  
6 credibility of three witnesses who were presented  
7 by the Crown as the case in its entirety, and one  
8 of them actually backed out of her statements and  
9 didn't testify, that left -- that left the case  
10 riding on the testimony of Ron Wilson and -- Ron  
11 Wilson and Albert Cadrain, both of whom I  
12 interviewed, and both who made it clear to me,  
13 expressed to me, described to me having been  
14 mistreated by police and, if you will, coerced by  
15 police.

16 Q Okay. So what I am saying is that, when Ms. Knox  
17 suggests that you should be running off in all  
18 these different directions trying to find this and  
19 trying to find that, you have limited resources  
20 and you are focusing on the main witnesses who  
21 contributed to the conviction?

22 A Yes.

23 Q It's not complicated?

24 A No, it's not complicated. We, we took some  
25 shortcuts in this case, actually primarily because



1 of what you just mentioned, it was a fairly simple  
2 case, if the, if the testimony of these witnesses  
3 wasn't valid, the case wasn't valid. And we  
4 talked with them, and basically what they said  
5 was, "we lied", and if you take away the testimony  
6 of those two witnesses there's nothing left and  
7 it's reasonable to conclude that there has been a  
8 miscarriage of justice and the wrong man is  
9 sitting in prison. Couple that with the spectre  
10 of Larry Fisher, and it's overwhelmingly  
11 conclusive.

12 Q Yeah. And what you found, it was really quite  
13 simple in that regard?

14 A Yes.

15 Q And most people you would talk to, most reasonable  
16 people, could see it in a few seconds?

17 A Absolutely.

18 Q 'Seconds' is an exaggeration, but very quickly?  
19 It's not hard to look at and say "the allegations  
20 against David Milgaard are based on a premise that  
21 the nurse walks down the wrong street, that nobody  
22 sees anything, that they get stuck in an area  
23 where nobody can see it, where the people who  
24 supposedly do see it don't act consistently when  
25 they recant their story ", just you look at that



1 and you compare it to Fisher, it's not a very  
2 equal balance?

3 A Hardly. Hardly. The basic premise of how this  
4 crime unfolded, as presented by the Crown, didn't  
5 make any sense at all.

6 Q Right. And so you've been chastised for not going  
7 and looking through police reports and looking  
8 through all this; when you got involved you were  
9 aware that there was a very experienced Crown  
10 attorney who looked at the file, a very  
11 experienced Crown attorney who handled the appeal,  
12 and a top-flight defence lawyer who handled the  
13 trial for David; would you expect to find smoking  
14 guns in the police file?

15 A Probably not.

16 Q Would you even know what to look for?

17 A No, I didn't, and I, frankly, I wasn't -- I wasn't  
18 naive enough to think that they, that the police  
19 department was going to open their files to me.

20 Q Would you expect to find disclosure withheld under  
21 those circumstances?

22 A No, no, of course not.

23 Q And I take it, also, Centurion Ministries, as with  
24 everybody else involved in this case on the  
25 Milgaard behalf, had very limited funds?





1           A           That's right, we have to, we have to be very  
2                        careful about how we -- how we spend our money,  
3                        that's right, and we have to make every bit of it  
4                        count.

5           Q           Ms. Knox asked you about Mr. Caldwell opening his  
6                        file to Peter Carlyle-Gordge; are you aware that  
7                        he was motivated, then, presumably by his ego,  
8                        that he wanted to have a book written and a  
9                        publication?

10          A           I wasn't aware of that. All I knew about Mr.  
11                        Caldwell's personal life was that he played the  
12                        trombone.

13          Q           Now Ms. Knox talked a lot about Mr. Caldwell's  
14                        being wounded by accusations and all these  
15                        terrible things. I'm not specifically sure what  
16                        the allegations are, but were you aware that on  
17                        his file there was -- there were, rather,  
18                        statements from roommates of Gail Miller,  
19                        statements from people who would have been in the  
20                        area where the, supposedly, the murder occurred,  
21                        statements from other victims who were sexually  
22                        assaulted in the area, all of which weren't  
23                        disclosed; were you aware of that?

24          A           Are you talking about, I guess you are referring  
25                        to what would be perceived as inculpatory --



1 exculpatory statements?

2 Q Evidence that might have put Mr. Tallis on the  
3 right trail to correct the miscarriage?

4 A No, I had no knowledge about that. Your office  
5 made no attempt to bias me against Mr. Caldwell's  
6 office, or the work that he did, or the efforts  
7 that he put into this, or -- no.

8 Q Would it surprise you to know that he had the  
9 statement of the other woman who was attacked that  
10 morning about a few minutes apart, down a few  
11 blocks away, Ms. (V4)---?

12 A That he had that statement?

13 Q On his file.

14 A Umm, would it surprise me? I don't know if it  
15 would surprise me, it probably wouldn't surprise  
16 me, but I did not realize that, no.

17 Q So the fact of the matter is if you had done what  
18 Ms. Knox suggests you should have done, and Mr.  
19 Caldwell had given you all his file, you may have  
20 had many stronger accusations to publicly make?

21 A Yes, it's certainly possible.

22 Q But, also, are you aware that if you had gone to  
23 see his file you would not have seen, I presume,  
24 the Mackie summary, which is very important? You  
25 know the document I'm talking about?



1           A           I recall this was a paper that was written on the  
2                       conviction, I believe?

3           Q           It's a document that --

4                       COMMISSIONER MacCALLUM:   Just a minute.

5                       MR. WOLCH:    Sir?

6                       COMMISSIONER MacCALLUM:   Are you suggesting  
7                       that he might have seen the Mackie summary on  
8                       Caldwell's file?

9                       MR. WOLCH:    No, I said presumably not, is  
10                      what I said.

11                      COMMISSIONER MacCALLUM:   Oh, I'm sorry,  
12                      I --

13                      MR. WOLCH:    It was found later on the file  
14                      at the Attorney General's Department.

15                      COMMISSIONER MacCALLUM:   Yes.

16                      MR. LORAN:    I'm not sure where Mr. -- Pat  
17                      Loran for the Saskatoon Police Service.

18                      COMMISSIONER MacCALLUM:   Uh-huh.

19                      MR. LORAN:    I'm not sure what the  
20                      connection between Mr. Wolch's line of  
21                      questioning here is with Ms. Knox's  
22                      cross-examination.

23                                       I note that the witness has  
24                      already resiled from his position, at least as I  
25                      understood his evidence when I was examining him



1 was that Mr. Cadrain could not have been coerced  
2 since his evidence never changed, and that this  
3 is -- this is the concern I have about the change  
4 to the order of the examination, is that the  
5 witness seems to now be suggesting that he, I  
6 think his statement was that Mr. Cadrain had  
7 lied. Well Mr. Cadrain has maintained, or did  
8 maintain his position from the very first contact  
9 he had with Saskatoon Police, and if the witness  
10 is changing his evidence that causes me some  
11 concern in terms of whether we'll get an  
12 opportunity to return. And, of course, I realize  
13 the Commission doesn't want to have us bouncing  
14 up and down like yo-yos, but I want to express my  
15 concern, for the record, about Mr. Wolch going  
16 into areas that Ms. Knox didn't cover and, yet,  
17 perhaps other counsel did. Thank you.

18 COMMISSIONER MacCALLUM: Well, Mr. Loran, I  
19 think the burden of Ms. Knox's cross-examination  
20 was, on this subject at least, that Mr. Henderson  
21 didn't dig, did not dig deeply enough, and  
22 Mr. Wolch was testing that.

23 MR. WOLCH: I am, Mr. Commissioner. I'm  
24 not sure what Mr. --

25 COMMISSIONER MacCALLUM: But I must say



1           that the last question kind of baffled me.

2           Obviously, I got it wrong.

3                   MR. WOLCH: I'm baffled more about Mr.  
4           Cadrain; what does Mr. Cadrain have to do with  
5           this?

6                   COMMISSIONER MacCALLUM: Apart from being  
7           baffled, do you have anything to add to what I  
8           have just said?

9                   MR. WOLCH: Ms. Knox has gone after this  
10          witness rather strongly that, "you didn't know  
11          this, you didn't do know that, and please  
12          apologize", and the witness, being a kind man  
13          that he is, says "yes, I would apologize", but  
14          she gave him half the story.

15                  COMMISSIONER MacCALLUM: Well it's --

16                  MR. WOLCH: I mean yeah, "if you knew  
17          this", but there's so much more to it.

18                  COMMISSIONER MacCALLUM: Mr. Loran, I'm  
19          sorry, what did -- how did Cadrain's --

20                  MR. LORAN: That was a while back in  
21          Mr. Wolch's examination, he asked this witness,  
22          he said there were two principal witnesses who  
23          gave evidence.

24                  COMMISSIONER MacCALLUM: Oh, I remember  
25          that, yes.



1 MR. LORAN: And they were Cadrain and  
2 Wilson.

3 COMMISSIONER MacCALLUM: Uh-huh.

4 MR. LORAN: In my examination of this  
5 witness I thought I'd had him back off of his  
6 position that Mr. Cadrain had been coerced in  
7 that --

8 COMMISSIONER MacCALLUM: I didn't --

9 MR. LORAN: -- how do you coerce somebody  
10 not to change their evidence?

11 COMMISSIONER MacCALLUM: I didn't  
12 appreciate that Mr. Wolch was putting questions  
13 to the witness which related to your examination  
14 of him as opposed to Ms. Knox's. If he did, then  
15 of course he shouldn't have, but I don't really  
16 remember him doing that. And, if the witness is  
17 changing his evidence on some salient points,  
18 surely it's just something for me to sort out.

19 MR. LORAN: Thank you, Mr. Commissioner.

20 COMMISSIONER MacCALLUM: I know I've made  
21 careful notes of what he said before, and I'm  
22 trying to do it now, so can you somehow get back  
23 to the question that you asked?

24 BY MR. WOLCH:

25 Q Yeah. My question is, in assessing blame, are you



1 familiar with the Mackie summary which is a  
2 document which contains suggestions as to -- and  
3 predictions, in a sense, as to what witnesses will  
4 eventually say; do you know --

5 A I know, I've heard about the Mackie report, but  
6 I'm -- I can't tell you much about it. I mean I  
7 have a vague memory of it.

8 Q Are you aware of the RCMP reports, the Riddell  
9 reports, the reports that virtually point a finger  
10 at the Larry Fisher to be discovered?

11 A Point a finger at?

12 Q Larry Fisher, but not by name, right back at the  
13 beginning?

14 A When was -- when was that generated?

15 Q Before David Milgaard was a suspect.

16 A Before David Milgaard was a suspect?

17 COMMISSIONER MacCALLUM: You --

18 A I'm not familiar about that, no.

19 COMMISSIONER MacCALLUM: Mr. Henderson, he  
20 is talking about reports that were put on the  
21 file by, on the RCMP files by RCMP investigators  
22 who were helping out the Saskatoon City Police in  
23 or around February of 1969 --

24 A Okay.

25 COMMISSIONER MacCALLUM: -- just after the



1 murder, and they expressed a view that the rapist  
2 active in the area might be linked to the murder  
3 or might, in fact, be the murderer of Gail  
4 Miller.

5 A Okay.

6 COMMISSIONER MacCALLUM: That's what he's  
7 talking about.

8 A Okay, thank you, thank you, your honour (sic).

9 COMMISSIONER MacCALLUM: So did you have  
10 any knowledge about these things at all?

11 A Well, I did -- what I am familiar with is I  
12 believe there was a police report that I saw  
13 whereas a member of, an investigator or somebody  
14 on the department had expressed the opinion that  
15 there was a strong possibility that all of these  
16 crimes, including the murder I think, were  
17 committed by the same person. There was also a  
18 newspaper article in which somebody on the  
19 Saskatoon Police Department had provided a --  
20 similar information. Two things. But as far as  
21 being familiar with a report, no, I don't remember  
22 that.

23 BY MR. WOLCH:

24 Q Okay. But what I am getting at is that, to ask  
25 you to assess whether you were right or wrong in





1           accusations is a very difficult thing when you  
2           don't know half of what, perhaps, we know as to  
3           what Mr. Caldwell had in his file, or what he even  
4           did; you are not in a position, are you?

5           A       No, I -- obviously you had been, your law firm had  
6           been involved in this case for a long, long time,  
7           and with the understanding that you had about my  
8           involvement in this case there was only --  
9           wouldn't have -- you couldn't possibly have shared  
10          all the information that you had with me. There  
11          was only so much time.

12          Q       Now we have had comment, a comment made just in  
13          the objection that, "well the witness", or "I've  
14          heard that, well, Wilson says that he wasn't  
15          mistreated", or things like that; any way of  
16          guessing what day to believe Mr. Wilson?

17          A       What day to believe him and what day not to  
18          believe him?

19          Q       Yeah. How do we know when he is telling the  
20          truth?

21          A       Well, let's put it this way, I believed him on the  
22          day that he told me that he was mistreated, --

23          Q       Okay. Now --

24          A       -- and not just because he told me that, because  
25          that's usually what happens when witnesses come up



1 with false testimony. Like I said before, a guy  
2 like Ron Wilson doesn't simply come up with false  
3 accusations against a friend when he is questioned  
4 by police, there has to be some reason for him  
5 bearing false witness, and I have had considerable  
6 experience with this, and the likely -- the usual  
7 explanation is that these witnesses were leaned on  
8 by the cops, and that they relieved the pressure  
9 by giving police information that they knew they  
10 wanted.

11 Q The fact is you are at a major disadvantage, as  
12 compared to police officers, when interviewing  
13 people; are you not?

14 A Well, of course. I'm -- we have nothing to offer  
15 them, we have nothing, I had nothing to offer Ron  
16 Wilson except perhaps a feeling of relief that he  
17 had.

18 Q Okay.

19 A I asked him to be honest with me and I suggested  
20 to him that, if he carried the burden of his  
21 wrongful, of what I suspected to be wrongful  
22 testimony against a friend, if he'd carried that  
23 around with him, this was his opportunity to  
24 unburden himself.

25 Q But the point is that while a police force can



1 offer a person freedom, they can offer them "we're  
2 not going to punish you, we're not going to lay  
3 charges against you, we're going the let you go",  
4 all you can basically say is "look, I can offer  
5 you perjury and a lot of harassment"?

6 A Well, I suppose. When we go to witnesses we  
7 appeal to their conscience.

8 MR. LORAN: Mr. Commissioner? I stand  
9 again, --

10 COMMISSIONER MacCALLUM: Yes?

11 MR. LORAN: -- but I don't recall Ms. Knox  
12 going into this particular area, and I'll simply  
13 make that comment.

14 COMMISSIONER MacCALLUM: Yes.

15 MR. WOLCH: I'm finished with it anyways,  
16 so --

17 COMMISSIONER MacCALLUM: Thank you. Your  
18 comment has been recorded.

19 MR. LORAN: Okay.

20 BY MR. WOLCH:

21 Q So what I am getting at is when you form a  
22 conclusion, let's say about John or about Cadrain  
23 or whoever, you are basing it on the circumstances  
24 plus what they're telling you?

25 A That's right.



1 Q It's a combination of things, you don't look in  
2 isolation?

3 A There are a lot of factors. A lot of factors were  
4 involved in helping me form my opinion about what  
5 happened in this case, it's -- and, I mean, there  
6 is a lot of things, starting with information that  
7 I absorbed from my contacts with your office and  
8 with Joyce Milgaard, information obtained from the  
9 witnesses, and ultimately circumstances regarding  
10 the emergence of Larry Fisher and how the  
11 Saskatoon Police Department responded to it.

12 Q Ms. Knox asked you two things, she asked you a lot  
13 about your doing more investigation, and she also  
14 asked you in particular about Albert Cadrain and  
15 his mental problems. Are you aware of him talking  
16 about having David stomping on the Virgin Mary?

17 A Sure. I mean, that was one of the red flags that  
18 his brother told me about.

19 Q All right. Are you aware of --

20 A It was certainly of concern to Dennis and it  
21 helped him, was a factor in his concern that David  
22 (sic) did not provide reliable testimony at the  
23 trial.

24 Q Or about David Milgaard lining up virgins to  
25 deflower them in bathtubs, and being a member of



1 the Mafia, and things like that?

2 A Well, I heard a lot of these things first-hand  
3 from Albert.

4 Q And, in terms of checking things out further, no  
5 doubt Cadrain walked in and talked about blood,  
6 but all sorts of other witnesses didn't see  
7 blood -- we won't go through them all, we all know  
8 them -- we are aware of that; and we also know, do  
9 we not, that Cadrain lied about his drug use the  
10 night before; and misled him about being  
11 questioned in Regina?

12 A Well, for the record, the gentleman who was  
13 speaking just before you here, counsel I think for  
14 Saskatoon Police Department, made the statement  
15 that I backed off from my original contention that  
16 -- or belief that Albert Cadrain was subjected to  
17 pressure by police to come up with his evidence,  
18 he stated that I had backed off of that in the  
19 face of a report showing that Albert had come up  
20 with his testimony on the first day that he was  
21 questioned by police and that he actually  
22 volunteered that information to police by going  
23 into the police department. It's not quite true.

24 I think what I said yesterday  
25 was that, although stipulated certainly that it,



1 based on what Dennis told me and based on  
2 documents that I have seen, it appears that he may  
3 have come up with allegations on the first time he  
4 was questioned by Saskatoon Police in Saskatoon at  
5 least, this was not consistent with what he told  
6 me about the ordeal he went through at the hands  
7 of police officers, police detectives, and it  
8 wasn't consistent with the observations of his  
9 brother, Dennis, regarding what happened to him  
10 during the period of time that he was being  
11 questioned by Saskatoon Police.

12 COMMISSIONER MacCALLUM: The witness has  
13 now just justified Mr. Loran's objection, Mr.  
14 Wolch. Can you just confine your questions to  
15 what was raised by Ms. Knox, please.

16 BY MR. WOLCH:

17 Q My last question, Ms. Knox asked you about the  
18 1993 RCMP investigation, and do I take it you  
19 played no part in that?

20 A No, I don't think -- I certainly had no active  
21 part in it.

22 Q And she asked you, I think she suggested that this  
23 was a report that made certain findings and  
24 whatever else?

25 A Uh-huh.



1 Q The fact of the matter is, in 1993 that report  
2 came out and there was no indication that the  
3 cloud was lifted over David's head or that Larry  
4 Fisher was guilty of a crime?

5 A Well, I wasn't following that closely, but I  
6 certainly understand that to be the case now and  
7 I'm somewhat surprised.

8 Q My final question is Ms. Knox spoke a lot about  
9 her client and how he felt so badly and I'm not  
10 sure if he was lying in bed hiding under the  
11 covers or whatever, not getting the newspaper or  
12 something, I can't remember before, that whole  
13 concept that he was just overwhelmed by all this,  
14 you heard also he was a prosecutor of 30 years.  
15 Do you know of any efforts he made to come forward  
16 and say this accusation is wrong, here's the  
17 information, here's what I have to say to you, to  
18 anybody acting for David Milgaard, do you know of  
19 any single time that he came forward and said I've  
20 been hurt by what you said, here is the truth?

21 A No, I don't. It sounds to me like if he perceives  
22 that his name, that he was besmirched by efforts  
23 by the defence to clear David Milgaard, he's  
24 waited a long time to try to clear his name.

25 MR. WOLCH: Thank you, sir. Those are all



1 my questions.

2 MS. KNOX: May I?

3 COMMISSIONER MacCALLUM: Yes.

4 MS. KNOX: Mr. Commissioner, for the  
5 benefit of all in the room, I do not intend to  
6 ask a single question and I don't have an  
7 objection. I did say prior to the break in  
8 response to a query from Mr. Henderson that I  
9 would get the number for a transcript I was  
10 referring to of a conversation between him and  
11 David Asper and Mrs. Milgaard where they  
12 discussed the information about Albert's mental  
13 health and you'll recall I was asking whether he  
14 took steps to inquire whether the Crown was ever  
15 told of this. The document number is 048385 and  
16 the pages that engage that discussion at some  
17 length begin at page 048387 and they go through  
18 and it's at page 048388 that the question is  
19 raised, or the statement is made by Mr. Asper  
20 that the Crown never disclosed that he was ill,  
21 so for Mr. Henderson's benefit, it's a lengthy  
22 transcript, but -- it goes about 20 pages, but  
23 it's in the first four pages of the transcript  
24 for the record.

25 COMMISSIONER MacCALLUM: Thanks.





1 MR. WOLCH: Mr. Commissioner, if I may,  
2 there's one small matter that I forgot, and that  
3 is on behalf of my client, I want to strongly  
4 thank Mr. Henderson for all his efforts and time  
5 he spent in helping him achieve the eventual  
6 result that was achieved, we really do thank you,  
7 sir.

8 A I have fond memories of the work and the outcome.

9 MR. HODSON: Mr. Commissioner, there's just  
10 one other -- I don't have any, I don't believe I  
11 have any redirect questions for Mr. Henderson. I  
12 mentioned yesterday that there was a box of  
13 documents coming from Centurion Ministries in New  
14 Jersey. I understand that it is now in Canada,  
15 but not yet in Saskatoon, and maybe just over the  
16 lunch hour Mr. Killeen and I can check whether  
17 it's something that might be available for him  
18 and I to look at. I think --

19 COMMISSIONER MacCALLUM: Well, I thought  
20 they were in Seattle, those documents. No?

21 MR. HODSON: Well, there was a box in  
22 Seattle, there's a box in New Jersey. The ones  
23 that were in New Jersey have been sent, the ones  
24 in Seattle I think we're waiting until  
25 Mr. Henderson finishes his move to get, but -- so



1           those documents -- I appreciate that  
2           Mr. Henderson has a flight out tomorrow, or  
3           tonight, pardon me, as does Mr. Killeen, but what  
4           I'm going to suggest is if we adjourn until 1:30,  
5           I'll talk to Mr. Henderson and Mr. Killeen, and  
6           if the documents are not here, then we will be  
7           done with Mr. Henderson for today subject to what  
8           might be in these documents and then we have  
9           about an hour, an hour to an hour and a half of  
10          the Bob Perry/Breckenridge read-ins this  
11          afternoon and we will not be sitting tomorrow.  
12          So the bottom line, if Mr. Henderson can come  
13          back at 1:30. I'll talk to him and his counsel  
14          now.

15                    COMMISSIONER MacCALLUM: Okay. So I can't  
16          bid farewell to you just yet, Mr. Henderson.

17          A           Okay.

18                    COMMISSIONER MacCALLUM: We'll see you at  
19          1:30.

20          A           I don't even have a reservation yet. That's fine.

21                    *(Adjourned at 12:08 p.m.)*

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

23                    MR. HODSON: Good afternoon, Mr. Henderson.  
24          Just an update, the box from New Jersey,  
25          Centurion Ministries has arrived in the city and



1 I think it's on its way to our office. At some  
2 point this afternoon -- I've just talked to Mr.  
3 Killeen, Mr. Henderson's counsel, and I propose  
4 that we adjourn Mr. Henderson's evidence on the  
5 following basis, that he will look through the  
6 Centurion Ministries' box today, or whenever, and  
7 Mr. Henderson has also confirmed that he will  
8 send to me or through Mr. Killeen his box of  
9 information in Seattle as soon as he's able to  
10 reasonably access it, he's going through a move,  
11 so as soon as he can get to that, and the  
12 following is the understanding, if we find some  
13 documents in either of those boxes which are new  
14 documents or relevant documents, that through Mr.  
15 Killeen we will look at a number of scenarios,  
16 hopefully all of which won't involve  
17 Mr. Henderson travelling back here, either  
18 putting the documents in or by telephone by  
19 affidavit or, depending on what's in the boxes, I  
20 suppose there's always the possibility that  
21 Mr. Henderson may have to re-attend, but I'm  
22 hoping that's not the case, so if we could simply  
23 adjourn it on that basis, and if I could thank  
24 you, Mr. Henderson for -- I'm sorry, Mr. Killeen,  
25 did you want to --



1 MR. KILLEEN: No, I was going to confirm,  
2 Mr. Commissioner, that we will attend to that as  
3 soon as we reasonably can. We will be at the  
4 Commission office this afternoon looking at those  
5 documents and then we'll forward them on as soon  
6 as possible, so thank you very much.

7 COMMISSIONER MacCALLUM: Thank you, Mr.  
8 Killeen.

9 MR. HODSON: If I could thank you again,  
10 Mr. Henderson, for giving evidence here, and as  
11 well to your counsel Mr. Killeen for his  
12 assistance and co-operation and I think with that  
13 we are done with you.

14 A I appreciate the opportunity I've had to express  
15 my views and I hope some of the information I've  
16 provided will be helpful.

17 MR. HODSON: Thank you.

18 COMMISSIONER MacCALLUM: Mr. Henderson,  
19 thanks, you are excused for the time being, and  
20 perhaps for permanently, and thank you for  
21 coming.

22 A Thank you, Your Honour.

23 MR. HODSON: I will come to Seattle to  
24 inform you of the results if you wish.

25 A I would welcome you there.



1 MR. HODSON: So what's left for the  
2 afternoon, I think Ms. McLean is going to address  
3 -- I think you are fine to go, Mr. Henderson --  
4 is going to address the matter you raised this  
5 morning and then I propose we take a short  
6 adjournment before Mr. Hardy does the read-ins.  
7 I have to leave with Mr. Killeen and  
8 Mr. Henderson to look at the documents as well  
9 with the, a meeting with Federal Justice lawyers  
10 as well, I think Ms. Cox and I and Mr. Frayer are  
11 meeting on Mr. Williams' evidence, so Mr. Hardy  
12 will be doing that. So after Ms. McLean speaks,  
13 we'll just take a five minute adjournment so we  
14 don't disrupt his read-ins.

15 MS. McLEAN: Mr. Commissioner, I was able  
16 to speak with my client this morning.  
17 Incidentally, I should have mentioned this this  
18 morning, she is in town preparing for the  
19 evidence that she's going to be giving on Monday,  
20 she's been reading documents.

21 I've been asked to advise you  
22 she very much regrets speaking to the media  
23 yesterday, she realizes her comments were  
24 extremely inappropriate. She realizes also that  
25 it was inappropriate for her to be speaking to



1 the media at all. It was a time when she was  
2 very upset and she simply spoke when she should  
3 not have. She will not do so again and I can  
4 advise that I will do my best to stay on top of  
5 the situation. She was waiting for her cab back  
6 to the hotel yesterday when she did speak to the  
7 media.

8 That said, we did have a very  
9 productive meeting last night with Mr. Hodson for  
10 some two and a half hours going over her  
11 anticipated evidence and we're meeting again  
12 tomorrow morning with Mr. Hodson while the  
13 Inquiry is not sitting.

14 COMMISSIONER MacCALLUM: Thank you,  
15 Ms. McLean, I appreciate your efforts. Now we'll  
16 take a break.

17 *(Adjourned at 1:37 p.m.)*

18 *(Reconvened at 1:43 p.m.)*

19 MR. HARDY: Good afternoon, Mr.  
20 Commissioner. I will be proceeding with read-ins  
21 relating in large part to Michael Breckenridge  
22 and information brought forward by him in the  
23 early 1990s relating to alleged wrongdoings by  
24 various public officials and in institutions  
25 relative to the David Milgaard and Larry Fisher



1 matters. We have learned that Mr. Breckenridge  
2 is currently in China and does not plan to return  
3 to Canada in the foreseeable future and at this  
4 time we do not propose to call him as a witness.

5 The read-ins will touch upon a  
6 number of other individuals as well that at this  
7 time we do not intend to call as witnesses and  
8 those will become apparent as I make my way  
9 through.

10 One in particular, a little bit  
11 of a different situation, Robert Perry, who was  
12 an investigator hired by counsel for Mr. Milgaard  
13 to look into Mr. Breckenridge's allegations and  
14 information and interview Mr. Breckenridge,  
15 Mr. Perry we interviewed last fall, September and  
16 October, and unfortunately has since passed away.  
17 We confirmed with Mr. Breckenridge when we met  
18 with him, though, that the information that he  
19 had provided to the RCMP during their  
20 investigations was accurate information and I  
21 will refer to that information during the  
22 read-ins.

23 COMMISSIONER MacCALLUM: Okay.

24 **(READ-INS RE: BRECKENRIDGE)**

25 **BY MR. HARDY:**



1 Q I'm going to start with just a couple of documents  
2 that we've read before and I'll ask the indulgence  
3 of the room, I'm going to read them again for  
4 context, they are the documents that, in effect,  
5 began the Michael Breckenridge portion of this  
6 matter. The first document is 159537. Again, we  
7 referred to this previously, it's a letter to Mr.  
8 Hersh Wolch dated March 21st, 1992 from Michael  
9 Breckenridge, and again for context I'm going to  
10 read this.

11 "Mr. Hersh Wolch,  
12 I have been watching with interest the  
13 David Milgaard case since I worked in  
14 the Attorney Generals Dept. in Sask. at  
15 the time of those cases (Fisher and  
16 Milgaard). My job was to process the  
17 criminal files. Serge Kujawa had just  
18 been appointed Chief Crown Prosecutor  
19 for party loyalty. Roy Romanow had just  
20 been elected and appointed Attorney  
21 General and wanted to make a name for  
22 himself. Attorney General Mitchell was  
23 Romanow's law partner in Saskatoon.

24 At the time of these cases  
25 there were many closed door meetings





1 with Romanow, Ken Lysyk - Deputy  
2 Minister and Serge Kujawa all because  
3 discrepancies in the two cases. I  
4 remember delivering both cases to Serge  
5 at the same time. The general feeling  
6 in the Dept. at the time was that these  
7 were to high profile cases that the  
8 N.D.P. could appear to get great  
9 political mileage from as part of their  
10 law and order platform. They figured  
11 that since they were the gov't nobody  
12 would ever question the findings of  
13 their court system. Since then, like  
14 now, their only objective was to govern  
15 at any cost.

16 Some other people in the Dept.  
17 that can attest to this are Mr. Dale  
18 Richter, now with C.S.I.S. living in  
19 Quebec, Mr. Dave Wolbaum now working at  
20 the P.C.C. in Regina and Mr. Maurice  
21 Herauf now a lawyer in Regina.

22 Today I would suggest that  
23 there is a cover up by the present  
24 administration to hide the sins of the  
25 Blakeney regime. I would also suggest



1           that the main motivation is political as  
2           opposed to legal. With people like Ned  
3           Shillington, Louise Simard and Serge  
4           Kujawa all part of both the present and  
5           past regimes they have too much to lose  
6           by having that association made.

7                     All of these people have deep  
8           rooted beliefs that the system is more  
9           important than any individual rights and  
10          they will now do everything they can to  
11          change the law to eliminate those  
12          rights. I would suggest you use all the  
13          resources at your disposal to push for  
14          an inquiry held by anyone outside the  
15          N.D.P. system in Sask., B.C., Ont.,  
16          otherwise it will never receive an  
17          impartial hearing. These people will  
18          use every means at their disposal to  
19          make sure that they stack the deck in  
20          their favor."

21                   Signed Mike Breckenridge.

22                             156896, please. This is a  
23          letter from Mr. Asper to Mr. Mike Robinson of  
24          Robinson Investigations dated May 1st, 1992 and  
25          the first paragraph of the letter states:



1 "Further to our telephone conversation  
2 on April 30, 1992, I am enclosing herein  
3 a copy of the letter which we recently  
4 received in our office. I have spoken  
5 with the author of this letter about its  
6 contents, although I really have no way  
7 of verifying any of the information."

8 Turn to 156898, please, again a letter to  
9 Mr. Mike Robinson of Robinson Investigations from  
10 Mr. Asper dated May 11th, 1992. The body of the  
11 letter states:

12 "Further to our telephone conversation  
13 on May 7, 1992, this will confirm that  
14 this office has retained you to  
15 investigate the substance of a letter  
16 that has previously been forwarded to  
17 you in relation to the David Milgaard  
18 case. If possible, I would appreciate  
19 your reporting to us at \$500.00  
20 increments so that we can keep our costs  
21 in a reasonable perspective."

22 Next document, 213939. This is a letter from  
23 Robert Perry of Robinson Investigations to  
24 Mr. David Asper dated May 26th, 1992 respecting  
25 the David Milgaard matter. I'll begin reading at



1 the beginning:

2 "This correspondence is to record our  
3 action taken on your client's behalf to  
4 date.

5 On May 11, 1992, I received a  
6 copy of your initial correspondence  
7 dated May 1, 1992, from Mr. Mike  
8 Robinson of Robinson Investigations Ltd.

9 Mr. Mike Breckenridge contacted  
10 me and as a result we met at our office  
11 on May 14, 1992. We spoke at length  
12 regarding his opinion and knowledge of  
13 the David Milgaard matter. This  
14 interview covered a number of topics  
15 relating to this case including  
16 Breckenridge's personal history; past  
17 and present employment; past and present  
18 political affiliations; co-workers;  
19 persons in authority and his knowledge  
20 of the Criminal Records Department of  
21 the Saskatchewan Ministry of Justice  
22 during the years 1970 and 1971.  
23 Mr. Breckenridge also covered topics  
24 that were irrelevant to this matter. As  
25 the interview progressed he would



1 suddenly remember some other point that  
2 he felt relevant. Although he could  
3 cover some topics in detail he was vague  
4 in others. He seemed "forgetful" when  
5 making reference to specific years  
6 pertaining to his past and present  
7 employment and personal history and yet  
8 concise when discussing any political  
9 details and motivation.

10 During the interview  
11 Mr. Breckenridge appeared unable to  
12 provide specific details regarding the  
13 handling of the Milgaard matter. Much  
14 of his information was speculative and  
15 based on his opinion and suspicions as  
16 well as these of his co-workers. The  
17 following persons were named as  
18 co-workers within the Department at that  
19 time - Mr. Dave Wolbaum, Provincial  
20 Correctional Centre employee, Regina,  
21 Mr. Dale Richter, C.S.I.C., Quebec,  
22 Mr. Gordon Dauncey, Clerk of the Court,  
23 Regina, Mr. Maurice Herauf, lawyer,  
24 Regina, and Ms. Pat Styles, Registrar,  
25 Department of Justice, Regina.



1 Mr. Breckenridge felt that any of these  
2 persons may be able to provide  
3 information. At this point I must  
4 advise that the majority of these  
5 persons are either still affiliated with  
6 the NDP party or are presently still  
7 provincially employed. Other high  
8 profile figures, not previously noted,  
9 were named as being involved in that  
10 department at that time.

11 Mr. Breckenridge felt that they were  
12 also privy to what transpired and  
13 include Louise Simard, lawyer, and  
14 Mr. Ned Shillington, both ministers in  
15 the present government.

16 Following the interview I asked  
17 Mr. Breckenridge to give the matter much  
18 thought and to be more specific to the  
19 Milgaard matter. I asked that he give  
20 more thought to dates and occurrences.  
21 I asked that following this he put the  
22 information into a Statement form. If  
23 he was having problems he should again  
24 contact me and I would take a statement.

25 I contacted your office on May



1 15, 1992, however you were not available  
2 and as a result you called me on May 19,  
3 1992. Some of this information was  
4 relayed to you. I advised you that I  
5 expected to hear from Breckenridge  
6 around May 20, 1992. Mr. Breckenridge  
7 was contacted on that date and stated  
8 that he was having problems organizing  
9 his thoughts but expected to do so in  
10 the immediate future. He called me on  
11 May 22, 1992. We met and he supplied me  
12 with a prepared statement. I have  
13 attached copies of that statement to  
14 this report.

15 I have noted the following for  
16 your information.

17 Mr. Michael Courtney  
18 Breckenridge (Born: August 29, 1950)  
19 --"

20 His address is stated,

21 "-- is separated and lives with an  
22 unknown adult female. He is unemployed  
23 and going through a personal bankruptcy  
24 over business guarantees. He claimed  
25 this was the result of bad advice and



1 manipulation of ownership of his past  
2 businesses brought on by Mr. Tom Dore  
3 and Mr. Ned Shillington. Mr. Ned  
4 Shillington is a Regina M.L.A. and  
5 Minister in the present government and  
6 Mr. Dore is his partner in the law firm  
7 of Shillington, Dore.

8 Mr. Breckenridge identified  
9 himself as a card carrying member of the  
10 NDP party in the early 1970's. He  
11 worked for various departments with the  
12 Government for approximately 2 years and  
13 then was employed by Credit Union  
14 Central in Regina. His employment  
15 history becomes unclear at this point,  
16 however it is believed he moved to  
17 California. He claims to have been  
18 employed by a photography company and  
19 worked as a security guard at the  
20 University of California, Santa Barbara  
21 Campus. Breckenridge admitted to having  
22 used drugs in those days and was  
23 arrested on two occasions in other  
24 offences. On one occasion he was drunk  
25 and on the second occasion he was





1 convicted of the state equivalent of  
2 being over 0.08. His U.S. experience  
3 apparently lasted for six years and  
4 covered the period of the late 1970's  
5 and early 1980's. He returned to  
6 Saskatchewan. Again it is unclear,  
7 however Mr. Breckenridge advised that at  
8 this time he owned and operated a taxi  
9 company called Racing for Life Ltd. with  
10 a subsidiary being Curt's Auto Repair.  
11 He also stated that he owned a  
12 construction company - Corban Homes Ltd.  
13 This is apparently when his legal and  
14 financial problems surfaced.  
15 Mr. Breckenridge stated that he moved to  
16 British Columbia around 1988. Prior to  
17 that he became a member of the Federal  
18 Progression Conservative Party and sat  
19 as a director in the riding of  
20 Regina/Elphinstone. When he moved to  
21 British Columbia he claimed that he was  
22 a director in the riding of  
23 Mission/Coquitlam. He returned to  
24 Saskatchewan after two years and is  
25 presently unemployed. He also stated



1 that "in the past" he was convicted of  
2 over 0.08 in Saskatchewan.

3 During this interview with  
4 Mr. Breckenridge he offered his views on  
5 political matters. In one statement he  
6 claimed to have proof that the idea for  
7 the Reform Party was the brainchild of  
8 Mr. Tommy Douglas and Mr. E.C. Manning.

9 Mr. Breckenridge's name was  
10 familiar to me. He frequently writes  
11 Letters to the Editor expanding his  
12 political views. He appeared to be a  
13 nervous and excitable person. This  
14 background detail is noted for  
15 information purposes only. It is meant  
16 to give you a clearer picture of this  
17 gentleman.

18 Mr. Breckenridge's opinion of  
19 wrong-doing and cover-up may be factual,  
20 however his zeal to correct the past may  
21 be clouded by his past and present  
22 personal experiences and state of mind.

23 I have learned that  
24 Mr. Breckenridge was receiving some  
25 forms of social assistance in



1 Saskatchewan in 1987. Further enquiries  
2 indicated that Racing for Life was  
3 incorporated in 1977 and dissolved in  
4 1987. Curts Auto Repair was  
5 incorporated in 1986 and not renewed by  
6 April 1991. Corban Homes was  
7 incorporated in 1983 and dissolved in  
8 1987. You will note that those dates do  
9 not coincide with Mr. Breckenridge's  
10 information given to me. Racing for  
11 Life is described on company history as  
12 being a company involved in  
13 Manufacturing and Selling of Goods.

14 We will not proceed further  
15 with this matter unless we receive  
16 instructions from your office."

17 Signed Mr. Perry.

18 I'll briefly reference 004012.  
19 This is the statement of Michael Breckenridge.  
20 We have previously read this in the course of the  
21 hearings, I don't propose to read it again, it  
22 contains some of the information that was just  
23 summarized.

24 If we move forward to a second  
25 letter from Mr. Perry to Mr. Asper, 156905, again



1 I'll read a portion of this letter dated June  
2 15th, 1992, it states:

3 "We were advised on June 12, 1997, by  
4 Mrs. Joyce Milgaard that our previous  
5 report of May 26, 1992 had not yet been  
6 received by your office. Your office  
7 confirmed this as of June 12, 1992. A  
8 reproduced report was given to Mrs.  
9 Milgaard to be hand delivered to your  
10 office. Mrs. Milgaard requested and was  
11 supplied a copy of that same report on  
12 June 12, 1992.

13 We met with Mrs. Milgaard on  
14 June 12, 1992 ... and discussed various  
15 aspects of the Milgaard situation at  
16 present. Mrs. Milgaard suggested  
17 various avenues of possible  
18 investigation. We advised Mrs. Milgaard  
19 that we felt that it would be in her  
20 best interest to fully discuss any  
21 future investigation with your office.  
22 Mrs. Milgaard requested that we set up  
23 another interview with Mr. Mike  
24 Breckenridge. We were given to  
25 understand that this had been discussed



1 with you or one of your associates in  
2 your absence.

3 Mr. Breckenridge was contacted  
4 and an appointment was set for June 14,  
5 1992.

6 We picked up Mr. Breckenridge  
7 and Mrs. Milgaard and met at our office  
8 on June 14, 1992. This meeting lasted  
9 approximately 2.5 hours. We fully  
10 discussed Mr. Breckenridge's involvement  
11 in the Milgaard and Fischer matters and  
12 the procedures involved.

13 He described the opening of  
14 files, the entering into the Master  
15 Ledger and the general flow of  
16 correspondence. Numerous names were  
17 brought up in the conversation. These  
18 named by Mr. Breckenridge, other than  
19 those previously reported were lawyers  
20 Richard Quinney, Ken McKay, Gerry  
21 Allbright and Peter Glendenning. Mrs.  
22 Milgaard asked what knowledge he may  
23 have of Ray Hnatishyn and Bob Caldwell.  
24 We also asked about Cal Tallis, Ian  
25 Disbury and E.C. Boychuk.



1 Mr. Breckenridge recollected that there  
2 was a letter or correspondence from a  
3 Saskatoon official to the effect that  
4 "they had the wrong man" that triggered  
5 the numerous discussions in the Criminal  
6 Records Department at that time. He  
7 also suggested that the files be gone  
8 back through to find his initials -  
9 either MB or MCB. He stated that when  
10 correspondence was moved through  
11 channels that person involved with the  
12 transfer would initial that  
13 correspondence. He felt that  
14 correspondence with his initials may  
15 bring back specific memories as to  
16 events, dates, times, etc.

17 It is also felt that obtaining  
18 secretaries initials, or "cc to" etc.  
19 would divulge the names of others  
20 involved in or having knowledge of the  
21 Milgaard/Fischer files.

22 We would also suggest, that if  
23 correspondence from Saskatoon City  
24 Police was sent to various other police  
25 forces requesting assistance in solving



1 the Saskatoon crimes, then there may be  
2 an R.C.M.P. file containing this  
3 correspondence. We believe it was  
4 routine to direct any requests to other  
5 police forces through Headquarters,  
6 R.C.M.P., Ottawa, Ontario.

7 Mrs. Milgaard will undoubtedly  
8 be discussing this particular interview  
9 with you and imparting her thoughts and  
10 suggestions.

11 This office will not undertake  
12 any further investigation unless  
13 instructed by your office."

14 Turn next to 004064. This is a letter to Kim  
15 Campbell, Minister of Justice, from Hersh Wolch  
16 dated September 16th, 1992 regarding David  
17 Milgaard. It reads:

18 "You will recall that we wrote to you on  
19 April 20th, 1992, at which time we  
20 advised you that we were requesting that  
21 the Attorney General for Saskatchewan  
22 order an inquiry into the Milgaard  
23 matter. We also advised you that while  
24 we felt that there was a federal  
25 interest in conducting an inquiry, we



1 also felt that the primary  
2 responsibility for ordering the inquiry  
3 belonged to the Provincial Government.

4 However, new evidence has been  
5 obtained which makes it imperative that  
6 the Federal Government order an inquiry  
7 into the entire Milgaard matter.  
8 Briefly, this evidence consists of a  
9 witness who was a former employee of the  
10 Saskatchewan Attorney General's  
11 Department who has come forward with  
12 information concerning activities in the  
13 department shortly after David  
14 Milgaard's conviction. Enclosed please  
15 find a photocopy of the statement which  
16 this witness has provided to a private  
17 investigator in Saskatchewan.

18 It is clear from this statement  
19 that some information came to the  
20 attention of this witness which  
21 suggested that there was a mistake made  
22 in the Milgaard case. This witness  
23 brought this information to Mr. Kujawa's  
24 attention, and was told to mind his own  
25 business if he valued his job. This





1 witness also indicated that by virtue of  
2 the filing which was required in his  
3 position, he became aware that meetings  
4 were held where both the Milgaard and  
5 Fisher files were considered together.  
6 These meetings were behind closed doors  
7 and involved senior attorneys in the  
8 Attorney General's office.

9 Mrs. Milgaard, along with the  
10 Investigator in question, met with this  
11 witness to follow up on the information  
12 contained in the statement. The witness  
13 described an incident which involved his  
14 refiling the Milgaard and Fisher files,  
15 which were requested for a meeting which  
16 was attended by Mr. Romanow, attorneys  
17 in the Attorney General's office, and  
18 police officials.

19 As you know, the Supreme Court  
20 of Canada has found that the Larry  
21 Fisher evidence came to light and was  
22 available in October of 1970. The  
23 Supreme Court of Canada has also found  
24 that this was credible evidence which  
25 could reasonably have been expected to



1                   affect the verdict of the jury. This  
2                   evidence was not disclosed to Mr.  
3                   Justice Tallis in October of 1970, while  
4                   Milgaard's appeal was pending, or at any  
5                   other time. Accordingly, we know that  
6                   the evidence of Larry Fisher was  
7                   suppressed. The following, however, has  
8                   not yet been established:

- 9                   1. Who had the Larry Fisher information in  
10                   October of 1970, and what was done with  
11                   it?
- 12                   2. Why was this information not disclosed?
- 13                   3. Was there a decision made, and if so by  
14                   whom, to withhold this information from  
15                   David Milgaard and his lawyers?
- 16                   4. What steps were taken, if any, to ensure  
17                   that this information did not come to  
18                   light?
- 19                   5. Who took these steps?
- 20                   6. Have there been ongoing efforts to cover  
21                   up the true facts concerning when this  
22                   information came to light and what was  
23                   done with it?

24   Mr. Mitchell has not seen fit  
25                   to order an inquiry into the Milgaard



1 matter, nor does he seem inclined to.  
2 In light of the evidence linking the  
3 present Premier of the Province of  
4 Saskatchewan to the Milgaard case, we  
5 would suggest that it would be  
6 impossible for the Milgaard family to  
7 obtain any form of impartial inquiry in  
8 the Province of Saskatchewan. A full  
9 and proper inquiry into this matter is  
10 absolutely essential to deal with this  
11 new evidence and with other issues which  
12 need to be addressed.

13 Accordingly, we are now  
14 formally requesting that you order an  
15 inquiry into the entire matter of the  
16 arrest, conviction and continued  
17 incarceration of David Milgaard,  
18 pursuant to The Federal Inquiries Act.  
19 The issue of compensation should also be  
20 placed before this inquiry.

21 We would be most pleased to  
22 render whatever assistance we can in  
23 connection with your deliberations in  
24 this matter, and in that regard we  
25 invite you to contact us at your



1 convenience."

2 Turn to 334826. We have a memo  
3 with the federal Department of Justice from  
4 Eugene Williams to Mr. MacFarlane dated September  
5 18th, and that should likely read 1992 in the  
6 upper right-hand corner, shortly following the  
7 receipt of Mr. Wolch's letter just noted. The  
8 memo states:

9 "Today I learned that Dave  
10 Wollbaum is a Corrections Officer at the  
11 Regina Correctional Detention Centre.  
12 Mr. Wollbaum was employed as a clerk in  
13 the Attorney General's Department  
14 between May, 1969 and May, 1972. He  
15 transferred to the Social Services  
16 Department of the provincial government.

17 Assuming that the witness who  
18 signed the statement provided by  
19 Mr. Wolch is Michael Breckenridge, I  
20 have learned that he was employed as a  
21 Clerk II in the Attorney General's  
22 Department between October, 1973 and  
23 June, 1975. It would appear that  
24 Mr. Breckenridge and Mr. Wollbaum did  
25 not work in the same Department



1 together.

2 Steps are being taken to  
3 interview Mr. Wollbaum to ascertain  
4 whether the comments attributed to him  
5 by the witness were made by Wollbaum.  
6 If so, we will attempt to determine the  
7 basis for those views.

8 As more information of  
9 significance becomes available, I will  
10 advise you accordingly."

11 Move to 047110.

12 COMMISSIONER MacCALLUM: I couldn't quite  
13 read the doc. ID on the letter of Wolch to  
14 Campbell, was it 064064?

15 MR. HARDY: It is 004064.

16 COMMISSIONER MacCALLUM: 004064? Thank  
17 you.

18 MR. HARDY: That's right. And the document  
19 that's on the screen now, 047110, it's a memo to  
20 file by Superintendent Egan respecting the David  
21 Milgaard matter, and it's reporting in relation  
22 to Sergeant Rick Pearson, stating:

23 "Sgt. Rick Pearson, Saskatoon  
24 GIS advised he had spoken with Eugene  
25 Williams, Federal Justice, who is now in



1 receipt of an affidavit which was filed  
2 on behalf of Milgaard to have a federal  
3 inquiry. He has alleged that a Pat  
4 Styles, currently employed at Sask  
5 Justice for Mr. John Baker, has provided  
6 information to Milgaard's lawyer that  
7 during the trial David Wollbaum, who is  
8 also employed at Sask Justice,  
9 identified to Serge Kujawa, the  
10 prosecutor, that there was a major fault  
11 with the prosecution. Kujawa inferred  
12 that Wollbaum and Styles should remain  
13 silent or risk losing their jobs. There  
14 is an indication that a further employee  
15 in Sask Justice, believed to be Mike  
16 Breckenridge, may have some knowledge.

17 Sergeant Pearson has been  
18 tasked to locate the people involved and  
19 have them interviewed. Dave Wollbaum is  
20 now believed to work for the Regina  
21 Correctional Centre and to reside in  
22 Rouleau, Sask. Sgt. Pearson will be  
23 contacting Mr. Murray Brown directly to  
24 obtain any relevant information which  
25 may assist his investigation. There has



1                   also been a reference that Mr. Bill  
2                   Logan, who worked at Justice at the  
3                   time, may have some information to lend.  
4                   Mr. Quinney is aware of the  
5                   investigational steps being made."

6                   I should have mentioned this memo is dated  
7                   September 18th, 1992.

8                   Move to 334872, 334 -- I'm  
9                   sorry -- 334870 is the document, and it is page 3  
10                  of that document. It is a letter dated September  
11                  18th, 1992 from Mr. MacFarlane to Murray Brown,  
12                  Department of Justice, Saskatchewan. The body of  
13                  the letter notes:

14                                "I attach a copy of a letter  
15                                received from Hersh Wolch, counsel for  
16                                David Milgaard, dated the 16th of  
17                                September, 1992 together with an  
18                                attachment headed 'Statement'.

19                                I understand that Mr. Milgaard  
20                                and some of his supporters will be  
21                                holding a rally in Winnipeg tomorrow. I  
22                                also understand that this letter, or its  
23                                contents, may be made public at the  
24                                rally."

25                                And if we could move to 219290.



1 This is a news release, we obtained this  
2 document, or it's sourced from Joyce Milgaard's  
3 collection. The news release states:

4 "A news conference will be  
5 held at Assiniboine Park behind the  
6 pavilion on Saturday September 19th 1992  
7 at 12.30 regarding the David Milgaard  
8 case.

9 Copies of a letter to the  
10 Minister of Justice containing new  
11 evidence that supports an application  
12 under the Federal Inquiries Act will be  
13 released.

14 David with other members of the  
15 Milgaard family and Hersh Wolch will be  
16 in attendance. David and Mrs. Milgaard  
17 will be available for background shots  
18 etc should they be required by request  
19 from 10 o'clock until 12.30. Mr. Wolch  
20 will be available after the press  
21 conference for any questions."

22 And then at the bottom it notes:

23 "A copy of the poster on the rally  
24 activities follows."

25 And that document is 218852.





1                   218852. This is the poster  
2                   that's referred to in the previous news release,  
3                   the John Howard Society, David Milgaard and the  
4                   Justice Support Fund presents Festival of  
5                   Freedom, it notes the live press conference at  
6                   12:30, Assiniboine Park.

7                   The next document is 334827.  
8                   This is a transcript of the press conference that  
9                   took place on the date we've been noting. We've  
10                  previously referred to the relevant portions of  
11                  this transcript. I understand, as well, that Mr.  
12                  Hodson will be again referring to this transcript  
13                  during the evidence of Joyce Milgaard, so I don't  
14                  propose to read any of those portions at this  
15                  time.

16                  Move, next, to 004014. This is  
17                  a statement of Patricia Styles that was taken by  
18                  Sergeant Pearson, the date is September 19th,  
19                  1992, and I will read this statement. We have  
20                  spoken with Ms. Styles, we do not propose to call  
21                  her as a witness, and she has confirmed the  
22                  accuracy of the information that she has  
23                  previously provided and, in particular, the  
24                  accuracy of this statement. Beginning at the  
25                  top:



1 "Q Patricia, I am assisting the Federal  
2 Department of Justice in pursuing  
3 information forwarded to them in Ottawa  
4 by Mrs. Milgaard concerning matters  
5 associated to the prosecution of her  
6 son, David Milgaard. Are you familiar  
7 with this case?

8 A I have heard of it.

9 Q I have correspondence indicating you  
10 worked as a file clerk or something  
11 similar during the late 1960's, early  
12 1970, is that true? Was this with the  
13 Sask. A.G.'s Department?

14 A Yes.

15 Q Could you describe who you worked for  
16 and what your duties were?

17 A Basically, handling incoming mail and  
18 files. I started with the Department  
19 in about 1962 and worked in various  
20 positions during the 1960's and early  
21 1970's, one position being what we  
22 would call the Criminal File Section.

23 Q What duty did you have at this office?

24 A At one point in time it have been the  
25 processing of incoming mail. We would



1 pull files, match them up with  
2 incoming mail and forwarded them on to  
3 the people responsible. This was a '  
4 general office' and one of our  
5 functions was to process the mail.

6 Q Do you recall working in the general  
7 office in 1970 and 1971?

8 A I'm sure I was.

9 Q Who are some of the people you worked  
10 with?

11 A I can't specify if they were in the  
12 office over the years 1970, 1971, but  
13 they would have been there over a  
14 period of several years. They're Dave  
15 Wollbaum, Brian Leible, Maurice  
16 Herauf. At one time Maurice's cousin  
17 also worked there, I think his first  
18 name was Al, last name was also  
19 Herauf. Dale Reichter also worked  
20 there. As far as I can recall, the  
21 people mentioned were on the criminal  
22 side of our office. The general  
23 office was separated into a criminal  
24 side and a civil side, but at times  
25 the duties overlapped.



1                   On the civil side there was  
2                   Mary Molnar, Betty Lubiens, and others  
3                   that were there but cannot recall  
4                   exactly when they were associated to  
5                   this office. I'm sure there are names  
6                   I am not recalling.

7                   Q    What procedures were in place at the  
8                   office for opening and handling  
9                   sensitive mail?

10                  A    Two people would always open the mail.  
11                  There was two because there was often  
12                  cash being sent. We handled the mail  
13                  for the A.G.'s Department which was  
14                  located in the Legislative Building.

15                  Q    Do you recall anything at all about  
16                  conversations you may have had in the  
17                  past about anyone expressing concerns  
18                  with the Milgaard conviction?

19                  A    No.

20                  Q    During 1970, 1971 and 1972 do you recall  
21                  there being any concerns raised by  
22                  fellow employees in the general office  
23                  about the Milgaard case, and in  
24                  particular if there had been some type  
25                  of miscarriage of justice?



1 A Nothing!

2 Q Do you recall working with Michael  
3 Breckenridge during this time period?

4 A I recall him working with the  
5 Department in the '60's or '70's but  
6 not the exact years.

7 Q Do you recall anything that Michael  
8 Breckenridge may have said to yourself  
9 or anyone else about the Milgaard case?

10 A No, if he did I don't recall any of  
11 it.

12 Q Does the name Larry Fisher mean anything  
13 to you?

14 A I've heard it in the news.

15 Q When you worked in the general office at  
16 the A.G.'s Department do you recall  
17 seeing any file material, memos or  
18 documents associated to the names Larry  
19 Fisher or David Milgaard?

20 A I con't recall specifically seeing  
21 those, but I'm sure I must have  
22 because we were dealing with these  
23 kinds of files at that time.

24 Q Who were you answerable to during your  
25 time at the general office?



1 A The Administrative Officer I believe  
2 was Arnold Boyd at the time.

3 Q Was it a practice, or was it possible  
4 for employees in the general office to  
5 read incoming mail and the actual files  
6 the mail was related to?

7 A Yes, it was possible, being a central  
8 filing area the files were always  
9 there.

10 Q Can you tell me anything about Michael  
11 Breckenridge?

12 A I haven't seen him in years. Many  
13 many years ago he dropped by the  
14 office to say hello, but I have no  
15 idea where he is or what he is doing.  
16 I didn't know him well.

17 Q Do you know Dave Wollbaum?

18 A I know him as I worked with him during  
19 those years. I don't know exactly  
20 which ones. I met up with him from  
21 time to time around town, but I don't  
22 have any association with him.

23 Q Do you recall Dave working with you in  
24 the general office?

25 A Yes, probably during the same time



1 period as I. I was there a long time,  
2 but can't say how long Dave was.

3 Q What duties did Dave Wollbaum have?

4 A The same as the rest of us, dealing  
5 with the files and the mail.

6 Q Where was your office located from the  
7 Crown prosecutor's office?

8 A Across the hall and down a bit, on the  
9 same floor. It was the third floor on  
10 the East wing of the Legislative  
11 Buildings.

12 Q Was there any difference in the way  
13 'Eyes Only' mail or 'Private and  
14 Confidential' mail was handled from  
15 routine mail?

16 A I don't recall specifically, but  
17 believe confidential mail would have  
18 been sent to them unopened, but I  
19 don't remember if there were specific  
20 procedures.

21 Q Did Dave Wollbaum have any privileges  
22 regarding access to files that yourself  
23 and others didn't?

24 A No!

25 Q So far as the Milgaard file is



1 concerned, would it have been filed and  
2 handled like the other homicide cases?

3 A It would have been handled like any  
4 other case.

5 Q I have correspondence from an individual  
6 who I believe worked in the same office  
7 as yourself during the very early 1970's  
8 who indicates the general office began  
9 receiving mail marked everything from  
10 'Private and Confidential' to 'Eyes  
11 Only' that were directed to Mr. Romanow.  
12 Can you respond to that for me.

13 A I honestly don't remember anything  
14 about this, about mail specifically  
15 directed to an individual.

16 Q Do you recall ever being specifically  
17 told not to enter a meeting between  
18 attorneys?

19 A No and it wouldn't be standard  
20 practice for file clerks to attend  
21 such meetings.

22 Q Where was the Attorney General's office  
23 located from the general office you  
24 worked in?

25 A Same wing, but down the hall.





1 Q Did file clerks have access to the  
2 A.G.'s office.

3 A Yes, if specific files were requested,  
4 we may have delivered them to the  
5 A.G.'s staff or the A.G.

6 Q Do you have knowledge of a paper  
7 shredder being kept in the Minister's  
8 office, as it is suggested in the  
9 correspondence I have received from the  
10 Federal Justice Department.

11 A No, but it wouldn't be unusual for  
12 them to have one.

13 Q The correspondence I have suggests that  
14 the Milgaard case was a mistake. Have  
15 you any knowledge of mistakes, cover-ups  
16 or a miscarriage of justice taking place  
17 with the investigation or prosecution of  
18 David Milgaard's matter.

19 A No!

20 Q This correspondence suggests the  
21 concerns raised about the Milgaard case  
22 were brought to the attention of Serge  
23 Kujawa, then told by Mr. Kujawa to mind  
24 their own business. Do you have any  
25 knowledge of such a concern being raised



1 among the people you worked with at the  
2 time?

3 A No.

4 Q According to the correspondence I have,  
5 after being told by Mr. Kujawa to mind  
6 their own business, the employees began  
7 to apply for transfers or find new jobs  
8 and that yourself, Patricia Styles, was  
9 the only person who didn't.

10 A I don't recall any massive turnover in  
11 staff, just the normal change because  
12 most of the positions were Clerk II or  
13 III and in order to develop or advance  
14 their career it was necessary to  
15 transfer out of the unit.

16 Q Do you recall any of your fellow workers  
17 having any conflict with Serge Kujawa  
18 over the Milgaard file?

19 A No."

20 Signed by Patricia Styles, witness Sergeant Rick  
21 Pearson.

22 And, next, the statement of  
23 David Wollbaum similarly taken by Sergeant  
24 Pearson, the document is 004019, beginning at the  
25 top:



1 "Q Dave, I am assisting the Federal  
2 Department of Justice in following up on  
3 information they received concerning the  
4 conviction of David Milgaard. Are you  
5 familiar with the Milgaard matter?

6 A Yes!

7 Q What do you do for a living now?

8 A I am a Corrections Worker at the  
9 Regina Provincial Correctional Centre.

10 Q Did you ever work at the Attorney  
11 General's office in Regina?

12 A Yes, from 01 Jul 1969 to 01 Jul 74

13 Q What office?

14 A A.G.'s office - Legislative Building.

15 Q What were your duties?

16 A I was a Clerk II. Received  
17 prosecution files and logged them for  
18 reference then filed them.

19 Q What job did you have at first?

20 A That was it, a Clerk II.

21 Q Were there any serious Criminal Code  
22 files handled by yourself?

23 A Yes, I handled everything so far as  
24 the filing was concerned.

25 Q Explain your office procedure for



1 handling the incoming mail?

2 A There was a person who would open  
3 male, process it and handle it  
4 accordingly. Anything that needed a  
5 lawyer's attention did not get handled  
6 by me as I was a Clerk II.

7 Q How long were you a Clerk II?

8 Q From the time I started, July 1969 to  
9 approximately July 1971.

10 Q During that time did you actually open  
11 mail?

12 A No!

13 Q What was the mail opening procedure?

14 A The mail came in, went to the desk of  
15 Mary Molnar and she would open it in  
16 the presence of a Clerk I, Mary was a  
17 Clerk IV. Betty Lubiens supervised  
18 the office. My supervisor at the time  
19 was Patricia Styles. The Clerk I was  
20 a lady by the first name of Ann.

21 Q After July 1971 what happened?

22 A I became a Clerk III and could then  
23 receive mail after it was opened by  
24 Mary Molnar. Pat Styles was the  
25 Senior Clerk III and I worked with her



1 receiving mail.

2 Q How did your job then change when you  
3 began receiving mail?

4 A We were no longer on the filing end.  
5 We received mail from the lawyers,  
6 ensured the correspondence was logged  
7 so it could be retrieved and filed  
8 correctly.

9 Q Were the Prosecution files all kept in  
10 the office area where you worked?

11 A Usually we had access to the files for  
12 a year then moved them to vaults. The  
13 files were all accessible by all the  
14 clerks in the office.

15 Q Do you recall the Milgaard file?

16 A Not from that time.

17 Q Does the name Larry Fisher mean anything  
18 to you?

19 A There are lots of Fishers in the jail  
20 where I work and have worked with  
21 approximately ten different Fishers,  
22 so I'm not sure if I relate to the  
23 name Larry Fisher or not.

24 Q Do you know Michael Breckenridge?

25 A Yes, we socialized together in those



1 days. We were friends and worked in  
2 the same office. In 1976/77 Mike and  
3 I went out to Vancouver and visited  
4 with a friend who had worked in the  
5 A.G.'s office with us, by the name of  
6 Dale Richter, who at that time became  
7 a Special Constable with the RCMP in  
8 Burnaby.

9 Q What did Breckenridge do at the office?

10 A He was a Clerk II and wouldn't have  
11 arrived in the office until 1972, he  
12 took Al Herauf's position and Al was a  
13 Clerk II when he left. The clerk II's  
14 would file lawyers' mail after the  
15 lawyer had dealt with it.

16 Q Did Michael Breckenridge ever get beyond  
17 a Clerk II?

18 A No!

19 Q How long did Michael stay in that  
20 office?

21 A Over a year but didn't make two years.

22 Q Why did he quit?

23 A I don't know, he was still there when  
24 I left.

25 Q Tell me what you can about Michael



1 Breckenridge?

2 A He had a booze problem. His  
3 personality was not well accepted by  
4 the other clerks, but Dale and I were  
5 the only two who got along with him.  
6 He thought he was a friend of Gerry  
7 Allbright, the lawyer, and he always  
8 poked around the lawyers' offices  
9 trying to get brownie points. He did  
10 not keep himself neat and clean and  
11 often came to work hung over. After  
12 Dale and I left, no one would  
13 associate with him and I'm not sure  
14 how long, but he quit sometime after.  
15 Approximately 11 or 12 years ago was  
16 the last time I saw Mike. He called  
17 me up and came over for coffee. He  
18 had quit drinking and had turned to  
19 religion. He began to talk religion  
20 and I sensed he was trying to convert  
21 me. He indicated he wanted to save  
22 and help people. Mike left my place  
23 and I've never seen him since.

24 Q Did Mike ever discuss or ask you about  
25 any of the files you worked with?



1           A     I don't remember anything he may have  
2                   mentioned, but we were trained to look  
3                   for errors and bring them to the  
4                   attention of the supervisors.

5           Q     Do you have any information at all that  
6                   a mistake or cover-up may have been made  
7                   in the David Milgaard police  
8                   investigation or prosecution of him?

9           A     None!

10          Q     Did Michael Breckenridge ever tell you  
11                 about his concerns regarding the  
12                 Milgaard file?

13          A     Not to my recollection.

14          Q     Were there any employees at the time,  
15                 1970 and 1971, who you worked with, who  
16                 raised concerns about the Milgaard file?

17          A     Not to my recollection.

18          Q     Was Serge Kujawa in that office at the  
19                 time?

20          A     Yes he was, during the entire time I  
21                 was there. We handled criminal  
22                 matters. I have the highest respect  
23                 and admiration for the man.

24          Q     I have correspondence suggesting that  
25                 Michael Breckenridge ran errands for the





1 Minister that were party business. Can  
2 you respond to that?

3 A I know nothing about that. I'm not  
4 sure who the Minister was at the time,  
5 but his Assistant was Gary Lane.

6 Q I have correspondence that states, 'On  
7 the Milgaard case it was brought to my  
8 attention by Dave Wollbaum that  
9 according to the information we had been  
10 receiving, it was becoming very evident  
11 that the Milgaard case was a mistake'.  
12 Respond to that please.

13 A A don't think my memory is that poor,  
14 and I know for sure that a case as  
15 sensitive as that I would have  
16 remembered. I sure don't remember  
17 having such a conversation with him on  
18 that.

19 Q I have correspondence that states, 'From  
20 the correspondence we are filing our  
21 section was convinced that there was  
22 error made in the Milgaard case and this  
23 was brought Serge Kujawa's attention.  
24 We were told basically to mind our own  
25 business if we valued our jobs'. Can



1                   you respond to that please.

2                   A     If something like that happened I  
3                   would remember it and I was never told  
4                   anything like this. We never had  
5                   access to the prosecution of matters.  
6                   Our area was filing, not accessing  
7                   evidence. I was definitely never told  
8                   anything like this by Serge Kujawa.

9                   Q     I have correspondence that states,  
10                  'After being told that our section began  
11                  to apply for transfers or to find new  
12                  jobs.' Can you respond to this please.

13                  A     The Milgaard case had nothing to do  
14                  with me leaving the section. It was  
15                  very hard for me to leave, it was  
16                  family. Betty Lubiens had tears in  
17                  her eyes. The change to the  
18                  Correctional Centre was a career  
19                  advancement but had nothing to do with  
20                  my job at the A.G.'s office.

21                  Q     In your opinion, why would Michael  
22                  Breckenridge say what is alleged?

23                  A     I don't know, unless it's the truth  
24                  for him, but it's not the truth for  
25                  me.



1 Q Have you been contacted by anyone  
2 previously about this matter?

3 A Never.

4 Q Did Mike ever ask you about or mention  
5 the Fisher file?

6 A Not that I can remember.

7 Q Do you have any information about any  
8 mistake or cover-up in the Milgaard  
9 prosecution?

10 A None.

11 Q Were there times when Clerk II's or III  
12 would deliver files directly to the  
13 A.G.'s office?

14 A Yes, right to the Prosecutor's desk.

15 Q Do you have any more to add?

16 A I don't see how he could see if there  
17 was an error made in the Milgaard case  
18 because everything on files such as  
19 this is factual. I just can't see  
20 there being a cover and I respect  
21 Serge beyond question."

22 Signed by David Wollbaum, witness Sergeant  
23 Pearson.

24 If we turn to 117922, if we  
25 turn to page 2 of this document we see the report



1 of Sergeant Pearson relating to his  
2 investigations and following his interviews with  
3 David Wollbaum and Patricia Styles, as we just  
4 reviewed, and I won't specifically otherwise read  
5 from that document.

6 If we move next to 004193.  
7 This is a facsimile from Murray Brown to Sergeant  
8 Pearson, it's -- it encloses various information  
9 relating to Mr. Breckenridge's previous  
10 employment with the Government of Saskatchewan,  
11 it includes the -- his job application form and  
12 the original letter of offer and acceptance, and  
13 we previously looked at those materials during, I  
14 believe, the testimony of Ken MacKay, and perhaps  
15 Serge Kujawa as well. I will refer to just one  
16 page of this document which is 004197. Again, I  
17 think we saw this previously, but it notes his,  
18 Mr. Breckenridge's employment in the Attorney  
19 General's office from October 3rd, 1973 to June  
20 29th, 1975.

21 And, for the sake of reference,  
22 I will also refer to 047268. And, again, this is  
23 a document that we previously covered showing the  
24 Grade 12 High School Equivalency Diploma for  
25 Mr. Breckenridge dated December 13th, 1972.



1                   If we can move to 334870. This  
2                   is a letter from Mr. MacFarlane to Mr. Wolch  
3                   dated September 21st, 1992. In the body of the  
4                   letter Mr. MacFarlane states:

5                   "Confirming our discussion  
6                   early this morning, I would like to  
7                   receive the name of the person who  
8                   provided the written statement to  
9                   Mrs. Milgaard, together with his current  
10                  address, place of employment and  
11                  telephone number where he can be  
12                  reached. Additionally, during the press  
13                  conference, Mrs. Milgaard made reference  
14                  to a letter that this person sent to  
15                  her, in which he suggested that an  
16                  outside inquiry should be called. I  
17                  would like to receive a copy of that as  
18                  well. Finally, an information package  
19                  was provided to the media. I would like  
20                  to receive a copy of that.

21                  As Mrs. Milgaard has asked for  
22                  a prompt response from the Minister, I  
23                  would be grateful if you could fax this  
24                  material to me by the close of business  
25                  today."



1                   If we move to 162867, we have a  
2                   letter from Mr. Wolch responding to  
3                   Mr. MacFarlane dated September 22nd, 1992, just  
4                   three paragraphs I'll note from this letter, the  
5                   first one reading:

6                                 "Further to our telephone  
7                                 conversation, I have now had a chance to  
8                                 discuss the matter with Mrs. Milgaard.  
9                                 She instructs me that her position is  
10                                that the Minister of Justice should  
11                                order an independent inquiry."

12                   The third paragraph:

13                                "I realize that the above  
14                                creates difficulties, but I do not feel  
15                                that they're insurmountable. We know  
16                                there has been a coverup, and the  
17                                question of compensation for David  
18                                Milgaard has never been properly  
19                                addressed. The reasons advanced by  
20                                Mr. Mitchell in the enclosed  
21                                correspondence is simply not accurate.  
22                                Frankly, I feel this potential witness  
23                                is far less important on the issue of a  
24                                coverup than Mr. Kujawa's public  
25                                utterances (samle videotape enclosed)."



1 And then at the bottom of the page, again  
2 respecting Mr. Breckenridge, we understand, it  
3 states:

4 "My instructions regarding  
5 the name and address of the informant  
6 are to ascertain the manner in which the  
7 entire matter will be investigated. We  
8 feel he should be part of a broader  
9 picture. We would like an opportunity  
10 to provide the investigator with a great  
11 deal of additional information which, in  
12 part, may have been forwarded to your  
13 Minister as copies of material forwarded  
14 to Saskatchewan on April 20, 1992."

15 And if we can turn to 327715,  
16 this is a news broadcast, and it is announced on  
17 this date, being November 17th, 1992, that  
18 Saskatchewan Justice has asked the RCMP to  
19 conduct an investigation into allegations of  
20 coverup as brought forward by Joyce Milgaard and  
21 those on behalf of David Milgaard. And I won't  
22 refer to specific portions, there are some  
23 comments that we're aware of already.

24 Next document is 060934. This  
25 is a letter from Mr. Wolch to the RCMP dated



1 December 3rd, 1992. It confirms that the RCMP  
2 investigation is under way and, as well, at the  
3 beginning of the letter Mr. Wolch provides the  
4 name and address for Michael Breckenridge.

5 Move to 159542, please, this is  
6 a letter from Michael Breckenridge to Mr. Wolch  
7 dated December 23rd, 1992, Mr. Breckenridge  
8 states:

9 "Please find enclosed the first part of  
10 a book I have written. I can send you  
11 the whole thing on computer disk in the  
12 near future.

13 I have marked the section that  
14 is particular interest to you and David  
15 Milgaard. If we can release this  
16 information I am sure it will help  
17 increase public pressure to secure David  
18 a financial settlement.

19 I would hope that I could count  
20 on your help to get this book  
21 published."

22 I'm not going to specifically refer to any  
23 portions of the attachment, it is a fairly long  
24 attachment that's included as part of the doc. ID  
25 that I provided. The specific pages that deal





1 with the David Milgaard matter are pages 30 to 32  
2 of that document, and again I won't read those  
3 specifically, but you may want to make a note of  
4 those specific pages.

5 Turn next to document 035725,  
6 and if we could turn to page 12 of this document,  
7 please. This is the continuation report left by  
8 Constable Jorgenson relating to the interview of  
9 Michael Breckenridge on May 13th, 1993, beginning  
10 at the top:

11 "The following update is based on an  
12 interview of Mr. Breckenridge and the  
13 research material contained within this  
14 file.

15 At the beginning of our  
16 interview Breckenridge supplied me with  
17 three pieces of paper. It was later  
18 learned from him that these pages are an  
19 excerpt from a book he has written, that  
20 is titled "Regina The Last 100 Years."  
21 While I read these pages prior to  
22 interviewing Mr. Breckenridge & and they  
23 were quickly reviewed by Sgt. Williams  
24 as well. The statements made in these  
25 pages were not specifically dealt with



1                   this date. I have however since studied  
2                   these pieces of paper more closely and  
3                   as can be noted, there are some very  
4                   strong statements/allegations contained  
5                   within these pages. These papers will  
6                   be submitted with this update for  
7                   review.

8                   I produced a copy of  
9                   Breckenridge's letter to Mr. Wolch dated  
10                  March 21, 1992 and a copy of the  
11                  statement of his that is dated 92-05-22.  
12                  I asked Mr. Breckenridge if the contents  
13                  of these two documents are true and  
14                  correct and he advised that they were.  
15                  I asked him if he wished to change or  
16                  delete anything in these documents and  
17                  he did not. It was not until the end of  
18                  our interview that I looked at taking a  
19                  written statement from him. Prior to  
20                  considering same I asked him if there  
21                  was anything more that he could tell us  
22                  that is not only contained in this  
23                  letter and the referred statement.  
24                  Breckenridge advised that there was not.  
25                  Breckenridge agreed to initial page one



1 of his letter to Mr. Wolch & signing and  
2 dating the second page. He as well  
3 initialled both pages of his statement.

4 Breckenridge was questioned  
5 about his employment history with the  
6 Sask Gov't. Initially he felt that he  
7 started with the Gov't in 1971 and he  
8 believed that he started with the A.G.'s  
9 Dept in 1972. He was subsequently shown  
10 a document that outlines his employment  
11 history with the government. He had no  
12 problem with it, and did not disagree  
13 with the date on it concerning when he  
14 started with the A.G.'s Dept.

15 Breckenridge states that  
16 everything concerning the Milgaard file  
17 was in the department that he worked in.  
18 He described this file as containing  
19 copies of Police Reports, a rap sheet  
20 and various pieces of paper, memo's and  
21 correspondence. Some of the later being  
22 originals and others being copies.  
23 Breckenridge described the Fisher file  
24 in the department as being at least 6"  
25 thick. Breckenridge described ongoing



1 handling of these files and continual  
2 incoming papers that were added to these  
3 files. (During a meeting with Murray  
4 Brown on the 93-04-27, we were advised  
5 that the Prosecutor's file on this  
6 murder investigation stayed in the  
7 Saskatoon office. Normally a file would  
8 stay in a Prosecutor's Office for three  
9 years and then get packaged up and sent  
10 to Prov Archives. In this particular  
11 case, Brown speculates that Caldwell  
12 hung onto this file because it was a  
13 significant file for him. Given this  
14 info., and the time period for which  
15 Breckenridge was with the A.G.'s Office,  
16 raises the question. What file and its  
17 content is Breckenridge referring to?  
18 Certainly there would have been a file  
19 in Regina relative to the appeal,  
20 however, I would question why this file  
21 would contain Police Reports or the  
22 volume that Caldwell's file would have  
23 contained. Breckenridge also refers to  
24 the Fisher file as being at least 6"  
25 thick. Breckenridge was very adamant



1 about this, in yet, given what we have  
2 learned to date, I question the size he  
3 is stating this file was.)

4 Breckenridge described files in  
5 the department as starting from a single  
6 page and that as time went on they were  
7 added to as papers came in. That when  
8 someone added something to a file it  
9 would be initialled by the person adding  
10 it. In this area he pointed out such  
11 persons as doing this as being himself,  
12 Dave Wollbaum & Dale Richter. In  
13 covering this area, Breckenridge  
14 indicated that if his initials did not  
15 appear on a particular piece of paper,  
16 (dealing with the Milgaard/Fisher) this  
17 did not mean that he would not have seen  
18 the particular piece of paper. (To date  
19 I have not come across any  
20 papers/documents in which any initials  
21 have caught my attention. There may  
22 have been incidents of my coming across  
23 some papers that had date stamps.  
24 However, I cannot comment on the age of  
25 such papers.)



1 Breckenridge describe occasions  
2 when a request would be made for a  
3 particular piece from a file. This  
4 would result in the file having to be  
5 reviewed in order to come up with what  
6 was being requested. Breckenridge  
7 stated that this happened with both the  
8 Milgaard & Fisher files.

9 Breckenridge states that Dave  
10 Wollbaum had brought to his attention a  
11 connection between the Milgaard & Fisher  
12 files. That Wollbaum had told him that  
13 something was wrong. (When questioned  
14 about what this connection was,  
15 Breckenridge could not recall.)  
16 Breckenridge states that at one point he  
17 and Wollbaum compared the two files side  
18 by side and that he made a connection  
19 between the two files. (When questioned  
20 about what this connection was,  
21 Breckenridge could not recall.) This  
22 connection was pursued with Breckenridge  
23 and he eventually suggested that it  
24 could have been the fact that Fisher  
25 lived in the house that Milgaard went



1 to, however, he was not sure whether or  
2 not this was the connection he made or  
3 not.

4 Breckenridge alleges media  
5 attention and concern from ridings back  
6 in the early '70's concerning these two  
7 files. This point was most confusing,  
8 along with the fact that he had pointed  
9 out ongoing handling of these files and  
10 additional papers coming in that were  
11 added to these files while he was there.  
12 Breckenridge started with the Sask A.G.  
13 Dept., on October 3/73. Realistically  
14 speaking, by 1973 these files are  
15 closed, for the lack of a better term.  
16 I therefore do not understand why there  
17 would be any concern regarding these  
18 files, especially given their outcome.  
19 This was discussed with Breckenridge,  
20 however, he stands by his position that  
21 these files were still being looked at.  
22 (Re: The three page that is  
23 Breckenridge brought in today. I  
24 suspect that Breckenridge's reference to  
25 ridings could very well be riding.



1 Mr. Romanow's riding. Regardless of  
2 whether or not it is in the singular or  
3 plural, as noted, Breckenridge states  
4 that there was continued dealings with  
5 these files.)

6 During questioning on the  
7 content of these two files, (Milgaard &  
8 Fisher) Breckenridge was asked if he  
9 knew what these two men were charged  
10 with at the time (when he was in the  
11 dept) and he indicated that he did not.

12 Breckenridge stated that he  
13 brought up his concerns to Mr. Kujawa  
14 concerning the two files. This took  
15 place in the office area that he worked  
16 in. Subject cannot recall specifically  
17 what Mr. Kujawa's response was. He  
18 believes that whatever Mr. Kujawa said,  
19 it meant that people should mind their  
20 own business if they valued their jobs.  
21 Breckenridge referenced Kujawa's tone &  
22 expressions at the time that he reflects  
23 on to come to this conclusion.

24 Breckenridge stated that the word  
25 history stands out in his mind for some





1 reason insofar as what Mr. Kujawa had to  
2 say.

3 Breckenridge suggests that Mr.  
4 Kujawa would have had both the Fisher &  
5 Milgaard files on his desk at some  
6 point.

7 States that there may have been  
8 other file discrepancies that were  
9 brought to Mr. Kujawa's attention,  
10 however, nothing came to mind.

11 Out of the blue Breckenridge  
12 states that there was a memo on the  
13 Milgaard file stating that there was  
14 insufficient evidence to prosecute.  
15 When questioned about this memo,  
16 Breckenridge admits that he cannot  
17 recall who this memo refers too.

18 When questioned as to why Mr.  
19 Wollbaum does not support his position  
20 and what Mr. Wollbaum has had to say,  
21 Breckenridge suggested that Wollbaum may  
22 not be saying anything because of an  
23 oath of secrecy staff members had to  
24 take and the fact that he is still  
25 working for the government. (When



1 Wollbaum was spoken to by Sgt. Pearson  
2 he was working at the Regina Provincial  
3 Correctional Centre.)

4 On questioning Breckenridge  
5 about the time frame that it took for  
6 him to come forward with the information  
7 he has given. He referred to the oath  
8 of secrecy that would have been in  
9 effect for 10 years after he left the  
10 dept., and the fact that he was living  
11 in B.C. for awhile & therefore not aware  
12 of the attention that these two matters  
13 were receiving.

14 Note on file copies of Wollbaum  
15 & Styles statements, which I feel should  
16 be read in conjunction with this update  
17 and the reference material contained  
18 herein. These statements were taken by  
19 Sgt. Pearson in 1992. In so far as any  
20 cover-up is concerned they are not  
21 supporting Breckenridge's position.  
22 They do however support the access issue  
23 to files.

24 Basically the subjects belief  
25 concerning a cover-up is outlined in the



1 referred letter, statement and the three  
2 pages that Breckenridge supplied us with  
3 today.

4 Interested in the 26 names that  
5 are listed on page one of the three  
6 pages that Breckenridge supplied us with  
7 yesterday under the heading: "People  
8 with greater/lesser knowledge of the  
9 Milgaard case." I phoned Breckenridge  
10 this afternoon and asked him about how  
11 many of these people would be aware of a  
12 cover-up. Breckenridge suggests that a  
13 number of these people could/would be.  
14 That this greater/lesser knowledge also  
15 would include the Fisher case. That  
16 whether or not these people will say  
17 anything to us though is dependent on  
18 their current relationship with the  
19 Gov't. Breckenridge did however point  
20 out that he feels that Dale Richter will  
21 support what he has had to say because  
22 he is now out of scope. He would have  
23 no ties with the Prov Gov't.

24 Styles ... & Wollbaum ... have  
25 not been dealt with to date. As



1                   previously noted, statements have  
2                   already been obtained from them by Sgt.  
3                   Pearson. They will be spoken to  
4                   relative to the information on this  
5                   file. It is requested that a file be  
6                   opened on Dale Richter, as I believe  
7                   that he should be spoken too. It is  
8                   requested that a copy of this file be  
9                   applied to the Richter file that is  
10                  generated. Once these people have been  
11                  spoken to, it can be decided whether or  
12                  not further interviews are necessary.  
13                  What this subject has to say can also be  
14                  dealt with in the interviews of Caldwell  
15                  & Kujawa.

16                                 Since this file is to be dealt  
17                                 with further and which may involve a  
18                                 further interview of Breckenridge it  
19                                 will remain;"

20                  Next page, please, it continues I believe with a  
21                  June 1st, 1993 date at the top:

22                                 "Contact was made this date with  
23                                 Mr. Breckenridge by phone and  
24                                 arrangements made for him to attend our  
25                                 office tomorrow between 0900 and 1000



1 hrs.

2 Mr. Breckenridge attended our  
3 building and was spoken to in an  
4 interview room at Regina Det., by myself  
5 and Cst. Cunningham. The purpose of our  
6 meeting with Mr. Breckenridge was to  
7 conduct a taped interview with him. An  
8 interview for the purpose of obtaining a  
9 record of his allegations and for  
10 questioning relative to areas of  
11 clarification and concerns that have  
12 come up, concerning his allegations.

13 Mr. Breckenridge was not  
14 comfortable with such an interview. He  
15 stated that had he known about my  
16 intentions, he would have prepared  
17 himself for such an interview. Not  
18 being prepared he felt that such an  
19 interview might result in his leaving  
20 points out and he wanted to have his  
21 facts in order.

22 Mr. Breckenridge is prepared to  
23 sit down at home and address what he has  
24 to say on paper. He feels that it will  
25 take him about a week to get this



1 together. He would then be prepared to  
2 meet with us again for the purpose of  
3 our reviewing what he has to say and to  
4 question him for the purpose of  
5 clarification and for questioning in  
6 areas that we feel should be covered.

7 A date of Friday the 11th of  
8 June, 1993 at the same time, at our  
9 building has been set up with  
10 Breckenridge to look speak with him  
11 again after he has written out what he  
12 has to say."

13 The next page, the date is June 16th, 1993:

14 "On 93-06-09 Breckenridge called and  
15 spoke to Cst. Cunningham and advised  
16 that he could not meet with us as  
17 previously arranged. He was willing to  
18 come in on the 18th at the same time. I  
19 subsequently called Breckenridge as I  
20 will not be available on the 18th and he  
21 agreed to come in on the 17th.

22 On 93-06-16 Breckenridge called  
23 and spoke to Cst. Cunningham.

24 Breckenridge apologized, stating that he  
25 is not able to come in as planned. He



1                   stated that he is not attempting to  
2                   avoid us and he would call next week."

3                   Next page, the date is June 22nd, 1993:

4                   "Spoke with Breckenridge by phone.  
5                   Stated that he has started to prepare  
6                   what we discussed on the 2nd of June,  
7                   however, other matters have prevented  
8                   his completing same. He will try and  
9                   get it done by this Friday (25th). If  
10                  not by then, hopefully by the 6th of  
11                  July. Breckenridge indicated that what  
12                  he might try and do is drop off what he  
13                  prepares and then meet with me on the  
14                  6th of July if I have any questions."

15                  Next page, the date is June 25th, 1993:

16                  "Received a two page typewritten article  
17                  that Breckenridge has signed and is  
18                  titled "The NDP Story." I take these  
19                  two pages to be what we talked about his  
20                  preparing at home. Along with these  
21                  pages Breckenridge supplied me with a  
22                  copy of the Co-operative Commonwealth  
23                  Federation Programme, adopted at First  
24                  National Convention held at Regina,  
25                  Sask., Jul, 1933. At first I did not



1 understand why Breckenridge supplied  
2 this copy of the Co-operative  
3 Commonwealth Federation Programme,  
4 however, after reading his statement  
5 (The NDP Story) I believe that the  
6 reasons for supplying this speaks for  
7 itself and requires no comment.

8 After reviewing Breckenridge's  
9 paper The NDP Story I found that it did  
10 not contain the detail that he provided  
11 us on our interview with him on  
12 93-05-13. In light of the investigation  
13 to date concerning Breckenridge, his  
14 allegations and given the content of  
15 this paper (The NDP Story), I see no  
16 point in talking with him further. His  
17 allegations are his own and could not be  
18 substantiated."

19 And the remainder of the document is a synopsis  
20 of that information that we just covered.

21 If we can move next, please, to  
22 047223, it's a further continuation report  
23 completed by the RCMP dated May 18th, 1993  
24 respecting a telephone interview with Dale  
25 Richter.





1 "With Sask A.G. August 1972 till August  
2 1975. Clerk in admin section at the  
3 mail desk for one year. Last two years  
4 in the criminal section handling all  
5 types of police reports, coroner  
6 reports, anything of a criminal nature.  
7 Recalls mostly RCMP reports in  
8 comparison to other municipal police  
9 reports.

10 Incoming reports would be put  
11 on files.

12 If you were not busy you could  
13 read files.

14 Both Breckenridge & Wollbaum  
15 were in the criminal section with him.  
16 He socialized with both of these  
17 gentlemen.

18 Does not recall ever seeing a  
19 file concerning Milgaard or Fisher. The  
20 names mean nothing to him from that  
21 period of time. Does not recall hearing  
22 about the murder in Saskatoon at the  
23 time of it and what transpired in  
24 relation to it.

25 The names of Milgaard & Fisher



1 he has heard of as a result of recent  
2 media attention only.

3 Recalls no mention of  
4 Breckenridge or Wollbaum making any  
5 connection between the Milgaard & Fisher  
6 files.

7 No indication of any concern in  
8 the office about Milgaard or Fisher.

9 Does not recall Breckenridge or  
10 Wollbaum bringing anything to his  
11 attention concerning Milgaard and/or  
12 Fisher.

13 Since the job, their job  
14 (Richter, Breckenridge & Wollbaum)  
15 involved filing they would pull files  
16 request and put them away after.

17 Recalls nothing in the office  
18 concerning any concerns being brought to  
19 the attention of Mr. Kujawa. Recalls no  
20 paranoia in the office at that time.

21 Does not recall Mr. Kujawa  
22 threatening his job or anyone else's.

23 Mr. Kujawa was always very  
24 courteous to him.

25 Richter had no complaints or



1 concerns regarding Mr. Kujawa.

2 Went over Michael

3 Breckenridge's letter to Mr. Wolch and  
4 his statement with Richter. Richter  
5 does not recall anything of what  
6 Breckenridge has to say in these papers.

7 Went over paragraph 118 excerpt  
8 from book that Breckenridge has written  
9 in which alleges a meeting taking place  
10 in late 1973 between Kujawa & Romanow to  
11 discuss the Milgaard & Fisher files.  
12 Richter does not recall this going on.

13 When he moved to B.C.,  
14 Breckenridge moved out there and lived  
15 with him for a while in his apartment.  
16 This was in 1975 or 1976. Breckenridge  
17 returned to Regina when he could not  
18 find work. His last contact with  
19 Breckenridge was in either 1978 or 1979.

20 Richter was contacted by David  
21 Asper about one year ago. He was  
22 looking for a cover-up and talking to  
23 people that would have been working at  
24 the A.G.'s office. He told Asper that  
25 he knew nothing relative to a cover-up.



1 In short. Dale Richter has no  
2 information to offer concerning any  
3 cover-up and recalls nothing going on in  
4 the A.G.'s office while he was there (72  
5 to 75) to suggest that anyone else was  
6 concerned about a cover-up."

7 Move next to 047116, I won't specifically read  
8 from this document, the RCMP interviewed Patricia  
9 Styles on May 19th, 1993 and she confirmed the  
10 accuracy of the previous statement that she  
11 provided to Sergeant Pearson.

12 Similarly, 047149, the same  
13 occurred with respect to David Wolbaum, again the  
14 date of this RCMP report being May 19th, 1993,  
15 and again Mr. Wolbaum was interviewed and  
16 confirmed the accuracy of the previous statement  
17 that he had provided to Sergeant Pearson in 1992.

18 Turn next to 035438, the RCMP  
19 interview another individual that had been  
20 mentioned by Mr. Breckenridge as potentially  
21 having information, William Logan. This is a  
22 continuation report relating to discussions with  
23 Mr. Logan dated May 25th, 1993. Beginning at the  
24 top:

25 "William Logan was Director of Policing



1 from 1973 to 1986 for the Department of  
2 the Attorney General.

3 I interviewed him concerning  
4 the Breckenridge allegations that the  
5 then Director of Public Prosecutions,  
6 Serge Kujawa had closed door meetings to  
7 discuss the Fisher/Milgaard files  
8 because there were "discrepancies" in  
9 the two cases. I also asked him about  
10 the allegations Kujawa told staff who  
11 questioned him to "mind their own  
12 business".

13 From 1973 to 1982 the NDP were  
14 in power. Much of the time Mr. Romanow  
15 was Minister of Justice/Attorney  
16 General. Mr. Logan states that one very  
17 significant aspect of Romanow's term was  
18 the non-political nature of his  
19 administration. He cites several  
20 examples of Romanow's high integrity and  
21 separation of criminal law from  
22 politics.

23 Mr. Logan was very well  
24 acquainted with Mr. Breckenridge during  
25 his employment with the department.



1 Breckenridge was not in a position to  
2 know anything about the files being  
3 reviewed by Mr. Kujawa nor was he  
4 considered astute enough to have  
5 knowledge of Mr. Kujawa's work.

6 Logan was close to Kujawa and  
7 discussed many aspects of the work  
8 within the department. He describes  
9 Kujawa as a man of great common sense  
10 who favoured the practical aspects of a  
11 case over the legal aspects. He was  
12 strong willed and very fair. He would  
13 not cover up facts such as evidence  
14 which indicated Fisher was Miller's  
15 murderer rather than Milgaard.

16 According to Mr. Logan, there  
17 was no discussion in the department  
18 supporting Breckenridge's allegation  
19 that Kujawa told the staff to "mind  
20 their own business" if they valued their  
21 jobs.

22 Kujawa had an aversion to  
23 administrative tasks - reports, memos  
24 and returns. Mr. Logan makes the candid  
25 observation that in his opinion, the



1 reason Kujawa was replaced as Director  
2 of Public Prosecutions was because of  
3 his administrative weaknesses.

4 The use of direct indictment  
5 was an unusual procedure and one  
6 Mr. Logan feels should have been used  
7 more often to expedite matters. He  
8 rejects any suggestion that the  
9 department used this procedure as a  
10 means of covering up results of a court  
11 disposition."

12 And the synopsis of that information that I've  
13 just read is provided on the next page.

14 Turn to 022706, we've  
15 previously seen this transcript, I'm not going to  
16 read from it, it is the statement of Serge Kujawa  
17 given to the RCMP during the course of their  
18 investigation dated June 10th, 1993.

19 If we move next to 035894 and  
20 if we could move to page 2 of that document,  
21 please, another continuation report by the RCMP  
22 dated July 20th, 1993 respecting an interview of  
23 former Premier Allan Blakeney who at the time was  
24 the acting Attorney General who had signed the  
25 direct indictment in Mr. Romanow's absence and



1 we've covered that in evidence already. I'll  
2 read portions of this document. It states at the  
3 top:

4 "A brief explanation was given to Mr.  
5 Blakeney about what we are doing and as  
6 well explained the purpose for our  
7 meeting with him.

8 According to Mr. Blakeney it  
9 was approximately three years ago that  
10 he first learned anything about the  
11 Milgaard matter and the reference to  
12 Larry Fisher. This was when the  
13 Milgaard matter was before the S.C.C.  
14 At that time he followed some of the  
15 information that came out of those  
16 proceedings.

17 Mr. Blakeney was elected on  
18 June 23, 1971. He took office on June  
19 30th, 1971. Mr. Blakeney speculated  
20 that the Direct Indictment that was  
21 pursued through Heald did not get signed  
22 due to the change in government. (Note:  
23 Period of transition between June 23 and  
24 June 30. During the course of our  
25 interview Mr. Blakeney was shown the





1                   correspondence that was directed to Mr.  
2                   Heald, that which was directed to  
3                   himself and the Direct Indictment that  
4                   he signed. Mr. Blakeney pointed out the  
5                   date on the correspondence to Mr. Heald.  
6                   That being the 25th of June, 1971. Mr.  
7                   Blakeney questioned the possibility that  
8                   the correspondence to Mr. Heald may not  
9                   have made it to Mr. Heald's desk till  
10                  after the 25th. That given the change  
11                  of government the papers concerning the  
12                  Direct Indictment may simply have sat on  
13                  Mr. Heald's desk and were not dealt  
14                  with.)

15                                 Mr. Blakeney was the acting  
16                                 A.G. in Mr. Romanow's absence. Where  
17                                 Mr. Romanow was on the occasion that he  
18                                 signed the Direct Indictment, Mr.  
19                                 Blakeney did not recall.

20   Deputy A.G. from 1957 to 1972  
21   was Roy St. Clair Meldrum, who is now  
22   deceased. Ken Lysyk took over as the  
23   Deputy A.G. on September 12, 1972.

24   Would never meet with the  
25   Director of Prosecutions on a particular



1 file. Would not get personally involved  
2 in a particular case. While he could  
3 not speak for Mr. Romanow, he believes  
4 that would be the case with Mr. Romanow  
5 as well.

6 Practice of the A.G. would be  
7 not to get directly involved in a  
8 particular case. Any contact with the  
9 Director of Prosecutions on the part of  
10 the A.G. would only involve the  
11 discussion of policy issues. ie.,  
12 dealing with impaired drivers, problems  
13 with spousal assaults. The A.G. would  
14 simply distance himself from having any  
15 contact with the prosecutor on cases.

16 Mr. Blakeney is satisfied that  
17 he did not meet with Mr. Kujawa about  
18 the Fisher case. Did not have any  
19 knowledge of the Milgaard case at that  
20 time.

21 The Deputy A.G. may very well  
22 have met with the Director of  
23 Prosecutions from time to time to  
24 discuss a case. Mr. Blakeney was not  
25 suggesting that this would have been the



1 case concerning these matters. Just  
2 that the Deputy A.G. may very well  
3 discussed particular cases with the  
4 prosecutor.

5 Mr. Blakeney never practiced  
6 criminal law himself. While may or may  
7 not have met with the Deputy A.G. about  
8 the Fisher case before signing the  
9 Direct Indictment he feels it would be  
10 very unlikely if he did. Mr. Blakeney  
11 believes that he most likely signed the  
12 direct indictment on the basis of the  
13 correspondence Mr. Kujawa sent on the  
14 matter.

15 Mr. Blakeney confirmed his  
16 signature on the Direct Indictment. Had  
17 it not been for our meeting, pointing  
18 out the fact that he signed the Direct  
19 Indictment and his seeing the Direct  
20 Indictment, he had no recall of his  
21 involvement in signing this Direct  
22 Indictment.

23 No further action deemed  
24 necessary on this file."

25 And if we can move to 022852, we see the



1 statement of Roy Romanow taken by the RCMP dated  
2 July 27th, 1993. From 1971 until 1973  
3 Mr. Romanow was the Attorney General of  
4 Saskatchewan and Deputy Minister of Justice.  
5 And I'll just refer to a couple of pages. If we  
6 could turn first, please, to page 3 -- I'm sorry,  
7 one further page. Beginning at the top:

8 "M.J. SAWATZKY: Thank you. First off,  
9 maybe you could outline to us what your  
10 position was in 1971 through to about  
11 1973. Do you recall?

12 R. ROMANOW: I was the elected Member of  
13 the Legislative Assembly for Saskatoon  
14 Riversdale and I served in the capacity  
15 of Deputy Premier and Attorney General  
16 for the Province of Saskatchewan,  
17 although I may have also held additional  
18 portfolios, but for the purposes of this  
19 interview, I was from 71 to 1973, the  
20 Attorney General and Deputy Premier.

21 M.J. SAWATSKY: O.K., go ahead John.

22 J. DYCK: Mr. Romanow, did you meet with  
23 Mr. Kujawa in 1973 to discuss the  
24 Milgaard and Fisher cases?

25 R. ROMANOW: No.



1 J. DYCK: Have you at any time met with  
2 Mr. Serge Kujawa to discuss the Milgaard  
3 and Fisher cases?

4 R. ROMANOW: No.

5 J. DYCK: Do you have any recollection  
6 about those two particular cases?

7 R. ROMANOW: No.

8 J. DYCK: When did you first become aware  
9 of those cases?

10 R. ROMANOW: Are we talking about being  
11 aware outside of the newspaper coverage  
12 pertaining to the events?

13 J. DYCK: Yes.

14 R. ROMANOW: I can honestly say that I have  
15 no recollection of being made aware of  
16 this matter until its recent arrival on  
17 the public scene, with the exception of  
18 what I might have been aware with  
19 respect to the publicly reported  
20 decisions of the Supreme Court of Canada  
21 at the time of appeals and things of  
22 that nature. But I have no recollection  
23 of even that but I must have, but I have  
24 no recollection of that.

25 J. DYCK: During the period of time from



1 1971 to the end of 1973, are you aware  
2 of anything taking place within the A.G.  
3 Department of Saskatchewan that would  
4 suggest that there were doubts about the  
5 guilt of David Milgaard?

6 R. ROMANOW: No. I am not aware of any  
7 such happenings within the Department of  
8 the Attorney General. And certainly  
9 nothing brought to my attention, as the  
10 Attorney General.

11 J. DYCK: As I mentioned before, I  
12 mentioned Mr. Kujawa's name primarily  
13 there, are you aware of any meetings,  
14 such meetings involving the Milgaard and  
15 Fisher cases where Mr. Ken Lysyk may  
16 have been present?

17 R. ROMANOW: No.

18 J. DYCK: Now I understand Mr. Lysyk was  
19 the Deputy Minister, at that time?

20 R. ROMANOW: That's correct. Ken Lysyk was  
21 the Deputy Attorney General, but I did  
22 not meet with Mr. Lysyk or Mr. Kujawa on  
23 the Milgaard/Fisher matters.

24 J. DYCK: Was there a certain protocol that  
25 was used at that time in between



1 different ministers and the Chief of  
2 Prosecutions in regard to files?  
3 R. ROMANOW: No. The practice that I  
4 followed in my office was straight  
5 forward practice. Prosecutorial matters  
6 and decisions pertaining to prosecutions  
7 were the sole responsibility of the  
8 police and thereafter the prosecutors in  
9 the Department of the Attorney General.  
10 I believe the process within the  
11 Department was that the Director of  
12 Public Prosecutions and/or his nominee  
13 would make ultimate decisions on  
14 prosecutions, keeping in mind that there  
15 is, as you will appreciate, a vast  
16 network of numerous files which are on  
17 an ongoing basis, but as required by  
18 those people. Those decisions were  
19 likely made without reference to the  
20 Deputy Attorney General, although I  
21 can't be certain about that and, at no  
22 time, would decisions pertaining to any  
23 prosecution, decisions as to prosecute  
24 or not to prosecute, be taken with the  
25 Attorney General, which was myself.



1                   That was a policy which was adhered to  
2                   by myself and never deviated from from  
3                   the Department, which also practised it  
4                   that way.

5                   J. DYCK: Do you have any further questions  
6                   or comments that you would like to give  
7                   at this time regarding this matter?

8                   R. ROMANOW: No."

9                   COMMISSIONER MacCALLUM: What page is that,  
10                  I'm sorry?

11                  MR. HARDY: Sorry, Mr. Commissioner?

12                  COMMISSIONER MacCALLUM: I missed the page  
13                  number there, I'm sorry.

14                  MR. HARDY: Oh, the page number I was just  
15                  reading from was page 5 of document 022852.

16                  COMMISSIONER MacCALLUM: So --

17                  MR. HARDY: I'm sorry, I start -- I think I  
18                  misstated when I said I started at page 3, I  
19                  actually started at page 4 of that document,  
20                  022852, and I have read through page 4 of that  
21                  document and page 5 of that document.

22                  COMMISSIONER MacCALLUM: Okay.

23                  MR. HARDY: And at the top of page 6 of  
24                  that document:

25                  "R. ROMANOW: No. I.. I just have no





1 further information to add. Other than  
2 the fact that the published reports  
3 about this situation which risen to this  
4 enquiry have caught me by surprise.

5 M.J. SAWATSKY: Just one question, one  
6 other question I have. That is  
7 concerning the aspect of meetings.  
8 Would it be common for you to, for  
9 example, meet with Mr. Kujawa for any  
10 reason behind closed doors? Is that  
11 something that was common or took place  
12 on a regular basis?

13 R. ROMANOW: No. The practice that I  
14 followed, especially during the years of  
15 Mr. Lysyk as the Deputy Attorney  
16 General, would be a practice of meeting,  
17 if my memory serves correctly, once a  
18 week, I think it was Wednesday morning,  
19 I stand to be corrected by that, where  
20 the Deputy would come with a set of  
21 matters to discuss with me. These are  
22 matters which would pertain to either  
23 administrative needs or financial needs  
24 or prosecutorial or civil law needs,  
25 let's say, personnel needs, legislation,



1 federal/provincial conferences, from  
2 time to time, occasional concerns which  
3 may arise in the course of  
4 administration of justice. We would  
5 meet, for example, even with the Royal  
6 Canadian Mounted Police, the Assistant  
7 Commissioner, the two or three people  
8 that the Assistant Commissioner would  
9 come, would bring to these meetings on  
10 briefing matters pertaining to RCMP  
11 concerns. From time to time at these  
12 meetings the Deputy would bring to the  
13 meeting individuals from the within the  
14 Department over whom he was responsible,  
15 which people would speak to specific  
16 matters on an agenda item. An example  
17 that might come to mind is a  
18 federal/provincial Attorneys  
19 General/Justice meeting and preparation  
20 therefor. Or the need for prosecutorial  
21 personnel. It seems like, if my memory  
22 serves me correctly, always a need for  
23 more prosecutors, save and the like. A  
24 variety of those issues. The meetings  
25 would invariably be held in my office in



1 the legislative buildings. If my memory  
2 serves correctly by 1973 the Department  
3 had either about completely vacated the  
4 legislative buildings as office space  
5 and moved to the City Hall or was in the  
6 process of completing that. So the  
7 Deputy and officials would come here and  
8 the meetings would be held actually  
9 upstairs in the, almost identically  
10 upstairs from where we're meeting right  
11 now. That would be the pattern. Now  
12 there would be from time to time  
13 occasional separate meetings which would  
14 be required, but meetings on a regular  
15 basis with Mr. Kujawa would not take  
16 place. That he attended meetings, as  
17 required from time to time, yes. But  
18 that would be also the case of the  
19 Director of Civil Law or the Director of  
20 Administration, or any other appropriate  
21 official.

22 M.J. SAWATSKY: Okay.

23 J. DYCK: That was my question, also.

24 M.J. SAWATSKY: I don't have any other  
25 questions, do you John?



1 J. DYCK: No I don't."

2 And I might have been confusing there, Mr.  
3 Commissioner, when I referred to the page numbers  
4 I'm referring to the actual document ID page  
5 numbers as opposed to the page number that you  
6 see in the upper right-hand corner.

7 COMMISSIONER MacCALLUM: Thank you, yeah.

8 MR. HARDY: I see that it's just past 3:00,  
9 I am getting closer to being finished, and  
10 perhaps if we had a short break I could review  
11 what's remaining and finish up after the short  
12 break?

13 COMMISSIONER MacCALLUM: Sure. 15 minutes,  
14 please.

15 *(Adjourned at 3:06 p.m.)*

16 *(Reconvened at 3:24 p.m.)*

17 MR. HARDY: We'll turn next to document  
18 022802. This is the statement of Kenneth Lysyk  
19 as taken by the RCMP dated August 11th, 1993.  
20 Mr. Lysyk was the Deputy Attorney General from  
21 1972 to 1976. If we can turn to page 3 of that  
22 document, please, and here Constable Jorgenson:

23 "M.E. JORGENSON: When did you take office  
24 as the Deputy Attorney General for  
25 Saskatchewan and how long were you the



1 Deputy Attorney General?

2 K. LYSYK: 1972, I came in the summer of  
3 1972 and I was there until 1976, the  
4 summer of 1976. So four years.

5 M.E. JORGENSEN: David Milgaard was charged  
6 and convicted for the January 31st, 1969  
7 murder of Nursing Assistant Gail Miller.  
8 Are you familiar with the prosecution's  
9 case against David Milgaard regarding  
10 this murder?

11 K. LYSYK: I'm well, familiar is a little  
12 bit difficult. I am certainly aware of  
13 the sequel and the proceedings in the  
14 Supreme Court of Canada, the recent  
15 proceedings.

16 M.E. JORGENSEN: During your time as Deputy  
17 Attorney General, did you have any... or  
18 were you familiar with the case against  
19 David Milgaard?

20 K. LYSYK: No."

21 If we can move forward, please, to page 6:

22 "M.E. JORGENSEN: The name Larry Fisher  
23 then during the period as the Acting  
24 Attorney General then from 72 to 76,  
25 does the name mean anything to you from



1                   that period of time.

2                   K. LYSYK: Not at all from that era and the  
3                   dates that you mentioned just before you  
4                   put the question to me are ones in the  
5                   later part of 1971, which was...

6                   M.E. JORGENSEN: Did you at any time meet  
7                   with Mr. Kujawa and/or Mr. Romanow to  
8                   discuss the Milgaard and Fisher cases?  
9                   Now I realize you have answered this  
10                  question, but I would just like to have  
11                  a specific response.

12                 K. LYSYK: There was no such... let me just  
13                 back up and make this statement. We're  
14                 talking about dates now that are 21  
15                 years ago, so most me, certainly me,  
16                 hesitate about saying certain things  
17                 were said or weren't said, or were done  
18                 or were not done. I have no hesitation  
19                 in this case because such a meeting to  
20                 discuss an individual criminal file  
21                 would be so unusual, so extraordinary  
22                 that there is no question that I would  
23                 remember it. So I can answer with no  
24                 hesitation and no qualification  
25                 whatsoever, that there was no such



1 meeting in which I took part.

2 M.E. JORGENSEN: Thank you. During your  
3 period as the Deputy Attorney General,  
4 are you aware of any concern being  
5 raised within the department about a  
6 connection being made by anyone between  
7 the Milgaard and Fisher matters. Now I  
8 realize you basically answered that.

9 K. LYSYK: Yes. This is the sort of thing  
10 the name may have been raised, you see.  
11 I, I, all I can say is that I honestly  
12 have no recollection of the Milgaard  
13 name or the Fisher name. Conversations  
14 take place over coffee over a period of  
15 time of which you take no particular  
16 note. But all I can tell is that I have  
17 absolutely no recollection of any  
18 discussion during the time I was there  
19 in Saskatchewan, over that period of  
20 four years, of the Milgaard file or any  
21 of the people who played a part in it.

22 M.E. JORGENSEN: I'm going to read the next  
23 question on, even though you have  
24 answered it so far. During your period  
25 as the Deputy Attorney General are you



1                   aware of any concern raised within the  
2                   department that there were doubts about  
3                   the guilt of David Milgaard? I think  
4                   you just answered that question. I  
5                   apologize.

6                   K. LYSYK: The answer is that I have no  
7                   recollection whatsoever.

8                   M.E. JORGENSON: The final question, sir,  
9                   is as the Deputy Attorney General, would  
10                  your position involve sitting down with  
11                  and discussing a particular case with  
12                  the Director of Prosecutions, or for  
13                  that matter, any prosecutor?

14                 K. LYSYK: It would be extremely rare for a  
15                 number of reasons. The Director of  
16                 Public Prosecutions at the time was Mr.  
17                 Kujawa. There was some reorganization  
18                 within the criminal side after that.  
19                 Individual criminal files would not be  
20                 brought to my attention, nor to the  
21                 Minister's attention unless there was  
22                 some very unusual reason for doing so.  
23                 So, it would be so rare and so  
24                 extraordinary during that period of  
25                 time, that I would have no problem in





1 remembering if it had been done."  
2 If we could move to the next page, please, page  
3 8:

4 "M.E. JORGENSON: Continuing with our  
5 interview, Mr. Lysyk, Michael  
6 Breckenridge is the author of these  
7 allegations and I believe it's  
8 reasonable and prudent for us to advise  
9 you of that. Does the name mean  
10 anything to you?

11 K. LYSYK: I can't say that it does. I  
12 just don't recall this individual. It  
13 may be that if you had a photograph or  
14 if I saw a photograph of him that I  
15 would recognize him, but I have no  
16 recollection of the individual I have to  
17 say. I'm simply going to add that I'm  
18 genuinely interested and I'm puzzled  
19 because I just cannot understand the  
20 motivation of someone to make a  
21 statement on the nature you outlined in  
22 the first part of your statement  
23 alleging cover up and... I'm genuinely  
24 interested and I'm afraid I just have no  
25 recollection of the man."



1 Next page, please, page 9. Just a portion of  
2 this answer provided by Mr. Lysyk:

3 "K. LYSYK: I am genuinely puzzled by the  
4 allegations of this man. I would be  
5 interested, at some point, in seeing the  
6 statement that he has made. I have not  
7 seen such a statement. Beyond that, I  
8 cannot think of anything that I can  
9 usefully add because it's simply in the  
10 way of negative information and I  
11 appreciate that that's not helpful, but  
12 I cannot assist in terms of why this  
13 person might make such an allegation. I  
14 don't want to speculate as to why he  
15 would have done so. The allegation with  
16 respect to meetings between Mr. Kujawa,  
17 Mr. Romanow and myself are simply false.  
18 It's hard to appreciate how one could be  
19 mistaken about an allegation like that.  
20 So that prompts my puzzlement, if I can  
21 put it that way, about this individual's  
22 motivation. I can't think of anything  
23 else I can usefully add."

24 If we could move to 054642,  
25 it's a letter from Inspector Sawatzky of the RCMP



1 to Mr. Wolch dated September 9th -- or September  
2 15th, 1993 regarding the David Milgaard  
3 investigation, the body of the letter Inspector  
4 Sawatzky states:

5 "During the course of our  
6 investigation we have discovered that  
7 Mr. Robert Perry of Robinson  
8 Investigations ... took a statement and  
9 conducted interviews with Michael  
10 Breckenridge.

11 Since Mr. Perry is a licensed  
12 private investigator there is an express  
13 or an implied client privilege. We are  
14 requesting a waiver from you to  
15 facilitate an interview with Mr. Perry.

16 An speedy reply would be  
17 appreciated."

18 054643, a letter from Mr. Wolch  
19 to Inspector Sawatzky dated September 22nd, 1993,  
20 wherein he responds stating:

21 "We have no difficulty with  
22 your interviewing Mr. Robert Perry in  
23 connection with his meetings with  
24 Michael Breckenridge."

25 If we can turn to 054611,



1 please. This is a copy of the continuation  
2 report relating to the RCMP's interview with  
3 Mr. Perry, you'll note the date at the top,  
4 October 19th, 1993. And if we could turn to the  
5 next page, please, page 2 of the document, just  
6 this middle paragraph:

7 "Mr. Bob Perry, a Private  
8 Investigator for Robinson Investigations  
9 ... received instructions from Mr. Mike  
10 Robinson of Saskatoon ... to interview  
11 and obtain a detailed statement from  
12 Michael Breckenridge. Mr. Perry  
13 subsequently met with Breckenridge on  
14 two occasions and as well received from  
15 Breckenridge a statement that  
16 Breckenridge completed himself. During  
17 his initial interview with Breckenridge,  
18 Mr. Breckenridge indicated that he was  
19 with the Justice Dept., in 1970 or 1971.  
20 Beyond being instructed to interview,  
21 obtain a statement and get a feeling for  
22 what Breckenridge had to say, he  
23 received no additional instructions to  
24 conduct any further  
25 inquiries/investigation. Mr. Perry does



1 not know whether or not Mrs. Milgaard,  
2 or anyone else acting on her behalf,  
3 made any inquiries to determine the  
4 veracity of Breckenridge's claim  
5 concerning when he was with the A.G.'s  
6 Dept. Mr. Perry also has no idea  
7 whether or not Mrs. Milgaard, Mr. Asper  
8 or Mr. Wolch were aware of the fact that  
9 Breckenridge was not in the A.G.'s  
10 Dept., at the time referred to in  
11 Mr. Wolch's letter to Kim Campbell and  
12 as stated in the referred press  
13 conference."

14 Next page. Actually, I'll move to page 5 and  
15 read a summary of, a further summary of the  
16 interview starting here. This is the interview  
17 with Mr. Perry, it states:

18 "With the exception of  
19 Mr. Perry explaining how he came to  
20 interview Mr. Breckenridge and the  
21 action he took, nothing further was  
22 learned beyond what was already known,  
23 in so far as the allegations that  
24 Mr. Breckenridge has made.

25 The following comes from the



1 92-09-19 press conference in Winnipeg:  
2 Mrs. Milgaard, in a paragraph contained  
3 on page 4 of the transcript, states: "I  
4 met with him and private investigators.  
5 (Mr. Perry pointed out that this should  
6 be investigator.) We made sure that he  
7 was employed where he said he was at  
8 that time, and that the people he  
9 mentioned were also employed and that he  
10 in fact did the things that he said he  
11 did, but he's the one that has come  
12 forward and said that Roy Romanow was in  
13 these meetings behind closed door." (As  
14 previously stated, Mr. Perry made no  
15 inquiries to firm or determine  
16 Breckenridge's period of employment with  
17 the A.G.'s Dept.)

18 Copy of Government of  
19 Saskatchewan Public Service Commission  
20 Memorandum dated 92-06-15 and directed  
21 to Michael Breckenridge, appears to  
22 indicate that he requested verification  
23 of his service with the government,  
24 however, it cannot be confirmed through  
25 him if he in fact made these facts known



1 to anyone else. This memorandum clearly  
2 shows that he was not employed by the  
3 government until April 2, 1973. Record  
4 indicates that he was with the  
5 Department of Industry and Commerce from  
6 April 2, 1973 to October 2, 1973. From  
7 October 3, 1973 to June 29, 1975 he was  
8 with the Attorney General's Department  
9 and from June 30, 1975 to October 1,  
10 1975 he was with the Highway Traffic  
11 Board. Given this information, it would  
12 appeared that Mrs. Milgaard's statement  
13 in the referred press conference that;  
14 'We made sure that he was employed where  
15 he said he was at the time,' is  
16 inaccurate.

17 Attempts will be made to  
18 contact Breckenridge in order to  
19 question him about the referred 92-06-15  
20 government memorandum."

21 Turn, now, to 054607. This is  
22 a further update report by the RCMP respecting  
23 Bob Perry and Michael Breckenridge, it's dated  
24 November 10th, 1993, it states:

25 "While in Calgary this date,



1 the writer and Sgt. Dosenberger attended  
2 Breckenridge's residence so that I could  
3 question him about the noted Government  
4 of Saskatchewan Public Service  
5 Commission Memorandum 92-06-15,  
6 verifying his service with the  
7 government.

8 Breckenridge stated that he  
9 told Mrs. Milgaard he was with the  
10 department in the early 1970's and that  
11 he might have told he was there in 1972.  
12 He states that he had a copy of his  
13 service with the department when he met  
14 with Mrs. Milgaard and Mr. Perry,  
15 however, he did not have it with him  
16 when they met and he did not give her  
17 the exact dates of his employment. In  
18 stating this he said that he would not  
19 have given specific dates unless he had  
20 the document in front of him. (This is  
21 not consistent with Mr. Perry's date of  
22 this meeting. According to Mr. Perry  
23 this meeting took place on 92-06-14 and  
24 the noted memorandum from the Public  
25 Service is dated 92-06-15. Breckenridge





1 was questioned about whether or not he  
2 met with Mrs. Milgaard again after the  
3 meeting with her and Perry and he stated  
4 that he did not. In pursuing a possible  
5 contact of any kind after the meeting  
6 with Milgaard & Perry, it was very  
7 unclear whether or not he talked with  
8 Mrs. Milgaard or anyone else after the  
9 noted date in June.) Breckenridge did  
10 state that he told Mrs. Milgaard that  
11 his employment history was available  
12 through the public service. He states  
13 that he never sent her a copy of the  
14 noted memorandum. For Mrs. Milgaard to  
15 say that they verified his period of  
16 employment with the department, he  
17 believes that she would have had to have  
18 requested it from the department. (This  
19 would seem unlikely given the comments  
20 in the noted press conference.)

21 In talking to Breckenridge  
22 about his meeting with Mrs. Milgaard he  
23 states that he was shown memo's, letters  
24 and police reports in an attempt to have  
25 him find his initials and others working



1 in the department at the time. He  
2 stated that Mrs. Milgaard had a lot of  
3 material. That out of the material that  
4 he was shown he was able to pick out his  
5 initials on two or three of the  
6 documents. I explained to Breckenridge  
7 that to date I have been unsuccessful in  
8 finding any of his initials on any  
9 documentation that I have reviewed.  
10 Breckenridge subsequently wrote on a  
11 piece of paper the two ways he feels  
12 that his initials would have appeared on  
13 what documentation he initialed. (This  
14 issue of Breckenridge's initials  
15 appearing on documents relative to the  
16 Milgaard & Fisher cases is dealt with  
17 under the file that was generated for  
18 Breckenridge 93-689. A copy of this  
19 update will therefore be applied to  
20 93-689.)"

21 The report moves on to November 12, 1993 stating:

22 "Still being unable to locate  
23 any documentation with Breckenridge's  
24 initials on them, I contacted Mr. Perry  
25 by phone to see if he could assist me.



1 Perry recalls Breckenridge talking about  
2 this point with Joyce Milgaard and  
3 recalls mentioning it in his reports to  
4 the lawyers in Winnipeg, however, he  
5 does not recall Breckenridge pointing  
6 his initials out for Mrs. Milgaard,  
7 unless it took place while he was out of  
8 the room. Perry did not have  
9 Breckenridge do this for him.

10 Perry believes that if there  
11 was any documentation that had  
12 Breckenridge's initials on them he  
13 should have copies of these documents on  
14 his file. Perry will review his file  
15 and if I do not hear from him by  
16 Wednesday of next week, I will call  
17 him."

18 Another date is noted, November 16th, 1993:

19 "Spoke with Bob Perry by  
20 phone. He has three pieces of  
21 correspondence that might be of interest  
22 to me. Perry stated that Breckenridge  
23 had indicated using the initials 'MB' &  
24 'MCB'. Initial or initials appearing on  
25 these three pieces of correspondence are



1 'B' and 'CB'. Correspondence in two  
2 cases is from March of 1971  
3 (Breckenridge not with the department  
4 then and initial(s) not consistent with  
5 what Breckenridge has stated he used on  
6 documents he initialed.) and the third  
7 prior to 1971. Whatever the case maybe,  
8 I will attend Perry's office Thursday  
9 morning and look at what he has and  
10 speak with Perry further."

11 Next date, November 18th, 1993:

12 "Met with Bob Perry at his  
13 office this afternoon, where he showed  
14 me two pieces of paper that have  
15 markings on them. On looking at these  
16 markings I suspected that they were file  
17 markings, rather than someone's  
18 initials. (On returning to our office  
19 and having the opportunity to review a  
20 number of documents in relation to what  
21 Perry showed me, I have come to the  
22 conclusion that my suspicions are  
23 correct. That the markings are file  
24 related and not someone's initials.)

25 Again, Breckenridge did not id



1 any of his initials or anyone else's for  
2 Perry's benefit. If Breckenridge did  
3 for Mrs. Milgaard, it was not done in  
4 his presence. Mrs. Milgaard had a  
5 substantial amount of paper with her at  
6 the time of their meeting, some of which  
7 she left with Perry for his  
8 file/reference, however, it does not  
9 appear to contain anyone's initials.

10 During an interview with  
11 Mr. Wolch, he indicates that he has  
12 never talked to, as he puts it, that  
13 clerk in the A.G.'s Office. (I take  
14 this clerk to be Michael Breckenridge).  
15 He goes on to suggest that he considers  
16 him to be the least important bit of  
17 evidence that they have. Regardless of  
18 what position Mr. Wolch's office may  
19 wish to view this clerk, this individual  
20 is subject of our investigation and I  
21 believe that every effort should be made  
22 to address his allegations to the  
23 fullest. In doing so, a letter will be  
24 forwarded to Mrs. Milgaard in order to  
25 address Breckenridge's comments



1                   concerning his identifying his initials  
2                   on documents for her."

3                   If we can then move to 054601,  
4                   we have a letter to Joyce Milgaard dated November  
5                   19th, 1993 from Inspector Sawatzky stating:

6                   "Recently, Mr. Michael  
7                   Breckenridge advised Cst. Jorgenson that  
8                   during a meeting between yourself and  
9                   Bob Perry, he was able to identify his  
10                  initials on papers that you showed him.  
11                  As I understand it, this meeting took  
12                  place on June 14, 1992.

13                  Could you please advise, at  
14                  your earliest convenience, which  
15                  papers/documents Mr. Breckenridge  
16                  identified to you as bearing his  
17                  initials. This would greatly assist us  
18                  in locating the papers in our files,  
19                  which I am sure you can appreciate, are  
20                  rather substantial. Should you be able  
21                  to locate these papers/documents, we  
22                  would appreciate receiving copies of  
23                  them."

24                  Next document is 054602. It is  
25                  a letter directed to Inspector Sawatzky, turn to



1 the next page, please. From Joyce Milgaard, the  
2 date is December 20th, 1993, Mrs. Milgaard  
3 states:

4 "Dear Inspector Sawatzky:

5 I have been through all the  
6 boxes of papers that I have here and  
7 have not been able to locate the papers  
8 you asked for.

9 I do recall the incident, and  
10 because I was not really trustful of him  
11 at the time, checking the initials he  
12 showed us against his signature and they  
13 matched. It would probably have been  
14 some of the files that were released to  
15 us by the Supreme court and would have  
16 had to have been the Attorney General  
17 files otherwise his initials would not  
18 have been there. I know that I had all  
19 the rape victim files with me and the  
20 Greenburg correspondence but I honestly  
21 can't remember what else."

22 And if we can move, please, to  
23 036145, this will be the last document I have to  
24 read from.

25 COMMISSIONER MacCALLUM: What's the number?



1 MR. HARDY: 036145. Beginning at the top,  
2 the date -- again, it's a continuation report by  
3 the RCMP respecting Breckenridge and Perry, the  
4 date at the top being January 4th, 1994. It  
5 states:

6 "In a response from  
7 Mrs. Joyce Milgaard, she states she has  
8 been unable to locate the documents in  
9 question. She recalls the incident and  
10 indicates that she was not really  
11 trustful of Breckenridge at the time.  
12 On checking Breckenridge's initials  
13 against his signature she found that  
14 they matched. Mrs. Milgaard does not  
15 indicate whether or not the identifying  
16 of Breckenridge's initials changed her  
17 feelings about him.

18 Mrs. Milgaard believes that the  
19 documents in question would have been  
20 from the Attorney General files, which  
21 for obvious reasons would have to be the  
22 case. Whatever the case maybe though,  
23 we are still no further ahead in  
24 confirming the issue of Breckenridge  
25 identifying his initials on any





1 documents beyond his statement of doing  
2 so and Mrs. Milgaard confirming this.

3 Additional closing summaries  
4 for Perry & Breckenridge files:

5 Breckenridge claims he had a  
6 copy of his service with the Provincial  
7 Government when he met with  
8 Mrs. Milgaard & Mr. Perry, however, he  
9 did not have this memorandum with him  
10 when the three met. (Given that this  
11 meeting is suppose to have taken place  
12 on 92-06-14 and the Government  
13 Memorandum in response to Breckenridge's  
14 request for his employment history is  
15 dated  
16 92-06-15, it would mean that  
17 Breckenridge's statement is either  
18 incorrect, or he had already confirmed  
19 his employment history by some other  
20 means.)

21 Breckenridge also states that  
22 he believes he told Mrs. Milgaard during  
23 this meeting that he was with the A.G.'s  
24 Dept., in the early 1970's and may have  
25 indicated the year 1972. Breckenridge



1                   claims he would not have given  
2                   Mrs. Milgaard specific dates concerning  
3                   his employment history unless he had  
4                   this particular memorandum with him.

5                   Breckenridge claims that he  
6                   told Mrs. Milgaard that his employment  
7                   history was available through the public  
8                   service. He has stated that he never  
9                   sent Mrs. Milgaard a copy of his  
10                  employment history. In Breckenridge's  
11                  opinion, for Mrs. Milgaard to say that  
12                  they verified his period of employment  
13                  with the department, she would have had  
14                  to have requested it herself. (Comments  
15                  in the noted Press Conference suggest  
16                  that Breckenridge's employment history  
17                  was confirmed)

18                  If Breckenridge in fact  
19                  initialed any papers/documents relating  
20                  to the Milgaard and or Fisher files  
21                  while employed with the A.G.'s  
22                  Department, they could not be found.

23                  Conclusions:

24                  No evidence could be found in  
25                  support of Michael Breckenridge's



1                   allegations.

2                   On September 16, 1992 a letter  
3                   was forwarded to the Justice Minister  
4                   Kim Campbell stating that new evidence  
5                   had been obtained and which makes it  
6                   imperative that the Federal Government  
7                   order an inquiry into the entire  
8                   Milgaard matter. Forwarded with this  
9                   letter was the statement of Michael  
10                  Breckenridge that is dated May 22, 1992.  
11                  (Note: The identity of the person  
12                  making these significant allegations  
13                  were was not reported on in this  
14                  letter.)

15                  The letter to Justice Minister  
16                  Kim Campbell states that this evidence  
17                  consists of a witness who was a former  
18                  employee of the Sask A.G.'s Dept., who  
19                  has come forward with information  
20                  concerning activities in the departments  
21                  shortly after David Milgaard's  
22                  conviction.

23                  On September 19, 1992 there was  
24                  a press conference in Winnipeg, in which  
25                  Michael Breckenridge's allegation were



1 made known publicly. (Breckenridge's  
2 identify was not made known in this  
3 press conference.) Press conference  
4 indicates that the allegations made by  
5 the source took place in 1970 to 1971.

6 Investigation suggests  
7 inaccuracies in the information reported  
8 on to Justice Minister Kim Campbell and  
9 the information provided during the  
10 noted press conference that was held in  
11 Winnipeg:

12 - By the time Breckenridge started with  
13 the A.G.'s Dept., (October 3, 1973),  
14 Milgaard's application for Leave to  
15 Appeal against his conviction had been  
16 dismissed by the S.C.C. some 23 months  
17 earlier. (November 15, 1971) Fisher  
18 pleading guilty to his Saskatoon charges  
19 had taken place 22 months before  
20 Breckenridge stated with the department.  
21 (December 21, 1971)

22 - Press conference suggests that  
23 Breckenridge's period of employment with  
24 the A.G.'s Dept., was verified. If this  
25 was in fact done, then the statement;



1 'We made sure that he was employed where  
2 he said he was at that time,...' ... is  
3 inaccurate.

4 - There is evidence to suggest that  
5 Breckenridge's actual period of  
6 employment with the A.G.'s Dept., was  
7 available to the persons reporting on  
8 the allegations. At the very least  
9 through the originator of these  
10 allegations, Michael Breckenridge.

11 - It is submitted that the suggestion  
12 that Michael Breckenridge was with the  
13 A.G.'s Dept., at the time of the Fisher  
14 & Milgaard cases, carries more weight in  
15 the reporting of these allegations than  
16 had they been reported to have occurred  
17 well after the matters were concluded in  
18 the courts. Regardless of the fact that  
19 Breckenridge's allegations could not be  
20 corroborated, I suggest that their  
21 significance and credibility are  
22 questionable given Breckenridge's actual  
23 period of employment with the A.G.'s  
24 Dept."

25 And I'll just refer to a couple



1 more document ID's that bring the picture to a  
2 conclusion from the RCMP's perspective; the  
3 documents are 032797, that is the letter from  
4 Neil McCrank, Deputy Minister of Justice in  
5 Alberta, the letter is dated August 15th, 1994  
6 directed to Mr. Brent Cotter, Deputy Minister of  
7 Justice, and it encloses and refers to reports  
8 that we're quite familiar with, concluding  
9 reports by the RCMP relating to their  
10 investigation, and I'll give the document ID's  
11 for those being 032805 and 023167. And with  
12 respect to that latter document, which is the  
13 longer report by the RCMP, I would direct your  
14 attention specifically to pages 141 to 147, which  
15 we have previously read during the course of the  
16 Inquiry.

17 And that brings the read-ins  
18 relative to this matter to a conclusion.

19 COMMISSIONER MacCALLUM: Thank you very  
20 much, Mr. Hardy. Until Monday, next Monday, is  
21 it here? 8th of May, here, at 1:00. Thanks.

22 (Adjourned at 3:49 p.m.)  
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**OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATES:**

We, Karen Hinz, CSR, and Donald G. Meyer, RPR, CSR,  
Official Queen's Bench Court Reporters for the Province of  
Saskatchewan, hereby certify that the foregoing pages  
contain a true and correct transcription of our shorthand  
notes taken herein to the best of our knowledge, skill,  
and ability.

\_\_\_\_\_, CSR

Karen Hinz, CSR  
Official Queen's Bench Court Reporter

\_\_\_\_\_, RPR, CSR

Donald G. Meyer, RPR, CSR  
Official Queen's Bench Court Reporter



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<b>\$500.00</b> [1] - 29401:19				
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