Commission of Inquiry

Into the Wrongful

Conviction of David Milgaard

before

THE HONOURABLE MR. JUSTICE

EDWARD P. MacCALLUM

****

<u>Transcript of Proceedings</u>

and

Testimony before the Commission

sitting at the

Delta Bessborough Hotel at

Saskatoon, Saskatchewan

****

On Wednesday, May 17th, 2006

Volume 151

<u>Inquiry Proceedings</u>

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Appearances:

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. Garrett Wilson, Q.C., **for** Mr. Serge Kujawa

Mr. Pat Loran, Esq.,   **for** the Saskatoon Police Service

Mr. Aaron Fox, Q.C.,   **for** Mr. Eddie Karst

Mr. Bruce Gibson, Esq., **for** the RCMP

Mr. Brian Beresh, Q.C., **for** Mr. Larry Fisher

Mr. David Frayer, Q.C., **for** Minister of Justice

                    (Canada), The Hon. Vic Toews

Mr. Marshall Hopkins, Esq., **for** Justice Calvin Tallis

                    (Retired)

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1   ***Transcript of Proceedings***

2   *(Reconvened at 9:01 a.m.)*

3   COMMISSIONER MacCALLUM: Good morning.

4   ALL COUNSEL: Good morning.

5   ***JOYCE IOLA MILGAARD, continued***:

6   **BY MR. HODSON**:

7   Q   Good morning, Mr. Milgaard.

8   A   Morning.

9   Q   Just to touch on a couple of points we talked

09:02 10   about yesterday. If we could call up 336950,

11   please, and we talked yesterday about I think

12   March or April of 1990, you told us that things

13   changed and the decision then was to go, to go the

14   public route, if we can call it that. Remember

09:02 15   discussing that?

16   A   Yes, I do.

17   Q   And this is a transcript, if we can go to page

18   970, and I believe it is around, I can't precisely

19   put the date other than I think it's in 1990, but

09:02 20   it's a discussion with you and Mr. Asper and "as I

21   said to Mitch". Now, who is Mitch, was he someone

22   who was helping the cause?

23   A   Mitch Podolak.

24   Q   Yes.

09:02 25   A   He was with the Folk Festival and David Asper was

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1   in charge of the Folk Festival, was -- yeah, I

2   think the president of it, and they opened up the

3   west-end cultural centre, did a number of things

4   to support me and that's where I recorded my song

09:03 5   to the minister, was with Mitch.

6 Q   Right, okay, yeah, so we see his name from time to

7   time. And here, this is Mr. Asper and you

8   discussing:

9   "... over the next few days I think

09:03 10   we're going to get a better sense

11   precisely of what Justices plans are,

12   but if you want to do something in the

13   interim, you know, my idea was for

14   you -- it's not a question of publicity

09:03 15   for you, it's publicity for the

16   cause --"

17   "-- to go to Saskatoon, and I mean

18   you'll stir up a complete hornet's nest

19   there. It's -- I mean, you know, you

09:03 20   haven't been there for a while, you

21   haven't been there since February."

22   "No, that's right."

23   "-- since February or March."

24   And I think that would be 1990; does that sound

09:03 25   right?

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1	A	Yes, I think that would be.
2	Q	And he says:
3		"Go to Saskatoon, with Maureen and Susan
4		if they will go, we'll set you up for
5		Colleen's show --"
6		And that would be Colleen Wilson's show; correct,
7		with --
8	A	That's right.
9	Q	And was that a Global production I think at the
09:03 10		time, or CanWest?
11	A	I think it was.
12	Q	And you appeared on that show on at least one
13		occasion; is that right?
14	A	Oh, yes.
09:04 15	Q	Or perhaps more?
16	A	More.
17	Q	And Mr. Asper says:
18		"-- we'll issue a release that you are
19		going be there. We'll issue a release,
09:04 20		like, a couple of days in advance and
21		give a time and a place of where you're
22		going to be. You'll get a little --
23		you'll get a placard made up of
24		something saying, you know, Free David
09:04 25		Milgaard --"

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1   "-- and you'll go -- and you'll go and

2   you'll be visible and getting Petitions

3   signed up and you'll be -- you know,

4   you'll be mad as hell, and you know, it

09:04   5   will -- and then when I said to Mitch if

6   you want to create the sense that this

7   is -- this thing is going to roll to

8   Ottawa --"

9   Tell them we're heading, etcetera, and then

09:04   10   scroll down:

11   "From there you're going to Regina, and

12   then Regina to Winnipeg, and then

13   Winnipeg east, and you're going to keep

14   going as long as it takes the Department

09:04   15   of Justice --"

16   "-- which gives us a little bit of time

17   to sort of see what --"

18   "They're doing."

19   "-- they're going to do because if they

09:04   20   jerk us around again, as I said to

21   Mitch --"

22   "-- my view is let's let the dogs loose

23   everywhere."

24   And etcetera. So this would have been the type

09:05   25   of conversations, and I think this is around

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1		1990, about the idea of getting this out in the
2		public domain; is that correct?
3	A	Yes.
4	Q	And is it fair to say that starting -- let's say
09:05 5		spring of 1990, March of 1990, would it be correct
6		that a significant part of your efforts and David
7		Asper's efforts were to -- stage is maybe the
8		wrong word, maybe the right word, but to get
9		events out there in the public, to get media
09:05 10		exposure to David's cause in whatever shape or
11		form you could?
12	A	That's correct.
13	Q	And so you would have, and I think we saw with the
14		incident with Kim Campbell, that would be an
09:05 15		example where, I think you said you wanted to give
16		her the report, but as well it gave an opportunity
17		to get public exposure to the cause?
18	A	That's correct.
19	Q	And so in this case it looks like Mr. Asper is
09:05 20		telling you to go out to Saskatoon and stir up a
21		hornet's nest and get things going; is that right?
22	A	That's correct.
23	Q	And did that happen from time to time when matters
24		were not progressing as quickly or as you had
09:06 25		hoped, that there would be a plan, a planned

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1   event, for lack of a better word, that lookit,

2   let's go out and get something in the news or go

3   contact reporters and say lookit, we need a story,

4   we need something out there to keep this alive?

09:06 5   A   David was pretty good about setting things up and

6   knowing what we should do and so I was certainly

7   following his advice at that time. You have to be

8   cognizant of the fact that we put this application

9   in in 1988.

09:06 10   Q   Right.

11   A   And it's two years later and, you know, I'm so

12   frustrated and so tired of waiting, waiting,

13   waiting for something to happen that when David

14   suggested these ideas, I went right along with

09:06 15   them, I didn't think there was anything wrong in

16   doing that.

17   Q   Right. And my question, though, is that these

18   would be designed to get something in the media

19   with the objective of causing justice to do

09:07 20   something and do it quicker?

21   A   Yes, because it was just to get the facts out

22   there and let people know what was happening and

23   challenging the system.

24   Q   And my earlier question was on this point, that we

09:07 25   see this in some of the transcripts and some of

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1   the letters, that at least it was the view of Mr.

2   Asper, I think, and perhaps yours, that in order

3   to get Federal Justice to do something or get a

4   reaction, that you felt or he felt that lookit,

09:07   5   let's get something in the news?

6   A   You had to light a fire under them before you got

7   any action, that's about what we felt.

8   Q   And so your perception at the time, you and Mr.

9   Asper, your belief was that in order to light a

09:07 10   fire under justice, you needed to get things out

11   in the media that would put pressure on them?

12   A   Correct.

13   Q   We talked yesterday about dog urine and the

14   secretor issue, I'll only be brief on this this

09:08 15   morning, we talked about Dr. Markesteyn's report

16   and saying it might be dog urine and then I think

17   the media got to the point where they said it was

18   dog urine. In the evidence at trial, and we've

19   heard evidence before this Commission that with

09:08 20   the frozen semen that was found at the scene,

21   there were also seven human pubic hairs, and I

22   think it was the evidence of Victor Molchanko at

23   trial that dealt with that issue, and in October

24   or November of 1991 when Neil Boyd brought this to

09:08 25   the attention of Dr. Markesteyn, he said, "okay,

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1   well, I guess I didn't realize that or I missed

2   that or I didn't see it, that changes my view

3   somewhat." Were you aware around the time of this

4   dog urine issue coming up in June of 1990 about

09:08 5   any discussion about how this theory that it was

6   dog urine would fit with the fact that human pubic

7   hairs were found in the frozen semen?

8   A   I -- I don't recall any awareness of that.

9   Q   Do you recall any discussions about that, do you

09:09 10   recall learning about that at some point, that

11   there were human pubic hairs frozen in the semen?

12   A   Yes, I remember hearing about that, but my

13   reaction to you -- I can't say what it is, I can't

14   remember that.

09:09 15   Q   If we could go back to the Markesteyn report,

16   155517, go to page 155522, or sorry, 523, and here

17   is where Dr. Markesteyn talks about the secretor

18   issue and he says:

19   "I must stress, however, my assumption

09:10 20   that Mr. Milgaard is an A, non-secretor

21   is based on the evidence submitted at

22   the trial. This assumption could be

23   subject to challenge. The determination

24   of the non-secretor status of Mr.

09:10 25   Milgaard, although perhaps acceptable at

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1   that time, would now no longer serve as

2   proof of his non-secretor status."

3   And would you agree that at this time at least,

4   June 4th, 1990, based on the report that Mr.

09:10   5   Asper obtained for David from Dr. Markesteyn,

6   that he was saying lookit, you can't rely on the

7   1969 secretor test and that that is not a valid

8   assumption; would that be correct?

9   A   That's what it looks like.

09:11   10   Q   And then yesterday -- actually, if we could just

11   go to -- so that yesterday I read that transcript

12   between you and Mr. Asper where you discussed,

13   remember that, where shortly after this you talked

14   to David Asper about saying, well, didn't Ferris

09:11   15   do the test?

16   A   Yes.

17   Q   And --

18   A   And I assumed that he had.

19   Q   Right, that was my question. So around this time

09:11   20   when this report was raised, what was your

21   understanding of David's secretor status and

22   whether or not it had been tested by anyone after

23   David was convicted?

24   A   I believe at that time I assumed that Ferris had

09:11   25   done it, I was sure that he would have and that he

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1   was a non-secretor.

2   Q   And what about the fact that here Dr.

3   Markesteyn -- if Dr. Ferris had done it and Dr.

4   Markesteyn was reviewing Dr. Ferris' report and

09:11   5   his work, would you not assume that Dr. Markesteyn

6   would have referenced that or -- the fact that Dr.

7   Markesteyn raises it as an issue, I'm wondering if

8   that might have suggested to you that Dr. Ferris

9   had not done it?

09:12 10   A   Well, I don't know, like, this would have gone to

11   David Asper first.

12   Q   Right.

13   A   And if David had looked at it and said we needed

14   something, I would have assumed that that would

09:12 15   have been done and followed up.

16   Q   And would you then rely on your legal counsel then

17   to do whatever needed to be done with respect to

18   this issue of secretor status, getting it checked,

19   whether it had been done or needed to be done?

09:12 20   A   Yes, because they really did all the legal things,

21   and the tests and things like that they would be

22   handling.

23   Q   And I think we saw in the transcript yesterday

24   that your discussion was, if I can summarize it,

09:12 25   was I'm assuming it's done, check if it's done?

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1   *A*   Yes.

2   **Q**   And if it's not done, you better do it?

3   *A*   Yes.

4   **Q**   Is that a fair summary?

09:12   5   *A*   That's a fair summary.

6   **Q**   Now, you talked yesterday about the headlines, if

7   we could go to your book, 269317, and go to page

8   483, 269483, and this is a comment about this

9   issue, you say:

09:13   10   "Science stories don't generally have

11   the news appeal of face-to-face

12   confrontations. Kim Campbell snubbing

13   me in the hotel hallway made good

14   television, but a camera shot of dog

09:13   15   urine didn't cut it. Still, this was so

16   bizarre that we could see some news

17   potential.

18   "What's your headline going to

19   be, Dan?" I asked Dan Lett of the

09:13   20   *Winnipeg Free Press*.

21   "Well, I'm not sure that we can

22   get dog piss in the headline, Dan

23   replied, "but I think you're going to

24   find that the guys who write headlines

09:14   25   for Page One are going to have a field

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1   day with this one."

2   The story did make Page One, on

3   June 6, 1990, but appeared under the

4   rather restrained headline, "Milgaard

09:14 5   Evidence 'Shaky,' Examiner Says."

6   And so again you talked about this yesterday, the

7   dog urine idea was one that would grab the

8   attention of the media and would generate

9   significant attention to the cause?

09:14 10   A   Yes.

11   Q   And am I correct that any attention was welcome

12   and that whether or not it drilled down into the

13   details of how exactly it affected, in other words

14   this issue that if it's dog urine it knocks the

09:15 15   legs out of Dr. Ferris' opinion, that was a

16   concern that you were prepared to put aside and

17   say, lookit, as long as it's out there and as long

18   as it's getting attention, that's fine; would that

19   be a fair summary?

09:15 20   A   I don't think that I felt, at that time, anything

21   negative about his report. I think I would have

22   been hesitant of putting it out there if I had

23   felt it was a negative report.

24   Q   And I don't mean to suggest it was negative, but I

09:16 25   think what -- and what we'll, what we later see

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1   is, and certainly what doctor -- and we haven't

2   heard from Dr. Markesteyn yet -- but certainly the

3   premise of Dr. Ferris' opinion is that what he was

4   examining or what he was considering, the frozen

09:16 5   semen, that it came from the perpetrator?

6   A   Correct.

7   Q   And on that basis he said, "on the assumption this

8   is human semen from the perpetrator, it cannot be

9   David Milgaard's, therefore it proves his

09:16 10   innocence". When Dr. Markesteyn comes along and

11   says "well lookit, Dr. Ferris, your assumption

12   isn't valid because it's not human semen from the

13   perpetrator, it's dog urine", therefore I guess

14   the negative sense of that is that if Markesteyn

09:16 15   is right that it's dog urine, it can't be human

16   semen, and it can't exonerate David Milgaard, and

17   I think what came after that is that the position

18   retreated a bit to say "okay, well it doesn't link

19   David Milgaard to the crime, I mean it's a

09:17 20   nothing, it's contaminated, it's dog urine, it's

21   nothing", and --

22   A   And of course, at the trial, it had definitely

23   been used to link David to the crime and to make

24   it seem like it was David, so I think I still felt

09:17 25   this was very strong in our favour.

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1   Q   And, but perhaps changed?

2   A   Changed in context, yes.

3   Q   157075. This is the letter from Mr. Asper to

4   Eugene Williams sending the Markesteyn report in,

09:17   5   and he says:

6   "With all due respect, this is the kind

7   of action that we anticipated your

8   office would take when we first

9   submitted the application on behalf of

09:18   10   David Milgaard."

11   And would that be the review of Dr. Ferris'

12   report?

13   A   Yes.

14   Q   And, again, at this time --

09:18   15   A   They still hadn't seen him.

16   Q   Okay. At this time, am I correct that your

17   position put forward by Mr. Asper is that "here's

18   the Markesteyn report, we had expected that you

19   would go out and check Ferris' report by getting

09:18   20   advice from someone"?

21   A   Yes.

22   Q   And at the time, and we will hear evidence from

23   this from Mr. Williams, back I think in the summer

24   of 1989 or the fall of 1989 he did in fact get

09:18   25   advice on this issue from I think a Patricia

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1   Alain, who would have been an RCMP forensic

2   scientist -- I'm not sure of her exact

3   designation -- and had reviewed this issue there.

4   I take it, in June of 1990, you didn't know that,

09:18   5   that he had done that?

6   A   We didn't know anything they were doing.

7   Q   Yeah.

8   A   That's why it was so frustrating.

9   Q   If we could go to 157077. Go down to the bottom.

09:19   10   It goes through the -- this is where the

11   statements are provided of Dennis Cadrain and

12   Ronald Wilson, and he says:

13   "Obviously, we take the view that the

14   enclosed statements provide further

09:19   15   dramatic proof of the wrongful

16   conviction of David Milgaard. It is

17   unfortunate that your office did not

18   speak with these people at the outset,

19   even if only to confirm their evidence."

09:19   20   And was that your understanding, we've touched on

21   this before, that was it your understanding from

22   somewhere -- and I'll come back to the source --

23   that the Department of Justice would go out and

24   contact all of the witnesses from the trial and

09:20   25   basically review all the evidence that was put

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1   in?

2   A   That was our understanding.

3   Q   And where did you get that understanding from?

4   Who, who or how did you, Joyce Milgaard, come up

09:20 5   with that, was it something you were told by your

6   lawyer, something you read somewhere, or something

7   you thought, or a combination of --

8   A   Well, first of all, I think it's common sense --

9   Q   Okay.

09:20 10   A   -- and I think that we all thought, on that basis,

11   that it would be done.

12   Q   Did you become aware at some point -- and, again,

13   we have not heard evidence from Federal Justice

14   yet -- but did you become aware at some point,

09:20 15   from Mr. Asper, Mr. Wolch or through reading

16   anything, that Federal Justice's position in

17   response to an application under Section 690 was

18   primarily to look at the specific grounds raised

19   in the application as opposed to doing a complete

09:21 20   reinvestigation? And I'm simply paraphrasing

21   what's in some of the documents that came later

22   on, but were you aware of their -- of that being

23   their position?

24   A   No, I was not, and it seems to me that if that is

09:21 25   the way the system operates, and someone is

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1   applying to have a conviction overturned, that

2   they should be letting you know exactly what the

3   rules and parameters are.

4 **Q** Okay. So, again, back, as did Mr. Asper or Mr.

09:21 5   Wolch ever say to you "lookit, the reason they

6   didn't investigate Ron Wilson or Albert Cadrain is

7   because they say we didn't put it in our

8   application or we didn't raise it as a ground of a

9   miscarriage of justice"; do you recall anything of

09:21 10   that being brought to your attention at any time?

11 *A* No, I don't, but I'm sure it probably was. I

12   don't specifically remember that.

13 **Q** If we can go to 229913, please. And this is the

14   front-page story in the *StarPhoenix* June 6th, 1990

09:22 15   after the Markesteyn and Merry report, and:

16   "Alleged semen found in the snow at the

17   scene four days after the murder, which

18   was linked to Milgaard, could have been

19   contaminated by dog urine."

09:22 20   And then, down at the bottom, it quotes

21   Markesteyn's report saying:

22   "'The evidence doesn't

23   exclude it (as dog urine)."

24   Then:

09:22 25   "David Asper, Milgaard's

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1   lawyer, is more blunt about the report.

2   'It concludes that what Penkala

3   found in the snow could very well be dog

4   urine,' said Asper."

09:23 5   And if we can just pause there, would it be

6   correct, Mrs. Milgaard, that this type of

7   information, I think you said before, was

8   sensational and grabbed people's attention, the

9   fact that maybe David had been convicted on the

09:23 10   basis of dog urine would cause people to look

11   twice at that; is that fair?

12   A   Yeah, they would sit up and take notice.

13   Q   Sit up and take notice?

14   A   Absolutely.

09:23 15   Q   And if that were true it would certainly, if it

16   was in fact dog urine and it was in fact used to

17   link David Milgaard to the crime, then I think you

18   are saying that would be a significant --

19   A   Breakthrough.

09:23 20   Q   -- breakthrough. We heard a bit, we heard

21   evidence some time ago from Mr. Penkala, and I

22   guess the flip side of this headline on the front

23   page is if it's not true, in other words that if

24   it wasn't dog urine, that it was in fact semen.

09:24 25   Did you have any concerns, or tell me whether you

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1   discussed with Mr. Asper or considered what impact

2   this type of information in the public domain

3   might have on those people who were involved in

4   the investigation? Let's talk about Mr. Penkala

09:24 5   who said basically, "lookit, the front page says I

6   found dog urine when I didn't find dog urine", and

7   caused him to perhaps maybe take a more strident

8   view in response to what you are putting forward?

9   And I'm not sure that he said that, but that whole

09:24 10   issue of saying, okay, if you poke a stick in

11   their eye and you are not right, what is -- what

12   about the reaction that might come of it. Now, if

13   you are right, then I suspect you say "too bad",

14   but what about that issue? Do you understand what

09:24 15   I'm -- where I'm trying to get at?

16   A   Yes, I do.

17   Q   And --

18   A   But I think, at that point, we were so exasperated

19   and so frustrated that we were willing to strike

09:25 20   out at anything in any way that we could to get

21   some action, to get some feedback about what was

22   going on, because we were getting nowhere.

23   Q   And so again on the dog urine, and if -- let's

24   just talk about Mr. Penkala. So am I correct

09:25 25   that, okay, we're taking this step, and I think

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 1              Mr. Asper said the words "the ends justify the

 2              means", and would that be --

 3      A       I don't think, even now when you are talking about

 4              it, I never ever thought that this would hurt

09:25   5       Mr. Penkala, that information coming out.  I mean

 6              I never personalized that, I never thought that it

 7              could damage anyone by that kind of information

 8              coming out.

 9      Q       Let's -- and I appreciate what you are saying

09:25  10       about the hurt and the feelings, but let's focus

11              on the reaction to the merits of the case for a

12              moment, and let's just talk about -- let's talk

13              about two people, one would be Joseph Penkala --

14      A       Yes.

09:25  15      Q       -- and one would be the Minister, Kim Campbell.

16              Did you consider or discuss that, if this isn't

17              true about the dog urine, that Mr. Penkala, who

18              hears and reads this on the front page, might say

19              "well lookit, I know that's not reliable because

09:26  20       we did all these tests, and that is so

21              outrageously wrong, therefore whatever else I read

22              or consider", that that somehow might, might

23              wrongly influence his view of the rest of the

24              information you are putting forward?  So, in other

09:26  25       words, that when you get to the next piece of
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1		evidence, when the person looks at it, they say
2		"well, lookit, I remember what they did about the
3		dog urine and that was out there, I now look at
4		this piece of evidence, I'm now suspicious about
09:26 5		that because of my view", being Penkala's, "about
6		that other issue". And was that a consideration,
7		not only for someone like Mr. Penkala, who at that
8		time I think was the chief of police, may have
9		been about to retire, but also as well with Kim
09:26 10		Campbell and perhaps the Justice officials, that
11		the risk of getting things out in the public
12		domain, if it ended up being viewed as being
13		unreliable -- and I appreciate your, you have a
14		different view of, than the authorities as to
09:27 15		whether it's right or not -- but was that a
16		concern, that in going to the public domain and
17		just letting the dogs loose, as Mr. Asper says,
18		that information might get out there that might be
19		viewed by the authorities as not as reliable as
09:27 20		other information, and that might hurt sort of the
21		merits of your other arguments? Sorry for the
22		long-winded question, but I wouldn't remind you
23		responding to that issue.
24	A	It is a very long question, and I don't know where
09:27 25		to start. I know we had discussions back and

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1   forth about how we should do this, how we should

2   do that, what if this did that, what if it did

3   something else, but I think it all went back to

4   the time factor, it all went back to the fact that

09:28   5   we're getting no feedback, it all went back to the

6   fact that we just felt they were sitting on their

7   hands and doing nothing, and it went back -- it

8   went back, it went back to David, it went back to

9   he was deteriorating so quickly at this time that

09:28   10   we had to do something. So I know that in

11   hindsight, when you look back at things you think,

12   well, maybe that wasn't a good idea, but Mr.

13   Hodson, we did the best we could under the

14   circumstances, and what we felt was the wisest.

09:28   15   Q   Right. And again, and I appreciate that, and I

16   think what you told us yesterday is that when you

17   went this route -- and Mr. Asper said the same

18   thing -- there were risks involved, in other words

19   that once it got out into the media there were

09:29   20   risks involved, and I think what he said is that

21   "we weighed those and decided that this was the

22   best route to go, the only route to go", and I

23   think in Mr. Asper's words, "had we not gone this

24   route we wouldn't have got David out of jail"?

09:29   25   A   I believe that's true.

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	1	Q	And so my question was to get back to this, to the
	2		assessments of these things at the time when you
	3		made the decision to go public about the -- not
	4		the wisdom of your decision to do so, but rather
09:29	5		whether -- whether you contemplated that in going
	6		public as opposed to -- or not -- going public and
	7		perhaps putting more emphasis on the public avenue
	8		of getting a remedy as opposed to the legal
	9		avenue, if I can call it that, whether in going
09:29	10		the public avenue you might end up harming or
	11		prejudicing the legal avenue by having information
	12		out there that might, might influence
	13		decision-makers adversely, and whether that was --
	14	A	I'm sure we must have discussed it. I don't
09:30	15		remember that aspect of it, and I think that we
	16		were just going ahead step by step --
	17	Q	Yeah.
	18	A	-- and taking whatever step opened up, and that
	19		seemed wisdom to us to go public.
09:30	20	Q	Yeah, and you talked about this yesterday, I think
	21		you said you had no idea that, when you decided to
	22		go public, that you would get the reaction that
	23		you did; --
	24	A	Oh, --
09:30	25	Q	-- is that fair?

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1   A   -- I think maybe David knew better than I did, but

2   I had no idea of what would happen. It was just

3   like suddenly people are phoning me from

4   everywhere, and people are on my doorstep, and

09:30   5   cameras are there rolling all the time, it was

6   just -- and you -- it was hard to know how to

7   react to all of this.

8   Q   No, and I appreciate we're now looking back at

9   events that were probably fairly fluid, and on

09:30 10   June 6th, 1990 you would have known what had

11   happened up to that date but you wouldn't have

12   known what was going to happen the next month?

13   A   That's right.

14   Q   And is it also correct to say that once you sort

09:31 15   of went down this path and got into the middle of

16   this public campaign --

17   A   There was no turning back.

18   Q   -- you couldn't get out of it?

19   A   That's right.

09:31 20   Q   In other words it was the horse was out of the

21   barn and you really couldn't get it back in; is

22   that fair?

23   A   That's fair.

24   Q   And again, just back on this concern about

09:31 25   reliability of information, that sort of once

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1   information -- would you agree that if you had a

2   piece of information and you gave it to the

3   minister, that there's this piece of information,

4   but if you put it in the public domain and it ends

09:31 5   up going through various media reports, etcetera,

6   by the time -- and your objective was that the

7   minister or the decision-makers would actually

8   read this; correct?

9   A Correct.

09:31 10   Q And, by the time it got there, it might not be

11   exactly how you would have presented it; is that

12   fair?

13   A That's fair, there was that danger.

14   Q And if we go back, I asked you last week and said

09:32 15   if I'm the minister and you came in in January of

16   '86 to convince me that David was innocent, if we

17   move it ahead to 1988 or '89 I think with the

18   Ferris report, that would be one thing where I

19   think you said "here is the Ferris report, it

09:32 20   proves David's innocence because the frozen semen

21   came from the perpetrator and it can't be his",

22   and then you tell me that and say "on that basis

23   let David out of jail, give me a remedy", and then

24   more information comes out from you that says

09:32 25   "hang on a minute here, that isn't semen, that's

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1   dog urine", and I guess the question is did you

2   consider, well okay, what might -- how will the

3   minister respond to something like that?

4   A   We felt, each time we learned something new, that

09:32 5   it was proper for us to relay it to the

6   authorities and pass the information on. We kept

7   finding -- we were expecting them to find the

8   information that we found, the witnesses that we

9   went out and re-investigated, all of the things I

09:33 10   felt, and David Asper and Hersh I know felt that

11   the Justice Department would do the things that we

12   ended up having to go out and do.

13   Q   Okay. Now Mr. Asper also said that at some point,

14   and probably around this time frame, I think his

09:33 15   words were that, lookit, as long as it was out

16   there, it was whether it was -- I don't think he

17   said if it was unreliable -- but information that

18   caused people to sit up and say, eh, there might

19   be something wrong with David Milgaard's

09:33 20   conviction, that was sort of his threshold, that

21   it was good enough if it caused people to sit up

22   and take notice and perhaps question the

23   conviction, that was the purpose at this stage; is

24   that correct?

09:33 25   A   That definitely is correct and was our purpose.

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1   Q   And so is it correct to say that this dog urine

2   versus Ferris issue, by this point it was, lookit,

3   one or the other causes people -- and the dog

4   urine might get people's attention better than Dr.

09:34 5   Ferris's opinion, and if that be the case so be

6   it, because that will get us a remedy?

7   A   I honestly remember, and it was in this talking

8   with Dan Lett and that, the fact that it would be

9   coffee table talk, everybody would be talking

09:34 10   about it when they got finished with it, and --

11   and that was the purpose, it was to get it out

12   there and get people talking about it.

13   Q   And then if we can go to 159853. This is Dan

14   Lett's article of the same date, and again that's

09:34 15   the report and quotes Markesteyn's report, and

16   here Mr. Asper said that:

17   "Asper said that after

18   reading the Markesteyn report it seems

19   entirely likely that his client was

09:34 20   convicted partly on the basis of dog

21   urine left in the snow after the

22   murder."

23   And this would be the type of notion that, I

24   think you said, would cause people to sit up and

09:35 25   take notice, --

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1   *A*   Yes.

2   *Q*   -- that if that were the case people would say,

3   well, there must be something wrong here?

4   *A*   Absolutely.

09:35   5   *Q*   If we could then go to 039140. And this would be

6   the next day, and I think this is when Ron

7   Wilson's statement -- he gave the statement June

8   4th, 1990 and I think the evidence is that Dan

9   Lett was given the statement, he did an interview

09:35   10   with Ron Wilson, and then the story was run on

11   June 7th, and I think either the same day or maybe

12   the day before Federal Justice got Ron Wilson's

13   statement; is that correct?

14   *A*   That's correct.

09:35   15   *Q*   Or maybe, I'm not sure whether -- whether they got

16   the news story before the statement, or after, but

17   it would be very close in time; is that right?

18   *A*   We would have probably faxed them the statement

19   and given the story to Dan at the same time.

09:36   20   *Q*   And so would the idea being that that would put

21   Justice in a bit of an awkward position, because

22   the media would be going to Mr. Williams, his

23   superiors would be saying "what's going on here"?

24   *A*   Absolutely.

09:36   25   *Q*   And that was the design?

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1   A   It was.

2   Q   004759. And this is, again, the same date, and I

3   think this is Dan Lett as well, and here's where

4   Mr. Asper says:

09:36 5   "Winnipeg lawyer David Asper

6   said he was shocked to learn federal

7   investigators have not bothered to

8   contact any of the original witnesses in

9   the case especially since one has

09:36 10   already recanted his original testimony.

11   'How do you explain where 18

12   months went?' ... 'We are insisting that

13   the minister react immediately to this

14   latest evidence. I can only hope that

09:37 15   they don't use this as an excuse to

16   prolong the whole thing."

17   And, again, I think your viewpoint at this time

18   is that they should have been out talking to all

19   these people as opposed to you going out and

09:37 20   talking to them?

21   A   Absolutely.

22   Q   Go to 010035. This is a letter of Mr. Asper to

23   Eugene Williams June 12th of '90. Mr. Asper says:

24   "We have heard through

09:37 25   sources in the Office of the Minister of

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1   Justice that the investigation into

2   Larry Fisher is complete, and has been

3   complete since the middle of May of

4   1990. Would you please confirm that it

09:37 5   is either complete or ongoing."

6   Do you know who Mr. Asper and Mr. Wolch's sources

7   in the office of the Minister of Justice were?

8   A   No I do not.

9   Q   It would appear from this letter that Mr. Asper

09:38 10   and/or Mr. Wolch were having -- had someone within

11   the Minister of Justice's office, or the

12   Department of Justice office, that was providing

13   them with information; is that correct?

14 A   I --

09:38 15 Q Do you recall that being the case?

16 A   I do.

17 Q   And what do you remember about who it was and what

18   type of information was being conveyed to your

19   group?

09:38 20 A I think it was just a matter of someone was

21   letting us know what they were doing when they

22   were doing it, --

23 Q   And do you know who?

24 A   -- and sort of updating us, but I have no idea who

09:38 25   it was.

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 1    Q    And so, again, updating you on what the minister

 2         was doing or what the Justice lawyers were doing?

 3    A    No, I believe it -- well, just overall, if

 4         anything was happening on it.

 5    Q    Okay.  I had -- I think, earlier, you had said you

 6         were -- you heard nothing from Justice about what

 7         they were doing or what was going on?

 8    A    We didn't, and I think that's why.  We didn't hear

 9         anything from Justice, any official information

10         from Justice, that's what I said.

11    Q    Okay.

12    A    Okay.

13    Q    So in --

14    A    But we --

15    Q    Sorry?

16    A    -- heard rumours and we heard, like these sources

17         that Hersh and David had, I don't know who they

18         were, but periodically we hear "it's close, it's

19         this, it's that, it's the other thing", you know,

20         but I never had names or any things of that sort.

21    Q    Was it your understanding, then, that Mr. Wolch

22         and Mr. Asper were getting information from a

23         Justice lawyer about what Justice, Department of

24         Justice, was doing with the application, some

25         information?
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 1    A     I think they were getting some information from

 2          somewhere.  I don't know if it was a lawyer, if it

 3          was a file clerk, I have no idea.

 4    Q     And so this would have gone on, do you know when

 5          this started, would this have been throughout the

 6          application process or are you able to shed any

 7          light on when that might have been?

 8    A     No, I think it was when we started getting really

 9          frustrated that we started phoning and asking

10          questions.  I have no idea.

11    Q     And so there was some -- you talked about rumours,

12          was there some information coming from someone,

13          perhaps on an unofficial basis, but someone from

14          the Justice Department informing Mr. Wolch or Mr.

15          Asper about -- giving some information about the

16          process, or the progress of the case, or what was

17          happening; is that correct?

18    A     I think so.

19    Q     And was that information shared with you by Mr.

20          Wolch and Mr. Asper?

21    A     Well they were encouraging me to hang in there and

22          not get upset and, you know, we -- the kind of

23          information they would give me would be, like,

24          "we've heard that it's almost complete", you know,

25          "it won't be long now, Joyce".  They were really
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1   just encouraging me to be patient and for the

2   family to be patient.

3   Q   Now, down at the bottom, Mr. Asper writes:

4   "Finally, further to our conversation

09:41 5   with respect to the witnesses whom your

6   investigator has interviewed, we can

7   advise that these witnesses were left

8   with a very negative impression about

9   your investigator."

09:41 10   And then it goes on to talk about Deborah Hall, I

11   think you've told us about her?

12   A   Yes.

13   Q   And then as well:

14   "We understand that Linda Fisher had

09:41 15   much the same feeling after your

16   investigators visited with her."

17   And there was a taped conversation or Mr. Asper's

18   evidence, one of the two, that I think he said

19   you would have got this information from Linda

09:41 20   Fisher. Can you tell us what you recall Linda

21   Fisher telling you about her -- how -- or what --

22   how she described her interaction with Eugene

23   Williams?

24   A   Well I do recall she was very upset, and she was

09:41 25   such a sweet person, and she said "he frightened

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1   me", and "it was like he didn't believe me", and

2   then I found out that he had actually put her

3   under oath and that he had done the same with

4   Deborah Hall, but he didn't do that with Caldwell,

09:42   5   he didn't do it with any of the police witnesses

6   or anything like that, so it just seemed as if

7   anybody that we provided him with was just being

8   raked over the coals, and -- and she felt she was

9   being cross-examined, rather than when I went out

09:42   10   to see her we listened to her story, we let her

11   tell what had happened, but he interjected all the

12   time when he talked to her and made her feel

13   wrong.

14   Q   Okay. And if I can just go back, and I appreciate

09:42   15   that we've heard from Linda Fisher, we've got the

16   transcript of that interview, I'm -- if I can get

17   you to go back to June of 1990, at this time, as

18   to what she told -- what she told you at this

19   time, what do you recall of what Linda Fisher told

09:42   20   you, if you can distinguish that from anything you

21   might have learned later or looked at later?

22   A   It all blends in together, Mr. Hodson.

23   Q   Okay.

24   A   I'm not sure about when I heard any of it, other

09:43   25   than the fact that I know at this time she was

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1   extremely upset about the manner in which he

2   behaved with her and felt that he grilled her, and

3   I think Deborah Hall felt the same way.

4 Q When you say "grilled", is that asked tough

09:43 5   questions, or I'm not sure what --

6 A Seemed to have everything -- was it -- she said

7   that "he made everything I was saying sound

8   unbelievable".

9 Q And that's what Linda Fisher --

09:43 10 A Yes.

11 Q -- told you?

12 A He didn't believe her, she had the feeling that he

13   didn't believe her.

14 Q And did she tell you that?

09:43 15 A Yes.

16 Q And it would have been around, before this letter,

17   or are you able to place that?

18 A I can't place --

19 Q Okay.

09:44 20 A -- it in time.

21 Q If we can go to 002483. And this is a memo of Mr.

22   Williams to his file June 12th, 1990, and I -- I

23   just want to go through a couple parts and find

24   out whether you would have become aware of this

09:44 25   information at the time. And just to assist you,

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1   you'll recall yesterday I read you that transcript

2   between you and Mr. Asper when you talked about

3   Dr. Ferris being visited by Mr. Williams and then

4   Dr. Ferris being away and about the need to check

09:44 5   whether David's secretor status was checked; do

6   you remember us going through that transcript?

7   A   I do.

8   Q   And I think that discussion with David Asper would

9   have been after this interview that Mr. Williams

09:44 10   had with Ferris, Markesteyn and Merry, just so

11   that you know, --

12 A   The time of it.

13 Q   -- because I want to come back and find out

14   whether this information that Mr. Williams

09:44 15   gathered from Ferris, Markesteyn and Merry found

16   its way to you through Mr. Asper. Okay?

17 A   Okay.

18 Q   And here he talks about interviewing Dr. Ferris

19   and goes on, at the bottom, and says:

09:45 20   "Apparently ..."

21   Ferris:

22   "... had not read the evidence of the

23   Crown's key witnesses, the prosecutor's

24   address to the jury and the judge's

09:45 25   charge to the jury."

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1   Again, as far as what information Dr. Ferris had

2   to put together his opinion, was that something

3   that you left up to Mr. Asper and Mr. Wolch to

4   decide as opposed to --

09:45   5   A   Yes, it would have been.

6   Q   And then down, the next paragraph -- no -- Ferris

7   is asked to comment on:

8   "... Markesteyn's report concerning the

9   identity of the frozen lump of yellow

09:45   10   ... snow ...",

11   Ferris says he's:

12   "... in general agreement with the

13   findings of ... Markesteyn ..."

14   about not being able to exclude the yellow frozen

09:46   15   lumps and sort of said "okay, there is a

16   reasonable doubt that it was human".

17   And then if we can go to the

18   next page, and what Dr. Ferris tells Mr.

19   Williams, according to this memo, and I think Dr.

09:45   20   Ferris confirmed for us that this would have been

21   accurate, that:

22   "... serological evidence should not

23   have been admitted because the

24   continuity of the sample had not been

09:45   25   satisfactorily established. He readily

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1   admitted that the semen was probably

2   contaminated ..."

3   And:

4   "He also acknowledged that the testing

09:45 5   performed on David Milgaard's saliva may

6   have been wrong. Therefore, the

7   non-secretor status attributed to David

8   Milgaard may be wrong."

9   And then the next page, Williams then:

09:45 10   "... asked Dr. Ferris to take into

11   account the contamination of the semen

12   ... and indicate whether the evidence

13   excluded David Milgaard."

14   "Dr. Ferris then stated that the

09:45 15   serological evidence did not link David

16   Milgaard to the offence, however, you

17   could not say that it ... excluded him."

18   And would you have been made aware of this, this

19   type of information by Mr. Asper or Dr. Ferris

09:46 20   around this time? Here's what Mr. Williams got

21   from Dr. Ferris about his opinion and I'm

22   wondering whether you became aware, either

23   through Mr. Asper, or somehow, that -- about what

24   Federal Justice obtained from your expert?

09:46 25   A   I really can't recall. I don't know if that

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1   information was shared at that time or later.

2   I've looked at this document many times.

3 Q And again, maybe if we can go do it a bit more

4   generally. Do you remember after Eugene Williams

09:46 5   visiting -- do you remember becoming aware that

6   Eugene Williams had been up to see Dr. Ferris? I

7   think the transcript I showed you yesterday --

8 A Oh, we were aware, we thought "wow, two years

9   later, now he's going out to see him". We just

09:47 10   felt it was very ironic.

11 Q And did you ever learn that, based on that

12   discussion, that Dr. Ferris may have provided

13   information that would have perhaps not retracted,

14   but may not have been -- that may have put some

09:47 15   doubt on the certainty of the opinion that you

16   believed he had given? In other words, you told

17   us you believed he said unequivocally this proves

18   David's innocence.

19 A I think I held to that, I think David and I held

09:47 20   to that. I don't think that we really were aware

21   what all this meant.

22 Q Okay. So you think David is your David, David

23   Milgaard?

24 A Yes, yes.

09:47 25 Q So this was going on, you may have been aware

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1		generally what was happening, but from your
2		understanding are you telling us lookit, I
3		continued to believe that Dr. Ferris' --
4	A	Absolutely.
09:48 5	Q	-- opinion proved David's innocence?
6	A	Yes.
7	Q	And just for the record, if you can call up
8		336785, go to page 797, I won't go -- go to 797.
9		This is the document I took you through yesterday,
09:48 10		this discussion about the secretor status, so I
11		think this sequentially or chronologically came
12		after the meeting that Mr. Williams had with Dr.
13		Ferris.
14		If we can now go to 009487, and
09:48 15		this is June 22nd, 1990, and I think on this date,
16		or maybe June 21, 1990 do you remember the CBC
17		running a story that disclosed the name of Larry
18		Fisher? Do you remember that happening?
19	A	Oh, yes, I do.
09:48 20	Q	And I think that was the first public disclosure
21		of his name; correct?
22	A	That's correct.
23	Q	Do you remember how that came about or what --
24	A	They phoned us to say it was going to take place
09:49 25		and to watch.

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1   Q   And you had told us earlier that at some time in

2   March or April you had given the Fisher name to

3   media outlets including the CBC under some type of

4   arrangement that they were not to publish the

09:49   5   name. What happened on June 21, 1990 that changed

6   that, so that they did run and publish his name;

7   do you remember?

8   A   Because they found this information independently

9   of us.

09:49   10   Q   Okay. So is it correct that the deal was lookit,

11   here's some information we're giving you, you

12   can't publish anything and attribute this with our

13   information that's attributed to us, but if you go

14   get it elsewhere, do with it as you please; is

09:49   15   that right?

16   A   No, we didn't say that.

17   Q   Okay.

18   A   I think that they went out and did that, but I

19   don't think that that was something we said up

09:49   20   front, no.

21   Q   Okay, I'm sorry. So what --

22   A   I think that what happened was as a result of us

23   giving the information, they did go out and they

24   found it and informed us that it was going to air

09:50   25   because they found it independently of us, it was

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 1   nothing to do with us, how they found that

 2   information.

 3   Q   And I think they may have checked the court file;

 4   is that right? Do you know what they checked or

09:50 5   where they got the information from?

 6   A   I don't.

 7   Q   Sorry, I maybe didn't phrase the question

 8   properly. I thought when you gave -- you gave the

 9   CBC the name Larry Fisher, you gave them the

09:50 10   information, I think you told us, about Linda

11   Fisher, said here you go, but don't publish the

12   name and don't publish the fact that he's being

13   investigated because we're allowing Federal

14   Justice and the RCMP to do their work, but go

09:50 15   ahead and investigate to your heart's content?

16   A   Yes, but their position was once they found this

17   information independently of us --

18   Q   Right.

19   A   -- that they would have found that anyhow, their

09:51 20   decision was they were going to go ahead and they

21   were going to use it.

22   Q   I see. And in June of 1990 was there some -- Mr.

23   Asper also talked about the competition amongst

24   the media and I got the sense that maybe others

09:51 25   had had this information but had decided not to

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1   run with it because it involved naming somebody as

2   a possible perpetrator of an offence; in other

3   words, publicly saying Larry Fisher either is the

4   killer or might be the killer --

09:51   5   A   Yes.

6   Q   -- of Gail Miller, and that that, there might be

7   some ethical or legal concerns about doing that?

8   A   I think there was a lot of that, and so we were

9   quite -- I know, I think it was Hersh that phoned

09:51   10   me and said you've got to watch, apparently

11   there's something really big coming on, and that's

12   when we went and watched that particular show.

13   Q   And in this letter, it's to Mr. MacFarlane, and it

14   appears that Mr. Wolch has had a discussion with

09:52   15   Mr. MacFarlane on June 21. Did you -- do you know

16   if your lawyers started to deal with people other

17   than Eugene Williams at some point; in other

18   words, above him in the hierarchy?

19   A   Yes, because they felt they were getting nowhere

09:52   20   with Mr. Williams and I know that Bruce MacFarlane

21   was I believe someone that Hersh had worked with

22   and knew and so I think that he appropriately went

23   over Williams' head to find out what was going on.

24   Q   And do you know when that started to happen, that

09:52   25   Mr. Wolch would go to Mr. MacFarlane, was that at

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1		some point during the first application? Are you
2		able to pinpoint when?
3	A	I could not pinpoint when that happened.
4	Q	And then Mr. Asper was given a copy of the news
09:52 5		story that ran and he says:
6		"Unfortunately, the rules seem to have
7		changed somewhat with the broadcast by
8		the CBC and its story relating to and
9		naming Larry Fisher. Many people in the
09:53 10		media have assisted us in our
11		investigation at various stages along
12		the way. They became privy to
13		confidential information which we have
14		successfully dissuaded them from
09:53 15		publishing up until this point.
16		However, the problem of competition has
17		crept into the picture and I am advised
18		that the media is now taking the
19		position that all deals are off. I
09:53 20		expect that over the next couple of days
21		a variety of stories will be published
22		and/or broadcast with respect to --"
23		And, I'm sorry, that's blacked out or
24		highlighted,
09:53 25		"-- both currently and at the time of

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09:53 1   the trial. I cannot speculate what else

2   might be published, but as I say, we

3   unfortunately cannot exercise any

4   further control in this situation.

09:53 5   We are being inundated by the

6   media to respond to all of these

7   matters, and I can assure you that we

8   will not be taking positions adverse to

9   the Department of Justice."

09:53 10   And so what is your recollection at the time,

11   what was the thinking or strategy at this time

12   about your dealings with justice and the fact

13   that Larry Fisher's name was now out there in

14   light of the fact that both Mr. Pearson and Mr.

09:54 15   Williams had asked your lawyers to refrain from

16   getting this in the public domain because it

17   might hurt their investigation of Larry Fisher?

18   A What was the question?

19   Q Sorry. I'm wondering what your view was at the

09:54 20   time, what was -- was this a good thing that

21   happened once the Fisher name came out, was it

22   something that was inevitable, something that was

23   planned, or was it something that when it happened

24   you became concerned that it might have an adverse

09:54 25   effect on your application?

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09:54		
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09:56		

1 A   I think that we felt it was something -- I was

2   glad it was out there myself personally, I was

3   glad it was out there, I was glad that people knew

4   about it. I was concerned about Linda, she was

09:54 5   concerned about her daughter, she was concerned

6   about her own safety, I had lots of concerns about

7   it being out there, but I think in a sense I was

8   relieved it was out there. As far as what the

9   Justice Department felt about it, at this point I

09:55 10   really didn't care.

11 Q   And so again the information about Mr. Fisher and

12   his crimes started to get picked up by other media

13   and there was a fair bit of publicity after about

14   him?

09:55 15 A   It really put fuel on the fire and allowed

16   everybody to go out and investigate.

17 Q   And when you say everybody, you are talking about

18   the media?

19 A   Yes.

09:55 20 Q   If we can then go to 000229, please. So that's

21   June 21, '90. June 24, '90 Albert Cadrain gave

22   this statement to Paul Henderson. Do you remember

23   that event happening?

24 A   Yes, I do.

09:56 25 Q   Do you know how that came about? I had asked this

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1   of Mr. Henderson and Mr. Asper. He had

2   interviewed Dennis Cadrain and Albert Cadrain at

3   the end of May and got the information, the

4   statement from Dennis Cadrain, but as far as what

09:56 5   prompted Albert Cadrain to give a statement on

6   June 24th, 1990, do you have any recollection of

7   how that came about or what caused Mr. Henderson

8   to go back out there?

9   A   I think -- I thought it was because we decided

09:56 10   that it's important for us to have it.

11   Q   And so he -- he went back out to try and get a

12   statement; is that right?

13   A   Yes.

14   Q   And we've been through this statement on a number

09:56 15   of occasions, and would it be fair to say that the

16   statement given by Albert Cadrain on June 24th,

17   1990 would contain or did contain information that

18   was similar in nature to what he provided, not

19   only what he provided to Peter Carlyle-Gordge in

09:57 20   1983, but what Dennis provided to Peter

21   Carlyle-Gordge in 1983?

22   A   Yes.

23   Q   And essentially that Albert stuck to his story, he

24   saw what he thought was blood on David's clothing,

09:57 25   number one?

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1	A	Right.
2	Q	And number two, that he was suffering from some
3		mental illness and according to Dennis was
4		unreliable?
09:57 5	A	Yes.
6	Q	And as well I think in 1983 he also talked about
7		his treatment by the police and the questioning
8		and the questioning having some effect on him,
9		that's information that he gave in '83?
09:57 10	A	Yes, and we felt that that was important
11		information.
12	Q	Now, this is a statement that has the words mental
13		hell and torture which Albert Cadrain says the
14		police put him through?
09:57 15	A	Right.
16	Q	And would that be something again that -- let me
17		back up. I think the evidence we heard from Mr.
18		Henderson, Mr. Asper and you is that your initial
19		approach to Albert Cadrain was he's lying about
09:58 20		seeing blood, that's inconsistent with David's
21		innocence and we think the police influenced him
22		to lie, we need to go out and get him to recant
23		that because the truth is he didn't see blood,
24		that would have been your initial position?
09:58 25	A	I think that's fair, it was our initial position.

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1   **Q**   And then after Mr. Henderson meeting with Albert

2   Cadrain on at least one occasion, I think he came

3   back and said lookit, he's not going to change his

4   story about the blood?

09:58 5   *A*   That's right.

6   **Q**   But I think this fellow is, I think his words were

7   nuts, I think he's got problems?

8   *A*   Absolutely.

9   **Q**   And therefore in order to eliminate or reduce the

09:58 10   impact of his incriminating evidence, we can

11   challenge his credibility and say because of his

12   mental illness his evidence at trial wasn't

13   reliable?

14   *A*   That's correct.

09:58 15   **Q**   And so it would have been a bit of a shift to say

16   okay, we can -- and I think yesterday you said it

17   was either as good as or even better than a

18   recantation because it answered the incriminating

19   nature of his evidence; is that fair?

09:59 20   *A*   I think that's fair.

21   **Q**   And was it also better in the sense that it was,

22   had that sensational factor to it, the mental hell

23   and torture and the mental illness, was that as

24   well something that --

09:59 25   *A*   I don't think we went out looking for

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1   sensationalism, but I think the statement

2   certainly provided it and that was helpful.

3 Q   No, and I -- so when you had this information,

4   when you have a witness saying I suffered from

09:59 5   mental illness and the police put me through

6   mental hell and torture, that would be the type of

7   information that, apart from assisting David on

8   the legal aspect of it, it had some newsworthy

9   components to it; is that fair?

09:59 10 A   It certainly did, it got the cameras pointed right

11   in his direction.

12 Q   And so that was something that may have been a

13   collateral benefit in that the manner in which he

14   responded to your interviews in 1990 gave you a

10:00 15   product that was helpful in explaining his

16   evidence at trial, but also very helpful in your

17   public campaign; is that correct?

18 A   That's correct.

19 Q   And if we can go to 039118, and we've been through

10:00 20   this, this is the article that came out from Dan

21   Lett, "Milgaard witness says detectives 'tortured'

22   him", and this would be the type of publicity, I

23   take it, that would be -- you talked before about

24   discussions at the coffee table on the dog urine.

10:00 25   Would this be again that type of information that

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1   would draw attention to the case and cause people

2   to say --

3   A   -- there's something going on here, something

4   should be done, and I think we were feeding this

10:01 5   to the public so they could see what our position

6   was and that there were so many things that were

7   wrong with this case that were now coming out.

8   Q   The one question that came up after this that has

9   been raised from time to time is the question of

10:01 10   the fact that Albert Cadrain went into the city

11   police on March 2nd, 1969, and we've heard

12   evidence that he was interviewed in Regina prior,

13   but on March 2nd, 1969 went into the police

14   apparently voluntarily and said I saw blood on

10:01 15   David Milgaard, and the question was okay, well,

16   how could the detectives torture him after that;

17   at trial he said I saw blood, what would be the

18   purpose of the torture. Do you follow? Was that

19   a question or an issue that you or Mr. Asper or

10:01 20   others considered at the time, aren't people going

21   to say, well, how could they torture him when he

22   went in voluntarily and gave the first statement?

23   A   But his own brother, his own brother felt that

24   they had.

10:02 25   Q   Oh --

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1   A   His own brother said, you know, and said how often

2   that they picked him up. If it was as simple as

3   you tried to make that sound, okay, that if it was

4   as simple as that, he went in, they took his

10:02   5   statement and that was the end of it, but it

6   wasn't. They kept picking him up day after day

7   after day and going over and over it. Now, why?

8   Because they don't believe him.

9   Q   No, and I think maybe you misunderstood my

10:02   10   question. I wasn't challenging you about the

11   information you had, I was simply asking you the

12   question that in your group when this became part

13   of the public campaign to say that Albert Cadrain

14   was tortured by the police, or whatever the

10:02   15   headline was, I appreciate you didn't write the

16   headline --

17   A   That's true.

18   Q   -- but it became in the public domain that he was

19   tortured by the police, and my question was did

10:03   20   your group, you and Mr. Asper, ever consider or

21   were you ever asked by anybody at the time saying

22   okay, well, is that claim credible or how could he

23   be tortured if he went in voluntarily because

24   that -- and I think that question has come up

10:03   25   later from time to time and perhaps even by the

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1   federal authorities to say, okay, well, could he

2   have been tortured by the police when, on some

3   people's view of the facts, he went in voluntarily

4   and gave the information before the police, at

10:03   5   least the Saskatoon City Police even questioned

6   him. So I'm not questioning the information you

7   gathered, I'm simply trying to find out whether

8   your group or you at the time this information

9   went out into the public, whether you considered

10:03   10   or whether you were ever asked that question,

11   saying okay, well, does this fit, does this make

12   sense, that's all.

13   A   Well, I guess as far as I was concerned after

14   talking to, or going over the statements, going

10:04   15   over what Dennis had said, he was very clear in

16   his description of what they did to Albert and he

17   felt that they really put him through a lot

18   because of the number of times that they had

19   picked him up, and I guess myself, I'm thinking,

10:04   20   well, if it's as simple as that, like, if he had

21   just gone in and said that, they would have taken

22   his statement and then they would have used it,

23   why were they going back and picking him up again

24   and again and again and again. Now -- so then

10:04   25   logically you start thinking, well, the only

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1   rationale for that is if they didn't believe him

2   and so they want to talk to him some more, and

3   Albert on the stand and everything later, I mean,

4   he had this wild imagination that kept coming out

10:05   5   and I'm thinking that the police maybe were

6   getting some of these wild stories at that point,

7   so in hindsight that's probably why they kept

8   picking him up and going back, maybe they really

9   didn't believe him, but where it says, "Before I

10:05   10   walked into that police station I was a happy,

11   normal kid," and his life will never be the same

12   again, I believed that that was true about him, I

13   think he was -- maybe not real normal at that

14   point, but he was a happy-go-lucky kid and he

10:05   15   never went back to that afterwards.

16   Q   Call up your book again, 269317, and go to page

17   269495 --

18   A   And what page number in the book?

19   Q   It's page 171.

10:06   20   A   Thank you.

21   Q   And you write:

22   "I wanted to keep the media on the story

23   but away from Shorty. He just seemed

24   too fragile, and I kept imagining how

10:06   25   his mother must feel. "Joyce, you can't

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1   contain this kind of stuff," Jim

2   McCloskey said. "You're trying to put a

3   cap on a volcano. You just can't do it.

4   Shorty Cadrain is a major player in the

10:06 5   original conviction."

6   David Asper calmed me somewhat,

7   noting that there had been an unbalanced

8   figure in the Donald Marshall case as

9   well, and the media had treated him with

10:06 10   kid gloves throughout that inquiry.

11   "The individual wasn't exploited, the

12   police were," David said."

13   And again, would that have been a concern at the

14   time about what -- the media exposure might have

10:06 15   an adverse effect on Albert Cadrain?

16 A   That's what I was afraid of, I just felt he was so

17   fragile.

18 Q   And is it correct that Mr. Asper's view was that

19   the media wouldn't exploit him, but rather the

10:07 20   police?

21 A   Yes.

22 Q   So in other words they focused?

23 A   Yes.

24 Q   And would that have been the strategy then or was

10:07 25   that the --

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	1	A	I think that's what happened, the media did focus
	2		on the police rather than him.
	3	Q	Go to 163 --
	4		COMMISSIONER MacCALLUM: What's the doc.
10:07	5		number? I missed it.
	6		MR. HODSON: That's the book, the doc. ID
	7		of the book is 269317.
	8		COMMISSIONER MacCALLUM: Thanks.
	9		BY MR. HODSON:

BY MR. HODSON:

10:07 10   Q   If we can go to 163079, and this is a letter to

11   George Oake of the *Toronto Star* and Mr. Asper is

12   sending clippings from Winnipeg and Saskatoon and

13   the stories of Wilson, under police pressure,

14   Albert Cadrain, the mental hell and torture, and

10:08 15   the statement, etcetera, and I think Mr. Asper's

16   evidence, and perhaps yours as well, is that

17   around this time, June of 1990, you were trying to

18   get more immediate exposure in eastern Canada; is

19   that correct?

10:08 20   A   That's correct.

21   Q   And you were getting great coverage by Dan Lett in

22   the Winnipeg paper; correct?

23   A   Yes.

24   Q   And Dave Yanko and Cam Fuller were covering it in

10:08 25   the *StarPhoenix* fairly significantly?

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1	A	Right.
2	Q	And is it correct that --
3	A	And there were a few in *The Globe and Mail*.
4	Q	And some in *The Globe and Mail*?
5	A	Uh-huh.
6	Q	But is it correct that at this time the
7		decision-makers, if I can call it that, are in
8		Ottawa, Toronto?
9	A	Correct.
10	Q	And your concern or Mr. Asper's concern was how to
11		get this in the newspapers there and that if it
12		got in *The Globe and Mail*, then it suddenly became
13		more credible to the politicians; is that a
14		correct summary?
15	A	That's a correct summary.
16	Q	And efforts were made to try and get the story in
17		the eastern media?
18	A	Yes.
19	Q	And is it correct that this would be an effort,
20		this is to the *Toronto Star*, saying lookit, here's
21		some sensational news in the west, the dog urine
22		stories, the Ronald Wilson manipulation story and
23		the Albert Cadrain torture story and those would
24		be sent out to the eastern media saying lookit,
25		you are missing something out here, here's

10:08 (line 5)
10:08 (line 10)
10:08 (line 15)
10:09 (line 20)
10:09 (line 25)

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1   something and use that to entice them to get

2   involved; is that a correct statement?

3   A   That's a correct statement, and then I believe I

4   mentioned the other day that when that didn't

10:09 5   work, that's when I went out and played my

6   switchboard operator card.

7   Q   And that was with the Toronto newspapers?

8   A   Yes.

9   Q   And then I take it at some point --

10:09 10 A   And once they got interested, that got the others

11   interested.

12   Q   And so then the *Toronto Star*, Toronto *Globe and*

13   *Mail* started to report on the matter?

14   A   They did.

10:10 15 Q   This letter, Mr. Asper also says, this is June of

16   1990:

17   "We are starting to have some high level

18   discussions with the Department of

19   Justice which at this stage focus

10:10 20   principally on the recanting statement

21   of Wilson. As things progress, I will

22   keep you posted."

23   Did Mr. Asper advise you of these discussions

24   and, if so, what was happening at this time?

10:10 25 A   Oh, I'm sure that -- I don't know what he's

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1   talking about here, but I'm sure that he was

2   keeping me informed about what was going on.

3   Q   There's some suggestion in the record --

4   COMMISSIONER MacCALLUM: He was or he

10:10 5   wasn't?

6   A   That he was.

7   BY MR. HODSON:

8   Q   He was keeping you?

9   A   I believe he was keeping me informed.

10:10 10 Q   Right. And again, is it fair to assume that what,

11   to the extent that Mr. Asper and Mr. Wolch were

12   having discussions with justice officials, they

13   would be keeping you informed on a regular basis?

14 A   We were in touch daily.

10:10 15 Q   Right. And so --

16 A   Several times a day quite often.

17 Q   So when we look back at this, it's a case of I

18   guess saying are you telling us you can't recall

19   specifically what this would have been, but

10:11 20   whatever was happening, I would have been

21   informed?

22 A   I believe so, but I think what he's doing here is

23   trying to give the newspaper something. "We are

24   starting to have some high level discussions." I

10:11 25   mean, he's trying to feed them and get them

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1   interested.

2   Q   So are you saying that maybe there weren't high

3   level discussions with the department ongoing?

4   A   I don't know if at that time we had high level

10:11 5   discussions going on.

6   Q   There's a suggestion in the documents that a

7   meeting was scheduled or planned for July the 6th

8   or 7th of 1990 in Ottawa with justice officials?

9   A   I remember that.

10:11 10   Q   And that it didn't happen because Ron Wilson --

11   Eugene Williams was to interview Ron Wilson around

12   June 18th or thereabouts and it didn't happen for

13   a number of different reasons and then Mr. Wilson

14   refused to be interviewed and as a result the

10:12 15   meeting of July 6th between your lawyers and

16   justice lawyers was postponed because Mr. Wilson

17   hadn't been interviewed yet. Does that sound

18   correct?

19   A   Yes, and I was looking at one document and I

10:12 20   believe it was Wilson's lawyer that said Eugene

21   Williams told him that he believed that David

22   Milgaard was guilty and so I think after what they

23   put our witnesses through, Wilson wasn't prepared

24   and his lawyer Mr. Watson wasn't prepared to have

10:12 25   him be put through the same intimidation, if you

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1		will, by someone that is obviously prejudiced
2		about the case.
3	Q	And we'll come back to that, I'll find the letter,
4		I think I know which document you are talking to,
10:13 5		and I'll find that and we'll see if we can shed
6		some light on that, but as far as the chronology
7		here, I'm just wondering, this high level
8		discussions, it's my understanding from the record
9		that there may have been a meeting planned for
10:13 10		early July with your lawyers to perhaps share
11		information.
12	A	What's the date of this letter?
13	Q	This is June 27th.
14	A	So they -- he may have been talking about ones
10:13 15		that were coming up?
16	Q	Right.
17	A	That's possible.
18	Q	But you have a recollection of a meeting, some
19		meeting being planned in Ottawa between your
10:13 20		lawyers and the justice lawyers?
21	A	Yes, I did.
22	Q	And I think that would have been the first
23		face-to-face meeting; is that correct?
24	A	Yes, that's correct.
10:13 25	Q	And we saw, or I saw in some transcript some

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1   disappointment I think expressed by you that that

2   meeting had to be cancelled because I think

3   everybody agreed or your lawyers agreed with their

4   lawyers that until Mr. Williams examined Ron

10:14 5   Wilson it couldn't take place and I think that's

6   when Mr. Asper made efforts to try and get Ron

7   Wilson to agree to the interview?

8   A   Yes.

9   Q   If we can go to 043139, please. And this is the

10:15 10   July 3rd, 1990 memo of David Asper about a phone

11   call he had with Carl Karp of the CBC during the

12   weekend of July 1, 1990, and obtained the names

13   and addresses of Larry Fisher's victims, and I

14   think it was at this point, Mrs. Milgaard, that

10:16 15   everybody -- when I say "everybody" meaning people

16   in your group and Sergeant Pearson and Mr.

17   Williams -- became aware that, contrary to what

18   was read in the CPIC, the Fisher offences in '68

19   to '70 were in Saskatoon and not Regina; is that

10:16 20   correct?

21   A   Yes, that's correct. I remember how excited we

22   were when we got this information.

23   Q   Okay. And prior to this you would have had the

24   date of the offences?

10:16 25   A   That's all.

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1	Q	And the fact that he had committed rapes?
2	A	Yes.
3	Q	And let's put the Winnipeg ones aside for a
4		moment; you would have believed they took place in
5		Regina?
6	A	Yes.
7	Q	And now that you found out they took place in
8		Saskatoon what, if any, change, or how did that
9		affect your thinking on the matter, if at all?
10	A	Well it was the wild factor. I mean when we found
11		out, when we looked at the addresses and then
12		looked at the map and, I mean, they encircled Gail
13		Miller, it was so obvious.
14	Q	And had you -- if we can just go back, I think
15		prior to this point is it correct that I don't
16		think Federal Justice or Mr. Pearson had checked
17		the Court file to identify the victims' names or
18		the location of the rapes, I think that's -- I've
19		asked that question of them, I haven't asked Mr.
20		Williams yet, but Mr. Pearson said that's the
21		case. Is it also correct that your counsel,
22		neither your counsel nor you, checked the Court
23		file in Regina about Mr. Fisher's rapes either; is
24		that correct?
25	A	No. I think that it came out on this, you know,

Line timestamps: 10:16 (line 5), 10:16 (line 10), 10:17 (line 15), 10:17 (line 20), 10:17 (line 25)

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1   through the CBC --

2   Q   And it --

3   A   -- when they found it.

4   Q   And I believe, and I'm not sure if there's any

10:18 5   record of this, but there may have been one, one

6   telephone call you had with Cec Rosner that

7   suggests that -- well the Court file in Regina --

8   in fact, let me call up 012649. And we have seen

9   these documents before, and the Regina Court file,

10:18 10   and this is the one, the conviction for (V1)---

11   (V1)-, and it talks about the rape having taken

12   place in Saskatoon, and certainly the indictment

13   as well talks about Saskatoon, so presumably --

14   presumably CBC went to the Court file in Regina,

10:18 15   found the name of the victim and the location of

16   the rapes --

17   A   Yes.

18   Q   -- in Saskatoon, and I also recall seeing a

19   document somewhere about perhaps using the

10:19 20   Henderson Directory to get the addresses of these

21   women at the time; does that ring a bell with you

22   at all as far as how -- let's just go back to

23   043139.

24   A   Yes, I believe that everything was happening very

10:19 25   quickly just at this time, and if you recall they

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	1	had done some publicity and a story. When we got
	2	this information, I know how excited we were about
	3	having it, I don't -- I don't know why we didn't
	4	go to Regina to get it, but I think just the fact
10:19	5	that we had the information, and it was a real
	6	bombshell as far as we were concerned, and would
	7	be turning it directly over to the Justice
	8	Department, and we felt they could not discount
	9	this, there -- there was no way. We found the
10:20	10	rapist that was in the -- you know, we had found a
	11	rapist that lived in the area, that lived in the
	12	house David was going to visit, and this man was a
	13	rapist; isn't it more likely it's him than it's
	14	David? We just felt that this information was
10:20	15	going to -- that Justice would investigate it.

16 Q But prior to this date, and learning the location

17   of the rapes, you would have had -- the

18   information you had was that Larry Fisher lived in

19   the Cadrain house at the time of Gail Miller's

10:20 20   murder; correct?

21 A Right.

22 Q And that he had been convicted for four rapes,

23   three before -- well, actually one was an

24   attempted rape, --

10:20 25 A Uh-huh.

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1   Q   -- three before and one after David's conviction,

2   and that he was convicted on those and, as well,

3   some rapes in Winnipeg. So that's the information

4   you had, and I think you've told us earlier that

10:21 5   that was significant, that a rapist lived in the

6   basement of the house that David visited that

7   morning and therefore lived in the neighbourhood

8   where -- lived a block and a half away from where

9   Gail Miller was murdered, and was a rapist?

10:21 10   A   That's right. And so, to us, that was huge, huge.

11   Q   And so again, and I asked this question of

12   Sergeant Pearson, so whether he committed the

13   rapes in Vancouver, Regina, Winnipeg or Saskatoon

14   --

10:21 15   A   He was a rapist.

16   Q   -- he was a rapist. So my question is now,

17   finding out that the rapes took place in Saskatoon

18   versus Regina, what, if any, did that change as

19   far as the -- sort of your position or theory that

10:21 20   Larry Fisher was the culprit here?

21   A   Oh, I mean when we started looking at these

22   addresses and how they surrounded the house and

23   the area, and started to make all the connections,

24   we just -- there is no way, we felt, that anyone

10:21 25   could look at that --

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1   Q   So the fact that he had committed rapes in the

2   neighbourhood of where he lived, in and around the

3   time, before and after --

4   A   Was tremendously -- to us, it was the proof, it

10:22 5   was right there.

6   Q   Now you said that you don't know why you or your

7   group didn't go out and get this information?

8   A   I think the fact that, even just the fact that it

9   was a rapist that lived there, that was enough --

10:22 10   Q   Okay.

11   A   -- we felt. And to me we still, you know, felt

12   that, well you are handing this over to them, they

13   would have to see it too, you saw it.

14   Q   And is it correct to say that the CBC, when you

10:22 15   gave them this information in March or April and

16   say "go out and investigate", that this was the

17   type of thing you might expect or that, in effect,

18   were they your investigators?

19   A   They were.

10:22 20   Q   And --

21   A   And because we didn't have the money to go out and

22   investigate any more, we were, you know, having a

23   tough time at that time.

24   Q   And if -- and maybe this is a question better to

10:23 25   Mr. Asper, but let me ask you -- if the CPIC,

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1   which I think we saw in your interview with Linda

2   Fisher, your view at the time, I think you said to

3   Linda, "lookit, these rapes were in Regina"; if

4   you had been informed that they were Saskatoon

10:23 5   rapes back initially, if the CPIC had not been

6   relied upon or --

7 A   Yes.

8 Q   -- if there was some other back in March, would

9   you have done anything different? If you would

10:23 10   have known, at that time, they were Saskatoon

11   rapes, would you have gone and checked names of

12   victims, location, things like that?

13 A   Oh, yes, absolutely.

14 Q   And so is it correct to say that the CPIC

10:23 15   information naming it as Regina may have been a

16   factor that --

17 A   Impeded us.

18 Q   -- that caused your group not to go out and get

19   the information as to where the rapes took place?

10:24 20 A   That's possible.

21 Q   And then if we could go to 337022. And I take it

22   this information about the rapes and the victims

23   was significant to your group, significant

24   information?

10:24 25 A   Oh, very.

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1   Q   This is an interview between you and I think it's,

2   it's either Carl Karp or Cec Rosner from the CBC,

3   and if we can go to page 337040. And the reason I

4   say it's one of those two, maybe someone else at

10:24 5 the CBC, and I think this is a discussion in July

6   of 1990 after the Carl Karp memo. You say:

7   "MRS. JOYCE MILGAARD: Yeah, that's

8   interesting that this stuff is coming

9   out. Now, we need to find the other

10   Statements from the other two. Are you

11   sure your CBC detective crew can't go

12   back out operating again?

13   UNIDENTIFIED MALE SPEAKER: Well, maybe,

14   but how did --

15   MRS. JOYCE MILGAARD: You guys sure did do

16   real good.

17   UNIDENTIFIED MALE SPEAKER: How did the --

18   Wilson's lawyer get hold -- there was a

19   reference there that he opened a package

20   from the Justice Department."

21   So I think the article that's being talked about,

22   which we're going to get to, is the July 17th,

23   1990 article of Dan Lett that talks about the

24   original statement of Ron Wilson?

10:25 25 A   Uh-huh.

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1   Q   And then I think when you say about getting the

2   other two:

3   "Now, we need to find the other

4   Statements from the other two.",

10:25 5   I think you are referring to Albert Cadrain and

6   Nichol John?

7   A   Yes.

8   Q   And so that would put this around July 17-18, or

9   thereabouts, 1990; is that correct?

10:25 10 A   I believe that's correct.

11   Q   And when you are talking about the CBC detective

12   crew, that would be the group that you had talked

13   to in March or April of 1990, and gave the Fisher

14   information to; is that right?

10:26 15 A   Yes.

16   Q   And would that be Carl Karp and Cec Rosner?

17   A   Probably.

18   Q   Yeah. Then, if we can go down to the bottom right

19   here, and it's -- so it appears you asked them to

10:26 20   go out, at least on the first statements from

21   Nichol John and Albert Cadrain, and then here the

22   CBC person says:

23   "UNIDENTIFIED MALE SPEAKER: Tell me one

24   other thing.

25   MRS. JOYCE MILGAARD: Mmhmm.

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1   UNIDENTIFIED MALE SPEAKER: Paul --

2   MRS. JOYCE MILGAARD: Henderson?

3   UNIDENTIFIED MALE SPEAKER: -- Henderson,

4   is he still actively doing anything

5   right now.

6   MRS. JOYCE MILGAARD: Not at the moment,

7   but we do have another investigator out

8   following up where you guys left off in

9   Saskatoon.

10   UNIDENTIFIED MALE SPEAKER: Oh, really.

11   MRS. JOYCE MILGAARD: Yeah. Yeah, going

12   out to see the victims.

13   UNIDENTIFIED MALE SPEAKER: Oh, really.

14   MRS. JOYCE MILGAARD: Yeah. Yeah.

15   UNIDENTIFIED MALE SPEAKER: Who is that?

16   Who do you have doing that.

17   MRS. JOYCE MILGAARD: Mike -- Mike -- I

18   think it's Mike Brecht (ph). He's with

19   an agency up there that did skip tracing

20   for us.

21   UNIDENTIFIED MALE SPEAKER: I see."

22   Next page:

23   "MRS. JOYCE MILGAARD: And our idea is, you

24   know, to get anything that helps our

25   case, to line him up. Oh, the other

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1   thing is, if you had a CBC crew out by

2   that Saskatoon Hospital it would be

3   interesting to see what happens when

4   Williams goes to see Fisher."

10:27   5   And this is around the time that Eugene Williams

6   is going to go interview Fisher:

7   "UNIDENTIFIED MALE SPEAKER: When is that

8   taking place.

9   MRS. JOYCE MILGAARD: I don't know for

10   sure, but he's out west and I know he's

11   going there.

12   UNIDENTIFIED MALE SPEAKER: Mmhmm. Well,

13   Williams is going to go see him

14   personally.

15   MRS. JOYCE MILGAARD: Oh, yeah.

16   UNIDENTIFIED MALE SPEAKER: Instead of Rick

17   Pearson.

18   MRS. JOYCE MILGAARD: Oh, yeah. Mmhmm.

19   And I would give anything to be a bug on

20   the wall in that one."

21   And then the CBC fellow says:

22   "No ...",

23   going back to his question:

24   "When is that taking place.",

10:27 25   he says:

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1   "UNIDENTIFIED MALE SPEAKER: No, talking to

2   the victims, Fisher's victims, you're

3   saying.

4   MRS. JOYCE MILGAARD: Yeah.

5   UNIDENTIFIED MALE SPEAKER: Yeah, that

6   would be interesting because we really

7   could -- the information we relied on is

8   Henderson Directory, that type of thing,

9   and so to actually try to track them

10   down would be -- might be very

11   interesting.

12   MRS. JOYCE MILGAARD: Mmhmm. And that's

13   what we're doing because it may be that

14   we can get something there because from

15   the way Lorne Huff spoke about those

16   other paring knives that he definitely

17   used in the case, you know, like for

18   instance if he held the knife up next to

19   the victims' throat, and you know, there

20   were a lot of little cut -- little cuts

21   right in Gail Miller's throat --"

22   "MRS. JOYCE MILGAARD: -- just indicative

23   of someone holding a knife at her

24   throat, so if he sort of did that with

25   the other victims, I think that that

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1   would be very telling --"

2   "MRS. JOYCE MILGAARD: -- very conclusive

3   stuff like that."

4   "MRS. JOYCE MILGAARD: So these are the

5   areas that we're sort of trying to dig

6   around in."

7   Now do you recall this conversation?

8 A   Not really. I mean, I had many conversations with

9   many callers similar to that, but, you know, --

10:28 10 Q   It appears from this that --

11 A   -- I think it would be CBC.

12 Q   Yeah. It appears in July of 1990 you had

13   discussed, with him, getting a private

14   investigator to go interview the victims to look

10:28 15   at the similarities, or to look at the attacks

16   against these women, and to look for similarities;

17   is that right?

18 A   That's right.

19 Q   Now do you know if that happened?

10:29 20 A   I believe it got bogged down because of money.

21   I'm not sure. And then -- but it seemed to me we

22   also hired Mike Brecht, I just --

23 Q   Mike Brecht was hired the following year, on the

24   second application, to find the victims, and then

10:29 25   you and Mr. Henderson went and looked for them.

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1   He was also involved in finding Albert Cadrain,

2   Ron Wilson, and Nichol John in May. And I don't

3   have any documents that suggest in July or August

4   of 1990, other than this transcript, that suggest

10:29 5   he went out and interviewed the victims, but it

6   appears from this that you are saying it was

7   happening and --

8 A   I think we were thinking of, you know, we were

9   talking about it happening. I don't know where it

10:29 10   went, but I remember something, I think it was

11   financial, came up that we couldn't do it at that

12   time.

13 Q   And so, again, what would be the purpose in having

14   Mike Brecht or someone go out and talk to the

10:30 15   victims at this time?

16 A   Just what I said, to get the similarities, and

17   just make it even more conclusive that it was

18   Larry Fisher.

19 Q   Okay. And then if we can go to page 042 on this

10:30 20   transcript, and this is the same conversation with

21   the CBC reporter, and you say:

22   "MRS. JOYCE MILGAARD: And like I said to

23   David Asper, I would really like him to

24   rewrite the Application from the basis

25   of this -- all this new information

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1   because I think it would present very

2   differently now with Markesteyn, with

3   what you guys found out --

4   UNIDENTIFIED MALE SPEAKER: Right.

5   MRS. JOYCE MILGAARD: -- and everything put

6   together.

7   UNIDENTIFIED MALE SPEAKER: Exactly.

8   MRS. JOYCE MILGAARD: It's a different

9   Application --

10   UNIDENTIFIED MALE SPEAKER: Yes.

11   MRS. JOYCE MILGAARD: -- but he's afraid to

12   do anything because it'll just delay

13   things more."

14 Scroll down:

15   "MRS. JOYCE MILGAARD: So it's hard to know

16   what to do.

17   UNIDENTIFIED MALE SPEAKER: Mmhmm. Well,

18   we shall see. Something will probably

19   happen in the near future.

20   MRS. JOYCE MILGAARD: Well, maybe when Kim

21   Campbell hears my son she'll swoon and

22   say get me the file."

23 And they talk about a TV camera. So it appears

24 at this time, June of -- July of 1990, when you

25 talk about it being a different application now

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	1		with Markesteyn, would it be fair to conclude
	2		that Markesteyn's report may have affected
	3		Ferris' opinion so that, if you were redoing the
	4		application, you might put the Ferris report in a
10:31	5		different light in light of the Markesteyn
	6		report?
	7	A	That's possible, yes.
	8	Q	And, as well, you've got the information that the
	9		CBC came up with and you say "it's a different
10:31	10		application"; correct?
	11	A	Yes.
	12	Q	And so, what, am I right that you wanted to
	13		rewrite the application and put out, in your
	14		terms, --
10:32	15	A	All this new stuff.
	16	Q	-- "here's all the new stuff". Now, I mean --
	17	A	But we'd been sharing the new stuff with them, so
	18		it wasn't like they didn't have it, and this is
	19		what David Asper pointed out to me, "they have got
10:32	20		it, Joyce, they have got all this stuff".
	21	Q	But if we -- if, July of 1990, if you had not yet
	22		filed an application with the minister is it
	23		correct that it would look quite different --
	24	A	Absolutely.
10:32	25	Q	-- than the application you filed in 1988?

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	1	A	That's correct.
	2	Q	So was that your concern at the time, saying maybe
	3		we should put it in our words exactly what it is
	4		we're seeking and why?
10:32	5	A	Yes.
	6	Q	And spell out where the Fisher information fits
	7		in, where Markesteyn fits in, and spell it exactly
	8		why we say we're entitled to a remedy?
	9	A	Yes.
10:32	10	Q	And is it correct to say that Mr. Asper's advice
	11		back was, well, if we do that we'll simply delay
	12		it, and therefore don't, they have got it anyway?
	13	A	Yes, they have got it anyway, and it's going to
	14		delay it more.
10:32	15	Q	And when you wanted to file a new application --
	16		if we could go back to the left-hand corner --
	17		when you say "it's a different application" and
	18		"everything put together", was your concern to put
	19		together sort of your own -- when I say "your",
10:33	20		your group's -- own interpretation on the
	21		significance of all of this information? I
	22		appreciate what you are saying is you have given
	23		everything to them, --
	24	A	Uh-huh.
10:33	25	Q	-- but to put in an application document to say

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1   "here's why I think the Fisher information is

2   important and here's why", and --

3   *A*   Yes.

4   *Q*   -- and to spell it out in a written document.

10:33 5   Because I think, other than letters from your

6   counsel which put forward positions and the

7   information was provided, were you concerned that

8   you might want to have one all-encompassing

9   document spell it out?

10:33 10   *A*   I felt it would be good to have that, however, I

11   also got copies of the letters that they were

12   writing in to them explaining what we were doing,

13   why we were doing, and the outcome.

14   *Q*   This is probably an appropriate spot to break.

10:34 15   *(Adjourned at 10:34 a.m.)*

16   *(Reconvened at 10:52 a.m.)*

17   BY MR. HODSON:

18   *Q*   Get 027179 up please. This is an article that Dan

19   Lett wrote July 17, 1990, I was through this with

10:53 20   Mr. Asper and a few other witnesses, and in this

21   article, this relates to Ron Wilson's first

22   statement, the March 3, '69 statement, and the

23   question -- I guess really two questions; number

24   one, did Mr. Caldwell give it to Mr. Tallis,

10:53 25   disclose it at the time of trial; and number two,

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1   if so, how did Mr. Tallis use it. And the

2   article, I'll just read the pertinent parts, it

3   says:

4   "A statement given by a star

10:53 5   witness in the David Milgaard case that

6   could have discredited his entire

7   testimony appears to have been withheld

8   from defence counsel during the 1969

9   trial, two lawyers close to the case

10:53 10   have charged.",

11   and that is Ken Watson and David Asper, later on.

12   Now let me just pause there, Mrs. Milgaard. Last

13   week you will recall, when we went through the

14   1981 time period, you told us that you, in fact,

10:54 15   had Ron Wilson's first statement, the March 3rd,

16   '69 statement, that you got from Mr. Tallis'

17   file; correct?

18   A   I believe that's correct, yes.

19   Q   And, when we went through your April 15th, 1981

10:54 20   interview of Ron Wilson you actually informed Mr.

21   Wilson about the first statement, he doubted you,

22   and you said "well I've got it right here from Mr.

23   Tallis' file", or words to that effect, "and it's

24   to Riddell March of '69"; correct?

10:54 25   A   Yes.

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1 Q   Yeah. So at this time, July of 1990, is it

2   correct that you obviously had and knew -- or let

3   me ask the question. Would you have known at this

4   time -- certainly, I'll take you to two

10:54 5 transcripts in a moment, your discussions with Mr.

6   Asper and Mr. Lett where you say lookit, based on

7   my reading of the transcript I think Mr. Tallis

8   had it; remember going through that?

9 A   Yes.

10:54 10 Q   But, in addition to that, you would have obtained

11   it yourself from his file back in 1981; correct?

12 A   Probably, yes.

13 Q   And do you know if that was something that Mr.

14   Asper was aware of, or would you have shared that

10:55 15   with him?

16 A   I really couldn't honestly say whether I shared it

17   with him or not. In a way, when we started again,

18   it was like we were starting fresh, and it may

19   have been that it wasn't something that got to

10:55 20   him, I don't know.

21 Q   But I --

22 A   But I'm sure that, if he knew that, he wouldn't

23   have been co-operating with this.

24 Q   Okay. And, again, from -- let's just focus on

10:55 25   your end. You would have given him the Ron Wilson

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	1		transcript from 1981, you've already told us that,
	2		--
	3	A	Yes.
	4	Q	-- which has that information in it?
10:55	5	A	Yes. Whether he'd read everything.
	6	Q	And, secondly, you would have given him a copy of
	7		the Ron Wilson statement that you obtained from
	8		Mr. Tallis' file; that would have been in the
	9		materials you gave to him?
10:56	10	A	Yes.
	11	Q	Yeah. And so, as far as a discussion with him
	12		around this time, there's nothing in the
	13		transcript which I'm going to show you later where
	14		you bring it up, and I'm just wondering if it was
10:56	15		something that maybe the significance of it had
	16		not been appreciated at the time, that --
	17	A	That's possible.
	18	Q	And if we could go to 336054. And again, sorry,
	19		just back to the article, *Witness statement*
10:56	20		*withheld*, and now Mr. Asper explained what he
	21		thought he said to Mr. Lett and sort of took issue
	22		with how, I can't remember what he said, how two
	23		things were conjoined, I think were his words.
	24		But, in any event, the fact that *Witness statement*
10:57	25		*withheld, lawyers say*.

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1   "A statement given by a star

2   witness in the David Milgaard case that

3   could have discredited his entire

4   testimony appears to have been withheld

5   ...",

6   and then, later on in the article, Ron Wilson

7   says, "lookit, if Tallis would have had that

8   statement he would have destroyed me"?

9   A   Yes.

10:57 10   Q   And is it correct to say, in reading that article,

11   the reader would likely say, "well hang on, first

12   of all the Crown committed some misconduct, he

13   didn't give a statement of a key witness";

14   correct?

10:57 15   A   Uh-huh, yes.

16   Q   Two, the witness is saying "well boy, if the

17   defence would have had that he would have got the

18   truth out of me, he would have been able to crack

19   me"?

10:57 20   A   Yes.

21   Q   And so back to this sort of the observer at the

22   coffee table, as you say, this is the type of

23   article that would cause people to sit up and take

24   notice and say "lookit, something is wrong with

10:57 25   this case"?

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 1    A      Yes.

 2    Q      Now back to my question before, that if it were

 3           true, that it would certainly suggest something

 4           quite wrong; is that fair?

10:58 5    A      That's fair.

 6    Q      If it's not true, which I think the evidence now

 7           shows that in fact the first statement was given

 8           to Mr. Tallis and Mr. Tallis used it in his

 9           examination and he's described what he did and why

10:58 10          he did it, --

11    A      Yes.

12    Q      -- again from that side, and, again, did you back

13           at the time -- and I've asked you this question

14           before with other pieces of information that went

10:58 15          out -- would there have been a consideration at

16           the time -- and maybe this isn't a fair question

17           to you because you are not quoted in this

18           article -- but a consideration at the time that

19           says "okay, when we put information out there that

10:58 20          causes people to sit up and take notice, draws

21           attention to the case, if it turns out that it's

22           not true I guess the downsides would be, one, it

23           might affect some people's reputation or might

24           have -- might damage some people advertently,

10:58 25          inadvertently"; is that fair?
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1   A   No.

2   Q   No? So that, by saying that there was misconduct

3   or that something wasn't happened --

4   A   I really truly believe that, in all of my dealings

10:59 5   with the reporters and with everyone, I tried to

6   be very truthful. I would not -- I would not have

7   allowed something like this out myself if I was

8   realizing at that point. I think I've tried to

9   explain to you that it was important to me that

10:59 10   everything be very truthful so, if this went out,

11   I don't think I had anything to do with it. I may

12   even have pointed it out to them afterwards, I

13   don't know, but --

14   Q   You did actually talk to Mr. Lett about this. And

10:59 15   let me just pause for a moment, this isn't your

16   quote or anything and I'm not suggesting that you

17   deliberately gave information that you knew to be

18   wrong, I'm not suggesting that at all. I'm trying

19   to get back to the -- this idea of when you go to

11:00 20   the public and put things into the media that, in

21   this case it wasn't you but it was Mr. Asper that

22   put in the media this information, so I'm not

23   suggesting you, but -- but back on the --

24   A   But --

11:00 25   Q   -- on the overall plan, that if it turns out that

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	1		what is put out there turns out not to be true,
	2		although it has the effect of causing people to
	3		sit up and take notice, my question would be would
	4		there be a couple of potential downsides, one is
11:00	5		that it might, it might unfairly malign people?
	6	A	Yes.
	7	Q	And the second thing is that it might cause the
	8		authorities, namely the Justice Minister, if it's
	9		not true, to look at this and say "well, hang on a
11:00	10		minute here," --
	11	A	"This isn't true".
	12	Q	-- "this isn't true", and therefore -- my question
	13		is was there a concern about the reliability
	14		factor, in other words that if we put something
11:00	15		out there that we think is true, believe to be
	16		true, turns out not to be true, does that then
	17		cause decision-makers to look at the rest of our
	18		materials perhaps in a less-favourable light?
	19	A	I think that there was definitely a possibility of
11:01	20		that, and that's one of the reasons I tried to
	21		stick very closely to doing everything in a very
	22		true fashion.
	23	Q	And I think what you've told us is that everything
	24		you would give to the media you would, you
10:59	25		explained that you believed to be true?

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1   A   Yes.

2   Q   And that in some cases is it fair to say that the

3   media would take the seed and perhaps, by the time

4   it got reported in the media, it might be a little

11:00 5   bit different than what you had said, did that

6   happen from time to time?

7   A   It happened a lot of the time and so -- and that's

8   one of the reasons why a lot of those reporters

9   are taped, and they knew they were being taped.

11:00 10 Q   Okay.

11   A   Because I told them.

12   Q   If we can go back to 336054, and I went through

13   this in detail with Mr. Asper, so I won't with

14   you, go to page 336107, and this is your

11:00 15 discussion with Mr. Asper, and I think after the

16   article appeared in the paper you phoned both him

17   and Dan Lett and I think you expressed some

18   concern after you read this article; didn't you,

19   that it might not be correct?

11:01 20 A   Yes, that's correct.

21   Q   In fact, not might not be correct, I think your

22   reaction was that this is wrong and that your view

23   was that Mr. Tallis did have the statements?

24   A   And knew about the statements, yes.

11:01 25 Q   And so this is a discussion where you tell Mr.

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1   Asper, lookit, the only problem is, according to

2   the testimony, I think Tallis knew about these

3   statements, and then you go on and you went back

4   to the transcript, and based on your knowledge of

11:01   5   the transcript and your reading of it, you were

6   trying to tell Mr. Asper, look, he had the

7   statement?

8   A   Yes.

9   Q   And then to page 336109, and I think Mr. Asper's

11:01   10   response was notwithstanding what was in the

11   transcript, he was saying, well, lookit, that

12   doesn't mean he has the statement and I went

13   through that with him and he had a number of

14   reasons as to the fact that even though Mr. Tallis

11:01   15   refers to the fact that Ron Wilson gave a

16   statement to Riddell in March of '69 in his

17   questioning, Mr. Asper said, well, that still

18   doesn't satisfy him that he had it, there could be

19   other explanations, and he says here:

11:02   20   "When you have -- you see, umm, I don't

21   know that Tallis necessarily has a copy

22   of the actual statement."

23   And at this time, about 18 or 19 years earlier

24   you had -- sorry, nine years earlier, I added a

11:02   25   decade there -- you had actually got a copy of

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1		that very statement from his file?
2	A	Yes.
3	Q	And then I think the question then, the discussion
4		went on between you and Mr. Asper that one of two
11:02 5		scenarios, both of which were wrongdoings, if I
6		can call it that, and I think what he was saying
7		is, number one, if Caldwell didn't give, Mr.
8		Caldwell didn't given the statement to Mr. Tallis,
9		that would be serious Crown misconduct; correct?
11:03 10	A	Correct.
11	Q	And if he did give it to Mr. Tallis, Mr. Tallis
12		didn't put it to the witness and it didn't become
13		an exhibit, it didn't get in and therefore that
14		would be wrongdoing on Mr. Tallis' part, so one
11:03 15		way or the other one of those two did wrong?
16	A	That's right.
17	Q	That was his position. And then if you could go
18		to 336054 and go to -- this is a conversation
19		around July of '90, this is with Mr. Dan Lett, and
11:03 20		go to page 059, and it looks as though -- would
21		you have called Dan Lett, do you remember, or was
22		this just a conversation -- would you have picked
23		up the phone after the article and phoned him and
24		said -- here you say:
11:04 25		"I was just going through, you know,

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1   it's been bugging me ever since I read

2   that story because I was so sure --"

3   "-- that somewhere Tallis talked about

4   the original statement."

11:04   5   And he says:

6   "Well I have -- did you find anything

7   yet?"

8   And then you say:

9   "Yeah. There is something in the prelim

11:04   10   here, I've got it in front of me --"

11   And then you go through an exercise with him

12   similar to what you did with Mr. Asper; is that

13   correct?

14   A   Correct, because Dan did have both.

11:04   15   Q   Now, Dan would also have had -- he had both -- he

16   would have had Ron Wilson's transcript of April,

17   '81 --

18   A   That's right.

19   Q   -- where you told Ron Wilson that you got his

11:04   20   first statement off of Mr. Tallis' file?

21   A   Right.

22   Q   And he would also have Ron Wilson's first

23   statement that you gave him?

24   A   Well, I don't know if he had Ron Wilson's

11:05   25   statement, but I know that we were talking about

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1   he had both the prelim and the --

2   Q   Oh, I'm sorry.

3   A   -- trial.

4   Q   And I think you told me earlier though that you

5   would have given Mr. Lett all the transcripts and

6   everything you had?

7   A   I believe I did.

8   Q   And so that would have been the Ron Wilson

9   interview?

10   A   Yes.

11   Q   And then if we go to page 062, I think the

12   discussion then turns to saying okay, well, if he

13   did have it, you say:

14   "-- as a lawyer he would have called the

15   statement into evidence. It was never

16   brought in."

17   And Dan Lett says:

18   "Well, yeah, the fair -- well I suppose

19   the one thing that we really can't do is

20   we can't bring up the issue of Tallis

21   and incompetency, which really may have,

22   you know, that may be an element at work

23   here. But, you know, I still find it

24   surprising that, that, that he couldn't

25   have used it more to his advantage."

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1   And:

2   "Well, you see, when I read this --"

3   You say:

4   "-- I mean you can read it two ways."

11:06   5   And you say:

6   "Like if we read it that he has just,

7   that he hasn't had the statement, and he

8   just knows that he talked to Riddell."

9   And so it appears the discussion turned to where

11:06 10   Mr. Lett said okay, well, if Tallis did have it,

11   then maybe, at least in Mr. Lett's view, that

12   that might shed some light on Mr. Tallis'

13   competency because Mr. Lett thought he should

14   have used it differently?

11:06 15   A   Yes.

16   Q   Is that correct?

17   A   Correct.

18   Q   Now, I don't think there was ever a further

19   article written on this subject. Do you remember

11:06 20   raising with anybody that based on your

21   discussion -- let me ask you this. After you

22   talked to David Asper, Dan Lett, did your view

23   change as to whether or not Mr. Tallis had Ron

24   Wilson's first statement?

11:07 25   A   I think they convinced me that it was possible

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1		that it had been the other way, the way that David
2		Asper was presenting it to me, and not having a
3		lot of knowledge about what defence lawyers would
4		do and what they had, I may have thought that he
11:07 5		could have got that afterwards. I didn't know.
6	Q	Then if we could call up 337022 --
7		COMMISSIONER MacCALLUM: He got the
8		statement afterwards?
9	A	Yes, for his file.
11:07 10		COMMISSIONER MacCALLUM: And that's after
11		what, what do you remember about that, after the
12		preliminary, after the trial?
13	A	After the prelim.
14		COMMISSIONER MacCALLUM: After the prelim.
11:07 15		BY MR. HODSON:
16	Q	I'm sorry, that you thought that maybe after he
17		examined Mr. Wilson he got -- but it was the
18		questioning at trial I think where he referenced
19		the statement to Riddell.
11:07 20	A	Where he referenced the statement, but I guess in
21		my mind once David Asper and Dan Lett talked to me
22		about this and went back and forth about the
23		possibilities of him just having had the other, I
24		knew that when we got to his file he had it in
11:08 25		there, I thought it could have been after

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1   everything was over. I didn't know when he got

2   hold of that.

3 Q   Okay. Let me just back up. So you are saying it

4   was after the trial was done that he would have

11:08 5   got a copy of Ron Wilson's statement?

6 A   That's a possibility that they were presenting to

7   me.

8 Q   Okay. Now, I don't think in either of those

9   transcripts you raised with either Mr. Asper or

11:08 10   Mr. Lett the fact that lookit, I got a copy of the

11   statement off Mr. Tallis' file, that's not in the

12   tapes that we have, and so is it possible that at

13   the time of this discussion you maybe didn't

14   recall that you had obtained the statement off of

11:08 15   his file?

16 A   That's very possible. I was pretty good about

17   remembering things and I think that I would have

18   remembered it, but if I had remembered that, it

19   would certainly have been in my -- it would have

11:09 20   been a focus in this conversation.

21 Q   And is it possible, I think in both conversations

22   you say to Mr. Asper and Mr. Lett, saying it

23   bothered me when I read that article, you said to

24   Mr. Lett something is bugging me because I think

11:09 25   he had the statement?

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1   A   Yes.

2   Q   Possibly your recollection related back to '81

3   seeing it in Mr. Tallis' file, but it doesn't

4   appear that you specifically raise that.

11:09 5   A   That's possible.

6   Q   But again back to this question of Mr. Tallis

7   getting it after David was convicted, what would

8   cause you to think that he would get it after the

9   conviction?

11:09 10   A   I was just thinking that now, is it possible that

11   that would have been one of the explanations for

12   it, that when I got it in -- when I got it in his

13   file that he had got -- I had no idea of how these

14   things worked, whether he would have access to

11:09 15   that through another way of getting it after the

16   trial or with his files or if he didn't have it at

17   the time. I know that when we went back I found

18   out that I really did have that, or that he had it

19   in his file, but when we discussed it here, I

11:10 20   obviously didn't remember that.

21   Q   Right. And I guess that was a question earlier,

22   and as well at this point I think the record

23   reflects that there had not been any communication

24   yet between Mr. Asper and Mr. Tallis other than I

11:10 25   think there may have been a letter or two

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 1   indicating involvement, there hadn't been a

 2   meeting and there hadn't been a request to Mr.

 3   Tallis yet; is that correct?

 4   A   That's correct. I think that came later.

11:10 5   Q   And if we go to 337022, this is around the same

 6   time, and this is a discussion with Cec Rosner, go

 7   to 337034, please, and actually just scroll up a

 8   bit, please, you say:

 9   "Now, Wilson in this interview --"

11:11 10   And I think this is the one maybe with Eugene

 11   Williams,

 12   "-- said, like, that he had --"

 13   Or sorry, with Lett,

 14   "Now, Wilson, in this interview, said,

11:11 15   like, that he had with Lett, said that

 16   he's even more confident than ever that

 17   similar Statements must exist for the

 18   other witnesses, like Nicole, John and

 19   Albert Cadrain ..."

11:11 20   And so I think this is after Dan Lett's article,

 21   maybe he talked to Ron Wilson again, and Wilson

 22   said, well, Nichol John and Albert Cadrain must

 23   also have other statements. Rosner says:

 24   "... so that there must be similar

11:11 25   original Statements somehow -- where --"

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1   And you say:

2   "Somewhere in the Saskatoon Police

3   files."

4   Rosner says:

11:11 5   "If they haven't been purged by now."

6   And you say:

7   "Well, this one wasn't, I mean,

8   obviously Williams got it from

9   somewhere, but you see what was

11:12 10   happening was Watson was refusing to let

11   Wilson talk to Justice until he'd gone

12   over his Statement with him, and over

13   his trial transcript. He wanted to make

14   sure that he knew exactly what he was

11:12 15   talking about and to familiarize himself

16   with the case."

17   And again this discussion about original

18   statements for Cadrain and John, you would have

19   got those as well in 1981 off of Mr. Tallis' file

11:12 20   you told us; correct?

21   A   Yes.

22   Q   And so it would appear at this point that maybe

23   that had, that you maybe had forgotten about that?

24   A   Yes.

11:12 25   Q   If we can go to 337 -- sorry, if you can actually

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1   go to page 023 on this, and I think again this is

2   around the same time frame, or after the July 17th

3   article, and this is a discussion with Mr.

4   McCloskey, so we've had Paul Henderson out for

11:13 5   Linda Fisher, we've had Paul Henderson out late

6   May, early June for the Cadrain, Wilson

7   statements; correct?

8 A   I'm sorry?

9 Q   That Mr. Henderson had been out twice to help you

11:13 10   prior to this time?

11 A   Yes.

12 Q   And I think you told us Mr. McCloskey you

13   continued to stay in touch with?

14 A   Yes.

11:13 15 Q   And keep updated?

16 A   Yes.

17 Q   And you say here:

18   "... and it was quite a good thing.

19   There's a small article in the paper

11:13 20   today. What we found out is Wilson

21   received a Statement -- Wilson's lawyer,

22   Watson, received a statement --"

23   And it goes on, next page, and you say:

24   "Okay. They sent him Wilson's first

11:13 25   Statement, which we've never had."

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1   "Right."

2   And I take it again is it fair to say that you

3   would have forgotten about the fact that you got

4   the statement?

11:13 5   A   I obviously -- yeah, it was nine years before I

6   guess and it probably had gone from my head.

7   Q   And you say:

8   "And this Statement is completely almost

9   identical to the Statement he gave to

11:13 10   Paul."

11   And I think you are talking about the March 3rd,

12   '69 statement --

13   A   Yes.

14   Q   -- and the statement you gave to Paul. And

11:14 15   McCloskey says:

16   "Is that -- that's great, no kidding."

17   And then scroll down, bottom left, you say:

18   "But Wilson phoned David and told him

19   about this Statement, so David leaked it

11:14 20   to Dan Lett, and Dan Lett called

21   Watson."

22   So again, would that be how the Dan Lett article

23   came about, that Ron Wilson told David Asper and

24   Asper leaked it to Dan Lett and then Dan Lett

11:14 25   called Ken Watson, Wilson's lawyer?

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 1    A      Yes.

 2    Q      And then you read from the paper the article:

 3                  "Watson said, "Not only does the first

 4                  Statement lend credibility to his

11:14  5            client's recent recant of his testimony,

 6                  it suggests a serious omission in

 7                  information given to Tallis.  I can see

 8                  no reason for the statement to be

 9                  withheld," Watson said, "any lawyer

11:14 10            would have questioned it and it would

11                  have been quickly exposed in court"."

12            And Mr. McCloskey says:

13                  "Right."

14            And if we can go to the next page.  So you would

11:15 15      have been raising this with Mr. McCloskey to keep

16            him up to date and get his --

17    A      Just updating him on what was happening, we did

18            that all the time.

19    Q      And then here I think there's a discussion, you

11:15 20      continue to talk about things and then you talk

21            here about -- actually, just scroll up to the top,

22            top right, please, here's where you tell Mr.

23            McCloskey that Hersh Wolch -- sorry, I need

24            337028, top right -- and this is where you tell

11:16 25      that Mr. Wolch is going to be an a panel with
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1   Mr. Tallis, our former lawyer:

2   "-- and he's going to be talking with

3   him a little bit to see what he can get

4   out of him, if he'll talk."

11:16   5   And:

6   "Was he the trial attorney."

7   Then you go on to say he's a judge, and then the

8   bottom right, and you indicate he's the Chief

9   Justice and then you say:

11:16 10   "-- rumoured -- he's rumoured as

11   going -- as being on the list for the

12   Supreme Court of Canada."

13   And McCloskey says:

14   "Oh, for God's sake, my God. Jesus."

11:16 15   And you say:

16   "So if he was dirty, you can understand

17   why we're running into all this stuff?"

18   And McCloskey says:

19   "Well, I don't know if he was dirty, but

11:16 20   at a minimum he certainly was negligent,

21   grossly negligent."

22   "Well, maybe, but if he didn't have

23   these Statements, if he didn't have --

24   like, let's give him the benefit of the

11:16 25   doubt, if he didn't have Wilson's

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1   Statement, original Statement, saying

2   that, you know, nothing happened --"

3   "-- and he'd gone in there not knowing

4   that, things could have been entirely

11:17 5   different."

6   McCloskey:

7   "Oh, yeah, I know, but, you know, the

8   Saskatoon Police could have just

9   withheld that stuff."

11:17 10   And then scroll down, here:

11   "So that's where I'm -- you know, that's

12   where we're coming from right now."

13   And McCloskey:

14   "Now, does David not have some kind of

11:17 15   recourse to find out -- to get all --

16   what we call discovery, to go back, even

17   though it's 21 years later, and get that

18   police file in this case and get the --

19   all the Statements given by any witness

11:17 20   in this case."

21   And you say:

22   "No."

23   "He cannot do that."

24   And you say:

11:17 25   "He's already asked the Justice

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1   Department for it and hasn't been able

2   to get it. You see, this was a real

3   break because Watson is negotiating with

4   Justice ..."

11:17 5   So again, that excerpt, let's just go back.

6   Would you have been telling Mr. McCloskey here's

7   what -- I mean, this appears to relate to the

8   disclosure, non-disclosure of Wilson's first

9   statement to Tallis and it appears from this

11:17 10   discussion that certainly Mr. McCloskey is of the

11   view, and perhaps you, that Mr. Tallis was either

12   dirty or grossly negligent in handling the

13   matter; is that right?

14   A   Well, this had been my feeling after the comment

11:18 15   that David had made in Prince Albert about the

16   fact that it was rumoured that Tallis was going --

17   that David was going down for the count and Tallis

18   was going up for a judgeship and after that Mr.

19   Tallis became a judge and you put those two

11:18 20   statements together and I became very suspicious

21   of Mr. Tallis at that time.

22   Q   And that --

23   A   And that carried through to there.

24   Q   If we can just go back to the previous page on the

11:18 25   bottom right, please, and is it fair to read the

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1   comment here that what you are saying to McCloskey

2   is that -- I mean, you've talked about the fact

3   that the Ron Wilson statement, that there's either

4   been police misconduct, Crown misconduct or

11:19 5   defence counsel misconduct or incompetence; is

6   that fair?

7   A   Right.

8   Q   One somewhere along the way. And then you go on

9   to tell him that lookit, Mr. Tallis is rumoured to

11:19 10   be going to the Supreme Court or on the list and

11   then, "For God's sake, my God. Jesus." Is it

12   fair to read that McCloskey is thinking that

13   something nefarious is happening here?

14   A   Yes, he is.

11:19 15   Q   And that you say:

16   "So if he was dirty --"

17   And I think you said that relates back to your

18   son David's information from prison years

19   earlier?

11:19 20   A   Yes.

21   Q   "-- you can understand why we're running

22   into all this stuff?"

23   And is it correct to read this conversation as

24   you and Mr. McCloskey saying that somehow you are

11:19 25   not getting ahead and you are not getting answers

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1   or somehow the system, or the justice system is

2   covering up because Mr. Tallis may have committed

3   misconduct, been incompetent and he might go to

4   the Supreme Court and therefore you better not

11:19   5   get any remedy; in other words, you are being

6   held back because you might expose something?

7 A   Yeah.

8 Q   Is that your thinking, is that --

9 A   I think that's fair. I think we were suspicious

11:20 10   of all of these things and certainly I was not

11   understanding the way the system worked, but I am

12   glad at least I put in the comment "give him the

13   benefit of the doubt" at the bottom.

14 Q   Right. And as far as -- I'm sorry, I didn't mean

11:20 15   to -- as far as Mr. McCloskey, would his -- again,

16   the information he would be getting about the case

17   at this time would be from you primarily?

18 A   Yes.

19 Q   And Mr. Asper?

11:20 20 A   So he was reacting to that.

21 Q   And so was his -- was his thinking at the time and

22   later on that there was some kind of conspiracy or

23   cover-up here, that people in high places were

24   doing terrible things to prevent you from getting

11:20 25   a remedy, was that his thinking?

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1   A   Yeah, I think it was all of our thinking because

2   of the way we had been pushed back all the time.

3   Q   And then if we can go to page 030, and here again

4   this is around July of 1990, I showed you the

11:21 5   discussion you had with the CBC on this subject

6   and here you say to Mr. McCloskey:

7   "No, but we are -- we do have -- I've

8   asked David to get some -- a local

9   investigator in Saskatoon to go out and

11:21 10   see the victims of Fisher and talk to

11   them, the victims that were there in

12   Saskatoon, talk to them, research the

13   entire crimes, and see if there's

14   anything there that's similar in the

11:21 15   Miller case that we can tie into --"

16   "-- something he says, something that,

17   you know anything."

18   "So we're doing that."

19   And again, do you recall, had that happened or

11:21 20   what was going on with that?

21   A   I do think that we planned on doing that, but

22   somehow or other, and there probably are letters

23   in the file back and forth, I think the point was

24   that they had spent so much money on this already

11:22 25   that there weren't funds to go ahead and I didn't

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1   have the funds to pay it and that's why that part

2   didn't go ahead at that time.

3   Q   Is that a recollection or are you assuming that

4   that was the likely reason?

11:22 5   A   I'm assuming that's the likely reason.

6   Q   Okay.

7   A   I don't know that for sure.

8   Q   And the David here would be David Asper, you would

9   have asked David Asper to get a local

11:22 10   investigator?

11   A   Yes, yes.

12   Q   And it would appear to be your thinking at this

13   time that this information would be helpful from

14   the victims?

11:22 15   A   Yes.

16   Q   And is this similar, if not exactly what you and

17   Mr. Henderson ended up doing the following May of

18   1991?

19   A   It was, but I know that -- it's probably David and

11:22 20   Hersh at this point in time, rather than spend

21   this money, would have thought they've given this

22   to justice, they would have to take a very serious

23   look at it and they would be going out and doing

24   this so it would not necessitate us going out and

11:23 25   doing it.

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1   Q   Now, is that a recollection or is that something

2   you assumed might have been the explanation?

3   A   Well, it's the only logical explanation for it.

4   If I was asking for it to be done, it could have

11:23 5   been two things, they would expect, and I think I

6   would expect too when I think back, I probably --

7   we had this tremendous information, I would have

8   felt they would have to go out and look at it,

9   they would have to go out and talk to the victims,

11:23 10   they would have to check it out.

11   Q   Would you trust them to do that though? You told

12   us -- and again, you said back in March and April,

13   on Larry Fisher, you didn't trust their

14   investigation, you would want to do it yourself.

11:23 15   Would that be a reason here why you are saying

16   lookit, I want to go and talk to them as opposed

17   to letting justice do that?

18   A   That was probably my reasoning there, and perhaps

19   Hersh and David, because they had been working

11:24 20   with the department, and I think that they

21   believed in the system to a degree, would have

22   felt that, well, they've got the information, now

23   they will look at it and they will research it.

24   Q   If we can just go back, and again, is what you've

11:24 25   told me your assumption or your thinking, okay,

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1   well, this must have been the reason why nothing

2   happened as opposed to your recollection of why it

3   wasn't followed?

4   A   It's my assumption rather than my memory.

11:24   5   COMMISSIONER MacCALLUM: What's the date on

6   this discussion, what was it, 337023?

7   MR. HODSON: This would be July of 1990 and

8   it's I think shortly after the July 17th

9   newspaper article of Dan Lett because that's

11:24 10   what's discussed with Mr. McCloskey.

11   COMMISSIONER MacCALLUM: Okay.

12   MR. HODSON: So I think the latter part --

13   latter part of July, 1990.

14   BY MR. HODSON:

11:25 15   Q   If we could go to 336054. Do you remember

16   again the -- we talked a bit earlier about Ron

17   Wilson and there were some challenges in getting,

18   not in getting, he was reluctant to meet with Mr.

19   Williams for a while or his lawyer was and then

11:25 20   ultimately it took place; is that correct?

21   A   That's correct.

22   Q   And I think David Asper tried to make contact with

23   Mr. Watson and encouraged him to meet with Mr.

24   Williams so that -- I think justice was saying

11:25 25   lookit, we can't consider the Wilson recantation

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1   until we've had a chance to talk to him; is that

2   --

3   A   Yes, that's correct.

4   Q   And this is a discussion I think again around, I

11:25 5   think July 25 was the date, of 1990, was the date

6   of Ron Wilson's examination by Mr. Williams. If

7   we could go to 336169 and if I can give you a bit

8   of background, this -- I think prior to Mr. Wilson

9   being examined Ken Watson phoned David Asper, they

11:26 10   had a discussion about what Wilson was going to

11   say to Eugene Williams, and just to refresh your

12   memory, in the statement that Ron Wilson gave to

13   Paul Henderson on June 4, 1990 Ron Wilson said

14   that David did not have a knife between Regina and

11:26 15   Saskatoon. Do you remember that?

16   A   I remember that.

17   Q   And so here Mr. Asper is telling you:

18   "Well, Watson, Watson asked me, he said

19   "what was that murder weapon here", and

11:26 20   I said "well I'm not sure, you know, the

21   Crown said it was this paring knife but

22   there was also this bone-handled hunting

23   knife that they lost", at which point he

24   went "oh sit", and I said "what", and he

11:27 25   says "well here's what Wilson is gonna

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1   say."

2   You said:

3   "Well if Wilson is going to say that,

4   what's the difference David? Like I

5   don't understand it. He's also going to

6   say that he was never separated from

7   David."

8   Asper says:

9   "Yes."

11:27 10   And then I think this is talking about where Mr.

11   Asper learned from Mr. Watson that when Wilson

12   was going to be interviewed by Eugene Williams,

13   he was actually going to correct his statement

14   and say, "oh yes, I did see a bone-handled

11:27 15   hunting knife on David Milgaard on the trip up to

16   Saskatoon". Do you remember that coming up?

17 A Yes, I do.

18 Q And then to page 188, I think this is Mr. Asper

19   again saying:

11:27 20   "See, because when I talked to Watson

21   yesterday the first question he asked

22   was "what was the murder weapon in this

23   case"."

24   The next page, and he talks about the Crown's

11:28 25   theory that it was a maroon-handled paring knife:

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1   "... "but, you know, there's this other

2   knife that was found at the scene" --"

3   "-- "and lost", and he -- and at that

4   point, to use his words, he says "oh

11:28   5   shit"."

6   Scroll down, and:

7   "So I don't know. We'll just have to

8   see if it --"

9   And you say:

11:28   10   "The truth can't hurt us."

11   Asper:

12   "No, I know, it just -- I'm just

13   concerned, now, that it's gonna send

14   Williams off on a tangent to go and

11:28   15   investigate that break-in now."

16   And I think that relates to the elevator break-in

17   where I think Nichol John had said David came

18   back with a bone-handled hunting knife?

19   A   That's correct.

11:28   20   Q   And so is it fair to say at this time, and I think

21   you had already in the media said there was

22   another murder weapon, it was a bone-handled

23   hunting knife, it was found at the scene?

24   A   Yes.

11:28   25   Q   And it's disappeared under suspicious

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1   circumstances?

2   A   Yes.

3   Q   And is it correct to summarize David Asper was

4   concerned that this might cause Federal Justice to

11:28 5   go off and indicate that, okay, well, since you've

6   now publicly said we think there was another

7   murder weapon and Ron Wilson is now saying in my

8   recantation I forgot to mention that David had a

9   bone-handled hunting knife, that somehow this

11:29 10   would be harmful to the re-opening?

11   A   Yes.

12   Q   And that was David's view. Your view was, well,

13   the truth can't hurt us; is that correct?

14   A   No. That was my view.

11:29 15   Q   Did it bother David Asper though, was he concerned

16   about this?

17   A   Yes, I believe he was.

18   Q   And then on the next page you make the point again

19   saying:

11:29 20   "Because the point is, if he was never

21   separated from David, it couldn't have

22   been David. Now he's remaining firm in

23   that; isn't he?"

24   And then Asper says:

11:29 25   "That's right, that's right."

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1   And on that point, in the interview that Ron

2   Wilson had with Eugene Williams he did indicate

3   then, and I think has subsequently, has

4   continually said that he and David were apart for

11:30 5   a short time?

6   A   But not long enough for --

7   Q   Right.

8   A   -- him to murder Gail Miller.

9   Q   And so -- and I think in Paul Henderson's

11:30 10   statement of June 4, 1990, and I stand to be

11   corrected, I don't think that issue was raised

12   with Mr. Wilson specifically in the statement.

13 A   I don't remember.

14 Q   But again, was that -- when you say that he was

11:30 15   never separated from David, is it fair to read

16   that as never separated from David long enough to

17   have committed the murder; is that --

18 A   That's what I was meaning.

19 Q   Right. Then go to 220989. I just want to carry

11:32 20   on, there is a couple of further articles and

21   transcripts, so this is July 25, 1990, this is

22   after the -- I think, up until this point, we've

23   covered the Wilson, the Cadrain, the Fisher

24   information, and at this point do you recall;

11:32 25   would it be correct to say that you had given a

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1   fair bit of new information to Justice in the

2   month of June --

3   A   Yes.

4   Q   -- 1990, you gave them the Dennis Cadrain

11:32 5   statement, the Albert Cadrain statement, the Ron

6   Wilson statement, the Markesteyn report, the Dr.

7   Merry report, and information came to light that

8   Larry Fisher's rapes had been in Saskatoon, not

9   Regina, so that was all new information that was

11:32 10   generated and given to them in the month of June?

11   A   Correct.

12   Q   And was the month of July, at this point was it,

13   "okay, well let's let them digest that and work on

14   that"; --

11:33 15 A   Yes.

16   Q   -- would that be -- and here we're talking about

17   *Delays cause Milgaard 'untold damage,' Asper says.*

18   And Mr. Asper says:

19   "The federal Justice

11:33 20   Department is inflicting untold

21   psychological damage to David Milgaard

22   by delaying his application for a new

23   trial, Milgaard's lawyer charged

24   yesterday.

11:33 25   David Asper was responding to

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1   comments from Justice Department

2   officials that Milgaard could face

3   several more months in jail before his

4   application for a new trial is heard by

11:33   5   Justice Minister Kim Campbell."

6   And am I correct that, at this time, that the

7   several more months to allow Justice -- Justice

8   was saying "lookit, we need to go through all

9   this information that you've given us", and that

11:33   10   that was communicated to you, that --

11 A It could be months and months and months.

12 Q Right. And, again, the frustration level at this

13   point was similar to what it was before, or worse?

14 A It was worse. We didn't think David could handle

11:34   15   it.

16 Q Your son David?

17 A That's right.

18 Q What about Mr. Asper, was he becoming quite

19   agitated at this point?

11:34   20 A He was very agitated.

21 Q And he makes a comment at the bottom:

22   "'This is supposed to be the

23   final repository of justice in the

24   country,' Asper said of appeals to the

11:34   25   justice minister. 'From our

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	1		perspective, it looks a lot more like
	2		the three stooges.'"
	3		And, again, was that something that was -- and,
	4		again, it's not your comment, but your
11:34	5		observations at the time -- was that a comment
	6		made out of frustration or was it designed to
	7		send a message?
	8	A	I think it was just out of frustration. I think
	9		he was so upset at that point that -- and, I mean,
11:35	10		he really felt that they were not doing a good
	11		job.
	12	Q	And, again, would this have been -- we talked
	13		earlier about, I think the words were a hornet's
	14		nest, getting things in the media to put pressure
11:35	15		on the Justice Minister; from your perspective or
	16		observation would this have been that type of
	17		story? If we can just go back to the headline,
	18		*Delays cause Milgaard 'untold damage'*, would this
	19		have had another purpose in getting the public to
11:35	20		put pressure on the Justice Minister, to put some
	21		heat on them to maybe move quicker?
	22	A	Yes, I believe so.
	23	Q	If we can go to 337105. This is a conversation
	24		with Mr. Asper, I think it is July of 1990, if we
11:36	25		can go to page 336 -- I'm sorry, I've called up

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1   the wrong -- if we could call up 336054. If we

2   can go to page 132 or, I'm sorry, go to 134, and

3   this is a discussion with you and Mr. Asper, I

4   think it's again around this same time frame, July

11:36   5   of 1990. And you say:

6   "MRS. JOYCE MILGAARD: Right. We know the

7   end, David.

8   MR. DAVID ASPER: Well, we know the end,

9   except we don't know how dirty it's

10   gonna be.

11   MRS. JOYCE MILGAARD: (*Sighs*).

12   MR. DAVID ASPER: I mean this thing could

13   get really, really dirty.

14   MRS. JOYCE MILGAARD: Oh, David, don't tell

15   me that.

16   MR. DAVID ASPER: Because the truth, the

17   truth in all of this is not -- it -- the

18   truth is very, very bad.

19   MRS. JOYCE MILGAARD: But the truth in all

20   of this is coming out little specks at a

21   time."

22   Do you know what he might have been referring to,

23   or what did you take out of this conversation,

24   that things are going to get:

11:37   25   "... really, really dirty.",

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1   and:

2   "... the truth is really, really bad."

3   A   What else were we talking about? I'm sorry, from

4   this little bit, I can't tell you.

11:37 5   Q   I'm sorry, earlier you were talking about a book,

6   about whether somebody was going to write a book,

7   and there's nothing prior this to this, I don't

8   think, that sheds any light on this, but just sort

9   of a conversation. Actually, if we want to go to

11:37 10   the previous page, it's a discussion, I think,

11   with a fellow, Michael Harris, about the guy who

12   wrote the book on Donald Marshall, and writing

13   biographies, keep it in mind -- and Asper says:

14   "MR. DAVID ASPER: And shouldn't be done

15   until everything is -- about the story

16   is known."

17   "MR. DAVID ASPER: He said it's pointless

18   to even begin until you know the end."

19   So this is talking about writing a book, and I

11:38 20   think the point is that, "okay, well until the

21   story is done, don't write it".

22   A   Right.

23   Q   My concern more is about what -- what did you take

24   Mr. Asper's comments to being that the:

11:38 25   "... this thing could get really, really

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1   dirty."

2   I presume he's talking about your efforts to

3   re-open?

4 A Obviously.

11:38 5 Q And that:

6   "... the truth is very, very bad."

7   I'm trying -- what did you understand or take out

8   of this conversation, if anything?

9 A I honestly don't know. I -- when I read it in

11:38 10   this context:

11   "... the truth is very, very bad.",

12   everything that the police have done and

13   everything that Justice has done, there's an

14   awful lot of stuff there that we have that's

11:39 15   going to come out, and it's gonna -- it's very,

16   very bad. And I'm saying:

17   "But the truth in all of this is coming

18   out little specks at a time."

19 Q And is it correct to read this that, when he says:

11:39 20   "... the truth is very, very bad.",

21   that Mr. Asper's view, expressed to you around

22   this time and perhaps before and after, is that

23   the truth is going to hurt people in the

24   system --

11:39 25 A Yeah.

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	1	Q	-- and that it's --
	2	A	And it's very, very bad.
	3	Q	It's very, very bad, in other words that there was
	4			some very --
11:39	5	A	Significant things had been turning up.
	6	Q	And so some serious misconduct, --
	7	A	Yes.
	8	Q	-- and I think the word "dirty":
	9			"... how dirty it's gonna be."?
11:39	10	A	Yes.
	11	Q	And so that was -- is it fair to say that Mr.
	12			Asper was telling you here, and perhaps what he
	13			was telling you from time to time, was that
	14			something really bad has happened with people in
11:40	15			the system, and there's been --
	16	A	Yup.
	17	Q	-- misconduct, and it's gonna get really messy --
	18	A	Yes.
	19	Q	-- because people have done so very bad things; is
11:40	20			that --
	21	A	I think that's fair.
	22	Q	And that would have been his view at the time and
	23			that's what he would have told you?
	24	A	Yes.
11:40	25	Q	And if we could go to 336950 and go to page

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1   336976, and this is a conversation that you had

2   with Mr. Asper, again around this time, and I

3   think it came as a result of the newspaper article

4   that talked about where Justice said it could be a

11:41 5   number of months to review the information.

6   A   Okay.

7   Q   And you say:

8   "MR. DAVID ASPER: So Cec did call, ...",

9   I presume that's Cec Rosner:

10   "... and apparently this guy, Corbett,

11   told Cec that, you know, there is no

12   hurry, there's plenty of things to do

13   and that, you know, the Report won't

14   even go to the Minister until the end of

15   the summer or early fall.

16   MRS. JOYCE MILGAARD: Oh, that's just

17   totally ridiculous.

18   MR. DAVID ASPER: Well, I know. I know,

19   especially in light of the fact that

20   yesterday we had a conversation with

21   Williams, and Williams suggested that it

22   might be a week or ten days."

23   And then follow down:

24   "MR. DAVID ASPER: Hang on, hang on, let me

25   -- were only going to have this -- I'm

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1   not - were never having this

2   conversation again, I can tell you that,

3   I'm absolutely fed up, and I said to

4   Hersh -- I had a fairly strong

5   conversation with him last night,

6   essentially saying to him Hersh, they

7   have done this from day one. You have

8   been detached from it, and you haven't

9   had the sense of frustration that I

10   have, and imagine what Mrs. Milgaard is

11   going through and imagine what David is

12   going through, but it's time that

13   somebody take these guys to task. This

14   is absolutely stupid. Anyway, Hersh put

15   a call in first thing this morning to

16   Corbett. He was on a conference call

17   and has not yet returned the call. We

18   are going to clarify what their position

19   is today."

11:42 20   And down at the bottom Asper says:

21   "MR. DAVID ASPER: -- you know, I've got a

22   role here, but my opinion is, assuming

23   that Corbett is correct -- now,

24   apparently Corbett told Cec that they

25   want to talk to -- they want to

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1   re-interview Melnyk and Lapchuk ...",

2   and then go back to the bottom right, and again

3   he says:

4   "MR. DAVID ASPER: Well, this is stupid.

5   This is stupid.",

6   and then goes on to talk about David. And what

7   does this -- again, we talked about sort of the

8   mindset of you and David Milgaard at the time; at

9   this point was Mr. -- was your group becoming --

11:42 10   it appears here that Mr. Asper is more than

11   frustrated, more than he was before; do you

12   recall this conversation or do you recall his

13   frame of mind at the time?

14   A   I recall many conversations like this with him,

11:43 15   and it was terrible.

16   Q   And I think this was around the time of the

17   newspaper article about the three stooges; do you

18   remember that discussion with him?

19   A   That's -- probably came out of this.

11:43 20   Q   If we can go to 334970. This is a conversation

21   with Dan Lett, and -- or pardon me -- this is a

22   conversation with you, with David, with David

23   Asper, and then I think Dan Lett joined in. And

24   if we can go to page 33 -- or sorry, start off is

11:43 25   a conversation with you, and then a second

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1   conversation with Dan Lett, 334982.

2   COMMISSIONER MacCALLUM: Have you got an

3   approximate time?

4   MR. HODSON: Umm, July of 1990, I think, is

11:44   5   the time frame, because it precedes a letter and

6   a memo that comes up, might be July-August of

7   1990.

8   BY MR. HODSON:

9   Q   And this is a conversation with Dan Lett where he

11:44   10   tells you:

11   "So ... the other thing too is, that

12   I'm, I'm trying to get some, to get some

13   clause ...",

14   I think that should be with a "w":

11:44   15   "... into the justice, the Saskatchewan

16   Justice Minister to find out if they

17   won't ... you know, like we're, we

18   talked it over today about which

19   official channels we could go through to

11:44   20   find out more information about Albert

21   Cadrain, and what happened to him and

22   ... and so, what we talked about was

23   just approaching the justice minister in

24   Saskatchewan and saying 'Look, you

11:44   25   know..., ... you know, there's all, all

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1   of these reversals and all of these

2   problems with the investigation,' and I

3   said, 'worse than that, one of your

4   senior counsels...," see, my guess is

11:45 5   that there are people in the provincial

6   government who are gonna rat on Caldwell

7   ... basically because it's quite evident

8   from him having been canned that he's

9   not popular there...",

11:45 10   and you say:

11   "Right."

12   "... and I think that, I think that,

13   that either on the record or off the

14   record, I'm going to find out that

11:45 15   Caldwell is just a screw-up all around

16   ...",

17   And would it be correct to say, from this, that

18   Mr. Lett would be out, trying to get information

19   that might assist your efforts, information

11:45 20   negative about Mr. Caldwell, or do you recall

21   this?

22   A   I don't recall it but it's obvious, from the

23   conversation, that that's what he was doing.

24   Q   And, again, would that have been one of the --

11:45 25   when you talked before about getting the media to

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1   be, I think your words were akin to your

2   investigators, in other words let them loose, see

3   what they can dig up, --

4   A   Right.

11:45 5   Q   -- would this be a case here, an example where, if

6   Dan Lett can go out and get some -- what were his

7   words --

8   A   Some claws into Justice.

9   Q   Right.

11:45 10   A   Yeah, I know that various of the reporters would

11   come to me before they went and did things, and I

12   certainly didn't discourage them, because if they

13   could, you know, if they could get information

14   that we couldn't get it would be helpful.

11:46 15   Q   And as well, if they publicized information that

16   was negative about the Crown or the police or

17   their conduct in the prosecution or the

18   investigation, that would be helpful to your

19   cause?

11:46 20   A   Yes, it would.

21   Q   So, again, would that be something that would be

22   encouraged in the sense that, lookit -- or one of

23   the things that you would hope the reporters would

24   do, go out and get as much bad stuff you can find

11:46 25   about the people who were involved in the original

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1   investigation, the prosecution, and the people who

2   are looking into the re-opening; would that be a

3   fair statement?

4   A   I honestly don't think that I was asking them to

11:47 5   go out and find all the bad stuff they could find.

6   What I essentially was asking them to go out and

7   find was the truth about what really happened.

8   Q   And --

9   A   If it was bad, then definitely, we wanted that

11:47 10   stuff as well.

11   Q   And if it was information that might assist you in

12   causing the public to sit up and take notice, --

13   A   That was great.

14   Q   -- that would be helpful?

11:47 15 A   Yes.

16   Q   So then if we can go to 162386. This is an August

17   10th, 1990 memo from David Asper to Hersh Wolch,

18   and in this memo he says:

19   "Dan Lett article burning Bob Caldwell

11:47 20   is going to appear sometime over the

21   weekend in the Free Press."

22   Again, did -- and I'm assuming that that's

23   related to the discussion you had with Dan Lett,

24   and I will show you an article August 29th, and

11:47 25   what it relates to is suggesting that Mr.

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 1              Caldwell was involved in assisting Eugene

 2              Williams; do you remember that issue coming up?

 3      A       Yes, I do.

 4      Q       And so, again, --

 5      A       And I found it totally unbelievable that they

 6              could have, that Justice could have gone to Mr.

 7              Caldwell and had him work with them on something

 8              that should -- they should have been investigating

 9              him, not having him working with them on

10              something, and we were very upset by that.

11      Q       And was it a case where, when you learned this

12              information, that that would have been given to

13              Dan Lett and said "here, go, go find something and

14              bring this to the public's attention"?

15      A       Oh, I think Dan Lett found it.

16      Q       Oh, Dan Lett?

17      A       I believe that he was the one that found it; am I

18              not correct in that?

19      Q       I don't know, sorry.

20      A       I believe he was.

21      Q       And so again, regardless of where the information

22              came, when it came to your attention that Mr.

23              Caldwell had some involvement -- and that was your

24              understanding, he was involved in the work of

25              Eugene Williams?
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1   A   That's right, and it just seemed so unprincipled

2   that someone that they're supposed to be

3   investigating them, is actually working on the

4   investigation, it seemed so wrong.

11:49 5   Q   And then if we can go to -- and I'll come back to

6   that, I'll come back to the article and the

7   letter, --

8   A   All right.

9   Q   -- so we're not finished with this subject yet.

11:49 10   026530. This is an article August 13th, 1990 in

11   the *Western Report*, and if you could go to page

12   026532, and right at the tail end -- actually, go

13   back to the full page. You'll see here, although

14   it's not a very good picture, but here the *Western*

11:49 15   *Report* -- and it's now August 13th -- now said:

16   "The Crown's sperm samples were dog

17   urine.",

18   attributed that to Dr. Markesteyn?

19   A   Yes.

11:50 20   Q   And so that would be, is it fair to say, a little

21   bit different than what Dr. Markesteyn had said in

22   his report, he had said "I can't exclude it being

23   dog urine"?

24   A   That's right.

11:50 25   Q   And so, here, the media has now shown a picture of

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1   him and reported that it is -- that it was dog

2   urine?

3   A   Yes.

4   Q   And so that's a case where a piece of information

11:50 5   had got into the media and somehow --

6   A   Escalated.

7   Q   -- escalated. Back to the bottom right, and it

8   talks about Mr. Watson and his comments on Wilson,

9   and then:

11:50 10   "Says Mrs. Milgaard: 'For us to sit and

11   wait for the minister of Justice to

12   decide is horrible. We have proof. I

13   think the Justice Department is going

14   out and just trying to cover up what is

11:50 15   going on."

16   And, again, presumably that would be the Federal

17   Justice department?

18   A   That's right.

19   Q   Sand so August of 1990, was that your view, that

11:50 20   Federal Justice Department was -- or tell me what

21   you meant by those words:

22   "... just trying to cover up ..."?

23   A   Well it seemed that no matter what we gave them,

24   they were taking it and trying to destroy it, they

11:51 25   weren't looking at it and evaluating it fairly,

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1   so, in my mind, I felt that they were trying to

2   cover up the mistakes that had been made rather

3   than to fairly bring them to the surface.

4   Q   If we could go to 331162 and go to page 331207.

5   And this is a conversation, it just has "Male" but

6   it is David Asper I believe, and he says -- and,

7   again, I think this is early August, I'm going to

8   show you a letter August 14th, 1990 from Mr. Asper

9   to the minister -- and he says:

10   "So, next time your up at the office or

11   I can drop it off or whatever, I'll show

12   you the letter that we sent that was

13   faxed out Monday and ... that's the end

14   of Williams."

15   "Well, I hope in it, you said something

16   about prosecutorial misconduct of

17   Caldwell."

18   Asper:

19   "Well, we ... we said that ... we sort

20   of did it backhanded because we did talk

21   to Tallis, ultimately and ..."

22   "You've talked to Tallis?"

23   "Well, he called simply to, to respond

24   to the letter that I wrote to him."

25   "And what did he say?"

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1   "And he said that he had no knowledge

2   whatsoever of ... any rapes occurring in

3   the neighbourhood prior to the Miller

4   murder."

5   "Really!"

6   "He had none."

7   "Oh, David, that is incredible!"

8   "Yeah, so we included that in this

9   letter."

11:53 10   "Well in, if Tallis had no knowledge of

11   that, then Caldwell certainly did have."

12   And Asper:

13   "Well, one would think so, one would

14   think so. As to the statements ...

11:53 15   Tallis has no recollection of exactly

16   what he got ... and simply says if

17   Caldwell says I had them, then I had

18   them, which is not, I mean that's a

19   nothing answer. So, we may, we may not

11:53 20   ultimately, unless we can find some

21   paper trail to give us an answer on

22   that, we may not know the answer to

23   that, you know."

24   And you say:

11:53 25   "So, he may have known that Ute Frank

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1   had been questioned?"

2   Asper:

3   "Oh, he had Ute Frank's statement."

4   "Who said he did?"

5   Well:

6   "According to Caldwell he had...

7   According to Caldwell ...",

8   and it goes on to talk about Melnyk and Lapchuk.

9   And so it appears, at this time, that Mr. Asper

11:53 10   has talked to Mr. Tallis, Mr. Tallis has

11   confirmed that he did have statements from

12   Caldwell, certainly the Ute Frank statement; --

13 A   Yes.

14 Q   -- correct? And then the letter, and I'll come

11:53 15   back to the letter in a moment, it appears to be

16   talking about a letter being sent about Eugene

17   Williams and prosecutorial conduct of Mr.

18   Caldwell; would that be relating to -- when you

19   are talking of prosecutorial misconduct are you

11:54 20   talking disclosure of statements, would that be --

21 A   Yes.

22 Q   Yeah. And then, down at the bottom, Mr. Asper

23   says:

24   "... and Disbery's recollection was that

11:54 25   they, that their assessment was that it

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1   would potentially be harmful ... to put

2   someone who was admitting to being high

3   on drugs and whatever else ... on the

4   stand even though her recollection was

11:54   5   that, you know, that this didn't

6   happen."

7   And, again, this is Ute Frank's statement. And

8   is it looks like, from this tape and perhaps a

9   few others, that Mr. Asper may have contacted Ian

11:54   10   Disbery, who was an articling student or junior

11   counsel at the trial, for information as opposed

12   to Mr. Tallis, and I'm wondering if it was

13   because of concerns that you had or Mr. Asper had

14   that somehow Mr. Tallis may have been involved in

11:54   15   some bad way in the defence of David Milgaard; do

16   you remember that being the case?

17 A   No, I think that we contacted him because he was

18   more available than Tallis, and that we were able

19   to talk to him. And I think we got involved, in

11:55   20   some case, in trying to get files through him, and

21   that may have been the connection in talking with

22   him.

23 Q   And, again, do you know any reason why -- it looks

24   like that Mr. Asper did talk to Mr. Tallis -- any

11:55   25   reason why he would be talking to Ian Disbery

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1   about what happened with Ute Frank's statement and

2   why she wasn't put on the stand as opposed to

3   asking Mr. Tallis; are you aware of any reason

4   why?

11:55   5   A   No.

6   Q   And then the top of the next page -- actually,

7   sorry, go back to the previous page. So I think

8   it talks about Disbery's recollection, why Ute

9   Frank wasn't called, you say:

11:56   10   "But if they knew that they must have

11   known that others were in the room, why

12   wouldn't they have even have questioned

13   them?"

14   And, presumably, that would have been Deborah

11:56   15   Hall and Bob Harris?

16   A   Yes.

17   Q   And then the top of the next page:

18   "Well, that's, that, that goes to a

19   broader issue. It goes to like, I mean,

11:56   20   you, you can back track on that score

21   all the way to why didn't they go and

22   find the guy that they bought the

23   chicken soup from on the way into town."

24   And it goes on to say that:

11:56   25   "... Tallis has told us that he had no

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1   knowledge at all...",

2   So this would be going back and saying "why

3   didn't Mr. Tallis do" --

4   A   Some research and find out, yeah.

11:56 5   Q   -- "some research." 157100. I think this is the

6   letter that was referred to in the tape, it is a

7   letter to the minister from Mr. Asper, saying:

8   "It has come to our attention that your

9   officials have been to some degree using

11:57 10   the services of Mr. T.D.R. Caldwell, who

11   is employed with the Department of

12   Justice in Saskatoon, Saskatchewan.

13   This is shocking since it was Mr.

14   Caldwell who conducted the prosecution

11:57 15   against David Milgaard in 1969.

16   Apparently your officials have told the

17   media that unless Mr. Milgaard

18   specifically alleges prosecutorial

19   misconduct, in their view there is

11:57 20   nothing improper with the inclusion of

21   the original prosecutor in the present

22   investigation."

23   Now let me just pause there. You'll recall, in

24   the earlier tape that I just showed you, you said

11:57 25   to Mr. Asper, "I hope you included in that letter

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1		something about prosecutorial misconduct of
2		Caldwell", and is it a correct reading of that to
3		say "lookit, put it in issue"?
4	A	Yes.
11:57 5	Q	And so that you heard back, it appears through the
6		media, that they talked to the Justice officials
7		and said, "lookit, Milgaards have not put
8		Caldwell's conduct in issue in the application,
9		therefore, at least according to the media or
11:58 10		according to this letter, it's okay for us to talk
11		to him", you say "okay, well now put it in issue";
12		is that a fair reading of that?
13	A	Yes, that's a fair reading.
14	Q	What was your understanding about what Mr.
11:58 15		Caldwell, what involvement he had in -- in the fed
16		-- in the work that Mr. Williams was doing, and
17		would that have been from Mr. Asper or where did
18		you learn what he was doing?
19	A	I honestly don't remember, but I remember just --
11:58 20		I think it was probably from David.
21		COMMISSIONER MacCALLUM: Asper?
22	A	David Asper, yes.
23		COMMISSIONER MacCALLUM: Uh-huh.
24		MR. HODSON: 153152.
11:58 25		COMMISSIONER MacCALLUM: Excuse me, Mr.

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1   Hodson.

2   MR. HODSON: Oh, I'm sorry.

3   COMMISSIONER MacCALLUM: It's occurred to

4   me, from time to time, that our record might not

11:59 5   be free of ambiguity with respect to the use of

6   "David", usually it's apparent from the context

7   of what is being said, but everybody concerned

8   should be careful to differentiate between David

9   Asper and David Milgaard for fear that the record

11:59 10   might be confusing.

11   MR. HODSON: Right. And I will try, I will

12   try to do that, I know I have not done that in

13   every case.

14   BY MR. HODSON:

11:59 15   Q   Is it correct to say, though, that with respect to

16   any reference about dealings with Federal Justice

17   officials and dealings with the media, that when

18   you refer to "David", it is David Asper as opposed

19   to your son David that he would likely be

11:59 20   referring to as far as discussions?

21   A   Yes, it's more likely it would be, but, however, I

22   could certainly see the Commissioner's point --

23   Q   Yes.

24   A   -- in that if -- I mean David, my David -- and

11:59 25   perhaps maybe that's the way I should be

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1   addressing it as "my David" --

2   Q   Well --

3   A   -- would be the one that would be, he would be in

4   touch with the Justice Department too, so that --

12:00 5   Q   Right, okay.

6   A   -- that could be.

7   Q   If we can go to 153512. This is a letter August

8   15th, 1990 from Mr. Wolch to Mr. Tallis.

9   Actually, let me just scroll up two paragraphs.

12:00 10   Looks like, here, Mr. Wolch is asking Mr. Tallis

11   here about whether or not he got the Ron Wilson

12   statement, correct, the very first one?

13   A   Yes.

14   Q   Wondered whether you were ever provided with a

12:00 15   copy, and here he says:

16   "During Mrs. Milgaard's early

17   investigation in 1980 she came upon some

18   notes in Mr. Caldwell's file which

19   indicated that Mr. Caldwell had enquired

12:01 20   of the police as to whether there were

21   any other reported incidents in that

22   area within the time frame preceding the

23   murder. Nothing was mentioned of any of

24   these rapes, and we wonder whether you

12:01 25   have any recollection of being informed

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1   of these particular acts committed by

2   Mr. Fisher."

3   Now do you know what Mr. Wolch is referring to in

4   this letter?

12:01 5   A   No.

6   Q   And, in particular, --

7   A   No.

8   Q   And I've gone through, and maybe I've missed it, I

9   did not see anything in either Mr.

12:01 10   Carlyle-Gordge's notes or in Mr. Caldwell's file

11   that indicated that he made inquiries:

12   "... of the police as to whether there

13   were any other reported incidents in

14   that area within the time frame

15   preceding the murder."

16   Now I may have missed it, but do you have any

17   recollection as to what that would have been

18   referring to?

19   A   I do not.

12:01 20   Q   That would probably be an appropriate spot to

21   break for lunch.

22   *(Adjourned at 12:02 p.m.)*

23   *(Reconvened at 1:31 p.m.)*

24   BY MR. HODSON:

01:31 25   Q   004745, please, this is the article August 29th,

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1		1990 that I think had been talked about in earlier
2		memos about the conflict alleged against Mr.
3		Caldwell, and it appears here that Mr. Williams
4		has confirmed, according to Dan Lett:
01:31 5		"... that he has on occasion conferred
6		with Bobs Caldwell."
7		And:
8		"The admission has prompted Milgaard's
9		lawyers, David Asper and Hersh Wolch, to
01:32 10		charge Williams with conflict of
11		interest and file a formal complaint ...
12		asking her to intervene immediately."
13		And I think this is where you wanted to get
14		Eugene Williams removed from the case; is that
01:32 15		right?
16	A	Absolutely.
17	Q	And on the basis of his interaction with Mr.
18		Caldwell; correct?
19	A	Correct, and also the fact that I felt he was
01:32 20		prejudiced with his remarks to Mr. Watson, I
21		believe we had them at that time.
22	Q	And that was with respect to --
23	A	That he believed that David was guilty.
24	Q	Okay.
01:32 25	A	There's no way he should be out there

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1   investigating when he had that in his mind.

2   Q   And just on the comments of Ken Watson, was

3   that -- did you have a direct conversation with

4   Mr. Watson or did this information come --

01:32   5   A   It came via Mr. Asper.

6   Q   So from Mr. Asper you understood that Ken Watson

7   had told Mr. Asper that Eugene Williams said he

8   thought David was guilty; is that right?

9   A   It was also in one of the newspaper accounts.

01:33   10   Q   I'm sorry?

11   A   I just read it in one of the newspaper accounts

12   again now.

13   Q   That --

14   A   About Eugene Williams.

01:33   15   Q   But from what Mr. Watson -- what I'm trying to

16   understand is what information you had about what

17   Mr. Watson, and I think what you said is you

18   didn't talk to Mr. Watson, Mr. Asper told you what

19   Mr. Watson told him?

01:33   20   A   I believe he did, either that or I read it in the

21   newspaper.

22   Q   Okay.

23   A   Because it is in one of the newspaper articles

24   that you gave me here.

01:33   25   Q   Do you have the doc. ID there? I'm sorry, I'll

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1		look for it at the break. I thought if you had it
2		handy there.
3	A	I probably have. I flipped the page over. Yes,
4		it's 217222.
5	Q	If you can maybe call that up.
6	A	It's the second column from the end where it says:
7		"Lawyers representing other witnesses
8		have said previously that Williams
9		bluntly told them that he was personally
10		convinced Milgaard was guilty, despite
11		overwhelming evidence to the contrary."
12	Q	Okay.
13	A	And as a mother, when I read that, I get mad.
14	Q	I think this article was in November of '90 and I
15		was getting there.
16	A	Oh, sorry.
17	Q	No, that's fine. So there's this article in the
18		newspaper and I think if we go back, this is Mr.
19		Lett -- full page, please -- so this is Mr. Lett's
20		article. This one isn't dated, but I think when
21		we get there it is around November, 1990. So
22		that's one source of information. And you read
23		that to be referring to what Ken Watson heard
24		from --
25	A	That's what I assumed, yes.

01:33 (line 5)
01:34 (line 10)
01:34 (line 15)
01:34 (line 20)
01:34 (line 25)

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1   Q   And again, did Mr. Asper also tell you -- was

2   there any other source of information that you

3   were relying on?

4   A   No. I couldn't tell you at this time.

01:35 5   Q   And then if we can go back to 004745, and here in

6   the article there's reference where at least Dan

7   Lett is reporting that:

8   "Williams said Caldwell has been ruled

9   out as a witness because in Milgaard's

01:35 10   application to the Justice Department,

11   there was no specific allegation of

12   prosecutorial misconduct."

13   And I think you told us earlier this is where you

14   then said to Mr. Asper, well, add it so that

01:35 15   there is that allegation?

16   A   Correct.

17   Q   213049, this is a reporting letter from Mr. Wolch

18   to you September 24, 1990 sending a letter from

19   Mr. MacFarlane talking about a meeting of October

01:36 20   1, 1990 in Ottawa and he describes that:

21   "David Asper and I are both intending on

22   attending this meeting which we consider

23   to be quite important."

24   And I think they went and spent a day in Ottawa

01:36 25   with Bruce MacFarlane, Eugene Williams, I think

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1		Mr. Corbett and reviewed documents in the case.
2		Do you remember that happening?
3	A	Yes, I do, and the reason he was asking me to
4		forward the letter was at that point he was fired.
5	Q	By David?
6	A	Yes.
7	Q	Your son David?
8	A	Yes.
9	Q	So he was telling you this, and why, do you
10		remember why David had fired them?
11	A	He got -- they got -- he got so upset with all the
12		things that were not happening that he just felt
13		that we should be representing ourselves, and of
14		course when that happened, I rationalized the fact
15		that even though David was the client in the
16		sense, I was the one that had hired them and I was
17		the only one that could fire them, and so they
18		were acting on behalf of David via me and that,
19		that's the rationale we took, but when David was
20		going through these periods of depression and
21		upset, there was no way you could tell him that
22		Hersh and David were going to go acting for him
23		somewhere.
24	Q	And what were the types of things that Mr. Wolch
25		and Mr. Asper were doing or not doing that caused

01:36 (line 5)
01:36 (line 10)
01:37 (line 15)
01:37 (line 20)
01:37 (line 25)

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1   concern to David, to your David?

2   A   Well, because the job wasn't getting done. I

3   mean, he didn't realize that it wasn't their

4   fault, that it was the fault of the Justice

01:37 5   Department and all the stalling that they were

6   doing and how -- because it was taking so long, he

7   blamed them for that.

8   Q   And I noticed in some of the tapes or some of the

9   letters maybe that David, your son David's desire

01:38 10   to have justice deal with the family, namely, you

11   and David, as opposed to lawyers on his behalf,

12   that that was his desire for a while; is that

13   correct?

14   A   Yes, it was.

01:38 15   Q   Do you know why he, or what was his rationale for

16   that, did he see there to be some advantage in

17   having you and he and the family interface with

18   justice as opposed to lawyers?

19   A   Well, he felt that possibly we would get further

01:38 20   ahead because they would have to talk with us if

21   there were no lawyers involved and I think that's

22   what he wanted, was hands on, to be involved.

23   Q   Were there also some issues, and again I recall

24   seeing this in some of the taped interviews, were

01:38 25   there also some issues about the focus of the

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1   media attention, and let me be a bit more

2   specific, that your David had concerns with the

3   type of coverage and exposure that Mr. Asper, Mr.

4   Wolch and perhaps even you were focusing on where

01:39 5   your David wanted a different focus on media

6   attention, I think with prisoner issues?

7   A   Yes, he did. He was very eager to put forth the

8   position of the Justice Group inside the prison

9   which he had founded and rather than just having

01:39 10   the media concentrating on his case, but rather be

11   concentrated on all of the cases and all of the

12   injustices that were taking place.

13   Q   Would it be correct to say, we've talked a fair

14   bit with you and with Mr. Asper about, in the

01:39 15   spring of 1990, this public campaign, and I think

16   that's when --

17   A   Yes.

18   Q   -- everything went out. Is it correct that your

19   son David had some concerns about that and that

01:39 20   maybe wasn't always on side with that strategy?

21   A   That's correct.

22   Q   Or maybe was at all times he against that

23   strategy, or can you shed some light on that?

24   A   He would go in and out of despair, he would --

01:40 25   there were times that you couldn't even talk to

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1   him about the case he was so down, and so -- he

2   wasn't being rational, Mr. Hodson, at that time.

3 Q   And when he said he wasn't in favour of this

4   public campaign, do you recall what concerns he

01:40 5   would have had or why he was against it?

6 A   Well, it wasn't so much that he was against the

7   public campaign, it was because he wasn't getting

8   any answers and nothing was happening that he felt

9   that if it was just the family that was dealing

01:40 10 with the Justice Department, then we would have to

11   get the answers.

12 Q   And is it correct to say that your son David felt

13   that a different approach than what was being

14   taken might work better in his view?

01:41 15 A   That's correct.

16 Q   And would that have been the source of conflict

17   from time to time between your David and David

18   Asper and Hersh Wolch that led to their firing

19   from time to time?

01:41 20 A   Probably, but it was more his mental state, his

21   ups and his downs, if I can put them that way.

22 Q   And would these occasions when he wished to fire

23   or did fire counsel, those would be during his

24   down times I take it?

01:41 25 A   Yes, that's right.

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1   Q   So let's just get back to the meeting. What was

2   your understanding of this October 1, 1990 meeting

3   with justice? This, I think, would have been the

4   first face-to-face meeting; is that right?

01:41   5   A   That's correct, and I was very excited about it,

6   thought we're finally, we're getting there, we're

7   opening the door.

8   Q   And what was your understanding of -- actually,

9   let me just go to 157117, and this is the letter

01:42   10   that was sent from Mr. MacFarlane and this talks

11   about the meeting and it appears that according to

12   Mr. MacFarlane:

13   "During telephone conversations over the

14   past several months, you --"

01:42   15   Being Mr. Wolch,

16   "-- have expressed an interest in

17   meeting to discuss Mr. Milgaard's

18   application once the Department had

19   completed its review, in order to

01:42   20   provide your perspective of the case

21   personally and fully.

22   The departmental review of the

23   case is now complete and, as I indicated

24   during our telephone conversation

01:42   25   earlier today, I am quite prepared to

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1   meet with you for the purpose you

2   earlier have outlined to me."

3   And then goes on to talk about the meeting with

4   Corbett and Williams. And so is it correct that

01:42   5   Mr. Wolch had said lookit, once -- it appears

6   here that this issue of a departmental review

7   came up. Would it be correct to say by this time

8   you and your counsel were aware that before the

9   minister would make a decision, the Justice

01:42   10   Department would prepare a department report?

11   A   Yes, we were now aware of that.

12   Q   And as well that Mr. Wolch has said to Mr.

13   MacFarlane at some point that lookit, once your

14   departmental report is complete, we would like to

01:43   15   meet with you and talk about the case before you

16   send the report up to the minister; is that

17   correct?

18   A   Yes, we wanted to see what they were going to send

19   to the minister.

01:43   20   Q   And so that would be the purpose of this meeting,

21   is to find out what they had concluded and what

22   they might be saying?

23   A   Correct.

24   Q   And to have some of your own input?

01:43   25   A   Correct.

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1   Q   Now, you didn't attend the meeting; correct?

2   A   No, I did not. I did try.

3   Q   And we do have a reporting letter from Mr. Wolch,

4   162374. What is your recollection of what Mr.

01:43 5   Asper and Mr. Wolch reported to you after this

6   meeting, and again, I'm not so much looking for

7   specifics, I do not have any minutes of that

8   meeting, all I've got is Mr. Wolch's report to

9   David of October 3, but maybe -- what was your

01:44 10   sense when they came back, was it positive,

11   negative? Do you remember much of that?

12   A   Can I read this report?

13   Q   Sure.

14   A   And that might give me a better idea of what --

01:44 15   Q   I'll tell you what, let's maybe go through parts

16   of this and then I can come back to that. So this

17   is a report to David and they talk about meeting

18   with -- who they met with:

19   "Prior to the meeting we were provided

01:44 20   with a number of reports contained in a

21   thick black binder, most of which we had

22   seen before."

23   And we'll make available the binder, so let's

24   just pause there. It looks like your counsel got

01:44 25   some materials --

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1	A	Yes.
2	Q	-- that you maybe had not seen before?
3	A	Yes, that's correct.
4	Q	And do you remember what those documents were?
01:44 5	A	Off the top of my head, I can't tell you. Umm --
6	Q	My understanding is that it may have been
7		certainly some of the police reports and
8		statements relating to the motel incident
9		witnesses, Ron Wilson and some of the matters in
01:45 10		which Mr. Williams --
11	A	Oh, that's right, they did come back with a lot of
12		things like that that we hadn't seen before.
13	Q	So Saskatoon City Police reports?
14	A	Yes, some of them.
01:45 15	Q	And information from Mr. Caldwell's file, some of
16		that?
17	A	Yes, but we never got the information from the
18		RCMP report.
19	Q	Okay. So some information at this time, and I
01:45 20		don't think we've been able to identify from our
21		documents what would have been in that binder, or
22		what you would have received at that time, but I
23		think you are saying there was some new
24		information there?
01:45 25	A	There definitely was.

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1   Q   And anything stand out in your mind as to being

2   revealing at that time, anything stick out?

3   A   Well, it seemed to me we got some reports that we

4   then followed up on to our advantage, like witness

01:46   5   reports in the area --

6   Q   Okay.

7   A   -- that we hadn't had before.

8   Q   And then if we can just scroll down, the next

9   paragraph, Mr. Wolch reports on the purpose of the

01:46   10   meeting and that Mr. MacFarlane said that he

11   wanted to get some submissions to:

12   "... address any area of the case that

13   might cause reviewers to have any

14   negative thoughts. Also, we wanted to

01:46   15   be certain he was being properly briefed

16   by Mr. Williams."

17   So it appears here that Mr. Wolch said that we

18   were invited to, or we did address any things

19   that we thought were negative and here's our

01:46   20   chance to put input in the event that Mr.

21   Williams was properly briefing everybody?

22   A   Correct.

23   Q   And then scroll down, it appears that there was a

24   lengthy discussion about Mr. Wilson, about the

01:46   25   physical impossibility argument, the Nichol John

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1   statement at length, and Mr. Wolch says:

2   "It was quite easy to point out the

3   absurdity of her statement and the

4   impossibility of same. The forensic

01:47 5   evidence was reviewed at great length

6   and the evidence of Deborah Hall, Melnyk

7   and Labchuk was considered."

8   And:

9   "The situation regarding Larry Fisher

01:47 10   was examined fully."

11   Again, does that accord with your recollection as

12   to what Mr. Asper and Wolch told you happened at

13   the meeting; would that be accurate?

14   A   Yes, it does, yes.

01:47 15   Q   Do you recall any concern being expressed by

16   either Mr. Wolch or Mr. Asper that we didn't get a

17   chance to put our submissions in or we didn't get

18   a chance to deal with this issue or that issue?

19   A   No, I think that they felt that they had been able

01:47 20   to address most issues.

21   Q   And then at the bottom paragraph:

22   "It was obvious in talking to the

23   Justice officials that the points we

24   were making were sufficient and they

01:47 25   took copious notes.

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1   There was even a discussion as

2   to what the test should be for the

3   Minister to apply and should the matter

4   be referred to a Court, which would be

01:48   5   the appropriate Court. My personal

6   opinion is that it should go to the

7   Supreme Court directly."

8   Do you have any recollection about what, the

9   discussion about the test for the minister to

01:48   10 apply, any -- anything stand out?

11   A   No, nothing stands out on that.

12   Q   Would that be something, and again what we've

13   heard is probable miscarriage of justice, likely

14   miscarriage of justice, maybe miscarriage of

01:48   15   justice, innocence, those things, would that be

16   something you would leave to your lawyers to sort

17   out, what type of proof you had to establish to

18   get a remedy?

19   A   Oh, yes, because they would be ones that knew what

01:48   20   had to be presented.

21   Q   Then the top of the next page it says:

22   "All in all we brought 'life' to our

23   written submissions. We did have

24   certain facts brought to our attention.

01:48   25   It is clear that Deborah Hall in her

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1   examination by Mr. Williams in some ways

2   corroborated Melnyk and Labchuk. But in

3   reading her evidence thoroughly, it

4   became obvious that she was not wavering

01:49 5   and she was very clear that there was no

6   re-enactment and that your comments, if

7   made, were sarcastic at best."

8   And so again, is it fair to say that at this

9   meeting, and I think you said earlier you would

01:49 10   have learned about Deborah Hall's examination?

11 A Yes.

12 Q So here you would have been aware of Federal

13   Justice's position saying that lookit, Deborah

14   Hall's evidence corroborates, at least to some

01:49 15   extent --

16 A They were saying it corroborated Melnyk and

17   Lapchuk, yes.

18 Q And then as well he ends up saying:

19   "I believe that everything that can be

01:49 20   done has been done to this point, with

21   the possible exception of the recent

22   suggestion that we may have more

23   evidence regarding Fisher. Any

24   direction from you would be

01:49 25   appreciated."

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1		Do you know what that relates to?
2	A	"With the possible exception of the recent
3		suggestion that we may have more evidence
4		regarding Fisher"?
5	Q	Yes.
6	A	Well, I think "any direction from you would be
7		appreciated," this is a letter to David, to my
8		David isn't it?
9	Q	Yes, it is.
10	A	Yeah.
11	Q	And I guess --
12	A	I think he was giving David an opportunity to
13		input here.
14	Q	No, I'm sorry, I think -- I'm wondering if you can
15		shed some light on Mr. Wolch, what he was meaning
16		here when he said everything has been done with
17		the possible exception of the recent suggestion
18		that we may have more evidence regarding Fisher.
19		I'm wondering what the more evidence might be
20		that you may have.
21	A	Well, the fact that -- I think at this point we
22		still had felt that they would follow it up and
23		the more recent evidence that we had of course I
24		think was the Saskatoon evidence, that they were
25		in Saskatoon, that could have been the more recent

01:50 (lines 5, 10, 15, 20, 25)

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1   evidence he was talking about here.

2   Q   Okay. I think, if I can just go back, at this

3   point the departmental report of Federal Justice

4   is done, it's about to be sent up to the minister.

01:51 5   This is October of 1990.

6   A   So they would have had all that information?

7   Q   Well, no, no, just let me finish. And so Mr.

8   Wolch is reporting to your David saying everything

9   has been done up to this point except the recent

01:51 10   suggestion that we, presumably being the Milgaard

11   group, may have more evidence regarding Fisher, so

12   I think -- and all I'm asking is what might that

13   be. I don't know what it is. I'm trying to see

14   if you know.

01:51 15   A   I don't know, unless David had asked him to get

16   more evidence on Fisher.

17   Q   So you don't know what other evidence may have

18   been --

19   A   I don't. I do point, do notice up at the top

01:51 20   there:

21   "We were also able to see some very

22   unfair and untrue police reports

23   regarding --"

24   David.

01:51 25   "For example, a reference to your

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1   serious criminal record prior to your

2   arrival in Saskatoon was simply not

3   true, but yet was contained in the

4   police report."

01:52 5   Q   Oh, I see. Okay, yes.

6   A   And I think that that's important because it

7   showed an obvious bias on their part and --

8   Q   Do you know, did Mr. Wolch or Mr. Asper shed any

9   light on what he was referring to in this letter?

01:52 10   A   No, but there were some police reports that were

11   wrong and were giving information that was

12   incorrect and I believe --

13   Q   So, sorry, these reports would have been the ones

14   that were given to Mr. Wolch and Mr. Asper at this

01:52 15   meeting then?

16   A   That they saw at the meeting. I don't know

17   whether they were given to him, or given to them,

18   but maybe they were.

19   Q   It's my understanding, and we'll hear more

01:52 20   evidence about this, that anything that Mr. Wolch

21   and Asper were shown at that meeting, I believe

22   the evidence we will hear is that that's what they

23   were given a copy of, but --

24   A   Then they must have had copies of it.

01:52 25   Q   I believe that will be the evidence.

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1	A	Okay.
2	Q	So again, so that would be some reference there
3		that some police reports were wrong and put an
4		unfavourable light, or were unfair to David, and
01:53 5		then again as well the reward money, there's some
6		discussion there about Mr. Cadrain getting the
7		reward. Do you have any recollection of Mr. Wolch
8		or Mr. Asper reporting on that?
9	A	Yes, I remember that.
01:53 10	Q	Now, again, I've gone through the letter. Just
11		back to my earlier question, do you remember Mr.
12		Wolch and Mr. Asper, when they came back from the
13		meeting, was it reported to you that lookit, this
14		is positive, this is negative, we understand where
01:53 15		they are coming from, we don't understand? What
16		was your sense from hearing their report?
17	A	They were trying -- they were trying to make David
18		feel that it was good.
19	Q	Okay.
01:53 20	A	But I think my feeling of it was they were a
21		little on edge about it.
22	Q	And on edge meaning that --
23	A	Well, because of some of the stuff they found,
24		they felt it was very biased.
01:54 25	Q	Biased in what way?

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1   *A*   Against David.

2   **Q**   And so biased in the sense that information that

3   might hurt David's chance or information that was

4   wrong and unfair, or both?

01:54   5   *A*   Both.

6   **Q**   And so --

7   *A*   And I think they felt that it was good that they

8   were there and could give that information to Mr.

9   MacFarlane.

01:54   10   **Q**   Now, there isn't any mention in here about the

11   Ferris report other than the earlier thing that

12   they discussed it fully, and I think you told us

13   earlier that the Ferris report was, in your view,

14   sort of the one piece of information that you

01:54   15   thought proved his innocence and -- subject to

16   some other items in there, but that should prompt

17   I think David to get out of jail, and certainly

18   that was your son David's view. What is your

19   recollection of what came out of this meeting

01:54   20   about the Ferris report?

21   *A*   I don't remember them mentioning anything having

22   come out of the Ferris report at this meeting.

23   **Q**   And I'm wondering, did you find that to be unusual

24   given the significance that the Ferris report had

01:55   25   played in the original application?

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1   A   No, because I think we just assumed it was good

2   and, you know, and that it was going to be our big

3   gun, so to speak.

4   Q   Do you have any recollection of hearing from

01:55   5   either Mr. Wolch or Mr. Asper that the Ferris

6   report may not be as convincing and as compelling

7   as once contemplated?

8   A   Not at that time, no.

9   Q   At some later point did you?

01:55 10   A   I think there was some discussion later on when

11   they -- but this would be after, the discussion

12   that I'm thinking of was after the minister had

13   turned the application down.

14   Q   And what about the discussions of Larry Fisher,

01:56 15   what is your recollection of what Mr. Wolch and

16   Mr. Asper told you about the Fisher information?

17   Presumably from the letter it says that it was

18   dealt with. Did you have a discussion with them

19   about what significance that information played in

01:56 20   the application?

21   A   No. We didn't sort of go over it step by step at

22   that time, you know, what they had learned. I

23   think they felt there was a lot of good

24   information there, that if the minister was seeing

01:56 25   it and in the right context, that would get an

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1   approved application.

2   Q   You said that you felt that your lawyers were a

3   bit on edge after the meeting. Was it your sense

4   after this meeting you would have known then the

01:56 5   report was going up to the minister for a

6   decision; correct?

7   A   Yes. When I say they were on edge, we were all

8   really on edge.

9   Q   Did you think -- and what I'm trying to get is

01:57 10   whether or not you formed the view or were told by

11   your lawyers or concluded that lookit, this may

12   not go our way based on --

13   A   No.

14   Q   -- the feedback obtained at the meeting, or was it

01:57 15   the other way or was it lookit, we just don't

16   know?

17   A   We just don't know.

18   Q   And was there some sense of -- and I'm trying to

19   probe a bit on this when you say your lawyers

01:57 20   returned on edge. Was there some sense that maybe

21   there were some issues, perhaps not with respect

22   to, in your view, David's innocence, but rather

23   with respect to the information that was being put

24   forward, that there may be some issues there that

01:57 25   justice may have raised some concerns that might

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1   have caused your lawyers to be concerned?

2   A   I think they were concerned about the information

3   that was going in, that may be going in very

4   prejudicial because of the investigation by

01:58 5   Williams, I think that's where their concern lay,

6   and I think that up to this point, you know, it's

7   taken so long to get there that we were hopeful

8   that it would be a good report going in, but it

9   was obvious to us that maybe that wasn't the case,

01:58 10   so I think that's why it put us all on edge, you

11   just didn't know.

12   Q   And is it correct that you would have known that

13   the minister would base her decision primarily on

14   the information collected; in other words, the

01:58 15   information put forward by you --

16   A   In that report.

17   Q   -- and the information followed up by Mr.

18   Williams, that the application was going to be

19   decided based upon the information that had been

01:58 20   gathered in this process?

21   A   Correct.

22   Q   And were there any concerns that there wasn't

23   enough information or that the information given

24   maybe wasn't as good as it could be or there might

01:59 25   be problems or was the feeling lookit, we put

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1		everything forward, there's sufficient information
2		there to get our remedy?
3	A	I believe that we felt there was sufficient
4		information there to get our remedy.
5	Q	In we could go to 059 -- let me just back up. Is
6		it -- just so I understand, on this letter to
7		David Milgaard, are you -- if we can go back to
8		the full page, please -- when you said you were
9		trying to keep David, I can't remember your words,
10		but --
11	A	Probably "happy" would be a good one.
12	Q	-- happy -- would this letter, and were you
13		telling us -- and maybe I've heard your answer
14		wrongly -- that this letter would have been more
15		optimistic than what the meeting really was so as
16		not to alarm David?
17	A	It certainly would be more optimistic, I would
18		think that that would be part of the letter, yes.
19	Q	And so that, rather than saying, "lookit, David,
20		here are a bunch of problems" --
21	A	Yeah.
22	Q	-- "and it's not looking good" -- I'm not saying
23		that's what happened -- but that perhaps the
24		letter was written with a view to making sure
25		that, or keeping in mind your son David's

02:01 5
02:01 10
02:01 15
02:01 20
02:02 25

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1   condition at the time, you did not want to upset

2   him with negative news?

3   A   That's correct.

4   Q   059336. And I'm not gonna show this, this is just

02:02 5   for the date, September 25, 1990. The *Fifth*

6   *Estate*, I think, finally, I think this is the

7   program they ran, is that right? Would this be

8   the first one or is this the second one, I think

9   this the first one?

02:02 10   A   I have no idea.

11   Q   In any event, they ran a 16-minute segment on the

12   *Fifth Estate*, and I want to take you to a couple

13   discussions you had with Mr. Asper after that. Do

14   you remember, do you remember viewing the *Fifth*

02:02 15   *Estate* program?

16   A   Yes. They had --

17   Q   This is the one that had Larry Fisher --

18   A   -- they had more than one, so --

19   Q   Okay. If we could go to 337105 and go to page

02:03 20   337127. And this is a conversation, I think,

21   right around -- right after the program September

22   25, 1990, and you say:

23   "I thought it was excellent. What did

24   you think?"

02:03 25   And Mr. Asper says:

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1   "I don't know."

2   "You don't know."

3   "I don't know. I...I think it was great

4   but I -- I'm so desensitized to it. Did

02:03 5   it punch?"

6   "Oh I think it really punched."

7   And then if we can go ahead to 337131. And there

8   is a discussion here, Mr. Asper says:

9   "Yeah, yeah. But they didn't get into

02:04 10   Markesteyn or Ferris or any of that

11   stuff"

12   And let me just pause there. In the *Fifth Estate*

13   program there is no mention about anything about

14   the Dr. Ferris report or the Dr. Markesteyn

02:04 15   report or the forensic information, okay, --

16   A   Right.

17   Q   -- in this program, and Mr. Asper says:

18   "Which ... sort of supports Justice's

19   argument."

02:04 20   "You know - to say even the Fifth Estate

21   didn't think it was important."

22   And you say:

23   "Well, there's pages and pages of it.

24   That can't hold em ...",

02:04 25   and then:

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1   "Believe me Joyce I've spent today

2   preparing the briefing books for Hersh

3   and I pulling out evidence and ...

4   there's six pages out of 49 in the

02:04   5   Crown's address, opening address to the

6   jury devoted to forensic evidence."

7   "Great. What about his closing

8   address."

9   Mr. Asper:

02:04 10   "Well I don't have that."

11   Joyce:

12   "Well we did."

13   "All we've got are his rough notes."

14   And then you go on to discuss it. And I think

02:04 15   Mr. Asper testified that, at this time, he

16   wouldn't have looked at Mr. Caldwell's closing

17   address.

18   But just back up to this

19   comment here, now this is before, I believe

02:05 20   before the October 1 meeting with Justice, and it

21   looks like Mr. Asper is referring to Justice's

22   argument that the Markesteyn and Ferris

23   information isn't important; do you remember that

24   being brought to your attention around this time?

02:05 25   A   Obviously, it was.

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 1   Q        And, again, do you have any -- I had asked this

 2            question earlier about being aware, prior to the

 3            October 1, 1990 meeting, that Justice was saying

 4            "we don't put much or any weight on the Markesteyn

 5            or Ferris report"; do you remember that coming to

 6            your attention?  Does this assist you in

 7            refreshing your memory on that?

 8   A        It didn't.  To me, I almost held that report as

 9            sacred, I just felt it was so important, and it

10            was because of Dr. Ferris, the way he told me, and

11            I mean it's a memory in my heart that I'll always

12            remember when he said, "You have more than enough

13            evidence to prove that your son is innocent,

14            Mrs. Milgaard, why do you need this", and then,

15            just I believed in the man, I believed that that

16            report showed David's innocence, and so even when

17            they were saying some of these other things about

18            it, I still felt that there was more than enough

19            evidence there to prove that David was innocent.

20   Q        But is it correct that, here, Mr. Asper's concern,

21            after having watched the *Fifth Estate*, is that our

22            at one time key piece of evidence -- I think what

23            he said is that the Fisher information kind of

24            overtook the Ferris report --

25   A        Right.
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1   Q   -- as the primary ground -- but certainly what was

2   viewed and still viewed by you and by your son

3   David as the prime piece of evidence to secure his

4   freedom, that the *Fifth Estate* didn't even mention

02:07 5   it in their program, and that Mr. Asper is saying

6   lookit, you know, this lends credence to the

7   Justice position. And what I am trying to find

8   out, whether you were aware, at that time, that

9   your lawyers had been informed by Justice,

02:07 10   directly or indirectly, that the Ferris report and

11   the Markesteyn report were viewed by them as not

12   being valid and credible or supporting your

13   application. That's all. And I appreciate what

14   you are saying is, lookit, I always thought it was

02:07 15   sacred.

16   A   Yes, and where, where he says here, you know, to

17   say:

18   "... even the *Fifth Estate* didn't think

19   it was important.",

02:07 20   I'm saying:

21   "Well, there's pages and pages of it.",

22   and:

23   "That can't hold em ...",

24   and that, like, *Fifth Estate* couldn't get into

02:07 25   that kind of stuff, that won't hold the audience,

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1   they -- they were working with the stuff that

2   would hold the audience, and that's, that's what

3   I'm talking about there.

4   Q And do you recall the other day, when I showed you

02:07 5   the letter from your son David where he had been

6   informed by the *Fifth Estate* that two months after

7   they received the Ferris report in February of '89

8   they reported to your son David that they had a

9   forensic pathologist in Toronto look at it, and I

02:08 10   think the implication was that Ferris' findings

11   were disputed?

12   A That's correct. And we asked, at that time, to

13   get someone else to look at it.

14   Q Okay. I think it was actually about a year later.

02:08 15   This, just the timing here is when the application

16   is filed in December of '88, it was sent to Sandra

17   Bartlett at the same time it was sent to the

18   minister, two months later the *Fifth Estate* got

19   back and said "lookit, we're not running our show,

02:08 20   we don't have enough to prove innocence", your son

21   David corresponded with the *Fifth Estate* and they

22   got back, and David wrote a letter saying "the

23   *Fifth Estate* told me that they went and got a

24   pathologist or some scientist in Toronto, and that

02:08 25   person disputed Ferris' findings, and that that

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1   may have been the reason they didn't run the

2   show", and it wasn't until May of 1990, it was a

3   year later, a year and a bit, that Dr. Markesteyn

4   was retained. So I think that's the sequence

02:09   5   we've heard so far; does that sound right?

6   A   That sounds right.

7   Q   And so again, at this point, I'm trying to probe

8   and find out what your knowledge and understanding

9   was about the Ferris report and, in particular,

02:09   10   whether, based on what your lawyers told you, you

11   had any concerns about the value of it? And I

12   think you are saying no, you still held it to be

13   valuable, and that any criticism that came you

14   discounted and said "well they must be wrong"; is

02:09   15   that correct?

16   A   I think that was part of it, but I think that we

17   had so much other stuff now, with the Fisher

18   information, that I really didn't even think it

19   would be needed, I -- so it wasn't as if we were

02:09   20   depending on it as much as we had been before.

21   Q   Okay. But it was still part of the arsenal, but

22   had been overtaken, perhaps, by the Fisher

23   information?

24   A   By the Fisher information, right.

02:10   25   Q   Yeah. And then if we can go to 337043. This is

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1   another -- and go to page 337062 -- and this is a

2   further discussion about -- and I think this is

3   the *Fifth Estate*, or it may have been another CBC

4   program around the time, and again talking about

02:10   5   it, and Mr. Asper says:

6   "Well I've gotta go and check his

7   affidavit to tell you the truth because

8   he was saying some things that I was

9   quite concerned about."

02:10   10   "Like what?"

11   "Well for example that they had talked

12   about a purse snatching ...",

13   And you say:

14   "Well, he did."

02:10   15   "And ... he has no recollection of there

16   being a TV or being bugged by Melnyk or

17   anybody in the motel room."

18   You say:

19   "That's right"

02:11   20   And then Mr. Asper says:

21   "He just says I don't remember, I don't

22   know. And ... I mean he had to be

23   prepped with about four questions. She

24   kept after him. Saying well did you..

02:11   25   did you re-enact it or not? And he kept

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1   saying well I don't know. And ... her

2   reaction ... the question would be ...

3   she'd come back with well is it possible

4   that because of the drugs that you were

02:11   5   taking that you wouldn't recall

6   re-enacting it and his answer was I

7   don't know."

8   And then you:

9   "Did you have a list of the questions

02:11 10   that he ... that they were going to ask

11   him?"

12   And I think this may have been another interview

13   around the time, as opposed to the *Fifth Estate*;

14   do you recall David, your son David, being

02:11 15   involved in a program or being interviewed?

16   A   Well, he was involved in some program, and --

17   other than the *Fifth Estate*, he was involved in

18   other interviews with CTV and that, but sometimes

19   he was not in good shape for a program and so --

02:12 20   and I remember one where the film went wrong and

21   they had to, they couldn't use it and they were

22   gonna have to go back, and I -- it could have been

23   something to do with this particular interview, I

24   -- but I don't know, I can't give you more

02:12 25   specific details on it, I'm sorry.

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1   **Q**   And in any event, if we could go to page 064. And

2   this continues on, the discussion, it says:

3   "Yeah ... it's gonna be an interesting

4   contrast because they've got...they did

02:12 5   a lengthy interview with Deborah Hall

6   where she describes what happens in the

7   motel room and...you know she describes

8   what David did and ...exactly what

9   happened and then you've got that...up

02:12 10   against David saying look I don't even

11   remember if there was a television in

12   the room."

13   And you say:

14   "Well that's something that he's always

02:13 15   said - that he just - he says I could

16   have done it - I don't know mom. I mean

17   he's been totally up front about that

18   for years David. And he said that to me

19   - I don't know if there was even a

02:13 20   television there, I can't remember that

21   room. Can't remember anything about

22   it."

23   Mr. Asper:

24   "Yeah, well which is a bit of a problem

02:13 25   because then the...the viewer may get

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1   the impression while either he was so

2   stoned that he could have done it or if

3   he doesn't remember it how could Deborah

4   Hall remember it. It cuts both ways."

02:13   5   And is it correct to say, at this time, that the

6   concern would be that your son David may have

7   been doing interviews and responding to certain

8   questions in a manner that would be inconsistent

9   with positions that had been taken on his behalf

02:13   10   in a re-opening, namely the purse snatching, the

11   motel room incident, things of that nature; would

12   that be the concern?

13 A   I imagine so.

14 Q   And that Mr. Asper said "well, I have to go back

02:13   15   and check the affidavit", because in the affidavit

16   filed with the minister David said that he did

17   not, did not perform the motel room incident and

18   denied that, and so would that be the concern

19   here, that, lookit, he's gone on television and

02:14   20   said "well maybe I did" --

21 A   Yeah.

22 Q   -- or implying that maybe he did?

23 A   Yes.

24 Q   And I think what you are saying is "well, maybe he

02:14   25   did, he has always said that"?

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1   A   And he always has, that he just didn't know.

2   Q   336852, if we can go to page 336901. And this is

3   in September of 1990, and this is a discussion

4   with you and Dan Lett, and I think Dan Lett went

02:14 5   up to visit your son David from time to time; is

6   that right?

7   A   Yes, he did.

8   Q   And I think you say here:

9   "And ... he said well just ... I'm gonna

02:15 10   tell him about Hersh and David but I'm

11   gonna tell him that, that my reason for

12   it is because I feel that they've done

13   everything that they can do but now is

14   the time to just sit back and ... just

02:15 15   wait, and he, of course his feeling was

16   ..."

17   "... which is unrealistic Dan, that the

18   work is done, he can sit back now and

19   he's just gonna walk out of there."

02:15 20   And I think this is the time around when David,

21   your David, had said he was -- he had fired Hersh

22   and David Asper; correct?

23   A   Correct.

24   Q   And then that:

02:15 25   "... the decision is gonna be let him go

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1   and I said David, what if that is not

2   the decision? What if it has to go back

3   to a court? He said well, I'll have to

4   deal with that then but he said right

02:15   5   now he said, I would like to ... put it

6   up to the public about what ... Williams

7   is doing to us, and he said I would like

8   ... under apparently a section of the

9   Code somewhere that he's dug up, he

02:15 10   feels that as a family, we could go

11   after Williams for ineffective

12   administration of justice."

13   And then Dan Lett says yeah:

14   "... what you do is ... you can ... you

02:15 15   can bring an action against the Minister

16   ... the section of the Criminal Code

17   that allows for this type of review also

18   says that the Minister is performance

19   ...",

02:16 20   etcetera. And am I correct that, at this time,

21   Mr. Lett and your son David, the discussion there

22   is that your son wanted to bring a criminal

23   prosecution against Eugene Williams?

24   A   And against the Justice Department.

02:16 25   Q   And do you recall him taking that view at the

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1   time?

2   A   Yes, I do, and I know that he, between he and Dan

3   they found the legislation that would allow you to

4   do that type of thing, and that's where he wanted

02:16   5   to go with it.

6   Q   And so this was something that Mr. Lett was

7   working with him on, to see whether or not he

8   could initiate a prosecution?

9   A   I think David asked for his help in it --

02:16   10   Q   And --

11   A   -- and Dan had provided the information he needed.

12   Q   And is it correct that your son David would not

13   have had any direct contact with Eugene Williams

14   up to this point; is that correct?

02:16   15   A   No. But, you know, he'd have the input from all

16   of us about what went in.

17   Q   And so your son David's impression of what role

18   Eugene Williams was playing in the matter would

19   have been, he would have been informed of that by

02:17   20   you, Dan Lett, and Mr. Asper; is that correct?

21   A   Yeah, well he heard through us what had happened

22   to Deborah Hall, what had happened to Linda Fisher

23   and, you know, when we were approaching Justice

24   about the way he was behaving, David would have

02:17   25   been aware of all of that.

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1   Q   And so his reaction at this time was to say based

2   on the information he'd received from you, Mr.

3   Asper, Mr. Lett, Mr. Wolch -- and would there be

4   anyone else that would be communicating to David,

02:17   5   to your David?

6   A   Not really. Not really.

7   Q   And his reaction was, "there, based on that

8   information, I want to prosecute Mr. Williams and

9   the Justice Department for a criminal offence"?

02:17   10 A   That's right.

11 Q   And did that cause some issues between he and

12   Mr. Wolch and Mr. Asper? Actually, let me bring

13   up a document, 331162, and go to page 331180. And

14   I think what this transcript talks about, this is

02:18   15   a discussion I think with Mr. Asper, and this is

16   where I think he is talking about getting Mr.

17   Williams arrested, or that Hersh should be

18   arrested. And I think, was there a suggestion

19   that because Mr. Wolch and Mr. Asper may be

02:18   20   friends with Mr. Williams, or be lawyers, and

21   that's why they were not taking steps, that

22   somehow Mr. Wolch and Mr. Asper might be somehow

23   responsible; do you recall that coming up? I'm

24   not sure if I'm reading this right, I think that's

02:18   25   what was --

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 1    A      Yeah.  At that time David was just out of it, he

 2           really was out of it.

 3    Q      And, if we could go to page 182, and this is

 4           where:

 5                     "I think that what he ... really feels

 6                     very strongly about ... Williams ... he

 7                     really feels that you people are not

 8                     acting against Williams because he's

 9                     your friend."

10           And that would be referring to Mr. Wolch and Mr.

11           Asper?

12    A      That's correct.

13    Q      And then on page 331186.  And here there is a

14           further discussion, again this same -- and I think

15           this is with Mr. Asper, and here:

16                     "Oh, he said that to ... you some time

17                     ago."

18           Or, sorry, back up.  I think Mr. Asper says:

19                     "But, we've never, we've never been

20                     advised to go after Williams.  He's,

21                     that's never, I mean...",

22           and then you say:

23                     "... he said ... to you some time ago.

24                     He wanted to have, and you told me that

25                     he told you he wanted Williams
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 1                            arrested."

 2              And the male, who I think is Asper, says:

 3                       "No, he told me he wanted Penkala and

 4                       Caldwell arrested ...",

 5              So, again, would that have been around this time

 6              that he, based on information that your David

 7              would have received from you and Mr. Wolch, Mr.

 8              Asper and Mr. Lett, that in addition to Mr.

 9              Williams he felt that Mr. Penkala and Mr.

10              Caldwell should be arrested?

11      A       Yeah.  I mean he, you can see, he was quite out of

12              it at that point.

13      Q       If we can go to 337105.

14      A       But, if you'll notice, I -- right there:

15                       "Well, we talked about that too ...",

16              and that's, I said:

17                       "... I still don't think it's a bad idea

18                        to sue those guys ...",

19              and I had actually talked to them about launching

20              a lawsuit because I felt that maybe that would

21              get it out there.

22      Q       And 337105.  Again, this is around September of

23              1990 -- go to page 337140.  And I think this is a

24              discussion around September 1990 between you and

25              Donna Friesen.  Donna Friesen, I think, was a
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02:20   02:20   02:20   02:20   02:21

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1   reporter with --

2   A   CBC.

3   Q   -- CBC, and you appeared on a radio phone-in show

4   with Roy Norris; do you remember that?

02:21 5   A   Yes, I did. That, Roy Norris, that's in

6   Saskatchewan?

7   Q   Saskatoon, yes.

8   A   Saskatoon, yes.

9   Q   It's a phone-in radio show. And there is a

02:21 10   discussion here where you are talking about -- go,

11   scroll up to the top, please. And I think, and I

12   think you are referring to what Mr. Norris said to

13   you, you said:

14   "What he'd said to me was about the

02:22 15   witnesses and it's something that you

16   know it just sort of crept in I guess

17   through the years ... I said the police

18   went down and talked to these witnesses

19   from Saskatoon. They drove all the way

02:22 20   down to Regina and talked to these

21   witnesses and said don't talk to

22   Mrs. Milgaard and I said why and he said

23   are you sure they said don't talk to

24   Mrs. Milgaard or did they say you don't

02:22 25   have to talk to Mrs. Milgaard. And all

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1   of a sudden it just stopped me dead in

2   my tracks and I...I...then I sort of

3   turned my thought and listened and you

4   know it was. They did. And I said you

02:22   5   know you're right. That's what they did

6   say. They said you don't have to talk

7   to Mrs. Milgaard. But I said why would

8   they do that? Why would they drive all

9   the way down from Saskatoon to Regina

02:22 10   anyhow and say that? Because I had

11   admitted and I had realized that its

12   just sort of a leap that I took in my

13   thought because ..."

14   And then Donna says:

15   "Yeah, I see what you mean."

16   "... but it wasn't right and it was good

17   that he caught me up on that."

18   Yeah, no, back up. And then Donna says:

19   "Well I guess there's nothing real...I

02:23 20   mean I think I've asked you this before

21   and I seem to remember your answer was

22   you didn't really want to lay blame but

23   do you feel...I mean is there some

24   accountability here from Saskatoon that

02:23 25   you still would like someone...",

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1   and then:

2   "Oh...definitely".

3   I'm just wondering if you could elaborate on that

4   comment? It seems to be that you are saying that

02:23 5   Mr. Norris challenged you a bit on your comment

6   that Saskatoon Police went and told witnesses not

7   to talk to you and said "maybe what they did say

8   is you don't have to talk to them if you don't

9   want to", and that you agreed with him and said

02:23 10   "okay" --

11   A   I did agree with him, because as he said that to

12   me -- and that's one of the reasons, I obviously

13   hadn't played my tapes over before I went on the

14   show -- but when I got that information from him I

02:23 15   knew he was correct, he was right in that, when he

16   said it it twigged a memory and I admitted right

17   on the show that that was the truth.

18   Q   And so --

19   A   But I still felt it was very suspicious that they

02:23 20   were, Saskatoon Police, were down in Regina saying

21   that to the witnesses.

22   Q   And just so that I'm clear on this, after the Roy

23   Norris show you then said, okay, the police didn't

24   go down and tell the witnesses that you don't --

02:24 25   they didn't go down and tell the witnesses "don't

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1		talk to Mrs. Milgaard", but rather they went down
2		and said "you don't have to talk to
3		Mrs. Milgaard"?
4	*A*	That's right.
02:24 5	*Q*	Is that the distinction?
6	*A*	That was the distinction there. Now it's
7		possible, because it was very firmly established
8		in my mind the other way, that at a later date I
9		could still have said that, but that particular
02:24 10		time I remember just having -- when he said that
11		to me I thought "you're right, that is the
12		situation".
13	*Q*	If we could go to 222477. Now this is a news
14		release October 9, 1990, and there is a letter
02:24 15		that goes with it, so this would be a week after
16		the October 1 meeting with Mr. Wolch, Mr. Asper,
17		and the Justice officials, and it says:
18		"David Milgaard and his family have
19		today in the attached letter challenged
02:25 20		Mr. Eugene Williams of the Federal
21		Department of Justice to account for his
22		inaction on the Milgaard case.
23		Demanding that he meet personally with
24		the family with 72 hours, Milgaard
02:25 25		states in his letter, 'Do you have the

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1   courage to face us and the truth?'"

2   "Although Milgaard's counsel,

3   David Asper and Hersh Wolch, met with

4   the Justice Department officials in

02:25   5   Ottawa on October 1, 1990, Milgaard

6   stated, 'I appreciate what they're

7   doing, but you can't realistically

8   expect me to have any faith in the

9   system. I'm going to tell the world

02:25 10   that I am not getting the respect an

11   innocent man deserves."

12   And then just go to the next page, and this is a

13   letter from David to the minister -- or to Eugene

14   Williams, it looks like it's prepared by Mr.

02:25 15   Asper's office; is that correct?

16 A   That's correct.

17 Q   And it says:

18   "I feel you have failed me and my

19   family. You are responsible for my

02:26 20   application, and you received it in

21   1988. I am an innocent man and have

22   written to Minister after Minister with

23   questions, and none have ever been

24   answered.

02:26 25   Dr. J. Ferris made it clear in

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1   his report that I never murdered anyone,

2   and in fact someone else did. At the

3   very least you should have had a group

4   of specialists prove or disprove this.

02:26   5   It was my family and I who had to obtain

6   the second opinion.

7   We want you to come to see us

8   personally and explain why this has

9   happened. If we have not heard from you

02:26   10   within 72 hours, we will simply have

11   proven our point. Do you have the

12   courage to face us and the truth?"

13   Do you recall how this came about and what the

14   purpose of this was?

02:26   15   A   David felt that he had to do something, that he

16   couldn't sit still any longer, that something had

17   to be done, and he wanted to have a press

18   conference and get this information out there.

19   Q   And it would appear -- and please correct me if

02:27   20   I'm wrong -- that in this letter your David is

21   relying on the Ferris report, saying "lookit, this

22   report makes it clear that I never murdered

23   anyone"?

24   A   Yes.

02:27   25   Q   And on October 1, 1990 I expect, some of the

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1   evidence we've heard and I expect more evidence

2   that we will hear, is that your lawyers were told

3   at that meeting by Justice officials that they did

4   not put much stock, if any, in the Ferris report.

02:27 5   And so here, again, would David have been unaware

6   of that if that were, in fact, the message sent at

7   that meeting?

8   A   If that -- it's possible that they didn't share

9   that with him because of the state he was in.

02:27 10   Q   And so is it correct that at this time your David

11   is of the view that the Ferris report is his key

12   out of jail, that it proves his innocence?

13   A   It would certainly look like that.

14   Q   And that, notwithstanding the meeting that took

02:27 15   place with his lawyers, he wanted a face-to-face

16   meeting with Mr. Williams?

17   A   Correct.

18   Q   159805. And, again, this news release would have

19   been sent out to the media; correct?

02:28 20   A   Yes.

21   Q   And would the hope be that this would again get

22   some exposure to the case and cause people to sit

23   up and take notice, again, similar to the other

24   information that was given to the media?

02:28 25   A   I think so.

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1   Q   And this is one, I think there are others, this is

2   just one article that talks about the ultimatum,

3   there's nothing specific in there, but, again,

4   that would have been one of the objectives here

02:28 5   with this, was to get the matter back in the news,

6   --

7   A   Yes.

8   Q   -- keep it in the news? 217222, please. And this

9   is the article that you had referred to earlier

02:29 10   with respect to the comments; do you remember

11   that?

12   A   Yes.

13   Q   And I think, this article is not dated, but I

14   believe it is around November 1990. If we can go

02:29 15   back to the full page, please, and there is a

16   comment here that says:

17   "Some senior justice officials ...",

18   and this is Mr. Lett:

19   "Some senior Justice officials believe

02:29 20   department lawyer Eugene Williams has

21   mishandled the investigation into

22   Milgaard's application and are trying to

23   rewrite his report before giving it to

24   Justice Minister Kim Campbell, sources

02:29 25   said.

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1   In addition, Milgaard's lawyer,

2   David Asper, has accused Williams of

3   completely misconstruing evidence

4   obtained during his two-year review of

02:29 5   the application.

6   Asper said concerns about

7   Williams' handling of the case emerged

8   during a meeting in October when he and

9   co-counsel Hersh Wolch met Williams and

02:29 10   other Justice Department officials."

11   And talks about:

12   "... there was very clearly a bias

13   against our client, but for reasons that

14   he ... couldn't explain.'"

02:30 15   So is it correct that, certainly from Mr. Asper's

16   perspective, that the October 1 meeting with --

17   if we can go back to the full page, please --

18   that the October 1 meeting with Justice may have

19   been more negative, from his perspective, as to

02:30 20   what he observed?

21   A   Yes, I -- and when I, I read that, I remember

22   David being absolutely -- David Asper being

23   absolutely livid about Williams, and I think Hersh

24   said something to the effect, almost, that he was

02:30 25   ready to attack him physically he was so upset.

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1   Q   This is at the October 1, 1990 --

2   A   Yes, yeah, they really got into it.

3   Q   So if we go back to my question earlier, that

4   after the October 1, 1990 meeting, your impression

02:31   5   of whether things were going well, and whether

6   your information and the application you had filed

7   was being favourably looked at by the minister, is

8   it correct to say that maybe there were some

9   concerns that --

02:31   10   A   There were some concerns. Now that you've got me

11   into the time slot there with this part, I can

12   remember David Asper coming back at that time and

13   how furious he was, and Hersh trying to calm him

14   down, but a feeling that something was definitely

02:31   15   wrong at that point.

16   Q   And then as far as your optimism that your

17   application would be favourably received by the

18   minister, would it be correct to say that maybe

19   you had some concerns after the October 1 meeting,

02:29   20   the meeting of your counsel, that --

21   A   That's right.

22   Q   Now, what about --

23   A   One of the things that came out of that meeting,

24   if I'm not -- and, I mean, you'll be examining

02:30   25   David Asper on this, but it seems to me where

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1   David became ballistic about it, David Asper, was

2   when he discovered all these reports and

3   everything that we had never been given and he

4   said -- oh, I know what it was, he had all of

02:30   5   David's psychiatric reports and records and he was

6   so upset because we couldn't get hold of them and

7   he said "how did you get them?" and the two of

8   them got into it.

9   Q   Now, if I might assist, I think that as far as

02:30   10   dates, there was a meeting in either December of

11   1991 or January of 1992 right before the Supreme

12   Court reference where Mr. Williams had David's,

13   your David's psychiatric records that were going

14   to be put in as evidence at the Supreme Court

02:31   15   reference at which time I know that Mr. Asper,

16   there's some documents where he was quite irate at

17   that.

18   A   Oh, okay. Then I'm mixing up those two meetings.

19   I would have thought that that was then.

02:31   20   Q   Now, there could be more than one meeting where

21   Mr. Asper was irate with Mr. Williams.

22   A   I'm sure there was.

23   Q   And so just back to this time, and I don't want to

24   suggest that your recollection is of the Supreme

02:31   25   Court meeting.

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1   A   I think it was, because it was the psychiatric

2   reports, so if that is in the Supreme Court

3   part --

4   Q   I believe it is.

02:31 5   A   -- then that would be that meeting, not the

6   October 1st meeting.

7   Q   But again, back to this meeting then, is it your

8   evidence that Mr. Asper was not upset with Mr.

9   Williams at this time or do you recall anything of

02:31 10   that nature?

11   A   I think he was always upset with Mr. Williams, but

12   I would say that at this time -- my feeling was

13   that, my recollection was at that first meeting

14   they were not that discouraged by it.

02:32 15   Q   Okay. If we can just call this paragraph up

16   again, please. Do you have any personal knowledge

17   about what is being referred to here, that:

18   "Senior justice officials believed

19   department lawyer Eugene Williams has

02:32 20   mishandled the investigation ... and are

21   trying to rewrite his report ..."

22   Do you know --

23   A   No. I remember Dan dug up that information and I

24   had no idea where he got it.

02:32 25   Q   Dan Lett?

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1   A   Yes.

2   Q   And do you know who the senior justice officials

3   were?

4   A   No, no. I believe he kept his sources secret from

02:32   5   me too.

6   Q   And then 159802, I think after this article,

7   December 4, 1990, "Furious Campbell defends

8   handling of Milgaard case".

9   A   Oh, yeah.

02:32   10   Q   And it appears that Ms. Campbell reacted, became

11   upset with what Mr. Asper had said about the

12   manner in which her department handled the matter;

13   is that correct?

14   A   That's correct.

02:33   15   Q   And at the bottom her response as reported here

16   is:

17   "I'm concerned about what I consider an

18   extraordinarily unprofessional approach

19   that is being taken by some people," she

02:33   20   said."

21   And again, at this point would --

22   A   She was being harassed in the House. I mean, John

23   Harvard was after her, Lloyd Axworthy was after

24   her, a lot of people were after her in the House

02:33   25   about what she was doing, and so this is why she

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1		came flying back, fighting back.
2	Q	Isn't that precisely what the plan had been,
3		though, back in the spring of 1990?
4	A	Yes.
5	Q	To get, to put all this pressure on her?
6	A	Yes.
7	Q	From all directions?
8	A	Yes.
9	Q	And so is it correct to say that at this point
10		that this was going according to plan, that she
11		was feeling the pressure from your group?
12	A	Yes, but she was reacting in a way that we weren't
13		comfortable with let's say.
14	Q	And elaborate on that, you were hoping for what?
15	A	Well, we were sort of hoping that she would do
16		something about the case rather than stand up and
17		defend her actions.
18	Q	Okay. And so was there a concern at this point,
19		or at any point, that the strategy or the plan may
20		not be unfolding as it had hoped?
21	A	A little. I was hoping that we didn't get her so
22		mad that she wouldn't look at it favourably.
23	Q	Was that a concern at this time?
24	A	It was certainly my concern as David's mom.
25	Q	And explain a bit further, that somehow all this

Line timestamps: 02:33 (line 5), 02:34 (line 10), 02:34 (line 15), 02:34 (line 20), 02:34 (line 25)

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 1              publicity and all this pressure might have a

 2              negative effect on her --

 3       A      That she might say just turn the thing down.  I

 4              mean, she was government, she could do what she

02:35  5        wanted.

 6       Q      Now, you'll recall, and I don't have it handy

 7              here, but she did at one point, and I can't

 8              recall, I think it was around this time or perhaps

 9              on the second application, indicate that the

02:35 10        justice minister exercising the discretion under

11              Section 690 of the Code could not be persuaded

12              about how popular an applicant could be and how

13              much media coverage they could get and how much

14              pressure they could put on, that those are matters

02:35 15        that the minister should not be looking at in an

16              application for mercy, I think I read that to Mr.

17              Asper.  Do you remember that part where she said

18              she should not, she would not -- should not be

19              persuaded by those external things?

02:35 20        A      That's right.

21              Q      And again, so at this time am I correct that one

22              of the concerns that came to light is that lookit,

23              maybe this is pushing her the wrong way as opposed

24              to the right way?

02:35 25        A      I think I had some concerns there, yes.
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1	Q	159801. You'll be happy to know we're almost in
2		1991, Mrs. Milgaard.
3	A	Do you realize this is practically an anniversary?
4	Q	For?
02:36 5	A	37 years.
6	Q	Today?
7	A	Think of the date today.
8	Q	I'm not following. May 17th.
9	A	Yeah, the date today is when they -- wasn't that
02:36 10		the date that they went out and interviewed David?
11	Q	No, I think we're back in March, March 3rd.
12	A	Well, anyhow, I was figuring out at this date
13		somehow that we were right at our 37th year that
14		I've been doing this, and I would really
02:36 15		appreciate it, Mr. Hodson, if you finish it off
16		quickly.
17	Q	Okay. I'll see what I can do. I'm only
18		responsible for half though.
19	A	Okay.
02:37 20	Q	This is an article that talks about your trek to
21		Ottawa and this is where you went and visited MPs
22		and handed out the Centurion Ministries' report;
23		correct, and I think --
24	A	That's correct.
02:37 25	Q	Bring up 009456, and this is your letter to

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1		members of parliament, and if we can go to the
2		next page, this is the Centurion report that was
3		prepared; is that right, that you sent out?
4	A	That's correct.
5	Q	Can you tell us, what was the purpose -- who
6		prepared this report and what was the purpose of
7		it?
8	A	Well, we had a number of the officials in the
9		House that were actively acting on our behalf and
10		we felt that if we could get all of this
11		information out, that we would get more of them,
12		and the report I think was prepared by Centurion,
13		I mean, it's got their logo and everything on it,
14		so I'm sure that it was prepared by Jim.
15	Q	I think Mr. Henderson's evidence was that Mr.
16		McCloskey would have prepared most of it with
17		input from --
18	A	Yes, from us.
19	Q	And I guess my question is that, if we can go
20		back, your first written application was made
21		December 28th, 1988, the written materials were
22		filed, it was supplemented by letters and
23		information, and then October 1, 1990 your counsel
24		made submissions before the departmental report
25		went up to the minister, I think you said you knew

02:37 (line 5)
02:38 (line 10)
02:38 (line 15)
02:38 (line 20)
02:38 (line 25)

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1		that went up to the minister?
2	A	Right.
3	Q	And here's another piece of information and I'm
4		wondering why this would not have been given to
5		the Department of Justice much like all the other
6		information to go up to the minister as opposed to
7		giving it to members of parliament by you. Was
8		there some reason that it was done this way to get
9		further information other than through the regular
10		course?
11	A	I don't recall that.
12	Q	Okay. Was there a concern that if you sent this
13		report in again, that it might delay matters; is
14		that -- or was this more of a political --
15	A	I think it was more of a political ploy and that
16		we thought we wouldn't even give it to her. I
17		don't even know if we gave it to her. I think it
18		went to every other MP in the House.
19	Q	And was that to try and get other MPs to influence
20		the minister?
21	A	It was.
22	Q	213025, and I think this is a January 11th, 1991
23		letter and this is, I think, identical to the
24		letter that was sent to Eugene Williams by David
25		on October 9th about you failed my family, you are

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1   responsible and challenging him, or the courage to

2   face us, and this one is now sent to Mr.

3   MacFarlane. Do you know how and why that came up?

4   A   No, I don't. It probably was in one of my son's

02:40 5   down sessions.

6   Q   And I'm wondering why Mr. MacFarlane would be the

7   recipient of this?

8   A   Well, because we were obviously all aware that

9   Williams was not going to do anything and

02:40 10   MacFarlane was in charge of him.

11   Q   And so it would be one person up?

12   A   One person up, yes.

13   Q   Go to 001529, this is the February 27th, 1991

14   letter from Kim Campbell to Mr. Wolch that

02:40 15   outlines the response to the first application, we

16   have been through this on a number of occasions,

17   and I presume this is a document, Mrs. Milgaard,

18   that you have reviewed a number of times over the

19   years and at the time; is that fair?

02:41 20   A   Yes, that's fair.

21   Q   And if we can go to page 001530, there's a

22   reference here about Mr. Justice McIntyre and it

23   says:

24   "In view of the allegations that were

02:41 25   made, senior --"

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1   And I think those allegations were the ones that

2   Mr. Asper made saying because Mr. Williams had

3   contacted Mr. Caldwell and that he said Mr.

4   Williams was biased, that that would be -- that

02:41 5   was your understanding of the allegations; is

6   that correct?

7   A   I think it was, yes.

8   Q   "-- senior officials concluded that, in

9   the particular circumstances of this

02:41 10   case, especially in view of the public

11   perceptions that could flow from these

12   unwarranted allegations, it would be

13   appropriate to seek the advice of

14   eminent counsel ..."

02:41 15   Etcetera.

16   "The Honourable William R. McIntyre ...

17   was retained for that purpose."

18   "Mr. McIntyre has reviewed the case in

19   detail, and has provided his advice to

02:42 20   me as well."

21   Do you remember when you would have become aware

22   of this, the fact that Mr. McIntyre had given an

23   opinion to the minister?

24   A   When we got the letter.

02:42 25   Q   And we see in subsequent correspondence your

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1   counsel raised that as an issue, did they not,

2   that they had concerns about that?

3   *A*   I need to take a break.

4   **Q**   Sure.

02:42   5   *A*   I find -- this is a letter I find very upsetting

6   and I would really appreciate a break.

7   **Q**   Sure, we'll take the afternoon break.

8   *(Adjourned at 2:42 p.m.)*

9   *(Reconvened at 3:02 p.m.)*

03:02 10   *A*   Mr. Commissioner, I would like to apologize to you

11   for my breakdown.

12   COMMISSIONER MacCALLUM: Oh, don't

13   apologize for that, that's fine. Thank you.

14   BY MR. HODSON:

03:02 15   **Q**   Thank you. If we could just, again 001529, I just

16   have a couple of questions about this, and the

17   letter details a response to I think five of the

18   issues raised in the application and I think what

19   we see from subsequent correspondence and

03:02 20   comments, that -- and maybe to understate it would

21   be that your response to this was that you did not

22   agree with, fair to say, anything that the

23   minister came back and told you; is that correct?

24   *A*   I think the main thing was it was a no and I had

03:03 25   expected a yes.

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1   Q   Right. And again, I don't want to get into too

2   much of the detail, but if we go to, for example,

3   001533, and this is dealing with the submissions,

4   and this would be the first ground, you remember

03:03   5   when you initially filed it, the ground was that

6   Deborah Hall, based on Deborah Hall's affidavit

7   she said Melnyk and Lapchuk lied at trial and

8   therefore that was the new ground, and the

9   minister came back and side lookit, after

03:03 10   interviewing Deborah Hall, she actually

11   corroborates the incident. She may have a

12   different view about whether it was serious or

13   not, but it actually corroborates Melnyk and

14   Lapchuk and it's not a lie about the incident,

03:03 15   etcetera, so again, that would have been the

16   response saying lookit, that ground of your

17   application fails, and I'm wondering, is that what

18   your reaction would have been to that at the time,

19   was it something you looked at and said, oh, okay,

03:04 20   I guess that was wrong, or we disagreed with that,

21   we think you got that wrong?

22   A   I disagreed with it wholeheartedly.

23   Q   And because of the substance of what she said or

24   was it simply lookit, you turned us down,

03:04 25   therefore anything and everything you say I

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1		dispute?
2	*A*	No, I think it was that we really believed that
3		Deborah Hall, even though she had said a lot of
4		things to Williams that she didn't say to us, the
03:04 5		fact that she was saying it was a joke was
6		important and should have been taken into
7		consideration.
8	Q	Okay. So that sort of an alternative position
9		that what was initially put forward, that okay,
03:04 10		the incident happened, but there was evidence that
11		could have been put in front of the jury that --
12	*A*	That it was a joke.
13	Q	That it was a joke. And so that would have been
14		something you thought should have been considered?
03:05 15	*A*	I felt that the jury should have known that, yes.
16	Q	And then on the next page, the forensic evidence,
17		and again we've been through this before, if we
18		can go to the next page, and basically it says a
19		couple of things, one, the application proceeds on
03:05 20		the assumption that David Milgaard is a
21		non-secretor and I think they in a way say, well,
22		that's not necessarily the case.
23	*A*	Yes.
24	Q	But even if we assume that it is, they then go on
03:05 25		to say, based on discussions with Dr. Ferris, that

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1   basically when interviewed he agreed that once

2   contamination of the sample was taken into

3   account:

4   "... the forensic evidence neither

03:05   5   inculpated nor exculpated David

6   Milgaard."

7   And goes on to basically say lookit, the Dr.

8   Ferris report doesn't get anywhere. In fact, go

9   to the next page, there's one other line:

03:06   10   "The suggestion that the forensic

11   evidence exonerates Milgaard mis-states

12   the value of that evidence."

13   So here sort of the two grounds, the second

14   ground that you put forward, being the Ferris

03:06   15   opinion, the minister came back and said, number

16   one, the assumption that David is a non-secretor

17   is flawed, two, even if he is a non-secretor,

18   Ferris has basically confirmed that the sample is

19   contaminated and doesn't exonerate him, and that

03:06   20   the application misstates the value of that by

21   saying it proves innocence when it doesn't, it

22   proves nothing, that would be paraphrasing the

23   response back; correct?

24   A   Correct.

03:06   25   Q   And was that something that you took issue with?

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1   I'm trying to understand, when you got that back

2   did you say okay, well, on that specific piece I

3   see where the minister is coming from and what we

4   now know maybe wasn't as good as we thought, or

03:07 5   were you saying lookit, you are dead wrong,

6   Ferris' opinion still proves innocence?

7   A   Mr. Hodson, I really hardly read it, I didn't get

8   into the specifics of it because I found it so

9   upsetting that he was being turned down and I

03:07 10   think I really left the rest of it for the

11   lawyers.

12   Q   Okay. And so again is it correct to say though

13   that -- let me back up. So you would let your

14   lawyers interpret what it meant and go through all

03:07 15   these things. Do you have a recollection then of

16   what Mr. Asper, Mr. Wolch would have said to you

17   about the response, would it be, one extreme would

18   be everything she says is wrong, she's wrong on

19   every one of the grounds we put forward, there's

03:07 20   no merit in anything she says, the other extreme

21   might be that some of the grounds that we put

22   forward it turned out weren't as good as we

23   thought and there might be some merit in what she

24   has to say -- again, not agreeing with the overall

03:08 25   response, but with respect to the certain grounds

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1   put forward -- and can you tell us where in there

2   your thinking might have been or what your lawyers

3   might have been telling you?

4   A   Well, I think that the lawyers pointed out that

03:08 5   she could take that view, but that she could have

6   had a more expanded view which would have allowed

7   her to open the case, and of course we had no

8   knowledge of what she gave to Mr. McIntyre to

9   view, we didn't know what he had saw when she

03:08 10   sought his opinion. This would be the second time

11   that -- like, I've not gone through it for years

12   because it's a document that I just found

13   extremely upsetting.

14   Q   And I'm trying to get an understanding, though,

03:08 15   of -- because we go into the next application in

16   August of 1991.

17   A   Yes.

18   Q   And I'm trying to understand that after this

19   response came back, was it okay, well, let's

03:09 20   regroup and find something else, or lookit, we

21   think she's wrong on a number of these points and

22   there should have been enough information, she

23   should have done something?

24   A   We felt she should have done something. We

03:09 25   decided to regroup, we went ahead and decided

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1   that -- all I remember is calling Jim McCloskey

2   and that's when Jim said we've got to go out,

3   you've got to do a profile of Larry Fisher and,

4   Joyce, you are going to have to go out and

03:09   5   interview the witnesses.

6   Q   If we can go to 165532, please, and this is a

7   letter March 12th, 1991, if we can go to the last

8   page, page 538. This letter is signed by you and

9   your family; is that correct?

03:10   10   A   That's correct.

11   Q   And if we can just go back to the first page.

12   When I questioned Mr. Asper on this, there was an

13   earlier draft of March 4th that was very similar

14   on Wolch Pinx letterhead from David and it

03:11   15   appeared, I think Mr. Asper confirmed this, that

16   it was revised, and rather than being his letter

17   it became the family letter, but that it would be

18   principally drafted by him on the family's behalf;

19   is that correct?

03:11   20   A   That's correct.

21   Q   And again, as far as the details of what's put in

22   here, the March 12th letter, would it be correct

23   to say that this would be Mr. Asper's drafting on

24   behalf of the family saying lookit, here's what

03:11   25   the family thinks, as opposed to you sitting down

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	1	and saying, okay, David, I would like you to raise
	2	this point, this point, this point?
	3	A	I think we did talk about what points were
	4		necessary to be in it.
03:11	5	Q	In a general way?
	6	A	In a general way, yes.
	7	Q	And I guess the drafting though was left up to Mr.
	8		Asper, that what -- in other words, we take issue
	9		with a whole bunch of things, you would have
03:11	10		discussed it with Mr. Asper, some of these things,
	11		but you would have left it up to him as to how to
	12		characterize it; is that fair?
	13	A	Yes, yes.
	14	Q	And this letter would have represented the family,
03:12	15		your view and your family's view about your
	16		response to the minister's letter; is that
	17		correct?
	18	A	Yes.
	19	Q	162441, this is a news release March 12th, 1991,
03:12	20		and this is the David Milgaard Support Group, care
	21		of John Howard Society. We talked earlier about
	22		the fact sheet, and I'm going to get to that, in
	23		August of 1991 when we get there. Who -- was
	24		there more than one support group?
03:12	25	A	Yes, there were support groups all across the

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1   country.

2   Q   Who was this support group, are you able to

3   identify?

4   A   Well, this would be the Winnipeg one.

03:12 5   Q   And so this would be the one -- you would have had

6   some involvement with these people; is that right?

7   A   With all the people right across the country, each

8   support group. Like, in Ottawa, when I was there

9   I would visit with the support group members. All

03:13 10   across the country, they were there.

11   Q   And so here, and this is the response, again it's

12   out of Stony Mountain Penitentiary, would that

13   have been -- would your son David have been part

14   of this group?

03:13 15   A   Yes, he was.

16   Q   Call that out, please.

17   A   We had a press conference that day.

18   Q   And so would this have been on behalf -- I mean,

19   would you have had some involvement in the

03:13 20   drafting of this or this coming forth?

21   A   Absolutely.

22   Q   And so here:

23   "The David Milgaard Support Group to-day

24   officially declared war on the Minister

03:13 25   of In Justice, Kim Campbell and her

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1   department."

2   A   David did the "Minister of In Justice", that was

3   his wording, my David.

4   Q   David Milgaard?

03:13 5   A   Yes.

6   Q   And so again this would have been sort of the

7   family position and the group's position?

8   A   Yes.

9   Q   Declaring war on the minister?

03:14 10   A   That's correct.

11   Q   And then 006737, doc. ID is 006736, next page, and

12   so this I think is around the same date,

13   "Milgaards Declare War." "Prisoner, family target

14   Campbell in campaign," and here Mr. Asper says:

03:14 15   "Her decision is an outrage. Either she

16   got bad advice and didn't exercise due

17   diligence, or she is an active

18   co-conspirator in this injustice."

19   And would that have sort of represented your

03:14 20   views at the time?

21   A   Yes, it did.

22   Q   And would it be correct to say that -- I think we

23   saw earlier on that the, much of the focus, if I

24   can call it that, of the Milgaard group's public

03:15 25   criticism of the system would have been focused on

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         1   Eugene Williams; is that correct --

         2   *A*   Yes.

         3   **Q**   -- prior? And is it now --

         4   *A*   Focused on the minister.

03:15   5   **Q**   Focused directly on Kim Campbell?

         6   *A*   Yes.

         7   **Q**   A bit of a shift, that Kim Campbell is now the one

         8   that is, well, declared war on; is that --

         9   *A*   That's correct.

03:15   10   **Q**   And what did you mean by that, when you say

        11   declare war, what message were you trying to send

        12   or what were you trying to say?

        13   *A*   Well, if you go back to what we, to that first

        14   document where we said that, I think in it it sets

03:15   15   it out pretty clearly, that was -- I don't know

        16   the number.

        17   **Q**   Sure, 162441.

        18   *A*   Okay, we wanted her to know that we wouldn't stop

        19   fighting until justice is done and we felt that

03:16   20   David had become a political prisoner, he's been

        21   in, being held hostage by the criminal injustice

        22   system, a prisoner of conscience, and we had, I

        23   cannot tell you the calls that I got from people

        24   all across the country and they were outraged with

03:16   25   this decision and they all said that they would

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1   fight to make sure that this decision was changed,

2   that it's gone beyond David, it threatens everyone

3   if the justice system can do this, it's an affront

4   to decent people everywhere, she's just making a

03:16 5   mockery of the due process that we have and that

6   the Charter of Human Rights gives, so we felt we

7   couldn't let it go unchallenged, and that's why we

8   had that meeting and we started to go out and I

9   remember coming home that day feeling that I was a

03:17 10 failure to David and the family, but I knew that I

11   had to start again and I did the very next day, I

12   was on CBC or one of the television programs and

13   encouraging support group members to come forward

14   and help.

03:17 15 Q   Now, I don't want to get into the legal issues

16   that followed this, I think what we saw and heard

17   from Mr. Asper, that after this decision, for some

18   time or a short time period one consideration was

19   going to Federal Court to quash the minister's

03:17 20   decision or to challenge that, perhaps go to the

21   Court of Appeal?

22   A   Yes.

23   Q   But ultimately I think in April of 1991, within

24   about a month, within a month or so of the

03:17 25   decision, the decision was made to make a second

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1   application; is that right, to go back to the

2   minister with more -- more and different

3   information?

4   A That's correct.

03:17 5   Q And I think that's where Mr. McCloskey -- would it

6   be correct to say that the second application,

7   that the principal guiding force on that, would

8   that have been Mr. McCloskey, or am I overstating

9   his involvement? Let me rephrase it. Would it

03:18 10   have been his idea to say we've seen in some of

11   the documents and heard his reports where, and you

12   just told us Mr. McCloskey said go out, talk to

13   all the victims and let's analyse the specifics of

14   each of Mr. Fisher's crimes and compare that to

03:18 15   Gail Miller and use that as a basis to go back to

16   the minister?

17   A Yes, I believe that he felt that that was the

18   right steps to take. However, I believe that

19   Hersh and David were the ones that were the

03:18 20   driving force behind it. Jim was just sort of

21   there giving advice, but he then agreed to send

22   Paul Henderson up to work with me to go out and

23   see the victims because I just felt I didn't want

24   to go and have to see these women and I knew what

03:18 25   I would be asking them to do.

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1   **Q**   Whose idea was it to go interview the victims and

2   get --

3   *A*   Jim McCloskey's idea.

4   **Q**   And what was the purpose of interviewing, what

03:21   5   were you hoping to get from that?

6   *A*   He felt that we had to build a profile, he wanted

7   to have a profile of a serial rapist where Gail

8   Miller would fit right in the middle of it. And,

9   of course, that's what we thought the Justice

03:21   10   Department would have done, that they would have

11   gone out and interviewed the victims and found out

12   how -- the similarities and everything, and once

13   we got out and interviewing them I couldn't

14   believe how close they were.

03:21   15   **Q**   Now do you recall any discussion amongst your

16   counsel or Mr. McCloskey about -- the minister's

17   response to your first application was, with

18   respect to the Fisher information, was that even

19   though there's suspicion about him there is no

03:22   20   link between Mr. Fisher and the Gail Miller death?

21   *A*   Right, and I was just reading in, in this report

22   that Mr. Williams put in, because -- and this is

23   what Kim Campbell got, you know, and she said --

24   or he said in here:

03:22   25   "The circumstances of Ms. Miller's death

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1   do not bear a similarity to the offences

2   for which Mr. Fisher was convicted."

3   Now that's utter nonsense. It's a lie.

4   Q   And what are you referring to?

03:22   5   A   Well, he's saying --

6   Q   No, I'm sorry, which document are you referring

7   to?

8   A   Mr. Williams' report, and I don't think I've ever

9   read it before, I just --

03:22   10   Q   What, is that, that may be the 1991 --

11   A   Oh.

12   Q   That might be the second application.

13   A   The page that I am on is 04 -- 004392.

14   Q   004392?

03:23   15   A   392.

16   Q   And maybe just bring that up.

17   A   Oh, the doc. ID is 004374, page 19.

18   Q   Go back to the first page, please. So this is

19   August 28th, this would have been Mr. Williams'

03:23   20   report to Mr. MacFarlane around the time of the

21   end of the investigation on the first application?

22   A   Yes.

23   Q   So that this is a document you've read recently

24   then?

03:23   25   A   This morning.

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1   Q   Okay. Back to the question about the link between

2   Larry Fisher and Gail Miller's death. In the

3   minister's response February of '91 she said

4   suspicion is not enough, there needs to be a link

03:24 5   between Larry Fisher and Gail Miller?

6   A   Right.

7   Q   And was what Mr. McCloskey suggested, in fact, to

8   go out, get the similarities, was that with a view

9   to addressing that response from the minister, --

03:24 10   A   That's right.

11   Q   -- in other words to show a link?

12   A   To show a link.

13   Q   And I think, I mean the legal term that's been

14   used from time to time is 'similar act' or

03:24 15   'similar fact evidence'?

16   A   Similar fact evidence, yes.

17   Q   And to try and build a case against Mr. Fisher by

18   saying the similarities between all of his other

19   offences are so similar to Gail Miller's death

03:24 20   that that's evidence that establishes, that

21   provides a link to show that he --

22   A   Yes, --

23   Q   -- is the perpetrator?

24   A   -- that's correct.

03:24 25   Q   And so that would have been the plan after the

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1		February 27th letter, is to go out and gather
2		evidence to show the link, and go back with a
3		second application and say "here's the link,
4		here's how we link Larry Fisher to Gail Miller"?
5	A	Yes.
6	Q	And if we could call up -- so, again, the decision
7		to have you and Mr. Henderson go out, that would
8		have been from Mr. McCloskey; is that right?
9	A	Mr. McCloskey, yes.
10	Q	And so you go out, interview the victims, gather
11		the details, and he would then prepare a report;
12		was that the plan?
13	A	Yes, he did.
14	Q	If we can go to 224162 and go to 224215. I think
15		this is from a diary of yours that has an
16		excerpt, --
17	A	Hmm.
18	Q	-- and this is March 18th, 1991, and I think it's
19		when you are in New Jersey, if I'm not mistaken.
20		At the top:
21		"Caught ... bus into Princeton",
22		and just go back here, please. It says:
23		"Had a good meeting with Jim. Decided
24		to zero in on Fisher - Get everything on
25		him possible Visit all his victims also

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1   rape in (V14)-- Send Wpg. police officer

2   Do a comparative analysis Jim would come

3   up for Press Release & filing in Federal

4   Court Called Dan, David. Must get press

03:26 5   in Vancouver & Ottawa - Get pressure on

6   Campbell in these areas."

7   And let me just pause there. So this would be --

8   would this be the start of the second

9   application, right here?

03:26 10 A   Yes.

11 Q   So the plan would be to, as we see, gather the

12   information, that Jim would come up for the press

13   release and filing. And I think at this time,

14   Federal Court, I think Mr. Asper had talked about

03:26 15   going to Court to challenge the minister's

16   decision, and I think later on it was concluded

17   that a second application to the minister might be

18   the better route to go than to go to Court to

19   challenge the first one; is that correct?

03:27 20 A   That's correct.

21 Q   But the plan would be the same, whether it's for

22   Federal Court or the minister, --

23 A   Yes.

24 Q   -- to gather this information? And so then you

03:27 25   would have called, and then I take it the plan

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 1            would have been to involve Mr. McCloskey in the

 2            press release?

 3    A       Yes.

 4    Q       And why would that be, what was the rationale or

 5            the thinking there?

 6    A       Well I believe the rationale for that is he

 7            brought a lot of credibility with him, with his

 8            organization, Centurion Ministries, and we felt

 9            that just having him standing up there and saying

10            "here, we've got this, look at it" was going to be

11            helpful.

12    Q       And so the plan would be to gather the

13            information, file the application, but involve Jim

14            McCloskey and Centurion Ministries in a public way

15            to add credibility to your cause --

16    A       Yes.

17    Q       -- in the eye of the public?

18    A       Absolutely.

19    Q       And, again, is it correct to say that in the

20            second application the plan to involve the media,

21            as you did in the first application, would

22            continue?

23    A       Yes, it did.

24    Q       And so here Dan, I'm presuming, is Dan Lett?

25    A       Right.
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  1   Q      And:

  2                 "... David.  Must get press in Vancouver

  3                 & Ottawa - Get pressure on Campbell in

  4                 these areas."

03:28  5         Now Kim Campbell --

  6   A      Lived in Vancouver.

  7   Q      -- was from Vancouver?

  8   A      From Vancouver, yes.

  9   Q      So the plan here was to get some media pressure in

03:28 10         her home city, --

 11   A      Yes.

 12   Q      -- put pressure on her, because she would be

 13         considering the second application?

 14   A      That's correct.

03:28 15   Q      And would it be correct to say that the public

 16         campaign plan on the first application would be

 17         renewed in the second application, perhaps with

 18         even more vigour?

 19   A      It would, and was.

03:28 20   Q      And then if we can go to 224221, which is -- I'm

 21         sorry, and the doc. ID of this is 224162.  And

 22         this is now April the 2nd, 1991, and I think this

 23         is where you met with Jim McCloskey again:

 24                 "He wants me to go with Paul to visit

03:29 25                 all of Fisher's victims & to get every
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	1		nitty-gritty bit we might ...",
	2		did I get that right:
	3		"... we might use. God do I really have
	4		to do this"
03:29	5		And so, again, this would have been where and
	6		when Mr. McCloskey said that you and Paul
	7		Henderson should go and interview the victims; is
	8		that correct?
	9	A	Yes.
03:29	10	Q	And then 156886. This is an April 16th, 1991
	11		letter from Mr. Asper to Mike Brecht asking him to
	12		find the four victims in Saskatoon, and that Paul
	13		Henderson will be in Winnipeg, he's working -- at
	14		the end of April, expect to be travelling to
03:30	15		Saskatoon, and it might be a good idea to get
	16		together. So this would be the start of the
	17		interview process, Mr. Asper went to Mike Brecht
	18		to find these women?
	19	A	That's correct.
03:30	20	Q	Now Mike Brecht, that's the same fellow that was
	21		referred to in the July 1990 conversation as the
	22		person --
	23	A	Right.
	24	Q	-- you had either thought or asked to go out and
03:30	25		interview these women; is that correct?

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1   *A*   That's correct.

2   *Q*   212782. This is a letter from Mr. Wolch to the

3   minister in response to the application, and there

4   is a part here I just want to ask you about, it

03:30   5   talks about the reaction of the family and what he

6   says here is:

7   "They view your Department as just one

8   more extension of the prosecutorial arm

9   that contributed to David's wrongful

03:31   10   conviction and incarceration. They have

11   always viewed this procedure with

12   scepticism and have always felt that the

13   delays herein were simply time required

14   to avoid and evade the merit of our

03:31   15   application."

16   And, again, would that accurately reflect what

17   you thought about the process?

18   *A*   Yes.

19   *Q*   And so, prior to even filing the application with

03:31   20   the Federal Minister of Justice, was that your

21   view?

22   *A*   We felt we'd been victimized by the system, we

23   felt the whole process was bad.

24   *Q*   But I guess I'm trying to figure out when, I mean

03:31   25   the letter simply says, the letter says:

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1		"They have always viewed this procedure
2		with scepticism and have always felt
3		that the delays herein were simply time
4		required to avoid and evade the merit of
03:31 5		our application.",
6		and I'm wondering if that's something you felt
7		before you filed the application -- and I
8		appreciate these aren't your words, they're your
9		lawyer's words -- but can you shed some light on
03:32 10		this?
11	A	I think originally when we filed the application,
12		we had hope it would work, but I think it was in
13		view of the delays and everything that started us
14		being skeptical, and more so as time went on.
03:32 15	Q	Umm --
16	A	And then we, then we started feeling that, that
17		they were against us and trying to, as it says:
18		"... evade the merit of our
19		application."
03:32 20	Q	If we can go to 213827. And you'll recall I
21		showed you the letter that your family wrote to
22		the minister on March I think 11th or 12th, 1991,
23		and this would be the minister's reply of April
24		30th, 1991 to you and family, and if we can go to
03:33 25		the last page, please, page 213829. And this was

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1   in response to the letter that your family wrote,

2   and the minister says:

3   "I ... wish to emphasize that mere

4   suspicion of guilt in the absence of

03:33 5   some information to link Mr. Fisher to

6   the offence is an insufficient basis to

7   grant the relief that was requested."

8   And, again, would that have been -- and we talked

9   about this earlier -- was that the purpose of the

03:33 10   McCloskey idea, or the idea to go out and

11   interview the victims, to try and provide a link

12   between Mr. Fisher and the offence, then, to

13   address this issue that had been raised by the

14   minister?

03:33 15   A   Yes.

16   Q   Now I think -- we're done with that document -- I

17   think around the spring of 1991, when you and Mr.

18   Henderson went out to interview the victims, I

19   think that's when a fellow by the name of Tom

03:34 20   Vanin became involved; is that right? Do you

21   remember Mr. Vanin who was a Saskatoon police

22   officer?

23   A   Yes.

24   Q   What is your recollection of your interaction or

03:34 25   direct dealings with Mr. Vanin?

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1   A   I don't have a lot of recollections of the time

2   spent with him. I know that when you were going

3   over Paul Henderson's testimony -- was it Paul

4   Henderson's testimony --

03:34 5   Q   Yes.

6   A   -- with Mr. Vanin, that I was involved in some of

7   those interviews with him.

8   Q   I think the evidence that Mr. Vanin and Mr.

9   Henderson gave is that the initial meeting, I

03:34 10   think at the Colonial Hotel on 8th Street, you may

11   have been there for a short time and then --

12   A   Just for a short time, and then out of it, and

13   then after that I think it was pretty well dealt

14   with between Vanin and the lawyers and Paul.

03:35 15   Q   And so is it fair to say that any information that

16   you, Joyce Milgaard, have about Tom Vanin's

17   involvement would have come from either Mr. Asper,

18   Mr. Wolch, or Mr. Henderson?

19   A   Correct.

03:35 20   Q   And we have Mr. Vanin, the issue of the (V5)--

21   (V5)--- file and that being shown to Mr.

22   Henderson, Mr. Henderson has testified and he has

23   a memorandum that says Tom Vanin obtained a copy

24   of the (V5)-- (V5)--- file from the police station

03:35 25   and showed him a copy, we have Mr. Vanin saying

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1		"no I did not"; do you have any recollection or
2		any information that might assist us in dealing
3		with that issue?
4	A	I recall Paul telling me that he had seen it.
03:35 5	Q	That he had seen the (V5)-- (V5)--- file?
6	A	Yes.
7	Q	Do you recall Paul Henderson telling you who had
8		shown it to him?
9	A	Well, the only one he was working with at that
03:35 10		time was Vanin, so it must have been him.
11	Q	And is that something that you recall or something
12		you assume?
13	A	No, I actually recall, because we were very
14		excited about getting it.
03:36 15	Q	And you were --
16	A	But he couldn't copy it, I don't think we got a
17		copy of it.
18	Q	I think that was Mr. Henderson's evidence. So you
19		didn't see the file; is that correct?
03:36 20	A	No, I didn't see it, but Paul told me about it, --
21	Q	And --
22	A	-- but we didn't get a copy of it and I had really
23		wanted a copy of it.
24	Q	Okay. What about Gus Weir; did you have any
03:36 25		direct dealings or involvement with Gus Weir, or

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1 are you aware of any dealings that your counsel,

2 Mr. Asper, or Mr. Henderson may have had with Gus

3 Weir about --

4 A I knew he was one of the other sources, but --

03:36 5 Q A source for who?

6 A For us.

7 Q When you say "us" are you talking about Mr. Asper,

8 or --

9 A Yes, yes.

03:36 10 Q Who would have talked to Gus Weir, who did you

11 understand had talked to Gus Weir?

12 A I'm sorry, I can't recall, it would either have

13 been David or Paul I guess.

14 Q Okay. And, what, do you have any recollection of

03:36 15 what information Gus Weir would have given anybody

16 in your group?

17 A I think it was Gus Weir that gave us -- I'm really

18 stretching here, and I want to be accurate, but it

19 seems to me it was one of the victims, and he was

03:37 20 telling about how upset he was when he found out

21 that Larry Fisher had confessed -- confessed --

22 Q Right.

23 A -- a number -- and that no one had told him, and

24 he was furious.

03:37 25 Q Okay. Now -- and I think that's, I think Dave

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1   Roberts from *The Globe and Mail* had had some

2   dealings with Gus Weir as well, --

3 A   Okay.

4 Q   -- and I think we saw that in one of the newspaper

03:37 5   articles, that information from Gus Weir. So

6   when, when you say he was a source, would it be

7   correct to say that the information that the

8   Commission has already heard about -- from Gus

9   Weir --

03:38 10 A   Yes.

11 Q   -- and I think we saw it in the newspaper articles

12   and that -- was there anything in addition to what

13   we've already heard --

14 A   I don't think I have any additional information on

03:38 15   that.

16 Q   And is it your recollection that Gus Weir was a

17   source in the sense that he talked directly to Mr.

18   Henderson or Mr. Asper and gave information about

19   the case?

03:38 20 A   I know he gave information on that part, whether

21   he gave other information, I do not know.

22 Q   Okay. If we could go to your book, 269317, it's

23   page 148, and go to page 269475. You write here:

24   "A police source let us see,

03:39 25   but not photocopy, records of Fisher's

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1   attacks. We were somewhat fortunate to

2   have had a couple of police insiders

3   helping us out, and David Asper went to

4   extreme lengths to both preserve and

03:39   5   protect these sources. They gave us

6   information not only about Fisher but

7   also about how the Justice Department

8   was conducting its investigation, using

9   Bobs Caldwell and others involved in the

03:39   10   original prosecution. This later proved

11   to be great fodder for our 'political

12   campaign' to clear David's name."

13   And then go on to talk about scuttlebutt, about

14   police incompetence and possible corruption,

03:39   15   etcetera, related to Mr. Penkala. Now, just on

16   that latter point, I think what Mr. Henderson

17   told us is that he talked to I think a John

18   McDonald and a Terry Thrasher about information

19   they had about Mr. Penkala and Operation Donut,

03:40   20   an unrelated matter?

21   A Yes.

22   Q And is that what you are referring to here?

23   A That would have been.

24   Q Now let's get back to the first paragraph. It

03:40   25   says here:

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1   "A police source let us see,

2   but not photocopy, records of Fisher's

3   attacks.",

4   plural, and it's my understanding that there

03:40   5   would have been only one file, the (V5)--- file,

6   that was shown, as opposed to all of the Fisher

7   files, is that correct, or is your recollection

8   different?

9   A   Well, I put "attacks" here, I thought there was

03:40   10   more than one.

11   Q   There was -- I think the evidence that the

12   Commission has heard is that there was a partial

13   of the (V1)--- (V1)- file, the very first one,

14   from -- that was found in 1990, and the (V5)---

03:40   15   file was there in 1991.

16   A   Yes, okay.

17   Q   So that there was --

18   A   Two.

19   Q   -- two. And, again, what I am trying to

03:41   20   understand, Mrs. Milgaard, is whether you have

21   information that suggests that, different than

22   what we've already heard, that there were more of

23   the Fisher files than what the Commission has,

24   namely the (V5)--- file and a partial of the (V1)-

03:41   25   file?

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1   A   I could not say that, I don't know, I -- as far as

2   I know, I remember seeing more than one file.

3   Q   And when did you see the files?

4   A   I have no idea. It was at -- at one point when we

03:41 5   were here.

6   Q   In the Commission hearing, or at the Supreme

7   Court, I'm sorry?

8   A   I think it was probably at the Supreme Court.

9   Q   And so is it correct to say that, whatever

03:41 10   information you got from your police sources about

11   records of Fisher attacks, it would be the same

12   information that would have been put forward in

13   the Supreme Court reference?

14   A   Yes.

03:41 15   Q   And so that there isn't something out there that

16   we don't have, whatever you saw the Supreme Court

17   had, and we have; is that correct?

18   A   I think that's correct, yes.

19   Q   And as far as the sources here, it says:

03:42 20   "... a couple of police insiders ...";

21   do you know who you would have been referring to

22   there?

23   A   No, I do not, because David Asper really kept his

24   sources close to his vest.

03:42 25   Q   And then if we could go to 0018 -- or 108, I just

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1   want to go through a couple of the interviews with

2   the Fisher assault victims, I don't propose to go

3   through them all, I have done that with Mr.

4   Henderson and other witnesses. But if we could go

03:42 5   to -- let me just pause here. It's my

6   understanding that, when you went out to interview

7   these victims, that you would take notes of the

8   interview, Paul Henderson would prepare his own

9   memorandum, is that correct, --

03:42 10   A   That's correct.

11   Q   -- you each took your own, and then when it came

12   time for the application that was filed that for

13   the most part, for each victim, that would include

14   Mr. Henderson's memorandum and your memorandum?

03:43 15   A   That's correct.

16   Q   So that both went in?

17   A   Yes.

18   Q   And so, here, this is your note of your -- and I

19   think it's been typed up -- but this would be your

03:43 20   note of your interview with (V5)-- (V5)---;

21   correct?

22   A   Yes.

23   Q   And just scroll down. Sorry, this is -- sorry.

24   And it says here:

03:43 25   "She was eighteen years old ...   She

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 1                         still locks doors at night.  At the

 2                         time, a tall skinny detective mentioned

 3                         it was very similar to the Gail Miller

 4                         case."

 5            Do you have a recollection of that discussion

 6            with Ms. (V5)---?

 7    A       Yes, I do, and I remember her saying that she

 8            didn't know who he was, but it was a tall, skinny

 9            detective, and we tried to find out who it was

10            after that.  But she said, she mentioned that it

11            was very similar -- that he had said to her it was

12            very similar to the Gail Miller case.

13    Q       And then, if we can go to the next page, this

14            would be Mr. Henderson's memo of the same meeting;

15            correct?

16    A       Correct.

17    Q       And again, if we can go to the next page, he

18            writes about getting access to the police reports

19            and mentions Tom Vanin, and then goes on to

20            outline some of the information that was in the

21            report or in the police file, but I think this is

22            one where he got a chance to look at it but you

23            didn't; is that correct?

24    A       That's correct.

25    Q       I now want to talk about (V14)- (V14)-, and you
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       1              will recall --

       2     A        And he's talking about, here, that the file is

       3              quite thick.

       4     Q        Right.

03:44  5     A        I don't -- I didn't recall that.

       6     Q        I think that was his evidence.  I think the file

       7              is about 60 pages or thereabouts, the file that we

       8              have, --

       9     A        Right.

03:45  10    Q        -- and I think that's what Mr. Henderson --

       11    A        Felt he'd seen?  Okay.

       12    Q        Now, just while we're on that, Mr. Vanin's

       13             evidence before the Commission was that he did not

       14             get the (V5)--- file but, instead, he got a file

03:44  15             card that has Fisher's name and occurrence numbers

       16             and a partial police report; do you have any

       17             recollection of being informed of that information

       18             coming from Mr. Vanin?

       19    A        I would probably have been informed of it.  Do I

03:44  20             have a --

       21    Q        Recollection?

       22    A        -- recollection today?  No, I do not.

       23    Q        Okay.  If we can then turn to (V14)- (V14)-, and

       24             you'll recall your dealings with Ms. (V14)-?

03:44  25    A        I certainly do.
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1   Q   And I do have some documents to go through, and I

2   don't mind going through, and I will go through

3   some of the documents with you, and your

4   memorandum, but I'm wondering if you are able to

03:44 5   just give us just your general recollection about

6   how that came about and your meeting with her, and

7   if you'd rather me go through the documents with

8   you I'm prepared to do that as well?

9   A   No, she just came forward out of the blue and

03:44 10   called me and wanted to -- and told me what had

11   happened to her, and wanted -- she wanted to go to

12   the prison and see David, and she said --

13   Q   I mean --

14   A   -- that she never ever put her television on

03:45 15   because she didn't want to see David on TV.

16   Q   Sorry, let me just back up for a moment. I think,

17   is it fair so say that she informed you that she

18   had been raped in 1968?

19   A   She did.

03:45 20   Q   And did she tell you that she thought that David

21   may have been --

22   A   The one that raped her.

23   Q   -- the one that raped her?

24   A   Yes.

03:45 25   Q   So that would be the first information you got

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1   from her was "I was raped in 1968 and I think your

2   son did it"; is that fair?

3   A   That's fair.

4   Q   And "I want to see him to confirm in my mind

03:45 5   whether he is the perpetrator"; is that --

6   A   That's right.

7   Q   Okay. Carry on?

8   A   And then, then she had this story about how she

9   couldn't look at him on TV, and it just seemed

03:45 10   weird. I mean if she really thought it was David,

11   why would she want to go see him in person, and I

12   just felt it was maybe some kind of publicity

13   stunt or, you know, that there was -- it was

14   weird. And I just didn't believe her, I was very,

03:46 15   very suspicious of her, but she did go into all

16   the details and everything. And the fact that it

17   was, the date of it, I mean, and the fact that

18   whoever it was had a truck, I knew David wouldn't

19   have had access to a truck.

03:46 20   Q   Okay. Let me just, maybe just back up for a

21   moment. So she would have phoned you, and I think

22   there was a meeting, and you and Mr. Henderson

23   went to meet with her; is that correct?

24   A   Yes, that's right, we ended up going to meet her

03:46 25   and she didn't show, and I remember deciding to

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1   check out the bus depot in case she was taking the

2   bus back home, and when we got down there I saw

3   this woman and figured it was her and went up and

4   approached her, and she came off the bus and we

03:47 5   went into a restaurant and talked.

6   Q   Okay. Now the purpose of the meeting, you'd

7   agreed to meet with her, is that right?

8   A   Yes, she wanted to meet with us.

9   Q   And maybe we'll call up 054514, which is Mr.

03:47 10   Henderson's memo, and I will come to your memo as

11   well.

12   A   Thank you. And this is Mr. Henderson's note, and

13   there's just a couple parts here, he says:

14   "Within the past year, David Asper

03:47 15   received a call from a man who claimed

16   to be an attorney representing a woman

17   who was attacked by a rapist in the

18   (V14)-- area in May of 1968. According

19   to the caller, police later told the

03:47 20   woman that the case had been solved with

21   the arrest of David Milgaard in

22   Saskatoon in 1969."

23   And then scroll down to here, please. And she

24   was:

03:47 25   "Recent publicity surrounding the

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1   Milgaard case had resurrected her

2   memories of the rape ordeal. ... She was

3   determined to resolve the matter and and

4   planned to visit David Milgaard in

03:48   5   prison and see if she recognized him."

6   And I think, is it correct that her purpose --

7   and she may have contacted Mr. Asper first; is

8   that right?

9   A   Yes.

03:48 10   Q   And is it correct to say that, from her

11   perspective, the reason she was contacting you or

12   Mr. Asper is she wanted to follow up to establish

13   whether David Milgaard had been the person who

14   raped her? That's what she believed or

03:48 15   thought, --

16   A   Yes.

17   Q   -- and she wanted to see him or get a picture of

18   him to try and resolve in her own mind whether she

19   was the perpetrator; is that fair?

03:48 20   A   Right, that's fair.

21   Q   And is it also correct that, before you met with

22   her, that she had never raised with either Mr.

23   Asper or with you or Mr. Henderson her suspicion

24   that Larry Fisher may have been the rapist; is

03:48 25   that right?

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1   A   No, she had never raised that.

2   Q   And that was something that you and Mr. Henderson

3   had introduced to her, was that Mr. Fisher is a

4   better suspect than David Milgaard, and he is more

03:49   5   likely the rapist than your son; is that fair?

6   A   That's fair.

7   Q   And here, if we could scroll down, and Mr.

8   Henderson talks about the fact this woman worked

9   at the Justice Department, and:

03:49   10   "It was starting to smell like a

11   possible setup."

12   Did you have that view at the time?

13 A   Absolutely.

14 Q   Okay.

03:49   15 A   And that's the reason why, when we met with her

16   and talked with her, I felt that she was out for,

17   I didn't know, publicity, lawsuit, whatever it

18   was, so that's why I had a picture of Larry Fisher

19   with me, --

03:49   20 Q   What --

21 A   -- and I showed it to her when she wanted to see a

22   picture of David.

23 Q   Okay. And is that what I think Mr. Henderson

24   referred to as the switcharoo?

03:49   25 A   That was it.

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1   Q   So she thought --

2   A   So --

3   Q   I'm sorry -- she thought you were showing her a

4   picture of your son?

03:50 5   A   Yes, and she said, "and his hair was a little

6   longer than that", but, yeah, she was identifying

7   it.

8   Q   Let's just walk through -- sorry -- walk through

9   your recollection of what was spoken between you

03:50 10   and Mrs. (V14)-. And when you showed -- you

11   showed her a picture of Larry Fisher; is that

12   correct?

13   A   Yes, that's correct.

14   Q   And what did you say to her about the photo?

03:50 15   A   I said "well, do you want to see a picture, I'll

16   show it to you?"

17   Q   A picture of whom; did you tell her who?

18   A   I didn't say of whom, because I said "you wanted

19   to see a picture", she'd been asking to see a

20   picture of David, --

21   Q   Okay.

22   A   -- but I didn't lie to her, I said "you wanted to

23   see a picture, here's the picture".

24   Q   And what were the words that she spoke after

03:50 25   looking at that?

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1   A   She looked at it and she said, "yes, his hair was

2   a little longer though".

3   Q   Okay.

4   A   And that's when I told her that she had just

03:50 5   identified Larry Fisher.

6   Q   Okay. Now Mr. Henderson, I think, had a different

7   interpretation of the discussion, and as did

8   Ms. (V14)-, about whether she did or didn't

9   identify the photograph, and your recollection is

03:51 10   that she did identify the photograph?

11   A   She didn't say "that's him", like she didn't say

12   "oh yes, that's him", what she said was "his hair

13   was a little longer".

14   Q   Okay.

03:51 15   A   But she gave the impression that that was him.

16   Q   So your perception or your take on it was that she

17   had identified Larry Fisher?

18   A   That's correct.

19   Q   Now if we just pause here for a moment,

03:51 20   Mrs. Milgaard, and say, okay, you have been

21   working for a number of months, your son is in

22   jail for a crime that you say Larry Fisher

23   committed in Saskatoon, that he is serving the

24   crime in Saskatoon that Larry Fisher had

03:51 25   committed, you now have a woman come forward that

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1   says "I think David raped me in 1968 hundreds of

2   miles away from Saskatoon at a different time",

3   and this woman is now saying that -- who also

4   accused your son of a crime, or in a way thought

03:52   5   he did, is now also saying "Larry Fisher committed

6   that crime", so that Larry Fisher now has

7   committed two crimes for which your son has been

8   blamed for; did that cause you to think that was a

9   bit unusual?

03:50   10   A   I hadn't thought of it the way you put it.

11   Q   And --

12   A   I just felt that I was very suspicious of this

13   woman. Afterwards I think, as I spent more time

14   with her, I thought, well, maybe I shouldn't have

03:51   15   been, maybe this really happened, and when she

16   explained and told how it had happened and

17   everything and then we sort of investigated and

18   found out that Larry Fisher did have access to a

19   truck and that he could have been working in that

03:51   20   area at that time, I thought, well, you know,

21   maybe she had been raped by Larry Fisher and had

22   thought it was David because of what happened to

23   Gail Miller and with all the publicity that had

24   been surrounding him.

03:52   25   Q   Okay.

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1   *A*   So I sort of started to see her as more believable

2   as time went on.

3   *Q*   Okay.

4   *A*   And that's why we ended up putting it in the

03:52   5   application I believe.

6   *Q*   Okay, I'll get to that. If we could just, about

7   this setup, when you were talking about a setup,

8   did you think that the police or the Justice

9   Department was somehow behind sending this woman

03:52   10   out?

11   *A*   Oh, no, no, no, I thought that she and whoever it

12   was that had called David Asper, that they were

13   maybe trying to set the family up or something. I

14   didn't know. I just -- it smelled, it just didn't

03:52   15   seem right.

16   *Q*   So if we can go to the next page, this is how Mr.

17   Henderson described it:

18   "Without identifying the person, we

19   showed her the photo-booth strip of

03:52   20   (four) Larry Fisher pictures. She

21   studied the photos and commented, "His

22   hair was longer"."

23   And would that be accurate, is that --

24   *A*   Yes, that's what I remember.

03:53   25   *Q*   And you took that to being that she identified him

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1   by saying his hair was longer?

2   A   Yes.

3   Q   Would it be correct to say that -- well, no, I'll

4   come back to that. So then if we can scroll down

03:53 5   to the bottom, it says:

6   "We talked for about an hour. Her plan

7   was to spend another night in Regina and

8   take the bus home in the morning. I

9   believe we were able to convince her

03:53 10   that Larry Fisher is a far more probable

11   suspect than David Milgaard. Strangely

12   though, she still expressed a desire to

13   view David in prison."

14   A   And that really bugged me because David had been

03:53 15   on TV a lot and his picture, but every time I

16   mentioned that to her, she said I don't want to

17   see him on TV.

18   Q   Was there a concern at this time that -- I mean,

19   you were in the process of getting ready to go

03:53 20   with a second application to the minister with a

21   public presentation as well?

22   A   Yes.

23   Q   Were you concerned that this woman may come

24   forward with this allegation and that this might

03:54 25   hurt David's chance to have his remedy?

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    1   *A*   Absolutely.

    2   **Q**   And is it correct to say that one way to deal with

    3   this woman's allegation -- firstly, you believed,

    4   you did not believe her when she said that your

03:54   5   son had raped her; correct?

    6   *A*   That's right.

    7   **Q**   And I think what you found out either at this

    8   meeting, or at this interview or at some later

    9   point, was that she either was told by the police

03:54 10   or believed, based on something the police had

  11   said, that the person who had raped her had been

  12   convicted for murder and she thought that that was

  13   David Milgaard?

  14   *A*   That's right.

03:54 15   **Q**   And that that's perhaps where this idea started

  16   from back in 1968?

  17   *A*   That's correct.

  18   **Q**   And would it be correct to say that one way to

  19   deal with this type of allegation, which you

03:54 20   viewed to be unfounded, in other words, her

  21   allegation that David had raped her, would be to

  22   come forward and say, okay, well, lookit, we're

  23   going to take the position that Fisher is the

  24   perpetrator and, in other words, the best defence

03:55 25   is a strong offence and let's beat her to the

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1   punch and say bang, we're out here saying it's

2   Fisher based on this meeting where you and Mr.

3   Henderson try to convince her that Fisher is a

4   butter suspect than David?

03:55   5   A   Yes.

6   Q   Would that be a fair summary of the plan?

7   A   I think that's fair.

8   Q   And in other words, to -- would it be correct to

9   say that if you did not include her complaint in

03:55 10   your application, you were concerned that the

11   authorities would find out about it or the public

12   would find out about it and that it might be

13   damaging to David's application?

14   A   No, I don't think that was in my thought. I think

03:55 15   that towards the end I really felt that this woman

16   had been raped by Larry Fisher.

17   Q   Did she ever say that to you, that she thought or

18   suspected that Larry Fisher had raped her?

19   A   No, but after she looked at the picture of him, to

03:56 20   me that was identifying him, and I felt that --

21   like, when we got more of her story and that she

22   had been told it was David Milgaard that did it, I

23   could understand her thinking it was David

24   Milgaard because that's what she had been told,

03:56 25   but as I listened to more of the story and started

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1   to feel a little bit more sympathy for the woman I

2   guess, because at first I thought she was just

3   trying to set us up, and then I started to feel

4   that she was somewhat believable and I felt that

03:56   5   it was important to include it.

6   Q   Sorry, believable on what point?

7   A   Believable on the fact that she had been raped.

8   Like, at first I wasn't even prepared to believe

9   that, I thought the whole thing had been

03:56   10   manufactured out of the cloth.

11   Q   Okay.

12   A   And that maybe we were going to be blackmailed. I

13   didn't know.

14   Q   Now, did you become aware that she had gone to the

03:57   15   police and the police had investigated the rape?

16   A   Yes, we got more details from her when we talked

17   to her.

18   Q   And is it correct, you only met with her once and

19   spoke to her once; is that right, and that was at

03:57   20   the bus depot?

21   A   Yes, I believe that's right, but we spent over an

22   hour with her.

23   Q   Right. And then again, let me just go back

24   though, would it be correct that one of your

03:57   25   concerns was that you were trying to protect your

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1   son David and you did not want what you viewed to

2   be an unfounded allegation made against him either

3   privately or publicly?

4 A Correct.

03:57 5 Q And so one approach would be to say you are wrong

6   and it isn't David, you are mistaken; correct?

7 A Correct.

8 Q But to introduce -- what I'm trying to understand

9   is to why you would introduce Larry Fisher to her

03:57 10   as sort of a substitute perpetrator, saying okay,

11   well, lookit, it can't be David, it must be Larry,

12   and let me tell you about Larry and here's how bad

13   he is and isn't he a far better suspect and isn't

14   he the fellow who did it?

03:58 15 A No. When I first showed her the picture of Larry

16   Fisher, okay, you have to know where my head was,

17   my head was in this space that I thought we were

18   trying to be set up and I in return was going to

19   set her up, because if she really didn't know what

03:58 20   my David looked like, then I was going to provide

21   her with this picture and see if she would

22   identify it.

23 Q Let me just pause there and ask you this question.

24   Before you met her and you had this photo of Larry

03:58 25   Fisher --

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1   A   Right.

2   Q   -- did you have any inkling, idea or suspicion

3   that Larry Fisher was the perpetrator of her rape

4   or was it a convenient photo for you to show her?

03:58 5   You wanted to show her another photo, but did you

6   go there to the meeting thinking okay, this is a

7   setup, I'm going to use Larry Fisher's picture to

8   see if she might identify him because I think he

9   might be the person who raped her, or was it

03:59 10   simply part of the setup to say, okay, if she

11   identifies him, then I know it's not David?

12   A   I honestly don't know. I think that the purpose

13   of showing her that picture was she was saying --

14   Q   It was to throw her off, wasn't it? If she

03:59 15   identified the photo you could say "aha, it's not

16   David, you identified somebody else"?

17   A   It wasn't just to throw her off -- well, yes, it

18   was to throw her off, but at the same time I felt

19   if she identifies it, then she could be talking

03:59 20   about Larry Fisher, because we did find out before

21   we talked, you know, before we went to talk with

22   her, we did find out that he -- we went and

23   investigated and found out that he had been

24   employed in that area at that time and that he

03:59 25   had -- I think it was a red truck, a company

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1   vehicle, so there were enough of the information

2   that we had gleaned from the phone calls that we

3   thought that it could be him.

4 Q Okay. Let me back up. So that before you went to

04:00 5   see her, based on her phone call did you do some

6   checking with the idea that maybe Larry Fisher is

7   the perpetrator of this rape?

8 A Yes, we did.

9 Q And that was talking to Jake Ketler?

04:00 10 A Yes.

11 Q And was that Mr. Henderson who did that or was

12   that you?

13 A I think I did.

14 Q And that was to find out whether he had been in

04:00 15   the area?

16 A Yes.

17 Q And whether he had a truck?

18 A Yes.

19 Q Now, I think the information that came perhaps

04:00 20   later was that Mr. Fisher would not have been in

21   the area and his truck, if he had one, would have

22   been white or grey but not red. Do you remember

23   that?

24 A I remember that coming up later, yeah.

04:00 25 Q And so going into the meeting then, the interview

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1   with Ms. (V14)- then, you had some suspicions that

2   maybe Mr. Fisher had been the perpetrator?

3   A   Yes.

4   Q   Is that fair?

04:00   5   A   That's fair.

6   Q   Okay. And so in showing the photograph, you

7   called it a setup, that I guess two possible

8   objectives, one is that if she identified it, it

9   would mean that it's not David, and two, if she

04:01   10   identified it, it might be here's another rape

11   that Fisher committed?

12   A   That's right.

13   Q   Now, do you have any -- if we could go to the next

14   page, and I've been through this with Mr.

04:01   15   Henderson and Mr. Pearson, she basically gives a

16   description of the assailant that I think could be

17   fairly characterized as being similar to Mr.

18   Fisher, being part Indian?

19   A   Correct.

04:01   20   Q   A certain height, work boots, work clothes. We

21   then later see the police report that she filed in

22   1968 that described a white man, taller, finer

23   features, and then in her description to Mr.

24   Pearson later she says no, I never identified

04:01   25   Larry Fisher, I never said he was part Indian, I

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1   never said he was that height, I never said he was

2   wearing this, but provided a completely different

3   description than what Mr. Henderson was given, and

4   I'm wondering if you have any explanation as to

04:02   5   why you and Mr. Henderson might get a completely

6   different description of the assailant than the

7   police did in 1968 and Mr. Pearson did a few

8   months later in 1991.

9   A   All I know is that's the description she gave us.

04:02   10   Q   And if we can go to 222275, these I think are your

11   notes, aren't they, of the meeting? Would these

12   have been notes of the --

13   A   It's my handwriting.

14   Q   And again maybe just take a look at it. This

04:02   15   ended up getting typed and put in the application.

16   Is this something you would have done at the time

17   or was it something that was done later for the

18   application? Do you remember?

19   A   I don't remember when I did it, I'm sorry.

04:03   20   Q   That's fine. And if we can go to the next --

21   these would be your notes?

22   A   They are my handwritten notes, yes.

23   Q   And the next page, what you say here about the

24   exchange with the photo is:

04:03   25   "She looked at Larry Fisher's picture &

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1   said it could be him but she especially

2   remembers his hair longer, dirtier & not

3   so clean cut as the picture."

4   And again, would that be -- that's similar to

04:03 5   what you told us before --

6   A   Yes.

7   Q   -- but here I think you are saying her words were

8   "it could be him". Do you have a recollection of

9   what precise words she used as opposed to what

04:03 10   your impression was of what she said?

11   A   That sounds, what I put here sounds more, that

12   what she said, "not so clean cut as in the

13   picture," she remembered his hair longer, but she

14   remembered -- I remember her saying, well, "his

04:04 15   hair was longer", and I do remember that "dirtier

16   & not so clean cut as in the picture".

17   Q   What about the comment about "it could be him"?

18   A   I don't honestly remember that.

19   Q   Okay.

04:04 20   A   But I don't think I would have put it in at that

21   time if she hadn't said it.

22   Q   And then if we can go to the next page, she said:

23   "She had wanted to come to Wpg to see

24   David & see if she could identify him."

04:04 25   And so is it correct to say that after your

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1   meeting with her, you and Mr. Henderson, after

2   this hour long meeting, she still said lookit, I

3   want to see your son David?

4   A   Yes.

04:04 5   Q   And in fact I think she maybe had followed up a

6   bit further with Mr. Asper to try and get either a

7   photograph or in to see him and those requests

8   were not accommodated; is that correct?

9   A   That's correct.

04:04 10   Q   And why was that?

11   A   I think David Asper was very suspect of the whole

12   situation, and Hersh.

13   Q   And so that you did not, for example, I mean --

14   A   Felt we shouldn't get involved in it.

04:05 15   Q   I'm sorry?

16   A   Felt that we shouldn't get involved in it, that

17   she was sort of a crazy woman and that we just

18   shouldn't get involved in it.

19   Q   And then how come it, or why would it then be put

04:05 20   in the application then to the minister?

21   A   Well, because I felt that it was important to go

22   in because it was part of our investigation and I

23   felt that it could have been a possibility.

24   Q   Now, in the application materials it's listed as

04:05 25   one of the assaults that Larry Fisher committed

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1   and was similar, and again would you agree it was

2   a bit stronger than it could be one of his, it was

3   listed as one of his assaults; correct?

4   A   Yes, it probably was.

04:05 5   Q   And Mr. Henderson expressed some concern, and I

6   think his evidence here was he didn't think it

7   should be included. Do you remember any

8   discussions at the time with Mr. Henderson or Mr.

9   Asper about this?

04:06 10   A   I honestly don't remember why we put it in, or if

11   there was a reason for putting it in, other than I

12   felt that if it was, you know -- of course at that

13   time I was thinking when we put something like

14   that in it's going to be checked out, but that --

04:06 15   Q   Well, it was checked out by Sergeant Pearson and

16   I'll take you to his memo. He ended up checking

17   it out and she told him, basically, "I never said

18   it was Larry Fisher, I never suspected him, I

19   suspect David Milgaard," and the RCMP then spent a

04:06 20   fair bit of time for the following years

21   investigating and dealing with her, that concern,

22   so again I'm trying to find out what was the

23   reason it was put into the application.

24   A   Well, if I look back on it now, I really felt that

04:07 25   the woman had come forward, she felt it was David

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1   and yet she had identified, as far as I was

2   concerned, Larry Fisher, and that if it was

3   possible that Larry Fisher had done it, it should

4   be in the report, that was my feeling. Now,

04:07 5   whether I influenced David and Hersh at that time,

6   you'll have to ask them.

7   Q   Okay. I think Mr. Asper couldn't recall much of

8   that.

9   A   We just felt she was a nut case by the end of it.

04:07 10 Q   And again, so I go back and say, okay, then what

11   you are saying is her version of events you didn't

12   believe?

13 A   That's right.

14 Q   And then I guess the question is why then would it

04:07 15   be included in the application to the minister

16   saying this is a rape that Larry Fisher committed

17   on this woman knowing that they would go and

18   investigate and find out that perhaps what you say

19   wasn't supported by what she said?

04:07 20 A   Well, we knew -- we knew that the woman believed

21   it -- I knew that David couldn't have been in that

22   area, so I knew it couldn't have been David at

23   that time, I mean, he wasn't able to get out and

24   drive or do those things at that time, and I

04:08 25   really felt, as I said, that because she had come

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1   forward and we had investigated it and it just

2   seemed right to put it in to me, although I think

3   that probably when I'm making these comments, and

4   I hate to be making these about this woman now,

04:08 5   but the part about the nut case, I'm uncomfortable

6   with that comment, but I think that that maybe

7   surfaced afterwards, like, in our later dealings

8   with her.

9 Q   But again, let's just go back, at the time of the

04:08 10   application, August 14th, you would have met with

11   her once for an hour with Mr. Henderson?

12 A   Yes, but don't forget, I had lots of phone calls

13   and talks with her after that.

14 Q   Oh, okay.

04:09 15 A   Okay, and so at the time, and then when we put in

16   the application, it wasn't until afterwards where

17   we continued to want to see David and everything.

18 Q   What were the nature of the subsequent phone

19   calls, between the time you met with her and the

04:09 20   time you filed the application was she calling you

21   to say lookit, I would like to see your son David?

22 A   Yes, she was.

23 Q   And that would be each of the calls would be her

24   request to see David?

04:09 25 A   Yeah.

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1   Q   Because she felt that he was the person who raped

2   her?

3   A   That's right.

4   Q   And so when you filed the application August 14th,

04:09 5   1991, is it correct to say that at that time,

6   although you believed that David had not committed

7   that rape, that your belief at that time was that

8   (V14)- (V14)- thought he did?

9   A   That's right.

04:09 10   Q   And so --

11   A   -- I felt it should be in there.

12   Q   But in there, and again what I'm trying to

13   understand is you think this woman is saying your

14   son raped her, you disagreed with her and you put

04:10 15   it in the application, though, saying this is a

16   crime committed by Larry Fisher when you know she

17   doesn't think that, she thinks your son committed

18   it, and I'm trying to understand what, whether

19   there was another reason that it was put into the

04:10 20   application.

21   A   No. I believed that she identified Larry Fisher

22   as the one that raped her, so I believed she

23   identified him in that way, I believed that she

24   went back in her mind to what the police told her

04:10 25   that it was David Milgaard and she still wanted to

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1   see David Milgaard and see if it was him, but in

2   my mind she had identified Larry Fisher.

3   Q   Based on the photograph that you showed her?

4   A   Correct.

04:10 5   Q   And then following that photograph, she went back

6   to you and said I want to see your son?

7   A   That's right.

8   Q   I think he raped me?

9   A   Yes.

04:10 10   Q   And so you were relying --

11   A   And that happened many times, many different times

12   that she phoned, so at that point we were thinking

13   she was unstable.

14   Q   Okay. And back to this point, and I asked this

04:11 15   question earlier, I'm going to ask it again, was

16   it possible that the thinking at the time was that

17   this woman's allegation that your son raped her

18   was going to come either to the attention of the

19   authorities or in the public in the midst of your

04:11 20   application being considered by the minister and

21   that one way to diffuse that or to respond to it

22   would be to include it in your application and put

23   it as one of the Fisher crimes and if she later

24   said, well, no, no, it's David Milgaard, that

04:11 25   somehow the credibility was suspect and it would

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1   be, that issue would be moved to the side; in

2   other words, the best defence is a strong offence,

3   and by including it you could make sure that her

4   unfounded allegation in your mind would not hurt

04:11 5   David's application to the minister. Is that

6   something that might have been considered or was

7   considered?

8 A   It was not something that I considered, and I

9   don't think it was considered, but I could be

04:12 10   wrong.

11 Q   And so your thinking at the time when you put it

12   in is you believed that Fisher may have been the

13   perpetrator of the crime?

14 A   I did.

04:12 15 Q   Notwithstanding that she was saying David did it?

16 A   Yeah, but don't forget, she didn't say that when I

17   showed her the picture.

18 Q   Okay. And so you were relying on the photograph

19   exchange?

04:12 20 A   Identification, right.

21 Q   Now, when the application was filed, and I think I

22   had shown this to Mr. Henderson, that his

23   memorandum I think with respect to all of the

24   other victims, what was filed for the most part

04:12 25   was his complete memo of the meeting and your memo

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1   of the meeting for each of the victims; correct?

2   A   Correct.

3   Q   With respect to Ms. (V14)-, what was filed was the

4   first two pages of his memorandum were removed and

04:12 5 your first page of notes were substituted and so

6   his first two pages were not included in the

7   application, and I asked him about that and he

8   wasn't able to give an answer and he thought that

9   that shouldn't have happened because his memo was

04:13 10 complete. Do you have any recollection of how

11   that came about?

12   A   None whatsoever.

13   Q   And let me just show you, if we could go to

14   054518, and this is part of the, I think actually

04:13 15 the application, and I've compared the typewritten

16   version and I think it mirrors your handwritten

17   notes, okay, so this would have been your report

18   about your meeting with Ms. (V14)-, and I want to

19   just show from the application an example from one

04:13 20 of the other files, 000928, please, which is, I

21   think that's part of the -- 000901 is the second

22   application and if we could go to page 928. This

23   is for the -- this is part of the application,

24   this deals with the (V2)----- matter, and if you

04:14 25 could just go to the next page, and this is the

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1   (V2)----- memorandum of Mr. Henderson, so that's

2   what's in the application.

3   If you could then go to 048152,

4   and actually put that on the right-hand side, and

04:14 5   000928 on the left-hand side, and you'll see the

6   right-hand side, I think those are your --

7   actually, there's a further document that I'll

8   show you in a moment -- no, you don't have to call

9   it out -- that has the handwritten notes of your

04:15 10   interview with Ms. (V2)-----, and then I think

11   your handwritten notes were typed and then I think

12   for the application in this type of font, or

13   whatever you want to call it, your report was

14   reproduced. Does that sound correct?

04:15 15   A   I don't know.

16   Q   Who would have been responsible for putting

17   together the documents that went into the

18   minister?

19   A   David Asper and Hersh.

04:15 20   Q   Okay. So would you have had any involvement in

21   what reports went in or out?

22   A   No.

23   Q   So on the (V14)- matter, you would have given your

24   notes and memo to Mr. Asper and what ended up in

04:15 25   the application would have been he or Mr. Wolch

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1		then would have decided that?
2	A	That's correct.
3	Q	Okay. So again if we just want to go, and I'll
4		show you what I was referring to before, if we go
04:15 5		to 009 -- so anyway, here's what was for the other
6		victims, if we go to 000920 --
7	A	I guess I don't understand where you are going
8		with this.
9	Q	Yeah, no, I'll show you.
04:16 10	A	Thank you.
11	Q	I'll try to show you. And this is what's in the
12		second application to the minister with respect to
13		the (V14)- matter. The first page mirrors your
14		handwritten notes of the meeting.
04:16 15	A	Okay.
16	Q	That's the one that I showed you.
17	A	Right.
18	Q	Okay. And that is consistent with what's put in
19		for the other seven victims. If we go to the next
04:16 20		page, you'll see this picks up, and it goes to
21		page 3 of Mr. Henderson's memo, and so it may be
22		simply that the first two pages were taken out of
23		his memo by somebody, so then page 3, this is
24		what's included in the application. So your
04:17 25		memorandum --

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	1	A	So are you saying that page 1 then goes to page 3
	2		and there's no page 2?
	3	Q	Right. What I'm telling you, what the application
	4		shows, I believe, is that -- let me just back up.
04:17	5		With respect to the other victims, what is
	6		included is your memorandum of your meeting with
	7		the witness.
	8	A	Right.
	9	Q	Mr. Henderson's memorandum of the meeting with the
04:17	10		witness.
	11	A	Right.
	12	Q	So a full version of each.
	13	A	Right.
	14	Q	So with respect to Ms. (V14)-, what's included is
04:17	15		your memorandum, and then Mr. Henderson's
	16		memorandum, the first two pages are taken out, and
	17		Mr. Henderson couldn't figure out why.
	18	A	I can't either.
	19	Q	And again, he suggested that I ask you, which is
04:17	20		why I'm asking you.
	21	A	Well, I have no idea. Are these our documents or
	22		is that what justice got?
	23	Q	That's what justice got.
	24	A	That's what justice got. Interesting.
04:18	25	Q	And if you go back to 054514 --

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1   A   And do we have page 2 and page 1 of Paul

2   Henderson's somewhere?

3   Q   Yes, I'm going to show you that right now.

4   A   Okay.

04:18 5   Q   And this is page 1, and go to page 2, and this

6   talks -- and down here, this is where the comment

7   is made about:

8   "I believe we were able to convince her

9   that Larry Fisher is a far more probable

04:18 10   suspect than David Milgaard."

11   And the first two pages set out how the meeting

12   came about and thought it was a setup and things

13   of that nature, and the purpose of my question is

14   to find out if you have any knowledge or

04:18 15   information as to why, with respect to the (V14)-

16   matter, the materials filed with the minister

17   would be different than the other victims and, in

18   particular, that the first two pages of Mr.

19   Henderson's memo appear not to have been included

04:19 20   and either replaced or supplemented with your

21   memo. Do you have any knowledge or information

22   as to how that came about?

23   A   None whatsoever.

24   Q   158358, please, and perhaps there was one other

04:19 25   source that I didn't mention to you as a possible

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1   explanation. Here is May 14, 1991, Mr. Asper's

2   letter to Mr. McCloskey:

3   "We are enclosing for your information

4   copies of the statements made by the

04:19 5   various victims of Larry Fisher."

6   And I suppose another possibility is that Mr.

7   McCloskey -- would Mr. McCloskey have put

8   together your memos and Mr. Henderson's memo --

9   A   Yes.

04:19 10   Q   -- to prepare the application?

11   A   Yes.

12   Q   Or was it -- and I hate to get into the mundane of

13   who actually prepared the paper, but was the

14   booklet put together in New Jersey by Mr.

04:20 15   McCloskey or was it done by Mr. Asper's office?

16   A   I think it was done by Jim McCloskey's office, and

17   what makes me think that was in order for us to

18   have put it together, we would have had to have

19   his letterhead and I don't think we did, because

04:20 20   it was done on his letterhead.

21   Q   Okay. I'll maybe actually take you to --

22   A   I believe.

23   Q   I'll get to that. If we go back to 000901, this

24   is the application to the minister of August 14th,

04:22 25   and you'll see, here, that in the covering letter

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1   from Mr. Wolch he talks about Centurion and then

2   says:

3   "We agreed and Centurion investigators

4   developed a startling profile showing

04:22   5   the similarity of <u>all</u> of Fisher's

6   attacks and of that committed against

7   Gail Miller. I am enclosing statements

8   of the victims and a summary of the

9   findings ..."

04:22   10   And then if we go ahead to page 000901 -- or

11   sorry -- 903, this is the cover page, An

12   Application Made By David Milgaard, submitted by

13   Mr. Wolch, Mr. Asper, and if you go to the next

14   page -- or actually 905, the next page, this is

04:23   15   the table of contents, and this is where it lists

16   the victims. And was this document something

17   that Centurion prepared, or do you know, or was

18   this prepared -- and I'm not talking about the

19   substantive content, but who put it together?

04:23   20   A   I have no idea.

21   Q   Okay. If we can go back to 185851, please. And

22   this is Mr. Henderson's interview notes about

23   going to see Linda Fisher, and it says:

24   "We drove to Candu to talk with Linda

25   ...",

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1   and I think he said you may have been with her.

2   Do you remember, around the time that Mr.

3   Henderson was out to interview the victims, that

4   you went to see Linda Fisher; is that -- do you

04:23   5   remember that at all?

6 A   Yes, I believe so.

7 Q   And, again, it looks like there was just some

8   further information followed up about Larry Fisher

9   that, --

04:24   10 A   Yes.

11 Q   -- presumably, Mr. McCloskey needed to put

12   together the profile; is that correct?

13 A   That's correct.

14 Q   And then if you can go to page 853, please.

04:24   15   There's an interview of Jake Ketler, and here's

16   where it says:

17   "Ketler recalled that the truck Fisher

18   bought from the company in September

19   1970 was a grey and white coloured GMC.

04:24   20   (Note: this corrects earlier

21   information from Joyce that the pickup

22   purchased by Fisher was red)."

23 A   Yup.

24 Q   And so, I think at the time you interviewed Ms.

04:24   25   (V14)-, she said there was a red truck and --

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1   A   And we thought, I think we got some information at

2   one time that it was a red truck, but because it

3   says:

4   "this corrects earlier information from

04:25 5   Joyce that the pickup purchased was

6   red."

7   Q   So at the time you interviewed Ms. (V14)- --

8   A   I thought it was a red vehicle.

9   Q   If we can go to 054461, please. I want to ask

04:25 10   you, you mentioned earlier about the fact sheets,

11   and I've got a number of them here, and I am

12   wondering if you can just maybe give us an idea of

13   your involvement in these. This is a, it's called

14   A Portrait of a Canadian Injustice compiled by

04:25 15   VOICE, Victims of Injustice Cry Enough, August

16   1991. And if we can go to the next page, there's

17   some information there, a quote from David, and

18   then to the next page, Fact; and do you know, is

19   this document familiar to you?

04:26 20   A   Yes.

21   Q   And who was this group?

22   A   This document is familiar in the sense that all of

23   those facts and all of that listings we had on a

24   fact sheet. This was a supportive group, and the

04:26 25   first page that you showed me belonged to that

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	1		group, and they have obviously picked up our fact
	2		sheet and used it. There were a lot of sort of
	3		groups that picked up and became part of it that
	4		were not really part of it.
04:26	5	Q	Right. So that this might have been a group that
	6		you knew about but you were not integrally part of
	7		it; is that right?
	8	A	That's right.
	9	Q	If we can go to 219257.
04:26	10	A	Now that's our fact sheet.
	11	Q	So that, when you talk about the fact sheet, this
	12		is your document then?
	13	A	Yes, that's correct.
	14	Q	And this would be updated from time to time?
04:27	15	A	Yes, it would.
	16	Q	And who would have prepared this, who was the
	17		keeper of this?
	18	A	Well I think we were all involved in it, David and
	19		Hersh and I, and, you know, in putting it
04:27	20		together, --
	21	Q	If we could go to 21 --
	22	A	-- what should go on it.
	23	Q	If we could go to 217573, please. Is this
	24		familiar, this --
04:27	25	A	Yes, it is.

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1	**Q**	And would this be a version of the fact sheet,
2		then?
3	*A*	Yes, it was.
4	**Q**	And this would be something that you, or people
04:27 5		helping you, prepared --
6	*A*	Would be using, uh-huh.
7	**Q**	And these would be used to send out to the public
8		and media, etcetera?
9	*A*	Yes.
04:27 10	**Q**	219255.
11	*A*	We were going around and getting petitions signed,
12		as well, so we had the fact sheet to give to
13		people to look at.
14	**Q**	And, again, would this be another version of that
04:28 15		that your group, or you or people on your behalf,
16		would have prepared; does that look familiar?
17	*A*	Yes. Can you go down a little farther?
18	**Q**	Sure. Go to the full page, call out that, it
19		contains similar information to the other fact
04:28 20		sheets.
21	*A*	Yeah, but see we've added a bunch of stuff here,
22		so I think -- do we have a subsequent report that
23		shows all of this on it? I think we would have
24		had.
04:28 25	**Q**	Go to --

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1   A   I think the report changed as our investigation

2   changed.

3   Q   If we could go to 219 -- or 228924, please. And,

4   again, that is, I think, one typed up --

04:29 5   A   Ah, yeah, and that's typed in there.

6   Q   So this would be one of your fact sheets?

7   A   Yes.

8   Q   Okay.

9   A   Yes, it would.

04:29 10   Q   This is probably an appropriate spot to break for

11   the day.

12   (Adjourned at 4:29 p.m.)

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2 We, Karen Hinz, CSR, and Donald G. Meyer, RPR, CSR,

3 Official Queen's Bench Court Reporters for the Province of

4 Saskatchewan, hereby certify that the foregoing pages

5 contain a true and correct transcription of our shorthand

6 notes taken herein to the best of our knowledge, skill,

7 and ability.

8

9

10

11

12   _____, CSR

13   Karen Hinz, CSR

14   Official Queen's Bench Court Reporter

15

16

17

18   _____, RPR, CSR

19   Donald G. Meyer, RPR, CSR

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