

*Private Members' Business*

following the Miller murder, in 1970, he committed three more vicious assaults in Winnipeg. He was arrested and given a 13-year sentence. He was released in 1980 and soon after attacked and nearly killed a woman in North Battleford. He is back in prison.

Why is he a suspect? He was committing his serious crimes around the time of the Miller murder. He rode the 20th Street bus to work in Saskatoon. So did Gail Miller. Certainly Miller's murder appears more likely to have been committed by a man like Fisher than by Milgaard who had no history of violence or sex offences.

The speculation about Fisher of course does not clear Milgaard by itself, but it is one more shadow of doubt over his murder conviction. There is a lot more to this incredible story but I cannot recount it here.

Will our justice system come crashing down if David Milgaard is freed and cleared of his conviction? No. Would it mean the system is riddled with lousy judges and lawyers? No. What it does mean is that we recognize human beings for what they are. They are not perfect. Our institutions are not perfect. Each and every one of them, including our justice system, can and does make mistakes.

Do we have the courage to admit our mistakes? Do we have the courage to admit that we have possibly incarcerated an innocent man for more than 20 years? I hope so. I certainly hope so for David Milgaard's sake.

In closing, I hope the government is listening, especially the Minister of Justice. I chose not to discuss her handling of the case today because the country already knows just how bad it is. It is never too late. There is still time for justice. There is still time for David Milgaard. Canadians are asking the Minister of Justice to heed the words of this motion and do what is right.

• (1540)

I would like to thank my colleagues for their support, those from Manitoba. I would like to cite them: Lloyd Axworthy, Ron Duhamel of St. Boniface, Ray Pagtakhan of Winnipeg North and David Walker of Winnipeg North Centre. They have all lent their support in this very worthy cause.

[*Translation*]

**Mrs. Nicole Roy-Arcelin (Parliamentary Secretary to Minister of Communications):** Mr. Speaker, a decision to exercise the executive's power to order a new trial in a case where the courts have already handed down a decision must be considered very carefully. We must bear in mind the independent role of the courts. It is up to them to decide whether the accused is innocent or guilty. In a trial before judge and jury, jury members are responsible for reaching a verdict based on the facts, while the judge determines how the law is to be applied.

To ensure this tradition is observed, ministers of Justice refuse to substitute their own opinion for those of jury members or judges. However, in cases where, on the basis of new facts that come to light after the court's decision, there is reason to believe there has been a fundamental miscarriage of justice, the Minister of Justice has subsequently made the appropriate decision, in other words, referred the case back to the courts.

It is important to understand where the prerogative of pardon fits into the criminal justice system and to use it the way it was meant to be used. Section 690 of the Criminal Code says the Minister of Justice may order a new trial or refer the case to the Court of Appeal. That is an extension of the Crown's prerogative of pardon which is reflected in our legislation.

Mr. Speaker, this recourse is available only when all legal recourse has been exhausted. In the David Milgaard case, an impartial jury declared him guilty, an independent Court of Appeal rejected his appeal, and an appeal to the Supreme Court of Canada was rejected in 1971.

Consequently, the applications to the Minister of Justice are outside the judicial process. However, the judicial review process provided under section 690 may, when it is desirable to do so, allow a new examination by the courts. That was the procedure followed in the Donald Marshall case, and more recently in the Wilson Nepeose case.

By passing section 690, Parliament has conferred on the Minister of Justice the authority to accept or reject such requests. This responsibility is exercised without any partisan or political considerations, in the broadest sense of the word.