

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

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Transcript of Proceedings  
and  
Testimony before the Commission  
sitting at  
TCU Place at  
Saskatoon, Saskatchewan

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Volume 153

Inquiry Proceedings



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**Appearances :**

*Mr. Hersh Wolch, Q.C.,*           **for** Mr. David Milgaard  
*Ms. Joanne McLean,*           **for** Ms. Joyce Milgaard  
*Ms. Lana Krogan-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. Chris Boychuk, Esq.,*   **for** Mr. Eddie Karst  
*Mr. Bruce Gibson, Esq.,*     **for** the RCMP  
*Mr. Eamon O'Keefe, Esq.,*   **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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JOYCE IOLA MILGAARD, CONTINUED

- BY MR. HODSON

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Transcript of Proceedings

(Reconvened at 1:05 p.m.)

COMMISSIONER MacCALLUM: Good afternoon.

ALL COUNSEL: Good afternoon.

MR. HODSON: Good afternoon, Mr.

Commissioner. Just a couple of scheduling matters that I can raise.

We do intend to finish with Mrs. Milgaard's evidence this week, she will be followed by Mr. Eugene Williams, he is available to start testifying this week if we finish with Mrs. Milgaard so we'll see how that goes.

Secondly, the constitutional issue will be argued, and we've scheduled it for tomorrow at 1:30. I had also indicated to the parties that we might try and fit it around the end of my examination of Mrs. Milgaard and before other examination starts, but I think maybe we'll set it for tomorrow at 1:30 regardless of where we're at on examination. Graham Mitchell, on behalf of the Government of Saskatchewan, will be here tomorrow at 1:30 to present submissions on behalf of the government, and I think Mr. Frayer is available tomorrow at 1:30 as well, and there are a few other parties that may be making



1                   submissions.

2                   COMMISSIONER MacCALLUM:   Okay.

3                   JOYCE IOLA MILGAARD, continued:

4                   BY MR. HODSON:

01:07 5           Q           MR. HODSON:   So if we could carry on,  
6                   Mrs. Milgaard, with where we left off 10 days ago,  
7                   if we could call up 002671.  And we were, at that  
8                   point in time, right before the Supreme Court  
9                   reference and maybe, just to refresh your memory a  
01:07 10           bit as to what we talked about and where we were,  
11                   I think where we finished off we talked about  
12                   learning of -- from the Federal Justice Minister  
13                   that the matter would go to the Supreme Court?

14           A           Yes.

01:07 15           Q           And I think we talked about, as well, that it came  
16                   pretty quickly, I think January 16th were the  
17                   first -- when Court opened, and then I think David  
18                   testified five days later, and we talked a bit  
19                   about the challenges that you and your, and  
01:08 20           lawyers for David, faced in getting ready; do you  
21                   recall going through that?

22           A           Yes, I do.

23           Q           And so we were right in that time frame of  
24                   December 1991, and the preparations for the  
01:08 25           reference, so I'll just pick it up there.  And



1 this is a document that is from Murray Brown -- if  
2 we can go to the next page -- to Mr. Wolch, and  
3 this deals with the secretor issue. And you'll  
4 recall in your previous evidence we covered in  
01:08 5 June of 1990, do you remember when we went through  
6 a discussion that you and David Asper had after  
7 Dr. Markesteyn and Dr. Merry came back and said  
8 "lookit, the secretor status of David done in 1969  
9 might not be reliable"; do you remember us going  
01:08 10 through that?

11 A I do.

12 Q And you had a discussion with Mr. Asper, and I  
13 think your position was, "well, presumably Dr.  
14 Ferris would have checked that and, if he didn't,  
01:09 15 we should get it done"?

16 A Yes, that's correct.

17 Q And so here, in December of 1991, he talks about  
18 -- and this is from Murray Brown, now Murray Brown  
19 is the individual who is handling the matter on  
01:09 20 behalf of the Government of Saskatchewan; you are  
21 familiar with who Murray Brown is?

22 A Yes, I am.

23 Q Yeah, and he was counsel as well, or co-counsel at  
24 the Supreme Court. And here he is asking  
01:09 25 Mr. Wolch, he says:



1 "... it would appear that Mr. Milgaard's  
2 status as a non secretor is not  
3 established. I am informed that the  
4 test used to determine that  
01:09 5 characteristic in 1969 has subsequently  
6 proven to be unreliable. This confirms  
7 information given the federal Department  
8 of Justice by Colin Terry ...",

9 I think that should be Merry, etcetera. And  
01:09 10 then:

11 "I would like to know therefore, whether  
12 you have made any recent effort to have  
13 Mr. Milgaard's blood tested to determine  
14 his secretor status. If you have, would  
01:10 15 you please advise us as to the results  
16 of such tests? If you have not, do you  
17 intend to do so?"

18 Now do you recall, I think what the record  
19 reflects is that from the June 1990 discussion  
20 when it was raised by Dr. Markesteyn, Dr. Merry,  
21 and indeed even by Dr. Ferris, it does not appear  
22 that any steps were taken by you or your counsel  
23 or David, your David, to have the secretor status  
24 checked. Do you know if there was a reason for  
01:10 25 that, if it was something that -- was there a





1 deliberate decision made to not get the test  
2 done?

3 A Not to my knowledge, no.

4 Q And --

01:10 5 A I think that I, I discussed it with David and  
6 Hersh and assumed that it would have been done.

7 Q And is it fair to say that back in June of 1990,  
8 when your experts raised this issue -- and I think  
9 what they said is "lookit, don't rely on the test  
01:10 10 that was done in '69" --

11 A Uh-huh.

12 Q -- "it might not be accurate"; is it fair to say  
13 that your understanding was that either David's  
14 secretor status had been confirmed by Dr. Ferris  
01:10 15 or, if it hadn't been, that it was going to  
16 be confirmed--

17 A Yes.

18 Q -- back in 1990?

19 A Yes.

01:11 20 Q And then do you recall, around the time of the  
21 Supreme Court reference, this issue coming up that  
22 the secretor status being raised by the Government  
23 of Saskatchewan; do you remember that being raised  
24 as an item?

01:11 25 A I honestly don't remember this letter from Murray



1 Brown, --

2 Q Okay.

3 A -- but I'm sure that the -- my counsel would have  
4 told me about it.

01:11 5 Q And if we could call up 336391, please. And this  
6 is a conversation, I think it's December 21, 1991  
7 is the date that I have, based on some other  
8 documents, and it's a discussion between you and  
9 David Asper. Now if we could go to 336426. And  
01:11 10 here, and he's talking about:

11 "And I think what I'll do is ... I'll  
12 set up a secretor test when he comes out  
13 on, to our office."

14 And I think the "he" is your son David?

01:12 15 A Right.

16 Q Earlier in the discussion I think your son David  
17 was going to get out of jail to assist in the  
18 preparations for the reference hearing; is that  
19 correct?

01:12 20 A That's right.

21 Q And so here, and then David says:

22 "... I don't want to do it through the  
23 institution."

24 "No, no I think that's wise."

01:12 25 "So we'll hire a private doctor and





1 Or what if ... the sophistication of  
2 todays testing shows him to be a  
3 secretor? I mean you know ... who  
4 knows. Anyways ..."

01:13 5 And you say:

6 "That's mind boggling."

7 Do you have a recollection of this issue being  
8 raised?

9 A Yes, I do, I do.

01:13 10 Q And were you surprised, at the time, that David's  
11 secretor status was being raised on the eve of the  
12 reference case?

13 A Yes, and I remember the thought that, you know,  
14 that it might -- that he might be a secretor, at  
01:13 15 that point, was mind-boggling to me. I mean I  
16 just didn't even want to think about it. Here we  
17 are at the Supreme Court, and that was a big  
18 issue, and if it turned out that he was it would  
19 certainly be a big issue.

01:13 20 Q And a 'big issue' in what way?

21 A Well, because that was the basis of Ferris'  
22 report, that he was a non-secretor.

23 Q Right. So that if he --

24 A That was a real part of it.

01:13 25 Q Were you surprised, at this time, that his



1           secretor status had not been confirmed in recent  
2           years?

3           A           I -- I was surprised because, as you can see from  
4           my answers:

01:14 5                        "What do you mean, what if the test was  
6                        wrong?"

7           I mean I just, it never even occurred to me that  
8           the original test was wrong.

9           Q           And, again, I appreciate that, but I think in June  
01:14 10           of 1990, I think that's when your experts raised  
11           the flag and said "lookit, the testing in 1969 was  
12           not done correct", in fact I think Dr. Merry said  
13           it could not have shown a positive result because  
14           the antigens would have been destroyed by the very  
01:14 15           testing procedure, so I think Dr. Merry said it's  
16           clearly of no value?

17           A           Well, the only thing I can say is that I don't  
18           know how knowledgeable I was about Dr. Merry's  
19           reports and things like that at the time, I  
01:14 20           honestly don't remember that particular part of  
21           it, and so I -- that's why I was surprised when  
22           this came up with David.

23           Q           And that's what I am looking for. Was it your  
24           understanding that this was not an issue, prior to  
01:15 25           this discussion and Mr. Asper raising it, was it



1           your understanding that David was a secretor  
2           (sic)?

3           A           Yes.

4           Q           And that that was not an issue?

01:15 5           A           That's right.

6           Q           And that it had somehow been verified or tested by  
7           --

8           A           That he was a non-secretor.

9           Q           I'm sorry, a non-secretor. Yeah, I'm sorry, a  
01:15 10          non-secretor.

11          A           Right.

12          Q           And that whatever was raised in June of 1990 by  
13          your experts had been dealt with by Mr. Asper and  
14          Mr. Wolch?

01:15 15          A           Yes.

16          Q           And so that's -- is that why this was a surprise  
17          to you?

18          A           That's why this was a surprise to me.

19          Q           And would it be fair to say, at this time, that  
01:15 20          you're weeks away from the start of the Supreme  
21          Court reference; correct?

22          A           Yes.

23          Q           And at this time, we talked a fair bit in your  
24          last evidence about the significance that Dr.  
01:15 25          Ferris' opinion had for both you and your son



1 David, do you remember that?

2 A I do.

3 Q And I think you said that other than maybe the  
4 Fisher information that came up, that Dr. Ferris'  
01:16 5 opinion was, I think, the most significance piece  
6 of information that he --

7 A It was a solid leg, we felt, to stand on.

8 Q Right. And so, at this time, was the concern that  
9 weeks before the Supreme Court reference what you  
01:16 10 thought to be the expert opinion that proved your  
11 son's innocence may, in fact, do the opposite?

12 A Yes.

13 Q Or not prove his, his guilt, but may put him in  
14 the group of people who could have committed the  
01:16 15 crime?

16 A Yes.

17 Q If we can then go to 009789. And this is a letter  
18 from Mr. Asper to Murray Brown in response to that  
19 letter, and he says in the second paragraph:

01:16 20 "This whole issue ...",

21 or pardon me, it says:

22 "David Milgaard has not had his blood  
23 tested to determine his secretor  
24 status."

01:17 25 And I think that's not in dispute, is it, your



1 son David did not have his blood tested prior to  
2 this time?

3 A That's right.

4 Q And:

01:17 5 "This whole issue arose for us for the  
6 very first time when we received from  
7 the Department of Justice in Ottawa the  
8 opinions it solicited with respect to  
9 this matter. The question of whether  
01:17 10 David Milgaard is in fact a non-secretor  
11 was never raised with us by the Federal  
12 Department of Justice, and it comes  
13 somewhat as a surprise given the fact  
14 that in his Affidavit submitted in  
01:17 15 support of the first application, David  
16 undertook to take any tests whatsoever  
17 in order to establish his innocence. It  
18 is puzzling to say the least that we  
19 were never apprised of any real doubt as  
01:17 20 to David's status, and we have always  
21 operated on the basis that the test  
22 performed by the RCMP at the time was  
23 accurate."

24 Now this is Mr. Asper's letter that sets out his  
01:17 25 understanding, but I would like to ask you yours.





1 First of all, do you have a recollection of  
2 David's being a non-secretor being raised by the  
3 federal Department of Justice?

4 A No, I don't.

01:18 5 Q Or raised by someone, at least, back in June of  
6 1990?

7 A I honestly don't remember that at all.

8 Q Okay. Last -- two weeks ago when we went through  
9 the conversation with Mr. Asper in June of 1990,  
01:18 10 and that's when the Markesteyn report and the  
11 Merry report came out that questioned the secretor  
12 status, --

13 A Right.

14 Q -- do you remember us going through that?

01:18 15 A Yes, I recall that.

16 Q And it appeared, at that time, that at least you  
17 and Mr. Asper would have been aware that David's  
18 secretor status was being questioned; is that  
19 fair?

01:18 20 A I honestly don't remember, with this discussion  
21 with Dr. Merry, whether I was even involved with  
22 that or not. I may have been, but I can't say for  
23 sure, because I didn't really get involved a lot  
24 with the -- that part, with the doctors and  
01:18 25 everything like that. However, if it was a



1 telephone conversation that I had with David and  
2 he told me at that time, but I know that when it  
3 came time for the Supreme Court I was really  
4 amazed that we were put into this position.

01:19 5 Q Yeah. So is it a case that, based on your  
6 tape-recorded conversation with Mr. Asper, it may  
7 have been something that was brought to your  
8 attention but today you don't, you don't recall  
9 that being --

01:19 10 A I don't recall it today.

11 Q -- a concern?

12 A That's right.

13 Q That's fair. Now, if we can go to the next page,  
14 and I think Mr. Asper says that:

01:19 15 "... David's secretor status is  
16 concerned, he is prepared to submit to  
17 whatever tests that you desire, but we  
18 would simply appreciate understanding  
19 your position prior to such tests being  
01:19 20 performed."

21 And, again, would that be something Mr. Asper  
22 would deal with?

23 A Yes, it would.

24 Q As far as what the terms and conditions would be  
01:19 25 of if and how David would be tested for secretor



1 status?

2 A Yes, it would be.

3 Q If we could go to 334505. And here is a memo  
4 January 29th, 1992, I won't take you through the  
01:20 5 documents, but your son David did provide I think  
6 blood or maybe it was saliva, I'm not sure which  
7 of the two it was, tested by the RCMP lab, and  
8 there is a lab report I'll show you in a moment,  
9 but here they confirm the tests and indicated that  
01:20 10 David was in fact an A secretor; do you recall  
11 becoming aware of that information?

12 A Yes, I do.

13 Q And how did you become aware and what was your  
14 reaction to it?

01:20 15 A I don't know how I became aware of it. I can  
16 remember, you know, just it was a downer.

17 Q Pardon me?

18 A It was a downer, when we got the information it  
19 was a real downer, because that was a rock that I  
01:20 20 had established in my thinking with Ferris and him  
21 being a non-secretor, so when we heard that it had  
22 a tendency to make me feel very down.

23 Q And 'down' in the sense that Dr. Ferris' report  
24 may not be as valuable as you had originally  
01:21 25 thought --



1 A That's correct.

2 Q -- it was?

3 A That's right.

4 Q And in fact I think, at the reference, Dr. Ferris  
01:21 5 didn't testify; is that correct?

6 A That's correct.

7 Q Do you know if that's the reason he didn't  
8 testify, was because of this test result, do you  
9 have any knowledge of that?

01:21 10 A I have no knowledge of that.

11 Q Do you have any recollection as to whether he was  
12 going to be a witness at some point or was that  
13 something you left up to your lawyers?

14 A Originally I think he was going to testify, but  
01:21 15 I'm not certain of that, that you would have to  
16 check with Mr. Asper.

17 Q And then 002094, and this is just the lab report,  
18 February 3rd, 1992, and we've seen this document  
19 before, in fact it was a saliva sample that was  
01:22 20 taken from your David, so that's the test result.  
21 Do you recall whether your son David was informed  
22 of this around this time? This would have been  
23 after he testified.

24 A It would have been after he testified in the  
01:22 25 Supreme Court?



1 Q After he testified in the Supreme Court that you  
2 would have learned of his secretor status, yes.

3 A Yes.

4 Q Do you know if David, your David would have been  
01:22 5 informed of that?

6 A Oh, I'm sure he would have been.

7 Q Do you have any recollection of that?

8 A I don't.

9 Q I want to talk a bit about the Supreme Court  
01:22 10 reference and we certainly have the entire record  
11 and the transcript of that case in various  
12 documents, so I don't propose to go through that  
13 in detail. Would it be correct to say that if we  
14 take a look at the position that was taken on  
01:23 15 behalf of your son before the Supreme Court, that  
16 those matters would be basically decided by your  
17 counsel, Mr. Wolch and Mr. Asper, as to what  
18 position to take on various legal issues put  
19 forward by the court?

01:23 20 A Yes, and yet we were in full discussion. I  
21 mean --

22 Q Let me give you an example. One of the issues the  
23 court early on wanted to address was what is the  
24 test that the court should use in considering the  
01:23 25 reference question and they received submissions



1 from counsel for the parties, considered them and  
2 then I think rendered is decision saying here's  
3 the test we're going to apply in our advice; for  
4 example, what is the onus on David Milgaard and  
01:23 5 what things do we need to look at. Would those  
6 matters be matters that you would rely upon your  
7 lawyers to put forward, a position in the best  
8 interests of David?

9 A Yes, I would.

01:24 10 Q And is it fair to say that you may have had some  
11 discussions with them, but the ultimate decision  
12 as to what legal position to take, you would rely  
13 on your legal counsel to do that?

14 A That's correct.

01:24 15 Q And what about as far as the conduct of the  
16 hearing itself, as to which witnesses were called,  
17 is that something you would have relied upon your  
18 legal counsel, to decide which witnesses?

19 A Yeah. We did have some discussions on them, about  
01:24 20 who would make a good witness and who would not, I  
21 remember those.

22 Q And I don't want to suggest that you wouldn't have  
23 been informed of the position they were taking or  
24 informed of the issues and had discussions or had  
01:24 25 some input, but is it correct to say that the



1 ultimate decision as to which witnesses to call,  
2 which questions to ask, which questions not to  
3 ask, that you would rely on your legal counsel for  
4 those?

01:24 5 A That's fair.

6 Q And that as far as your son David is concerned,  
7 would it be correct to say that, although I guess  
8 technically David would be the client being the  
9 party before the court, that in effect you were  
01:25 10 his spokesperson, for lack of a better word, you  
11 would be the person looking out for your son  
12 David's interests as far as communications with  
13 legal counsel; is that fair?

14 A Yes, and yet David had a fair amount of input as  
01:25 15 far as his counsel was concerned, he wanted to  
16 have a fair hands-on approach to know what was  
17 going on.

18 Q And again just following up on other matters  
19 relating to the reference hearing, as far as the  
01:25 20 decision as far as to what documents or tapes or  
21 transcripts or interviews that you, and when I say  
22 you, let's talk about the Milgaard group, let's  
23 say everything you gathered, your counsel gathered  
24 or Mr. Carlyle-Gordge gathered, as far as the  
01:25 25 decision about which of those documents, tapes,



1 transcript, statements should be filed with the  
2 Supreme Court, was that something you relied upon  
3 your legal counsel to determine?

4 A Yes, it was.

01:26 5 Q And if there was a decision -- if certain  
6 documents were not provided to the Supreme Court  
7 that you or your group had in its possession,  
8 would it be fair to conclude that that would have  
9 been a decision made by your legal counsel not to  
01:26 10 put those documents in as opposed to your  
11 decision?

12 A Yes.

13 Q Or David's decision?

14 A Yes.

01:26 15 Q So in other words, you would rely on your legal  
16 counsel to decide what documents to put in and not  
17 to put in on the record?

18 A Yes, we would.

19 Q And would the same apply with respect to  
01:26 20 documents, transcripts, tapes that you or people  
21 on behalf of your son would disclose to either  
22 Federal Justice or Saskatchewan Justice?

23 A Yes.

24 Q So in other words, if documents were not given to  
01:26 25 Federal Justice or not given to Saskatchewan





1 Justice by David Milgaard, would it be correct to  
2 say that that would have been decisions made by  
3 your legal counsel as opposed to your decision or  
4 your son David's decision?

01:27 5 A Yes.

6 Q Again, as far as what the Supreme Court would  
7 decide and not decide and the scope of that  
8 hearing, would it be correct to say that that's  
9 something that your lawyers would have dealt with,  
01:27 10 would have put forward, your son David's interests  
11 before that court as to what should or should not  
12 be reviewed by the court or heard by the court?

13 A I'm sorry, you are going to have to run that one  
14 again.

01:27 15 Q Sure. There's some issue as to, or appeared to be  
16 some issue back at the time as to what the Supreme  
17 Court of Canada, what issues it was dealing with  
18 and what issues it was not dealing with, and would  
19 it be correct to say that you and your son David  
01:27 20 would rely on Mr. Asper and Mr. Wolch to put  
21 forward David's interests before the court and  
22 have whatever issues were in David's best interest  
23 determined by the court?

24 A Yes, but I think I was also relying on the Supreme  
01:28 25 Court to be thoroughly looking into this



1 situation.

2 Q Right, no, I appreciate that, but as far as -- I  
3 just want to understand what role if any you,  
4 Joyce Milgaard, played in putting forward a  
01:28 5 position on behalf of your son before the Supreme  
6 Court, and I appreciate that the court did what  
7 the court did for whatever reason, I'm just trying  
8 to identify or confirm that if a position was  
9 taken before the Supreme Court on behalf of your  
01:28 10 son with respect to the scope of the hearing, that  
11 that would be something you would rely on your  
12 lawyers to put forward as opposed to you directing  
13 it?

14 A I would think so, but there may have been issues  
01:28 15 that I would have dealt with hands on with the  
16 lawyers if they came back to me about certain  
17 things. I can't just give you a blanket,  
18 wall-to-wall blanket and say yes to everything,  
19 because in many cases I would be totally involved  
01:29 20 and arguing with them if I felt that it wasn't  
21 going the right way.

22 Q And I had earlier made the comment, and I can  
23 repeat it, that I think what you are telling us is  
24 even though you relied upon your lawyers and your  
01:29 25 lawyers ultimately made the call as to what



1 position to take before the court, you would  
2 discuss it with them and you would have input?

3 A Yes.

4 Q But ultimately you relied on your legal counsel to  
01:29 5 advance your son David's interests as best they  
6 could?

7 A Yes, I did.

8 Q And then again as far as your understanding of  
9 what issues the Supreme Court was going to delve  
01:29 10 into at the reference, would it be correct to say  
11 that your understanding -- or what was your  
12 understanding, let's start there, of what the  
13 Supreme Court of Canada was going to deal with on  
14 the reference and what they weren't going to deal  
01:29 15 with?

16 A It depends on what time period you are talking  
17 about. Before the Supreme Court hearings, before  
18 we went down and the lawyers sat down with the  
19 judges, I assumed that they would be looking into  
01:30 20 all of it.

21 Q Okay, now let me pause there. When you say all of  
22 it, what do you mean by all of it?

23 A Well, I expected they would be looking into the  
24 police misconduct, all of the things that we were  
01:30 25 talking about that had happened and had kept David



1 in jail, and so when they came back out to me, the  
2 lawyers, and said we can't talk about any of that  
3 and then gave the guidelines that they were given,  
4 I felt it was totally wrong.

01:30 5 Q Okay. Let me just pause there again, and let's  
6 talk about your initial understanding, which is  
7 before your lawyers met with the Supreme Court; is  
8 that correct?

9 A Right.

01:30 10 Q Would it be correct to say that your understanding  
11 or your assumption was that the Supreme Court  
12 would consider the same things the Minister of  
13 Justice would consider in your first two  
14 applications?

01:31 15 A Yes.

16 Q And, namely, whether there had been a miscarriage  
17 of justice?

18 A Yes.

19 Q And so that everything you put forward to Minister  
01:31 20 Campbell in the first and second application, was  
21 it your understanding or assumption that the  
22 Supreme Court would consider all of that and  
23 anything like that; is that fair?

24 A Yes, and anything else that we had at that point  
01:31 25 in time.



1 Q And so anything that would suggest that your son  
2 was wrongly convicted?

3 A That's correct.

4 Q And again, you mentioned the police misconduct,  
01:31 5 and again, was that something that you felt the  
6 police misconduct showed, number one, that there  
7 was a miscarriage of justice, and two, that your  
8 son was innocent?

9 A Yes.

01:31 10 Q And so would it be fair to say that that was the  
11 connection in your mind, that police misconduct  
12 caused people to lie that caused a miscarriage of  
13 justice and caused David to be convicted of a  
14 crime he didn't commit; is that a fair summary?

01:32 15 A Well, other than the fact that I never ever said  
16 that he was wrongly convicted in 19 -- like, at  
17 his original trial. I felt that the wrongful  
18 conviction started when Larry Fisher surfaced and  
19 nothing was done about him, that's when the -- the  
01:32 20 real -- I mean, he was wrongly convicted because  
21 he was innocent, but the wrong started when Mr.  
22 Karst went down and interviewed Larry Fisher and  
23 conveniently forgot all about the rapes and  
24 everything and to connect it to Gail Miller.

01:32 25 Q What about the wrongs put forward in the first



1 application suggesting arising from Ron Wilson's  
2 statement and the information he provided to Paul  
3 Henderson, that the police manipulated, coerced  
4 and bullied him into lying?

01:32 5 A All of that conduct as well.

6 Q So that would be a piece of police misconduct that  
7 was in your first application?

8 A Yes, that's right.

9 Q And the effect of that I think was to say lookit,  
01:33 10 because of police misconduct, Ron Wilson gave  
11 false evidence at trial?

12 A That's right.

13 Q And had he not done so, David might not have been  
14 convicted?

01:33 15 A Correct.

16 Q So I appreciate what you are saying about when  
17 Larry Fisher comes to light in October of '70 --

18 A Yes.

19 Q -- but was there also not some suggestion that  
01:33 20 police misconduct contributed to the original  
21 conviction?

22 A Yes, because they had information about all the  
23 rapes that had taken place at that time and, I  
24 mean, later we found out that policemen in that  
01:33 25 department had always thought, you know, it was



1 the same person that had done all the rapes, so  
2 that when this one came along, they thought at  
3 first it was this one, and then they get a young  
4 man that's only been there once and they  
01:33 5 conveniently start pinning it on him.

6 Q Now, let's talk again, you said that after your  
7 lawyers first went and met with the court, they  
8 came back, and is it correct to say that your  
9 understanding of the scope of the Supreme Court  
01:34 10 hearing, would it be correct to say that your  
11 understanding of that would have come through what  
12 Mr. Wolch and Mr. Asper told you?

13 A Yes.

14 Q In other words, as opposed to -- you did not  
01:34 15 attend in Justice Lamer's chambers or hear him say  
16 any of these words; is that correct?

17 A That's correct.

18 Q It would be from your lawyers telling you?

19 A It was from the lawyers telling me.

01:34 20 Q And do you recall, prior to the hearing starting,  
21 being told by your lawyers that somehow the court  
22 was going to limit what evidence would be heard?

23 A I do, and I was outraged.

24 Q And what do you recall being told?

01:34 25 A Well, that we would not be able to lead this



1 evidence, that we would not be able to bring those  
2 parts of the evidence in. Now, I still felt that  
3 they would find him innocent with the amount of  
4 material that we had.

01:35 5 Q Sorry, what evidence was it that your lawyers were  
6 telling you they couldn't lead at the Supreme  
7 Court?

8 A Well, we couldn't bring in -- we couldn't bring in  
9 any evidence of police misconduct, we couldn't  
01:35 10 bring in, bring that up.

11 Q Okay. Now, what -- when you say any evidence of  
12 police misconduct, what specifically, and again  
13 I'm looking back at what you remember your lawyers  
14 telling you or what your understanding was.

01:35 15 A Well, I'm thinking in terms of the Roberts'  
16 interview, Nichol overnight in jail, the constant,  
17 you know, if David didn't do it, then we'll get  
18 you for it, the threats, the coercion, the things  
19 of that nature that were done to those kids.

01:35 20 Q Now, Inspector Roberts did testify as did Nichol  
21 John; correct?

22 A Yes.

23 Q And I believe that that type of evidence came out  
24 at the hearing didn't it?

01:36 25 A Some of it did.





1 Q And so again I'm trying to go back and get what  
2 you remember being told by your lawyers as to what  
3 they told you could and couldn't go in, and so you  
4 are saying police misconduct was one?

01:36 5 A I believe that was one of the ones that they  
6 mentioned and that we couldn't go into those  
7 areas.

8 Q Even if they related to your son's innocence or to  
9 a miscarriage of justice and his conviction, do  
01:36 10 you remember that?

11 A Yes, that was my understanding. I may be wrong,  
12 but that was my understanding.

13 Q Okay. What was your understanding as to what  
14 evidence could be put in or what issues were  
01:36 15 before the court?

16 A Well, I understood that all of the issues that we  
17 had pretty well would be able to be dealt with. I  
18 thought that the Larry Fisher evidence would have  
19 been dealt with and I believe it was to a degree.

01:37 20 Q And again, just on your understanding, is this,  
21 and I appreciate it's difficult to go back 15  
22 years and try and pinpoint at what point, is it  
23 possible that some of this information about, that  
24 your lawyers may have told you about the scope of  
01:37 25 the hearing may have come through the hearing or



1 even after the decision came out?

2 A Probably after the decision came out.

3 Q So it was after April 14th, 1992 that your lawyers  
4 would have told you that lookit, we weren't  
01:37 5 allowed to put this evidence in?

6 A And we weren't allowed to do this and we weren't  
7 allowed to do that because that was one of the  
8 reasons that we felt we had failed at the Supreme  
9 Court.

01:37 10 Q Okay. And I'll get to the decision. So just so  
11 that I'm clear here, are you saying then that the  
12 information you got from your lawyers about the  
13 scope of the Supreme Court hearing you got after  
14 their decision or before the hearing?

01:38 15 A I would say I got part of it at the time, you  
16 know, whatever they were dealing with. I don't  
17 think that I realized the scope of the lack of  
18 information that was going in until afterwards.

19 Q And would it be correct to say that after the  
01:38 20 Supreme Court decision came out, and I'll take you  
21 to that in a moment where they said there was no  
22 evidence of, I think the words were no evidence of  
23 police misconduct or no evidence of wrongdoing,  
24 things of that nature, was it at that point  
01:38 25 where --



1 A I was throwing my hands up in the air and I'm  
2 saying how could they say that. They told my  
3 lawyers on the very first day that they couldn't  
4 lead that evidence, I can remember saying that  
01:38 5 publicly.

6 Q And when you talked earlier about being outraged  
7 when you heard this, is it likely that it was  
8 after the decision came out that you were outraged  
9 or was it before the hearing started that you were  
01:38 10 outraged about the scope of the Supreme Court  
11 hearing?

12 A I felt it was wrong when we first started, but  
13 then when they based their decision by saying that  
14 we have heard no evidence of this, I thought that  
01:39 15 was terrible, how could they say they had heard no  
16 evidence of it when they had told our lawyers that  
17 they couldn't bring in that evidence.

18 Q And let me pause there.

19 A That's when I got really outraged.

01:39 20 Q And my question is did your lawyers tell you that  
21 they couldn't bring that evidence in after the  
22 Supreme Court decision came out; in other words,  
23 was it when the decision came out that they said  
24 lookit, Mrs. Milgaard, the reason there wasn't  
01:39 25 evidence before the court was because they told us



1           they couldn't, or was that something you learned  
2           back before the hearing started?

3           A           I think part of it I learned before the hearing  
4           started. The scope of it I didn't realize until  
01:39 5           afterwards, how mammoth it was. It wasn't until I  
6           started reading that decision.

7           Q           So that before the hearing started and in the  
8           course of the hearing, you may have been generally  
9           aware that there was some limits on what the court  
01:40 10          could hear?

11          A           Some limits, uh-huh.

12          Q           But maybe you didn't appreciate the significance  
13          of that; is that fair?

14          A           That's fair.

01:40 15          Q           And then once the decision came out, you  
16          appreciated the significance much more?

17          A           I did.

18          Q           And after the decision came out, would it be  
19          correct to say that your understanding of what the  
01:40 20          Supreme Court would and would not hear came from  
21          Mr. Wolch and Mr. Asper?

22          A           Yes.

23          Q           That would be the source?

24          A           Yes.

01:40 25          Q           As opposed to hearing directly from the judge of



1 the court?

2 A That's correct.

3 Q If we can go to 002623, and this is a letter from  
4 Murray Brown to Mr. Fainstein, this is right  
01:40 5 before the start of the Supreme Court and talks  
6 about issues, or potential witnesses, and I only  
7 bring this up because it does mention Dr. Ferris  
8 and Dr. Markesteyn at this time. Now, this is Mr.  
9 Brown saying lookit, this is who I think Mr. Wolch  
01:41 10 is going to call and I think you told us your  
11 memory is you thought that Dr. Ferris and Dr.  
12 Markesteyn were going to testify at least at one  
13 point?

14 A Yes.

01:41 15 Q And then is it fair to say that after the secretor  
16 status of your son, it was determined that he was  
17 a secretor, that their evidence was not --

18 A -- tendered.

19 Q And it wasn't as valuable as you thought it would  
01:41 20 have been; is that right?

21 A That's correct.

22 Q Go to 115875, and go to the next page, please,  
23 this is a letter from Mr. Wolch to Chief Justice  
24 Lamer of the Supreme Court, it's two days before  
01:42 25 the hearing starts, and again this talks about



1 witnesses and order of witnesses and areas and we  
2 touched on this generally before. Would it be  
3 correct to say that this would be something you  
4 would rely on your lawyers to put forward to the  
01:42 5 court in your David's best interests, and although  
6 you may have discussed it with Mr. Wolch and Mr.  
7 Asper and had some input, you relied upon them as  
8 to what position to take with the court on  
9 witnesses and evidence?

01:42 10 A Yes, I would.

11 Q And if we can go to page 115878, and I just want  
12 to have you comment, we touched upon this when you  
13 previously testified. This is relating to your  
14 David's emotional or mental state at the time and  
01:42 15 the issue of him testifying, and Mr. Wolch says:

16 "It has always been our intention to  
17 have David Milgaard testify. The  
18 difficulty we are having right now is  
19 with David's emotional state."

01:43 20 And is that, was that your understanding, that  
21 David -- I can't recall what you told us last  
22 time. I thought you might have said that lookit,  
23 you weren't sure that David would actually have  
24 to testify when you started the process with the  
01:43 25 federal government?



1 A I think we had real concerns about David's ability  
2 to be able to testify because of the mental, the  
3 emotional mental state that he was in.

4 Q Let me just go back to December of '88 when you  
01:43 5 filed your application with the minister.

6 A Yes.

7 Q At that time did you have any understanding or  
8 idea whether -- I think you were asking for a  
9 court hearing of some sort?

01:43 10 A Yes.

11 Q That David would have to testify. Was that  
12 something you knew was likely going to have to  
13 happen from day one or is that something you  
14 learned right around the time of the reference?

01:43 15 A I think I probably expected it, but I don't know  
16 that for sure, Mr. Hodson.

17 Q Okay. So something that you thought, yeah, maybe  
18 he will have to depending on the type of hearing?

19 A Uh-huh.

01:44 20 Q It wasn't a case of being surprised in January of  
21 1992 that finding out for the first time that  
22 David is going to have to testify?

23 A No.

24 Q So likely you had some inkling it was going to  
01:44 25 happen?



1 A I think we did.

2 Q Here Mr. Wolch says:

3 "After being convicted, David underwent  
4 numerous bouts of depression and  
01:44 5 emotional difficulties. This continued  
6 over the many years of incarceration,  
7 and we have brought this to Justice's  
8 attention numerous times as it is well  
9 documented, and in fact the Prime  
01:44 10 Minister himself at one point expressed  
11 concern. All penal authorities and  
12 experts that we have spoken to have told  
13 us that David's reintroduction into  
14 society will be very difficult to say  
01:44 15 the least. Those fears are being  
16 realized. Much of David's time in jail  
17 was focused on proclaiming his  
18 innocence, helping others and correcting  
19 injustice. For approximately  
01:44 20 twenty-three years, nobody has ever  
21 listened to him. Now everybody wants to  
22 listen to him, and he has achieved  
23 almost celebrity status.

24 Unfortunately, but  
01:45 25 understandably, he does not have a great





1 deal of faith in the Justice system.  
2 What we are faced with now is that  
3 David's main interest is to start  
4 experiencing living, and also rectifying  
01:45 5 various ills in society. We are having  
6 a great deal of difficulty having David  
7 even focus on this reference. We have  
8 enlisted the aid of Dr. Stanley Yaren,  
9 the Chief Psychiatrist for the Province  
01:45 10 of Manitoba, who has had a long standing  
11 relationship with David. Our  
12 understanding is that Dr. Yaren will be  
13 meeting with David and his family this  
14 week. Dr. Yaren may have to be called  
01:45 15 as a witness to explain David's mental  
16 state."

17 And can you confirm the accuracy of what's stated  
18 there, would you agree with what Mr. Wolch put  
19 forward about David's circumstances at the time?

01:45 20 A Absolutely.

21 Q Do you have anything else you wish to add to  
22 what's stated there about what was happening to  
23 your son immediately prior to the reference?

24 A Well, so much was riding on it that it, he had his  
01:46 25 really down days and he had his up days, but you



1 never know when you went to visit him, you never  
2 knew what kind of shape he was going to be in.  
3 Sometimes he would ask to be taken to solitary  
4 confinement and -- because he just needed to get  
01:46 5 away from it all. All the inmates at this point  
6 of course are coming up to him and talking to him  
7 about it and he's living it morning, noon and  
8 night.

9 Q And did the media attention cause him some  
01:46 10 discomfort?

11 A Oh, absolutely, because everyone was calling and  
12 wanting interviews and to do things with him and  
13 some days he could do it, he was all right, other  
14 days he just couldn't.

01:46 15 Q Did he have concerns about the media attention,  
16 was he at times opposed to the media attention  
17 that was deliberately being brought to his case,  
18 which I think was in order to get a remedy?

19 A Yes, I believe he supported some parts of it, but  
01:47 20 he also felt somewhat violated by it I think.

21 Q Did that lead to some of the conflict between he  
22 and Mr. Asper and Mr. Wolch from time to time  
23 about -- I think we've heard that, from Mr. Asper  
24 that he got fired on a number of occasions. Would  
01:47 25 that be sometimes the issue between them, that



1 your David didn't like the direction being taken  
2 in the media on his behalf?

3 A Well, actually it was almost the reverse, because  
4 we would in some cases have to sit on David and  
01:47 5 say no, you can't do these interviews because of  
6 the condition you are in and he of course didn't  
7 see himself as in any kind of condition, and so  
8 oftentimes it was when we were trying to keep him  
9 from doing interviews because we didn't want  
01:47 10 people to see him in that state that we would have  
11 difficulties, and David needed to be really -- it  
12 was important for him to be in control.

13 Q Okay. I'm sorry, maybe I didn't state it. My  
14 understanding is that his concern or one of his  
01:48 15 concerns with the media attention being drawn to  
16 the case is that he wanted attention drawn to  
17 other --

18 A His Justice Group.

19 Q His Justice Group --

01:48 20 A Right.

21 Q -- in the prison?

22 A Right.

23 Q And prisoners' rights, as opposed to David  
24 Milgaard's re-opening efforts?

01:48 25 A That's correct.



1 Q And would that be one of the areas of conflict  
2 between he and Mr. Asper and Mr. Wolch about,  
3 maybe not having media coverage, but the type of  
4 media coverage?

01:48 5 A Absolutely, that was one of the big issues that we  
6 were dealing with.

7 Q And your David, is it correct to say, his position  
8 often would be don't go out in the media and talk  
9 about my case, I want you to talk about prisoners'  
01:48 10 issues?

11 A Yes, because he was very strong on what he  
12 believed was happening in that prison was wrong.

13 Q Go to the next page, please, and just comment  
14 here, we touched on this as well, this letter is  
01:49 15 January 14th, '92, Mr. Wolch says:

16 "We should add that it is also our  
17 intention to file additional material  
18 with the court. Since our last meeting,  
19 we would guesstimate that we have  
01:49 20 received approximately 5,000 pages of  
21 material that we have not seen before.  
22 Our sources of material have been the  
23 Department of Justice in Ottawa, the  
24 Department of Justice in Saskatchewan  
01:49 25 and the Parole Board. We are trying to



1 work it down as to what is relevant and  
2 not duplicitous."

3 And I think that's similar to what you told us  
4 last time, that in December of '91, right before  
01:49 5 the reference case, that you received a  
6 significant volume of documents from the  
7 authorities?

8 A We just -- it was hard to even get through them  
9 all. Many of the nights I slept overnight in the  
01:50 10 war room in the chair at that time.

11 Q If we could go to 305225, and this is a decision  
12 that the court rendered on February 28th, 1992, so  
13 this is after the court has heard evidence for  
14 about a month and it had to do with the -- well,  
01:50 15 right at the top, a statement of the court with  
16 respect to what will constitute a miscarriage of  
17 justice in the circumstances of this case, and  
18 what the court says is basically four areas; one,  
19 if David can prove his innocence beyond a  
01:50 20 reasonable doubt he will get this remedy, if he  
21 can prove his innocence on a preponderance of  
22 evidence he will get this remedy, thirdly, if he  
23 can't do either of those but the continued  
24 conviction of David Milgaard would constitute a  
01:51 25 miscarriage of justice, if there's new evidence



1 that could reasonably have affected the verdict,  
2 and those tests. Do you recall becoming aware of  
3 this or having any involvement in this or placing  
4 any significance on this at the time or was this  
01:51 5 something you left up to the lawyers?

6 A I think at that time that would be mostly up to  
7 the lawyers, and, you see, when I read that, like,  
8 I'm looking at it now with hindsight and realizing  
9 how terrible it is.

01:51 10 Q And why do you say that?

11 A Well, because of the way they used it --

12 Q Okay.

13 A -- to turn him down.

14 Q And maybe let's just go to the next page. When  
01:51 15 you say they used it, what do you mean, can you  
16 elaborate on that?

17 A Well, how they used areas of it to say in their  
18 judgment that they couldn't find this or they  
19 couldn't find that.

01:51 20 Q Okay. Let me just maybe highlight the part --  
21 maybe go to the next page.

22 A Can I find -- can you tell me where it is in this  
23 book that we're working with?

24 Q Do you know what -- I can show you right on the  
01:52 25 screen and read it to you if that would help you,



1           it would be in February 28th, 1992 in that book;  
2           was there a certain part you wanted me to show  
3           you?

4           A       Well, I would feel more comfortable if I had  
01:52 5           looked at it --

6           Q       Sure.

7           A       -- in its entirety.

8           Q       And I think, if I can, do you want to take a quick  
9           read through that, or if I can just draw to your  
01:53 10          attention, Mrs. Milgaard, the key areas that I  
11          wanted to ask you some questions about.

12          A       Okay.

13          Q       What the Court said is that this was a set of  
14          tests to assist them in saying -- I think what  
01:53 15          they were saying was how do we determine whether  
16          or not there's been a miscarriage of justice --  
17          and if we could just scroll up to the top a bit,  
18          please -- and they say therefore it will apply the  
19          following guidelines in forming its opinion as to  
01:53 20          whether the continued conviction of David Milgaard  
21          constitutes a miscarriage of justice. And point  
22          one they say, look, that it would constitute a  
23          miscarriage of justice if on the basis of the  
24          judicial record, which is the Court proceeding,  
25          the reference case, which are all the documents



1 that were filed, and such further evidence as this  
2 Court may receive, that if the court is satisfied  
3 beyond a reasonable doubt that David Milgaard is  
4 innocent, then they would consider advising the  
01:53 5 Governor-in-Council to grant a free pardon. So  
6 that would be question one, the Court said lookit,  
7 if after hearing everything we're satisfied beyond  
8 a reasonable doubt that David is innocent, then  
9 that's a miscarriage of justice and we'll advise  
01:54 10 the Minister to give a pardon.

11 A Okay.

12 Q So that was something, at the time, you would have  
13 been aware of, that the Supreme Court was going to  
14 determine whether or not the evidence or the  
01:54 15 record established David's innocence; is that  
16 fair?

17 A Yes.

18 Q Now if we could just scroll down to the next  
19 point, and that was proof beyond a reasonable  
01:54 20 doubt that basically said the same thing, that if  
21 David can prove that he is probably innocent --  
22 and I think that's where they use, here, on a  
23 preponderance of the --

24 A Preponderance of the evidence, yes.

01:54 25 Q Yeah. And I think, I think I'm right in saying





1           that that means more likely than not, or  
2           probably --

3           A           Yes.

4           Q           -- 50 percent plus 1, so if David can establish to  
01:54 5           the Court's satisfaction or if the Court is  
6           satisfied after looking at all the documents,  
7           hearing all the evidence, that David is probably  
8           innocent, then they will give him a remedy?

9           A           Correct.

01:54 10          Q           And the remedy here, I think, was to go re-apply  
11           for leave, and so that's something you would have  
12           been aware of at the time, --

13          A           Yes.

14          Q           -- that if David couldn't prove innocence beyond a  
01:55 15           reasonable doubt, if he could still prove that he  
16           was probably innocent, he would get a remedy?

17          A           That's correct.

18          Q           And is that, again, at the time would it be  
19           correct to say that that's something that you had  
01:55 20           asked for, you had wanted a hearing for judges to  
21           decide and hear new evidence and have an  
22           opportunity for David to prove that he was  
23           innocent?

24          A           Yes, --

01:55 25          Q           Was --



1 A -- we wanted to be able to have a new trial and  
2 show that he was innocent.

3 Q And so again, at the time, do you recall having  
4 any concerns about the tests that the Court was  
01:55 5 putting down? Was this something that you said  
6 "oh good, we finally get our chance to have the  
7 Court hear from David, hear from Ron Wilson, hear  
8 from Larry Fisher, hear from everybody and once  
9 and for all say David is probably innocent"?

01:55 10 A Yeah, I did.

11 Q What was it later on, I think I said later on when  
12 you looked back you now realize that, you see --

13 A That they used these statements in the wrong way  
14 against us.

01:56 15 Q And can you elaborate on that?

16 A Well I'd have to go to the judgement, but when I,  
17 when I read all of their reasons that they gave  
18 they seemed to be saying that "if we'd had this"  
19 or, you know, "we didn't have this so this is  
01:56 20 why".

21 Q Okay. I think at the end, when we get to the  
22 judgement, the concern would be is that the Court  
23 did not find that David was probably innocent or  
24 that he was innocent beyond a reasonable doubt?

01:56 25 A But they did say that he should get a new trial.



1 Q Yeah. Let me just go to the next point and then  
2 we'll come back to that. The next page, the third  
3 ground, what they said is, in this test, that it  
4 would be a miscarriage of justice if there was new  
01:56 5 evidence put before the Court which is relevant to  
6 the issue of David Milgaard's guilt which is  
7 reasonably capable of belief and could reasonably  
8 be expected to have affected the verdict, then it  
9 would be open to quash the conviction and have a  
01:57 10 new trial?

11 A That's right.

12 Q And I think this is the ground where the Supreme  
13 Court ultimately decided; correct?

14 A Yes.

01:57 15 Q So in other words if David can't prove he's  
16 innocent beyond a reasonable doubt, or probably  
17 innocent, if he can give us some new evidence  
18 that's credible, that might have affected the  
19 verdict, he's entitled to a new trial?

01:57 20 A Right.

21 Q And so did you have concerns about that?

22 A No. I think we felt that if we got a new trial  
23 we'd be all right because, at the new trial, we'd  
24 be able to enter all the evidence.

01:57 25 Q Okay, and get an acquittal?



1 A And get an acquittal.

2 Q Okay. So again, at the time when this came out,  
3 do you recall having any concerns or your lawyers  
4 expressing any concerns to you saying "lookit, the  
01:57 5 tests that the Supreme Court is setting out, we  
6 either really like it, we don't like it, anything  
7 of that nature; do you recall any concerns that  
8 you had at the time?

9 A I couldn't tell you specific concerns, but I  
01:57 10 believe Hersh and David were discussing some of  
11 them.

12 Q Do you know what they were, or is that something  
13 --

14 A No, I really don't.

01:58 15 Q But, generally speaking, having an opportunity to  
16 have the Supreme Court of Canada rule on David's  
17 innocence was something that you had been seeking?

18 A Oh, yes.

19 Q Or any Court?

01:58 20 A Yes, it was major, and we were very happy about  
21 it.

22 Q If -- and don't take this question the wrong way  
23 -- if the Court had concluded that David was  
24 probably innocent and found in favour of you, is  
01:58 25 it fair to say that you may have had less concern



1 with the tests that they employed than you  
2 ultimately did?

3 A Yes, probably.

4 Q And so the result was one that you didn't agree  
01:58 5 with, you didn't like, therefore maybe you looked  
6 a bit more critically at the test; --

7 A That's --

8 Q -- is that a fair --

9 A That's fair.

01:58 10 Q -- a fair way to put it?

11 A That's a fair way to put it.

12 Q If we can then go to 010127. This is an affidavit  
13 of yours that was filed with the Court and is  
14 included in the documentary evidence; do you  
01:59 15 recall how this affidavit came about and why it  
16 was filed, or what may have prompted it?

17 A I think it was required.

18 Q By whom?

19 A By the Court.

01:59 20 Q Okay. And, I'm sorry, did they -- did they ask  
21 you to put -- or --

22 A No, my lawyers did, but I assumed it was something  
23 that was required for it.

24 Q Okay. So your lawyers indicated -- were you told  
01:59 25 that you might be a witness at the Supreme Court;



1 do you remember that being discussed, about  
2 whether you would actually testify?

3 A Well, I offered to testify, I said that I'd be  
4 happy to testify.

01:59 5 Q And do you recall why you weren't called as a  
6 witness?

7 A No, I don't.

8 Q And would that be something your lawyers would  
9 have --

01:59 10 A I think, even in my affidavit, --

11 Q Right?

12 A -- I had indicated that I would be prepared to  
13 testify.

14 Q Right, that is at the end of your affidavit, and I  
01:59 15 think that was your position. I'm trying to find  
16 out if you know any reason as to why you weren't  
17 called as a witness?

18 A No, I have no idea.

19 Q And would the affidavit then be, was it a way to  
02:00 20 get some of your evidence in before the Court  
21 without you testifying, or do you know?

22 A I think it was a way of making sure that, if I  
23 didn't testify, the evidence got in.

24 Q If we can go to the next page, please. Paragraph  
02:00 25 5 at the bottom you talk about, here:



1                    "... retained the services of Gary Young  
2                    and later Anthony Merchant. I was  
3                    advised at that time that reopening  
4                    convictions was extremely difficult and  
02:00 5                    it would best --",

6                    I think that should be 'would be':

7                    "... best if the main witnesses were  
8                    approached to determine if they were  
9                    prepared to recant their evidence and  
02:00 10                    included herein at pages 17 - 18 is a  
11                    letter from Anthony Merchant. Skip  
12                    tracers were retained and as a result I  
13                    was able to contact Ron Wilson and did  
14                    have a telephone conversation with him  
02:01 15                    in 1981. The telephone conversation,  
16                    while cordial, was generally  
17                    insignificant."

18                    And let me just pause there. I think that would  
19                    be the same conversation that we went through --

02:01 20                    A                    Yes, --

21                    Q                    -- a couple of weeks ago?

22                    A                    -- it was.

23                    Q                    Yeah, it would be. And, in fact, there was two  
24                    conversations; wasn't there?

02:01 25                    A                    Yes.



1 Q So the January 26th, 1981 and the April 15th,  
2 1991, I think were the dates, those would be the  
3 telephone conversations that you would be  
4 referring to in this affidavit?

02:01 5 A That's correct.

6 Q And do you know if there was any, ever, discussion  
7 about attaching those transcripts to your  
8 affidavit or putting that, those transcripts,  
9 before the Court; do you recall anything of that  
02:01 10 nature?

11 A I don't recall us discussing that.

12 Q And would that have been your view, that those  
13 conversations were generally insignificant with  
14 Mr. Wilson, would you --

02:01 15 A Well to me those conversations that I had at that  
16 time, because of the condition that he was in, if  
17 I was a judge or someone looking at that  
18 transcript or -- and listening to that  
19 conversation I would say "how can we get anything,  
02:02 20 how can we take anything out of this, this man is  
21 obviously inebriated, on drugs, whatever", he was  
22 just all over the place, and so --

23 Q Well, was there --

24 A -- I just felt it was insignificant. I didn't  
02:02 25 think it was anything that could be used as





1 evidence.

2 Q Did you have any thought, at the time, about at  
3 least putting it before the Court and letting the  
4 judges decide whether it did or did not assist  
02:02 5 them in understanding Ron Wilson's evidence?

6 A I don't remember any thought processes like that.

7 Q Okay. And, again, I'm trying to determine  
8 whether, back at this time of the affidavit,  
9 whether there was a decision with your lawyers  
02:03 10 saying, "okay, well should we put it in or should  
11 we not, let's not put it in, and here's why"?

12 A I don't recall any of that.

13 Q Okay. And, similarly, you talk about locating  
14 Nichol John and had a meeting with Nichol John in  
02:03 15 the presence of her lawyer, and about the  
16 hypnosis, but there is no mention of the interview  
17 being taped or of the transcript, and the  
18 transcript certainly was not attached. Would you  
19 get -- would you have the same evidence with  
02:03 20 respect to Nichol John and those interviews as you  
21 did with Ron Wilson -- well, actually let me  
22 rephrase it, because I think you are saying the  
23 Ron Wilson interviews you thought were  
24 insignificant because of his condition?

02:03 25 A And with Nichol John, I mean, because we got, we



1           didn't get anything from her, I didn't see that we  
2           had anything to submit.

3           Q       And so, again, but what; was it a case of, back at  
4           the time of this affidavit, that you and your  
02:04 5           lawyers discussed "should we or should we not put  
6           the transcript in", and you decided not to, or was  
7           it a case that it simply -- that issue wasn't  
8           addressed between you and your lawyers?

9           A       I don't think it was addressed.

02:04 10          Q       Okay.

11          A       I think that I was progressively going through,  
12          sort of letting them know what I did.

13          Q       If we can go to the next page, and I think here  
14          you say:

02:04 15                    "In order to obtain the file ...",  
16                    I think you are talking about Mr. Tallis'  
17                    original file?

18          A       Uh-huh.

19          Q       You say:

02:04 20                    "... I have also caused to be made  
21                    enquiries of Anthony Merchant and he  
22                    does not have the original file although  
23                    he was able to locate his file which  
24                    consists of primarily parole reports."

02:04 25                    And I think this would have been the first time



1           that you or your counsel had contacted Mr.  
2           Merchant to get his file; is that right?

3           A           That's correct.

4           Q           And do you remember how that came about or why  
02:04 5           that became an issue at that time and not earlier?

6           A           Well I think because we thought that we might need  
7           it.

8           Q           Might?

9           A           Need it for the Supreme Court.

02:05 10          Q           Might need Mr. Merchant's file?

11          A           Yes.

12          Q           Okay. And if we can scroll down to paragraph 9,  
13          you say:

14                        "I am advised by Mr. Wolch that this  
02:05 15                        Court is interested in determining what  
16                        disclosure was made available to Justice  
17                        Tallis at the time and given that the  
18                        files apparently are either lost or  
19                        destroyed I have reviewed the material  
02:05 20                        that I have gathered over the years  
21                        ...".

22                        Would that have been what Mr. Wolch had told you;  
23                        that the Supreme Court was interested in  
24                        determining what disclosure was made available to  
02:05 25                        Justice Tallis?



1 A Yes.

2 Q And then you go on to attach copies of letters,  
3 and you say here -- these are letters, I think,  
4 from -- between Mr. Caldwell and Mr. Tallis -- and  
02:05 5 you say:

6 "These letters were provided to me by a  
7 Peter Carlyle-Gordge who had apparently  
8 received same from Mr. Caldwell in 1983.  
9 I have also included Mr. Caldwell's  
02:05 10 report and other correspondence that may  
11 be helpful."

12 So do I have this correct, that Mr. Wolch would  
13 have said, "lookit, we'd like, we need evidence  
14 before the Court about what disclosure was made  
02:06 15 by Mr. Caldwell to Mr. Tallis, you've got some of  
16 that information because you've got these letters  
17 from Mr. Carlyle-Gordge, put it in through your  
18 affidavit"; is that --

19 A Right, that's correct.

02:06 20 Q If we can go to page 010133, and paragraph 17 you  
21 talk about seeking the assistance of Centurion  
22 Ministries, you say that Reverend McCloskey is  
23 prepared to testify, Paul Henderson is prepared to  
24 testified, and then down here Professor Boyd and  
02:06 25 Rossmo, they are independent, on the next page you



1 say they are prepared to testify; do you have any  
2 knowledge as to why Mr. McCloskey, Mr. Henderson,  
3 Mr. Boyd, and Mr. Rossmo did not testify before  
4 the Supreme Court?

02:07 5 A I do not.

6 Q Am I correct that, from reading your affidavit, it  
7 appears that you are suggesting that they should  
8 be called as witnesses or that you would like them  
9 to be witnesses?

02:07 10 A Well I had felt that they would be excellent  
11 witnesses for the Supreme Court to hear from.

12 Q And then, again, just scroll down to paragraph 9.  
13 I think this is where you say:

14 "... it clearly understood that I am  
02:07 15 more than willing to testify before this  
16 Court to any matter raised in this  
17 Affidavit ...";

18 is that correct?

19 A Yes. And the first part of that statement is how  
02:07 20 they got me doing this affidavit.

21 Q I'm sorry?

22 A The first part of that statement is how Hersh and  
23 David --

24 Q Oh, --

02:07 25 A -- got me doing that statement.



1 Q -- sure, so:

2 "I am aware how valuable court time is  
3 in the Supreme Court and have been  
4 advised by counsel that the tendering of  
02:08 5 Affidavits may be an expeditious way of  
6 preserving court time."

7 A Yeah.

8 Q Was that --

9 A I mean that was one of the reasons that we were  
02:08 10 doing the affidavits was because -- to save the  
11 Supreme Court time.

12 Q And was that your understanding, at the time, as  
13 to why you would put an affidavit in as opposed  
14 to --

15 A Yes, it was.

16 Q -- appearing in person? Now as far as the Supreme  
17 Court reference itself, I think it went over the  
18 course of three months, sporadic days here and  
19 there; is that correct?

02:08 20 A That's correct.

21 Q And you attended each day of Court, I think, and  
22 --

23 A I did.

24 Q -- and you also would have participated, I think,  
02:08 25 with Mr. Wolch and Mr. Asper, and I think



1 Mr. Bruce was present as well in Ottawa for a  
2 while, --

3 A Yes.

4 Q -- as far as reviewing materials and preparing --

02:08 5 A My whole family, the -- I had family, a niece in  
6 Kanata, and their husband and their children, they  
7 actually went through files and worked with us  
8 pulling out stuff because, at the last minute, we  
9 had so much paper and things to do and we'd --  
02:09 10 we'd had someone, Hersh would say "well where's  
11 this", and then there'd be a concerted effort of  
12 everybody to find it because there was -- we were  
13 just deluged with paper.

14 Q Now if we could go to your book, which is 269317.

02:09 15 A And the page number, please?

16 Q 227.

17 A Thank you.

18 Q The book page is 227, the doc. ID is 269555. And  
19 we touched on this a bit earlier, this relates to  
02:09 20 the Mackie summary, the document; you know which  
21 document is the Mackie summary?

22 A Yes, I do.

23 Q And here you write in your book:

24 "One night, David Asper and I  
02:09 25 were prepping Hersh when Hersh read a



1 police document and looked startled.

2 'Joyce, do you you know what this is?

3 Don't you realize the significance of

4 this?'"

02:10 5 You answered:

6 "'No. What's the

7 significance of it?'

8 'Look at this,' Hersh said. I

9 looked at a police report we had

02:10 10 received in the late 1980s, after we

11 started pressuring the Justice

12 Department to make sure Saskatchewan

13 provided us with all available documents

14 on the case. I had seen it what seemed

02:10 15 to be a thousand times, and so had David

16 Asper. It hadn't struck us as

17 particularly remarkable, perhaps because

18 we were buried so deeply into the case.

19 'This is incredible,' Hersh

02:10 20 said. 'They did this before they talked

21 to those kids.'

22 Hersh was marvelling about a

23 Crown document that set out the

24 prosecution's game plan. What was

02:10 25 shocking was its timing. It said what





1 witnesses were to say *before* they had  
2 said it. At the bottom of the document,  
3 the police were ordered to get David's  
4 young friends, interrogate them and get  
02:10 5 them to make statements that conformed  
6 to the Crown's theory, which they did in  
7 May of 1969. Everything that was  
8 outlined in the Crown's theory was what  
9 they eventually got those kids to say  
02:10 10 later. It was an absolutely dynamite  
11 piece of paper.

12 Hersh had waited years for his  
13 chance in Court, and he wasn't about to  
14 waste it. Eddie Karst, one of the key  
02:11 15 police investigators in the case, was on  
16 the witness stand on February 17, 1992,  
17 when Hersh produced the Crown 'game  
18 plan' document that targeted David.  
19 Hersh absolutely rocked the packed  
02:11 20 courtroom when he said, 'A senior  
21 officer laid out a whole theory and told  
22 you to go get it from these people.' It  
23 wasn't so much a question as a bald  
24 statement of fact."

02:11 25 And then it goes on to talk about that and



1 Mr. Karst's evidence.

2 If we can just go back to the  
3 previous page, would that be an accurate account,  
4 what I read from your book, about what you  
02:11 5 remember?

6 A Absolutely. To this day, I'll never remember how  
7 shocked David Asper and I were to see his  
8 interpretation of it, I mean we'd looked at the  
9 paper so -- and I was mad at myself that I hadn't  
02:11 10 seen the significance of it before that time, but  
11 Hersh saw it immediately, and it was like a big  
12 white light had gone on for everyone.

13 Q And would that have been, I think you told us this  
14 earlier, but at that point I think the theory put  
02:12 15 forward by your group that the Mackie summary was  
16 evidence that supported your contention that the  
17 police wrongfully coerced witnesses?

18 A That's correct.

19 Q Now it talks here about, you say that:

20 "... a police report we had received in  
21 the late 1980s, after we started  
22 pressuring the Justice Department to  
23 make sure Saskatchewan provided us with  
24 all available documents on the case."

02:12 25 I'm presuming the "Justice Department" would have



1           been the federal Justice Department; is that  
2           right?

3           A           Yes, that's correct.

4           Q           So in the late '80s, in the late '80s then, did  
02:12 5           you -- it appears from this comment in that, in  
6           late '80s, you would have received some police  
7           files from Federal Justice?

8           A           I believe we did.

9           Q           And would that -- would that -- are you able to  
02:12 10          pinpoint the date any further, would it have been  
11          --

12          A           No, I'm sorry, I can't, Mr. Hodson.

13          Q           And, again, this would have been a document that  
14          you would have read, I think you said, a --  
02:13 15          thousands of times -- maybe that's overstating  
16          it -- but --

17          A           Yeah.

18          Q           -- you would have read it many, many times?

19          A           We had read it many, many times, because you sort  
02:13 20          of went through the step by step, but not seeing  
21          the significance of the date being before it took  
22          place.

23          Q           If we could call up 008879. This is the Supreme  
24          Court of Canada decision dated April 14, 1992.  
02:13 25          Now, before I go through this, I think you've told



1 us a couple weeks ago that basically -- and please  
2 correct me if I'm wrong -- but basically you had  
3 three -- when I say "you" I'm talking about you  
4 and your son David and perhaps your counsel -- but  
02:13 5 that you had really three objectives in going to  
6 the Supreme Court, one -- and I think you ranked  
7 them this way -- number one was to get David out  
8 of jail; is that right?

9 A Right.

02:14 10 Q Is that fair?

11 A Fair.

12 Q And number two was to clear his name?

13 A Yes.

14 Q Or to give you a process that would allow you to  
02:14 15 clear his name?

16 A Correct.

17 Q And so a free pardon would have done that. If the  
18 Court would have, if the Supreme Court would have  
19 said "we find beyond a reasonable doubt that David  
02:14 20 is innocent" and gave him a free pardon or advised  
21 the Minister to give him a free pardon, that would  
22 have satisfied that concern?

23 A Yes.

24 Q If the Court had said, "lookit, we believe that  
02:14 25 David is probably innocent and therefore we give



1 him leave to appeal to the, appeal to this  
2 Court", --

3 A Yes.

4 Q -- that would have -- is it -- would that have  
02:14 5 cleared his name sufficiently for your purposes  
6 then?

7 A As long as he got leave to take it to a Court,  
8 yes.

9 Q And if the Supreme Court said "we find that, based  
02:14 10 on the evidence, David Milgaard is probably  
11 innocent, and therefore we advise the Minister to  
12 give him a remedy"?

13 A Yes.

14 Q And the remedy, I think they, in their earlier  
02:14 15 decision, said they'd give would be to allow him  
16 to re-open his application for leave to appeal to  
17 the Supreme Court that would presumably lead to  
18 the Court granting a remedy. And, again, that  
19 would be something that would satisfy your concern  
02:15 20 of clearing David's name; is that fair?

21 A Yes, I think so.

22 Q And the third item I think you said of your list  
23 of things that you wished to achieve from the  
24 Supreme Court was a ruling that would allow David  
02:15 25 a basis to seek compensation from the authorities



1 for wrongful conviction?

2 A Correct.

3 Q And would it be correct to say that, in order for  
4 David to seek compensation for being wrongfully  
02:15 5 convicted, that you also needed something from the  
6 Court saying that?

7 A Yes.

8 Q And so that you -- you -- sort of two and three  
9 were connected, in other words in order to get  
02:16 10 compensation you need to, you needed to get  
11 David's name cleared; is that fair?

12 A That's fair.

13 Q Now I propose to go through parts of this  
14 decision, but is it fair to say that -- that -- or  
02:16 15 correct to say that the Supreme Court decision  
16 gave you number one, in other words it allowed for  
17 David to be let out of prison; but that it  
18 significantly hampered two and three, namely it  
19 did not remove -- it did not clear David's name  
02:16 20 and, secondly, it acted as an impediment for David  
21 to seek compensation?

22 A It did. I can remember that day that -- when we  
23 got the judgement and we were going to have to go  
24 up to the prison to get David out, and I, I was so  
02:16 25 upset when I read that judgement. The fact that



1           they were letting him out was great, and -- but I  
2           was furious as to what they said in the ruling,  
3           and I remember David Asper saying to me "Joyce,  
4           you've got to look happy about this", and I said  
02:17 5           "why do I have to look happy about this, what they  
6           have done is wrong". And I mean I -- there was no  
7           way I wanted to go up there and put on a happy  
8           face, and he said "you're gonna have to. I am  
9           telling you, Joyce, you have got to get up there  
02:17 10          and you've got to be really happy and look excited  
11          about taking your son out of prison, this is a day  
12          you have been waiting for for a long time", but I  
13          was so overwhelmed at what was in that decision  
14          that it was taking the joy out of it, or trying,  
02:17 15          you know.

16          Q           And what -- what -- what was it that bothered you  
17                       so much or why was it so troubling for you?

18          A           Well, all the various things where they were  
19                       making excuses for what -- to me they were  
02:18 20          excuses -- I -- they were saying things like "we  
21                       heard no evidence", --

22          Q           Okay.

23          A           -- and we weren't allowed to give it. I'd have  
24                       to --

25          Q           Sure --



1 A -- go through it --

2 Q -- let's go through it.

3 A -- step by step --

4 Q No, we will do that.

02:18 5 A -- to know.

6 Q I'm sorry to get ahead of myself. If we could go  
7 to page 008883. And this is the judgement, this  
8 is page 2, and the Court just repeats the test,  
9 and I don't think we need to go through that

02:18 10 because I went through it before, that said "here  
11 are the four guidelines; one, if David can  
12 prove" --

13 A Right.

14 Q -- "beyond a reasonable doubt, preponderance of  
02:18 15 evidence". Then if we can go to page 008885. And  
16 so, after they set out the test, they say:

"It is appropriate to begin

by stating that in our view David

Milgaard had the benefit of a fair trial

02:19 20 in January 1970."

21 Was that a statement that concerned you, that  
22 troubled you?

23 A It was the next one that killed me.

24 Q We'll go --

02:19 25 A "We have not been presented with any





1 probative evidence that the police acted  
2 improperly in the investigation of the  
3 robbery, sexual assault and murder of  
4 Gail Miller or in their interviews with  
02:19 5 any of the witnesses."

6 That just --

7 Q Now --

8 A -- blew my mind that they could say that.

9 Q -- and you had been present, I think the Court did  
02:19 10 hear from Inspector Roberts, from Mr. Karst, --

11 A Uh-huh.

12 Q -- Mr. Wilson, --

13 A Uh-huh.

14 Q -- Ms. John, and Mr. Cadrain; correct?

02:19 15 A Right.

16 Q And was your concern that, lookit, they should  
17 have found differently?

18 A Yes.

19 Q And so that would be your concern with that, or  
02:19 20 you didn't agree with the Court when the Court  
21 said the police didn't -- that there was no  
22 evidence that the police acted improperly; is that  
23 fair?

24 A Well, no, because as soon as I read that statement  
02:20 25 I thought:



1 "We have not been presented with any  
2 probative evidence that the police acted  
3 improperly ...",

4 I remembered back to the first day when they said  
02:20 5 "we do not want to receive evidence of police  
6 misconducts, that's not what we are here for",  
7 they laid the guidelines, and of course you'll  
8 have to get those from David Asper.

9 Q Okay.

02:20 10 A And so then in their statement they say "we've not  
11 been presented with them"; how can they say that  
12 when they said they didn't want it in the first  
13 place?

14 Q So is it --

02:20 15 COMMISSIONER MacCALLUM: What about the  
16 fair trial part of the question, she hasn't  
17 answered that.

18 BY MR. HODSON:

19 Q I'll -- yeah, I'll come back to that, to the first  
02:20 20 sentence. If I could just pick up on that last  
21 point, would it be correct to say that it was Mr.  
22 Asper, then, who told you that, lookit, they told  
23 us that we couldn't call any evidence on this  
24 subject?

02:20 25 A Yes, that's right.



1 Q And that would have been at the time you got the  
2 judgment?

3 A Yes, that's right.

4 Q So he would have said the reason there wasn't any  
02:20 5 probative evidence that the police acted  
6 improperly is because the court told us we  
7 couldn't call it; is that right?

8 A That's right.

9 Q And so that's the concern you had, is that --

02:21 10 A With that one.

11 Q Now, what about the fact that there was, and I  
12 don't want to debate what was and wasn't before  
13 the court, or what evidence, but certainly  
14 Inspector Roberts, Mr. Karst, Nichol John, Cadrain  
02:21 15 and Wilson all testified before the Supreme Court  
16 and I think Mr. Wolch questioned them all about  
17 the police interviews of those witnesses. Do you  
18 remember hearing that, being evidence before the  
19 court?

02:21 20 A Yes, I do.

21 Q What about that, was that -- I'm wondering how  
22 that fits in with what Mr. Asper had told you  
23 about them not being allowed to call evidence  
24 about the police interviews of witnesses?

02:21 25 A I don't know how that fits in.



1 Q Okay. And then if we can go back to the first  
2 sentence here, did you have issues, or take issue  
3 with the Supreme Court saying that David Milgaard  
4 had the benefit of a fair trial?

02:21 5 A In January of 1970 I had already said that I  
6 believed that, yes.

7 Q So you were fine -- you didn't take issue with  
8 that, that at the time --

9 A No, I didn't.

02:22 10 Q Now, we also go on to this sentence, that:

11 "Nor has evidence been presented that  
12 there was inadequate disclosure in  
13 accordance with the practice prevailing  
14 at the time."

02:22 15 Did you take issue with any of that or did that  
16 cause you any concern?

17 A Well, part of it was because we -- do we have any  
18 notes on the conversations that took place at the  
19 Supreme Court, is that possible, to have those to  
02:22 20 deal with?

21 Q As far as what was discussed -- we will be hearing  
22 evidence from people who were present, namely,  
23 Murray Brown will be testifying.

24 A Yeah.

02:22 25 Q Eugene Williams will be testifying, Ron Fainstein



1 will be testifying, Mr. Asper has already  
2 testified about the discussions before the Supreme  
3 Court. I think based on my interviews I can tell  
4 you that there are different views about what was  
02:23 5 said, so --

6 A Okay.

7 Q So we haven't heard all the evidence yet, and I  
8 simply want to know what you were told. I mean,  
9 you said you weren't there. I just want to  
02:23 10 understand what your knowledge was and what it was  
11 based on.

12 A Yes.

13 Q Okay. I'm not asking you to speculate of what was  
14 discussed in conversations where you weren't  
02:23 15 present. I do want to know what your lawyers told  
16 you though.

17 A Yes, all right.

18 Q So here, just on this issue about the inadequate  
19 disclosure, do you have any recollection of Mr.  
02:23 20 Asper or Mr. Wolch saying anything to you about  
21 this, and in particular whether a ruling by the  
22 court somehow precluded this evidence from going  
23 in?

24 A Well, it seemed to me that there was all kinds of  
02:24 25 inadequate disclosure because there were all the



1 witnesses like the Merrimans, there were all of  
2 those things that we never got, so if --

3 Q Let me just --

4 A -- there was no evidence presented about that,  
02:24 5 that would be because they had not said that we  
6 could not call it.

7 Q Okay. Now, that evidence, or at least what you  
8 mentioned, was in the case on reference, the  
9 documents, certainly there's a fair bit of volume  
02:24 10 on that, and there was your affidavit that had the  
11 letters between Mr. Caldwell and Tallis. Was  
12 your -- my first question was whether you had a  
13 concern with the court's finding, and it sounds to  
14 me like you did?

02:24 15 A I did, yeah.

16 Q And was it a case that you said lookit, I don't  
17 agree with you, court, I think you are wrong --

18 A Because there was so much stuff that we found  
19 afterwards that if Mr. Tallis had known that there  
02:24 20 was a serial rapist in the area, I mean, he would  
21 have brought that up, it would have been part of  
22 his defence about all those attacks that had taken  
23 place. He didn't have that disclosure.

24 Q And I'm trying -- okay, and I'm trying to  
02:25 25 understand your understanding at the time, and was



1           it a case of you saying lookit, I don't like this  
2           finding of the court, I think it's wrong, or was  
3           it similar to the earlier sentence, was it a case  
4           of Mr. Asper or Mr. Wolch telling you that lookit,  
02:25 5           the reason there was no evidence of inadequate  
6           disclosure is the court told us not to, that we  
7           couldn't file it?

8           A           I think it was half and half.

9           Q           Okay. So a bit of both?

02:25 10          A           A bit of both, yeah.

11          Q           So they had some evidence, but not all the  
12          evidence?

13          A           That's right.

14          Q           But bottom line is you didn't agree with the  
02:25 15          conclusion?

16          A           I certainly didn't agree with the conclusion.

17          Q           And then as well:

18                        "Milgaard was represented by able and  
19                        experienced counsel. No error in law or  
02:25 20                        procedure has been established."

21           As far as the ruling on representation of  
22           counsel, did you have concerns at the time about  
23           that finding?

24          A           No, I think probably about this time I was all  
02:26 25          right with that.



1 Q And then:

2 "At the conclusion of the first trial,  
3 there was ample evidence upon which the  
4 jury, which had been properly  
02:26 5 instructed, could return a verdict of  
6 guilty."

7 Again, do you recall having any issue with that?

8 A Yes. No, not, no issue with that.

9 Q And then if we can scroll down, and this is where  
02:26 10 the court I think grants the remedy, it says:

11 "In our view --"

12 Actually, let me just scroll up a paragraph. It  
13 talks about fresh evidence, being Ron Wilson, the  
14 motel room confession and Larry Fisher, and then  
02:26 15 says:

16 "In our view, this evidence, together  
17 with other evidence we have heard,  
18 constitutes credible evidence that could  
19 reasonably be expected to have affected  
02:26 20 the verdict of the jury considering the  
21 guilt or innocence of David Milgaard.  
22 Our conclusion in this respect is not to  
23 be taken as a finding of guilt against  
24 Fisher, nor indeed that the evidence  
02:26 25 would justify charging him with the





1 murder of Gail Miller."

2 Again, do you recall having concerns about that  
3 part of the judgment?

4 A Yes, I do, and I remember the lawyers saying that  
02:27 5 the Supreme Court could not in any way, shape or  
6 form indicate the guilt of Larry Fisher because  
7 then he could never get a fair trial.

8 Q Okay. So --

9 A Something to that effect. I mean, they sort of  
02:27 10 told me that would be the reason behind that. I  
11 remember questioning that in my own mind.

12 Q And so that as far as the guilt or innocence of  
13 Larry Fisher, because he had not been before the  
14 court, they had to be careful?

02:27 15 A Yes.

16 Q With respect to David Milgaard, is it fair to say  
17 that the court was free to express their opinions  
18 about guilt or innocence?

19 A Yes.

02:27 20 Q And so then down at the bottom the court goes on  
21 to say the options, so number one, they say:

22 "... we are not satisfied beyond a  
23 reasonable doubt that David Milgaard is  
24 innocent of the murder of Gail Miller."

02:28 25 And do you take issue with that, or did you take



1 issue with that at the time, had you felt that  
2 that was wrong, that you had established his  
3 innocence beyond a reasonable doubt?

4 A I felt we had, but I'm prejudiced, I'm his mom.

02:28 5 Q Pardon me?

6 A I said I was prejudiced, I'm his mom.

7 Q But again, is that something, though, that when  
8 you read that part of it, you took issue with  
9 that, or is it something that said, okay, well,

02:28 10 that's a high burden --

11 A Mr. Hodson, there was no way that I went through  
12 section by section by section of this page.

13 Q Okay.

14 A I took the overall conclusion of it and I was just  
02:28 15 sick.

16 Q Okay. Let me go to the next page, and maybe this  
17 is the area that I'll get you to elaborate on, it  
18 says:

19 "As to the second, we are not satisfied,  
02:28 20 on the basis of the judicial record, the  
21 Reference case and the further evidence  
22 heard on this Reference, on a  
23 preponderance of all the evidence, that  
24 David Milgaard is innocent of that  
02:29 25 murder."



1 And would this be the section or the part of the  
2 judgment that caused you most of the concern?

3 A Probably, yeah.

4 Q And I think later some authorities or some people  
02:29 5 took the position that since the court failed to  
6 find David probably innocent, that that meant he  
7 was probably guilty?

8 A Correct.

9 Q And that was a position taken --

02:29 10 A -- by the Saskatchewan government.

11 Q And so I think there might be an argument that it  
12 still could be 50/50, but if he's not probably  
13 innocent, that he was probably guilty?

14 A Yes.

02:29 15 Q And would that be the part of the judgment that  
16 caused you the most concern?

17 A I never went through it to see which caused me  
18 concern and which didn't. The whole thing that  
19 caused me concern was the fact that they weren't  
02:29 20 saying he was innocent, period.

21 Q Right. And so is it correct to say that this  
22 paragraph right here, the top of page 6, and if  
23 that is read as I think the authorities did later,  
24 that David Milgaard failed to prove he's probably  
02:30 25 innocent and therefore is probably guilty --



1 A That was very disturbing.

2 Q And number one, that although you could get David  
3 out of jail, it precluded you from clearing his  
4 name; correct?

02:30 5 A Correct.

6 Q And it precluded you effectively from seeking  
7 compensation didn't it?

8 A That's right.

9 Q In other words, how could you go to the Government  
02:30 10 of Saskatchewan or the federal government and say  
11 David has been wrongfully convicted, he's out of  
12 jail, I now want compensation, when the highest  
13 court in the land has just found that he's  
14 probably guilty, would that be a fair way of  
02:30 15 putting the concern, or that he's not probably  
16 innocent?

17 A When it first came out I didn't even see it that  
18 way. Like, I don't even think Hersh and David saw  
19 it that way when it first came out because we did  
02:30 20 apply.

21 Q For compensation?

22 A We applied to have it re-opened, yes, afterwards.

23 Q And I'll take you to this, but the response back  
24 was how can we give you compensation and say you  
02:31 25 are innocent when the court has just ruled that



1           you are not?

2           A           Yeah, but then as I said, that was their  
3                        interpretation of the report as opposed to Hersh's  
4                        interpretation of the report and David Asper's  
02:31 5                        interpretation of the report.

6           Q           The report being the Supreme Court decision?

7           A           Yes.

8           Q           Yeah. So again, and I'm not going to get into  
9                        that debate, we'll hear from Murray Brown and  
02:31 10                      we've heard from Mr. Asper on that, but again,  
11                      from your understanding --

12          A           And I think the letters from Hersh are making it  
13                      clear when he applies what our understanding of it  
14                      was.

02:31 15          Q           Yeah. But you said that you were disappointed  
16                      with the decision. Did you view the Supreme Court  
17                      decision as a loss? Even though David got out of  
18                      jail, did you view it as that you lost the case?

19          A           I think in a sense I did. I just felt that they  
02:32 20                      had failed him miserably.

21          Q           And the failure was, just so that I have this  
22                      right, the failure was in that they did not give,  
23                      they did not clear David's name?

24          A           That's right.

02:32 25          Q           And that had a collateral effect in that it would



1 preclude him from getting compensation?

2 A That's right, and he wandered around for years  
3 with a cloud over his head.

4 Q And again, if we can just scroll down, the comment  
5 here:

6 "Without being exhaustive it will  
7 suffice to observe that there is some  
8 evidence which if accepted by a jury  
9 could implicate Milgaard in the murder  
10 of Gail Miller."

11 And did that, was that something in the judgment  
12 that troubled you as well?

13 A I don't know that I ever remember reading that  
14 part of it or seeing that part of it.

15 Q And I think what the court went on to say is that  
16 lookit, set aside the conviction, have a new trial  
17 and if he's convicted again, then you should  
18 consider giving him a pardon --

19 A Yeah.

20 Q -- because he's effectively served enough time?

21 A Yes.

22 Q Do you recall that being a part of it?

23 A I remember that being part of it.

24 Q And did you have concerns about that part of the  
25 judgment?



1 A No, because I felt that he should -- well, yes and  
2 no. When they put that in, we knew that that was  
3 an out for Saskatchewan.

4 Q In what way?

02:33 5 A Well, what's the sense of having -- I mean, if I  
6 was in Saskatchewan, I would say, well, what's the  
7 sense of having a new trial if we can't give him  
8 any more time.

9 Q Now, did you want -- let's just move ahead a bit.  
02:33 10 Right after this decision the Government of  
11 Saskatchewan did enter a stay and didn't proceed?

12 A That's right.

13 Q And were you satisfied with that or did you want  
14 them to have a trial?

02:33 15 A Oh, we wanted to have a trial.

16 Q And why?

17 A To prove his innocence.

18 Q And so that a jury would then acquit him?

19 A That's right. I mean, that's what we had been  
02:33 20 trying since it all began, to prove his innocence.

21 Q And if, and I don't want to get hung up on  
22 technical legalities here, but if the Supreme  
23 Court of Canada would have said that we find David  
24 to be probably innocent, would you have been as  
02:34 25 concerned about getting an acquittal?



1 A Probably not.

2 Q And so no matter how it came, you wanted something  
3 from some legal venue that said David is  
4 acquitted?

02:34 5 A They've made a mistake.

6 Q And --

7 A And they admit it.

8 Q If we can go to the next page, please, and the  
9 court commented here, it says:

02:34 10 "Without enumerating them fully, or  
11 commenting on which should prevail, it  
12 will suffice to observe that there were  
13 a number of differences in the testimony  
14 given by Milgaard and Justice Tallis on  
02:34 15 this reference."

16 And we talked about that in your previous  
17 evidence about --

18 A Yes.

19 Q -- that issue, and I think that's something that  
02:34 20 you said you became very concerned about when you  
21 learned what Mr. Tallis was going to say --

22 A Yes.

23 Q -- shortly before the reference. And again, was  
24 that something that -- I think you said before  
02:35 25 your David testified, it troubled you that he





1 would be giving evidence that would be  
2 contradicted by Mr. Tallis on a number of points?

3 A That's correct.

4 MR. HODSON: This is probably an  
02:35 5 appropriate spot to break.

6 (Adjourned at 2:35 p.m.)

7 (Reconvened at 2:55 p.m.)

8 BY MR. HODSON:

9 Q Mrs. Milgaard, if we could just pick up after the  
02:55 10 Supreme Court decision came out. I think you told  
11 us your initial reaction was that you were  
12 disappointed or upset with the decision; is that  
13 right?

14 A That's correct.

02:55 15 Q And can you take us through sort of what happened  
16 in the days after? I think you said you went and  
17 told your son David about the news and you told us  
18 Mr. Asper told you to appear happy; is that right?

19 A That's right.

02:55 20 Q And so David got out of jail I think within a day  
21 or two after that; is that correct?

22 A Yes, we went out to get him the next day.

23 Q And then what, sort of what happened next then,  
24 what was your -- what was your plan then to deal  
02:56 25 with the decision; in other words -- let me put it



1 another way. Did you think, okay, well, David is  
2 out of jail, let's get on with our life and leave  
3 this alone, or was it a discussion of what can we  
4 do? I'm just trying to understand what followed  
02:56 5 from the Supreme Court decision.

6 A I'm trying to think sort of when it started. I  
7 know in talking to David and Hersh we talked about  
8 the fact that they would be in touch with  
9 Saskatchewan and, I mean, at that point we were  
02:56 10 waiting to see what was going to happen as far as  
11 the new trial was concerned. My feeling was if we  
12 got the new trial, it would not be a problem  
13 because then we would have the means of showing,  
14 you know, at trial that he was innocent. It was  
02:57 15 really wonderful to have David out and -- but it  
16 was extremely difficult too in having him out, and  
17 I can remember we all went out to celebrate and I  
18 think he tried to drink Canada Dry at the time and  
19 I can remember I was living in the basement of my  
02:57 20 husband's apartment at that time because I had run  
21 out of money and had no accommodation and I  
22 remember David lying on the bed and looking up at  
23 me and saying, "Guess what, mom, I'm free," and I  
24 said, "Yes, dear God, you are," and yet he wasn't  
02:58 25 free, and when I -- and I knew that and I knew



1           that it wasn't over, that we were going to have to  
2           fight and we were going to have to continue.

3           Q       And I guess that was my question. I take it then  
4           that there was -- was there ever a consideration  
02:58 5           around this time where you said okay, he's out of  
6           jail, it's enough, let's move on, or it sounds  
7           from your last answer that no, you were not  
8           prepared to let the status quo continue?

9           A       No, because it wasn't principled and it wasn't  
02:58 10           right.

11          Q       And would it be correct to say that after the  
12          Supreme Court decision came out, in light of what  
13          the Supreme Court said and in particular the fact  
14          that they could not find David to be probably  
02:59 15          innocent, that you had to find another forum or  
16          mechanism to have that issue addressed; is that  
17          right, you needed some other way to have that  
18          issue dealt with again?

19          A       Addressed, yes.

02:59 20          Q       And one option would be if the Government of  
21          Saskatchewan proceeded with the prosecution and  
22          David was acquitted, that would then erase, for  
23          lack of a better word, erase the conclusion of the  
24          Supreme Court in some respects?

02:59 25          A       Correct.



1 Q And that if David was acquitted, that would at  
2 least allow you to say okay, he's now no longer in  
3 legal limbo, he has been acquitted of the murder  
4 and so that would clear the cloud; correct?

02:59 5 A Correct.

6 Q And secondly, that might provide you the basis to  
7 seek compensation?

8 A Correct. If the Supreme Court had even said in  
9 their judgment that he must have the opportunity  
02:59 10 of a new trial, I mean, that they actually gave  
11 them an indication there that --

12 Q In some respects was the Supreme Court of Canada  
13 decision on the issue of David's innocence worse,  
14 were you in a worse position as a result of the  
03:00 15 decision than you were before the decision?

16 A I really felt we were because they were  
17 whitewashing everybody except David.

18 Q And worse in this sense, before the Supreme Court  
19 decision you claimed you had all, you had a  
03:00 20 significant amount of new evidence, including the  
21 Larry Fisher information?

22 A Yes.

23 Q And the court heard from Larry Fisher and heard  
24 some of the Larry Fisher information?

03:00 25 A And I swear, Mr. Hodson, I was in that courtroom



1 that day when Larry Fisher testified and when  
2 Hersh cross-examined him you could have heard a  
3 pin drop in there and I know that every one of  
4 those judges up there knew that Larry Fisher had  
03:00 5 done it. I know that everyone in the courtroom  
6 felt that way. It was just an incredible  
7 experience. It just seemed to me that it would be  
8 impossible, but then as lawyers they explained to  
9 me that the Supreme Court couldn't say that Larry  
03:01 10 Fisher did it because he could never get a --

11 Q But did your lawyers tell you that if the judges  
12 honestly thought that Larry Fisher had done it,  
13 even though they couldn't say it in their  
14 judgment, they could say that as a result of that  
03:01 15 thought that David Milgaard is probably innocent;  
16 in other words, if you think that Larry Fisher  
17 committed the crime, then therefore David didn't?

18 A I don't think we got into that. I just felt it  
19 was, the testimony that was given was electrifying  
03:01 20 in the courtroom and it certainly seemed -- but I  
21 guess I'm a mom, I was prejudiced. To me it came  
22 across that way and I just assumed everybody else  
23 saw it that way too.

24 Q And just on this point of, and I think you've  
03:02 25 agreed with this, that you were arguably in a



1 worse position after the Supreme Court?

2 A Absolutely.

3 Q And just to clarify that, prior to the Supreme  
4 Court decision you were saying David is innocent,  
03:02 5 Larry Fisher is the murderer?

6 A Yeah.

7 Q A whole host of things, Ron Wilson recanted,  
8 Albert Cadrain was mentally unstable, etcetera.

9 Now you were going to be faced with the

03:02 10 authorities and perhaps others saying yes, but you  
11 put all that information before a court and a  
12 court still concluded that David isn't probably  
13 innocent?

14 A That's right.

03:02 15 Q And so some of your arguments in effect were being  
16 taken away from you, at least in the eyes of the  
17 authority, because of what the court ruled; is  
18 that fair?

19 A That's fair.

03:02 20 Q And is it correct to say that after the Supreme  
21 Court decision came out, that your battle, if I  
22 can call it that, with Federal Justice was over,  
23 but your battle with the Government of  
24 Saskatchewan was now beginning?

03:03 25 A That's correct.



1 Q And whereas prior to the Supreme Court decision,  
2 it was the federal government who could give you  
3 the remedy through Section 690?

4 A Right.

03:03 5 Q And I think that's where a significant amount of  
6 your effort was focused, on putting pressure on  
7 Federal Justice; correct?

8 A Correct.

9 Q Once the reference was done, Federal Justice was  
03:03 10 basically done; is that fair?

11 A Right.

12 Q And now it was the Government of Saskatchewan who  
13 could grant David a remedy or put in place a  
14 process that would give him a remedy and deal with  
03:03 15 the issue of compensation?

16 A Correct.

17 Q And so is it correct to say that that, following  
18 the decision, that's where your efforts were  
19 focused?

03:03 20 A Yes.

21 Q On putting pressure on the Government of  
22 Saskatchewan?

23 A That's correct.

24 Q If we can go to 020392, and is this a news release  
03:04 25 put out by -- and again I think you used the term



1 Saskatchewan. It talk about Government of  
2 Saskatchewan or Saskatchewan Justice or  
3 Saskatchewan, we're all talking about the same  
4 thing I think; correct?

03:04 5 A Yes, I think so.

6 Q Saskatchewan Government is who I guess ultimately  
7 we're referring to, and here is where the Attorney  
8 General Bob Mitchell announced that the Crown was  
9 going to enter a stay of proceedings and referring  
03:04 10 to the decision, and down at the bottom it says:

11 "We do not believe that a new trial is  
12 feasible. First of all, the evidence is  
13 23 years old. Some witnesses have died  
14 and some, as the Supreme Court hearing  
03:04 15 shows, just don't remember what  
16 happened.

17 As well, the Supreme Court has  
18 decided that Mr. Milgaard has served his  
19 term, stating in effect that, if he were  
03:04 20 convicted, the Federal Justice minister  
21 should pardon him immediately."

22 And so if I pause there, once the government  
23 announced a stay, so this is two days after the  
24 Supreme Court decision --

03:05 25 A Yes.





1 Q -- that effectively meant that you could not use a  
2 new trial to establish David's innocence; is that  
3 right?

4 A That's correct.

03:05 5 Q So that that avenue was being taken away?

6 A Correct.

7 Q And I take it at the time was there any concern  
8 that a new trial would also bring with it some  
9 potential downside as well?

03:05 10 A In what way?

11 Q Risk of cost -- I know -- I mean, from your  
12 perspective did you have any concerns that a jury  
13 might find David guilty again?

14 A No, no, I had no concern.

03:05 15 Q So again, as far as the trial was concerned, was  
16 there any issue in your mind about any downside  
17 about proceeding with the trial?

18 A Oh, just, you know, having to go through another  
19 trial. I would have felt that going to the  
03:05 20 Supreme Court would have been enough, but having  
21 to go through another trial would have been  
22 difficult, but one that was necessary obviously.

23 Q And one where David would have to testify again  
24 likely?

03:06 25 A Yes, yes.



1 Q So again, is it fair to say that with a new trial,  
2 that there were some negatives out of that from  
3 David's perspective?

4 A Yes.

03:06 5 Q If we can go to the next page, and the government  
6 also goes on to say:

7 "In making today's announcement, we feel  
8 we have to make a couple of points  
9 crystal clear. First, the government  
03:06 10 will not order a commission of inquiry  
11 into the Milgaard case.

12 In the opinion of the Supreme  
13 Court, Mr. Milgaard was given a fair  
14 trial after a competent police  
03:06 15 investigation and was justly convicted  
16 on the evidence presented. I do not see  
17 what an inquiry could possibly establish  
18 that the Supreme Court has not already  
19 done."

03:06 20 And let me just pause there on this issue of the  
21 inquiry, and I will take you in a moment to some  
22 letters that Mr. Wolch wrote after about the  
23 inquiry, but is it correct to say that in looking  
24 at your avenues that you could pursue, I mean, if  
03:07 25 the government is not going to proceed with the



1 prosecution, you had to find some way, either an  
2 investigation or an inquiry or some mechanism of  
3 further investigation to try and undo what the  
4 Supreme Court of Canada had done in its decision;  
03:07 5 is that fair?

6 A That's fair.

7 Q And an inquiry you thought was one way to do it?

8 A Yes.

9 Q Where you were hoping there that the inquiry might  
03:07 10 come to a different conclusion than the Supreme  
11 Court did?

12 A Correct.

13 Q And so that would be one of the, I guess,  
14 potential advantages of an inquiry, is that it  
03:07 15 might allow David to have his name cleared?

16 A That's right.

17 Q And as well that the compensation that would  
18 follow with that, in having his name cleared?

19 A Correct.

03:07 20 Q And then the government goes on to -- so I guess  
21 here saying -- sorry, just scroll up a bit, the  
22 fact that the Government of Saskatchewan is saying  
23 not only are we going to stay the proceedings,  
24 we're not going to have an inquiry, would take  
03:07 25 away a second avenue that you might pursue to get,



1 to undo the damage, if I can call it that, of the  
2 Supreme Court decision?

3 A Correct.

4 Q Or undo the finding?

03:08 5 A Uh-huh.

6 Q The government goes on to say:

7 "Secondly, we will not be offering any  
8 compensation to David Milgaard. It is,  
9 of course, his right to seek legal  
03:08 10 recourse against the government, but we  
11 will oppose any such claim.

12 The bottom line is that there  
13 is nothing that was brought before the  
14 Supreme Court which convince even one  
03:08 15 justice that Mr. Milgaard is either  
16 innocent or a victim of a miscarriage of  
17 justice. Anyone who would suggest  
18 otherwise has no understanding of what  
19 the Supreme Court said."

03:08 20 And so here the government's position I think is  
21 in reliance on what the Supreme Court of Canada  
22 said, is lookit, you had your chance, but  
23 whatever evidence you wish to forward with  
24 respect to David Milgaard's innocence, you did so  
03:08 25 and not one judge on the court agreed; is that



1 fair? That was your understanding of their  
2 position?

3 A That was their position.

4 Q And so when we talked earlier about the, being in  
03:09 5 a worse position after the Supreme Court decision  
6 than before, would this be one example of that?

7 A Yes, it was.

8 Q If we can go to 026935, and this is a letter that  
9 Mr. Wolch wrote to The Honourable Bob Mitchell,  
03:09 10 and I don't propose to go through it in detail,  
11 but I want to ask you a couple of points here,  
12 because I think what followed afterward, is it  
13 fair to say that your counsel, Mr. Wolch, and the  
14 Minister Bob Mitchell and government officials,  
03:09 15 then what ensued was an exchange of correspondence  
16 debating what the Supreme Court decision meant; is  
17 that fair?

18 A Correct.

19 Q And your counsel had a different view?

03:09 20 A Absolutely.

21 Q About what -- I guess about two things, I think  
22 number one, about what the scope of the reference  
23 was, about what evidence was allowed?

24 A Correct.

03:10 25 Q And, secondly, what the Supreme Court judgement



1           meant?

2           A           Correct.

3           Q           And that's something you left up to Mr. Wolch to  
4                    argue on David's behalf, --

03:10 5           A           Yes.

6           Q           -- or advocate? Now there is a comment here where  
7                    Mr. Wolch says:

8                                 "On Thursday, April 16, 1992,

9                                 your decision was announced not to

03:10 10                                proceed to trial. While we certainly

11                               agree with your decision, we found it

12                               somewhat troublesome that reasons were

13                               provided ...",

14                               etcetera. And I think what Mr. Wolch is saying,

03:10 15                               "we agreed with you not proceeding with the new

16                               trial but we don't like your reasons", and that

17                               seemed to be a bit at odds with your earlier

18                               comment that you wanted them to proceed with the

19                               trial. Was there some -- were there different

03:11 20                               views between you and Mr. Wolch at the time?

21           A           I don't think so.

22           Q           And again, just on this point, what he's saying:

23                                "While we certainly agree ..." --

24                               and I'm not sure if that's he or he and Mr.

03:11 25                               Milgaard -- but agree with your decision not to



1 proceed to trial, and I thought you told us  
2 earlier that you wanted the government to proceed  
3 to trial?

4 A My understanding, yes, I definitely wanted -- we  
03:11 5 wanted to have it cleared up. Is that what he's  
6 saying here?

7 Q Yes, the:

8 "... decision ... announced not to  
9 proceed to trial. While we certainly  
03:11 10 agree with your decision, we found it  
11 somewhat troublesome that reasons were  
12 provided that witnesses were either  
13 deceased or had problems with memory.",  
14 and then goes on to express concern about the  
03:11 15 fact that there was no inquiry and no  
16 compensation, and I think that's where the  
17 remainder of his letter deals with. So I -- I  
18 read that letter as Mr. Wolch saying "we agree  
19 not -- with your decision not to proceed to  
03:12 20 trial, but we don't agree with your decision" --

21 A Not to have an inquiry?

22 Q -- right -- "and not to provide compensation"?

23 A Right, okay.

24 Q And then if we could go to -- again, is that, are  
03:12 25 you able to tell us whether, whether you would



1 have shared that view at the time?

2 A Well if, if the lawyers were suggesting that that  
3 was the way to go, that having the public and  
4 having an inquiry where all the real facts of the  
03:12 5 case would get out, then certainly that has always  
6 been my concern, that --

7 Q That --

8 A -- the truth be revealed, all of it.

9 Q But just back on the question of in April of 1992

03:12 10 I think you told us that your view was that you  
11 wanted a new trial, you didn't want the government  
12 to stay the charges, you wanted them to prosecute  
13 David for the murder of Gail Miller and allow him  
14 to defend that --

03:13 15 A Yes, --

16 Q -- and go to trial?

17 A -- I did.

18 Q But it appears, here, that Mr. Wolch is agreeing  
19 with the government decision not to proceed?

03:13 20 A But that just could be Mr. Wolch --

21 Q Okay, no, that's what I was trying to --

22 A -- just saying that.

23 Q Okay.

24 A You know, I don't know, I don't think I would have  
03:13 25 agreed with that.





1 Q Do you recall what your son David, whether he had  
2 any views or not about whether he wished to  
3 undergo a trial?

4 A Oh, I don't think any of us wanted David to have  
03:13 5 to undergo another trial. We saw how hard it was  
6 on him at the Supreme Court. I mean he, he ended  
7 up being sent back and missing most of the Supreme  
8 Court trial, because he didn't -- he just couldn't  
9 handle it, and to put him through another trial  
03:13 10 would have been very difficult. So I can  
11 understand, you know, when I think back now at  
12 this. But, certainly, always we felt there should  
13 be a forum for that information getting out to the  
14 public, and an inquiry is the way of doing that.

03:14 15 Q And then if we can go to 334776. And would it be  
16 correct that up until the Supreme Court of Canada  
17 decision came out in April of 1992, as far as your  
18 dealings -- being yours and David's -- dealings  
19 with the Government of Saskatchewan, that they  
03:14 20 would have been minimal in the sense that you had  
21 not been seeking anything from them; correct?

22 A That's correct.

23 Q And other than the fact that their lawyers  
24 participated in the Supreme Court reference and  
03:14 25 took the position of defending the conviction, --



1 A Right.

2 Q -- and I think, I think your earlier evidence was  
3 that you understood why they had to take -- that  
4 that was part of the direction, that someone had  
03:15 5 to be -- I think when you and Mr. Asper had a  
6 discussion what he told you is it has to be  
7 adversarial, --

8 A Yes.

9 Q -- so someone has to defend the conviction, and  
03:15 10 it's the Government of Saskatchewan?

11 A That's correct.

12 Q So, up until the Supreme Court of Canada decision,  
13 is it fair to say that, other than the concerns  
14 you may have had with Mr. Kujawa or Mr. Caldwell,  
03:15 15 who were government prosecutors, as far as the  
16 Attorney General's office, Mr. Mitchell or the  
17 government itself, that you did not have any  
18 concerns with them about -- on David's behalf?

19 A Well I don't know when it was that Mr. Mitchell  
03:15 20 said that he believed that David Milgaard was in

21 --

22 Q 1995.

23 A So that was after this --

24 Q Yeah.

03:15 25 A -- time period? Oh, okay. Up until then --



1 Q Yeah.

2 A -- I didn't have any qualms about Mr. Mitchell.

3 Q Okay. And so do you agree that, up until at  
4 least --

03:15 5 A At least at that time.

6 Q -- the Supreme Court of Canada decision on April  
7 14, 1992, --

8 A Okay.

9 Q -- that the Government of Saskatchewan -- and,  
03:16 10 again, putting aside Mr. Kujawa and Mr.  
11 Caldwell, --

12 A Yeah.

13 Q -- but the Government of Saskatchewan was not --

14 A On my radar screen.

03:16 15 Q -- on your radar screen?

16 A Correct.

17 Q Is that fair?

18 A That's fair.

19 Q And so, here, this is a letter that Mr. Wolch  
03:16 20 writes to Bruce MacFarlane -- if we could just go  
21 to the next page -- on April 20, 1992. And prior  
22 to the Supreme Court decision the Federal Justice  
23 was on your radar screen; is that correct?

24 A Yes, they were.

03:16 25 Q And it appears, at least in this letter, that



1           there is a bit of a switch here from Federal  
2           Justice to Saskatchewan Justice right after the  
3           Supreme Court decision, is that correct, as far as  
4           who's on your radar?

03:16 5           A           Yes.

6           Q           And here Mr. Wolch tells the Minister, thanking  
7           her:

8                         "... for your expeditious Implementation  
9                         and follow-up to the opinion of the  
03:16 10                        Supreme Court ... I might also take this  
11                        opportunity to point out to you that  
12                        your Mr. ... McFarlane ... Fainstein ...  
13                        and ... Frater worked endless hours  
14                        within extreme time constraints to see  
03:17 15                        that this matter proceeded in a timely  
16                        fashion before the Supreme Court.  
17                        Although clearly we have not agreed on  
18                        all issues, and in fact have disagreed  
19                        on several, their professionalism was  
03:17 20                        above reproach."

21           And this appears to be a little friendlier  
22           approach to the Minister than previous positions;  
23           is that fair?

24           A           It certainly sounds very flowery.

03:17 25           Q           And then it goes on to talk about:



1 "Following the Supreme Court  
2 opinion, while you moved expeditiously,  
3 Saskatchewan appeared to have delayed in  
4 making a decision, and when they did,  
03:17 5 they appear to have decided issues that  
6 were premature. In other words, they  
7 turned down a request for an Inquiry and  
8 for compensation before those requests  
9 were even made. Accordingly, I have  
03:17 10 written to the Attorney-General for  
11 Saskatchewan setting out the reasons why  
12 there should be an Inquiry and  
13 compensation to follow.",  
14 and then encloses the letter. And then talks  
03:17 15 about an overlap and *The Federal Inquiries Act*,  
16 and goes on to talk about a potential federal  
17 inquiry and then goes on, if we could scroll  
18 down:  
19 "Accordingly, our request is before the  
03:18 20 Provincial Government, and at the same  
21 time we are bringing it to your  
22 attention. Clearly the matter does not  
23 call for two inquiries. What we are  
24 doing is providing the Attorney-General  
03:18 25 for Saskatchewan with an opportunity to



1 review the material and perhaps consult  
2 with your officials so that needless  
3 duplication will not arise."

4 And then goes on to talk about the letter, which  
03:18 5 I'll get to shortly, to the Attorney General.  
6 Actually, the April 20th letter was the letter  
7 that I just showed you, and in that letter Mr.  
8 Wolch points out three main players, Detective  
9 Karst, Mr. Caldwell and Mr. Kujawa, and potential  
03:18 10 wrongdoing on their part, and requesting an  
11 inquiry. So here he is now going to, it appears  
12 going to the Federal Government and saying  
13 "lookit, we're pressing the province to  
14 investigate into this matter, and in particular  
03:18 15 the conduct of those three individuals, and we're  
16 bringing it to your attention because they might  
17 be talking to you"; is that --

18 A That sounds reasonable, yes.

19 Q And so am I correct, at this time, that you were  
03:19 20 going to the Federal Government perhaps as a bit  
21 more of an ally in your quest with the Government  
22 of Saskatchewan --

23 A Yes.

24 Q -- to give you a remedy?

03:19 25 A Yes.



1 Q And, in other words, trying to use the Federal  
2 Government to pressure the provincial government  
3 to now deal with you?

4 A Yes, we were.

03:19 5 Q If we can go to 003987. Actually, sorry, if we  
6 can just go to the next page. And, again, this is  
7 Mr. Wolch's letter to Mr. MacFarlane and he says  
8 here, there are various concerns:

9 "... as to what information was provided  
03:19 10 to you--particularly in the first  
11 application--in order for you to make a  
12 decision. For example, did you know of  
13 the other attacks; one on the same  
14 morning as the murder of Gail Miller,  
03:20 15 and another two weeks earlier on a nurse  
16 in the early morning hours? We did not  
17 know of same, so we don't see how you  
18 would have. Yet that information was  
19 readily available, but not disclosed."

03:20 20 And it appears, from this, that Mr. Wolch is  
21 saying to the Federal Government, "lookit, the  
22 Province of Saskatchewan didn't give you some  
23 information" --

24 A Right.

03:20 25 Q -- "because we didn't get it, and that might have



1 affected, that might be the reason you didn't  
2 agree with us before"; would that be --

3 A Right.

4 Q And sort of trying to bring them into your tent?

03:20 5 A I think so.

6 Q And then, scroll down, this paragraph. And you  
7 say:

8 "There is the overlapping issue of  
9 compensation. The 690 application  
03:20 10 travelled a long and arduous road made  
11 more difficult by the withholding of the  
12 Fisher evidence. We had already spent  
13 considerable time with our application  
14 before we had even heard of Larry  
03:20 15 Fisher. This misconduct has resulted in  
16 additional expense. Joyce Milgaard  
17 depleted her life savings in her efforts  
18 to achieve what has been accomplished  
19 herein. We incurred considerable  
03:21 20 disbursements in providing legal  
21 services when we were turned down for  
22 legal aid in two Provinces.",  
23 and then goes on to talk about David. So, again,  
24 would it be correct to say that the concern here  
03:21 25 is directed towards the Province of Saskatchewan





1 and their failure to disclose the Fisher  
2 information?

3 A That's correct.

4 Q If we can then go to 003987. And I appreciate --  
03:21 5 this is a letter from Minister Bob Mitchell to  
6 your counsel, and I appreciate, Mrs. Milgaard,  
7 that these are not letters that you wrote or  
8 received, but rather your counsel, but what I am  
9 trying to understand or get from you is what you  
03:21 10 knew at the time and what information you were  
11 getting. Okay? I'm not asking you to speak on  
12 behalf of Mr. Wolch as to what he was writing or  
13 receiving, but rather what you knew at the time?

14 A All right.

03:21 15 Q Okay? And so here, this is Mr. Mitchell's  
16 response, he says:

17 "Second, I note in your letter, that you  
18 are happy with our decision not to  
19 proceed with a new trial. Based on your  
03:22 20 press statements and those of your  
21 partner and your client, you would like  
22 me to go further and declare your client  
23 innocent. With the greatest of respect,  
24 I do not see why or how I can ignore the  
03:22 25 findings of the Supreme Court. Your



1 client testified before that Court that  
2 he did not kill Gail Miller. Had the  
3 Court believed his evidence, it would  
4 have been compelled to declare him  
03:22 5 innocent. Apparently, the Court did not  
6 believe him because they specifically  
7 said that they did not find he was  
8 innocent using either the high criminal  
9 standard of proof beyond a reasonable  
03:22 10 doubt or the much lower civil standard  
11 of proof of balance of probabilities."

12 And would it be correct to say, at least at this  
13 point, the government's position is pretty clear  
14 here that they are relying on the Supreme Court  
03:22 15 decision, correct, --

16 A Yes.

17 Q -- on the issue of David's innocence?

18 A Yes.

19 Q And that they were not prepared to declare him  
03:22 20 innocent because the Supreme Court had said  
21 otherwise; is that fair?

22 A That's fair.

23 Q And would it be this position that you had to try  
24 and -- at least one of the positions that you had  
03:23 25 to try and challenge and find a mechanism to put



1           some pressure on the government to deal with this  
2           position?

3           A           Yes.

4           Q           And the next page, it says:

03:23 5                   "Finally in this regard, the Court heard  
6                   all your new evidence. It heard Mr.  
7                   Wilson, Ms. Hall and all the 'Larry  
8                   Fisher' evidence. After hearing all of  
9                   this new evidence, you still could not  
03:23 10                  convince the Court that your client was  
11                  even probably innocent.

12                           After hearing your client  
13                           testify, after hearing what little  
14                           evidence there was left from the  
03:23 15                   original trial witnesses and after  
16                   hearing your new evidence, if you could  
17                   not convince even one judge of that  
18                   Court that your client was innocent, how  
19                   can you expect me to, in effect,  
03:23 20                   overturn the Courts finding and  
21                   pronounce your client innocent? Your  
22                   request Mr. Wolch, is totally  
23                   unreasonable."

24                           And, again, that would have been -- would this  
03:24 25                   position have been conveyed to you at the time,



1 Mrs. Milgaard?

2 A I believe Mr. Wolch wrote a letter following this  
3 to him pointing out how wrong this was.

4 Q Right, and I appreciate there is correspondence  
03:24 5 back and forth between Mr. Wolch and  
6 Mr. Mitchell --

7 A Uh-huh.

8 Q -- about the meaning of the Supreme Court  
9 decision. But would you have been aware, around  
03:24 10 this time, of the Government of Saskatchewan's  
11 position as --

12 A Yes, I would.

13 Q -- I read from this letter?

14 A Yes, I was, yes.

03:24 15 Q And what concerns did you have about that  
16 position?

17 A Well, it was shutting a door --

18 Q Right.

19 A -- to our dream of David's innocence being  
03:24 20 established, and his complete freedom.

21 Q Right, and they were shutting the door, but  
22 relying upon the Supreme Court decision?

23 A Yes.

24 Q And so what was your view, if any, about their  
03:25 25 reliance on that decision; did you take issue with



1 that?

2 A Yes, I took issue with it, because I felt that we  
3 hadn't been given the opportunity to give the  
4 evidence that we should have given at the Supreme  
03:25 5 Court whereby the judges could have come to the  
6 right conclusion.

7 Q Okay. And so did your position become -- and when  
8 I say "your position" being of you and David and  
9 your counsel -- did your position then become, in  
03:25 10 light of what position the government took here,  
11 "well, you shouldn't rely on the Supreme Court  
12 decision, because we weren't allowed to put in all  
13 the evidence we otherwise would have"?

14 A That's right.

03:25 15 Q And, therefore, when the Supreme Court says "we  
16 cannot find that David is probably innocent --",

17 A They didn't have all the facts to find him all  
18 innocent.

19 Q And that's because the Court told your lawyers  
03:26 20 that they couldn't put it in?

21 A That's right.

22 Q And so that became at least part of the debate  
23 between your lawyers and the government that  
24 ensued about whether or not it was appropriate for  
03:26 25 the Government of Saskatchewan to rely upon the



1 Supreme Court decision in dealing with your two  
2 requests, one for a declaration or an  
3 acknowledgment of innocence or a process to  
4 determine that, and, secondly, compensation?

03:26 5 A Correct.

6 Q Similarly, if we can scroll down, here the  
7 Minister goes on about the compensation and  
8 wrongdoing, and what the Minister says here:

9 "Here, the Supreme Court after examining  
03:26 10 the whole situation very thoroughly, has  
11 found there was no wrong doing. If  
12 there is no wrong doing, there is no  
13 basis for me to give away the Provincial  
14 tax payers' money."

03:27 15 And I think, if I can maybe summarize this, the  
16 other debate that went on between your counsel  
17 and the Government of Saskatchewan was over  
18 whether or not the Supreme Court of Canada had  
19 determined that the police and Crown had not  
03:27 20 committed misconduct in the investigation and  
21 prosecution of David Milgaard; correct?

22 A Correct.

23 Q And the government was saying "the Supreme Court  
24 of Canada decision, in addition to dealing with  
03:27 25 David's innocence, also dealt with police



1 misconduct and Crown misconduct and concluded  
2 there was none"?

3 A Yes.

4 Q And your position was "no, that's wrong, they  
03:27 5 wouldn't let us call evidence about police  
6 misconduct and Crown misconduct, therefore don't  
7 rely on" --

8 A On that.

9 Q -- "that decision"?

03:27 10 A Correct.

11 Q So, in addition to harming or prejudicing your  
12 contention of David's innocence, the Supreme Court  
13 decision also impeded your position that the Crown  
14 and police had committed misconduct?

03:27 15 A That's correct.

16 Q Because it had, at least in the eyes of the  
17 Government of Saskatchewan, had ruled that there  
18 was none?

19 A Right.

03:28 20 Q And is it fair to say, then, at this point, and  
21 this is around April 30, 1992, that they -- the  
22 new target on your radar, if I can put it in your  
23 words, would be the Government of Saskatchewan?

24 A Absolutely.

03:28 25 Q And would they be the new, maybe 'enemies' --



1 well, maybe it's the right word -- but would they  
2 be the new people that were standing in your way  
3 of getting what you wanted for your son?

4 A That's correct.

03:28 5 Q I now want to talk about a fellow named Michael  
6 Breckenridge; and you are familiar with that  
7 individual?

8 A Yes, I am.

9 Q And I believe he contacted Mr. Wolch in March of  
03:28 10 1992; is that correct?

11 A March the 21st, 1992.

12 Q And I think you then subsequently met with him and  
13 what followed was a press conference and a  
14 subsequent investigation by the RCMP, and I think  
03:29 15 in some earlier evidence you said that you  
16 acknowledged that the information Mr. Breckenridge  
17 provided to you in 1992, namely the information  
18 that Mr. Romanow, Mr. Kujawa, Mr. Lysyk and others  
19 had committed some wrongdoing with respect to  
03:29 20 having the Fisher and Milgaard files together, I  
21 think you acknowledged that you now accept that  
22 Mr. Breckenridge was not telling you the truth; is  
23 that correct?

24 A Well, after the fact I found that out, yes.

03:29 25 Q Okay.





1 A But at the time I got this, at the time we got  
2 this letter and when I talked to him, he was  
3 perfectly believable and I believed him.

4 Q When did you conclude that he was not telling you  
03:29 5 the truth?

6 A After we got the information back, later on,  
7 with -- I think it was here.

8 Q At the Inquiry?

9 A Yes.

03:30 10 Q And what information are you referring to?

11 A The information that he had not been employed at  
12 the time he said he was employed.

13 Q Okay. That was information that certainly came  
14 out the Inquiry, it was also information that the  
03:30 15 RCMP obtained back in 1993; were you aware of  
16 that, do you have a recollection?

17 A No, I don't have any recollection of that.

18 Q And so is it your evidence that until you heard  
19 the evidence of this Inquiry, that up until you  
03:30 20 heard that, you believed Michael Breckenridge's  
21 evidence or the information he told you back in  
22 1992?

23 A Oh yes, I mean, otherwise I wouldn't have  
24 proceeded on it.

03:30 25 Q Okay. No, and I appreciate you are saying at the



1 time he told you, you believed it, I'm trying to  
2 pin down --

3 A When it was.

4 Q -- when Joyce Milgaard concluded that the  
03:30 5 information he gave you, that you no longer  
6 believed it, and I think you told us is at this  
7 Inquiry when you learned that Michael Breckenridge  
8 didn't work there in 1971; is that right?

9 A It's whenever I heard that information about  
03:31 10 Michael Breckenridge, correct.

11 Q And did you hear that information during the  
12 course of this Inquiry or at an earlier date?

13 A I believe it was here.

14 Q At the Inquiry?

03:31 15 A Yes.

16 Q So on day one, when you arrived at the Inquiry,  
17 you believed that what Michael Breckenridge told  
18 you in 1992 was true; is that correct?

19 A No, I think -- I think down the line, somewhere  
03:31 20 along the line we found out that there were some  
21 discrepancies, but I don't remember when.

22 Q Okay. And was it a case -- and I'll take you  
23 through some of the documents that might assist --  
24 but I'm trying to understand, from your  
03:31 25 recollection, at what point did you realize that



1 Mr. Breckenridge wasn't truthful in the  
2 allegations he made back in 1992?

3 A I can't give you a time frame because I really  
4 don't know.

03:32 5 Q Okay. Now prior to hearing from Mr. Breckenridge,  
6 I think you told us in your previous testimony,  
7 you will recall when I went through the August  
8 16th, 1991 time frame when you filed the second  
9 application, the various media reports suggesting  
03:32 10 a frame and coverup, you remember us going through  
11 all those with Mr. McCloskey and Mr. Asper and  
12 you?

13 A Yes.

14 Q And the various media reports, and I think at that  
03:32 15 time you said that was your view, that there had  
16 been a coverup by officials with respect to the  
17 Larry Fisher information?

18 A Yes.

19 Q And I think your allegation at that time was  
03:32 20 people connected the Larry Fisher file with the  
21 David Milgaard file in and around 1970-'71, and  
22 knew that Larry Fisher was the killer of Gail  
23 Miller, and deliberately covered it up?

24 A That's right.

03:33 25 Q And so part of that was that someone, and likely



1 Mr. Kujawa, Mr. Caldwell or others, actually  
2 considered both the Fisher rapes and the Miller  
3 murder, or the Fisher and Milgaard files together,  
4 and recognized a connection and took steps to  
03:33 5 cover it up?

6 A That's right.

7 Q And is it fair to say that, when Mr. Breckenridge  
8 came forward to you, that his information --

9 A Substantiated that.

03:33 10 Q -- substantiated what you had as a suspicion;  
11 correct?

12 A That's it.

13 Q And so you had a suspicion that -- before  
14 Mr. Breckenridge came in did you have a suspicion  
03:33 15 that Mr. Kujawa had both the Fisher and Milgaard  
16 files?

17 A No, no, but we had this -- we -- we knew that they  
18 were covering up because we knew that they knew  
19 about Fisher.

03:33 20 Q So you thought someone in government and police,  
21 people --

22 A Were doing something, in power.

23 Q -- people in power knew about them, made the  
24 connection, and covered it up?

03:34 25 A That's right.



1 Q And so, when Mr. Breckenridge came forward with  
2 his concerns, that fit with what you thought had  
3 happened?

4 A That's right. And that's why, at that point, we  
03:34 5 went public with it.

6 Q Why did you go public with it?

7 A Because the public seemed to be the only avenue we  
8 had at this point. I mean we needed the public to  
9 get the pressure there, and to get enough people  
03:34 10 realizing what was going on, to get something  
11 done.

12 Q Had you considered giving it to the Government of  
13 Saskatchewan to check out whether there was any  
14 truth to it?

03:34 15 A When you think that the Saskatchewan Government is  
16 covering things up you are not hardly likely going  
17 to go and give that information to them. What I  
18 wanted to do at that point was we had people all  
19 across the country that were supporting David  
03:34 20 still and wanted to see him vindicated, if you  
21 will, and proved innocent because they believed in  
22 it, and we were asking for this new trial. So we  
23 had all of these people out there. By having a  
24 press conference, by putting it out to the  
03:35 25 public -- and we got to the stage where, at one



1 point, there were thousands of women across the  
2 country that were going to come with me and stage  
3 a demonstration on the lawn of the Legislative  
4 Buildings.

03:35 5 Q Let's just go back to August of 1991, and you will  
6 recall we went through Mr. McCloskey's press  
7 conference and you and Mr. Asper, at that time the  
8 public position --

9 A Yes.

03:35 10 Q -- if I can call it that -- and I think you said  
11 there was the legal application -- but the public  
12 position was David Milgaard had been framed,  
13 although you had some concerns about the use of  
14 that term, --

03:35 15 A About using that word, yup.

16 Q -- but Mr. McCloskey and Mr. Henderson, I think,  
17 both used -- Mr. McCloskey certainly used the  
18 word, --

19 A He did.

03:36 20 Q -- and Mr. Asper used those words and attributed  
21 them to Mr. McCloskey in the articles that we  
22 saw; --

23 A Yes.

24 Q -- correct? And so the public position was "David  
03:36 25 Milgaard had been framed and people in power have



1 covered up"?

2 A Yes.

3 Q And I think you had told us that that was a  
4 message that would cause people to sit up at the  
03:36 5 coffee table and take notice?

6 A That's right.

7 Q And it was something that would cause the public  
8 to put pressure on the Federal Justice Minister to  
9 give you a remedy?

03:36 10 A That's right.

11 Q And that one of the purposes, or maybe the purpose  
12 in going public in August of 1991 with this frame  
13 and coverup message, was to get people's attention  
14 and cause the public to put pressure on Kim  
03:36 15 Campbell to give you the remedy?

16 A Yes.

17 Q And I take it when the Supreme Court, when she  
18 gave you the remedy and you went to the Supreme  
19 Court and the Supreme Court said, after hearing  
03:36 20 Larry Fisher and other evidence, saying "we're not  
21 prepared to find that David is probably innocent";  
22 would it be fair to say that the Supreme Court  
23 decision had a negative impact --

24 A Yes.

03:37 25 Q -- on the previous public position?



1 A It did.

2 Q In other words, it was difficult to go out and say  
3 "David was framed and there was a coverup",  
4 because people and/or authorities would say "well  
03:37 5 what do you mean, you had your hearing and the  
6 Supreme Court said he is probably guilty, or not  
7 probably innocent"?

8 A Uh-huh, right.

9 Q And so the Supreme Court decision, is it fair to  
03:37 10 say, maybe put a stop or slowed down --

11 A It slowed down things.

12 Q -- the earlier public campaign about frame and  
13 coverup?

14 A Right.

03:37 15 Q And is it correct to say that the Breckenridge  
16 allegations --

17 A It --

18 Q -- allowed you to renew the coverup allegation,  
19 but now against the new target, --

03:37 20 A Yes.

21 Q -- the provincial Justice Minister who you now had  
22 to rely on to get your remedy?

23 A That's right.

24 Q And so in other words it fit and allowed you to go  
03:37 25 to the public and take notice and say "lookit





1 public, now the provincial Justice Minister, there  
2 is something wrong there, and we need the public  
3 to put pressure on the provincial Justice Minister  
4 to give us the remedy", and the coverup is  
5 something that would cause people to sit up and  
6 take notice?

7 A Yes, that's correct.

8 Q If we could go to 159537. This is the initial  
9 letter from Mr. Breckenridge to Mr. Wolch, March  
03:38 10 21, 1992; do you recall when you first became  
11 aware or got a copy of this letter?

12 A I think it was almost immediately.

13 Q And what discussions did you have with Mr. Wolch  
14 at the time?

03:38 15 A Well, I was just amazed at the letter, and thought  
16 how important it was that we get this out to the  
17 public.

18 Q Okay. Now this would be before the Supreme Court  
19 of Canada had finished the hearings and before  
03:38 20 they'd rendered the decision; do you recall any  
21 discussion with Mr. Wolch or Mr. Asper about  
22 calling Michael Breckenridge as a witness at the  
23 Supreme Court or providing this letter or this  
24 information to either the Court or Federal Justice  
03:39 25 or Saskatchewan Justice?



1 A No, as a matter of fact I didn't remember that  
2 this letter was at that time, I thought that this  
3 was after the Supreme Court of Canada that we got  
4 this letter.

03:39 5 Q Okay. Well I'm going by the date, March 21, 1992,  
6 I will search to see if I can find a date-stamped  
7 letter, but it appears to have been sent either by  
8 mail or by fax to Mr. Wolch and, if it was  
9 received around that date, it would have been  
03:39 10 received before --

11 A Before the Supreme Court.

12 Q Where were you when you became of this letter; do  
13 you recall that?

14 A I can't, sorry.

03:39 15 Q And was this the type of information, this would  
16 be fairly significant information; is that fair?

17 A Well, yes, yeah, it is, and if we had it at that  
18 time, I don't know why we wouldn't have used it at  
19 that time.

03:39 20 Q And what do you recall discussing with either Mr.  
21 Asper or Mr. Wolch about this letter and the  
22 information and what ought to be done with it?

23 A Well, my recollections on this was that we should  
24 use it to pressure the government to re-open the  
03:40 25 case.



1 Q So let's just go back, and I think before the  
2 Supreme Court rendered its decision, do you have  
3 any memory of this being considered or discussed  
4 as being possible evidence?

03:40 5 A No, I do not. I don't even remember this being  
6 considered or discussed before the Supreme Court  
7 remedy, that's what I'm saying to you.

8 Q Okay. So then after the Supreme Court decision  
9 came out, do you recall discussions about, with  
03:40 10 Mr. Wolch or Mr. Asper about how this letter might  
11 be used in your efforts to pressure the  
12 Saskatchewan government --

13 A -- to do something?

14 Q To do something, or --

03:40 15 A That was after they turned down the trial.

16 Q And would it be fair to say that this letter  
17 provided you with an opportunity to go to the  
18 public with something that was new and something  
19 that had not been before the Supreme Court that  
03:41 20 might cause the public to put pressure on the  
21 provincial government?

22 A Absolutely, uh-huh.

23 Q And what do you recall of discussions, what did  
24 Mr. Wolch think about this letter and this  
03:41 25 information?



1 A I honestly don't remember discussing it with him.

2 Q What about Mr. Asper?

3 A We didn't go into a great deal of detail other  
4 than the fact that the letter seemed to speak for  
03:41 5 itself, you know, to sort of give us a blueprint  
6 about what went on, and to me it spelled out very  
7 clearly what had been happening to us.

8 Q When you got the letter and read it and before you  
9 ever talked to Michael Breckenridge or knew who he  
03:42 10 was, did the contents of the letter fit with what  
11 you thought had likely happened?

12 A Yes, and I think that's why I was so excited about  
13 the letter because I had had so many suspicions  
14 all along, but nothing to pin them on, and then  
03:42 15 suddenly the suspicions became real. I mean,  
16 this -- they became facts.

17 Q And the letter, I think you would agree, there's  
18 some talk in the letter that Mr. Breckenridge has  
19 concerns with the NDP administration, he has some  
03:42 20 political concerns doesn't he? If you can go to  
21 the next page, they talk about:

22 "... push for an inquiry held by anybody  
23 outside the N.D.P. system in Sask.,  
24 B.C., Ont., otherwise it will never  
03:42 25 receive an impartial hearing."



1 So he's not talking just about the NDP in  
2 Saskatchewan, but at this time B.C. and Ontario  
3 also had an NDP government and he was saying this  
4 is an NDP thing, you would have to go outside  
03:43 5 anywhere that has an NDP government; is that  
6 correct?

7 A Yes, that's what he seems to be saying here.

8 Q And did you get the impression that he had an  
9 issue with the NDP administration and people in  
03:43 10 the NDP administration?

11 A Yes, I believe we did. However, it wasn't  
12 anything -- I was just grateful that he had an axe  
13 to grind with them that made him come forward with  
14 this information for us.

03:43 15 Q Did you have a concern or do you recall any  
16 discussions with Mr. Wolch or Mr. Asper or anybody  
17 else about the concern that this letter and the  
18 information Mr. Breckenridge provided to you may  
19 have been in response to what he read in the media  
03:43 20 back in August, September, 1991 about your  
21 allegations that there was a frame and cover-up of  
22 the Fisher and Milgaard files?

23 A I don't remember ever having any discussion on  
24 that.

03:43 25 Q And in particular, whether Mr. Breckenridge might



1           have read that and thought okay, here's my chance  
2           to get even with the government and that he may  
3           have his own motive for coming to you with this  
4           information?

03:44 5           A        No. I was just so grateful to get the information  
6           I guess I wasn't suspicious enough.

7           Q        And when you did conclude in your own mind,  
8           whether it was at this Inquiry or prior, that he  
9           did lie to you and not tell you the truth about  
03:44 10          this information, did you think about why he might  
11          have not told you the truth when he gave you this  
12          information, did you ever consider what might have  
13          motivated him to do that?

14          A        No, I hadn't considered it until you mentioned the  
03:44 15          NDP part, so maybe he had some political  
16          motivation there. I had no idea.

17          Q        Prior to making this information public, did you,  
18          Joyce Milgaard, have any concerns about either the  
19          credibility of Michael Breckenridge or the  
03:44 20          credibility of the information he was providing to  
21          you and you were making public?

22          A        No. I really felt that his information was spot  
23          on because it just sort of was the icing on the  
24          cake to all the things that I had been believing  
03:45 25          all along and suddenly here's someone saying I can



1 prove it.

2 Q Do you recall Mr. Wolch or Mr. Asper expressing  
3 concern to you about either Michael Breckenridge's  
4 credibility or the credibility of the information  
03:45 5 he was providing?

6 A No, I do not.

7 Q Would that have been something you would have  
8 discussed with your lawyers, about should I go  
9 public with this type of information?

03:45 10 A Well, they were there when I went public with the  
11 information.

12 Q Right. Mr. Wolch was?

13 A Well, I don't know whether Hersh was actually  
14 there or David, but they were both aware of it,  
03:45 15 that we were going forward. I think one or both  
16 of them would have been there.

17 Q And would you have got their approval or their  
18 advice to proceed with making this information  
19 public?

03:45 20 A I honestly don't recall anyone saying I should not  
21 go public with it, so I'm sure that it was  
22 probably a joint decision.

23 Q And I think Mr. Wolch was at the press conference  
24 with you; was he not?

03:46 25 A I believe so.



1 Q And so is it fair to conclude that if he had  
2 concerns as your lawyer about you making this  
3 information public, that --

4 A He would probably have told me.

03:46 5 Q And would you have listened to him?

6 A *(Laughs)*.

7 Q What I'm trying to understand --

8 A I don't remember us having any -- Mr. Hodson, I do  
9 not remember us having any issues over this. I  
03:46 10 don't remember him saying you should not do this,  
11 Joyce. I think I would have remembered that if he  
12 had. I think we went ahead and did it because it  
13 seemed the right thing to do at the time.

14 Q Okay.

03:46 15 A Is that clear?

16 Q Yeah. And so is it fair to conclude that you did  
17 not get advice saying don't do this, don't make  
18 this information public because of the nature of  
19 the information?

03:46 20 A I don't recall getting any advice like that at  
21 all.

22 Q Okay.

23 A That's not to say that I didn't, but I certainly  
24 have no recollection of that at all.

03:47 25 Q Okay. Now, do you recall, and I'll take you





1 through some documents, it looks like -- actually,  
2 if we can go to 156898 -- or sorry, yeah, 156896,  
3 and this is a letter from Mr. Asper to Mike  
4 Robinson and talks about a conversation, a copy of  
03:47 5 the letter which we recently received. Mr. Asper  
6 says:

7 "I have spoken with the author of this  
8 letter about its contents, although I  
9 really have no way of verifying any of  
03:47 10 the information."

11 Asking him to keep the letter in the strictest of  
12 confidence, "... and then contacting me to  
13 discuss same." And I believe, I'm not sure if  
14 Mr. Asper was able to confirm a recollection of  
03:48 15 this, but I believe that this would have been the  
16 letter where Mr. Asper hired some private  
17 investigators to assist you in dealing with  
18 Michael Breckenridge; is that fair?

19 A Probably.

03:48 20 Q Do you remember how that came about, why you would  
21 go get -- and Bob Perry was the fellow involved.  
22 Why and how did that come about?

23 A I really don't know. Maybe David was wanting to  
24 check the man out. I don't know.

03:48 25 Q Were you content to proceed with the letter that



1           you received, the very first letter?

2           A           I was content after I had met the man.

3           Q           Okay. Let's maybe follow through. If we could  
4           get 156898, and this is a May 11th, 1992 letter  
03:49 5           from Mr. Asper to Mr. Robinson confirming:

6                       "... that this office has retained you  
7                       to investigate the substance of a letter  
8                       that has previously been forwarded to  
9                       you in relation to the David Milgaard  
03:49 10           case."

11           And then some cost issue. So it would appear  
12           that Mr. Asper engaged Mike Robinson or Robinson  
13           Investigations to investigate the substance of  
14           the letter; is that right?

03:49 15           A           That's what it looks like, yes.

16           Q           Do you recall whether Mr. Asper or Mr. Wolch had  
17           any concerns about this letter and the contents so  
18           that a private investigator had to be hired?

19           A           They must have, but I honestly didn't know that  
03:49 20           they were doing this, and I didn't have the money  
21           for doing this, so they must have been doing it on  
22           their own.

23           Q           And was there any reason that you didn't call up  
24           Michael Breckenridge and go and interview him  
03:49 25           initially without going to the private



1 investigators? I'm trying to understand why this  
2 route was taken.

3 A Well, unless David and Hersh are thinking they  
4 want to make sure that the man's not a nut case or  
03:50 5 something like that and they don't want me to go  
6 out to someone that isn't sensible and maybe just  
7 to check the guy out and make sure that he's  
8 legitimate.

9 Q Do you have a recollection of that or is that  
03:50 10 something you --

11 A No, I'm just assuming that that's probably what  
12 their concern was.

13 Q If we can go to 213939, and this is a letter of  
14 Bob Perry of Robinson Investigations to David  
03:50 15 Asper dated May 26, 1992, and I think there's a  
16 subsequent letter that confirms that this letter  
17 was given to you in June by Bob Perry, and so do  
18 you have a recollection of getting this  
19 information and reviewing it and dealing with it?

03:51 20 A From Bob Perry?

21 Q Yeah.

22 A No.

23 Q I'll tell you what, just take a look, this is the  
24 May 26th report from Bob Perry to David Asper  
03:51 25 dealing with his interview with Michael



1 Breckenridge. If we can go to 156905, you'll see  
2 this is Bob Perry's second letter to David Asper  
3 saying:

4 "We were advised on June 12th, 1992,  
03:51 5 by Mrs. Joyce Milgaard that our previous  
6 report of May 26, 1992, had not yet been  
7 received by your office. A reproduced  
8 report was given to Mrs. Milgaard to be  
9 hand delivered to your office. Mrs.  
03:51 10 Milgaard requested and was supplied a  
11 copy of that same report on June 12,  
12 1992."

13 And then he went on to meet with you. And so  
14 just if we go back to 213939, my question was do  
03:51 15 you remember getting this May 26th report from  
16 Robinson Investigations?

17 A No, I don't.

18 Q What do you remember, and I'll go through these,  
19 what is your memory of your dealings with --

03:52 20 A I really have not a lot of memory of this  
21 situation at all.

22 Q Do you remember a fellow by the name of Bob Perry,  
23 a private investigator with Robinson  
24 Investigations?

03:52 25 A It doesn't even ring a bell with me.



1 Q Do you remember meeting with Michael Breckenridge,  
2 like, personally meeting with him?

3 A I couldn't even put a face on the man. I know  
4 that I did meet with him because, you know, that  
03:52 5 was the intention, but it's not something that  
6 really stands out in my mind at all.

7 Q Do you have any recollection of --

8 A I wouldn't know him if I saw him on the street or  
9 if I had seen him.

03:52 10 Q But do you have a recollection of your interview  
11 with him, your meeting with him, his demeanour,  
12 his credibility and the contents of what he told  
13 you, do you have any recollection of that?

14 A No, I do not.

03:53 15 Q And we've been through this letter on a couple of  
16 occasions, but in this letter Mr. Perry talks  
17 about meeting with Michael Breckenridge on May 14,  
18 1992 and I take it that you would have been aware  
19 at that time that Bob Perry met with Michael  
03:53 20 Breckenridge; is that correct?

21 A Yes, I would have been according to this.

22 Q And he goes on to describe, covered a number of  
23 topics relating to this case, personal history:

24 "... and his knowledge of the Criminal  
03:53 25 Records Department of the Saskatchewan



1 Ministry of Justice during the years  
2 1970, 1971."

3 And then:

4 "Mr. Breckenridge also covered topics  
03:53 5 that were irrelevant to this matter. As  
6 the interview progressed he would  
7 suddenly remember some other point that  
8 he felt relevant. Although he could  
9 cover some topics in detail he was vague  
03:54 10 in others. He seemed "forgetful" when  
11 making reference to specific years  
12 pertaining to his past and present  
13 employment and personal history and yet  
14 concise when discussing any political  
03:54 15 details and motivation.

16 During the interview  
17 Mr. Breckenridge appeared unable to  
18 provide specific details regarding the  
19 handling of the Milgaard matter. Much  
03:54 20 of his information was speculative and  
21 based on his opinion and suspicions as  
22 well as these of his co-workers."

23 Do you have any recollection, Mrs. Milgaard, of  
24 concerns being expressed either directly by Bob  
03:54 25 Perry to you or hearing them from Mr. Asper or



1 Mr. Wolch, that based on Mr. Perry's interview  
2 with Mr. Breckenridge that there might be some  
3 concerns about his credibility and the  
4 credibility of the information he was providing  
03:54 5 to you?

6 A Well, certainly this letter would appear that, but  
7 obviously he was giving co-workers to us as well,  
8 so that I think we had another way of checking it  
9 out.

03:55 10 Q Did you check with any co-workers before you made  
11 the information public?

12 A I don't know because if you'll notice on the next  
13 page of this letter in my handwriting, "Bill  
14 Logan - Police Liaison officer," and "Prov. Gov't  
03:55 15 Louise Simard".

16 Q And you'll see these names mentioned here about  
17 ministers in the present government. Would that  
18 have been handwriting you would have made at the  
19 time when you got this letter?

03:55 20 A It's possible, but I'm wondering whether I had  
21 maybe tried to check with those people, but I have  
22 absolutely no recall on it, I'm sorry.

23 Q I think the record suggests and the evidence of  
24 these people suggests that none of them were  
03:55 25 contacted by you or anybody on your behalf before



1 the information of Mr. Breckenridge was made  
2 public on September 19th, 1992. Do you take issue  
3 with that?

03:56 4 A No, I couldn't take issue with it because I don't  
5 remember it.

6 Q And assuming that to be true, do you know why  
7 those people were not contacted or any of those  
8 people contacted in advance of making the  
9 information public to try and corroborate or  
03:56 10 verify what Mr. Breckenridge was telling you?

11 A Well, as I pointed out to you, Mr. Hodson, when  
12 Mr. Breckenridge came forward, I instantly  
13 believed the information he was giving because it  
14 so fit in with the picture that I had in my mind  
03:56 15 that I don't think for a minute I discounted it  
16 and I wanted to go forward with it.

17 Q And is it fair to say that you wanted it to be  
18 true?

19 A Oh, absolutely, I believed it was true.

03:56 20 Q And again just back to -- and I take it you would  
21 agree that the information was not only very --

22 A It was compelling and it was something I could get  
23 out there and get some help with.

24 Q I was going to use different words. Would you  
03:57 25 agree that the information was, made some very





1 strong allegations of misconduct, number one?

2 A Yes, which I always suspected.

3 Q And two, it made those allegations against some  
4 people in significant positions of authority;  
03:57 5 namely, the premier of the province at the time?

6 A Yes.

7 Q And a former deputy minister and Mr. Kujawa;  
8 correct?

9 A Yes.

03:57 10 Q And I take it that the fact that an allegation of  
11 misconduct against the premier of the province  
12 would be something that you know would get the  
13 public's attention and would get the Government of  
14 Saskatchewan's attention?

03:57 15 A Absolutely.

16 Q And in that sense was the fact that  
17 Mr. Breckenridge was saying that Roy Romanow was  
18 involved in addition to Mr. Kujawa, that by  
19 including the premier of the province, that that  
03:58 20 gave the information perhaps more public impact?

21 A Yes, it would have to me.

22 Q And so again just back on the question about  
23 checking it out, to the extent that you would have  
24 done this, is it your evidence that because you  
03:58 25 believed what he was saying fit with what you



1 thought had happened, in other words, it confirmed  
2 what you thought to be the case, your  
3 suspicions --

03:58 4 A And once you -- you have to realize, I also wanted  
5 to get it out to the public and what had happened  
6 through the years, every time that I brought  
7 something out to the public, okay, the media then  
8 would get on the band wagon and they -- because I  
9 didn't have the money to do it and they would go  
03:58 10 out and do the investigating and find out all the  
11 ins and outs of it, so I knew that if I went  
12 public with this, they would be right out there  
13 checking all this information out.

14 Q And what if they checked it out and it was wrong  
03:59 15 and that you had publicly made statements about  
16 Mr. Romanow, Mr. Lysyk and Mr. Kujawa that were  
17 based on information that was not true, was that a  
18 concern in putting it out to the public and  
19 letting the media verify it for you?

03:59 20 A I don't think it was a concern because I believed  
21 it. I know it's probably, in hindsight you can  
22 look back and say, well, lady, you should have  
23 checked it out, you should have done this, but it  
24 came so near to what my beliefs were and through  
03:59 25 all the years that someone was pushing me back and



1           it had to be someone strong and it had to be  
2           someone big and that's why I wasn't able to get my  
3           son out, it was always these figures in the dark,  
4           and suddenly these figures had been brought out  
04:00 5           into the light and I see them as real people and I  
6           want to get it out there. I really believed it or  
7           I wouldn't have done it.

8           **Q**       And so at the time you made it public, did you  
9           have any doubts?

04:00 10          **A**       No, I don't believe I had a doubt.

11          **Q**       And if you had been made aware at the time that  
12          there were some credibility issues with both  
13          Mr. Breckenridge and the information, if that had  
14          been brought to your attention would you have  
04:00 15          considered it or was it brought to your attention?  
16          I think you told us it wasn't.

17          **A**       No, it wasn't brought to my attention, and I'm  
18          quite sure that I would have considered it because  
19          I tried to base everything I did with my son on  
04:00 20          dealing with a strong basis of principle and  
21          having truth on my side and so to take and use  
22          false information and put it out there, that isn't  
23          something I would do, Mr. Hodson.

24          **Q**       No, and I appreciate what you are saying is it was  
04:01 25          what you believed to be the truth, but I think



1           you'll acknowledge that sometimes what you believe  
2           to be the truth isn't the truth, particularly when  
3           someone else gives you the information?

4           A           Yes.

04:01 5           Q           And so my question is saying okay, because you  
6           believed it to be the truth, whether you  
7           considered taking other steps to verify it because  
8           of the nature of the allegations and who they were  
9           being made against, in other words, did you say or  
04:01 10          did someone say to you lookit, before you make a  
11          public allegation against the premier of the  
12          province that he committed misconduct, criminal  
13          misconduct, you should make sure everything is in  
14          order, and even though you believe it to be the  
04:01 15          truth, that maybe check it before it's made  
16          public?

17          A           I don't think anyone ever said that to me because  
18          maybe I might have stopped at that point and done  
19          something.

04:01 20          Q           Okay. And so again as far as Bob Perry's letter,  
21          I think you are saying you don't have a  
22          recollection of getting it, we've been through  
23          this a few times, and I think it does, or it seems  
24          to, and I don't want to interpret the letter, but  
04:02 25          certainly it, in places, raises some issues about



1 Mr. Breckenridge's story; is that fair?

2 A Right.

3 Q Is that a fair reading of it?

4 A It seems to now when I read it, yes.

04:02 5 Q And is that something that at the time you might  
6 have discounted or not put much weight on because  
7 you believed the evidence to be true because you  
8 thought it fit your --

9 A I read what I wanted to read.

04:02 10 Q Okay. So that to the extent that there might have  
11 been red flags in this letter about  
12 Mr. Breckenridge or his information, you didn't  
13 pick up on them; is that fair?

14 A I think that's fair.

04:02 15 Q And because you didn't -- because you wanted to  
16 believe Mr. Breckenridge's story?

17 A I did.

18 Q And then just at the bottom, if we could scroll  
19 down, and then I think this is where Mr. Perry  
04:03 20 says that Mr. Breckenridge was asked to:

21 "... that he was having problems  
22 organizing his thoughts but expected to  
23 do so in the immediate future. He  
24 called me on May 22, 1992. We met and  
04:03 25 he supplied me with a prepared



1 Statement."

2 And that's where the second statement comes  
3 about; correct?

4 A Correct.

04:03 5 Q And it appears from this letter, and I think from  
6 other evidence, that the Breckenridge statement  
7 was not a statement taken by Bob Perry, the  
8 private investigator, but rather a statement that  
9 Michael Breckenridge himself prepared and then  
04:03 10 gave to Mr. Perry when they meet; is that your  
11 recollection of the events?

12 A I have no recollection of the event at all.

13 Q And then to 213941, the next page, this talks  
14 about his employment history becomes unclear at  
04:04 15 this point. Do you have any recollection of --  
16 what was your -- when you went public with this  
17 information on September 19, 1992, did you believe  
18 that Michael Breckenridge was employed with the  
19 Justice Department in 1970 and '71?

04:04 20 A Yes, I did.

21 Q And on what did you base that?

22 A On what he told us.

23 Q On what Michael Breckenridge told you?

24 A Yes.

04:04 25 Q And that would have been your meeting with him?



1 A Yes.

2 Q And again down at the bottom, do you recall this:

3 "During this interview with

4 Mr. Breckenridge he offered his views on

04:04 5 political matters. In one statement he

6 claimed to have proof that the idea for

7 the Reform Party was the brainchild of

8 Mr. Tommy Douglas and Mr. E.C. Manning."

9 A I don't remember that at all.

04:04 10 Q And that:

11 "Mr. Breckenridge's opinion of

12 wrong-doing and cover-up may be factual,

13 however his zeal to correct the past may

14 be clouded by his past and present

04:05 15 personal experiences and state of mind."

16 And is it correct to say that that might have

17 been something that you would not have put any

18 weight on at the time?

19 A Right.

04:05 20 Q And for the reasons you stated before, because you

21 wanted to believe what he told you?

22 A That's right, that's correct.

23 Q And then the next page, and again this is a letter

24 to Mr. Asper, but he's saying lookit, we won't

04:05 25 proceed further unless we receive instructions



1 from your office, and I think Mr. Perry's evidence  
2 before this Commission, based on his interviews  
3 with the RCMP, is to the effect that he never did  
4 directly check and verify Mr. Breckenridge's  
04:05 5 employment with the Government of Saskatchewan in  
6 '70 to '72, and would that have been your  
7 understanding at the time as well?

8 A Yes, I'm sure it was.

9 Q So again, when you had the press conference on  
04:05 10 September 19th, 1992 and made this information  
11 public, I think the evidence is that at that time  
12 you would have known that Bob Perry, the private  
13 investigator, had not independently verified  
14 Mr. Breckenridge's employment with the government;  
04:06 15 is that fair, and you were relying on what  
16 Mr. Breckenridge told you?

17 A I was relying on what Mr. Breckenridge had told  
18 me. Whether I knew that -- I vaguely remember  
19 that there was a private investigator that had  
04:06 20 gone out to check on him, so I would have assumed  
21 that he would have checked on him and that would  
22 have been something he would have checked on.

23 Q Okay. So that was an assumption on your part then  
24 at the time?

04:06 25 A I would think so. Like, if you hire -- I didn't





1 hire the detective, obviously the firm did, but if  
2 you've hired a detective to go out and check on  
3 someone, I would think that the first thing you  
4 would be checking would be the employment and that  
04:06 5 kind of information, so to me I would assume that  
6 if he'd been checked by a detective, that that  
7 would have been done.

8 Q Okay. If we could go to 004012, and this is the  
9 statement, and we've been through this before, but  
04:07 10 here in his statement he says he was hired to the  
11 Blakeney government in approximately 1970 or '71,  
12 and again that was information that  
13 Mr. Breckenridge provided you and you believed to  
14 be true at the time?

04:07 15 A That's correct.

16 Q Go to the next page, and I take it that this  
17 information here where he says:

18 "We were often aware of these

19 meetings because --"

04:07 20 And they are talking about, I think, Romanow,  
21 Kujawa, and Lysyk,

22 "-- after we delivered the file the  
23 attorneys would meet behind closed doors  
24 and our section was told to stay away  
25 from that meeting, although, there were



1 times when they would request another  
2 file at the same meeting. This often  
3 happened with the Milgaard and Fisher  
4 files. Also there was a paper shredder  
04:08 5 kept in the ministers office that was  
6 used quite extensively in cases of very  
7 sensitive material that would do damage  
8 to the gov't, in such cases, I was told  
9 that the gov't could claim ignorance of  
04:08 10 this matter thereby escaping any  
11 political heat."

12 And this last point, the paper shredder, that  
13 would have fit with what you and people in your  
14 group had put out in August of 1991, that files  
04:08 15 had gone missing; correct?

16 A That's right.

17 Q And so at the time, I think within a week after  
18 the public information about the frame and  
19 cover-up, the information came to light, I think  
04:08 20 Mr. Asper's comments were August 30th, 1991 that  
21 the files had gone missing or that the Fisher  
22 files had gone missing, and so would this have  
23 been information that again fit with --

24 A Sort of fit right into that package, yes.

04:09 25 Q And again the fact that someone was saying that



1           they had the two, the Milgaard and Fisher files  
2           together in the same office and discussed it, and  
3           I think they go on to talk about being told to  
4           mind their own business --

04:09 5           A           Yeah.

6           Q           -- that as well fit in with what you thought had  
7           happened?

8           A           Had happened, yes, sir.

9           Q           Now, here in the statement Mr. Breckenridge says:

04:09 10                    "On the Milgaard case it was brought to  
11                    my attention by Dave Wolbaum that  
12                    according to the information we had been  
13                    receiving it was becoming very evident  
14                    that the Milgaard case was a mistake."

04:09 15           And so he's actually saying this is what David  
16           Wolbaum told me?

17           A           Uh-huh.

18           Q           Correct?

19           A           Right, and I thought to myself "wow" when I read  
04:09 20           this, "isn't that terrific".

21           Q           And again, I think Mr. Wolbaum was contacted  
22           either the day of or the day after your press  
23           conference and I think advised the RCMP that no,  
24           none of which Mr. Breckenridge attributes to me is  
04:10 25           true and I don't have any recollection -- I'm



1 summarizing --

2 A Yeah.

3 Q -- of what he says.

4 A But I think that I probably even mentioned this, I  
04:10 5 might even have mentioned this at my press  
6 conference, so that's why maybe Dave Wolbaum came  
7 forward.

8 Q I'm sorry?

9 A I might even have mentioned that there's other  
04:10 10 people there, like that I might even have  
11 mentioned this Dave Wollbaum's name at the press  
12 conference, I don't remember but I could have.

13 Q No, I think what the record shows is that  
14 immediately, I think a day or two prior to the  
04:11 15 press conference, Mr. Wolch had sent the statement  
16 to Bruce MacFarlane at Federal Justice, --

17 A Oh, okay.

18 Q -- who in turn had Dave Pearson contact  
19 Mr. Wollbaum around this time, and Dave Wollbaum  
04:11 20 confirmed -- or didn't affirm what was attributed  
21 to him, I think is how he was contacted.

22 A Okay.

23 Q I mean it --

24 A But I never got that information.

04:11 25 Q And I guess that's my question; did you consider



1 or did you discuss with Mr. Wolch or Mr. Asper  
2 going to the source, Dave Wollbaum, and saying  
3 "lookit, what Mr. Breckenridge tells us is that  
4 you told him that it was evident that the *Milgaard*  
04:11 5 case was a mistake"; in other words wouldn't  
6 Dave Wollbaum maybe be a better witness than  
7 Mr. Breckenridge if Mr. Breckenridge was getting  
8 it from Mr. Wollbaum?

9 A I hadn't really thought of it. I thought that  
04:11 10 this man here was the key to opening the whole  
11 thing up, and he was the key to finding out what  
12 was going on, and that all of these other things,  
13 they could be followed up.

14 Q But, again, I guess the question; before you went  
04:12 15 public with the information is there a reason you  
16 would not have contacted Dave Wollbaum to do two  
17 things; one, to verify or to not verify what  
18 Mr. Breckenridge was telling you; and two, if what  
19 Mr. Breckenridge was telling you was true, perhaps  
04:12 20 give you more information, since it appears that  
21 that's where Mr. Breckenridge got it from?

22 A But obviously the lawyers had already had an  
23 investigator checking out the man so why would I  
24 call Dave Wollbaum?

04:12 25 Q Yeah, no, I'm asking you that.



1 A No.

2 Q And if you are saying you relied on your lawyers  
3 and investigator to do whatever was necessary?

4 A Yeah.

04:12 5 Q Okay. And, again:

6 "From the correspondence we were filing  
7 our section was convinced that there was  
8 error made in the Milgaard case and this  
9 was brought Serge Kujawa's attention."

04:13 10 And:

11 "We were told basically to mind our own  
12 business if we valued our jobs."

13 And I take it, again, what this fit, or I guess  
14 what this gave you, if I understand your

04:13 15 evidence, is the person in the high place who  
16 made the connection and took steps to cover up;  
17 is that fair?

18 A That's right, it just fed my suspicions.

19 Q If we can go to 156905, please. And this is a  
04:13 20 letter from Mr. Perry to Mr. Asper saying:

21 "We were advised on June 12, 1992, by  
22 Mrs. ... Milgaard that our previous  
23 report of May 26, 1992, had not yet been  
24 received by your office."

04:13 25 And I'm speculating, from that comment, that you



1 would have contacted Mr. Perry and that's how he  
2 would have become aware; is that fair?

3 A It certainly looks like it, although I have no  
4 recollection of it.

04:14 5 Q Okay. If we can scroll down, Mr. Perry writes:

6 "We met with Mrs. Milgaard on June 12,  
7 1992 ... and discussed various aspects  
8 of the Milgaard situation at present.  
9 Mrs. Milgaard suggested various avenues  
04:14 10 of possible investigation. We advised  
11 Mrs. Milgaard that we felt that it would  
12 be in her best interest to fully discuss  
13 any future investigation with your  
14 office."

04:14 15 That being Mr. Asper and Mr. Wolch.

16 "Mrs. Milgaard requested the we set up  
17 another interview with Mr. Mike  
18 Breckenridge. We were given to  
19 understand that this had been discussed  
04:14 20 with you or one of your associates in  
21 your absence."

22 Do you have any recollection of this discussion?

23 A Not at all.

24 Q Was it a case where Mr. Asper or where Mr. Wolch  
04:14 25 would have said, based on Mr. Perry's letter,



1 "it's not worth pursuing", and you went back to  
2 Mr. Perry and said "lookit, I think we should  
3 pursue other areas"; is that -- does that trigger  
4 a memory at all?

04:15 5 A It could. I really -- none of this triggers a  
6 memory.

7 Q Okay. And then they go on about a meeting with  
8 Mr. Breckenridge, that:

9 "... lasted approximately 2.5 hours. We  
04:15 10 fully discussed Mr. Breckenridge's  
11 involvement in the Milgaard and Fischer  
12 matters and the procedures involved."

13 And, again, I think you have told us you have  
14 little recollection of that, --

04:15 15 A None at all.

16 Q -- of any detail at all at that meeting?

17 A When I read the letter, --

18 Q Sure.

19 A -- and where it talks about he described the  
04:15 20 opening of files --

21 Q Yeah.

22 A -- and entering into the master ledger and things  
23 like that, I have a vague recollection of that,  
24 but I can't even remember where we were or what we  
04:15 25 were doing, it's just very, very vague.





1 Q Okay. And then maybe the, see if you recall this,  
2 talking about:

3 "Numerous names were brought up ...

4 These named by Mr. Breckenridge, other

04:16 5 then those previously reported were

6 lawyers Richard Quinney, Ken McKay,

7 Gerry Albright and Peter Glendenning.

8 Mrs. Milgaard asked what knowledge he

9 may have of Ray Hnatishyn and Bob

04:16 10 Caldwell. We also talked about Cal

11 Tallis, Ian Disbury and E.C. Boychuk."

12 And so is it correct to say that you would have

13 brought up names with him saying "here's who I

14 think might be involved", and do you have any

04:16 15 knowledge of that, or does any of that assist?

16 A I'm sorry, it doesn't assist, I could have brought  
17 them up but I honestly don't remember any of it.

18 Q There was also a discussion about going through  
19 some of your documents and asking him to identify  
04:16 20 where he may have had initials on them; do you  
21 remember that?

22 A I do remember having documents with when I talked  
23 to someone, and it would have had to have been, it  
24 would have had to have been him, but just I  
04:17 25 remember taking a bunch of papers and things with



1 me but honestly don't remember what happened with  
2 them when I got there.

3 Q Yeah. So this would be June 15th, 1992, you have  
4 had one meeting with him, Mr. Perry has had two  
04:17 5 meetings with him, --

6 A Uh-huh.

7 Q -- and you got the statement from him, which I  
8 think is dated May 21, 1992; is that correct? I  
9 think that's the date.

04:17 10 A Yes, I think it is.

11 Q May 22, 1992. And it's not until September 19th  
12 that this information is made public; can you tell  
13 us what -- what -- what was the reason for that,  
14 why this information wasn't made public sooner  
04:17 15 than September 1992?

16 A No, I have no idea, unless I was away at that  
17 time.

18 Q I -- there is a few documents I will show you and  
19 I'll just tell you generally what they are and see  
04:18 20 if this assists you. I think in the months May,  
21 June, July and August of 1992 a number of people  
22 from the public, I think there was a  
23 letter-writing campaign to the Minister -- and I  
24 won't bring them up now -- but there were letters  
04:18 25 sent to Bob Mitchell by supporters of David



1 Milgaard, and the Minister responded basically  
2 saying similar to what he said to Mr. Wolch  
3 earlier, that "lookit, the Supreme Court said you  
4 are not probably innocent, they found no  
04:18 5 misconduct, no inquiry, no compensation", and  
6 telling the members of the public to read the  
7 Supreme Court decision because it was -- it  
8 contradicted the position that Mr. Wolch was  
9 putting forward. Do you remember that taking  
04:18 10 place, this battle of letters, if I can --

11 A Yes. I can remember the Ottawa group, Sigrid  
12 Macdonald was one that was doing letter-writings,  
13 and also some people out in Vancouver. Whether I  
14 was travelling at the time, and working with these  
04:19 15 support groups, I honestly don't know.

16 Q And I think by -- and I'll show you some letters a  
17 bit later -- by the end of August '92 or September  
18 '92 I think the Minister, Bob Mitchell, and/or the  
19 Government of Saskatchewan was being quite -- was  
04:19 20 responding to, both publicly and directly to  
21 people who were raising these issues, relying upon  
22 the Supreme Court of Canada decision and saying  
23 "lookit, there is no basis to these"?

24 A Yes.

04:19 25 Q And do you remember that being an issue in the



1 summer, that despite your efforts to try and get  
2 the Government of Saskatchewan to move and to do  
3 something --

4 A They weren't listening.

04:19 5 Q -- they -- and in fact not only were they not  
6 listening, they were responding relying on the  
7 Supreme Court decision, --

8 A Yes.

9 Q -- and using that as a basis to say that basically  
04:20 10 your position was wrong; is that right?

11 A That's right.

12 Q And would that have been the reason for the  
13 Breckenridge information coming out in September  
14 of 1992, was it intended to counter what the  
04:20 15 Government of Saskatchewan was putting out in the  
16 public and to people about the case?

17 A It could well have been.

18 Q In the sense that -- and it was --

19 A This could give a reason for what they were doing,  
04:20 20 it would give a reason for them sending out these  
21 letters, again another coverup.

22 Q Okay. If we could call up 336832. And, again,  
23 this is a discussion I think between you and David  
24 Asper June of 1992, and if we can go to page  
04:21 25 336849, and here the discussion is he's talking



1 about :

2 "... Yannow ...",

3 who I think is a *StarPhoenix* reporter:

4 "...made an interesting suggesting.

5 MRS. JOYCE MILGAARD: What's that.

6 MR. DAVID ASPER: To have a news conference  
7 in Saskatchewan with the Miller family  
8 and Fisher's victims. You know, he  
9 agreed with -- you know, playing the  
10 thing out for the next three or four  
11 weeks, doing you know, minor things --  
12 or not minor things, but doing things to  
13 keep the story alive.

14 MRS. JOYCE MILGAARD: Mmhmm.

15 MR. DAVID ASPER: And you know, keep  
16 getting rejected, and then, you know, as  
17 we discussed between June 1<sup>st</sup> and 10<sup>th</sup>,  
18 have this news conference with all these  
19 people. What do you think about that.

20 MRS. JOYCE MILGAARD: I think it's asking  
21 much of all the victims to come forward.  
22 Like, I could see them coming forward on  
23 a -- a show like *Fifth Estate* or  
24 something like that, blocked off."

04:21 25 And it looks like in June of 1992 there -- the



1 discussions are how do we find a way to keep this  
2 in the public; is that -- is that a fair read of  
3 that?

4 A Yeah, yeah, I think that's a fair read of it.

04:22 5 But, as I pointed out, it was something that I  
6 didn't feel we should put the victims --

7 Q No, right.

8 A -- to ask them to do.

9 Q And is it correct to say that, and putting aside  
04:22 10 the content, I think you are saying here, "lookit,  
11 I don't agree with that", but is it correct to say  
12 that in and around June of 1992, and in the months  
13 that followed the Supreme Court of Canada  
14 decision, that there was a concern that you might  
04:22 15 lose the public's attention?

16 A Correct, absolutely.

17 Q In other words the Supreme Court of Canada  
18 decision was being used to say "lookit, public, we  
19 went to Court, they had their hearing, and they  
04:22 20 lost"?

21 A That's right.

22 Q And so the challenge in the summer of 1992 was how  
23 do we get this back into the public domain and get  
24 the public back on our side -- or not back on our  
04:22 25 side -- but get the public give us, get something



1 out there that will cause the public to put  
2 pressure on, now, the provincial government?

3 A Right.

4 Q And so that, that's the reason I showed this  
04:23 5 exchange, --

6 A Uh-huh.

7 Q -- it appears that --

8 A I'm sure that that's what we were trying to do.

9 Q And is it correct that the media exposure after  
04:23 10 the Supreme Court of Canada decision, that it  
11 actually died down a bit, and that -- that there  
12 wasn't as many -- I mean the stories that were  
13 being run before about various matters that you  
14 put forward were basically old news as a result of  
04:23 15 the Supreme Court of Canada decision?

16 A Yes, and -- but the reporters, and you can note in  
17 that, the reporters were trying to keep it alive.

18 Q This is probably an appropriate spot to break  
19 before I move into a different area.

04:23 20 (Adjourned at 4:23 p.m.)

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Official Queen's Bench Court Reporter

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Donald G. Meyer, RPR, CSR

Official Queen's Bench Court Reporter





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