

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

Transcript of Proceedings

and

Testimony before the Commission

sitting at

TCU Place at

Saskatoon, Saskatchewan

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Volume 156

Inquiry Proceedings



Commission Staff:

Mr. Douglas C. Hodson, Commission Counsel
Ms. Vanessa Monar Enweani Assistant Commission Counsel
Ms. Sandra Boswell, Document Manager
Ms. Kara Isabelle, Document Assistant

Support Staff:

Ms. Irene Beitel, Clerk to the Commission
Ms. Karen Hinz, CSR, and Official Q.B. Court Reporters
Mr. Don Meyer, RPR, CSR,
Mr. Hugh Esson, Security Officer
Mr. Jay Boechler, Audio Technician



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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Transcript of Proceedings

(Reconvened at 9:04 a.m.)

COMMISSION MacCALLUM: Good morning.

JOYCE IOLA MILGAARD, continued:

BY MR. WILSON:

Q Back to where we left off yesterday afternoon,
Mrs. Milgaard, may we look at transcript page
32063:

"A And we were turning the file over to the
police to look at it."

That was your intention at the time you were
speaking with Michael Breckenridge?

A Yes.

Q You didn't carry out that intention did you?

A Yes.

Q You in fact gave it to the public at your press
conference?

A But I also gave it to the police.

Q No, you did not. The police investigation came
about at the direction of the Minister of Justice
for Saskatchewan.

A That's correct, and I gave the file --

Q I beg your pardon?

A That's correct, and I gave the file over to the
police.



1 Q No, but you didn't turn the file over to the
2 police, that wasn't your intention at all with it,
3 it was your intention to go public with it and you
4 did?

09:05 5 A That was the -- the decision was made to go public
6 with it and we did, but the file was also turned
7 over to the police.

8 Q That was the manner in which you planned to get
9 the thing to the hands of the police, was via a
09:05 10 press conference?

11 A I don't believe that was my plan, no. The press
12 conference came about as a result of talking with
13 my lawyers and we were at a state where we needed
14 public opinion to help us at that particular time
09:06 15 and a decision was made to have a press
16 conference. It was not my decision alone.

17 Q Oh. Would you mind moving the mike a little
18 closer to you, I'm having difficulty hearing you.
19 Who participated in the decision to have a press
09:06 20 conference?

21 A I imagine our, the entire team that was available
22 at that time. I don't really remember. I haven't
23 a current memory of exactly how it came about, but
24 that's the way we usually did things, we sort of
09:07 25 ran it around the table and discussed the pros and



1 cons and decided what we were going to do and that
2 was the decision that was made.

3 Q The team would include you and your lawyers;
4 right?

09:07 5 A That's correct, and the volunteer staff that we
6 worked with very closely.

7 Q Yeah. Well, we know that Mr. Asper left the firm
8 in June of '92, so he wouldn't have been involved
9 very much in that decision would he?

09:07 10 A No, he would not have.

11 Q Mr. Wolch, however, was involved?

12 A Yes.

13 Q Are you telling us that it was Mr. Wolch's advice
14 that you go to a press conference with this
09:07 15 material?

16 A No, I'm not.

17 Q Whose advice was it, whose direction was it, whose
18 recommendation was it?

19 A I don't believe it was anyone's recommendation.
09:07 20 It came out of a conversation with all of us
21 deciding what we were going to do and that
22 decision was made.

23 Q I see. It was a group decision and you can't put
24 your finger on anybody who participated in it?

09:08 25 A I have put my finger on who participated. Mr.



1 Wolch participated, I participated -- would you
2 like me to name all the members that were there?

3 Q Sure.

4 A I can't do that. I know that Bob Bruce was there,
09:08 5 some of the other members would have been, Linda,
6 Barb probably, maybe two or three others, but --

7 Q Members of the law firm?

8 A Bessey, Marie -- no, I don't know if there were, I
9 don't remember that. There could have been.

09:08 10 Q In any event, you were in favour of doing the
11 press conference; correct?

12 A Yes.

13 Q Mr. Wolch was in favour of doing the press
14 conference?

09:08 15 A It seemed our only option at that time.

16 Q Okay. And from March until September when you
17 held the press conference, you made no
18 investigation of the Breckenridge allegations
19 other than talking to Breckenridge himself; is
09:09 20 that correct?

21 A I went with an investigator and talked to
22 Mr. Breckenridge, that's correct.

23 Q You talked to none of the other people who he
24 mentioned in his --

09:09 25 A No. My intention was to turn that over to the



1 police for investigation as I reported to you
2 yesterday. This is all things we went over
3 yesterday.

09:09 4 Q This event, this press conference on the 19th of
5 September had been carefully orchestrated, had it
6 not, there was a lot to be done?

7 A Any public event that's taking place, because we
8 were having a number of groups being involved,
9 that sort of set the timetable and the dates and
09:09 10 things like that, it was when they would be
11 available, so yes, there was a lot involved to
12 doing something like that.

13 Q Yes.

14 A And it took time.

09:10 15 Q You had to arrange for the park where it was held,
16 right, you arranged for the food, the
17 entertainment, the bands; correct?

18 A Well, I wouldn't have been involved in that, the
19 volunteers would be doing that.

09:10 20 Q Somebody directed it to be done?

21 A Yes.

22 Q It didn't happen accidentally.

23 COMMISSIONER MacCALLUM: Just a minute.

24 Let's not talk at the same time, please. So the
09:10 25 park, the food, the entertainment and then you



1 were asked -- your question was?

2 BY MR. WILSON:

3 Q The sound system, that had to be arranged for it?

4 A Naturally.

09:10 5 Q And the invitations had to go to the members of
6 the media; correct?

7 A Correct.

8 Q And one of the things that had to be done was Mr.
9 Wolch had to get his letter prepared and sent to
09:10 10 the Minister of Justice in Ottawa because it was
11 going to be distributed on the 19th; correct?

12 A Correct.

13 Q And it went forward on the 16th, that's also
14 correct, we saw that the other day?

09:11 15 A If that was the date, yes.

16 Q May we look at 047110, please, you see this is an
17 internal RCMP memorandum advising that Eugene
18 Williams in Ottawa had requested Sergeant Rick
19 Pearson to make some investigations in respect to
09:11 20 the allegations that you were making on the 19th
21 of September?

22 A Correct.

23 Q You notice the date?

24 A September the 18th.

09:12 25 Q "Sgt. Pearson has been tasked to locate



1 the people involved and have them
2 interviewed. Dave Wollbaum is now
3 believed to work for the Regina
4 Correctional Centre and reside in
09:12 5 Rouleau."

6 A So in other words, the information was turned over
7 to the police.

8 Q I'm sorry?

9 A In other words, the information was turned over to
09:12 10 the police.

11 Q Yeah. May we look at 004014, statement of
12 Patricia Styles taken at 1:45 p.m. on the 19th of
13 September, 1992; correct?

14 A Yes.

09:12 15 Q That's just about the time you were standing up
16 making your speech to the media at the press
17 conference isn't it?

18 A I imagine it would be.

19 Q Yes. Can we scroll down, please:

09:13 20 "Q Do you recall working in the general
21 office in 1970 and 1971?

22 A I'm sure I was."

23 Who were some of the people. Some are them are
24 mentioned, including Michael Breckenridge;
09:13 25 correct?



1 A Yes.

2 Q Dave Wollbaum. The next page:

3 "Q During 1971, 1971 and 1972 do you recall
4 there being any concerns raised by
09:13 5 fellow employees in the general office
6 about the Milgaard case, and in
7 particular if there had been some type
8 of miscarriage of justice?

9 A Nothing!

09:13 10 Q Do you recall working with Michael
11 Breckenridge during this time period?

12 A I recall him ... but not the exact
13 years.

14 Q Do you recall anything that Michael
09:14 15 Breckenridge may have said to yourself
16 or anyone else about the Milgaard case?

17 A No, if he did I don't recall any of
18 it."

19 Next page:

09:14 20 "Q Can you tell me anything about Michael
21 Breckenridge?

22 A I haven't seen him in years. Many
23 many years ago he dropped by the
24 office to say hello, but I have no
09:14 25 idea where he is or what he is doing."



1 Do you know Wollbaum? Yes. Next page:

2 "Q So far as the Milgaard file is
3 concerned, would it have been filed and
4 handled like the other homicide cases?

09:14 5 A It would have been handled like any
6 other case."

7 Next page:

8 "Q This correspondence suggests the
9 concerns raised about the Milgaard case
09:15 10 were brought to the attention of Serge
11 Kujawa, then told by Mr. Kujawa to mind
12 their own business. Do you have any
13 knowledge of such a concern being
14 raised...

09:15 15 A No.

16 Q According to the correspondence I have,
17 after being told by Mr. Kujawa to mind
18 their own business, the employees began
19 to apply for transfers or find new jobs
09:15 20 and that yourself, Patricia Styles, was
21 the only person that didn't?

22 A I don't recall any massive turnover in
23 staff...

24 Q Do you recall any of your fellow workers
09:15 25 having any conflict with Serge Kujawa



1 over the Milgaard file?

2 A No."

3 Completed 3:35 p.m. There wasn't a lot of
4 difficulty getting that statement from
09:15 5 Ms. Styles, was there?

6 A Apparently not.

7 Q Thank you. May we now look again at 004019. This
8 is the statement I showed you yesterday of David
9 Wollbaum taken at 4:10 p.m., it says '91 but the
09:16 10 9th -- obviously that's a mistake, it's the 19th
11 of September at 4:10, same afternoon you are doing
12 your press conference; do you agree with that?

13 A It certainly looks like it.

14 Q You can take that down, thank you. So with almost
09:16 15 no notice, because you didn't give Federal Justice
16 any notice other than the faxed letter on the
17 16th, they were able to immediately run down both
18 Wollbaum and Styles, both of whom denied that
19 there was any truth whatsoever in Breckenridge's
09:17 20 story; correct?

21 A It seems that way, yes.

22 Q Now Mr. Wolch spoke to the RCMP, Inspector
23 Sawatzky, sometime after that press conference, I
24 think in about November; do you know that?

09:17 25 A No, I don't.



1 Q But you spoke to them in February, and we saw your
2 interview notes, right?

3 A Yes.

4 Q May we look at 159542, please. 12th of December,
09:17 5 1992, letter to Mr. Wolch from Michael
6 Breckenridge:

7 "Please find enclosed the
8 first part of a book I have written. I
9 can send you the whole thing on computer
09:18 10 disk ...

11 I have marked the section
12 that is particular interest to you and
13 David Milgaard. If we can release this
14 information I am sure it will help
09:18 15 increase public pressure to secure David
16 a financial settlement."

17 Then:

18 "I would hope that I could
19 count on your help to get this book
09:18 20 published."

21 Did Mr. Wolch tell you about this book that he
22 received from Mike Breckenridge?

23 A He may have, but I have no recollection of it, I
24 do remember seeing it in the files here, though,
09:18 25 and being rather surprised by it.



1 Q Did you ever look at the book?

2 A No, no, and I -- I don't know if there ever was a
3 book.

4 Q Oh. I think you told me yesterday that, even
09:18 5 since that press conference and the interview with
6 Inspector Sawatzky and the final report from RCMP
7 and Alberta Justice on the investigation, you made
8 no effort to look back at any of the information
9 or material to see what had come about from the
09:19 10 allegations you had made based on Breckenridge?

11 A I was still looking ahead, trying to get my son
12 out and cleared.

13 Q Well you did -- you didn't have enough interest to
14 go back and see what Wollbaum and Styles or others
09:19 15 might have said about this man you went to bat
16 for?

17 A I was very focused on one thing, and that was
18 clearing my son.

19 Q So the answer is "no"?

09:19 20 A That's correct.

21 Q Well let's just have a brief look at the interior
22 of this book of Mr. Breckenridge's. Could we turn
23 to 159561, please.

24 A You mean he actually wrote a book?

09:19 25 Q Well, if you want to call it that. He thinks it



1 was. Here he has a marvelously-advanced notion,
2 he wants to promote sterilization of the mentally
3 and physical defective, you have to be a bit of a
4 crank to do that.

09:20 5 If we turn to 159568, please.

6 You admitted that you identified that
7 Mr. Breckenridge has a bit of an axe to grind, you
8 admitted that at the press conference, correct?

9 A I said, in all cases, sometimes people have an axe
09:21 10 to grind.

11 Q Yes.

12 A But I didn't know for sure that he had one.

13 Q But the possibility was in your mind though?

14 A I think that that was a possibility and I was
09:21 15 being honest about it at the press conference.

16 And it wasn't me that was making
17 the allegations against your client, this is
18 something that you seem to misconstrue,
19 Mr. Breckenridge was making the allegations
09:21 20 against your client.

21 Q Well, we'll talk about that distinction a little
22 later. It's an interesting paragraph: "As long
23 as these people are forced to belong to a union
24 they can be kept under control and quiet with a
09:21 25 gag order known as the *Freedom of Information Act*."



1 This, instead of allowing the public any
2 information, is a way to force employees not to
3 release any information for fear of losing their
4 job. With absolute control the government, both
09:22 5 civic and provincial, has gone from a democracy to
6 a dictatorship. Only those that are card-carrying
7 socialists a.k.a. communists a.k.a. NDP are then
8 allowed freedom of speech (party doctrine), all
9 others are stepped on or stamped out by the ruling
09:22 10 junta. This is further enforced by the closing of
11 the library system through cutbacks, thus keeping
12 the people ignorant by not allowing them to read
13 and learn what is happening around them."

14 Pretty strong stuff, wouldn't
15 you say?

16 A Sound like it. This was written after the press
17 conference I take it?

18 Q Beg pardon?

19 A This was written after the press conference I take
20 it?

21 Q Well, I don't know when it was written, it was
22 produced afterwards, but before your interview
23 with the RCMP.

24 One other reference, 159571, a
09:23 25 neat little comment down here at the bottom. "In



1 Regina it will soon be a time when we see the
2 crack S.S. police entering every household and
3 using arms to force every resident to kiss their
4 boots, exactly like the left wing Nazis of the
09:23 5 Adolf Hitler regime. This is called a Free
6 Socialist Society or a New Democratic Government.
7 The Democracy has been taken out of Democratic."

8 Even stronger stuff; right?

9 A Correct.

09:23 10 Q Would you, if -- had you seen that, agree that
11 probably this man did qualify as a crank, someone
12 with an axe to grind?

13 A It certainly sounds like it.

14 Q Take it down, please.

09:23 15 A But, I would point out, I did not have that
16 information.

17 Q I beg your pardon?

18 A I would point out, I did not have that
19 information.

09:24 20 Q You mean Mr. Wolch didn't alert you to the fact
21 that this had come in before you spoke to the RCMP
22 in February?

23 A No, I'm sure he did not.

09:24 24 Q That might have had an impact on your interview
25 with Mr. -- with Inspector Sawatzky?



1 A I don't know that, but, I mean, it didn't come
2 before the press conference, is what I was saying.

3 Q You spent 2 1/2 hours with this man and saw no
4 evidence that he's the kind of a guy who could
09:24 5 create that kind of a --

6 A I did not. We didn't talk about the government
7 and the type of things he was writing there, we
8 were talking about specific issues, he was telling
9 me what he saw and heard.

09:25 10 Q Yes, well you were on your way to a press --

11 A And I was ready to listen to him.

12 Q Well, you certainly were, he -- we've heard
13 earlier that you were receptive to what you
14 already believed?

09:25 15 A Correct.

16 Q You were on your way to a press conference to
17 accuse the Premier of Saskatchewan, and other fine
18 gentlemen, of criminal conduct?

19 A I was --

09:25 20 Q But you weren't content with just that. Can we
21 look at 156905, please. This is a report from
22 your investigator to Mr. Asper:

23 "He described the opening of
24 files, the entering into the Master
09:26 25 Ledger and the general flow of



1 correspondence. Numerous names were
2 brought up in the conversation. These
3 named by Mr. Breckenridge, other than
4 those previously reported were lawyers
09:26 5 Richard Quinney, ...",
6 and next page, please:
7 "... Ken MacKay, Gerry Allbright and
8 Peter Glendenning. Mrs. Milgaard asked
9 what knowledge he may have of Ray
09:26 10 Hnatishyn and Bob Caldwell."
11 You were speaking of the Ray Hnatyshyn who, at
12 that time, was the Governor General of Canada?
13 A Sorry, umm, I don't recall, but I probably was
14 asking him for whatever information he had.
09:27 15 Q Did you know that, in 1992, Ray Hnatyshyn was the
16 Governor General of Canada?
17 A I am sure I probably did.
18 Q I would hope that you did. So you have this man,
19 Breckenridge, who is giving you some dirt on
09:27 20 Premier Romanow and Serge Kujawa and Mr. Justice
21 Lysyk, and now you are hoping that he'll dish up a
22 little on the Governor General?
23 A I was asking him questions about everything at
24 that point.
09:27 25 Q Well it's pretty strange to be drawing the



1 Governor General into a conversation like you were
2 having with Mr. Breckenridge; wouldn't you agree?

09:28 3 A If you had been where I had been at that point in
4 my life, up against walls every time I turned
5 around, you would have become as suspicious as I
6 was of everyone, and looking behind the bushes
7 everywhere, at anybody and everything, and that is
8 why I would be asking these questions, trying to
9 get the truth.

09:28 10 Q Yes, of course, we've heard that before. The fact
11 is that your son David had been out of jail some
12 six months by this time, and what was left to
13 accomplish was exoneration and compensation;
14 correct?

09:28 15 A The main thing was that exoneration, because he
16 was going around with a cloud over his head.

17 Q Well, you must have been much more relieved after
18 David was freed from prison, the distress that you
19 just described must have mitigated somewhat?

09:28 20 A Actually, in truth, after he got out of prison my
21 life became a, more of a nightmare than it ever
22 had been when he was in prison.

23 Q But the fact remains that you were looking for
24 dirt on the Governor General; correct?

09:29 25 A I was looking for dirt on anyone I could find it



1 on.

2 Q Yeah, even including Cal Tallis, who at that time
3 did you know -- I think you did -- was a member of
4 the Court of Appeal of Saskatchewan?

09:29 5 A I said I was looking for it on anyone, including
6 Mr. Tallis.

7 Q Yeah, thank you, you can take that down. Mr.
8 Hodson played for us, the other day, the tape of
9 the press conference; you were here and you heard
09:29 10 it?

11 A I did.

12 Q How did you feel as you listened to yourself
13 there?

14 A If I knew what I knew today I would never have
09:30 15 conducted that press conference and, naturally, I
16 have regrets about the disparaging remarks that
17 were made about people that turned out not to be
18 true.

19 Q *(Cell phone rings)* Excuse me, I've done it again.
09:30 20 Carry on? That's it?

21 A That's it.

22 Q I want to look briefly, I hope, at the transcript
23 of that press conference, 004204. Now, after you
24 made -- turn to 207, please -- after you made your
09:31 25 speech and turned material over to the media and



1 some questions began to come in, and I want to
2 look at a couple of those questions, it would be
3 -- the reporters who were present were pretty
4 experienced journalists, I take it?

09:31 5 A Yes, they were.

6 Q And would you agree that the first thing they did
7 was zero in on the credibility of this letter you
8 had from Breckenridge?

9 A I believe they did.

09:32 10 Q Next page, please. They are asking if the Premier
11 is directly involved:

12 "... is he lying?"

13 And then:

14 "Are you saying - that if this letter is
09:32 15 valid ...",

16 Next page:

17 "Assuming that it's valid, you've done
18 the investigation? Okay...",

19 and to that you respond:

20 "We've been out, I've been out to see
21 him."

22 That's true as far as it goes, isn't it?

23 A That's true. And you'll notice that I never once
24 said that -- these items myself, I told what this
09:33 25 man was saying.



1 Q Could we turn to page 6, please, next page. Well,
2 how do you explain this, then, because you didn't
3 put this in Mr. Breckenridge's mouth, you stated
4 it yourself:

5 "All I know is that Roy Romanow, Serge
6 Kujawa, and other senior officials met
7 with those two files."

8 A Because that's what he told me, that's how I knew
9 that.

09:33 10 Q But you are now putting your credibility behind
11 that statement, you're not just saying "well we
12 have a witness who says" --

13 COMMISSIONER MacCALLUM: Excuse me. Yes?

14 MS. McLEAN: Just go down, the fourth line
09:33 15 there specifically says "according to our
16 source", --

17 COMMISSIONER MacCALLUM: Thank you.

18 MS. McLEAN: -- to put that comment in
19 context.

09:33 20 COMMISSIONER MacCALLUM: Yeah, the second
21 sentence, the third sentence, just read that to
22 her.

23 A "Now they told these people that put it
24 together, or he told these people
25 according to our source, that ah they



1 had put it together because the file
2 clerks had put it together ..."

3 BY MR. WILSON:

4 Q Yes?

09:34 5 A I'm saying that according to the source.

6 Q You are there, yes.

7 A Yes.

8 Q But you opened the response by saying "all I know
9 is that" this happened, these people did this, --

09:34 10 A According to my source.

11 Q -- then you refer back to the source, but you put
12 your own credibility there?

13 A I think, if you go through other pages in there,
14 --

09:34 15 Q Next page, please.

16 A -- you will find places where I said very
17 specifically "I'm not saying this".

18 Q Okay. Again, a reporter comes in asking some
19 pretty valid questions:

20 "You've met with him and your private
21 investigator?"

22 You say "yes":

23 "Did he tell you why he was coming
24 forward now?"

25 "When did he send the letter to you?"



1 Now you gave an incorrect response there; didn't
2 you?

3 A Umm, I don't know:

4 "That ... would have been in May.",

09:35 5 I don't know if that's correct or not.

6 Q You saw the letter the other day?

7 A Well, then you can tell me, what was the date of
8 the letter?

9 Q The 21st of March.

09:35 10 A It may have been May when I saw the letter, --

11 Q Well --

12 A -- I don't know back now, I'm sorry.

13 Q Well, I don't want to drag you back through your
14 evidence with Mr. Hodson, but you told us that you
09:35 15 saw it almost immediately and were taken by
16 surprise and you thought it was of the utmost
17 importance?

18 A Well, obviously, I was mistaken at that time. I
19 thought it was May, I guess, when I said this. I
09:36 20 certainly wouldn't have said a date, on purpose,
21 that was wrong. I knew it was after David was
22 out.

23 Q It was after?

24 A I think it was after David was out, that's what I
09:36 25 was thinking about, and he was out in April.



1 Q Well, but it happened in March, and the Supreme
2 Court hearing was still going on in March, so the
3 natural concern that I have when I read this is
4 did you deliberately say May rather than March?

09:36 5 A No.

6 Q This had to be very fresh in your mind at that
7 time because you were dealing with the letter, you
8 had --

9 A I was dealing with, yeah, I was dealing with so
09:36 10 much stuff at that time that it was -- at the
11 Supreme Court, when all of this paper and
12 everything was coming in, it's impossible to know
13 the hours that I was spending, very early morning
14 until very late at night, I sometimes only had an
09:37 15 hour and a half sleep, and so I'm -- it's not
16 surprising that I can get mixed up on dates and
17 times.

18 Q But --

19 A It certainly wasn't deliberate, if that's what you
09:37 20 are inferring.

21 Q Well, the possibility is there that you didn't
22 make a mistake and said January, you said a later
23 date. And you see here that the media people are
24 curious as to why you have been holding this
09:37 25 information back for so long; aren't they?



1 A Well I imagine part of that, if we were involved
2 in the Supreme Court and everything else, there
3 was no place for it in our life at that time.

4 Q Okay. Well let's just carry on.

09:37 5 "Why didn't he come forward during the
6 Supreme Court ...",

7 "Did you ask him ...",

8 and then Mr. Wolch steps in and says:

9 "... it wouldn't have been relevant to
09:37 10 the Supreme Court. It simply wasn't
11 relevant."

12 "... it wouldn't even have been
13 admissible."

14 Now do you recall Mr. Wolch giving you that
09:38 15 advice back in March when the letter came in?

16 A No, I don't.

17 Q Do you recall any discussion with Mr. Wolch, when
18 that letter came in in March, about whether or not
19 it was admissible, could be introduced at the
09:38 20 Supreme Court?

21 A I really don't, because we had so much on our
22 plate during the Supreme Court, that letter could
23 maybe have just been put aside. I have no idea.

24 Q Do you recall any conversation with Mr. Wolch
09:38 25 about whether that letter, when it came in in



1 March, should be re -- disclosed to Federal
2 Justice and Saskatchewan Justice?

3 A I have no recollection of anything like that.

4 Q Is it correct to say, Mrs. Milgaard, that no
09:39 5 attempt was made to introduce Mr. Breckenridge's
6 letter at the Supreme Court?

7 A It would certainly seem that way, because if Mr.
8 Wolch is saying it couldn't be used, then he must
9 have thought the matter through and decided it
09:39 10 couldn't be, or checked, I don't know.

11 Q And no disclosure was made to Federal Justice or
12 Saskatchewan Justice?

13 A Not that I know of.

14 Q So the first the Federal Justice people heard
09:39 15 about it was Mr. Wolch's letter on the 16th of
16 September, 004064? This is a letter that was
17 prepared and distributed at the press conference;
18 correct?

19 A I can't really read it the way it is, so I
09:40 20 couldn't tell you, but I'm sure it's -- that's
21 what it says, yes.

22 Q Next page. The letter was rather carefully
23 written to exclude any identification of
24 Mr. Breckenridge; correct?

09:40 25 A I don't know if that was the intention of Mr.



1 Wolch when he wrote the letter.

2 Q This wasn't something that was discussed at one of
3 your group meetings, as to how this would all be
4 handled?

09:41 5 A The legal letters, and things like that, were not
6 normally discussed. If it was something, a press
7 release or something like that, that -- I realize
8 that this was given out at the press conference,
9 but a letter to the Justice Department and things
09:41 10 like that, those were pretty well left at the
11 legal department.

12 Q Okay. Do you know what the word "defamation"
13 means?

14 A If you defame somebody you're -- it's defamation,
09:41 15 yes.

16 Q In law it means the wrongs of libel, the written
17 word, and slander, the spoken word, that might be
18 actionable; do you know that?

19 A That's right.

09:41 20 Q Did Mr. Wolch advise you, at any time, that there
21 was a danger that, if Mr. Breckenridge did not
22 turn out to be true, these comments that you were
23 repeating publicly, that there could be a lawsuit
24 come out of it?

09:42 25 A I don't believe that I ever received a warning



1 like that.

2 **Q** You didn't have in your mind, as you stood before
3 that crowd on the 19th of September, that you
4 could be sued for what you were doing there?

09:42 5 **A** No, I don't think that I thought that, because it
6 was very clear that I wasn't making the
7 allegations.

8 **Q** I'm afraid that wouldn't help you in a lawsuit in
9 defamation. I would suggest to you that it would
09:42 10 be highly unusual that one would take that step,
11 to make those accusations against three men like
12 Mr. Romanow, Mr. Justice Lysyk, and Mr. Kujawa,
13 and not expect that there might be some litigation
14 result; would you agree?

09:43 15 **A** That's possible.

16 **Q** When you look back on it now, was it not a
17 dangerous thing you were doing?

18 **A** Under those circumstances, I guess it was, but
19 I -- I didn't realize that.

09:43 20 **Q** May we look at 023167, please. You know now that,
21 Mr. Hodson pointed out to you the other day, that
22 a very thorough and -- Mr. Gibson pointed out to
23 you a very thorough and extensive investigation
24 took place following your press conference on the
09:44 25 19th?



1 A I do.

2 Q Inspector Sawatzky, with a team of a dozen
3 investigators, two very senior and
4 highly-experienced Crown attorneys in Alberta,
09:44 5 reviewed and directed the entire investigation?

6 A I do.

7 Q Could we turn to -- can you find me page 147 of
8 that or shall I go get another?

9 "During our meeting with Mr. Wolch ...
09:44 10 he was quick to point out ...",

11 met with Mr. Wolch on the 26th of November, 1992:

12 "... he was quick to point out that he
13 never talked to the clerk (Breckenridge)
14 and he considered "... him to be the
09:45 15 least important bit of evidence that we
16 have ..." Wolch made no further
17 reference to Breckenridge during our
18 interview."

19 Did Mr. Wolch ever tell you that he thought
09:45 20 Breckenridge was that insignificant?

21 A Well, in light of the information that we had on
22 Fisher and all of the other people and the
23 reports, the police reports that had been withheld
24 and all of the other things that we had, including
09:45 25 comments from the --



1 Q The question, did Mr. Wolch ever tell you that he
2 regretted Breckenridge as being that
3 insignificant?

4 A No. I suppose he would be insignificant in
09:46 5 comparison to all the other information we had
6 though.

7 Q Well, he wasn't insignificant when you used him to
8 accuse the Premier of Saskatchewan of criminal
9 conduct?

09:46 10 A No.

11 Q So --

12 A In compar --

13 Q How does he suddenly, in your view, become
14 insignificant in November?

09:46 15 A He is saying that he's insignificant in comparison
16 to all the other important evidence we have is
17 what I read that as. I'm sorry.

18 Q Well, let's look at the next paragraph:

19 "The issues raised by Breckenridge
09:46 20 formed the basis for our investigation,
21 i.e., wrongdoing and obstruction of
22 justice by former officials of the
23 department of the Attorney General.
24 Yet, once the investigation was ordered,
09:46 25 Wolch rejected the value of what



1 Breckenridge had to offer."

2 Did you know that Mr. Wolch was going to do that,
3 take that position with the RCMP investigators?

4 A No, that wasn't something we discussed.

09:47 5 Q Look at the last paragraph:

6 "In addition, during the Milgaard press
7 conference, it was made clear that they
8 had confirmed Breckenridge's employment
9 with the Department during the period in
10 question. This was extremely

11 misleading. The best that can be said
12 about this comment is that perhaps it
13 was an inference drawn from
14 Breckenridge's statement, however, given
09:47 15 the obvious confused nature of
16 Breckenridge's allegations the use of
17 his material was inappropriate and was a
18 misrepresentation of the facts."

19 A And I would agree --

09:47 20 Q You now would agree?

21 A -- in hindsight that that was the case, and I
22 think this is in hindsight for Mr. Wolch too and
23 that's why he's saying that.

24 Q Do you think it would be appropriate for you to
09:48 25 apologize to Premier Romanow, the deceased



1 Mr. Justice Lysyk, his family, and Mr. Kujawa for
2 having introduced this inappropriate material and
3 misrepresentation of facts?

4 A I believe I've already said in hindsight that I
09:48 5 was sorry that we went ahead with that.

6 Q And you are sorry for the pain and suffering that
7 they were caused as a result of it?

8 A Absolutely.

9 Q Mr. Hodson tells us that this investigation cost
09:48 10 something over \$2 million of taxpayers' money.
11 Would you like to apologize to the taxpayers for
12 the waste of their funds as well?

13 COMMISSIONER MacCALLUM: Just a second.

14 MR. WOLCH: I think it was earlier on we
09:48 15 had comments from yourself about the use of
16 apologies and this is taking it to an extreme.
17 We're talking here about an investigation that
18 eventually led to the right killer being
19 identified. Why would somebody apologize for
09:49 20 that? Why are we getting into this area in any
21 event?

22 COMMISSIONER MacCALLUM: Well, yes, that --
23 the instance you speak of, I believe, had to do
24 with Mr. Lockyer's demands for an apology and I
09:49 25 told him at the time that I didn't think it was



1 the appropriate forum for that sort of thing,
2 irrespective of whether or not the apology was
3 merited, and so I think we'll call an end to that
4 line of questioning at this point.

09:49 5 BY MR. WILSON:

6 Q May we turn to 032805, please. This is a report
7 of Alberta Justice that you looked at, Mr. Gibson
8 drew your attention to the quality of the people
9 who were directing the investigation and whose
10 opinions are encased in this report?

11 A He did.

12 Q May we look at 820, please:

13 "Messrs. Kujawa, Lysyk and
14 Romanow were interviewed and all deny
15 such meetings taking place.

16 Breckenridge worked in the
17 Saskatchewan Department of Justice from
18 October 3, 1973 to June 29, 1975. The
19 Milgaard leave to appeal to the Supreme
20 Court of Canada was denied on November
21 15, 1971, and Larry Fisher pled guilty
22 in the Court of Queen's Bench on
23 December 21, 1971. It appears extremely
24 unlikely that the Attorney General of
25 Saskatchewan and his senior officials



1 would be interested in these files two
2 or more years after they were concluded.

3 The RCMP investigation fails to
4 uncover any evidence to support this
09:51 5 allegation and this allegation appears
6 to be absurd."

7 Do you agree with that too?

8 A I can't say I agree with all of it, no. The fact
9 that the Larry Fisher files were out there in 1971
09:51 10 at the same time that David's appeals and
11 everything were going through, I felt that was
12 very suspicious. I still do.

13 Q You told me yesterday that you didn't know that
14 Ken Lysyk was a serving member of the Supreme
09:51 15 Court of British Columbia at the time you raised
16 the Breckenridge allegations that involved him;
17 correct?

18 A Correct.

19 Q Did Mr. Wolch ever raise with you the fact that a
09:52 20 sitting judge was being drawn into this
21 allegation?

22 A I don't believe he did.

23 Q Was any comment ever made about the impact that
24 would happen in the Department of Justice in
09:52 25 Ottawa which is the responsible body for the



1 judiciary in Canada when a complaint of criminal
2 conduct against one of the judges came in?

3 A I don't recall any conversations like that.

4 Q You would assume, would you, or not, that when
09:52 5 Mr. Justice Lysyk was interviewed by the RCMP in
6 British Columbia, that his Chief Justice would
7 have to be made aware of that fact?

8 A I don't recall any information given about this
9 man at all. I'm drawing a complete blank on it,
09:52 10 I'm sorry.

11 Q I understand that. You didn't know and you didn't
12 take a lot of care to find out did you? You can
13 take that down.

14 A As I said, at that particular time we were still
09:53 15 fighting for my son's exoneration and I was
16 focused there in all the work that I was doing.

17 Q Yesterday you didn't know what the phrase due
18 diligence meant. Do you know what the phrase
19 wanton and reckless disregard means?

09:53 20 A Yes.

21 Q What does it mean?

22 A Well, if you wantonly go ahead and do something,
23 you are not checking. Reckless means not being
24 careful.

09:53 25 Q That's a very high degree of carelessness I



1 suggest to you, and in fact it's such a high
2 degree of carelessness that it constitutes a crime
3 in this country. Did you know that?

4 A No, I did not.

09:54 5 Q The offence of criminal negligence is generally
6 defined as a wanton and reckless disregard. Would
7 you agree that your conduct on the 19th of
8 September -- well, actually from March, May, June
9 and into September constituted a wanton and
09:54 10 reckless disregard of the concerns of other
11 individuals?

12 COMMISSIONER MacCALLUM: I'm a bit
13 concerned that we are getting into areas here
14 which clearly are beyond the Terms of Reference
09:54 15 when we start speaking about criminal liability.

16 MR. WILSON: Okay.

17 COMMISSIONER MacCALLUM: In fact, the same
18 might be said for civil liability which is
19 equally proscribed as a line of inquiry for us.

09:55 20 MR. WILSON: Thank you, Mr. Commissioner.

21 COMMISSIONER MacCALLUM: Just for the
22 benefit of everybody here, of course, the
23 relevance of this Inquiry is the possible or
24 probable effect of the dissemination of false
09:55 25 information which came to the attention of the



1 authorities and which might have affected their
2 decision on the re-opening, so I hasten to add
3 that I'm making no comment whatsoever on whether
4 the information is false and whether it was
09:55 5 disseminated, but it is evidence which is
6 relevant before us in that context, but that's
7 all.

8 BY MR. WILSON:

9 Q I would like to turn to an event that took place a
09:55 10 year before that press conference when you had a
11 conversation with a member of then Premier Grant
12 Devine's staff. Do you recall that?

13 A No, I'm sorry, I don't.

14 Q It's among the tapes that you made available to
09:56 15 the Commission, it's in the package of tape 128
16 and I think the doc. ID is 336658 and the tape
17 begins at 336731 and I have asked the staff it
18 play that. It won't be very long.

19 COMMISSIONER MacCALLUM: Starting at page
09:56 20 what, the page number that you start at?

21 MR. WILSON: I started at 336658.

22 COMMISSIONER MacCALLUM: Yes. Oh, 731,
23 okay.

24 ***(Tape recording of a conversation between***
10:43 25 ***Joyce Milgaard and Alana from Grant Devine's office)***



1 MRS. JOYCE MILGAARD: I'm sorry to keep you
2 waiting, I was on the other line.

3 ALANA: No problem.

4 MRS. JOYCE MILGAARD: Uh-huh.

10:44 5 ALANA: Is this Mrs. Milgaard?

6 MRS. JOYCE MILGAARD: Yes, it is.

7 ALANA: Hi, Mrs. Milgaard, it's Alana
8 calling from Grant Devine's office in
9 Saskatchewan.

10:44 10 MRS. JOYCE MILGAARD: Oh, yes.

11 ALANA: You had called here late yesterday?

12 MRS. JOYCE MILGAARD: Uh-huh.

13 ALANA: Okay. What can I do for you?

14 MRS. JOYCE MILGAARD: Well, I know the
10:44 15 election is coming up, I know you guys are
16 scrambling out there, and part of the reason I
17 called, there looks like there is every -- and
18 this is very confidential, okay, there looks like
19 there is every possible chance that this case is
10:45 20 going to be opened up before the election, all
21 right.

22 ALANA: By the federal government?

23 MRS. JOYCE MILGAARD: Yes, yes, and I just
24 think that it might be very helpful if Grant
10:45 25 Devine was taking an interest in the case out



1 there right now from the point of view that, say,
2 for instance, I'm out there and he shows his
3 support for me and the Milgaard case especially
4 after what this Kujawa was saying, I mean, that
10:45 5 was crazy, him coming out with the comments that
6 he did, and I certainly want to do anything in my
7 power to work against that man, so I think that,
8 I think he's been involved in this case in the
9 wrong kind of a way and I think that's going to
10:46 10 come out eventually, I really do, because the
11 fact that he was handling both Fisher's appeal
12 and my son's appeal at the same time, plus the
13 fact that this Fisher went there by direct
14 indictment, there's no doubt in my mind that they
10:46 15 knew what was going on and that he knew what was
16 going on. I don't think for one minute when he
17 says he didn't put two and two together that
18 that's true, I think he was part of the whole
19 system there that was trying to put Fisher away
10:46 20 after David's last appeal was gone and I think,
21 you know, when the inquiry -- and there will be
22 an inquiry -- when the inquiry comes, that's
23 going to come out of it, that is going to come
24 out of it.

10:46 25 Now, this is not anything that



1 I would say publicly, you know, that I would go
2 off against the man publicly because, well, I
3 don't do things like that, I don't go out on
4 assumptions or, you know, saying things that I
10:47 5 can't back up 100 percent, but there is every
6 indication I met -- I talked to the Justice
7 Department, they phoned me on Monday after I had
8 talked to Brian Mulroney's office, he had the
9 Justice Department call me, and also my lawyers
10:47 10 have had contact with them, so I'm saying, you
11 know, we're thinking it could be very, very
12 shortly and I just felt that it might be helpful
13 for him and I know the race he's in, so --

14 ALANA: Okay. Well, I -- obviously I'm
10:48 15 aware of the case strictly from, you know, the
16 basis of the news and that kind of thing, I
17 haven't been involved in any other way, but, you
18 know, I guess I'm just a little -- I'll certainly
19 pass it on. I guess I'm just a little leery
10:48 20 about, you know, the last four days of the
21 election campaign suddenly having the premier,
22 you know, publicly take an interest in the case,
23 I just wonder if that does any good for your case
24 or not.

10:49 25 MRS. JOYCE MILGAARD: Well, I'll tell you,



1 I'll tell you, the NDPs are coming around and
2 trying to get me publicly to show their support
3 in the case, every one of them has been in touch
4 with me --

10:49 5 ALANA: Uh-huh.

6 MRS. JOYCE MILGAARD: -- you know, out
7 there, and I have backed right down from that,
8 and yesterday I was thinking about it and I
9 thought, well, what would hurt Kujawa more than
10:49 10 anything else would be some sort of support of
11 the other, and we're talking now within a day or
12 two from my understanding of it.

13 ALANA: Okay. Well, okay, I certainly -- I
14 believe your daughter called here as well today,
10:50 15 Terry McDonald?

16 MRS. JOYCE MILGAARD: Oh, no, she's not my
17 daughter.

18 ALANA: Oh, okay.

19 MRS. JOYCE MILGAARD: She's from Briar
10:50 20 Patch Magazine, they have been -- they have a
21 Regina chapter, David Milgaard support group
22 chapter there.

23 ALANA: Oh, I see.

24 MRS. JOYCE MILGAARD: Yeah, so -- and she's
10:50 25 the editor or something of Briar Patch Magazine I



1 think.

2 ALANA: Okay. She's already aware of this
3 I guess?

4 MRS. JOYCE MILGAARD: Not the -- she's not
10:50 5 aware of the fact that it's going to be that
6 quickly, no.

7 ALANA: But she's aware of your call to me
8 I guess?

9 MRS. JOYCE MILGAARD: Yes, yes, she knew
10:51 10 that I was going to be calling to see if it was
11 possible to meet with Mr. Devine for -- you know,
12 to get him interested in the case to make it
13 look -- you know, on that basis.

14 ALANA: Okay.

10:51 15 MRS. JOYCE MILGAARD: But anyhow, that was
16 the thought that was there.

17 ALANA: You realize Briar Patch is an NDP
18 magazine?

19 MRS. JOYCE MILGAARD: Yeah. I didn't tell
10:51 20 her any of the background. Oh, I know they are
21 an NDP.

22 ALANA: Okay.

23 MRS. JOYCE MILGAARD: And I didn't tell her
24 any of the background of my rationale to you.

10:52 25 ALANA: Okay.



1 MRS. JOYCE MILGAARD: I'm talking to you in
2 complete confidence, you know.

3 ALANA: Okay. Well, good enough, I guess I
4 just --

10:52 5 MRS. JOYCE MILGAARD: No, no, I know they
6 are an NDP.

7 ALANA: Okay.

8 MRS. JOYCE MILGAARD: But they've been
9 very, very supportive of David --

10:52 10 ALANA: Sure.

11 MRS. JOYCE MILGAARD: -- and this is it,
12 and the whole NDP, like, everyone is calling me.
13 Laporte was on the phone yesterday, Bill Blaikie,
14 just everybody is calling me. I've expected a
10:53 15 call from Kujawa. (Laughs).

16 ALANA: Oh, okay. Okay, well, I certainly,
17 Mrs. Milgaard, I appreciate the call, I certainly
18 will --

19 MRS. JOYCE MILGAARD: And if it's not of
10:53 20 use to him, that's fine, you know.

21 ALANA: Sure. Well, I appreciate the offer
22 and I will certainly pass it on and we'll be in
23 touch. I'll give Terry McDonald a call and --

24 MRS. JOYCE MILGAARD: And just say we've
10:54 25 talked and that, you know, we're trying to work



1 something out and that's all she needs to know.

2 ALANA: Okay.

3 MRS. JOYCE MILGAARD: Okay?

4 ALANA: All right. Thank you very much,
10:54 5 Mrs. Milgaard.

6 MRS. JOYCE MILGAARD: Bye-bye.

7 ALANA: All right, bye-bye.

8 **(Tape ended)**

9 BY MR. WILSON:

10:02 10 **Q** I asked you how you felt after you listened to the
11 press conference. How do you feel after listening
12 to this?

13 **A** Well, I guess I would kind of like to know, was
14 this after Mr. Kujawa called David a crazy kook or
10:03 15 was it after he said the system is more important
16 than one person or, you know, he came out with
17 such terrible comments at times that I became so
18 incensed that I could understand my running and
19 trying to do something against the man at that
10:03 20 point.

21 **Q** Could we look at the transcript, please, 336733.
22 You heard yourself say this:

23 "... I don't go out on assumptions or
24 ... saying things that I can't back up
10:04 25 100 percent?



1 A And I was talking in reference to the department
2 opening the case up at that time.

3 Q You were talking about what you might say publicly
4 about Serge Kujawa, but you don't say things that
10:04 5 you can't back up 100 percent?

6 A And I felt in the incident that you are talking
7 about, I felt I was backed up 100 percent.

8 Q Well, a year later at that press conference in
9 September of '92 you weren't following that, were
10:04 10 you, that 100 percent rule had slipped a bit?

11 A I believed that I was backed up 100 percent by
12 Mr. Breckenridge's letter in what I did at that
13 press conference.

14 Q That's what you mean by 100 percent?

10:05 15 A At that time, yes.

16 Q I see. But I asked you how you felt about that
17 listening to that conversation, and I'll explain
18 why I ask you that, because it suggests to me that
19 you are trying to play a little politics with
10:05 20 Premier Devine who was a Conservative and you were
21 being a tad dishonest by suggesting that you were
22 having no truck nor trade with the NDP; is that
23 correct?

24 A No, I don't think I said I had no truck or trade
10:05 25 with them because they were very supportive of me



1 and they were doing a lot for me.

2 Q The fact of the matter is you were playing footsie
3 with the NDP prior to that election, Rob Laporte,
4 whom you mention in this conversation, and others?

10:05 5 A I mentioned the fact that a lot of them were
6 calling me and talking to me because they were
7 supporting me. I made no -- I mean, that was very
8 clear in the tape, and I think the whole thing
9 when I heard the tape was I thought to myself how
10:06 10 could I have allowed Mr. Kujawa to make me that
11 upset that I would actually go out and do
12 something like this because it is not something
13 that I think was a good thing to do, but --

14 Q Okay, you --

10:06 15 A But when I get these comments like crazy kook and
16 the system is more important than one man, he came
17 out with things that I just felt so badly about
18 hearing.

19 Q Do I understand you to say that you are not
10:06 20 terribly proud of your performance at that --

21 A Naturally not.

22 Q Now, I'll try and get out of here quickly. Along
23 with everyone else I heard your comments yesterday
24 about new avenues of remedies for those who are
10:07 25 wrongfully convicted, but I didn't hear you



1 identify how it is we will identify, among the
2 many who claim to be wrongfully convicted, who
3 truly is?

4 A How, under the many wrongly convicted --

10:07 5 Q Many people claim to be wrongly convicted?

6 A Right.

7 Q Few are. How do we identify which are the true
8 ones?

9 A I wouldn't say that few are. At the present
10:07 10 time -- since David got out of prison, are you
11 aware that we have had, through the Association in
12 Defence of the Wrongly Convicted, 20 people
13 released from prison that were wrongly convicted?
14 We are presently working on 41 cases and I think
10:07 15 that that is the tip of the iceberg.

16 Q But there are many, many more convictions and
17 many, many of those people think they also should
18 have this remedy?

19 A Then they have to meet the criteria that would be
10:08 20 established with an independent board the way they
21 are doing it in England.

22 Q The way what?

23 A The way they are doing it in England.

24 Q I see. Well, AIDWYC must have some threshold
10:08 25 before it takes on a case?



1 A Yes, they do.

2 Q What is it?

3 A The threshold is that they can have absolutely no
4 involvement in the crime, that they couldn't have
10:08 5 been -- that that's one of the main stays, that
6 they have absolutely no involvement in the crime.

7 Q How is that determined?

8 A By the information that we look at.

9 Q But AIDWYC makes mistakes too; does it not?

10:08 10 A Yes, and also Centurion Ministries has made
11 mistakes. They focused on one gentleman for some
12 time and then found out he was guilty, it was a
13 very difficult thing, but all of the ones that are
14 freed certainly make up for the difference. If
10:09 15 you have spent a little wrong time, so to speak,
16 at least all of the other ones are now free and
17 many more will be free if we get an independent
18 board.

19 Q I have a news story in my hand from *The Globe and*
10:09 20 *Mail*, the 7th of June, 2002, the headline reads
21 *Legal group goes to bat for Giant Mine bomber.*
22 *Lawyers probe possible false confession.* Do you
23 remember that case?

24 A No, I don't.

10:09 25 Q "The legal sleuths who engineered the



1 exonerated of a half dozen people
2 convicted of murder are investigating
3 the case of a man who confessed to
4 setting a 1992 underground blast that
10:10 5 killed nine miners in Yellowknife --
6 Roger Warren."

7 Do you remember the case now?

8 A No, I honestly don't know anything about it.

9 Q Another paragraph here:

10:10 10 "Lawyers with the Association in Defence
11 of the Wrongly Convicted have already
12 interviewed Mr. Warren at Manitoba Stony
13 Mountain penitentiary and they plan to
14 travel to Yellowknife in July to delve
10:10 15 further into his case.

16 "It is a case where more than
17 anything we're investigating a possible
18 false confession," said James Lockyer,
19 one of three AIDWYC lawyers on the case.

10:10 20 "We are going to consult U.S. and
21 British experts on false confessions.
22 They are ready, willing and able to get
23 involved."

24 At the bottom of the story there's a paragraph:

10:10 25 "Before throwing its resources behind an



1 inmate, AIDWYC and its board of
2 directors must be convinced that there's
3 a strong possibility the convict is
4 innocent."

10:11 5 A That's right.

6 Q You serve on that board?

7 A I actually serve on the AIDWYC board of Manitoba,
8 not the main board, but I am sort of listed as I
9 think the mother of AIDWYC, so that although I'm
10:11 10 not involved in the day-to-day decisions and
11 things like that, I do get reports. I'm called in
12 on cases across the country where they need public
13 support and then I go in and in some cases help
14 the families that are having a difficult time
10:11 15 because of what they are going through in trying
16 to get their family member out of jail, and since
17 I've been there and done that, AIDWYC asked me to
18 go and work with these people, so that's a big
19 part of my job with them.

10:12 20 Q Well, I have another news story, this one is dated
21 the 25th of February, 2003, also *The Globe and*
22 *Mail*. Headline, *Legal-defence group drops Giant*
23 *Mine bomber's case*.

24 "A high-profile organization that
10:12 25 supports the wrongly convicted has



1 quietly dropped out of a case involving
2 a man convicted in a 1992 explosion that
3 killed nine miners in Yellowknife.

4 The Association in Defence of
10:12 5 the Wrongly Convicted abandoned its
6 year-long investigation of Roger
7 Warren's murder conviction without
8 revealing specific reasons for doing so,
9 a miner's union official said yesterday.

10:12 10 James Lockyer, an AIDWYC
11 director, was close-mouthed yesterday
12 for the reasons for dropping the case.

13 "We are simply saying that we
14 didn't feel his case came within our
10:12 15 mandate and were unable to help him,"
16 Mr. Lockyer said in an interview. "We
17 investigated the case, and we have
18 notified the Department of Justice that
19 we are no longer involved in it."

10:13 20 Mr. Lockyer said the Justice
21 Department will now resume considering
22 whether Mr. Warren's application to have
23 his case reopened under Section 690 of
24 the Criminal Code is warranted."

10:13 25 Now :



1 "When AIDWYC began its probe,
2 Mr. Lockyer said while confessions are
3 popularly believed to be
4 incontrovertible evidence, they are
10:13 5 nowhere near that reliable.

6 "The fact that there is
7 considerable detail in Mr. Warren's
8 confession is not, itself, that
9 significant," he said at the time.

10:13 10 "The details were well-known,
11 and he was an expert in explosives. He
12 was also put under considerable police
13 pressure."

14 Now, that would illustrate the difficulty of
10:13 15 getting across that threshold of establishing who
16 is truly wrongfully convicted and who is just
17 trying to get out of jail?

18 A That's right.

19 Q And in fact do you know that Roger Warren in this
10:14 20 case not only confirmed his earlier confession,
21 but testified to that effect in a civil lawsuit?

22 A No, I was not aware of that.

23 Q And for the last little item, you agree that the
24 justice system is a human institution and subject
10:14 25 to human failure; do you not?



1 A Yes.

2 Q Like all human institutions operated by competent,
3 well-meaning human beings?

4 A Yes.

10:14 5 Q You work in the health field. I have other news
6 story for you. This one is a little more current,
7 it's dated the 18th of April, 2006:

8 "Canada needs an independent,
9 arm's-length federal agency to protect
10:15 10 patients in hospitals and medical
11 clinics, according to a report
12 commissioned by Health Canada."

13 "An average of 60 people a year
14 have died in Canadian --"

10:15 15 Oh, somebody was comparing it to aviation
16 accidents. The story says:

17 "... as many as 24,000 people die
18 needlessly and tens of thousands are
19 injured in Canadian hospitals."

10:15 20 Each year. So there must be some human frailty
21 in the health field that you work in as well?

22 A No, because I'm working in the spiritual health
23 field, not administration --

24 Q 100 percent success rate there?

10:16 25 A Unfortunately -- I wish I had 100 percent success



1 rate there. I'm no longer functioning as a
2 Christian science nurse, I'm functioning as a
3 Christian science practitioner and that's healing
4 through prayer.

10:16 5 MR. WILSON: Thank you, Mrs. Milgaard.

6 COMMISSIONER MacCALLUM: Mr. Loran, do you
7 want us to have our break now, and then you can
8 start afterwards?

9 MR. LORAN: That would be fine, thanks,
10:16 10 yes.

11 COMMISSIONER MacCALLUM: Okay.

12 *(Adjourned at 10:16 a.m.)*

13 *(Reconvened at 10:42 a.m.)*

14 **BY MR. LORAN:**

10:42 15 **Q** Good morning, Mrs. Milgaard.

16 **A** Good morning.

17 **Q** My name is Pat Loran and I'm the lawyer for the
18 Saskatoon Police Service.

19 **A** Thank you.

10:43 20 **Q** Mrs. Milgaard, you recently produced a number of
21 tapes to this Inquiry, I just wanted to ask you a
22 few questions about them. Where you were a party
23 to those conversations that were recorded on the
24 tapes can we agree that you had consented to the
10:43 25 taping of those conversations?



1 A Yes.

2 Q And that the tapes are an accurate reproduction of
3 the conversations which took place?

4 A I would expect so, yes.

10:43 5 Q They, of course there are portions of the tapes
6 that may be inaudible, that sort of thing, but
7 they haven't been altered in any way or anything
8 like that?

9 A Not to my knowledge.

10:43 10 Q Thank you. And you've probably seen some
11 transcripts that were produced on the basis of
12 those tapes; have you had a chance to look at any
13 of those transcripts?

14 A No, I have not.

10:44 15 Q Now during the course of your re-opening efforts,
16 and let's focus especially in the 1980s, would it
17 be fair to say that your resources for the purpose
18 of hiring lawyers and investigators were quite
19 limited?

10:44 20 A Yes.

21 Q Generally speaking, did you require your lawyers,
22 prior to spending money on third party
23 investigators, that sort of thing, did you require
24 them to check with you and make sure that the
10:44 25 expenditure of money on your behalf was authorized



1 by you?

2 A In most cases, yes.

3 Q And just for clarity's sake, here, I'm referring
4 to them as 'your lawyers', but can we agree that
10:44 5 they were your lawyers and David Milgaard's
6 lawyers, and you were providing instructions on
7 behalf of your son?

8 A That's correct.

9 Q Now, so getting back to the question, you said
10:45 10 "generally speaking"; was there a threshold beyond
11 which or below which the lawyers were entitled to
12 just spend the money without asking you for
13 permission, how did things work in that regard?

14 A Well basically when -- each lawyer that I worked
10:45 15 with, I tried to -- like when I went to Hersh, for
16 instance, I wanted to know how much it would cost
17 me for him to read the transcripts, and got a
18 figure -- and to look into the case -- got a
19 figure from him for that amount, and then said
10:45 20 "okay". I felt it necessary to do that because of
21 my finances, and so that would be the parameters.
22 There would be small expenses that all of the
23 agencies would probably expend without saying
24 anything to me, but if it was anything major, like
10:46 25 when we were going to get Nichol hypnotized and



1 things like that, there was a large amount of
2 money going to be spent out, well then that would
3 have needed special authorization by me.

10:46 4 Q Okay. And my particular area of interest is where
5 third parties were hired, investigators, that sort
6 of thing; would those, before those kind of
7 expenses were incurred, would it be fair to say
8 that you were consulted by your lawyers?

10:46 9 A Not necessarily, no. In some cases I know the
10 investigators were hired without me knowing
11 anything about it.

12 Q And what circumstance, who -- who are the
13 investigators who would have been hired without
14 prior consultation with you?

10:46 15 A I think the Robinson investigators. I'm not sure
16 of that, though, but I know that some of them
17 were, that I heard after the fact that it wasn't a
18 really big thing for me to find that out at that
19 time.

10:47 20 You see, in some cases it
21 depends on when it was, when I was working with
22 Hersh and David they were picking up all the bills
23 anyhow so they could go ahead and order things
24 like that because, really, they were paying for
10:47 25 them, their law firm was.



1 Q I see. They were, they were covering the
2 disbursements for you?

3 A Yes, they were.

4 Q All right. And a different situation obtained,
10:47 5 then, at the time you had Mr. Young working for
6 you and Mr. Merchant working for you?

7 A Yes, although Mr. Merchant at times certainly --
8 he was working under the parameters of the money
9 that was received from --

10:47 10 Q Mr. Shannon?

11 A -- Mr. Shannon, so he could spend that money.

12 Q Did he not check with you, however, before
13 spending that money, that --

14 A No.

10:48 15 Q -- came --

16 A No, not in those cases, no.

17 Q All right. In terms of the correspondence that
18 went out on your behalf from your lawyers'
19 offices, would it be fair to summarize the
10:48 20 evidence you've given along these lines; you were
21 very involved in the strategizing and your lawyers
22 would generally discuss what was going to go out
23 with you, but you left the drafting of the actual
24 correspondence up to you; is that a fair summary
10:49 25 of your evidence?



1 A Yes, I would say again, it depends on which lawyer
2 you are talking about.

3 Q Okay. Were there different kind of understandings
4 apply --

10:49 5 A Yes, --

6 Q -- with different legal counsel?

7 A -- because -- absolutely -- because, as I started
8 out, I had no knowledge of what lawyers did and
9 how they operated, really, and so, by the time I
10:49 10 got to Hersh and David, I was sort of really
11 stipulating everything and -- but then once they
12 took over, because they really took over and
13 started paying everything, well I sort of -- you
14 know, I was involved, but if they were writing
10:49 15 letters, they were doing it.

16 Q Okay. Do I understand your evidence, then, to be
17 that you became more involved in the planning of
18 correspondence, and that sort of thing, as time
19 went on?

10:50 20 A Probably, yes.

21 Q So that, when Mr. Young and Mr. Merchant were
22 working for you, you would have been less involved
23 in the planning of the actual correspondence that
24 went out?

10:50 25 A Yes, because I -- I was leaving it to the legal



1 minds at that point.

2 Q Was there any consultation that took place between
3 you and counsel --

4 A Which counsel?

10:50 5 Q -- when -- let's talk about the time when Mr.
6 Young was acting on your behalf; would there be
7 any consultation between you and counsel prior to
8 correspondence going out?

9 A He would have -- there would probably have been
10:50 10 some. It depends on what we're talking about.
11 It's very hard to work in a vacuum. Can you give
12 me what you're looking for?

13 Q I'm trying to determine just what the general
14 practices were, whether you were involved in the
10:51 15 strategizing. I guess, when correspondence went
16 out, did your counsel provide you with copies, at
17 all times, of that correspondence?

18 A I don't know. I've seen some copies here that I
19 had never seen before, so unless they had a c.c.
10:51 20 on it to me, I probably didn't.

21 Q Can you identify the correspondence that you had
22 not previously seen, was there just one or two
23 surprises, or was there a significant amount of
24 correspondence sent on your behalf by previous
10:51 25 counsel which you were surprised to see here at



1 the Inquiry?

2 A I haven't looked at it that closely. I don't know
3 if there is a significant number, no, I think I
4 was pretty well aware of everything that was going
10:52 5 on.

6 Q When Mr. Young was discharged as your counsel can
7 you tell us what happened to the file, was it
8 forwarded to you, was it forwarded on to Mr.
9 Merchant, what happened to Mr. Young's file?

10:52 10 A I honestly don't know. It may have been. I -- it
11 didn't come to me, it may have gone to Mr.
12 Merchant, but I don't know that for sure.

13 Q Okay. When Mr. Merchant was discharged as your
14 counsel, do you recall whether he sent the file to
10:53 15 you, or whether he sent it on to Mr. Wolch?

16 A I don't think he sent it on to me, I think that he
17 kept his own file. Mr. Wolch may have asked for
18 it, but I don't know that either.

19 Q These tapes, which have recently been produced for
10:53 20 the Commission, there were a number of them, and
21 it would appear that you were regularly taping
22 phone conversations. Would it be fair to say that
23 in 1990-1991, that general area, you started to
24 make it a practice to tape most of your telephone
10:54 25 conversations?



1 A Yes.

2 Q As I understood your evidence, there were two
3 reasons; one, you'd been in contact with Centurion
4 Ministries, and that was the way they did things
10:54 5 and it seemed to be a good practice from that
6 point of view; and you also wanted something to
7 use personally, as a check, to make sure of the
8 accuracy --

9 A That's correct.

10:54 10 Q -- of statements you might make about matters
11 which had been the subject of telephone
12 conversations?

13 A Yes.

14 Q Now at one point in the evidence you gave to Mr.
10:54 15 Hodson when you were being examined in chief you
16 suggested that you might have spoken to a police
17 officer other than Mr. Tom Vanin, although your
18 memory was somewhat vague on the subject, and you
19 couldn't remember his name?

10:54 20 A That's right.

21 Q Do you recall that evidence?

22 A I do.

23 Q Did you happen to tape that conversation?

24 A No, because I think I looked back in the tapes for
10:55 25 that. You see, what happened often when tapes



1 didn't -- when calls didn't get taped would be if
2 people got me when I was in the war room, because
3 I had no facilities there for taping, or if they
4 got me at other places.

10:55 5 Q Where is the "war room"?

6 A That was in Mr. Wolch's office. We had -- it was,
7 actually we took over their conference room and
8 that became the war room, with all our files and
9 papers and everything in it, so if people
10:55 10 contacted me by phone there I didn't have the
11 ability to do the taping.

12 Q Aside from your tapes, the ones that were recently
13 produced to the Commission, --

14 A Yes.

10:55 15 Q -- you were involved in a number of conversations
16 which were also taped at various times through the
17 '80s, sometimes Peter Carlyle-Gordge had --

18 A Yes.

19 Q -- taped those conversations, and some you were
10:56 20 involved in conversations with Mr. Henderson, that
21 sort of thing?

22 A Yes.

23 Q There are a number of transcripts which have been
24 produced for the Commission, and I think you have
10:56 25 had the opportunity to review a number of those,



1 have you not?

2 A Yes, I have.

3 Q Can we agree that, to the extent those transcripts
4 have been produced, that they are an accurate
10:56 5 representation of the conversations which took
6 place that you were a party to?

7 A I expect so, yes.

8 Q Now yesterday, in his examination, Mr. Fox
9 questioned you about the suggestion that Nichol
10:57 10 John was traumatized by staying overnight at the
11 jail on the occasion when she gave her statement?

12 A Yes.

13 Q Isn't it true that, in your conversations with
14 Nichol John, she never, at any time, told you that
10:57 15 she was traumatized, in fact she denied it?

16 A That's correct.

17 Q Okay. And do you recall making the suggestion to
18 her that you thought she had been traumatized?

19 A I do.

10:57 20 Q And she flat out denied it?

21 A That's right.

22 Q Mr. Fox tried to refer to a portion of the
23 transcript yesterday, and he had the wrong page
24 number, I think he was only out by one page, but I
10:57 25 thought it might be worthwhile to draw your



1 attention to the portion of Nichol John's
2 evidence. Can I ask for the April 20th, 2005
3 transcript at 8335.

4 Sorry, this is a different, this
10:58 5 is a different issue, I made note of this.
6 Mrs. Milgaard, do you recall Mr. Fox asking you
7 about whether or not (V5)-- (V5)--- had been
8 advised that the man who had committed the assault
9 upon her had been caught?

10:59 10 A Yes, and I had, I had information in front of me
11 that said that the Detective Weir had gone to her
12 in the fall of 1970.

13 Q Okay. And are you comfortable --

14 A I can't see this, whatever it is you are looking
10:59 15 at.

16 Q Perhaps --

17 A And whose evidence is this?

18 Q I believe this is the evidence of (V5)-- (V5)---:

19 "Q Do you recall a meeting with the police
20 where the police advised you that they
21 had caught someone who had confessed to
22 your assault?

23 A Yes."

24 A Uh-huh.

11:00 25 Q Can we agree that she was advised to that effect?



1 A Yes.

2 Q Okay. I apologize for the confusion, because I've
3 kind of diverted in terms of my examination, let's
4 go back to Nichol John.

11:00 5 A Okay.

6 Q Okay. Now at the time you put this, the
7 proposition to Nichol John that she had been
8 traumatized by her overnight stay in jail, can we
9 agree that the occasion was in the early 1980s and
11:00 10 it was when you were represented by Mr. Merchant?

11 A It could have been.

12 Q Didn't that occur at a meeting where Mr. Merchant
13 was present and Larry Leslie was present?

14 A Yes, and there would have been dates on those
11:00 15 documents, I'm sure if you have those dates I'll
16 agree with them.

17 Q Let's pull up document number 048643, and I would
18 ask for page 650.

19 COMMISSIONER MacCALLUM: Who did you say
11:01 20 Leslie represented?

21 MR. LORAN: I believe he was Nichol John's
22 lawyer.

23 BY MR. LORAN:

24 Q And I don't see a date on this transcript,
11:01 25 Mrs. Milgaard, I'm sorry I'm not able to provide



1 you with that, but --

2 A I'm -- it was around those dates, though, so
3 that's fine.

4 Q And I draw your attention to this portion of the
11:01 5 transcript, or the transcript here, and down at
6 the bottom here you say:

7 "You know and ah they told that you were
8 taken to a cell in the women's part of
9 the jail upstairs. Do you recall that?
11:01 10 And that there was no-one else around
11 that you were left there all alone."

12 And Nichol responded by saying she didn't
13 remember that, and you suggested to her:

14 "That you became very hysterical."?

11:02 15 A Uh-huh.

16 Q That:

17 "They had to actually call a ... woman
18 officer to come in ... put a mattress
19 down on the floor ...",
20 and you asked if she remembered that and she
21 said:

22 "No."

23 And you persisted:

24 "Do you remember that happening at all?"

25 Your suggestion was:



1 "... that was the first night ... they
2 kept you two nights or overnight and
3 then they took you out the next day.
4 They drove you around and around the
11:02 5 scene. And then you come back and they
6 were going to put you in the cell again
7 and that was the time that you gave the
8 statement regarding what you'd seen
9 about David.",
11:02 10 and Nichol said she didn't remember that; right?
11 A Yeah, I thought that she really blanked, as I said
12 to her, you really blanked a lot of things out,
13 and I really --
14 Q Would you agree that that was only ten years
11:03 15 after, well a little better than ten years, --
16 A Yeah, but she was --
17 Q -- after the events that occurred?
18 A But she was very traumatized, I felt, by the
19 event, by what happened to her there.
11:03 20 Q And the basis for that, for that conclusion, was?
21 A Well, the fact that she couldn't even remember it,
22 I felt that it had certainly -- and what you had
23 to have -- you had to have been there with Nichol.
24 I mean, she was so nervous, she was so upset, she
11:03 25 -- all of the times that I was trying to meet with



1 her, and things like that, it was obvious that
2 she'd been put through a lot.

3 Q Was she traumatized? You are saying she was
4 traumatized at the time of your interview with
11:03 5 her, this interview?

6 A I believe that she was. You see, I think that not
7 only was she traumatized by the police, but I
8 think she was traumatized by Joyce Milgaard. I
9 think that she was terrified of me, and --

11:04 10 Q I was going to suggest that, but --

11 A No, but that's the truth, I really felt that I
12 terrified the -- I mean here I am, ten years later
13 in my -- and she knows I'm trying to get my son
14 out of prison, and she knows that, I think she
11:04 15 knew that she was partly responsible for him being
16 in there, and so, sure, I traumatized her.

17 Q But she denied having any recollection of the
18 events as you put them to her, she didn't take the
19 position that she couldn't recall what had
11:04 20 happened, did she?

21 A Yes, I think at the first she said that she
22 couldn't remember. If you go back a little ways
23 there, when we first started out --

24 Q Yeah?

11:05 25 A -- she said something about she didn't --



1 Q Let's go to the page prior, then.

2 A Uh-huh.

3 Q Umm, she says, or you said:

4 "... I'm just visualizing that you were
5 a sixteen year old girl. You must have
6 been just terrified right out of your
7 mind."

8 A No, but go up first:

9 "Can you give me a little background
10 about the time that the police took the
11 statement from you?"

12 "No I can't. It's been too many years."

13 Q You think that means she didn't remember anything?

14 A I think that she didn't remember, and I jumped to
15 the conclusion -- which I did in lots of cases,
16 jumped to conclusions -- that the reason that she
17 didn't remember was because she was a 16-year-old
18 girl and she was terrified. I mean even, just
19 even if you look at it logically, even if your
20 police department did nothing wrong -- okay, I
21 want to give you this -- even if your police
22 department did nothing wrong, the fact that a
23 16-year-old girl was taken upstairs into an area
24 where there were all -- it was being rebuilt, and
25 there were all empty jail cells, and she's left



1 there all by herself, and she starts to scream and
2 become hysterical.

3 Q But you have no evidence of that, Mrs. Milgaard?
4 As a matter of fact, you put it to her that that's
11:06 5 what happened, and she said "no"?

6 A I think that, if you look in the police files,
7 there should be evidence of it somewhere, because
8 it happened. And I mean it was at the time, if
9 you check, if you check back, it was at the time
11:06 10 that that place was being rebuilt. And, I mean,
11 that isn't something that I made up, I knew that
12 that had happened to her, that's why I was asking
13 her about it.

14 Q Okay.

11:07 15 A But I really felt that she had been traumatized.

16 Q You suggested to her that she ought to remember
17 this, --

18 A And she didn't.

19 Q -- and she said "no", --

20 A That's right.

21 Q -- "I don't."

22 A But she also said, prior to that, that she didn't
23 remember anything.

24 Q Well I don't think she said, at any point, that
11:07 25 she didn't remember anything; did she?



1 A No, it's --

2 Q You pointed out --

3 A It's -- I can't -- it's --

4 Q "It's been too many years.";

11:07 5 is what she said?

6 A That's right.

7 Q You asked for the background?

8 A That's right, and she said:

9 "It's been too many years."

11:07 10 And, to me, that's saying that she can't

11 remember.

12 Q Now at the Supreme Court reference you had
13 indicated that you wanted Mr. Short called and
14 Mr. Mackie called, and it seems to me that one was
15 ill and one was out of the country, they were
16 unavailable. You were concerned that you were
17 precluded from the opportunity to put forward
18 evidence of police misconduct, that was one of the
19 bases, I mean that was a pretty significant basis
11:08 20 for your application?

21 A That's correct.

22 Q Allegations of police misconduct?

23 A That's correct.

24 Q What other evidence were you prevented from
11:08 25 calling at the Supreme Court reference with regard



1 to police misconduct?

2 A I think that's a question you would have to ask
3 David Asper or Hersh, because they were at the
4 actual meeting with the judges, because I can only
11:08 5 go by the memory that I have which is -- is I
6 don't know how accurate, but I know that they had
7 a meeting and -- and --

8 Q I understand that.

9 A -- were told the parameters of it at that time,
11:09 10 and my understanding of that was that they could
11 not zero in on any of that kind of information,
12 that they're -- they were there to deal with other
13 things.

14 Q And I've heard you, we've heard your evidence in
11:09 15 that regard, Mrs. Milgaard, --

16 A Okay.

17 Q -- and I appreciate that's your evidence, I think
18 there may be evidence to suggest otherwise, but I
19 appreciate that. That's not, that's not really
11:09 20 what I was trying to get at.

21 A Okay.

22 Q What I was trying to get at is what evidence was
23 it that you wanted to see before the Supreme Court
24 that didn't make its way in front of the Supreme
11:09 25 Court at the reference, not what rules were there



1 that prevented you from putting forward all the
2 evidence you wanted, but what evidence was there
3 that you didn't get a chance to put forward at the
4 Supreme Court reference that you thought was
11:09 5 important?

6 A I think there would have been a great deal. To be
7 specific about it, I would have to really think
8 about it. I know we had -- we felt that there'd
9 been a shoddy investigation, if you will, --

11:10 10 Q Yeah, that's a conclusion, I'm wondering --

11 A -- and I thought that we could show that if we
12 could show all of the reports and the things in
13 the area, which we didn't get a chance to go into
14 all of that, because that was involved with the
11:10 15 police work.

16 Q I'm asking you what didn't you get a chance to go
17 into, and I think you were -- your evidence was
18 that you were precluded from going into certain
19 things, and I'm suggesting to you that, if it was
11:10 20 something that was of real concern and if you
21 really did have a number of areas of evidence that
22 you wanted to get into and you couldn't get into,
23 that you would now be able to remember what areas
24 of evidence it was you wanted to get into but were
11:11 25 prevented from getting into?



1 A I guess the police misconduct was one of them, and
2 the other areas could have been the areas of what
3 we felt were a cover-up.

4 Q And what evidence were you prevented from calling?

11:11 5 A I think that we were given -- the parameters were
6 that we could only deal with --

7 Q What specific evidence.

8 A -- the facts of the case.

9 Q Yeah, no, I don't want to talk about the
11:11 10 parameters.

11 A Okay.

12 Q I understand your evidence.

13 A So that meant we couldn't give anything about the
14 facts of the case. Anything related to the case,
11:12 15 but nothing related to what anybody did about the
16 case. Is that a little better?

17 Q No. It may be my fault for not asking the
18 question properly. You are speaking to the issue
19 of the parameters?

11:12 20 A Yes.

21 Q And I'm saying what specific facts were you
22 prevented from putting into evidence.

23 A Well, I think the facts that the Fisher reports
24 and David's file and all of these things were
11:12 25 together.



1 Q What facts are you referring to?

2 A Well, the facts that we knew that Mr. Kujawa,
3 okay, had -- was acting on behalf of David and
4 Larry Fisher and it was at the same time, these
11:13 5 were facts that we knew, that they had been
6 handled at the same time. Now --

7 Q And you were prevented from putting that into
8 evidence at the Supreme Court?

9 A Some of these we were prevented from bringing in
11:13 10 the type of information that we had at the time.

11 Q I'm going to move on to the issue of Albert
12 Cadrain. Is it fair to say that you had no direct
13 evidence from the Regina police about their
14 contact with Albert Cadrain?

11:13 15 A I believe there was a police report that indicated
16 that he had been picked up and questioned and --

17 Q My question for you is did you speak directly to
18 any Regina policemen about this?

19 A No, we read the reports.

11:14 20 Q And --

21 A But I can't tell you when we got those reports.

22 Q Okay. Is the evidence about Albert Cadrain's
23 contact with the Regina police that you rely upon
24 the evidence which was elicited by Mr. Tallis at
11:14 25 the preliminary inquiry in cross-examination of



1 Albert Cadrain and at the trial in
2 cross-examination of Albert Cadrain, is that the
3 evidence regarding his contact with Regina police
4 that you are aware of, or are you aware of further
11:14 5 evidence?

6 A I think by the time we got to the Supreme Court,
7 we got more police files than we had ever had
8 before and those would have also been -- and I'm
9 not sure of this, so it's hard to even say it, but
11:15 10 I think one of those police files was about what
11 happened to Albert in Regina at the time. There
12 was something about a place in the attic that he
13 was taken to, there was about the fact that he was
14 stripped naked and interrogated by the police
11:15 15 there.

16 Q And this comes from a police report?

17 A I think it was a police report from the Regina
18 police.

19 Q All right. Are you able to draw our attention to
11:15 20 that?

21 A I'm sure it will be in the reports and perhaps my
22 lawyer can find it for you.

23 Q All right. I would ask to call up the May 9th
24 transcript at 29888, and can I call up document
11:16 25 number 226814, can we put it beside that? Do you



1 recognize this article down here?

2 A Yes, I do.

3 Q And is that the article that was referred to in
4 the transcript? I think we've seen this news
11:17 5 article, *Women given warning*, on a number of
6 occasions at the Inquiry here haven't we?

7 A Yes, we have. I can't read whatever it is in the
8 transcripts you are wanting me to read. What is
9 it?

11:17 10 Q Can we agree that in the transcript here there's
11 discussion about this police warning, and you are
12 saying:

13 "A And often when I look at the thing that
14 we, the warning, --

03:30 15 Q Yes?

16 A -- the police warning, I can't
17 understand -- mind you I wasn't as
18 methodical as I should have been,
19 probably, in going through the papers,
03:30 20 but when I went through the newspapers
21 and things like that I would find an
22 item and I'd think "oh, now this is
23 something", and instead of going on
24 methodically through page after page
03:30 25 after page I'd get distracted by that



1 and go, and then the next time I'd go
2 back, maybe I must have missed the
3 page with that. Because I know that,
4 if I had seen that page, it would have
03:30 5 alerted me and I would have started to
6 follow up on it."

7 Is it fair to say that you are of the view that
8 if you had seen that article earlier along the
9 way, you think it might have put you on the track
11:18 10 of Larry Fisher earlier?

11 A I do.

12 Q Because Larry Fisher was a rapist and he was in
13 the neighbourhood and you believe that that would
14 have provided you with an alternative suspect to
11:19 15 look at?

16 A Yes.

17 Q And you devoted a fair amount of attention to that
18 sort of an approach to this hadn't you?

19 A I had, but as I pointed out, I really wasn't a
11:19 20 trained detective. Still am not.

21 Q Certainly. You were convinced of your son's
22 innocence and you were looking for alternative
23 suspects?

24 A That's right.

11:19 25 Q And at different times you considered Lorne Mahar,



1 Colin Thatcher and a Mr. LaChance as possible
2 suspects?

3 A They were probably three out of a hundred --

4 Q Okay.

11:19 5 A -- that I looked at.

6 Q You looked at a number of alternative suspects?

7 A Absolutely.

8 Q Did you share any of those theories with Peter
9 Carlyle-Gordge?

11:20 10 A Well, some of them I'm sure I did. Which ones I
11 don't know.

12 Q Okay. And is it fair to say that Peter
13 Carlyle-Gordge was working with you and he had the
14 same view, your son was innocent?

11:20 15 A Yes.

16 Q And Peter Carlyle-Gordge would likewise have been
17 looking for alternative suspects?

18 A That's correct, but of course unlike the police,
19 we couldn't go to police files and find out about
11:20 20 who was, who had done things like this and all of
21 the information, we were limited to newspaper
22 accounts and some, in many of the cases would
23 never get into the newspaper accounts.

24 Q You weren't strictly limited to newspaper accounts
11:20 25 in that you did a number of interviews, and Mr.



1 Carlyle-Gordge also did some interviews didn't he?

2 A Yes.

3 Q Now, yesterday there was some suggestion to you
4 that you made an admission that you may have been
11:21 5 guilty of tunnel vision. I'm not sure that's even
6 fair to you. It must have been very difficult
7 with all of these different potential suspects to
8 determine who would have been most likely to be
9 the true killer of Gail Miller. Did you find it
11:21 10 frustrating?

11 A I was very frustrated. Each time I'd find someone
12 that I thought fit the bill, I would get so
13 excited and thinking I'm going to get him out of
14 jail, I'm going to get him out of jail, and then
11:21 15 something didn't click, it didn't work.

16 Q It didn't work out?

17 A And you are right down in the depths again.

18 Q Okay. I'm going to ask for document number 333013
19 to be called up. This is an interview between
11:22 20 Peter Carlyle-Gordge and Albert Cadrain. There's
21 no date on it, but can we agree that it took place
22 sometime in the early '80s?

23 A Probably, yes.

24 Q And this is, I think it's a telephone
11:22 25 conversation, although I'm not certain, but it's a



1 fairly short follow-up to an earlier meeting with,
2 between Peter Carlyle-Gordge and Albert Cadrain
3 where they discuss Larry Fisher?

4 A I remember seeing that here and being so shocked
11:22 5 by it.

6 Q He says:

7 "I'm still doing some research and
8 trying to trace anybody who was um,
9 involved back in '69. One of the names
11:23 10 that I've come across is uh, he was
11 interviewed by police, is a Larry
12 Fisher."

13 A Uh-huh.

14 Q "... and he's given the same address as
11:23 15 yours. Do you know where he is now?"

16 Albert says:

17 "Wouldn't have no idea."

18 "No?"

19 As a question.

11:23 20 A Yeah.

21 Q "No, I wouldn't have no idea at all.

22 This Larry Fisher uh..."

23 And Peter interprets him and says:

24 "What was he, a lodger or something?"

11:23 25 "A what?"



1 "A, a boarder."

2 "Yeah, he was a, didn't even know the
3 guy, like he lived down in the basement
4 with his wife and kid, I guess."

11:23 5 Peter says:

6 "Yeah, I know from the records that they
7 did interview him anyway. I just
8 wondered if you had anything to add."

9 Albert says:

11:23 10 "Well, I'm sure they interviewed quite a
11 few people."

12 Peter says:

13 "Oh, they did, I know."

14 Albert says:

11:23 15 "And uh, I guess he was just a suspect
16 hey."

17 Peter says:

18 "Yeah, right, right. I'm wondering if
19 you have any memories of that time, and
11:24 20 after..."

21 And Albert interrupts him and says:

22 "I wouldn't know, I wouldn't have
23 nothing to do with the guy, he's a, a
24 real uh, gangster type."

11:24 25 And over on the top of the next page, please,



1 Peter Carlyle-Gordge says:

2 "Is he?"

3 Albert says:

4 "Oh, yeah, from what I hear, from what I
11:24 5 hear, hey."

6 "You mean, you mean like, a criminal?"

7 And Albert says:

8 "Yeah."

9 And Peter says:

11:24 10 "Oh, really."

11 Albert says:

12 "Yeah, I suppose uh, I guess they caught
13 him years later, or, I don't know how
14 much longer, later, in uh, rapes and
11:24 15 shit like that, hey?"

16 And I guess in hindsight it may look like that
17 sort of pointed in the direction of Larry Fisher
18 back in the early '80s?

19 A I can't understand Peter having that conversation
11:25 20 and not doing something about it, I really can't.
21 I mean, even in hindsight it just seems so
22 ludicrous that you would have somebody that was
23 doing rapes and that's what we were looking for
24 and that he didn't follow up. I know it -- and in
11:25 25 fairness to Peter, you have to realize that at



1 that time he was going through a very difficult
2 personal situation and he was getting ready to
3 pack up and leave for England and -- but I can't
4 understand where his head was that that didn't
11:25 5 happen, and I know he was very upset when he was
6 here and reread that and saw it and I know he felt
7 very, very badly about it.

8 **Q** There's no question he was doing his best to help
9 you and to try and find --

11:25 10 **A** Yes, he was.

11 **Q** -- alternative theories that might explain who the
12 true killer was?

13 **A** Yes.

14 **Q** Yeah.

11:26 15 **A** But at that time he was going through a difficult
16 personal time and whether it didn't register or it
17 was right after that that he left, because when I
18 first saw that here, it was here and I couldn't
19 believe it.

11:26 20 **Q** Now -- so it's your evidence that this information
21 given to Peter Carlyle-Gordge never did come to
22 your attention?

23 **A** No.

24 **Q** Back at about the time it occurred?

11:26 25 **A** No, it didn't.



1 Q Now, I'm going to make a suggestion to you, isn't
2 it possible that it came to your attention, but it
3 just didn't register as significant at the time
4 you heard it, you didn't remember it --

11:26 5 A It's possible, it's possible it came to my
6 attention and it could have been at the time that
7 I was focused on somebody else thinking they had
8 done it, I wouldn't want to discount that. Like,
9 it's possible because I did become very focused on
11:26 10 other people and that is -- you know, I don't want
11 to say that. I couldn't be sure.

12 Q And I suppose the other possibility is that Peter
13 Carlyle-Gordge just missed it and didn't consider
14 it important enough to bring to your attention?
11:27 15 It's unfortunate, but that's the other
16 possibility?

17 A Yeah, it's another possibility, but, you know, it
18 hurts me every time I read it because look at the
19 year it was in and how many years David could have
11:27 20 been out free before that.

21 Q The last thing I want to ask you about, Mrs.
22 Milgaard, is I'm going to ask to bring up document
23 number 335 -- oh, 335896 and at 335903, this is a
24 conversation between you and Mr. Asper. One of
11:28 25 your efforts was to undermine Albert Cadrain's --



1 that was one of the underpinnings of your approach
2 in terms of the re-opening efforts, was to
3 undermine Albert Cadrain's credibility; isn't that
4 correct.

11:28 5 A Probably, yes, because we felt that he was, his
6 testimony, and mentally he was really being
7 challenged.

8 Q And let's distinguish between mentally ill and
9 mentally challenged. I think --

11:28 10 A Well, he started out mentally challenged and I
11 felt that by the end of it he was mentally ill,
12 that was my feeling.

13 Q That would be the way I viewed the evidence you
14 gave when Mr. Hodson and Mr. Fox were asking you
11:29 15 about this, is that you never thought of Albert as
16 a very bright fellow?

17 A No.

18 Q But I want to focus in on the issue of mental
19 illness, his mental stability.

11:29 20 A Well, he was, at the end, he was having all these
21 visions of the virgins and bathtubs and all kinds
22 of things and --

23 Q There doesn't seem to be much -- there doesn't
24 seem to be much question that there were some
11:29 25 questions about his mental stability --



1 A Right.

2 Q -- later on, but this is a conversation between
3 you and David Asper where I think David Asper
4 quite rightly points out that --

11:29 5 A I can't -- can you --

6 Q Sure.

7 A Sure, thanks.

8 Q I'm going to draw your attention particularly, he
9 says we have to challenge Albert's credibility.

11:30 10 Here we are, sorry, there's the critical part
11 here.

12 A Okay.

13 Q "So you know, obtaining --"

14 And you are talking about Albert's credibility,

11:30 15 "So you know, obtaining that kind of
16 information is not going to be very
17 valuable, but it would be necessary with
18 Cadrain, even if he appears loony today,
19 is to establish that he was loony at the
11:30 20 time..."

21 And maybe before I go on, can we agree that by
22 "at the time" what you are talking about is at
23 the time of the preliminary inquiry and at the
24 trial? That's the time, the relevant time you
11:30 25 are talking about?



1 A I don't know. I assume it is because I'm saying:
2 "So we should be out there getting
3 neighbours that can say he was."

4 Q Yeah.

11:31 5 "... and everybody in the Cadrain
6 family, except for Dennis, says that he
7 wasn't."

8 A Yes.

9 Q And you sat through the trial and prelim and isn't
11:31 10 it fair to say that you made no complaint to
11 Mr. Tallis about Albert's mental stability after
12 hearing his evidence at trial?

13 A I honestly don't remember if I did or not. I have
14 no memory of it though.

11:31 15 Q And whether or not Mr. Tallis objected to Albert's
16 evidence on the basis of his stability is a matter
17 of record isn't it?

18 A Yes.

19 MR. LORAN: Thank you, Mrs. Milgaard.
11:31 20 Those are all my questions.

21 A Thank you.

22 **BY MS. KROGAN-STEVELY:**

23 Q Mrs. Milgaard, it's for the record that I say that
24 my name is Lana Krogan and I represent the
11:32 25 Province of Saskatchewan.



1 A Thank you.

2 Q And my questions of you this morning will have
3 been abbreviated given what Mr. Wilson has covered
4 with you. However, the area that I do want to ask
11:32 5 some questions on does relate to Mr. Breckenridge
6 and that's a name I'm sure we'll all be very happy
7 soon to dispense with.

8 Mrs. Milgaard, on Monday the
9 29th when you were giving evidence, and if I could
11:32 10 ask that page 31495 of the transcript be brought
11 up, and the question that Mr. Hodson put to you,
12 Mrs. Milgaard, was:

13 "Had you considered giving it --"

14 And this is the Breckenridge information to put
11:33 15 it in context:

16 "Had you considered giving it to the
17 Government of Saskatchewan to check out
18 whether there was any truth to it?"

19 To which you responded:

11:33 20 "A When you think that the Saskatchewan
21 Government is covering things up you are
22 not hardly likely going to go and give
23 that information to them."

24 That was your position, that was your response;
11:33 25 is that correct?



1 A Yes.

2 Q Now, you've already acknowledged, Mrs. Milgaard,
3 that by August of 1991, and Mr. Hodson went
4 through some newspaper articles with you at that
11:33 5 time, that allegations by you and others publicly
6 that Saskatchewan officials were involved in a
7 cover-up, that those were out for public
8 consumption by that time. Would you agree with
9 that?

11:33 10 A Yes.

11 Q All right. If I could just ask that document
12 010080 be brought up, please, and, Mrs. Milgaard,
13 can you read that or should we just bring that up
14 a bit?

11:34 15 A If you could bring it up, please.

16 Q Thank you very much. It's a document dated August
17 the 8th, 1991, so to put it in context, would you
18 agree it's around the time that the public
19 allegations of Saskatchewan officials being
11:34 20 involved in a cover-up, it's around that time;
21 correct?

22 A Yes.

23 Q All right. It's a letter to Ellen Gunn who was,
24 at that time, the Director of Public Prosecutions
11:34 25 in the Province of Saskatchewan, and this is a



1 letter, Mrs. Milgaard, from your counsel, Mr.
2 Wolch, and we'll shortly see his signature on the
3 second page, but it begins:

4 "It was only --"

11:34 5 And this is again 1991:

6 "It was only recently brought to my
7 attention --"

8 And again this is Mr. Wolch,

9 "-- that the Attorney-General for
11:34 10 Saskatchewan was not involved in our
11 application to the Minister of Justice
12 for Canada, with the exception of
13 receiving a copy of the Minister's
14 reply."

11:34 15 So as a starting point, would you agree at that
16 point that the message that Mr. Wolch -- well,
17 that the message is, from that portion of the
18 letter, that Saskatchewan had not been involved
19 in your information campaign, if I can put it
11:35 20 that way, prior to this time? Would you agree
21 with that?

22 A It certainly looks like that.

23 Q So that's 1991. So accordingly, the purpose for
24 this letter is, as we see, that Mr. Wolch was
11:35 25 providing information to the province, and we'll



1 note that there are, there's an itemized list of
2 the documents that were provided to the
3 department?

4 A I see that.

11:35 5 Q Thank you, all right. Now, if we could turn to
6 the next page, please, bring that out, you'll see
7 that Mr. Wolch has signed it, but if you look to
8 that paragraph and Mr. Wolch outlines the reason
9 for providing this information:

11:36 10 "Consequently, I am forwarding the
11 material with the clear hope that your
12 Department will take a position in this
13 matter..."

14 And presumably, would you agree, Mrs. Milgaard,
11:36 15 he was hopeful for a position of support from the
16 government, not one adverse to your view?

17 A Yes, I would think so.

18 Q "... hope that your Department will
19 take a position in this matter, but
11:36 20 hurriedly..."

21 And on he goes. Now, Mrs. Milgaard, I'm having a
22 little trouble reconciling your comments that
23 were first brought up that you were disinclined
24 to provide the Breckenridge information to the
11:36 25 province because the government basically wasn't



1 to be trusted. Allegations were publicly made
2 that, in 1991, August, 1991, that Saskatchewan
3 was involved in a cover-up and yet information
4 was provided to the government at that time. Do
11:37 5 you see the parallel?

6 A I do.

7 Q All right. I'm having trouble reconciling that,
8 though, Mrs. Milgaard. Can you -- do you have any
9 comment on why, despite the allegations of
11:37 10 involvement in cover-up, that that information and
11 that support would be sought from the Province of
12 Saskatchewan at that time?

13 A I honestly didn't know that it was being sought
14 from the province at that time.

11:37 15 Q It doesn't --

16 A My head space, if you will, at that particular
17 time, if I'm talking about government or justice
18 officials, I could very easily be lumping them all
19 together when they shouldn't be lumped together.
11:37 20 Do you know what I mean?

21 Q I certainly do, and I tried to be attentive to
22 that actually.

23 A And I think that maybe that is what has happened
24 here.

11:38 25 Q So your comment that -- well, but Mr. Hodson did



1 ask you specifically why it wasn't provided to
2 Saskatchewan.

3 A Well, my feeling at the time, and I think I said
4 to Mr. Hodson, was I distrusted everybody at that
11:38 5 time. It wouldn't matter whether you were the
6 Saskatchewan government, the federal government,
7 the provincial government, whoever you were, I
8 just had the distrust of authorities, if you will.

9 Q I accept that, Mrs. Milgaard, and despite that
11:38 10 general distrust, that was likely shared by
11 others?

12 A Here my lawyer is doing this.

13 Q It was thought appropriate to contact Saskatchewan
14 to seek support from them, that was the whole
11:38 15 purpose for the letter?

16 A I suppose it was, but as I said, I have no
17 knowledge of this particular letter.

18 Q Can I -- Mrs. Milgaard, would you agree with me,
19 given that the public allegations had been made
11:39 20 about wrongdoing on the part of Saskatchewan, it
21 might be a little difficult or perhaps the
22 government might not be inclined to want to
23 support your position. Can you accept that?

24 A Yes.

11:39 25 Q All right. If we could move now to the press



1 conference, and again I certainly appreciate that
2 Mr. Wilson has covered, and Mr. Hodson has covered
3 much of the September press conference involving
4 Mr. Breckenridge. If, kindly, the document 054856
11:39 5 could be brought up, and I'm using, I was using a
6 different document ID number, Mr. Commissioner,
7 for the press conference, than what Commission
8 Counsel was. If we could go to page 054860,
9 please. Mrs. Milgaard, here these are your
11:40 10 comments at the press conference, and specifically
11 regarding Mr. Breckenridge, your comment, the
12 comment that you make:

13 "We made sure that he was employed where
14 he said he was at that time."

15 Now --

16 A And that was my understanding at the time.

17 Q Right. And if I understand your evidence when Mr.
18 Hodson was questioning you, you said that you
19 relied on what was in Mr. Rodin's memo to arrive
11:40 20 at that conclusion that, you know, you made sure
21 that he was there. Can we bring up, please, 05 --
22 sorry, 048306, would you kindly draw that larger,
23 please, and, Mrs. Milgaard, I do want to give you
24 a chance to have a look at that because my
11:41 25 question to you is going to be where does it say



1 that he checked.

2 A It's written right on there:

3 "We checked".

4 Q Whose writing is that?

11:41 5 A That's mine.

6 Q "We checked",

7 so -- but where does Mr. Rodin, in that memo, say
8 that he checked?

9 A Umm, that he is a former employee of the
11:42 10 Saskatchewan Attorney General's office, --

11 Q Right, that was --

12 A -- he was employed by the Saskatchewan Attorney
13 General's office in and around 1971.

14 Q Which is likely from his statement, would you
11:42 15 agree? It doesn't say that that was checked, that
16 was verified, that is likely drawn from his
17 statement?

18 A But since it was like that, and I knew that we'd
19 had an investigator because I was with an
11:42 20 investigator when I went to see him, and he has
21 this information down there, I know I wrote:

22 "We checked",

23 because I thought we'd checked. And I assumed
24 that that's what this was saying, he was telling
11:43 25 all of the information about Mike Breckenridge in



1 this, and what his duties were and all the rest
2 of it.

3 Q Would you agree, though, that Mr. Rodin, nowhere
4 in that memo, says "I checked into that"?

11:43 5 A Now, when I look back at that, it doesn't say that
6 Mr. Rodin checked into it, but in my reading of it
7 I thought it had been checked into it, and I
8 believe I wrote:

9 "We checked"

11:43 10 so that, when I was giving my conversation to the
11 press, that I could say that.

12 Q Mrs. Milgaard, that was perhaps an assumption, did
13 you take any steps or did you speak to Mr. Rodin
14 to ask him what he meant by those paragraphs?

11:43 15 A I don't believe I did, because I took it at face
16 value, and the way I read it was that this was
17 what he was telling me that he had found out about
18 Mike Breckenridge.

19 Q But none of that information, Mrs. Milgaard, would
11:43 20 you agree, differs at all from the statement or
21 the statements that Mr. Breckenridge provided?
22 There's nothing further in that, in Mr. Rodin's
23 memo, that would indicate to you anything beyond
24 the information that Breckenridge provided in the
11:44 25 letters?



1 A That's right, but it -- because it was there, in
2 that form, I believed that it was what he had
3 checked, and that's the way I read it.

4 Q Mrs. Milgaard, you said today, and I -- again I,
11:44 5 it was to Mr. Wilson, that you drew the
6 distinction that -- you were drawing the
7 distinction that you didn't make these allegations
8 in the press conference; do you recall saying
9 that?

11:44 10 A I'm -- I made a point of, when I was speaking at
11 the press conference, to say that I wasn't making
12 the allegations, that these were being made by our
13 source.

14 Q All right. Can we have up page 054860 of the
11:44 15 press conference, that page, please. Could we
16 have that area brought out, please.

17 "What we're saying ...",
18 again, this is your comment, Mrs. Milgaard:

19 "What we're saying is we have
11:45 20 information that says Roy Romanow and
21 and this we have said in the letter to
22 the Minister of Justice - that he was in
23 these meetings. Now I'm not about to
24 judge his evidence."

11:45 25 And that's referring to Mr. Breckenridge. Then



1 you go on to say:

2 "... I met with him and I thought ... he
3 was credible."

4 A I did.

11:45 5 Q Mrs. Milgaard, wouldn't, implicit in that
6 statement, be an adoption of his, of what
7 Mr. Breckenridge's allegations were; you met with
8 him, you thought he was credible, translation you
9 believed him?

11:45 10 A I did.

11 Q And, thus, thereby adopting his allegations;
12 wouldn't that be a fair view for the public and
13 the media to take?

14 A Yes, but I made a point of saying "we're not
11:46 15 saying that", and then they said "well what are
16 you saying, Joyce?"

17 Q Mrs. Milgaard, but you do go on, --

18 A Uh-huh.

19 Q -- just a few words later, to say that you found
11:46 20 him credible, that you believed him?

21 A And I really did.

22 Q Completely?

23 A Yes.

24 Q But my point is, Mrs. Milgaard, that would it not
11:46 25 be a fair conclusion by the media and by the



1 public that you believed the allegations, that by
2 this statement you believed the allegations that
3 Mr. Breckenridge was making?

4 A Yes, and I wanted them checked out.

11:46 5 Q If we could go to 054861 of that document, and
6 this is your son speaking at this point,
7 Mrs. Milgaard -- I can't see for looking:

8 "... our initial inquiry and all the
9 rest of it, you know, this is the scope
11:47 10 of the matter but it's our request that
11 something be done immediately."

12 He says that later, either earlier or later in
13 the press conference, as well. My question,
14 Mrs. Milgaard, is did your son realize that this
11:47 15 information had been provided to you in March?
16 This is now September and he is seeking an
17 immediate response; did he realize that you
18 received it in March?

19 A Probably not.

11:47 20 Q Any idea why not, Mrs. Milgaard?

21 A I think because of what we were going through at
22 the time, at the Supreme Court, and with all of
23 the things that we were dealing with at that time.

24 Q Can we go to 862, please, the next page? The
11:48 25 media at this point, Mrs. Milgaard, is asking



1 about your source, and your comment is:

2 "We cannot release his name."

3 A That's correct.

4 Q It's true, isn't it, that Mr. Breckenridge didn't
11:48 5 ask for that protection; did he?

6 A I believe he did.

7 Q When did he do that?

8 A I think, when we had the conversation, that he was
9 prepared to speak to the Justice officials or the
11:48 10 police, but that he didn't want his name to be
11 released. I believe I said that somewhere.

12 Q Would you agree that it is not in his first or his
13 second statements that he provided to -- the
14 March, that is the March and the May statements?

11:48 15 A No, but it was in our meeting with him, because I
16 remember saying that and I wouldn't have said that
17 if he wouldn't have said that to me. If I could
18 have brought him out there, you know, in front of
19 them, I probably would have, but he wasn't, he
11:49 20 wasn't prepared to talk to the media.

21 Q He wasn't prepared to talk to the media but he was
22 prepared to talk to Justice officials; correct?

23 A To the -- yes.

24 Q All right. Mrs. Milgaard, but his name wasn't
11:49 25 provided to either the Province of Saskatchewan,



1 nor was his name provided to Federal Justice, and

2 --

3 A I beg your pardon?

4 MS. McLEAN: The statement was enclosed to
11:49 5 Federal Justice on the 16th of September.

6 MS. KROGAN-STEVELY: Could I see 004064,
7 and I might stand corrected.

8 MS. McLEAN: It's the end of the second
9 paragraph.

11:50 10 MS. KROGAN-STEVELY: The next page, please.
11 Pardon me?

12 MS. McLEAN: It's the end of the second
13 paragraph.

14 MS. KROGAN-STEVELY: Indeed, but I think in
11:50 15 the statements the names were blacked out, and
16 though I don't have it at my fingertips -- and
17 please correct me -- the -- Mr. -- Sergeant
18 Pearson, when this was turned over to him, had to
19 deduce, based on the written signature, what the
11:50 20 name was, and view -- compare that to the records
21 with the Province of Saskatchewan. That's
22 correct, in fact he didn't know, he didn't know
23 the name for certain was Mr. Breckenridge.

24 COMMISSIONER MacCALLUM: I believe that to
11:50 25 be the case from, just from memory, but if you



1 want to check it over the lunch hour, produce the
2 documents, you are welcome. We could adjourn
3 now, it's five to?

4 MS. KROGAN-STEVELY: Oh, I'd be delighted
11:50 5 to, thank you, sir.

6 (Adjourned at 11:50 a.m.)

7 (Reconvened at 1:35 p.m.)

8 MR. HODSON: Mr. Commissioner, just to
9 indicate that your ruling on the constitutional
01:36 10 issue has been circulated to all the parties and
11 will be posted on the Commission web site as your
12 decision, and I think it has also been provided
13 to the media as well.

14 COMMISSIONER MacCALLUM: Okay, thanks.

01:36 15 BY MS. KROGAN-STEVELY:

16 Q Thank you, sir. If we could have, just with
17 respect to the issue that we were discussing at
18 the break, just prior to the break, Mrs. Milgaard,
19 could we kindly have 334870 brought up, and could
01:37 20 you call it out, please. Thank you very much.
21 It's a document dated September 21st, 1992, and
22 it's a letter from Mr. Bruce MacFarlane to
23 Mr. Hersh Wolch, and the -- it reads:

24 "Confirming our discussion early this
01:37 25 morning, I would like to receive the



1 name of the person who provided the
2 written statement to Mrs. Milgaard ..."
3 So, clearly, that hadn't been provided; would you
4 agree Mrs. Milgaard?

01:37 5 A I would agree.

6 Q Thank you. And the name:
7 "... together with his current address,
8 place of employment and telephone number
9 where he can be reached. Additionally,
01:37 10 during the press conference,
11 Mrs. Milgaard made reference to a letter
12 that this person sent to her, in which
13 he suggested that an outside inquiry
14 should be called. I would like to
01:38 15 receive a copy of that as well."

16 And I presume he's talking about the first,
17 that's the March 21st letter?

18 A Probably.

19 Q It was in that, I believe, that he indicated
01:38 20 that -- or he suggested that an outside inquiry
21 would be appropriate, --

22 A Right.

23 Q -- so clearly that information hadn't been
24 provided to the Federal Government; would you
01:38 25 agree Mrs. Milgaard?



1 A I would agree.

2 Q Thank you. So Mrs. Milgaard, if I understand your
3 evidence from this morning, you stated you were
4 prepared to have Mr. Breckenridge talk to the
01:38 5 federal authorities; is that correct?

6 A He was prepared.

7 Q Or he was, and you were willing to facilitate
8 that?

9 A Yes.

01:38 10 Q All right. And, as well, --

11 A I think, I don't think that I just said the
12 federal authorities, he was willing to talk to,
13 quote "the authorities", whoever that may be.

14 Q So that might --

01:38 15 A He just wasn't ready to talk to the press.

16 Q All right. And so, with "the authorities", could
17 I perhaps include the provincial government in
18 there as well?

19 A I think he was prepared to talk to anyone.

01:39 20 Q Okay.

21 A As long as they were in authority.

22 Q Okay. I think yesterday you said, as well, that
23 you wanted this information turned over to the
24 police; is that accurate?

01:39 25 A Well, authorities, whoever.



1 Q Okay. Specifically, yesterday you said the
2 police, but you are expanding that right now?

3 A Well, I think I wanted it turned over to whoever
4 it was supposed to be turned over to, --

01:39 5 Q Okay.

6 A -- and I would leave that for my lawyers to
7 decide.

8 Q All right. Could I kindly have -- this is an
9 audio tape, Mrs. Milgaard, one that was made in
01:39 10 September of 1992, and this -- the document, the
11 transcript of that audio tape is document ID
12 336576. I'd ask that that transcript be brought
13 up, but I'd wonder if the, as well, the clip could
14 be -- the audio tape, that portion, could be
01:40 15 played as well?

16 **(Portion of audio tape #77 from Mrs. Milgaard played)**

17 JOYCE MILGAARD: I've written a letter to
18 the Prime Minister....

19 HERSH WOLCH: We're aware of that

01:40 20 JOYCE MILGAARD: Yah, but I want you to say
21 that we have, that I've written asking
22 for an independent inquiry and that you
23 too are asking for an independent body
24 or people. We will not be satisfied
01:40 25 with Williams going out to investigate



1 this guy in other words.

2 HERSH WOLCH: I got your point."

3 **(Tape stopped)**

4 MS. KROGAN-STEVELY: Could we have the
01:40 5 transcript? Sorry, the transcript cannot be
6 brought up at the same time?

7 MS. BOSWELL (Document Manager): We'll try.

8 MS. KROGAN-STEVELY: I just thought it
9 might be easy to follow. If we could put --
01:41 10 thank you very much. Sorry to interrupt.

11 **(Portion of audio tape #77 from Mrs. Milgaard played)**

12 JOYCE MILGAARD: I've written a letter to
13 the Prime Minister....

14 HERSH WOLCH: We're aware of that

15 JOYCE MILGAARD: Yah, but I want you to say
16 that we have, that I've written asking
17 for an independent inquiry and that you
18 too are asking for an independent body
19 or people. We will not be satisfied
20 with Williams going out to investigate
21 this guy in other words.

22 HERSH WOLCH: I got your point.

23 JOYCE MILGAARD: Ok. So you do the letter
24 and Bob has the stuff.

01:41 25 HERSH WOLCH: Who has it?



1 JOYCE MILGAARD: Bob has it.

2 HERSH WOLCH: I just need the stuff.

3 That's all.

4 JOYCE MILGAARD: Yah.

01:41 5 HERSH WOLCH: You guys sent ... the
6 statement that we sent to him ...

7 JOYCE MILGAARD: Uh hum...

8 HERSH WOLCH: The signature is scrawly, he
9 doesn't even know who it is.

01:41 10 JOYCE MILGAARD: That's good. (laughing).

11 HERSH WOLCH: Yah, but, he, you know, he
12 said if they had, if they're going to
13 investigate it how are they going to
14 look into it?

01:41 15 JOYCE MILGAARD: Yah, but, I don't want
16 them to investigate it. This is the
17 point, we want to make. I don't want to
18 give name and address and everything to
19 him. We want it to go to an independent
01:42 20 board and I don't think we should give
21 it to him..... Hersh but this is our
22 chance.... to hold out for an
23 independent body.

24 HERSH WOLCH: I understand that but uh...we
01:42 25 can't ask the minister of Justice to



1 appoint somebody without giving them
2 some basis to do it.

3 JOYCE MILGAARD: Well, we've given her the
4 statement.

01:42 5 HERSH WOLCH: Yah, but she doesn't even
6 know who it came from. (Inaudible)
7 there's got to be some cursory
8 examination to make sure the guy exists.
9 I've told them not to give it to
01:42 10 Saskatchewan. They'll figure it out
11 anyway. It won't be a secret.

12 JOYCE MILGAARD: Well, uhm...

13 HERSH WOLCH: It's better if we appear to
14 be co-operating to some degree.

01:42 15 JOYCE MILGAARD: Did you hear that Mitchell
16 made a statement?

17 HERSH WOLCH: No.

18 JOYCE MILGAARD: Oh, Yah!

19 HERSH WOLCH: What did he say?

01:42 20 JOYCE MILGAARD: He said, well, maybe if
21 there is something with this new
22 evidence that maybe he'll take another
23 look at it. Apparently that story's
24 going out on the wire right now.

01:42 25 HERSH WOLCH: Huh.



1 JOYCE MILGAARD: Yah. Interesting.

2 HERSH WOLCH: Huh.

3 JOYCE MILGAARD: and he's not getting it.

4 In no uncertain terms. He's not getting
01:43 5 it. Our sources said that he'll only
6 talk to someone independent of the
7 Justice department. So..."

8 **(Tape ends)**

9 BY MS. KROGAN-STEVELY:

01:43 10 Q Thank you.

11 A I had not remembered that.

12 Q No, I don't imagine you did, Mrs. Milgaard.

13 That's a conversation between Mr. Wolch and
14 yourself, --

01:43 15 A Yes.

16 Q -- just for the record; is that correct?

17 A Yes, that's correct.

18 Q And, I'm sorry, could the transcript be brought
19 back up, 336576. Would you call that out, please?

01:43 20 A This brings back a lot of memories, because I
21 remember wanting to hold out for an independent
22 body, or an independent board.

23 Q Right.

24 A And I'd sort of forgotten all about that part of
01:43 25 it, but I believe that Hersh and I had many



1 conversations about this, and what I was to do on
2 it.

3 Q Well, let's look at this, Mrs. Milgaard:

4 "HERSH WOLCH: You guys sent ...",
5 this is right about here:

6 "... the statement that we sent to him
7 ...

8 JOYCE MILGAARD: Uh hum...

9 HERSH WOLCH: The signature is scrawly, he
10 doesn't even know who it is."

11 And presumably that would be, well, first of all
12 someone with the Federal Government, but it was
13 Mr. MacFarlane who wrote back to Mr. Wolch, so
14 I'm presuming that's who it is?

15 A Right.

16 Q "The signature is scrawly, he doesn't
17 even know who it is."

18 And your response is:

19 "That's good."

01:44 20 and you laugh. And further down you say:

21 "... I don't want them to investigate
22 it."

23 That seems to be contrary to what you've said
24 today, Mrs. Milgaard?

01:44 25 A I had completely forgotten about wanting to send



1 it to an independent board, you know, and that's
2 really what we -- my first thing that I really
3 wanted to do was send it to an independent board,
4 and I'd forgotten about that entirely.

01:44 5 **Q** Mrs. Milgaard, there was no independent board that
6 existed at that time, would you agree with me?

7 **A** That's right, --

8 **Q** And so --

9 **A** -- and we wanted one established, and that's what
01:44 10 I was trying for, and someone that could be
11 independent of these people, and I really didn't
12 think we should give it to him. And this is what
13 I am saying, it's our chance to hold out for an
14 independent body.

01:45 15 **Q** All right.

16 **A** And I guess he's obviously convinced me, later on,
17 that we can't do that because probably rightly, as
18 you say, there was no independent board, and he's
19 probably brought that through to me.

01:45 20 **Q** There was no independent board at that time, Mrs.
21 Milgaard, so ostensibly what would have happened
22 is these allegations would have remained in the
23 public domain until some independent board was
24 established to have a look at them. Is that
01:45 25 appropriate?



1 A No, that wouldn't have been appropriate, and
2 obviously that's why we didn't do that.

3 Q Can we call up 004064, please, we'll get back to
4 that transcript. Could you call the body of that
01:45 5 out just so that it's easier to read, please.
6 September 16th, 1992, again this is the letter
7 that was sent by Mr. Wolch to Kim Campbell, and if
8 we could go to the -- and the body of that speaks
9 of the Breckenridge information. On the second
01:45 10 page, though, if we could go there, call that
11 paragraph out kindly:

12 "Mr. Mitchell has not seen fit to order
13 an inquiry into the Milgaard matter, nor
14 does he seem inclined to do so. In
01:46 15 light of the evidence linking the
16 present Premier of the Province of
17 Saskatchewan to the Milgaard case, we
18 would suggest that it would be
19 impossible for the Milgaard family to
01:46 20 obtain any form of impartial inquiry in
21 the Province of Saskatchewan. A full
22 and proper inquiry into this matter is
23 absolutely essential to deal with this
24 new evidence and with other issues which
01:46 25 need to be addressed."



1 Could I just see the next paragraph:

2 "Accordingly, we are now formally
3 requesting that you order an inquiry
4 into the entire matter..."

01:46 5 Looking into this issue. Mrs. Milgaard, you are
6 asking for the federal government to look at this
7 allegation, you are not asking for an independent
8 body, per se.

9 A Well, because Hersh showed, obviously told me that
01:47 10 there was one -- wasn't one. That must have come
11 up in subsequent conversations.

12 Q Can we go back to the transcript, please,
13 336576 --

14 A And obviously with the federal *Inquires Act*, he
01:47 15 has found a place that we can go to.

16 Q Mrs. Milgaard, you've sent, based on this
17 transcript, information has been sent, you are
18 aware that the signature is scrawly, which means
19 they can't identify, or presumably they couldn't
01:47 20 identify who your informant was. Would you agree
21 with me that that might be characterized by some
22 as purposely obstructive?

23 A Well, because at this point we didn't want those
24 particular people to investigate it, we wanted it
01:48 25 to go to someone that would be -- I really didn't



1 trust any of the people at this point, that's
2 where I was coming from, and so to me the fact
3 that they wouldn't understand who it was and it
4 was scrawly, that was good as far as I was
01:48 5 concerned at that point.

6 Q Is that --

7 A I mean, when you look back at it, and certainly
8 the way you are looking at it, I can see you would
9 think, well, what's this woman wanting to do, but
01:48 10 I was wanting to get the most independent people
11 possible to look at this information and judge it.

12 Q But -- and that's your view now, but our concern
13 is what did both provincial and perhaps federal
14 governments view was going on at the time and it
01:49 15 doesn't appear to be that you were being
16 forthright at the time and that's really my point.

17 Can we turn to the next page,
18 please, again talking about the minister, Federal
19 Minister:

01:49 20 "Yah, but she doesn't even know where it
21 came from."

22 Mr. Wolch says, and he also says:

23 "It's better if we appear to be
24 co-operating to some degree."

01:49 25 Implicit in that statement, Mrs. Milgaard, is



1 that you didn't want to be fully co-operative;
2 would you agree with that?

3 A Yes.

4 Q And providing some information and not the
01:49 5 complete picture, would you agree with me that
6 some might view that to be manipulative?

7 A Certainly some people could feel that was
8 manipulative. I felt we were doing what was
9 necessary under the circumstances.

01:50 10 Q All right.

11 A Now, if my lawyer had definitely said to me,
12 "Well, you can't do that, Joyce," then I wouldn't
13 have done it.

14 Q Mrs. Milgaard, would you agree, though, based on
01:50 15 this circumstance, it might not surprise you if
16 the provincial authorities viewed this as being a
17 manipulation?

18 A They probably did, but I felt I had been
19 manipulated by the provincial government and the
01:50 20 federal government and all the governments all the
21 way along.

22 Q All right. Thank you for that. Can I please have
23 156905. Mrs. Milgaard, this is the second letter
24 written by investigator, private investigator
01:51 25 Mr. Bob Perry, and can you scroll down a bit, I'm



1 interested in this, that paragraph:

2 "We met with Mrs. Milgaard on June 12
3 ... and discussed various aspects of the
4 Milgaard situation at present. Mrs.
01:51 5 Milgaard suggested various avenues of
6 possible investigation. We advised Mrs.
7 Milgaard that we felt that it would be
8 in her best interest to fully discuss
9 any future investigation with your
01:51 10 office. Mrs. Milgaard requested we set
11 up another interview with Mr. Mike
12 Breckenridge."

13 Now, if we can just bear that in mind and go back
14 to the transcript of the press conference,
01:52 15 please, and the document ID is 054856, and if I
16 could have page 867, please. You are being asked
17 at this time, Mrs. Milgaard, by members of the
18 media why it took so long, and you indicated that
19 the letter was received in May, although I know
01:52 20 Mr. Wilson covered this, the first letter was
21 received in March; correct?

22 A Right.

23 Q Your response is:

24 "Well it took a long time for us to find
01:53 25 this like you know to go through this.



1 Quite frankly my part of the problem is
2 funding, uh, it takes money for a
3 private investigator and that's
4 something we haven't got a lot of any
01:53 5 more."

6 The private investigator, he would go out and do
7 a little bit, when we had money he would go out
8 and do a little bit more, but it's taken awhile.
9 Mrs. Milgaard --

01:53 10 A I think Peter maybe went out first on this a
11 little bit too.

12 Q I'm sorry?

13 A I think maybe Peter went out on this a little bit
14 too, but I'm not sure of that.

01:53 15 Q You weren't paying Mr. Carlyle-Gordge?

16 A I wasn't paying him, but I think we did have him
17 try to investigate it. It seemed to me that --
18 but I'm not sure at this time whether he was here
19 at that time or not, but I thought that we had
01:53 20 someone else that tried to get the information, I
21 don't think we were paying for it, and we didn't
22 get it and I think that's when we went to the
23 other, but bear in mind the time constraints that
24 really kept us from doing anything at that time,
01:54 25 and I tried to point this out before, was the fact



1 that of the Supreme Court and the preparation and
2 all the work that we were doing there, it didn't
3 leave any time for any of this other stuff at all.

4 Q Well, my concern with these comments, though, more
01:54 5 specifically, Mrs. Milgaard, is that you are
6 leading the press to believe that this took quite
7 some time because of the investigator taking time
8 and it was due to funds, it was due to
9 insufficient funds; is that right?

01:54 10 A And I believe that what happened was then the
11 funding was paid by Hersh and they did it.

12 Q All right. The Bob Perry letter, the portion that
13 we covered --

14 A Yes.

01:54 15 Q -- we just covered that, you are making a request
16 of Mr. Perry during that conversation to do
17 further investigation, and we can bring the letter
18 back up, 156905, you suggested avenue of possible
19 investigation, we -- Mr. Perry advised that he
01:55 20 felt that it would be in your best interests to
21 fully discuss any future investigation with your
22 office. There's no indication, Mrs. Milgaard,
23 that he wasn't about to do the investigation
24 because of a lack of money. Would you agree with
01:55 25 that?



1 A Yes. It certainly doesn't look like -- and it's
2 possible that I never gave him the reason that I
3 wouldn't want him investigating was because of the
4 money, but this is a letter to David Asper; right?

01:56 5 Q No, I'm sorry. If we can go to the next page,
6 please.

7 A Who is this letter from and to?

8 Q From Mr. Perry.

9 A To David Asper?

01:56 10 Q Yes, detailing a discussion that he had with you.

11 A Okay, good.

12 Q I'm sorry if that wasn't clear to you.

13 A No, I didn't have it in context at all. I thought
14 it was a letter he was writing.

01:56 15 Q And again, that detailed your conversation in
16 which you appear to be asking him to do further
17 investigation, his response isn't I can't do it
18 because there's no money, and that's my point,
19 Mrs. Milgaard.

01:56 20 A So why didn't he do it if I was asking him to do
21 more investigation?

22 Q Well, you don't seem to be stopped from asking him
23 to do further things based on a lack of funds at
24 this point. Would you agree with that?

01:56 25 A I don't know. Maybe I had the funds or maybe



1 David Asper had said I could go ahead. From this
2 I can't really tell, I'm sorry.

3 Q But by the time the press conference is held, you
4 are indicating to the press that there were no
01:56 5 funds to proceed with the investigation?

6 A Well, most of the times I had no funds for
7 anything.

8 Q Can we please go to 31514. Mrs. Milgaard, if I
9 just -- before we get into this portion of the
01:57 10 transcript, historically we've seen, and I think
11 you've provided ample evidence on this, that you
12 had sought assistance from the media to do
13 investigation on your behalf. Would you agree
14 with that?

01:57 15 A Yes.

16 Q And if funds were a concern at this point, why
17 wouldn't you have sought their assistance to help
18 you with uncovering whether or not this allegation
19 was in fact accurate?

01:58 20 A I don't know if we had reached the stage at this
21 point where we were trying -- like, at one point
22 we tried to give a story to each of the media and
23 it may be that at this point we didn't want to
24 favour anyone. I honestly have no idea. I can go
01:58 25 back to that time and only know that we were



1 intensely busy with any number of things and
2 that's why that probably didn't get the
3 consideration that should have been given at that
4 time, so for the investigation part of it,
01:58 5 obviously we felt that it had to be done
6 professionally. I don't -- I really can't give
7 you our reasons for it. It was something that we
8 decided, that it go through something like this.

9 Q The Supreme Court reference was over by the spring
01:59 10 of 1992; is that correct?

11 A That's right.

12 Q So now this is fall of 1992?

13 A Yes, but I had my son out at this point.

14 Q This was on May 29th, as I said, Mrs. Milgaard, or
01:59 15 I believe I said, and this is part of your
16 evidence in discussion with Mr. Hodson, and he's
17 inquiring about whether or not or why you didn't
18 contact the individuals identified by
19 Mr. Breckenridge, and the question is:

01:59 20 "Q And assuming that to be true, do you
21 know why those people were not contacted
22 or any of those people contacted in
23 advance of making the information public
24 to try and corroborate or verify what
02:00 25 Mr. Breckenridge was telling you?"



1 Your response is:

2 "A Well, as I pointed out to you, Mr.
3 Hodson, when Mr. Breckenridge came
4 forward, I instantly believed the
02:00 5 information he was giving because it so
6 fit in with the picture that I had in my
7 mind that I don't think for a minute I
8 discounted it and I wanted to go forward
9 with it."

02:00 10 Now, can we -- you recall saying that, Mrs.
11 Milgaard?

12 A Yes, I do.

13 Q Okay. Can we see 054602, please. This is a
14 return letter to Mr. Sawatsky, this is after your
02:00 15 interview with him, or part of your interview with
16 him?

17 A Yes.

18 Q Okay. Can we see the next page, please, and I
19 believe the request had been for you to provide
02:00 20 some documentation to Mr. Sawatsky. Does that
21 sound -- does that ring a bell?

22 A Probably, yes.

23 Q And your return letter is, or your return reply:

24 "I do recall the incident, and because I
02:01 25 was not really trustful of him at the



1 time..."

2 You go on to say how you were checking his
3 initials.

4 A Yes.

02:01 5 Q Mrs. Milgaard, how does that reconcile with your
6 comment here to the Commission or to the Inquiry
7 that you instantly believed him?

8 A Well, the man comes forward with this story. I
9 believed him, I really, really believed what he
02:01 10 was telling me because I wanted to believe what he
11 was telling me, okay and this is how I felt about
12 it, but at the same time, because so many people
13 had come through in the past and had said
14 something and then I had subsequently found it
02:01 15 wasn't true, I wasn't prepared to just trust this
16 person, and this is what I was telling Mr.
17 Sawatsky, I was not really trustful of him at the
18 time until he showed me, and when we had the
19 meeting, he actually showed me some initials on a
02:02 20 file that he said were his and they matched, so to
21 me that is not being untruthful when I said I
22 instantly -- I instantly accepted it I believe is
23 truth, but at the same time was distrustful. Can
24 you not see how that is possible, to have both
02:02 25 those feelings at the same time? I was excited



1 because to me it was a breakthrough and I thought
2 it's what I always suspected, and so I did sort of
3 instantly believe it, but at the same time it's
4 important for me to, after all the experiences I
02:03 5 had, to -- and that's why I told Mr. Sawatsky
6 that.

7 Q I just am having difficulty, Mrs. Milgaard,
8 reconciling how one can be trustful and yet
9 distrustful, or mistrustful at the same time,
02:03 10 which is ostensibly what you are saying I believe.

11 A No, you can say you believe something, but if you
12 are not sure of the source, you want to make that
13 assurance, and that's what I was trying to do.

14 Q Mrs. Milgaard, do you recall what Mr. Breckenridge
02:03 15 actually showed you when you were inquiring into
16 his initials? Can you recall what he showed you
17 to allay your concerns?

18 A I can't, I really can't.

19 Q You said something about a file. Does that assist
02:03 20 in any recall at all?

21 A No. As I said to Mr. Hodson, I really have no
22 current memory of what went on at that time and
23 I'm only going and piecing together from the
24 pieces of papers that are being shown to me now.

02:04 25 Q All right. My concern, or a question I have, as



1 we know now Mr. Breckenridge was not employed with
2 the government in 1971?

3 A That's correct.

4 Q And so anything he could have shown you with his
02:04 5 initials on it, the date on that information or
6 document couldn't have been 1971, and I'm just
7 wondering if you might have looked at that or
8 might have made note of that?

9 A I didn't. I could have, but I don't remember, I
02:04 10 don't recall what they were or anything of the
11 documents that he had, I'm sorry.

12 Q If we could go back to the press conference,
13 please, 054869, we had just covered a portion,
14 Mrs. Milgaard, of the transcript in which you
02:05 15 advised media that you didn't have money for an
16 investigator?

17 A That's right.

18 Q Therefore, this wasn't looked into. On this page,
19 and some of this was covered previously, but on
02:05 20 this page you go on to say further, that's right
21 but I've not contacted them because -- well, again
22 funds are a big issue, and plus if I get involved
23 automatically people think that I've tainted a
24 witness. So here you provided two reasons why the
02:05 25 potential corroboration provided by



1 Mr. Breckenridge hasn't been looked into and one
2 is funds, the second is that you didn't want to
3 contact witnesses --

4 A That's correct.

02:05 5 Q -- because they might be tainted. Incidentally,
6 Mrs. Milgaard, was there ever another situation
7 where you didn't contact witnesses because you
8 were concerned about this tainting issue?

9 A No, because by that point I think I had gone
02:06 10 through all the witnesses.

11 Q Can we now see transcript page 31572, please, Mr.
12 Hodson is again asking you here, this is from the
13 May 30th transcript, and again Mr. Hodson puts to
14 you, you know, queries why you didn't follow up.
02:06 15 The question is:

16 "Q And do you know why that was the case,
17 why for example, Mr. Wollbaum wasn't
18 followed up with, and some of the other
19 people that Mr. Breckenridge said could
02:07 20 corroborate his story were not
21 contacted?"

22 And your response here is:

23 "A Well I think we were so deeply involved
24 in what we were doing at that present
02:07 25 time that that just sort of took to the



1 sidelines, at that point, --"

2 "-- until we were prepared to go ahead
3 with it."

4 Do you see your response there?

02:07 5 A Uh-huh.

6 Q And that seems to differ from the other two
7 responses you provided would you agree?

8 A No, I think that they are similar, they are just
9 different things that we were going through at the
02:07 10 various times.

11 Q Okay, all right. Specifically no money for an
12 investigator, didn't wish to taint the witnesses,
13 it took to the sidelines, and the first part of
14 the transcript that we went through was that you
02:07 15 instantly believed Mr. Breckenridge, therefore,
16 you didn't pursue that; is that correct?

17 A Therefore I didn't pursue?

18 Q The corroboration, you didn't speak to the
19 individuals who were identified.

02:07 20 A No, I never said that, I never said that I
21 instantly believed and therefore I never provided
22 corroboration, I never said that, I'm sorry.

23 COMMISSIONER MacCALLUM: She just pointed
24 it to you where you told Mr. -- our counsel about
02:08 25 it, Mr. Hodson. Do you want to turn back,



1 please?

2 MS. KROGAN-STEVELY: That was page -- yes,
3 and that's what we just went through, that you
4 were deeply involved in what you were doing.
02:08 5 Mr. Commissioner, was there a different --

6 COMMISSIONER MacCALLUM: Yes. Just a
7 minute.

8 MS. KROGAN-STEVELY: The previous one was
9 page 31514, that transcript.

02:08 10 COMMISSIONER MacCALLUM: That's right,
11 yeah. I have you -- in the fall of 1992 you were
12 talking about the reference was long over, which
13 was another reason she said she was busy in the
14 spring of '92, and she answered "yes, but I had
02:09 15 my son out at that time," and then you asked her
16 about telling Mr. Hodson that you did not check
17 on the Breckenridge matter because you instantly
18 believed him, and she answered Mr. Hodson, "yes,
19 that was the reason".

02:09 20 MS. KROGAN-STEVELY: Yes, and right now I
21 believe Mrs. Milgaard has taken issue with that,
22 so I've had that brought back up, sir.

23 COMMISSIONER MacCALLUM: Uh-huh.

24 BY MS. KROGAN-STEVELY:

02:09 25 Q And again, Mrs. Milgaard, I am pleased to read



1 back to you:

2 "Q And assuming that to be true, do you
3 know why those people were not contacted
4 or any of those people contacted in
01:59 5 advance of making the information public
6 to try and corroborate or verify what
7 Mr. Breckenridge was telling you?"

8 And you responded that you instantly believed and
9 that's why you didn't?

02:09 10 A "... I instantly believed the
11 information he was giving because it so
12 fit in with the picture that I had in my
13 mind that I don't think for a minute I
14 discounted it and I wanted to go forward
02:00 15 with it."

16 But you have to understand that on top of that, I
17 also wanted to be sure, and that's why we went
18 ahead to check it out.

19 Q You wanted --

02:10 20 A -- to go and further check it out, and I thought
21 that that had been done by my lawyer. I mean, we
22 went over that this morning.

23 Q Yes, Mrs. Milgaard, we did, but I think, and I'm
24 sorry if I'm not making my point clear, but the
02:10 25 point that I'm trying to make is that you've given



1 four reasons why you didn't pursue the independent
2 corroboration?

3 A Because I had various reasons, and sometimes if
4 you ask me a question I'll give you one reason, I
02:10 5 may give Mr. Hodson another reason, but they are
6 all part and parcel of the same reasons. I
7 probably should try to figure out a complete
8 answer, but, you know, having all of these
9 questions thrown at you, one after another, I'm
02:11 10 not used to that, and so maybe I have to stop and
11 formulate more complete answers, but to me
12 everything I said, the fact that I instantly
13 believed him because it fit in, that's what
14 happened inside of me, I instantly believed him
02:11 15 because it fit in, okay, but the next thing is I
16 also knew that it was something that had to be
17 checked out because of my past experiences, so a
18 lot of feelings and ramifications go through
19 there. I probably didn't get enough of them out
02:11 20 each time to fully portray that, but all of those
21 reasons are the reasons that I had.

22 Q No money for an investigator?

23 A That was part of it.

24 Q Not wanting to taint the witness, but it simply
02:11 25 took the sidelines seems to be incongruous with



1 those first two things, and finally you instantly
2 believed, therefore, you just chose not to, is
3 also apparently incongruous with the first two
4 reasons. Would you agree with that, Mrs.
02:12 5 Milgaard?

6 A You can read -- I'm sure if that's the way you
7 read it. It's not the way I remember it.

8 Q We're almost through, Mrs. Milgaard. Back to
9 the -- the press conference was September of 1992.
02:12 10 Today you said if you knew then what you knew now,
11 you wouldn't have proceeded with the press
12 conference; is that correct? I hope I haven't
13 misquoted you.

14 A No, if I knew what I was going to be going through
02:12 15 at this Inquiry I wouldn't have even got my son
16 out of prison I don't think.

17 Q Well, yes, you would have.

18 A I just feel -- it's very difficult trying to
19 explain everything that went on and it's so long
02:13 20 ago.

21 COMMISSIONER MacCALLUM: Well, no, that
22 wasn't the question. All the lawyer asked you
23 was to acknowledge that you told us a little
24 while ago that if you knew in 1992 what you know
02:13 25 now, you wouldn't have gone through with the



1 Breckenridge press conference.

2 A I probably wouldn't have.

3 COMMISSIONER MacCALLUM: All right. That's
4 what she wanted to know.

5 BY MS. KROGAN-STEVELY:

6 Q Thank you. I just wanted to canvass just briefly,
7 Mrs. Milgaard, what you apparently knew before the
8 press conference, and I understand what you've
9 said, I appreciate what you've said, that you have
02:13 10 no independent memory of it, so I'm going to rely
11 on documents and see if we can sort of put
12 together what perhaps you did know at that time.
13 Do you understand my --

14 A Yes.

02:13 15 Q -- the avenue of my questions? If we could look
16 at document ID 156905, please, and we have looked
17 at this, this is the June 15th Mr. Perry letter to
18 Mr. David Asper, and just from this letter, I just
19 wanted to point out the first paragraph, we were
02:14 20 advised on June 12, 1992, by yourself, that our
21 previous report of May 26th had not been received
22 by your office. Your office confirmed this as of
23 June 12. A reproduced report was given, to you,
24 to be hand delivered to your office. You
02:14 25 requested and were supplied a copy of the same



1 report on June 12, 1992.

2 Do you have any reason to
3 believe that's not accurate, Mrs. Milgaard?

4 A I don't understand what it is saying. We were
02:14 5 advised on June the 12th that the May the 26th
6 report had not been received and your office
7 confirmed this as of June the 12th. Oh, a
8 reproduced report. I thought they were saying --
9 I was reading it that I thought they were saying
02:15 10 they had given it to me. No, okay. Sorry, I'm
11 not with you.

12 Q Oh, but --

13 A A reproduced report was given to Mrs. Milgaard --

14 Q Yes.

02:15 15 A -- to be hand delivered to your office. When. On
16 June the 12th.

17 Q Or the area of my interest, Mrs. Milgaard, is that
18 you received a copy of the report and it really
19 doesn't matter when it was turned over for my
02:15 20 purposes.

21 A Okay.

22 Q And would you accept that's the case?

23 A Apparently it was hand given to me. I must have
24 got it.

02:15 25 Q Well, you requested it according to that letter.



1 A Uh-huh.

2 Q You requested it and you got it, so am I safe to
3 presume, given that you requested it and received
4 it, you would have read it?

02:15 5 A I would expect so, yes.

6 Q Can we go to that document then, please, document
7 ID 213939, and here is a copy of that report to
8 which Mr. Perry had referred, May 26th, 1992.

9 A Oh, now just a minute, if this was made right out
02:16 10 to Mr. Asper and it was something that they gave
11 to me, I may have given it directly to David.

12 Q The previous correspondence, Mrs. Milgaard, said
13 you requested a copy of it, that you requested a
14 copy.

02:16 15 A Yes, but because they hadn't received it -- I
16 don't know, but I'm just suggesting this when I
17 see that, it's attention Mr. Asper.

18 Q Can we go to page 2 of that, please.

19 A This is my writing.

02:16 20 Q That's your writing?

21 A So -- but of course it could have gone on at any
22 time. However, that is my writing there.

23 Q So safe to presume you did read it; correct?

24 A At some point I definitely read it. I wouldn't
02:16 25 know at what point.



1 Q Well, Mrs. Milgaard, what interest did you have in
2 Mr. Breckenridge after the September, 1992 press
3 conference?

4 A What interest did I have in it?

02:17 5 Q Yeah. Perhaps I should ask it this way. Your
6 main concern with Mr. Breckenridge was prior to
7 the -- prior to and up to and including the press
8 conference; would that be fair?

9 A Right, but when we were going through and
02:17 10 preparing all the files and everything here, I
11 went through them all at that time.

12 Q So would -- I think it would be, and I hope you
13 agree, that it would be safe to assume that you
14 would have read this prior to the press
02:17 15 conference?

16 A I would expect so, yes.

17 Q All right.

18 A Absolutely.

19 Q Back to page 1, please. Can you please -- thank
02:18 20 you very much. I want to read what, I'll start
21 there, what Mr. Perry wrote in this report.

22 A Oh, yes, we went through this the other day.

23 Q Yes?

24 A Where he was forgetful and making --

02:18 25 Q Absolutely.



1 A Yes.

2 Q Mr. Perry has identified difficulties that he has
3 seen with Mr. Breckenridge.

4 A Yes.

02:18 5 Q "Although he could cover some topics in
6 detail he was vague in others. He
7 seemed 'forgetful' when making reference
8 to specific years pertaining to his past
9 and present employment and personal
02:18 10 history and yet concise when discussing
11 any political details and motivation.

12 During the interview
13 Mr. Breckenridge appeared unable to
14 provide specific details regarding the
02:18 15 handling of the Milgaard matter. Much
16 of his information was speculative and
17 based on his opinion and suspicions as
18 well as these of his co-workers."

19 So you would have read that at the time, --

02:18 20 A Yes, --

21 Q -- it's safe to say?

22 A -- and I think I discussed that with Mr. Hodson,
23 and --

24 Q And that's just my point, Mrs. Milgaard, I --
02:19 25 that, likely, you did read, or I'm suggesting you



1 did read this prior --

2 A Yes.

3 Q -- to September 1992?

4 A Yes.

02:19 5 Q Okay. And you'll agree that this is not a
6 particularly favourable report with respect to
7 Mr. Breckenridge?

8 A That's right.

9 Q Okay. And again, given that we've touched on
02:19 10 this, you advised Mr. Sawatzky that you were
11 not -- that you were not trustful, you were not
12 particularly trustful of Mr. Breckenridge, you
13 gave that information, that evidence, before, to
14 the Commission?

02:19 15 A Yes, at that time, right.

16 Q Yes. And if we could go now to, then, 331214.
17 This is the interview that Mr. Sawatzky conducted,
18 dates February 25th and 26th, 1993, but at page
19 278, please. And again, you will recall this, Mr.
02:20 20 Hodson did go over this with you?

21 A Yes, he did.

22 Q And your response, or you offered, I should say,
23 that there was some concerns:

24 "... when we started digging we were
02:20 25 finding that he wasn't where he said he



1 was at the time."

2 Now would you agree that, Mrs. Milgaard, that
3 that digging occurred or all the digging, that
4 you have spoken about in your testimony, occurred
02:20 5 prior to the press conference; correct?

6 A It must have been.

7 Q Okay. So these concerns, and my point is, these
8 concerns existed prior to the press conference?

9 A Yes.

02:21 10 Q Or, I'm sorry, this information that he wasn't
11 there at the time?

12 A It must have.

13 Q Okay.

14 A And I believe that our rationale at that point was
02:21 15 that if he wasn't -- the fact that he did work
16 subsequently in the department made me feel that
17 he had got that information from somewhere in the
18 department and I really felt, because I so
19 believed the information, that it was true
02:21 20 information, and that he had picked it up from
21 somebody else. And I think that's what I went
22 into when I -- into explaining that to
23 Mr. Sawatzky too.

24 Q No, I, and I accept that, umm, --

02:22 25 A Now that I look back, I should have been a lot



1 more suspicious and a lot more careful, but didn't
2 realize that this was going to happen the way it
3 did.

02:22 4 Q Okay. And finally, my final point -- and I'll
5 just bring all of my points together,
6 Mrs. Milgaard -- as you've said, any independent
7 corroboration really wasn't pursued, you made the
8 --

02:22 9 A It shouldn't have -- it should have been pursued
10 much more effectively, I would agree with that.

11 Q Okay. So prior to the September 1992 press
12 conference -- and I just want to bring these
13 points together -- Mr. Perry was concerned about
14 Mr. Breckenridge's credibility, and you apparently
02:22 15 knew it, given that you had read that memo?

16 A Yes.

17 Q Correct? You didn't trust him, you advised
18 Mr. Sawatzky that, you were looking at his
19 initials so you didn't trust him?

02:22 20 A But I believed the information.

21 Q You didn't think he worked there at the time;
22 correct?

23 A Didn't know for sure, I knew he'd worked there
24 afterwards.

02:23 25 Q Okay. And there was no independent corroboration



1 for his story that you or your lawyers had
2 uncovered?

3 A That's correct.

4 Q Right? And so it's on that basis you proceed to a
02:23 5 press conference, make allegations against
6 high-ranking officials in the government,
7 including the Premier; is that correct?

8 A That's correct.

9 Q Okay. And, within 72 hours, this has been shown
02:23 10 to the public, through a *Globe and Mail* article,
11 that Mr. Breckenridge didn't work with the
12 government at that time?

13 A That's right.

14 Q So it -- clearly, within 72 hours, we -- the
02:23 15 public knows that this is basically bunk?

16 A Yes.

17 Q Okay. And as Mr. Wilson pointed out to you this
18 morning, the same day as the press conference, due
19 to the good work of Sergeant Pearson taking
02:23 20 statements, he knew it was bunk at that point;
21 correct?

22 A Correct.

23 Q Okay. So my question then is, Mrs. Milgaard, was
24 it any surprise that the Saskatchewan Government
02:24 25 might have come to the same conclusion, that



1 really the information in the press conference was
2 not credible, no surprise, and that they didn't
3 give you what you wanted based on that
4 appreciation of the value of your information?

02:24 5 A Yes.

6 Q Okay. And Mrs. Milgaard, even though -- given
7 this situation, and that being the allegations of
8 criminal misconduct, would you agree that it was,
9 the appropriate response by the provincial
02:24 10 government was to investigate whether or not any
11 criminal offences occurred?

12 A Yes.

13 Q Okay. Thank you. Those are my questions.

14 COMMISSIONER MacCALLUM: Thanks.

02:24 15 MR. HODSON: I think Mr. Frayer is now
16 going next. I'm wondering if we want to take the
17 afternoon break, we only go until 3:30 today,
18 probably appropriate to break now.

19 COMMISSIONER MacCALLUM: Well, we should
02:25 20 break at some point, so perhaps this is the best
21 time.

22 MR. HODSON: Yeah.

23 *(Adjourned at 2:25 p.m.)*

24 *(Reconvened at 2:41 p.m.)*

02:41 25 **BY MR. FRAYER:**



1 Q Thank you, Mr. Commissioner.

2 Mrs. Milgaard, as you know, my
3 name is David Frayer and I represent the Justice
4 Minister of Canada.

02:41 5 A Yes.

6 Q And it safe to say that during the course of the
7 numbers of years that you were working for your
8 son's cause, that you and I had no contact of any
9 sort, in fact our first contact was when this
10 Inquiry commenced?

02:42

11 A That's correct.

12 Q And that would be in April of 2005?

13 A Correct.

14 Q Now I'm hoping to be able to get through my
02:42 15 cross-examination of you, Mrs. Milgaard, within
16 the time allotted. And I should say at the outset
17 that it's my intention to go over some of the
18 areas that Mr. Hodson went over with you in more
19 detail, so I will be drawing to your attention
02:42 20 certain documents, most of which you've seen
21 before. So I'd like to start out, first of all,
22 with some background questions relating to the
23 events between the time that Gary Young was
24 retained by you as, I think, the first lawyer that
02:42 25 you employed to look into David's case; would I be



1 accurate in that?

2 A That's correct.

3 Q And that was in the early '80s somewhere, in '81?

4 A Yes, it would be.

02:42 5 Q And what was your purpose in going to Mr. Young,
6 generally; what did you expect to accomplish by
7 seeking his advice?

8 A A way of starting.

9 Q A way of starting. And would I be accurate in
02:43 10 saying that that's the first time, as a result of
11 your discussions with Mr. Young, that you became
12 aware of the royal prerogative of mercy, the fact
13 that there was a process in place in the *Criminal*
14 *Code* that allowed you to apply, ultimately, to the
02:43 15 Minister of Justice for relief?

16 A That's correct.

17 Q And so, from the date of your son's conviction in
18 1970 until that date, that particular procedure
19 had never been drawn to your attention by anybody?

02:43 20 A I don't believe it had been.

21 Q Okay. And if we might just go through some of the
22 documents that relate to the advice you were
23 getting from Mr. Young, the first of those is
24 331949, if I can have that on the screen, please.

02:43 25 This isn't advice being offered by Mr. Young, it's



1 just a confirmation of a telephone conversation he
2 had with you where he is enclosing the transcripts
3 in question, and, Mrs. Milgaard, do you have a
4 recollection of what those transcripts were?

02:44 5 A No, I have not.

6 Q Okay. By that time, had Mr. Young obtained
7 transcripts from the preliminary inquiry and
8 trial, and could that be what he's speaking about
9 there?

02:44 10 A It could be.

11 Q Okay. And if we can move on to 331977, this
12 again, is a letter, in this case written by you,
13 it's dated April the 22nd of 1981. And if we can
14 just bring up the first -- top of this, and can
02:44 15 you read that, Mrs. Milgaard?

16 A Yes, I can.

17 Q Okay. And starting with the words:

18 "I was ...",

19 just mark it there:

02:44 20 "I was really very interested to hear
21 what conclusions you have come to with
22 regard to reviewing the appropriate case
23 law with respect to obtaining reference
24 by Governor in Counsel and/or Attorney
02:45 25 General.



1 Have you come up with anything,
2 any legal avenue that we may pursue?"

3 So it's apparent that you and Mr. Young have had
4 some discussions with respect to the next steps
02:45 5 you might take in terms of seeking relief?

6 A That seems to be the case, yes.

7 Q And it would appear that there was some
8 understanding that Mr. Young was going to research
9 the law on that area for you?

02:45 10 A Yes.

11 Q And that he was gonna come back to you with a
12 legal opinion as to what might occur next?

13 A That's what it would seem to be.

14 Q Okay. And if we can move on to 331877, this is a
02:45 15 letter dated May 26th of 1981, 331877. This is a
16 letter from Mr. Young to you, Mrs. Milgaard, dated
17 May 26th of 1981. If we could just go to
18 paragraph two, please, and highlight that. And
19 I'm concerned with this particular area:

02:46 20 "Firstly, in your letter of
21 April 20th, 1981 you inquire as to what
22 conclusions I may have come to with
23 regard to reviewing the appropriate case
24 law with respect to obtaining a
02:46 25 reference by the Governor -in-Counsel.



1 As I believe that I had mentioned to you
2 earlier an application can be made to
3 the Governor General, through the
4 Minister of Justice for a reference to
02:46 5 the Supreme Court, under the Supreme
6 Court Act, or for a new trial, or to the
7 Provincial Court of Appeal under the
8 Criminal Code. In the discretion of the
9 courts, new evidence can be heard. In
02:46 10 order to satisfy the Minister of Justice
11 that a reference should be directed, it
12 would be necessary to submit evidence of
13 a very strong nature pointing in the
14 direction of the innocence of your son.
02:46 15 The evidence would have to be submitted
16 in Affidavit form."

17 And if I can just go to the bottom portion of
18 this:

19 "All that I have done to this point is
02:46 20 to review the relevant case law, the
21 transcripts from the trial and to a
22 certain extent from the Preliminary
23 Inquiry, review Tallis' file and talk to
24 you and Peter concerning the matter."

02:47 25 So it would appear that Mr. Young, at that time,



1 actually had the transcripts from the preliminary
2 inquiry and trial in his possession?

3 A Yes, it looks like it.

4 Q Okay. And would this be the first such advice
02:47 5 that you received with respect to the type of
6 remedy that your son might get?

7 A I believe it was, yes.

8 Q And in that is, as I've already emphasized:

9 "... it would be necessary to submit
02:47 10 evidence of a very strong nature
11 pointing in the direction of the
12 innocence of your son."

13 A Yes.

14 Q And so Mr. Young -- and if I just might move on
02:47 15 with respect to that, as we can see from page 878,
16 a copy of this particular letter was sent to your
17 son? You'll note that --

18 A Yes.

19 Q So it would have been, for the first time, that
02:48 20 your son David would have been made aware of
21 certain legal advice being offered as to what
22 relief he might seek?

23 A Yes.

24 Q Okay. Now after Mr. Young was discharged as
02:48 25 counsel you went to Mr. Merchant, we've heard some



1 fair degree of background with respect to that,
2 and it was Mr. Merchant who was again studying the
3 issue for you and offered the bombshell theory as
4 such?

02:48 5 A Correct.

6 Q And it was after going to Mr. Merchant, and for
7 the reasons that you have advised the Inquiry, you
8 moved on to Mr. Wolch and Mr. Asper. And that, I
9 believe, was done in either late 1985 or early
02:48 10 1986; is that correct?

11 A That's correct.

12 Q And it's my understanding that the real first
13 contact with respect to this was sometime in March
14 of 1986, that is when you went in after David
02:49 15 Asper was assigned responsibility for this file,
16 that you turned over to him every scrap of
17 material you had?

18 A That's correct.

19 Q And that's a quote from your earlier evidence,
02:49 20 that is every single thing that you had in your
21 possession from the time that you first obtained
22 it in the early '80s to March of 1986 was turned
23 over to Mr. Asper?

24 A When you say it like that I have to think, well,
02:49 25 was every scrap, every piece I had. I -- I think



1 that everything I had that I felt was important I
2 turned over, I don't know whether it was every
3 scrap of paper that I had.

02:49 4 Q Do you recall, and can you give us any evidence
5 with respect to, generally speaking, what it was
6 you turned over to Mr. Asper? And for example, we
7 know that Mr. Young had in his possession a part
8 of Mr. Tallis' file, and that we've heard earlier
9 evidence that some 89 pages of the Tallis file was
02:50 10 copied and taken away by you; you recall giving
11 that evidence?

12 A Yes, yes.

13 Q And would that materials have been part of the
14 materials that were turned over to Mr. Asper?

02:50 15 A It -- it very likely was.

16 Q And would that also include the transcripts from
17 the trial, and the preliminary inquiry, and so on?

18 A If I had them in my possession at that -- I'm
19 quite sure that he got most of those transcripts,
02:50 20 because that's what he dug into, I believe.

21 Q Okay. Safe to say that these weren't chronicled
22 in any way, there wasn't a list or anything of
23 that nature to disclose what it was that you were
24 turning over to him?

02:50 25 A No.



1 Q They were in boxes, as I recall your description
2 of them?

3 A Yes, they were.

4 Q And there were a number of boxes, as I understand?

02:51 5 A Yes.

6 Q And Mr. Asper, and anyone else, would be charged
7 with going through the -- through all of those
8 boxes to see what, of significance, was in there?

9 A Yes.

02:51 10 Q And did you assist in that process or did you
11 simply leave it with him to sort of ferret through
12 the materials?

13 A Umm, afterwards I did assist, but at first, no,
14 because he was really delving into it. However, I
02:51 15 believe he called me about various things, and I
16 did, on occasion, go down to the office and go
17 through things with him.

18 Q So you would assist him from time to time in
19 looking for things that he felt were significant
02:51 20 to the work he was doing?

21 A Or that he wanted to ask me questions about.

22 Q Okay. And there was considerable contact during
23 that time?

24 A Umm, no, because I was back and forth out of the
02:51 25 country at that time.



1 Q Okay. Now moving on to June 26th of, or June 28th
2 of 1986, the document 333272, please. And this is
3 the letter dated January 28th of 1986 that's
4 authored by your son, and it's sent on to John
02:52 5 Crosbie, who was then the Justice Minister?

6 A Yes.

7 Q And this would appear to be the first contact,
8 directly, that anybody had with a Minister of
9 Justice. Would I be accurate in that,
02:52 10 Mrs. Milgaard, this is the first letter or
11 correspondence directed to any Minister of
12 Justice, to your knowledge?

13 A I believe it probably was.

14 Q Okay. You know, earlier, that your son David was
02:52 15 made aware of the fact because we've already
16 looked at the Gary Young opinion as such?

17 A Yes.

18 Q So this, to your knowledge, was the first of the
19 letters sent. And if we could just scroll down to
02:53 20 the bottom of this, in addition to the *Fifth*
21 *Estate C.B.C.*, it also has "legal", and do you
22 know whether that -- what that represents?

23 A He probably gave a copy, I imagine, to Hersh or
24 David Asper.

02:53 25 Q Okay. You think that may be the case. Now my



1 understanding and recollection of your evidence
2 was that you don't recall seeing this document, am
3 I accurate in that, until it was shown to you?

4 A It could be. I'm so mixed up about which
02:53 5 documents I saw at what time, at this point I'm
6 really not giving very good evidence, I'm afraid.

7 Q But, in any event, this particular document was
8 authored by your son. Did you play any role in
9 it?

02:53 10 A I don't believe so, no.

11 Q Were you aware of the fact that he was writing the
12 Minister of Justice at that time?

13 A I may have been.

14 Q You would have been?

02:53 15 A I may have been.

16 Q You may have been? Okay.

17 A I have no idea.

18 Q And then if we can refer to 333268. And this is a
19 letter March 11th of 1986 -- and we've seen all
02:54 20 these documents before, Mrs. Milgaard -- but this
21 is a letter from Henry S. Brown, an Executive
22 Assistant to the then-Minister of Justice, John
23 Crosbie. And if we can just focus in on the
24 bottom part of this particular piece of
02:54 25 correspondence, on that page, please, from the



1 words:

2 "If you have not exhausted ..."

3 So it says:

4 "If you have not exhausted the Court
02:54 5 process, you should do so. If you have
6 and feel that yours is a compelling
7 case, you may make an application to the
8 Minister for relief. The following must
9 be sent to the Minister: a brief fully
02:54 10 detailing why you say that there was an
11 injustice; copies of transcripts of the
12 preliminary hearing and trial; copies of
13 any judgements and reasons for judgement
14 that were issued in your case; copies of
02:54 15 any written arguments filed by the Crown
16 and defence. On receipt of this
17 material, your application will be duly
18 considered."

19 And --

02:55 20 A That's a --

21 Q -- when --

22 A That's an awful lot of things to ask an inmate to
23 have to provide; isn't it?

24 Q Well I'm just pointing out to you, Mrs. Milgaard,
02:55 25 that the -- that Mr. Brown, Mr. Crosbie's



1 Executive Assistant, said what was required.

2 A Yes.

3 Q Okay. And you're not surprised by the fact that
4 one of the things a Minister might want is a brief
02:55 5 fully detailing why you say there was an
6 injustice?

7 A Yes.

8 Q Okay. And then copies of the transcripts and so
9 on?

02:55 10 A Uh-huh.

11 Q So -- and I know your thoughts on the difficulty
12 in an inmate providing that, but in any event,
13 this particular letter was a response to your son?

14 A It was.

02:55 15 Q And a response that you've seen?

16 A And a response?

17 Q That you've seen before?

18 A Yes.

19 Q Okay. And then there is also some reference, on
02:55 20 page 2, to getting:

21 "... the assistance of a lawyer ...
22 unable to afford one, I would suggest
23 you contact Legal Aid Manitoba ..."

24 And we do know from your evidence that both Legal
02:56 25 Aid Manitoba and Legal Aid Saskatchewan were



1 contacted and, apart from some very small
2 financial assistance offered by Legal Aid
3 Manitoba, I believe, your son was denied Legal
4 Aid in each of those two provinces; is that
02:56 5 correct?

6 A And the reason for it --

7 Q Yes?

8 A -- was, in the one case, Saskatchewan said it was
9 because he was in Manitoba, and Manitoba said it
02:56 10 was because it was a Saskatchewan case, and
11 neither of them would fund it.

12 Q Okay. So that was passing off from one
13 jurisdiction to another?

14 A That's correct, that's correct.

02:56 15 Q The resolution of that was that no Legal Aid was
16 obtained in either of the two provinces?

17 A That's correct.

18 Q But there was some, am I correct in my
19 recollection, some small offer by Mr. Fineblit,
02:56 20 who was then the head of the Legal Aid Manitoba?

21 A I think at one point they approached him and got
22 some help for some particular thing they were
23 doing.

24 Q And was that assistance taken, or do you recall?

02:57 25 A I don't recall.



1 Q Okay. Now, with respect to this response that
2 your son David got from Henry Brown, was this
3 particular document turned over to Mr. Wolch and
4 Mr. Asper to your knowledge?

02:57 5 A I have, I have no idea.

6 Q Yeah. I think it would be safe to assume that
7 somebody might have turned it over to them since
8 they were now going to be pursuing relief on his
9 behalf?

02:57 10 A I would think that, you know, that David Asper was
11 going out and seeing David, so I'm assuming that
12 David would show it to him.

13 Q Okay. So that it's in, on March 11th of 1986 that
14 the first response to the first contact with the
02:58 15 Minister of Justice comes back, and it outlines
16 what materials are required so that relief can be
17 pursued?

18 A Correct.

19 Q Okay. Now the next document that I'd like to go
02:58 20 to is 156666.

21 COMMISSIONER MacCALLUM: I'm sorry, I'm
22 sorry, what was the date that you said there, I
23 don't see one on the top?

24 MR. FRAYER: The second document was the
02:58 25 one from Mr. Brown, and that is dated the --



1 March 11th of 1986, Mr. Commissioner. Is that
2 the document?

3 COMMISSIONER MacCALLUM: Thank you.

4 A It says 19, I thought it said 1996, I was really
02:58 5 amazed at that, 1986.

6 MR. FRAYER: Yeah.

7 COMMISSIONER MacCALLUM: I don't see any
8 date at all. Where is it?

9 BY MR. FRAYER:

02:58 10 Q It's a date-stamp at the top.

11 A Yellow.

12 Q It's highlighted there.

13 COMMISSIONER MacCALLUM: Oh, yes, it is.

14 BY MR. FRAYER:

02:58 15 Q And this is in response to your son's letter of
16 January 28th, 1986?

17 A Right.

18 Q You see that there. Now the next document,
19 Mrs. Milgaard -- and then just, this is one
02:59 20 directed to Peter Carlyle-Gordge by Mr. Wolch,
21 it's dated April the 14th of 1986, and it says:

22 "As you are probably aware I am
23 attempting to help David Milgaard.

24 David has requested that I contact you
02:59 25 to obtain the relevant transcripts, etc,



1 that might be of some assistance. Other
2 than some conversations with David and
3 reading the case as reported I have very
4 little to work with and am not really
02:59 5 sure in what direction I am going.

6 Any comments you might have and
7 transcripts would be greatly
8 appreciated."

9 So it looks like Mr. Wolch is attempting to get
02:59 10 the transcripts, and do you know what transcripts
11 he'd be talking about in that particular letter?

12 A Well it may be that Peter had taken some of the
13 transcripts, you know, because he had been working
14 with them, so -- and I didn't, we didn't have a
02:59 15 lot of copies of them or anything, --

16 Q Yeah.

17 A -- so it may be that -- or they could have been
18 transcripts from his telephone conversations.

19 Q Now I'm reluctant to ask this question because Mr.
03:00 20 Wolch has now left the Inquiry, but in any event,
21 would you agree with the assertion that Mr. Wolch
22 makes that he has very little to work with? That
23 seems contradictory to what was turned over to Mr.
24 Asper by you in March of 1986, literally boxes of
03:00 25 materials, Mr. Wolch is reporting:



1 "... I have very little to work with and
2 am not really sure in what direction I
3 am going."

03:00 4 A Well, maybe because he didn't know what Peter had
5 already done, would that be it? I --

6 Q Or maybe he didn't know what David Asper was
7 doing; could that be that too?

8 A But they were working together in the firm.

03:00 9 Q Well, we don't have any explanation here as to why
10 it is that Mr. Wolch is making that assertion, but
11 I think you would agree with me, Mrs. Milgaard,
12 that that's -- that's not accurate. I'm not going
13 to say it's not true, but it's not accurate:

14 "... I have very little to work with
15 ...",
16 he had a huge amount of material to work with
17 that had been turned over by you; is that
18 correct?

03:01 19 A Yes, but it may be that this is -- the material
20 that I turned over that was transcripts and things
21 that I had done in the past, he may have felt that
22 none of that was applicable to where he was going,
23 I have no idea why he would say that.

03:01 24 Q And I appreciate when I ask you that question that
25 Mr. Wolch would have to speak to what he meant by



1 that letter, but it's certainly accurate to say
2 that there was a considerable amount of material,
3 I think that's the point I'm making, that had been
4 turned over already by you to Mr. Wolch and Mr.
03:01 5 Asper?

6 A Yes.

7 Q Okay, thank you. Now, if we can just go to the
8 chronology of the Ferris report, I'm not going to
9 deal with this in much detail because the Ferris
03:01 10 report has been discussed a considerable number of
11 times, so -- but I'm going to go to a series of
12 documents that relate to that, Mrs. Milgaard,
13 starting with 182095, and if we can just bring
14 that up a little bolder if we can. Thank you.

03:01 15 This is a document that you've already testified
16 to, Mrs. Milgaard, it's dated February the 26th of
17 1987, this is the genetic fingerprinting
18 memorandum, it's from David Asper to file, and am
19 I accurate in saying that this is the first time,
03:02 20 that is, in February, on February 25th of 1987,
21 that Dr. Ferris' name and the potential for what
22 he can do arises?

23 A I believe so, yes.

24 Q And this is information, as I gather from this,
03:02 25 that you found out through some other source and



1 that what you were doing was communicating it to
2 Mr. Asper so that --

3 A Yeah. Well, I had found out from David.

4 Q Right.

03:02 5 A He had actually advised me that they were doing
6 this in England and wanted me to check it out.

7 COMMISSIONER MacCALLUM: That's David
8 Milgaard?

9 A Yes.

03:02 10 BY MR. FRAYER:

11 Q Your David?

12 A My David, and then it was when I called England
13 that they told me that Dr. Ferris was actually
14 doing the same work in Canada and I subsequently
03:02 15 contacted him.

16 Q Okay. And so you gave Mr. Asper this information?

17 A Yes.

18 Q As to where he could be reached and so on. And in
19 doing so, I think your purpose was to have your
03:03 20 lawyers contact Dr. Ferris?

21 A That's correct.

22 Q And see whether they could get a report that might
23 assist in proving David's innocence?

24 A No, I actually -- I don't know whether I had asked
03:03 25 them to do it because he was contacting me back



1 and forth, but I may have. Obviously David Asper
2 has, I left a message and hoped that he will
3 contact me, so he must have been trying to see
4 him, yes.

03:03 5 Q Sure. But in any event, this is the first time
6 that Dr. Ferris is identified --

7 A Yes.

8 Q -- by your David to you and you communicate this
9 to Mr. Asper on February the 25th of 1987?

03:03 10 A Yes, I would think so.

11 Q And then the next document is 162412 and this is a
12 letter dated September 15th, 1987 and this is
13 directed to David Asper, and am I accurate in
14 saying that at this time Mr. Asper was on that 10
03:04 15 month period where he was out of the law firm and
16 not practicing?

17 A I don't think so.

18 Q It wasn't, okay. And if I can just --

19 A It could be, but I don't know, I would have -- I'm
03:04 20 not sure on the dates there. It may be dealt with
21 in the letter is it?

22 Q Let's see if we can just go to the second
23 paragraph starting with "we decided", if we can
24 just have that brought up, please.

03:04 25 A Ah, yes.



1 Q So this might suggest that he wasn't with the firm
2 at that time?

3 A I think so.

4 Q "We decided that you might like to be
03:04 5 up-dated as to what has happened. It is
6 not too difficult. It can be put in one
7 word. Nothing. At least up until
8 yesterday when I visited Hersh and got
9 him to phone Ferris office re his letter
03:04 10 as well as to dictate the letters re the
11 exhibits to Saskatoon."

12 And you are communicating this to David Asper
13 because, in your words, and you said this a
14 number of times, everything seemed to be taking
03:05 15 so long?

16 A Yes, and it stopped literally.

17 Q I'm sorry?

18 A It really literally stopped when David Asper went.

19 Q So this was just a bit of a, a bit of work on your
03:05 20 part to get Hersh Wolch up and moving again; is
21 that accurate?

22 A I think I was still trying to get David Asper
23 back.

24 Q In any event, it's clear from here that not only
03:05 25 was there more to be done with respect to the



1 obtaining of an opinion from Dr. Ferris, but there
2 was the issue as to getting from the courthouse --

3 A -- the exhibits and all the rest of it. None of
4 that had been done.

03:05 5 Q None of that had been done?

6 A No.

7 Q So you are expressing some frustration here, Mrs.
8 Milgaard, with respect to how long this has been
9 taking?

03:05 10 A Yes.

11 Q And then on September the 13th, I'm not going to
12 take you to this, of 1988, and that's doc. ID
13 002486, and you needn't bring it up, the report
14 from Dr. Ferris was received directed to Mr.
15 Wolch's attention?

03:06

16 A Yes.

17 Q So this really did move slowly, that's some 18
18 months from the time that you and your son had
19 identified Dr. Ferris to the receipt of the
20 report?

03:06

21 A Yes. It took a long time for us even to get the
22 exhibits and get them out to him by the proper
23 avenues and everything.

24 Q Well, part of that of course was the fact that
25 nobody was endeavouring to obtain the exhibits for

03:06



1 that purpose?

2 A Well, once -- I did write that in that memo, I
3 indicated that I had dictated the letters
4 regarding the exhibits right then and there.

03:06 5 COMMISSIONER MacCALLUM: What was the last
6 date you mentioned, please, Mr. Frayer, report
7 from Ferris?

8 MR. FRAYER: The report from Ferris was
9 September 13th of 1988, Mr. Commissioner.

03:07 10 COMMISSIONER MacCALLUM: Thank you.

11 MR. FRAYER: And that's doc. ID 002486 and
12 I said I don't intend to go to it.

13 COMMISSIONER MacCALLUM: That's fine.

14 BY MR. FRAYER:

03:07 15 Q But just to make the point that it really was
16 moving slowly?

17 A Oh, absolutely.

18 Q 18 months, and one of the many times that you'll
19 say that they weren't moving to your expectations.
03:07 20 Now, I would like to next deal with the first
21 application that was filed, December 28th of 1988.
22 I don't intend to go through this in very much
23 detail, Mrs. Milgaard, other than to take you to a
24 couple of items that followed the filing of that
03:07 25 application. The first of those is 004868, this



1 is a letter dated February the 16th of 1989 and
2 this is directed to Mr. Wolch and it comes right
3 from The Honourable Doug Lewis who was then the
4 Minister of Justice, and this is the response to
03:08 5 Mr. Wolch's application under, I guess it was 617,
6 or 690 at the time, and for the first time we see
7 reference to the fact that, or for the second time
8 I should say, apart from the Crosbie letter,
9 paragraph 1, the entire transcripts of evidence at
03:08 10 the trial are required. You see that again?

11 A I do.

12 Q Because that was also in the Henry Brown letter.
13 And then if I can just take you to 218743, this is
14 the letter dated March 8th of 1989, and that's
03:08 15 218744, and this is the letter that was sent to
16 Mr. Asper wherein the *Fifth Estate* said they
17 weren't going to do the show?

18 A That's right.

19 Q And this is the one that you've commented on
03:08 20 already, that David -- it affected him
21 substantially?

22 A It did.

23 Q And if we can go, if we can go to page 2 and just
24 bring up the top portion of this if we can, it
03:09 25 says:



1 "... I thought we had a breakthrough
2 with the genetic tests on the semen.
3 This, as you know, is inconclusive, and
4 therefore disappointing."

03:09 5 And he goes on:

6 "We examined this as best we could, did
7 further research, and then concluded
8 there are other experts around who can
9 challenge much of what Dr. Ferris has to
03:09 10 say. In other words, the story had been
11 reduced once again to an argument
12 between experts. This didn't meet our
13 requirements."

14 And bearing in mind the fact that you were aware
03:09 15 that the December 28th, 1988 application to the
16 minister was predicated on two bases, one of
17 which was the report of Dr. Ferris, Mrs.
18 Milgaard, to your knowledge was this particular
19 letter or its contents ever communicated to the
03:09 20 Minister of Justice?

21 A I have no idea.

22 Q You have no idea?

23 A No, I'm sorry.

24 Q And I suppose that's better left for me to ask Mr.
03:10 25 Asper, but one would have thought that now that



1 you had received at least the first comment on the
2 Ferris report and that there was somebody out
3 there that would contradict its contents and the
4 Ferris report was the basis upon it, one of the
03:10 5 basis upon which the application was made, would
6 it not have made good sense to have advised the
7 minister that there was problems with the report?

8 A As you say that, I can see that it probably would
9 be advisable, but then in a sense wouldn't we be
03:10 10 knocking down what we were trying to do to get him
11 a remedy?

12 Q I can understand your reticence, but you'll agree
13 with me, I mean, that was one of the two bases
14 upon which the application was made, and now we
03:11 15 have the *Fifth Estate*, who have done a fairly
16 comprehensive review it would appear, including
17 the -- well, a fairly comprehensive review and
18 they are now saying --

19 A It's a story that has been reduced once again to
03:11 20 an argument between experts and that doesn't meet
21 their requirements. I think for them they needed
22 something that would stand alone, that met their
23 requirements. Like, almost what we felt that we
24 needed and were told later is a bombshell.

03:11 25 Q But I think what will come out is that this



1 particular letter was never communicated to the
2 minister?

3 A I don't know whether it was or not.

4 Q Now if we can deal with the family presentation
03:11 5 which Mr. Hodson and you went through, and I would
6 like to go through just in a little more detail
7 with you, and I would like to draw to your
8 attention the first of the documents on that
9 issue, and that's 301671, and this is a letter
03:12 10 dated April the 29th of 1989 and this is directed
11 to the then Minister of Justice Doug Lewis and
12 it's authored by your son, and if we can just
13 bring up the paragraph 2, it says:

14 "All the information you have requested
03:12 15 will arrive at your office shortly.

16 I've enclosed a waiver..."

17 And so on, and then it goes on:

18 "My family and myself will also be
19 sending you a submission of our own. It
03:12 20 is expected to be completed at the end
21 of May."

22 So your son David is telling the minister that
23 there will be a family presentation and that that
24 family presentation will be available by the end
03:12 25 of May, and your evidence was, as I recall, on



1 more than one occasion, that the idea of the
2 family presentation was to keep David busy while
3 he was --

4 A Yes.

03:13 5 Q -- in the institution and to try to keep him
6 focused on --

7 A On doing something.

8 Q Yes, okay. Now, if I can go on with respect to
9 that and show you 032906, which is a letter dated
03:13 10 May 8th of 1989, again this one is to the justice
11 minister. If we can go over to page 2, please,
12 it's at 906, and if we can just look at where it
13 has "finally", the second last paragraph. This is
14 Mr. Wolch telling the justice minister directly:

03:13 15 "Finally, we would like to thank you on
16 behalf of Mr. Milgaard for your letter
17 inviting his submissions. Mr. Milgaard
18 and his mother have been working
19 consistently since the date of
03:13 20 conviction to establish that a
21 miscarriage of justice has occurred. In
22 addition to the materials which we have
23 presented to you, the Milgaard's are
24 planning on making a separate
03:14 25 presentation and once this is prepared



1 it will be forwarded to you in due
2 course."

3 So Mr. Wolch is setting out in his letter that
4 this family submission will be a separate
03:14 5 presentation made to the Minister of Justice?

6 A That's correct.

7 Q Okay. And what Mr. Wolch is doing here, if I can
8 put it in these terms, Mrs. Milgaard, is he's
9 legitimising this family presentation that you say
03:14 10 was to keep David busy?

11 A Yeah.

12 Q But in the same respect, Mr. Wolch is telling the
13 Minister of Justice that in addition to what we've
14 given you, "...the Milgaard's are planning on
03:14 15 making a separate presentation and once this is
16 prepared it will be forwarded to you in due
17 course," so Mr. Wolch is now confirming in writing
18 to the Minister of Justice that a family
19 presentation is going to be part of the materials
03:14 20 that are going to be filed with him before he
21 makes a determination as to whether he will grant
22 the relief that you are seeking.

23 A Yes.

24 Q Would you agree with me?

03:15 25 A Yes, I would.



1 Q And the next letter is 157023, and this is a
2 letter dated October the 11th of 1989, this is
3 from Mr. Williams, and if I can just go to the
4 paragraph "for your information", this is going to
03:15 5 Mr. Wolch:

6 "For your information, I am also
7 enclosing the most recent correspondence
8 from Mr. Milgaard. In it he reiterates
9 his intention to submit a presentation
03:15 10 as part of his application to the
11 Minister."

12 And Mr. Williams goes on:

13 "Armed with this information, it would
14 be premature to conclude our
03:15 15 investigation at this time."

16 And then he said at the end of it:

17 "I would be happy to discuss any further
18 submissions you may wish to make on your
19 client's behalf when you are in Ottawa
03:16 20 at the end of November."

21 So that Mr. Williams, as late as October the 11th
22 of 1989, is, it appears, still awaiting the
23 family presentation that is going to be made?

24 A That's correct.

03:16 25 Q And if I can look at 333331, five threes and a



1 one, it's a letter dated December 22nd, if we can
2 go to the next page, 332, please, this is a letter
3 that is dated December 22nd of 1989 and David once
4 again is talking about the presentation. If you
03:16 5 can bring up the top paragraph, please:

6 "Since I got your letter saying we can
7 proceed with our family presentation,
8 I've completed quite a bit of the
9 written part of it. The video segment
03:17 10 of it is yet to be completed. It will
11 be in two parts. Part one is a
12 reenactment according to the evidence in
13 the case and part two is my family and
14 myself talking to you."

03:17 15 And did you understand that to be what the family
16 presentation was going to be, Mrs. Milgaard, the
17 way David has described it in his letter to the
18 minister?

19 A No. The video segment of it would have been, I
03:17 20 think, at the scene of the crime, but the
21 reenactment according to the evidence in the case.
22 Part two is my family and myself talking to you.
23 I honestly have no recall of him talking about the
24 family talking to them on a video, I really don't
03:17 25 recall that.



1 Q Okay. Because we do know that part one, which is
2 the reenactment according to the evidence, is the
3 one that was eventually prepared for the Supreme
4 Court reference in 1992. Am I accurate on that,
03:18 5 the one that we've seen?

6 A Well, actually there was another one that was
7 prepared by the family and I think that's the one
8 that David is talking about. This is where my
9 daughter-in-law actually did the walk and I did
03:18 10 the driving of the car and my son was filming, my
11 son Chris was filming it.

12 Q Now, do you know, Mrs. Milgaard, whether the
13 material that David talks about in this letter of
14 December 22nd, 1989 were ever provided to the
03:18 15 Minister of Justice?

16 A I honestly don't because I really don't remember
17 doing any video with David giving evidence in the
18 case or, you know, the family and myself talking
19 to you the way he says that there, I don't
03:18 20 remember that, that we ever did anything like
21 that.

22 Q And you'll agree with me, though, wouldn't you,
23 that because of the fact that David raised the
24 issue initially and Mr. Wolch confirmed it in
03:19 25 correspondence to the minister in the various



1 other exchanges, Mr. Williams with Mr. Wolch and
2 then David's letter to the minister of December
3 22nd, 1989, that there would be a reasonable
4 expectation by people reviewing David's
03:19 5 application of December 28th of 1988 that there
6 was something forthcoming that was going to form
7 part of the basis upon which the minister might
8 grant relief?

9 A I think so, and I don't understand, it says:

03:19 10 "I would like to know why no one answers
11 my letters."

12 So obviously he has been writing to them and they
13 haven't been writing back.

14 Q But you'll agree with me that the expectation
03:19 15 would be that in order to make a determination on
16 your son's application for relief, that --

17 A They would have to have that, yes.

18 Q They would have to have that?

19 A Yes.

03:19 20 Q And to your knowledge, that was never filed with
21 the Minister of Justice?

22 A Not to my knowledge.

23 Q Okay. Now, we do know that, and maybe I'm going
24 to, in fairness, refer you to one further document
03:20 25 in this respect, and that's 333356, and this is a



1 letter dated March the 4th of 1990, Mrs. Milgaard,
2 and it's your letter, and you are writing to then
3 Minister of Justice Kim Campbell, and if I can
4 just look at the paragraph starting with "I am
03:20 5 enclosing", it says:

6 "I am enclosing a video cassette which
7 contains some interviews with David and
8 about him that you might find helpful to
9 view."

03:20 10 A Oh, that may have been the video he was talking
11 about then.

12 Q But you don't describe this as part of a family
13 presentation or anything of that nature. Do you
14 know what the video was, do you have a
03:20 15 recollection of it?

16 A I really don't. We had so many where he was
17 speaking about his case and everything, so that
18 could very well have been that particular video he
19 was talking about, and this was in March of '90.

03:21 20 Q Yes, March of 1990, which follows. But it's very
21 clear that that particular one didn't have the
22 re-enactment, that wasn't a re-enactment video,
23 because David talks in his letter of December 22nd
24 of 1989 about the presentation being in two
03:22 25 parts, --



1 A Yeah.

2 Q -- part one is a re-enactment according to the
3 evidence in the case and part two is my family and
4 myself talking to you. This may be, this may
03:22 5 consist of part two?

6 A This may have consisted of part two, yes.

7 Q Okay. And I'm showing it to you to say that it
8 may very well have been that part of the family
9 presentation was made, but it wasn't made to the
03:22 10 Minister in its entirety?

11 A That's right.

12 Q Thank you. Now, with respect, I'm not going to go
13 through much of what Mr. Hodson has covered so
14 comprehensively, but just with respect to (V14)-
03:22 15 (V14)-, (V14)- (V14)- became one of the focusses
16 of the second application that was filed in
17 August. And if I recall your evidence correctly,
18 you interviewed her, and was it your evidence that
19 you didn't believe her and that you felt she was a
03:22 20 nut case; have I -- have I recorded that, sort of
21 in a nutshell, accurately?

22 A I shouldn't have said that if I did say it. I
23 felt that she was unstable, I felt she didn't make
24 much sense in the fact that she wanted to go and
03:23 25 see David in person, and yet she said she couldn't



1 even look at him on TV, and there were some things
2 about her that I felt were -- just made me very
3 suspicious.

03:23 4 Q Yeah, you had some doubts about her, and I can't
5 recall your evidence, but did you communicate to
6 Hersh Wolch and David Asper your concerns about,
7 sort of, the credibility of (V14)- (V14)- and so
8 on?

03:23 9 A Well I think they knew, because I showed her a
10 picture, because she -- I felt she was just trying
11 to make things up, so I showed her a picture of
12 Larry Fisher and said "is this who you saw", and
13 she indicated "well, you know, his hair was
14 longer", and so she more or less identified a
03:24 15 picture of Larry Fisher as her assailant, and I
16 felt that -- that there was something going on
17 there.

18 However, I can remember some
19 discussion with Hersh and David about the fact
03:24 20 that, since they had it, that it better go in,
21 something to that effect.

22 Q Okay. Since they had it, they'd let it go in, but
23 --

24 A No, that it better go in.

03:24 25 Q That it better go in?



1 A Yeah. Because, since it was something that had
2 been done, it better go in, even though I really
3 didn't feel that it had relevance, I really
4 didn't.

03:24 5 Q And we have seen in that August application, the
6 second application, that she was the first-named
7 rape complainant that -- of the ones that were
8 named that were the victims of Larry Fisher, --

9 A Yes.

03:25 10 Q -- she was the first one named? Okay. Now I'm
11 almost finished, in fact I will be finished in
12 time, Mrs. Milgaard.

13 The next document I want to show
14 you is 337999, and the reason why I'm showing this
03:25 15 to you is that I believe, in showing this document
16 to Mr. Hodson yesterday, I don't think this forms
17 part of the Inquiry record, and I think, while the
18 issue of apologies has arisen from time to time,
19 I'm not putting it forward for that purpose. All
03:25 20 I'm putting it forward for is to show that on July
21 the 18th of 1997, as a result of the DNA testing
22 that was done that exonerated your son David, that
23 the then-Minister of Justice, Anne Mclellan,
24 issued this news release, right? Are you familiar
03:25 25 with this?



1 A Yes, I am.

2 Q And you've seen that before? And I don't, and I
3 think I'm accurate in saying that I don't believe
4 that to be part of the Inquiry record, and it's
03:26 5 included for that purpose.

6 A I think it should be included, --

7 Q Yeah.

8 A -- because I also received a call from Anne
9 Mclellan, I subsequently met with her, and it -- I
03:26 10 was very touched by her response. I was very
11 impressed by the way she then met with us as
12 representatives of AIDWYC and helped look at
13 changes to the system at that time.

14 Q Okay. Thank you. And the next one I want to show
03:26 15 you is 338000. And this is a document that is an
16 excerpt from the Department of Justice Annual
17 Report, and this is -- covers the period of
18 2004-2005, and I just want to go through this. It
19 may be a little difficult to read, and I'll try to
03:27 20 bring in this up, starting with Rodney Cain, if I
21 might. If we could just focus in on Rodney Cain,
22 can you see that, Mrs. Milgaard?

23 A Yes, I can.

24 Q Right. And are you familiar with Rodney Cain, do
03:27 25 you know this case?



1 A No, I don't think I do.

2 Q If you read the last paragraph:

3 "The Minister found that this new
4 information provided a reasonable basis
5 to conclude that a miscarriage of
6 justice likely occurred in Cain's case.
7 On May 19, 2004, the Minister granted
8 the application, quashed Cain's murder
9 conviction and ordered a new trial."

03:27 10 A Yes.

11 Q Okay. And this is for the calendar year, I'm
12 sorry, or the calendar, fiscal year 2004-2005.

13 If we can move on, you are very
14 familiar with Steven Truscott, I understand. If
03:27 15 we can move over to page 2, please, and if we can
16 just highlight this paragraph.

17 "Kaufman conducted ...",
18 thank you. And there -- and, of course, you know
19 the history of Steven Truscott?

03:28 20 A And it's still going on.

21 Q Yes.

22 "On the basis of this new information,
23 the Minister decided that there was a
24 reasonable basis to conclude that a
03:28 25 miscarriage of justice likely occurred



1 in Truscott's case. Accordingly, on
2 October 28, 2004, the Minister referred
3 Truscott's case to the Ontario Court of
4 Appeal to be heard as a new appeal."

03:28 5 A Yes.

6 Q And I understand that, in the latter two weeks in
7 this month, that appeal is actually going to be
8 heard in the Ontario Court of Appeal?

9 A I understand it is.

03:28 10 MS. McLEAN: That's --

11 MR. FRAYER: I'm sorry?

12 MS. McLEAN: That's actually not correct.

13 MR. FRAYER: Okay.

14 MS. McLEAN: I'm putting on my AIDWYC hat,
03:28 15 Mr. Commissioner. In June of this year the Court
16 of Appeal is going to be hearing witnesses on the
17 fresh evidence component of Truscott. The appeal
18 itself will be heard, if all goes well, in
19 January of 2007.

03:28 20 BY MR. FRAYER:

21 Q Thank you. I appreciate that. The information
22 that's shown on the screen is accurate, though, am
23 I correct in that? Okay.

24 If we can move on to the next
03:29 25 one, the third of the people who have sought



1 relief from the Minister is Darcy Borge, and then
2 if we can go to the last paragraph in his
3 decision:

4 "In his decision of February 10, 2005,
03:29 5 the Minister determined that there was a
6 reasonable basis to conclude that a
7 miscarriage of justice likely occurred
8 in relation to Borge's conviction for
9 possession of stolen property. He
03:29 10 ordered a new trial on this charge
11 before the Alberta Court of Queen's
12 Bench."

13 And if we can move on to the next page, please --
14 and do you know that gentleman, by the way?

03:29 15 A No.

16 Q It's not a familiar name?

17 A No.

18 Q Okay. The next of these, the fourth of the people
19 named, is a Danny Wood; do you know that name,
03:29 20 does that look familiar to you?

21 A I don't think so.

22 Q Okay. Just looking at the bottom part of the
23 second paragraph:

24 "Therefore, the Minister found that
03:29 25 there was a reasonable basis to conclude



1 that a miscarriage of justice likely
2 occurred. His matter was referred to
3 the Alberta Court of Appeal to be heard
4 as a new appeal."

03:29 5 The fifth, James Driskell, is
6 one that I know you are very familiar with
7 because there is an inquiry about to commence in
8 Manitoba in July of this year into this
9 particular matter

03:30 10 A And I've worked with James and his mum.

11 Q Okay. And if I can just go to:

12 "On March 3, 2005, the Minister released
13 his decision regarding Driskell's
14 application for ministerial review. The
03:30 15 Minister granted Driskell's application,
16 quashed his murder conviction and
17 ordered a new trial. The same day, the
18 murder charge against Driskell was
19 stayed, and the Government of Manitoba
03:30 20 announced that there would be a public
21 inquiry into his case."

22 And if we can just go to the
23 last page of this document, 003, this, the year
24 ahead -- appreciating that this covers 2004-2005:

03:30 25 "A number of applications are expected



1 to make their way ... On July 12th,
2 2005, for example, the Minister released
3 his decision in the application for
4 ministerial review of Andre Tremblay who
03:30 5 contended that his 1984 conviction for
6 first degree murder was a miscarriage of
7 justice. The Minister determined that
8 there was a reasonable basis to conclude
9 that a miscarriage of justice had likely
03:31 10 occurred and referred the matter to the
11 Quebec Court of Appeal."

12 Are you familiar with the *Andre Tremblay* case?

13 A Somewhat, yes.

14 Q That was the very -- the one that attracted a fair
03:31 15 amount of news coverage --

16 A Yes.

17 Q -- after it occurred.

18 The reason why I'm showing you
19 this is that, during the course of your evidence,
03:31 20 and your evidence on the systemic issue -- and I'm
21 sure that Ms. McLean will elaborate on this more
22 during her examination of you -- is that your
23 submission has always been that an independent
24 body, a review body likened to the one in Great
03:31 25 Britain, is the one that can properly review



1 miscarriages of justice in the most impartial way?

2 A Yes.

3 Q But you will agree with me that when you look at
4 the results of this, this is some six people who
03:31 5 have alleged that a miscarriage of justice has
6 occurred, and that in all six examples relief has
7 been granted by the Minister of Justice; you will
8 agree with me too?

9 A Yes. But I would point out that from 1968 or '69,
03:32 10 there were not any wrongful convictions overturned
11 or taken through the Justice Department, as far as
12 I know of.

13 Q Okay. And you're aware of the fact that --

14 COMMISSIONER MacCALLUM: '68 to '69?

03:32 15 A No, right from the time that we did our case,
16 there were no -- they weren't, they weren't able
17 to get through the guidelines at that point.

18 I think that there have
19 definitely been some changes since our case, and I
03:32 20 appreciate what the Ministers are doing now, I
21 think there have been some changes made. However,
22 I still feel an independent board would be
23 preferable, because -- even from the idea that
24 people would maybe feel more comfortable in going
03:33 25 to an independent board than going to the Justice



1 Department.

2 BY MR. FRAYER:

3 Q And you're aware that, since your son's
4 application, the legislation in the *Criminal Code*
03:33 5 has changed substantially --

6 A Yes.

7 Q -- in terms of how 696.6 applications are now
8 dealt with?

9 A Yes, I am aware of that.

03:33 10 Q Now the last of the items, and I'll finish with
11 this, you made reference to a case this morning
12 that you said a lot of time was spent on it and
13 that the ultimate result of it was that, while an
14 inmate had alleged that a miscarriage of justice
03:33 15 had occurred, that in essence it was established
16 that that particular inmate was properly
17 convicted; are you familiar with the *Roger Coleman*
18 case, --

19 A Yes.

03:33 20 Q -- the one, the McCloskey investigation?

21 A Yes.

22 Q And that's a case in which --

23 A They did the DNA and it turned out to be him.

24 Q Yes, so they did the DNA, that turned out to be
03:34 25 him, and was that the case you were talking about



1 this morning?

2 A Yes, it was.

3 Q Okay. And that's the case that Jim McCloskey
4 worked on, Centurion Ministries worked on, --

03:34 5 A Yes, they did.

6 Q -- and --

7 A It was a real downer for him.

8 Q Yeah, but -- I understand that from a *Washington*
9 *Post* article I have here, I'm not going to clutter
03:34 10 the record with it other than to say that that's
11 the case you were talking about?

12 A Yes, it was.

13 Q Okay. That's fine, Mrs. Milgaard, thank you.

14 And, Mr. Commissioner, that's all the questions I
03:34 15 have.

16 COMMISSIONER MacCALLUM: Thank you very
17 much.

18 MR. HODSON: I think left to examine are
19 Ms. Knox, Mr. Wolch, and Ms. McLean. I have
03:34 20 discussed with all counsel and with
21 Mrs. Milgaard. I think we are going to adjourn
22 her evidence for one week, until Monday, June the
23 12th, as Eugene Williams will be testifying this
24 coming Monday, June the 5. So Mr. Williams will
03:34 25 be on all of next week, I do not expect that we



1 will finish Mr. Williams, and for the benefit of
2 counsel I think it's safe to assume that I will
3 be questioning Mr. Williams for the entire week.
4 We will then return with Mrs. Milgaard on June
03:35 5 the 12th until she is finished.

6 One other piece of information.
7 I am advised that, due to some further
8 construction problems, that we have not been able
9 to be here next week, we have been moved to the
03:35 10 Radisson Hotel, and I will make sure Emails are
11 sent out to everybody and to the media. So we
12 will be at the Radisson, I think it's
13 Michelangelo B where we have been before, for all
14 of next week, and then we return back here,
03:35 15 upstairs to the new part, for the week after.

16 COMMISSIONER MacCALLUM: Okay. Thank you.

17 (*Adjourned at 3:35 p.m.*)

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1 **OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATES:**

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5 contain a true and correct transcription of our shorthand
6 notes taken herein to the best of our knowledge, skill,
7 and ability.

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