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

* *

On Tuesday, June 13th, 2006

Volume 162

Inquiry Proceedings

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Ms. Catherine Knox,   **for** Mr. T.D.R. (Bobs) Caldwell

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

Mr. Rick Elson, Esq.,   **for** the Saskatoon Police Service

Mr. Chris Boychuk, Esq.,   **for** Mr. Eddie Karst

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

Mr. Marvin Bloos, Q.C.,   **for** Mr. Larry Fisher

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

(Canada), The Hon. Vic Toews

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

(Retired)

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1　　　　　　　　　*Transcript of Proceedings*

2　　　　　　　　*(Reconvened at 9:05 a.m.)*

3　　　　　COMMISSIONER MacCALLUM: Good morning.

4　　　　　ALL COUNSEL: Good morning.

5　　*JOYCE IOLA MILGAARD, continued*:

6　　**BY MS. KNOX**:

7　Q　　Mrs. Milgaard, good morning. When we left off

8　　　　yesterday I was asking you some questions about

9　　　　the story of the July 17th, 1990 allegation that

09:07　10　　　　Mr. Caldwell had not disclosed Ron Wilson's first

11　　　　statement to the police, I had played for you some

12　　　　transcripts of conversations between yourself and

13　　　　Mr. Lett, yourself and Mr. Asper, and yourself and

14　　　　some members of the media, and in the course of

09:07　15　　　　that conversation I'd asked you some questions

16　　　　about whether you had, prior to this story, an

17　　　　actual copy of Ron Wilson's first statement and

18　　　　you indicated to me that you weren't sure if you

19　　　　did. I'm going to take you back to some testimony

09:07　20　　　　that you gave to Mr. Hodson, I believe it was

21　　　　about May 9th, when he referred you to the

22　　　　transcript of your taped conversation with Ron

23　　　　Wilson on April 15th, 1981; do you remember that?

24　　　　　　　　　　That was -- and, Mr.

09:08　25　　　　Commissioner, the document reference is 177468.

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1   And do you recall that during

2   the course of that Mr. Hodson showed you, in that

3   transcript, where you were talking to Ron Wilson

4   and you were correcting him. He told you that he

09:08   5   had given a statement in May, but you pointed out

6   to him that in fact he'd given a statement in

7   March, and you told him that you actually had a

8   copy of the statement, that you had gotten it from

9   Mr. Tallis' file, and you offered to show it to

09:08   10   him; do you now have a memory of that?

11   A   I don't have a current memory of it at all.

12   Q   All right. Mrs. Milgaard, in the interests of

13   time and simply to make the point, you have

14   reviewed that April 15th, 1981 transcript?

09:08   15   A   Yes, --

16   Q   And --

17   A   -- through here.

18   Q   And you accept that that April 15th, 1981

19   transcript is an accurate transcription of the

09:09   20   information that was exchanged between you and Mr.

21   Wilson --

22   A   Yes.

23   Q   -- that April 15th day? So, although you don't

24   have a present memory, would you agree with me

09:09   25   that this Commission, the evidence before this

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1   Commission, which we presume to be reliable

2   because it came from you or from your records, is

3   that you did, in fact, have his statement?

4 A Yes.

09:09 5 Q You had Albert Cadrain's statement, you had Nichol

6   John's statements?

7 A Yes.

8 Q And, while you don't remember it, clearly it must

9   have been part of the pages that you copied when

09:09 10   we have a bill on Mr. Young's file for you doing

11   photocopying?

12 A That's correct.

13 Q Okay. So -- and I take it, based on that, that on

14   July 17th, 1990, while you didn't have that

09:09 15   information immediately to mind because it was

16   some nine years old, that was information in your

17   possession, or by then in your lawyers'

18   possession, that you could have checked to confirm

19   the correctness of the assertion that Mr. Lett was

09:10 20   making?

21 A Yes.

22 Q Okay. Now, Mrs. Milgaard, there's just a couple

23   of other pieces in relation to that tape that I

24   want to touch on, and again it's about how

09:10 25   information got disseminated that did some harm to

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1   the professional and personal reputation of my

2   client, and you can appreciate why I ask these

3   questions?

4   A   I do.

09:10 5   Q   But do you remember knowing and dealing with a CBC

6   reporter by the name of Alan Habbick, I think the

7   actual spelling of his name is H-A-B-B-I-C-K?

8   A   Yes.

9   Q   Do you remember if you also contacted him at CBC,

09:10 10   and I'm not sure if he was *The National* desk, but

11   you contacted him around the same time that you

12   contacted Mr. Rosner and Ms. Ternowitski (sic), or

13   I didn't pronounce that right, but that lady that

14   we listed to yesterday?

09:11 15   A   Yes.

16   Q   And you gave the same information to him?

17   A   It was my custom, in those days, that whatever I

18   was doing I had a list of people that I phoned, so

19   if we had discussed it and they wanted that

09:11 20   information out to the press when I had talked to

21   David Asper, what I would have done then would

22   have been taken my list and then gone through

23   everybody and spoken to them all in the same way.

24   Q   Okay. And despite your caution to yourself about

09:11 25   making sure that you were giving correct, truthful

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1   information, you now realize, based on the

2   information before this Commission, tapes that

3   were played yesterday, and access to other records

4   that you had, that you didn't, in fact, give

09:11 5   accurate information in some of these incidents?

6 A   I really do believe that I didn't give accurate

7   information, but I have to point out the fact that

8   I was trying to free my son, and I know I've made

9   mistakes, and I'm sorry for the mistakes that I've

09:12 10   made, I'm sorry for any reputations that I've

11   damaged.

12 Q   Okay. Mrs. Milgaard, it's an unfortunate reality

13   that sometimes, with best intentions in the world,

14   we all make mistakes; don't we?

09:12 15 A   Yes.

16 Q   And you realize, and you heard Mr. Caldwell

17   testify, that in retrospect he realizes he made

18   some mistakes with respect to your son's file in

19   how he assessed some information with respect to

09:12 20   matters like (V4)---- (V4)---, the one piece of

21   Merriman information, and that if he had to do it

22   over again, like I suspect if you had it to do

23   over again today, he would do some things

24   differently?

09:12 25 A   I think we all would.

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1   Q   Okay.

2   A   And that's my hope for this Inquiry, that the

3   policemen and people that are watching, other

4   prosecutors and that, will see "eh, I've been

09:12   5   there", and possibly it will stop them in their

6   tracks from doing what we've done.

7   Q   Okay. But, Mrs. Milgaard, do you also accept that

8   sometimes people, when people make mistakes they

9   are honest mistakes, and that Mr. Caldwell had no

09:13   10   idea back in 1969 that when he didn't, you know,

11   he accepted that the (V4)---- (V4)--- was

12   unrelated, that -- and when he accepted other

13   matters as being factually accurate, that he had

14   no idea that he was wrong?

09:13   15   A   I think that I could go along with that, but

16   I think that what's kept me from maybe forgiving

17   him -- and I always try to do that -- is his

18   letters to the parole board.

19   Q   That --

09:13   20   A   I mean they were untrue, and that bothered me a

21   great deal, it kept David in when I felt he could

22   have been out much earlier. And so I've held onto

23   that, and that's all I'm hanging onto, but I'll

24   let go of that some day too.

09:13   25   Q   Mrs. Milgaard, I am going to talk to you about

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1   that subject area as area as we move along.

2   A   Good.

3   Q   Mrs. Milgaard, I'm not going to play for you the

4   conversation that you had with Alan Habbick, but

09:14 5   for the record I would indicate that it appears on

6   tape 30 immediately after your conversations with

7   Mr. Lett and with Mr. Asper.

8   Mr. Commissioner, the

9   transcription of that conversation starts at

09:14 10   336143.

11   And it's at page 336163, there

12   is the discussion -- and, if I may, I'll just read

13   it to you briefly, I had arranged for the clip but

14   I won't ask for the staff to play it in the

09:14 15   circumstances. And Mrs. Milgaard, at page

16   336163 -- maybe we could bring up the transcript

17   page -- 336163 you -- we have the transcript, and

18   perhaps if we could zero in on sort of the half

19   page at a time to make it easier to read. This is

09:14 20   where you have been having some -- a long

21   discussion with him, as I said the tape starts at

22   page 336146, page 90, and this is at page 110 of

23   the actual text. You start talking to him, as you

24   see, or you're talking to him about Mr. Watson and

09:15 25   the original statement, and you indicated to

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1   Mr. Habbick that the original statement was so

2   unexpected, he is asking how you found out about

3   it, and you respond to him:

4   "Oh yeah, well it was just Dan Lett,

09:15 5   like he calls everybody every day ...",

6   and you laugh there, and you indicated that he

7   called Watson, and that he discussed with him the

8   original statement that he had received. And if

9   we could go to page 111, please, at 97 -- or line

09:15 10   7, and you make a very clear statement here,

11   which is a statement referring to that March 3rd

12   statement that obviously Mr. Tallis didn't have

13   because he didn't cross-examine him on it

14   anywhere. Do you see how that so directly

09:15 15   conflicts with the transcription that you had

16   available to you and the discussions that you had

17   just had with Mr. Asper and Mr. Lett?

18   A   Yes.

19   Q   Okay. And then you go on to talk about civil

09:16 20   suits and the fact that you -- that you're

21   checking into suing Mr. Caldwell, among others,

22   because you're putting this forward as an accurate

23   allegation of misconduct on his part in spite of

24   the knowledge you have based on the discussions

09:16 25   that we heard yesterday; aren't you?

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 1    A    Yes.

 2    Q    Okay.  Mrs. Milgaard, somewhere in the tape -- and

 3         I didn't make note of it -- you indicated to a

 4         reporter that Mr. Watson had called David Asper

09:16  5         and that David Asper had leaked to Mr. Asper --

 6         and it was your term "leaked" -- had leaked to Mr.

 7         Asper the story that Mr. --

 8    A    I'm sorry, Mr. Asper leaked to Mr. Asper the

 9         story?

09:16 10   Q    Mr. Asper leaked to Dan Lett the story, --

11    A    Okay.

12    Q    -- and that was how Dan Lett got onto this story

13         that became such a terrible accusation against my

14         client in the national media.  Is it your memory,

09:17 15        or do you have a memory, that in fact it was Mr.

16         Asper who leaked the story?

17    A    I have no memory of these events.

18    Q    Okay.

19    A    Not --

09:17 20   Q    If the record indicates that that, in fact, is

21         what you stated on this date, July 17th or July

22         18th, 1990, to have happened, can we assume that

23         that, indeed, is what has -- what happened as the

24         events would have been much fresher in your mind

09:17 25        then than they are today?
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1   A   I would certainly think that that would be more

2   accurate than my memory now.

3   Q   Okay. And, again, I'm not going to bring the

4   record up but it can be provided.

09:17   5   The final conversation I want to

6   take you to on this point is a con -- do you

7   remember calling -- I'm not sure, I'm stopping

8   because I'm not sure if it's you calling or him

9   calling you -- but do you remember having a

09:17 10   conversation with Reverence McCloskey, Jim

11   McCloskey, about this subject?

12   A   No.

13   Q   Okay. Mr. Commissioner, if we could bring up tape

14   123 transcription, the transcription starts at

09:18 15   337022, and again I'm not going to ask to play the

16   audio unless you want to hear it, you can see, you

17   will be able to see in the transcription what it

18   is that I want to ask you. Okay. We have, if we

19   could bring up this first part please, that it is

09:18 20   tape 123, that it is a recording of tapes or

21   conversations taped in July 1990, and if we could

22   go to the next part, next page down, page 2, and

23   you see it has an index of conversations, and

24   there's an index for a conversation between you

09:19 25   and Jim McCloskey that starts at page 8, which is

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1   at page 337023 of our document database. And if

2   we could bring out this part, please, page 4.

3   See, this is the beginning of your conversation,

4   it's headlined you're discussing Wilson's

09:19 5   statement, and you go on to discuss other matters

6   like the song you were doing for the Prime

7   Minister; do you see that?

8   A   Okay.

9   Q   Okay. Do you see where you are telling him that

09:19 10   there was an article in the paper and that you had

11   found out that Wilson -- sorry -- Watson, Wilson's

12   lawyer, had received a statement, and you go on to

13   discuss -- if we could go to the next page -- how

14   he came to receive the statement, and if we could

09:20 15   -- yeah. And you see, you say to him:

16   "They sent him Wilson's first Statement,

17   which we've never had."

18   Do you see yourself --

19   A   Yes.

09:20 20   Q   -- giving that information to Mr. McCloskey? And

21   then you talked about it's almost identical to the

22   one that he had given Paul Henderson, and Mr.

23   McCloskey appears to be getting quite excited that

24   he is getting -- and I mean no disrespect by

09:20 25   this -- but that he is getting a little bit of

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1		dirt to work with here, that he's getting some
2		evidence of wrongdoing; do you see that?
3	A	Yes.
4	Q	And then the conversation continues with you
09:20 5		discussing with him that statement, and if we
6		could go to the next page, please, and actually I
7		just found where I -- bring out that part, please.
8		You indicate to him that Wilson, and I presume by
9		that either Wilson or Watson, but you say:
10		"But Wilson phoned David and told him
11		about this Statement, so David leaked it
12		to Dan Lett, and Dan Lett called
13		Watson."
14		You see the --
09:21 15	A	Yes, I do.
16	Q	So that is the information that you were giving to
17		Mr. McCloskey that July 17th day?
18	A	Uh-huh.
19	Q	And then you start reading to him some aspects of
09:21 20		it and including what Watson had said in the
21		newspaper?
22	A	Uh-huh.
23	Q	And, Mrs. Milgaard, the conversation continues
24		on --
09:21 25		COMMISSIONER MacCALLUM: We're speaking

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1   about, at line 7 there, just for the record,

2   we're speaking about David Asper and not David

3   Milgaard?

4   MS. KNOX: That's a good point,

09:21 5   Mr. Commissioner.

6   BY MS. KNOX:

7 Q   Looking back at line 7, when you say that there

8   was a phone call made to David about the

9   statement, David leaked it to Dan Lett, could you

09:21 10   clarify that it is David Asper, as I'm assuming,

11   and not your David, David Milgaard?

12 A   Yes, it would be David Asper.

13 Q   David Asper, okay. And then you go on to continue

14   to discuss, as I said, with him, and you make

09:21 15   reference to the fact that it is the Riddell

16   statement as we talked about yesterday in another

17   conversation, that you knew exactly what statement

18   was being put forth as being one that hadn't been

19   disclosed?

09:22 20 A   I'm sorry, I lost the question there.

21 Q   Referring to the top of page 11, you do again

22   repeat to him as you read to one of the other

23   reporters that the statement in question was the

24   one that Ron Wilson gave to Inspector Riddell, a

09:22 25   statement that you had had since 1981, and that

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1		you knew that Mr. Tallis had cross-examined him on
2		it at the preliminary inquiry and trial?
3	A	Yes.
4	Q	Mrs. Milgaard, this was during the time when you
09:22 5		were continuing to elicit the support of Centurion
6		Ministries and you were continuing to work to
7		convince the public particularly that your son had
8		been framed, if I may use that phrase?
9	A	Yes.
09:23 10	Q	And that this information, when you gave it to Mr.
11		McCloskey, you would know well that this was
12		information that he would take into his
13		consideration in the work that he was doing for
14		you didn't you?
09:23 15	A	I obviously believed, after talking to David Asper
16		on the phone, what David was telling me and that's
17		why I passed it on in this manner.
18	Q	But, Mrs. Milgaard, to say that you obviously
19		believed it, the record shows, and out of your own
09:23 20		mouth to Dan Lett and David Asper the record shows
21		that you knew differently. You might have wanted
22		to believe it or you might have decided to go with
23		what Asper told you, but the reality is you knew
24		better didn't you?
09:23 25	A	I did not or I wouldn't have gone ahead with it.

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1   I believed that -- I believed what Mr. Asper told

2   me and went on it.

3 Q Mrs. Milgaard, you know very well, or if we could

4   go back to what Mr. Asper told you, all that Mr.

09:23 5   Asper told you was that maybe he didn't have a

6   physical copy of the statement, but what you and

7   Mr. Asper agreed upon is that he obviously knew

8   about it because he cross-examined him on it

9   wasn't it?

09:24 10 A Yes, we do agree on that.

11 Q So in terms of splitting hairs to say you believed

12   he didn't have the physical statement, you had

13   full knowledge that he had the content of the

14   statement?

09:24 15 A Yes, I probably did.

16 Q And you didn't convey that to any reporter or to

17   Mr. McCloskey did you?

18 A No. I conveyed what David Asper conveyed to me I

19   believe.

09:24 20 Q Mrs. Milgaard, with respect, and I am trying very

21   hard to maintain a kindness towards you, but with

22   respect, I suggest to you that you are splitting a

23   pretty fine hair here to suggest that what you

24   were telling Mr. McCloskey, what you told Alan

09:24 25   Habbick, what you told Cec Rosner was what David

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1		Asper had told you because it wasn't, what you
2		told them is that he didn't have the statement,
3		you didn't say but he knew about the statement,
4		but we know he knew about the statement because he
09:24 5		cross-examined on it did you?
6	A	No, I didn't, and I obviously should have.
7	Q	And in some places, in some places you
8		specifically said he didn't cross-examine him on
9		it didn't you?
09:25 10	A	I don't recall that.
11	Q	Okay. Well, we can go back, but the record is
12		there for all of us to examine and I've showed it
13		to you.
14	A	Yes.
09:25 15	Q	You said to reporters, if he had it, he would have
16		cross-examined on it?
17	A	Yes.
18	Q	And you knew that not to be true?
19	A	I don't know that I knew that not to be true at
09:25 20		that time. I'm sorry, I have no current
21		recollection of any of this, so I can't say that.
22	Q	But, Mrs. Milgaard, looking at the records of the
23		words that came out of your own mouth, would you
24		agree with me that with those records we can
09:25 25		clearly see that you were stating things different

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1   than what you knew to be true based on your

2   conversation with Mr. Asper and Mr. Lett?

3   A   That's what it seems to be.

4   Q   Okay. Mrs. Milgaard, I wonder if I could bring up

09:25 5   for you to look at a *StarPhoenix* article dated

6   August 16th, 1991.

7   MR. HODSON: Doc. ID?

8   MS. KNOX: Oh, I'm sorry, 325148. I'm

9   sleeping at the switch.

09:26 10   BY MS. KNOX:

11   Q   Mrs. Milgaard, this is a story that appeared in

12   the *StarPhoenix* on August 16th, 1991 and it

13   appeared in other newspapers in Canada. You

14   remember that don't you?

09:26 15   A   Yes, I do.

16   Q   And it was played in the TV --

17   A   I shouldn't say yes, I do. I don't remember the

18   article at all, but --

19   Q   But you do remember that --

09:26 20   A   I followed them all.

21   Q   -- that Centurion Ministries stepped up to the

22   plate, they made these kinds of statements in the

23   Canadian public media, this is an example of

24   the --

09:26 25   A   Okay.

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1 **Q** Starting with the bold assertion that:

2   "Saskatoon city police framed David

3   Milgaard."

4 *A* Uh-huh.

09:26 5 **Q** And you can go through the entire thing if you

6   wish, but, Mrs. Milgaard, over the next number of

7   days we'll be seeing a large number of video and

8   audio representations of this story and as well

9   this group presented a report to every member of

09:27 10   the Canadian parliament didn't they?

11 *A* Yes, they did.

12 **Q** You knew that and you helped to arrange it?

13 *A* Yes.

14 **Q** Mrs. Milgaard, at any point in time when Mr.

09:27 15   McCloskey and Mr. Henderson were stepping up to

16   the microphone and making these assertions, did

17   you hesitate for a moment and say to yourself,

18   "but I misled them a little bit, I told them

19   things that I knew to be wrong, like, I said the

09:27 20   Crown withheld Ron Wilson's first statement"?

21 *A* No, I never said that to myself.

22 **Q** Would you accept today, having sat through this

23   Inquiry, having listened to Mr. Henderson and

24   having heard all of the evidence, that that kind

09:27 25   of information from you played a part, perhaps a

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	1	significant part in the conclusion they reached
	2	and the report they wrote because they were
	3	primarily relying on you for their information as
	4	to wrongdoing?
09:28	5	A It could have been.
	6	Q Yeah. Mrs. Milgaard, do you see how that headline
	7	and all of those stories that came out of that
	8	would have impacted terribly on the professional
	9	and personal reputation of my client?
09:28	10	A Yes.
	11	Q And, Mrs. Milgaard, I take it we can agree that
	12	that was wrong, was wrong then and it's wrong now?
	13	A I've always said that I agreed that the first
	14	trial was legitimate and that it was believed, but
09:28	15	I've also always said that when they had the
	16	information of Larry Fisher, I believe from that
	17	time on that my son was framed, I believe that
	18	they knew they had the wrong person and that no
	19	one did anything about it, and, I'm sorry, but I
09:29	20	can't change that belief, that's what I believed
	21	all along, so I could look at a headline that says
	22	"Milgaard framed" and I could truly believe it.
	23	Q Okay. But you know the evidence doesn't support
	24	your belief, don't you, today?
09:29	25	A That evidence may not support my belief, but I

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1		really believed that in 1970 they had all the
2		information there and it should have freed my son
3		then.
4	Q	I'll go there with you, but there's a couple of
5		other points in terms of the allegations that
6		you've made that I want to touch on before we
7		move.
8	A	Okay.
9	Q	I want to talk for a moment about the motel room
10		incident and the various allegations made by you,
11		including in your book, that the Crown had
12		information from Debbie Hall that they chose not
13		to call at the trial. You know that's not true
14		don't you?
15	A	I don't.
16	Q	Mrs. Milgaard, you had possession of the
17		statements of Craig Melnyk, George Lapchuk and Ute
18		Frank at the time?
19	A	Uh-huh.
20	Q	You were in the court when there was a *voir dire*
21		held toward the end of your son's trial where Mr.
22		Caldwell clearly outlined on the record the
23		circumstances giving rise to his knowledge of
24		Melnyk and Lapchuk, he outlined on the record that
25		he had three statements, that he had interviewed

09:29 (line 5)
09:29 (line 10)
09:30 (line 15)
09:30 (line 20)
09:30 (line 25)

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1   two witnesses, that he, indeed he provided the

2   three statements to the judge for review and he

3   indicated on the record that he had given all

4   three statements to Mr. Tallis and he was making

09:30 5   Ute Frank available to Mr. Tallis to talk to

6   because he had decided he wasn't going to call

7   her?

8   COMMISSIONER MacCALLUM: Would you please

9   identify the three statements for the record,

09:30 10   please?

11   MS. KNOX: Craig Melnyk --

    Mr. Commissioner, if you'll give me a minute here

13   to lay my hands on them.

14   COMMISSIONER MacCALLUM: I wasn't so much

09:31 15   interested in the doc. ID as I was in simply the

16   names of the parties who gave the statements.

17   MS. KNOX: Craig Melnyk.

18   COMMISSIONER MacCALLUM: Yes.

19   MS. KNOX: George Lapchuk.

09:31 20   COMMISSIONER MacCALLUM: Yes.

21   MS. KNOX: And Ute Frank.

22   COMMISSIONER MacCALLUM: Thanks.

23   MS. KNOX: The doc. IDs for George Lapchuk

24   are 002129, for Ute Frank, 277584, and I don't

09:31 25   have George Lapchuk directly -- Craig Melnyk

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1   directly in front of me.

2   BY MS. KNOX:

3   Q   But you knew during the course of the trial that

4   these statements were obtained as a result of a

09:31 5   conversation that Ron Wilson had with the police

6   on his way to Saskatoon the night before the trial

7   didn't you?

8   A   Yes, I did.

9   Q   And you knew that in one of those statements, one

09:31 10   of those witnesses said that Debbie Hall was no

11   longer in Regina, that she had run away and she

12   was either in, I think they said Vancouver or

13   Toronto?

14 A   And that's why when we got Debbie Hall and

09:32 15   interviewed her, I was so excited about it, and, I

16   mean, if I hadn't believed what Debbie Hall was

17   saying, we would never -- and if Mr. Asper hadn't

18   believed it and Mr. Wolch, we would never have

19   submitted it with our application. When I look

09:32 20   back now and see how we relied on that piece of

21   paper and the Ferris piece of paper to free my son

22   at that time and how it literally backfired on us,

23   if I had known now, know what I know now, we would

24   never have submitted it in the first place.

09:32 25 Q   But, Mrs. Milgaard, to go back to the factual

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1		assertions you've made about that, you know that
2		Debbie Hall was not interviewed in 1970 because
3		she wasn't anywhere in the province; in fact, she
4		had run away from home, nobody knew where she was?
09:32 5	A	I did not recall any of that.
6	Q	Well, I'm going to suggest to you that it was in
7		the statement. Would you accept that if it's in
8		the statement, you must have known it at that time
9		because you read the statements?
09:33 10	A	In 1969?
11	Q	Uh-huh. Or you met with, you were meeting with
12		Mr. Tallis, you ultimately got copies of the
13		statements, certainly no later than 1981.
14	A	I'm sorry, you've lost me. I thought you were
09:33 15		talking about Mr. Tallis -- or when Mr. Caldwell
16		said it in, at the trial.
17	Q	Yes.
18	A	And that's in 1969.
19	Q	1970 actually.
09:33 20	A	1970, okay. Well, I have no memory of that at
21		all.
22	Q	Mr. Commissioner, for the record, the trial
23		transcript with respect to that begins at, it's
24		page 987 of the transcript, our doc. ID 211849,
09:33 25		and it continues through including the argument as

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1   to whether these witnesses could be called and the

2   decision ultimately by the judge that he would

3   permit them to be called, it continues through to

4   211870, a fairly lengthy submission by Mr.

09:34   5   Caldwell as to the factual circumstances and a

6   legal argument by Mr. Disbery and Mr. Caldwell as

7   to whether they could properly be called given

8   that they hadn't been available and called at the

9   preliminary inquiry.

09:34   10   But, Mrs. Milgaard, you agree

11   that you were there and you heard that?

12   A   I agree that I was there, but I have absolutely,

13   when I go back through the years, have no memory

14   of that first event except for when they found him

09:34   15   guilty, and so for me to even remember that part

16   of it years later when we discovered what we

17   thought was a brand new witness, I'm sorry, I did

18   not make that connection and deliberately do it.

19   Q   Mrs. Milgaard, in January, 1981 you obtained the

09:34   20   full transcripts of the trial from Mr. Young

21   didn't you?

22   A   Yes.

23   Q   Mr. Young's advice to you was that you should read

24   the transcript, your advice to Mr. Asper and Mr.

09:35   25   Wolch was that they should read the transcript.

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 1            In black and white in that transcript in your

 2            hands from January, 1981 forward was that

 3            information; was it not?

 4       A    Yes, and obviously we all missed it or we wouldn't

 5            have submitted Debbie Hall and been embarrassed at

 6            the end of it by having submitted her.

 7       Q    Mrs. Milgaard, additional to the information that

 8            was in the transcript, you have seen before the

 9            Inquiry a full record of the actions taken by Mr.

10            Caldwell immediately upon him discovering that

11            information in 1970 haven't you?  He called

12            Mr. Tallis that very night, he wrote to him, he

13            sent him copies of the three statements and he

14            made Ute Frank, who he decided not to call,

15            available to him to be interviewed.  Do you accept

16            all that to be accurate?

17       A    I accept that, you know, it's provided here, so I

18            have a memory of it from here.

19       Q    So where we are in 1981 is, whether you remember

20            what was said and happened at the trial or not,

21            you had the transcript and you had copies of

22            statements and you were interviewing Craig Melnyk

23            and George Lapchuk in your witness contacts in

24            early 1981?

25       A    Yes.
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1 Q Okay. Now, you indicated, or you've indicated at

2   various times that it was a stroke of luck that

3   you found Debbie Hall, and the record shows, and I

4   take it you accept, that Chris O'Brien found her

09:36 5   in 1981?

6 A Because she was his hairdresser.

7 Q And he did an interview with her in 1981 and it

8   was recorded and a transcript was provided to you

9   of that interview?

09:36 10 A Yes.

11 Q That formal contact with her to prepare an

12   affidavit wasn't made until 1986 when Mr. Asper

13   had her swear an affidavit for the Supreme Court

14   of Canada?

09:37 15 A I don't recall and I don't know the significance

16   of that.

17 Q Mrs. Milgaard, given what was contained in the

18   statement from the young man that she was not

19   around, given the information that Mr. Tallis had

09:37 20   at trial, did it ever occur to you when you were

21   making representations either to the Supreme Court

22   of Canada or in the public media to say we know

23   that Debbie Hall wasn't talked to in 1970 because

24   she was not in the province?

09:37 25 A No, I did not recall that and did not make that

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  1              comment.

  2      Q       Mrs. Milgaard, you subsequently learned that,

  3              though, didn't you?

  4      A       I don't know.  I may have.  As I said, we ran with

09:37  5         Debbie Hall because we thought it was accurate and

  6              it obviously was a mistake because it really hurt

  7              us, Mr. Williams said, in the application.

  8      Q       It hurt Mr. Caldwell too didn't it?

  9      A       It probably did.

09:38 10    Q    In terms of his reputation?

 11      A       Yes.

 12      Q       Mrs. Milgaard --

 13      A       So as Mr. Caldwell has apologized for his

 14              mistakes, I've apologized for mine, and that's all

09:38 15         I can do at this point.

 16      Q       Mrs. Milgaard, apologies sometimes have an

 17              importance of timing as well.  I want to refer you

 18              now to your book, 269317.  If we could go to

 19              269446, and if we could go to this part of your

09:38 20         book, please, if you could read that last

 21              paragraph:

 22                      "We badly wanted to gather new

 23                      evidence..."

 24              And when you've finished -- oh, sorry, you have

09:39 25         your book, okay.
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1   A   Yes.

2   Q   When you've finished to the bottom of page 246, if

3   you would turn the page, please, and if you could

4   go to the next page for the benefit of others,

09:39 5   please. I'll read to you what you said in your

6   book in 1999:

7   "We badly wanted to gather new evidence,

8   and an odd stroke of luck led us to

9   Deborah Hall, who as a teenager had

09:39 10   attended a Regina motel party. It was

11   there that George Lapchuk and Craig

12   Melnyk supposedly had heard David

13   confess to the murder. Deborah had

14   given a statement to the Saskatoon

09:39 15   police that totally contradicted their

16   tale, but it was never passed on to our

17   defence team..."

18   A   That's what she told us.

19   Q   "...leaving us vulnerable to the

09:40 20   last-minute, damning testimony of

21   Lapchuk and Melnyk. In her police

22   report, Hall was misspelled "Hull" and

23   then her file was apparently misplaced."

24   Mrs. Milgaard, you know that Debbie Hall never

09:40 25   ever gave a statement because, as I've said

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1   earlier, and you agreed, we know that she was

2   nowhere to be found when the officer made that

3   quick trip to Regina on the 19th of January, 1970

4   was she?

09:40 5   A   But when we talked to her, I'm sure that that's

6   what she told us because we put it in her

7   statement.

8   Q   Mrs. Milgaard, you didn't put that in her

9   statement, and I ask if you can point me to

09:40 10   anywhere in the record that Deborah Hall said she

11   gave a statement to the police in 1970, because I

12   can't find it anywhere.

13   A   That was my understanding of it.

14   Q   Mrs. Milgaard, you wrote this book in 1999,

09:41 15   Deborah Hall had been, had testified in Supreme

16   Court of Canada, she had been interviewed by the

17   RCMP. Can you point me to anywhere that there's

18   any record of Deborah Hall having ever said to

19   anybody that she gave a statement to the police in

09:41 20   1969 -- sorry, 1970?

21   A   No, I can't, but I think this was the

22   understanding because I must have said

23   afterwards -- I mean, in the book I'm telling the

24   story of how it unfolded, I'm telling the story

09:41 25   about how I felt at the time, and at that

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1		particular time that was what I was feeling and
2		saying, because if I had been trying to write the
3		book from the effect of what actually happened, I
4		mean, we know that Debbie Hall's testimony was
5		just the opposite of that, because she said words
6		and things about David that really were
7		devastating, and so in the book I'm trying to show
8		how it really excited us that we had this
9		information that we were going to go forward with
10		it. Probably the best thing would have been to
11		have left it out of the book all together, but I
12		was trying to tell as much as possible what was
13		going on and what had motivated me to do the
14		various things that I did.
15	Q	Mrs. Milgaard, if I go to McNally Robinson tonight
16		to buy your book, can you tell me where in your
17		book I'm going to find you making the caveat that
18		this is what I believed at the time, but it turned
19		out that I was wrong?
20	A	No.
21	Q	It's not there is it?
22	A	I don't imagine it is.
23	Q	So anybody picking up your book from 1999 will not
24		find out that my client didn't withhold a
25		statement from Debbie Hall and cause an impairment

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1		of your lawyer's ability to defend your son will
2		I?
3	A	No, but it will come out during the inquiry.
4	Q	Okay. Mrs. Milgaard, I'm advised that there was a
09:43 5		supplement or a second edition of your book done
6		in 2000, I have it, it's a soft cover with a new
7		chapter.
8	A	Yeah.
9	Q	Nowhere in your 2000 version with the additions
09:43 10		are those kinds of statements made either are
11		they?
12	A	Not that I know of, no, that they are, were
13		recalled afterwards and it was simply to let the
14		public know what had happened.
09:43 15	Q	To let the public know what had happened as you
16		wanted to tell it, not what happened as it really
17		happened I would suggest to you.
18	A	Well, maybe we'll do a re-edition after the
19		Inquiry and include what happened from the
09:43 20		Inquiry.
21	Q	Mrs. Milgaard, do you think a re-edition at this
22		time will ever undo the harm that you've done to
23		people like Mr. Caldwell, Mr. Karst --
24	A	How many times do I have to apologize for what
09:44 25		I've done.

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 1   Q   Mrs. Milgaard, despite what Debbie Hall said that

 2   you've referenced in your answer to my question a

 3   few minutes ago, despite the fact that you know

 4   different than was in her affidavit and that which

09:44 5   is in your book, publicly you've never gone out

 6   and said on the record to any of your media

 7   contacts, "whoops, I made a mistake when I said

 8   those things about Debbie Hall and about them

 9   hiding her statement or all of that stuff that I

09:44 10   said about the motel room incident, that was

11   wrong," you never said that publicly have you?

12   A   I don't know, other than here.

13   Q   Can you give me any, point to anywhere that you've

14   said it, because again, I can't find it.

09:45 15   A   No. I said other than here, probably not.

16   Q   Mrs. Milgaard, there are many other allegations

17   that have been made at various places,

18   particularly in public medias, by you about

19   misconduct by my client, and I want to leave for

09:45 20   the moment the Fisher, whether he had knowledge of

21   Fisher and the National Parole Board issue, but

22   can you, having sat through this Inquiry since

23   January, 2005, can you point me or this Commission

24   to any evidence not known on the record at present

09:45 25   that would give any substance to any of the

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1   allegations that you made about Mr. Caldwell over

2   the years, leaving aside for the moment the

3   National Parole Board and whether he had knowledge

4   of Fisher?

09:46 5   A   No, I can't point to anything.

6   Q   Okay. Mrs. Milgaard, Mr. Hodson asked you last

7   week about allegations that were made that appear

8   in the various materials that were prepared by

9   people assisting you, particularly Bob Bruce, that

09:46 10   somehow there was a -- I hesitate to use the word

11   conspiracy, but if I could express my thoughts

12   using that word with the caveat, that there was a

13   conspiracy or an involvement by Mr. Caldwell's

14   good friend, the then Governor General Ray

09:46 15   Hnatyshyn, at the level of the prime minister's

16   office to prevent your 690 application from being

17   successful, and you indicated you have no present

18   memory of having discussed that?

19   A   No, I have not.

09:46 20   Q   Okay. Mrs. Milgaard, throughout the transcripts

21   of tapes that were provided to us, I'm going to

22   suggest to you that you made various calls to the

23   media or in response to calls made by the media

24   and that there are records of you putting that

09:47 25   forward to the media as one of the indications of

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	1		how high in power the cover-up with respect to
	2		your son's wrongful conviction went.
	3	A	And I'm sure that I believed it at that time.
	4	Q	Okay. So I don't need to pull up the tapes?
09:47	5	A	No. They will be available here at the Commission
	6		and certainly I know at that time I did what I
	7		felt was true.
	8	Q	So when you told, I believe it was Dave Roberts of
	9		*The Globe and Mail* this story and you didn't tell
09:47	10		him that this was a theory, you would have been
	11		wanting him to accept that as being a factual
	12		indication of how rotten the Government of
	13		Saskatchewan and my client were?
	14	A	I think I expected all of the reporters to dig in
09:48	15		for themselves and most of the times they did.
	16	Q	Mrs. Milgaard, you at various points in time made
	17		statements to suggest that my client had withheld
	18		the statement of Ute Frank and withheld from your
	19		lawyer knowledge that Ute Frank was a witness who
09:48	20		supported your David's story of what happened in
	21		the motel room, but that that never got made known
	22		to you, and you will agree with me, based on the
	23		records that we have from the trial and from the
	24		Crown file and from the evidence of Mr. Tallis,
09:48	25		Mr. Caldwell and Ms. Frank, that none of that is

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1		true? Mr. Tallis knew about her, he interviewed
2		her and he made a decision he didn't want her
3		called as a witness.
4	A	I have since learned that, yes.
09:48 5	Q	Okay. Mrs. Milgaard, with respect, I suggest to
6		you again that you knew some of that in 1970,
7		whether accidentally or by design you chose to
8		forget it, that was information that was known to
9		you and which was available to you in 1981, 1986
09:49 10		and all through including up to today, but for
11		some reason you chose not to bring it forward.
12	A	I believe I chose not to bring it forward because
13		I wasn't aware of it or remembered it.
14	Q	Mrs. Milgaard, appreciating that you were a mom
09:49 15		who had an absolute belief that your son was
16		wrongfully convicted, when you engaged, as you
17		did, first with the Supreme Court of Canada and
18		ultimately with the media throughout this land,
19		indeed even into the United States in these
09:49 20		allegations, did it ever, ever, ever occur to you
21		for a moment that you had to be sure of what you
22		were saying before you went out on those limbs?
23	A	No, I think that I just was so obsessed with
24		getting my son out, that I would have done
09:49 25		anything to get him out.

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1	Q	And, Mrs. Milgaard, would you agree with me that
2		the record indicates that, in fact, you did just
3		about anything to get him out?
4	A	It does.
09:50 5	Q	Mrs. Milgaard, when Peter Carlyle-Gordge testified
6		-- would you like a break?
7	A	No, that's fine.
8	Q	Okay. When Peter Carlyle-Gordge testified before
9		this Inquiry, do you remember him talking about
09:50 10		the need to apply rigorous logic when you were
11		examining the assertions that were being made
12		against your son, and by that he explained to us
13		that he meant just to make sure that things made
14		sense, that pieces fit together?
09:50 15	A	I don't recall it --
16	Q	Okay.
17	A	-- but I accept it.
18	Q	Mrs. Milgaard, did you ever sit down and try to
19		apply rigorous logic to your assessment of the
09:50 20		circumstances surrounding your son's wrongful
21		conviction when you were assessing the conduct of
22		my client?
23	A	No, I probably didn't.
24	Q	Mrs. Milgaard, if you'll bear with me, I want to
09:51 25		talk to you about some of the things that you knew

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1   to be factual from 1969-1970 forward, and would

2   you agree with me that you knew that, from my

3   client's point of view, he had statements from

4   witnesses who claimed either that they had seen

09:51   5   your son commit the murder, that they had seen

6   blood on his clothes, or he had -- they -- that he

7   had told them that he had 'got a girl' or 'hit a

8   girl' in Saskatoon?

9   A   Yes.

09:51   10   Q   Okay. So, as a starting point, that was the

11   information he had?

12   A   Yes.

13   COMMISSIONER MacCALLUM: Who had, I'm

14   sorry?

09:51   15   MS. KNOX: Mr. Caldwell.

16   BY MS. KNOX:

17   Q   Would you agree that back in 1969-1970 he had

18   knowledge, with nothing to contradict it, that a

19   young man had come out of the blue into the police

09:52   20   station to offer information that would lead to

21   the investigation and, ultimately, the arrest and

22   conviction of your son?

23   A   Yes, but he also had knowledge of Ms. (V4)---, he

24   had knowledge of lots of other things in his file

09:52   25   at that time, and he had the knowledge that the

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1   police, at that time, actually felt that it was

2   connected with the serial rapes that had been

3   going on.

4   Q   Okay. But, Mrs. Milgaard, you've reviewed the

09:52 5   file, you've heard the evidence, you know that the

6   police, while they had that initial theory, became

7   of the view, once Albert Cadrain came in and once

8   they had investigated and talked to other

9   witnesses, that there was no connection between

09:52 10   the prior rapes and Gail Miller's murder, that

11   they relied on what they believed to be honest,

12   truthful evidence from Wilson, Cadrain, and Nichol

13   John? Now they are mistaken, and we'll all -- we

14   all agree on that now, --

09:53 15   A   Yes.

16   Q   -- but that in 1969-1970 that was the belief that

17   was held, including by my client?

18   A   Yes.

19   Q   You know as well, don't you, that my client,

09:53 20   although he didn't consider the statement of

21   (V4)---, (V11) (V11)--, the information about

22   (V1)-, (V2)-----, the little that appeared on his

23   file, to be connected, that he kept every piece of

24   that information on his file?

09:53 25   A   Yes.

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1   Q   That indeed, when he was contacted by Eugene

2   Williams in 1989 to say "can you go look at the

3   file to see if you can find anything", among the

4   things that he sent to Eugene Williams, unprompted

09:53 5 by anybody, was the very pieces of information

6   that you use today to say that he knowingly did

7   wrong, the (V4)--- statement, the (V2)----- lab

8   report, those were the very things that he turned

9   over, in 1989, to the Federal Crown?

09:53 10 A   Yes.

11   Q   The fact that he would so willingly and so readily

12   have turned them over to the Federal Crown in 1989

13   was not considered by you, if you applied any

14   logic much less rigorous logic, to be inconsistent

09:54 15   with the notion that he had knowingly allowed an

16   innocent boy to remain convicted and in jail?

17   A   Well I think, at the time, I believed that the

18   fact that Peter Carlyle-Gordge had had access to

19   all of that, he would have to have turned it over

09:54 20   to Mr. Williams, because he knew that we already

21   had that information.

22   Q   Mrs. -- but Mrs. Milgaard, do you see how -- and I

23   mean no disrespect by this -- do you see how silly

24   that logic is? He voluntarily opened up his file

09:54 25   to Mr. Carlyle-Gordge in 1983; didn't he?

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1	A	Because he thought that he was writing a book, and
2		about him, --
3	Q	Okay.
4	A	-- and --
09:54 5	Q	Mrs. Milgaard, if he thought that a book was being
6		written about him, and in 1973 he knew that he had
7		done wrong and he knew that he was letting an
8		innocent boy stay in jail, do you think any person
9		in their right mind would let a reporter of
09:55 10		national stature come in and go through the file,
11		able to find evidence that showed that he was
12		corrupt at worst, at best a fool; do you think he
13		would have done that?
14	A	No.
09:55 15	Q	Rigorous logic, Mrs. Milgaard?
16	A	Well, I obviously didn't apply rigorous logic,
17		because that's how I saw it at that time.
18	Q	Okay. Can we bring the bar down a little bit and
19		ask, if you had applied common sense, would it
09:55 20		have made any sense that a man who was engaged in
21		corruption, in wrongdoing, in keeping an innocent
22		boy in jail, would have said "come in", let him
23		into the room, given him -- and I point you to a
24		pile of files, a pile of files that I asked the
09:55 25		staff to bring and put on this desk, that has all

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1		of the information that you claim is indicative of
2		his dishonesty, and he turned it over?
3		I guess she's not objecting, we
4		can continue.
09:56 5		MS. McLEAN: No, sorry.
6		BY MS. KNOX:
7	Q	The pile of information that he -- and we know
8		from Mr. Carlyle-Gordge's letter he let him sit
9		there, take a Dictaphone, he let him come back, he
09:56 10		gave him things that he asked, had coffee, he just
11		welcomed him with open arms; didn't he?
12	A	Yes, he did.
13	Q	And we know from Mr. Carlyle-Gordge that, not only
14		did he welcome him with open arms, he encouraged
09:56 15		him to talk to the police investigators?
16	A	I believe that Mr. Caldwell believed my son was
17		guilty.
18	Q	Okay.
19	A	And that's why he felt that, all of that
09:56 20		information that was there, that he had a guilty
21		man in prison.
22	Q	Okay.
23	A	But he didn't.
24	Q	Okay. But it's -- okay. So are we agreed, then,
09:56 25		that all of the evidence on the record is

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	1	sufficiently strong that even you, skeptic as you
	2	were and paranoid as you were, were satisfied that
	3	my client believed, had an honest belief that your
	4	son was guilty?
09:57	5	A Oh yes, I really felt he had an honest belief at
	6	that time.
	7	Q Okay. Mrs. Milgaard, that was --
	8	COMMISSIONER MacCALLUM: What time was
	9	this?
09:57	10	BY MS. KNOX:
	11	Q That was 1983 when Mr. Carlyle-Gordge went in to
	12	see him in February and March?
	13	A Well, I think that the evidence certainly
	14	supports, with the letters he wrote to the parole
09:57	15	board, I don't think that -- I don't know where I
	16	was as far as believing that he was trying to keep
	17	him there without believing that he had the right
	18	man, but at the time, when we heard that he was
	19	doing that and we found out that he hadn't done it
09:58	20	with anyone else --
	21	COMMISSIONER MacCALLUM: Writing to the
	22	parole board, you mean?
	23	A -- yes -- it made me very suspicious that why is
	24	he doing this? He must believe, he must know that
09:58	25	David is innocent and that's why he is doing this,

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1   he's trying to keep him in there and to keep us

2   out. And I know it sounds illogical, but that's

3   where I went, you know. As a mother, I would look

4   for every side of the coin, and I got very

09:58   5   suspicious of the man, and I admit that, and it --

6   I sort of went up and down it different times, and

7   that's why this Inquiry has been so important, is

8   to bring the truth out, and I'm glad it has.

9   BY MS. KNOX:

09:58   10   Q   But Mrs. Milgaard, and I will, and I know you go

11   back to the parole board, and I -- my biggest

12   binder is the National Parole Board, I'm warning

13   you -- but the letters that Mr. Caldwell wrote to

14   the parole board were written the first in 1972,

09:59   15   you're agreed, when he wrote and said "I read in a

16   brochure that you publish that you invite input

17   from people in the justice system, I have this one

18   case that I feel obliged to bring to your

19   attention"?

09:59   20   A   Yes.

21   Q   That he did that in response to a booklet that

22   solicited input from people, police, magistrates,

23   others in the justice system?

24   A   Yeah, I know that now, but I didn't know it at the

09:59   25   time, --

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	1	Q	Okay, but then --
	2	A	-- so that's why I was so suspicious of him at the
	3		time.
	4	Q	Okay, and we'll deal with what you knew, I don't
09:59	5		want to get into the parole board issue, I don't
	6		want to digress too much from where we are, but
	7		we're agreed that that was his first contact with
	8		the board was in response to that bulletin?
	9	A	Yes.
09:59	10	Q	His second contact with the board was after he was
	11		in a conference in Banff, and he wrote to the
	12		board chair who he met there and gave him
	13		information to suggest that he should get the
	14		actual psychological/psychiatric records from
10:00	15		David's background as a youth in Yorkton, in the
	16		reform school and things like that. He said to
	17		him "you should contact Dr. Ian McDonald, he has
	18		all that information"; do you remember that second
	19		letter in 1974?
10:00	20	A	Yes, I do.
	21		COMMISSIONER MacCALLUM: 19 what?
	22		BY MS. KNOX:
	23	Q	'74.
	24	A	And, of course, I was not aware of any of that.
10:00	25	Q	Okay. And his third letter in 1977 was to reply

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	1		to a letter from the parole board, it was
	2		solicited by the parole board, and a response
	3		given by him, a Ms. Nancy Flintlock-Meronek wrote
	4		and said "because Mr. Milgaard has moved around so
10:00	5		much we're not sure we've got all of his
	6		background records, can you assist us by directing
	7		us again to information that you gave in 1974"?
	8	A	Right.
	9	Q	Remember that?
10:00	10	A	Yes.
	11	Q	And, as a result of that, they sent an
	12		authorization signed by David to Dr. McDonald to
	13		get his records, and Mr. Caldwell wrote back and
	14		said "to confirm what I have said in the past this
10:01	15		A, B, C and D" -- and we'll go through those
	16		letters in more detail -- but that was in 1972,
	17		1974, and 1977; are we agreed on that?
	18	A	Yes.
	19	Q	And, Mrs. Milgaard, Mr. Carlyle-Gordge went to see
10:01	20		him in 1983, we're agreed on that, he saw him in
	21		February and he saw him in March?
	22	A	Yes.
	23	Q	You discussed the meetings, you had the
	24		transcripts, you knew that he welcomed him with
10:01	25		open arms and said, whether it was because he

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1   wanted to be famous in a book or not, he was

2   acting like "come on in, have at her", he wasn't

3   acting like a man with anything to hide; was he?

4   A   No.

10:01 5   COMMISSIONER MacCALLUM: '80 when did you

6   say?

7   MS. KNOX: '83.

8   COMMISSIONER MacCALLUM: '83.

9   BY MS. KNOX:

10:01 10   Q   And in that meeting, as I've already referenced,

11   you're aware from the transcript that was done,

12   that not only did he say "come on in, have at

13   her", he invited him, encouraged him to contact

14   the police, he encouraged him to contact Albert

10:01 15   Cadrain?

16   A   Yes.

17   Q   This is 1983?

18   A   Yes.

19   Q   And he encouraged him to contact Mr. Tallis?

10:02 20   A   Yes.

21   Q   Talked to him about where he might find him, and

22   indeed we know from the evidence of then-Detective

23   Sergeant Ray Mackie that, when Peter

24   Carlyle-Gordge actually contacted him and he was a

10:02 25   little hesitant, that he phoned Mr. Caldwell and

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1   Mr. Caldwell basically said to him "don't worry

2   about it, talk to him, tell him anything he wants

3   to know"?

4   A   Yes.

10:02 5   Q   So that's 1983?

6   A   Yes.

7   Q   Okay. Now we also know, and you know through

8   friendship, professional relationship or whatever

9   you had with Sandra Bartlett of the CBC, that in

10:02 10   1985, when the CBC were preparing a documentary

11   for the *Fifth Estate*, that he made his file

12   available to the CBC?

13   A   Yes, I believe I heard that.

14   Q   And she wrote a letter to Mr. Asper, in fact,

10:02 15   saying that he'd made his file available to them

16   as part of the preparation for a documentary.

17   A   Yes.

18   Q   Again, Mrs. Milgaard, would you agree with me

19   that's an action entirely inconsistent with a man

10:02 20   who had something to hide?

21   A   Yes.

22   Q   Now, Mrs. Milgaard, yesterday we talked briefly

23   about a conversation that you had with Donna

24   Friesen, a reporter in Saskatoon, in the fall of

10:03 25   1991; do you remember?

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        1   A   Yes.

        2   Q   Okay. Mr. Commissioner, I'm referring again to

        3   tape 152, the transcription starts at page 337105,

        4   the conversation with Ms. Friesen begins at

10:03   5   337136. Did you want to take a minute to read the

        6   lead-in to the conversation for a couple of pages?

        7   A   Yes, that would be --

        8   Q   If we could go to the next page, please.

        9   A   (Witness reading)

10:04   10   Q   Sorry, I was asking for 337145, this appears to be

        11   105.

        12   COMMISSIONER MacCALLUM: 105 was the --

        13   MS. KNOX: That's the wrong --

        14   COMMISSIONER MacCALLUM: -- doc. ID?

10:04   15   MS. KNOX: That's the wrong doc. ID, I need

        16   145 of the -- this is -- okay.

        17   BY MS. KNOX:

        18   Q   If you could, and this is talking about Mr.

        19   Caldwell, if you could continue to read here.

10:04   20   A   (Witness reading) Where?

        21   Q   Down through the page, and in particular I

        22   reference you to the statement that Donna Friesen

        23   made to you about a conversation she had with Mr.

        24   Caldwell and his belief, this being

10:05   25   October 1991 -- do you see that Donna Friesen was

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1		telling you in that conversation --
2	A	I can't understand, can you bring up a little
3		before there, because I don't know what it's --
4	Q	Okay.
5	A	-- in reference to. *(Witness reading)*
6	Q	Ms. Friesen is talking to you, you are talking to
7		her about stories that are appearing in the media,
8		and you are saying to her that you have a feeling,
9		with all of the news that you have got breaking,
10		that these guys, including my client, are gonna
11		break down?
12	A	Yeah, okay.
13	Q	And she indicates to you, well, that she doesn't
14		-- that's what she doesn't get, she's talked to
15		Mr. Caldwell several times, and she indicated that
16		he's steaming mad. Does it surprise you that he
17		would be steaming mad about headlines that says he
18		didn't disclose the statement, there was a
19		headline that said he paid witnesses, various
20		awful things were being said about him in the
21		media?
22	A	No, I can see that.
23	Q	Okay. And then you go on to say, you said 'is he'
24		referring to the fact that he was steaming mad,
25		and she said 'oh, yeah, he was so mad', you say

10:05 (lines 5, 10, 15, 20)

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 1            'well, you know', and she says 'swearing and

 2            everything but, you know, to get him on camera is

 3            impossible, everything he says is off the record

 4            because he's afraid of losing his job', and then

 5            you said, 'right', and then she says, 'but, you

 6            know, he said the last time I talked to him that

 7            he may reach a point where he's had enough', and

 8            then it goes on to the next, and you say 'well'

 9            and she says, 'because he really believes that he

10            was right, you know'.  And this is the part --

11    A      And then I say, 'not with all that's coming down,

12            he must realize that he was wrong.'

13    Q      Yeah.  And, Mrs. Milgaard, does it occur to you

14            when you look back on it, removed from the fray of

15            the moment, that when my client was hearing so

16            many lies, misstatements, mistruths being put in

17            the media by you, by Mr. Asper and others on your

18            behalf, that it's no wonder he continued to

19            believe he was right?

20    A      I hadn't thought of it that way, no.

21    Q      We're all -- you are familiar about the children's

22            story about *The Boy Who Cried Wolf*?

23    A      Uh-huh.

24    Q      You say wrong things so many times that, when

25            truth hits you in the face, doesn't matter because
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10:07   1          you've told lies or misstatements or
        2          misrepresentations so many times that it just gets
        3          written off as just one more crazy act by a woman
        4          who will say anything to get her son out of jail?
10:07   5          1991, you'll agree with me that it was reported to
        6          you that my client, far from being engaged in
        7          corruption or knowingly involved in misdeed, --
        8    A     Right.
        9    Q     -- was maintaining to a third party that he had
10:07  10          done his job, he had done it right, and what you
       11          were doing and what others were doing on your
       12          behalf was not true?
       13    A     But, as I said right here, 'with all that was
       14          coming down, that he must realize he was wrong',
10:07  15          and, again, my belief was that he was wrong.
       16    Q     But, Mrs. Milgaard, you've agreed with me
       17          yesterday and today that much of what was coming
       18          down was wrong?
       19    A     Yes.
10:08  20    Q     And that he, as the person who had prosecuted the
       21          file, he as the person who had all of the
       22          documentation, he as the person who was assisting
       23          in bringing all of the information forward, could
       24          pull out example after example after example where
10:08  25          lies were being perpetuated in the public and
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 1          media about the circumstances surrounding your

 2          son's conviction?

 3     A    Yes, I see that now.

 4     Q    So for him to say in 1991, "this is all nonsense"

10:08  5          would be, I suggest to you, pretty normal as

 6          opposed to unexpected?

 7     A    Yes.

 8     Q    And when, on top of all of the other

 9          misstatements, mistruths, and all of that

10:08 10          information that was out there, you put out in the

11          public media that it was another guy, that it was

12          Larry Fisher, does it surprise you at all that he

13          would just perhaps view that as just another

14          attempt by you, as he said, to in various

10:08 15          places -- and I believe this lady referred to

16          it -- to manipulate the media?

17     A    It's possible that was what he thought.

18     Q    If somebody had told you ten big fat lies and then

19          they came out with the truth, would you be willing

10:09 20          to sort of forget the ten big fat lies and say "oh

21          gee, I made a terrible mistake, I believe that,

22          the eleventh truth, I'm ignoring the ten big fat

23          lies that came before it"?

24     A    I don't know.

10:09 25     Q    Okay.  Mrs. Milgaard, I would suggest to you that
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	1		the ordinary person would have great difficulty
	2		divorcing himself from the ten big fat lies and
	3		recognizing the merit of the one truth, that it
	4		was Larry Fisher, not your son, who did this
10:09	5		murder?
	6	A	Well, I'm glad that's been established, that that
	7		is the case.
	8	Q	Uh-huh. Mrs. Milgaard, just as a matter of
	9		curiosity, in your dealings with Mr.
10:09	10		Carlyle-Gordge in 1991-'92-'93, and in particular
	11		when he was dealing with Mr. Caldwell, did he give
	12		you any impression as to whether or not he felt he
	13		would be welcomed back in Mr. Caldwell's office to
	14		meet and talk with him at any time?
10:10	15	A	When -- I'm sorry, --
	16	Q	Did Mr. --
	17	A	-- at what time?
	18	Q	At any time, after their first two visits in
	19		February-March, did Mr. Carlyle-Gordge suggest to
10:10	20		you that he had cordial visits with Mr. --
	21	A	Oh yeah, at that time I don't -- I meant if you
	22		were to say in 2001.
	23	Q	Yes, no, let's go back to 1983.
	24	A	Okay. That's all I want --
10:10	25	Q	In 1983 the relationships -- and I use the term

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 1              "relationship" loosely -- but he extended

 2              professional courtesy to him?

 3     A        Absolutely.

 4     Q        And, Mrs. Milgaard, given that he was extending

10:10  5        professional courtesy to him, given that we now

 6              know that Mr. Carlyle-Gordge picked up on

 7              something in the file that Mr. Caldwell had

 8              missed, that being the significance of the fact

 9              that a rapist lived in Albert Cadrain's

10:11 10        basement, --

11     A        Yes.

12     Q        -- had missed it because it was not known to

13              anybody in 1969-1970, can you think of a single

14              reason why you or he didn't go back to Mr.

10:11 15        Caldwell and say "Mr. Caldwell, I appreciate that

16              you believe that my son is guilty of this murder,

17              but did you know that, in the very basement that

18              the trail of exhibits that you relied so heavily

19              on led, there was what we now know to be a

10:11 20        convicted rapist"?

21     A        Well, obviously, he had got that information.

22     Q        But, Mrs. Milgaard, was there any reason why you

23              or Mr. Carlyle-Gordge, or somebody on your behalf,

24              didn't go to this man, who appeared to be honest,

10:11 25        up front, and say "did you know that there was a
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1   --"

2   A   I did not believe -- I'm sorry, I interrupted. I

3   did not believe that he was honest and up front,

4   so that's why I wouldn't have gone to him.

10:11 5   Q   But, Mrs. Milgaard, you told us earlier that for a

6   long time you had no reason to believe, and you

7   didn't believe, that he was dishonest?

8   A   Well, it was because of the writings to the parole

9   board and everything.

10:12 10   Q   But you didn't know about the writings to the

11   parole board in 1983?

12   A   Once I found out about them, I did, and I've

13   always had the suspicions that Cald -- right from

14   the first that Caldwell and Tallis were in it

10:12 15   together.

16   If you'll recall, that was

17   something that, when we talked about Mr. Tallis'

18   involvement, I felt so badly that I had felt, and

19   didn't understand how the two men had worked

10:12 20   together, and I took a very wrong thought about

21   Mr. Tallis and Mr. Caldwell working together, that

22   they were actually working together as prosecutors

23   at that time, but I had taken the view that they

24   had worked together to put David away.

25   Q   Okay.

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1   A   And so, naturally, that was something that,

2   through the years, I carried through in believing

3   that he was out to get David.

4   COMMISSIONER MacCALLUM: Just a second, I

10:13 5   don't -- let me catch up here.

6   You said that you didn't

7   believe Caldwell was honest and up front at the

8   time, and I -- just to get back, Ms. Knox, to

9   something that came up earlier, I've got your

10:13 10   question as "in your dealings with Carlyle-Gordge

11   in '91 to '93", did you mean '81 to '83, or did I

12   hear you wrong?

13   MS. KNOX: I, you must have heard me wrong,

14   I meant '81 to '83.

10:13 15   COMMISSIONER MacCALLUM: '81 to '83? Okay,

16   that's fine.

17   And then, Mrs. Milgaard, you

18   were telling me, you were telling the counsel you

19   didn't believe counsel -- Caldwell was honest and

10:13 20   up front at the time, meaning when you dealt with

21   Carlyle-Gordge in '81 to '83; correct?

22   A   Pretty well all the way along I've never believed

23   that he was.

24   COMMISSIONER MacCALLUM: All right. And

10:14 25   then counsel said "but you didn't even know

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1   about", and you said "that was because of the way

2   he wrote to the parole board"?

3   A   Well part of it --

4   COMMISSIONER MacCALLUM: But then you said

10:14 5   you didn't even know about him, suggests counsel,

6   about those letters in 1981 to '83; is that

7   right?

8   A   Right, and so that probably wasn't my rationale at

9   the time.

10:14 10   However, as I pointed out to

11   counsel, when David was convicted, and after all

12   of the things that happened and when we were going

13   back over it, I had a strong suspicion in -- about

14   Tallis and Caldwell, and somewhere in the

10:14 15   information that we had got we heard, I heard that

16   they worked together, Mr. Caldwell and Mr. Tallis,

17   on a case, and I had thought that they had worked

18   together on this case to put David away. And it

19   was when, I think in my testimony with Mr. Tallis'

10:15 20   lawyer, that I felt badly that I had had that

21   suspicion of the two men. So it may be that my

22   suspicions of Caldwell came right from the get-go,

23   I had them all along.

24   I get confused with the dates

10:15 25   about when I had other suspicions, and -- but

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1   right up until the time of the Inquiry, here, I

2   was absolutely convinced of that.

3   COMMISSIONER MacCALLUM: Yeah, well it's

4   just that counsel, what counsel was driving at

10:15 5   was how could you have such suspicions at the

6   time you were dealing with Carlyle-Gordge when

7   Mr. Caldwell was so cooperative with

8   Carlyle-Gordge when he first talked to

9   Carlyle-Gordge about it?

10:15 10   A   Well I think that, when he was talking to

11   Carlyle-Gordge, he was talking to him as doing a

12   story on his life and other great stories, and I

13   -- we just thought that he was giving out that

14   information. I never ever looked at it as

10:16 15   suspicious that he was giving him the -- we just

16   thought it was a wonderful opportunity to get into

17   his file and to find out things that we wouldn't

18   find out otherwise. I don't know, I was

19   suspicious of him, because my son was innocent and

10:16 20   he put him away.

21   BY MS. KNOX:

22   Q   Mrs. Milgaard -- and I don't mean to upset you and

23   I get the sense that I am -- but as the

24   Commissioner paraphrased, better, my question, do

10:16 25   you see how it makes absolutely no sense that a

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1		man who was knowingly engaged in wrongdoing would
2		have been so open to have his conduct examined?
3	A	I see that now but, at the time, I didn't see
4		that.
10:17 5	Q	All the people that you had helping you, Mr. Young
6		to whom he offered to open his file, Mr. Merchant,
7		Mr. Asper, Mr. Wolch; did any of them ever say to
8		you "Joyce, for goodness sake, if the man was
9		corrupt why on earth would he be inviting
10:17 10		Carlyle-Gordge and the CBC in and opening his file
11		to them"?
12	A	No one ever said that to me.
13	Q	Do you see now -- and I don't want you to beat
14		yourself up -- but do you see now, with the
10:17 15		benefit of hindsight, how important it would have
16		been for somebody to say that to you?
17	A	Yes, it would have been.
18	Q	And for you to step back and say "I'm a mum and
19		I'm not looking at this through clear eyes, I'm
10:17 20		being influenced by my emotions"; do you see how
21		important it was, how you needed to have that?
22	A	Yes, I did.
23	Q	And do you see the tragic consequences -- not,
24		that's a wrong word, sorry -- the unfortunate
10:18 25		consequences of the fact that you didn't take that

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1		step back, and nobody who was your advisors, your
2		lawyers, your group of supporters, nobody took a
3		step back with you and applied any kind of logical
4		analysis to the actions of my client?
10:18 5	A	Yes, because we were all focused on getting David
6		out.
7	Q	Okay. Mrs. Milgaard, we're getting close to the
8		break, and there's an area I referred you earlier
9		to, like if there was ten big fat lies out there
10:18 10		and the eleventh happens to be the truth, how
11		people like my client might ignore the eleventh.
12		And I want to ask the staff to play for us a clip,
13		and I'll set -- to do a setup for that for the
14		record. Do you remember that you were invited to,
10:18 15		and you appeared on, *Front Page Challenge* in PEI?
16		I believe the date of the taping was October 5th,
17		1991?
18	A	Yes.
19	Q	And this would have been quite some time along in
10:19 20		your attempts to get your son freed and to have
21		him exonerated?
22	A	Yes.
23	Q	And, Mrs. Milgaard, do you remember having a
24		conversation with the producer of the CBC -- of
10:19 25		the *Front Page Challenge* production that you were

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	1		going down to appear on?
	2	*A*	No.
	3	Q	Okay. Mrs. Milgaard, I'm gonna have the staff
	4		play the tape, or excerpts of the tape, and after
10:19	5		we're finished it will be time for us to take the
	6		coffee break; okay?
	7	*A*	Okay.
	8	Q	For the staff, it was set up, I believe, as clip
	9		CK4. Mrs. Milgaard, the beginning of this tape is
10:19	10		about you were discussing travel arrangements and
	11		various things like that, but you see, up at the
	12		top here, that it's an unidentified male from
	13		*Front Page Challenge*. I'm not even going to ask
	14		you if you remember the name, with my luck you
10:20	15		will, but we -- do you remember having a
	16		conversation, in fact you had two conversations,
	17		there's another brief one that follows, but a
	18		conversation with a producer at *Front Page*
	19		*Challenge* prior to arrangements being made for
10:20	20		them to get you to PEI?
	21	*A*	No, I don't.
	22	Q	Okay. I'm going to ask the staff -- and, Mr.
	23		Commissioner, the tape document ID for this tape,
	24		for the record, is 337018, the transcript
10:20	25		starts -- of this conversation starts at page

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1   337315.

2   *(Excerpt of tape 173)*

3   *"And he said 'look, lady', he said*

4   *'don't tell me when you go home you*

5   *don't toke up or smoke up or something'.*

6   *Well, you know, that is not the*

7   *thing you say to a lady on the parole*

8   *board, you know.*

9   *UNIDENTIFIED MALE SPEAKER: Yeah.*

10   *MRS. JOYCE MILGAARD: It just, well, that*

11   *set the scene. He confronts them*

12   *because he's just so fed up with whole*

13   *situation ..."*

14   *(End of excerpt)*

15   MS. KNOX: Mr. Commissioner, there's about

16   three different things here, or three different

17   subject areas in this tape. I wanted to start

18   playing -- the timing that I had on it was about

19   38:42 along in the tape and -- but we can

20   continue from that portion actually, that will

21   take us through what I need to do with the

22   witness.

23   MS. BOSWELL: Do you know which page that

24   was of the transcript?

25   MS. KNOX: Pardon me?

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1   MS. BOSWELL: Do you know what page in the

2   transcript?

3   COMMISSIONER MacCALLUM: 315, 337315.

4   MS. KNOX: The tape starts at 315. If you

10:22   5   can just bear with me, I think I brought a

6   photocopy of it. I just have to find that file.

7   COMMISSIONER MacCALLUM: We can break now

8   and you can set it up.

9   MS. KNOX: Yeah, that would be -- okay,

10:22 10   thank you, and I apologize, I thought I had it

11   with me.

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

13   *(Reconvened at 10:46 a.m.)*

14   BY MS. KNOX:

10:46 15   Q   Thank you. Mr. Milgaard, before we took the break

16   I was indicating that I was going to play a

17   portion of a taped conversation between you and a

18   producer at *Front Page Challenge.*

19   A   Yes.

10:46 20   Q   We have the pages and the portion of the tape that

21   I want to play. We might be a little bit over,

22   but if you'll bear with me, there's a couple of

23   points in this conversation that I wish to ask you

24   questions about when we finish.

10:47 25   A   Okay.

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1   **(Excerpt of tape 173)**

2   MRS. JOYCE MILGAARD: It just, well, that

3   set the scene. He confronts them because he's

4   just so fed up with whole situation, he doesn't

11:11 5   play the typical "I'm a good boy" routine for

6   them, and so that doesn't help. So I can't, in

7   all honesty, say that he'd have been paroled at

8   such and such a date, but we were told by someone

9   in the parole system -- I have it in writing and,

11:12 10 because I confirmed it in writing to them -- to

11   the effect that, if only he wouldn't say he was

12   innocent, he could be out on parole.

13   UNIDENTIFIED MALE SPEAKER: Right. Umm,

14   yeah. It -- when there is a miscarriage of

11:12 15 justice, umm, it's so hard to respond to those

16   things, you know, and --

17   MRS. JOYCE MILGAARD: Oh, it is, and I'm

18   sure it's very difficult for those people on the

19   parole board.

11:12 20   UNIDENTIFIED MALE SPEAKER: Yeah.

21   MRS. JOYCE MILGAARD: Because on the one

22   hand they have to look at the possibility "maybe

23   he didn't -- did it and he doesn't know he did

24   it".

11:13 25   UNIDENTIFIED MALE SPEAKER: Right.

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1   MRS. JOYCE MILGAARD: Okay? And he might

2   go out and do it again, and then we're the ones

3   that are in trouble if he does.

4   UNIDENTIFIED MALE SPEAKER: Well it hasn't

11:13 5   stopped them, in Ontario, from letting a lot of

6   people run loose.

7   MRS. JOYCE MILGAARD: But don't forget, the

8   prosecuting attorney in this one, Caldwell, kept

9   sending pictures all of the time to the parole

11:13 10   board, the new members, and they would get these

11   pictures of Gail Miller's poor body with all the

12   knife wounds in it just before they got to see

13   David, so when they looked at David they looked

14   at a monster, in their eyes.

11:14 15   UNIDENTIFIED MALE SPEAKER: Certainly.

16   MRS. JOYCE MILGAARD: You know.

17   UNIDENTIFIED MALE SPEAKER: All right. Is

18   this new evidence that's come up or simply

19   evidence that's been denied?

11:14 20   MRS. JOYCE MILGAARD: Which, the new --

21   UNIDENTIFIED MALE SPEAKER: The --

22   MRS. JOYCE MILGAARD: What we have taken in

23   this time?

24   UNIDENTIFIED MALE SPEAKER: Yeah.

11:14 25   MRS. JOYCE MILGAARD: The second time

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1   *around?*

2   *UNIDENTIFIED MALE SPEAKER: Now I know that*

3   *the second time around there was, there was a*

4   *miscarriage in the sense that files were not*

11:14   5 *delivered?*

6   *MRS. JOYCE MILGAARD: Uh-huh, uh-huh.*

7   *UNIDENTIFIED MALE SPEAKER: There have also*

8   *been interviews with people who met David within*

9   *a half hour of the, of the, of the crime who saw*

11:15   10 *nothing unusual about Bobbie (sic), --*

11   **(End of excerpt)**

12   BY MS. KNOX:

13   Q   Mrs. Milgaard, you made reference earlier to the

14   Commissioner that one of the areas that caused you

10:49   15   to have such a strong belief that my client

16   engaged in wrongdoing was this subject that you

17   are discussing here with the CBC -- I keep saying

18   CBC, I think *Front Page Challenge* is actually CTV,

19   but with the *Front Page Challenge* producer.

10:49   20   A   Uh-huh.

21   Q   And you made the statement, as you just heard on

22   the tape, that Mr. Caldwell kept sending pictures

23   to the Parole Board?

24   A   Yes.

10:49   25   Q   I want to now refer you to your book and the --

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1		again, for the benefit of the record, the document
2		ID is 269317 and the page I want to go to is
3		269432.
4	A	And the page in the book?
5	Q	Is 99.
6	A	Thank you.
7	Q	And if you could just read your description of
8		something happening at a parole hearing, and if I
9		may, the particular paragraph I want to invite you
10		to look at is the one that I've put the red box
11		around. Are you through to the point that I'm
12		marking at the top of page 100, because it's in
13		this area that I'll direct my questions and we'll
14		go into the actual letters as we go along.
15	A	Okay.
16	Q	Okay. I want to take you back to the first page
17		where you wrote:
18		"We soon discovered, through our
19		contacts in the system, that every time
20		David was up for parole Crown prosecutor
21		Bobs Caldwell found out who was going to
22		be sitting on the hearing and sent them
23		a big brown envelope with the pictures
24		of Miller's body."
25		Mrs. Milgaard, where did you get that information

10:50 — line 5
10:50 — line 10
10:51 — line 15
10:51 — line 20
10:51 — line 25

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1		that you put in your book?
2	A	I believed that it was from the lawyers that I
3		would have got that information. They were the
4		ones that had the contacts, not me.
10:51 5	Q	Okay. Mrs. Milgaard, I'm going to suggest to you
6		that this is absolutely untrue and ask you whether
7		you can point me anywhere to anyone in this parole
8		service or anywhere in the many records we have
9		that would suggest that Mr. Caldwell was getting
10:52 10		the names of Parole Board members and sending them
11		pictures in brown envelopes every time your son's
12		case came up for review.
13	A	Well, that was my understanding.
14	Q	Okay. Mrs. Milgaard, this was written by you long
10:52 15		after the RCMP had completed their investigation,
16		wasn't it, the Sawatsky investigation?
17	A	Yes.
18	Q	And the report by Alberta Justice?
19	A	Yes.
10:52 20	Q	Mrs. Milgaard, you know that the result of that
21		police investigation and the result of an
22		examination on Mr. Caldwell's file shows, as I
23		referenced with you earlier, that he sent three
24		letters to the Parole Board, 1972, document ID
10:52 25		006824.

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1   A   Are you saying he never sent pictures of Gail

2   Miller to the Parole Board?

3   Q   Mrs. Milgaard, I'm suggesting to you that Mr.

4   Caldwell had no contact with members of the

10:53 5   National Parole Board, number 1, and number 2, he

6   never sent pictures to new members every time your

7   son came up.

8   A   Well, that was certainly my understanding.

9   Q   What I will -- and I'll bring up, if I could bring

10:53 10   up first 006824, please. Now, this is from Mr.

11   Caldwell's file and this is the letter that he

12   sent on June 14th, 1972, and you are familiar with

13   this letter, it's here where he sets out some of

14   the history as he believed it to be, and he did

10:53 15   send to the board, to the chairman of the board,

16   June 14th, 1972, pictures from the trial. This,

17   you will agree with me, is to the chairman of the

18   National Parole Board?

19   A   Yes.

10:53 20   Q   This is two years after your son's conviction?

21   A   Uh-huh.

22   Q   Two and a half years actually if we look at the

23   date, June 14th, 1972. Your son was convicted on

24   January 31st, 1970; right?

10:54 25   A   Yes.

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1 Q   And you see that in his letter he's referencing

2   that he read a booklet entitled "An Outline of

3   Canada's Parole System for Judges, Magistrates and

4   the Police"?

10:54 5 A   Yes, I remember that coming up throughout the

6   Inquiry.

7 Q   And he noted they welcome reports from people like

8   him?

9 A   Yes.

10:54 10 Q   Now, you were present during the course of Mr.

11   Caldwell's evidence and you know that Mr. Hodson

12   on behalf of the Commission was able to actually

13   obtain from the archives of the National Parole

14   Board the very booklet that Mr. Caldwell refers to

10:54 15   here don't you?

16 A   Yes.

17 Q   And, Mr. Commissioner, for the record, the

18   document ID on that booklet is 332005. And, Mrs.

19   Milgaard, you know or you were here when Mr.

10:54 20   Hodson and ultimately I took him through sections

21   of that booklet where invitation was extended by

22   the National Parole Board to people like him to

23   give input so that the Parole Board could have a

24   rounded picture of the individuals that they would

10:55 25   have to consider ultimately for release?

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1   *A*   I was.

2   *Q*   Okay. Now, when you made the statements or when

3   you drew your judgments that he was doing

4   something wrong, I understood you to say earlier

10:55 5   you had no idea that in fact he was doing what was

6   invited by the National Parole Board of people in

7   the justice system who had important cases and who

8   had concerns did you?

9   *A*   No.

10:55 10   *Q*   If you had known that in 1972 on June 14th when

11   Mr. Caldwell wrote this letter he was acting in

12   accordance with an invitation being sent by a

13   different branch of the justice system to alert

14   them to a case that would be coming up for them in

10:55 15   the future, would that have changed your opinion

16   that he was doing something wrong when he wrote

17   this letter? You might not have agreed with the

18   content, but the principle of writing it, would

19   you not agree, was one that was in accordance with

10:55 20   the invitation extended?

21   *A*   I might have.

22   *Q*   Now, the next letter that he wrote, document ID

23   332505, you'll see this is dated September 27th,

24   1974, and we've looked at it before, it is to --

10:56 25   the chairman has changed, it is now a gentleman by

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	1		the name of Outerbridge, Mr. Street obviously has
	2		moved on, or been moved on, and he references
	3		hearing him talk on the National Parole Board in
	4		Banff 10 days -- eight days earlier, September
10:56	5		19th. You see that?
	6	A	Yes, I do.
	7	Q	And we can review this, but basically he says I
	8		wrote a rather lengthy letter a couple of years
	9		ago and I'm suggesting to you, presumably on the
10:56	10		basis of information from Mr. Outerbridge in that
	11		talk, that you may want to get the records that I
	12		referred to?
	13	A	Yes, and when I saw this I thought not only is he
	14		talking about this to people at other functions
10:56	15		and things like that, but he's even suggesting
	16		that they go and get all this other stuff as well.
	17	Q	Mrs. Milgaard, where do you take from this that
	18		he's talking to people at other functions? His
	19		sentence is I enjoyed hearing you talk, Mr.
10:57	20		Outerbridge.
	21	A	Yeah, and now he's sending this information off to
	22		him.
	23	Q	But there's nothing in this letter to suggest that
	24		he was discussing your son at this conference, he
10:57	25		simply said I listened to you and as a result of

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1   listening to you I encourage you to get this

2   information so that your file as the chairman of

3   the National Parole Board effectively is complete.

4   A   Yes.

10:57 5   Q   Okay. That's all he did.

6   A   Yes.

7   Q   Again, in accordance with, I would suggest to you,

8   the principles set out in the document, the manual

9   that he had read in 1972, he's just saying to him

10:57 10   essentially don't just take my word for it, go get

11   the records?

12   A   Yes.

13   Q   Okay. And nowhere in either one of these letters

14   did Mr. Caldwell request or ask that his

10:57 15   information be kept secret from your son did he?

16   A   No.

17   Q   No. So when he wrote this information, he wrote

18   it in an open, up-front way to go on your son's

19   file with the National Parole Board for

10:58 20   consideration by the National Parole Board

21   because, as you said, back in 1972 even you

22   believed he thought this to be true?

23   A   Yes.

24   Q   Okay. Now if we could go to the next letter that

10:58 25   he sent to the board and this is -- firstly, if we

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1   could go to document 332502, please. Now, again,

2   you are familiar with this letter, it's dated

3   August 5th, 1977, and it's a letter to Mr.

4   Caldwell from the National Parole Board. Do you

10:58   5   want to take a minute to read it?

6 A   Uh-huh.

7 Q   You see the letter?

8 A   Yeah.

9 Q   That's an invitation to him from the National

10:59 10   Parole Board.

11 A   Yes, I do.

12 Q   Now, Mrs. Milgaard, before this Commission there's

13   no documentation or any indication that there was

14   any contact between Mr. Caldwell and the National

10:59 15   Parole Board up to this point in time except for

16   his letters of 1972 and 1974 is there?

17 A   Not that I'm aware of, no.

18 Q   And this 1977 solicitation got a response from

19   him, but if I could direct you to the part that's

10:59 20   underlined. Ms., whatever her name is, Meronek,

21   is indicating that she had gotten from your son a

22   release signed for Dr. McDonald to allow them to

23   get the information that Mr. Caldwell had told

24   them was available?

11:00 25 A   Yes.

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1	Q	So can we conclude and can you be satisfied, based
2		on this letter, that by August 5th, 1977 your son
3		David knew that someone, and perhaps he even knew
4		that Mr. Caldwell had brought his previous history
11:00 5		as a young person in the juvenile system, juvenile
6		health care/justice system to the attention of the
7		National Parole Board?
8	A	I was not aware of that.
9	Q	Okay. You weren't aware of it, but you would
11:00 10		agree with me to have signed a release your son
11		would have had to know that this information was
12		being queried by the National Parole Board?
13	A	Yes, but whether he would have known it was from
14		Mr. Caldwell I don't know.
11:00 15	Q	Okay. But, Mrs. Milgaard, I don't know that it
16		matters whether he knew it was from Mr. Caldwell.
17	A	Yeah.
18	Q	What I'm suggesting to you is that in 1977 as he
19		was being prepared for his first parole review --
11:01 20	A	Right.
21	Q	-- your son had knowledge that the Parole Board
22		was going to look at his previous
23		psychiatric/psychological juvenile, whatever
24		label, you want to know?
11:01 25	A	Yes.

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	1	Q	1977?
	2	A	Yes.
	3	Q	And this would be in accordance with my earlier
	4		question to you, there's nothing here so far that
11:01	5		indicates Mr. Caldwell was doing a stealth attack
	6		on your son or that he was trying to blind side
	7		him or anything like that, he didn't ask it to be
	8		kept secret, the Parole Board didn't keep in
	9		secret?
11:01	10	A	Correct.
	11	Q	Now if we could go to document ID 332500, and this
	12		is a letter dated August 15th, 1977, 10 days after
	13		Ms. Flintoft-Meronek's letter to him, where he
	14		replies to her. Do you see that?
11:01	15	A	Yes.
	16	Q	And he's indicating that he set out his views
	17		extensively in 1972 to Mr. Street and he's
	18		indicating that he is enclosing again a copy of
	19		the judgment of the Court of Appeal, he's
11:02	20		referencing his comments in his letter of 1972
	21		with respect to the Supreme Court of Canada and
	22		he's indicating that he's enclosing an extra copy,
	23		so this would be the second copy of the
	24		photographs that he sent to the board.
11:02	25	A	Uh-huh.

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1   Q   Okay. Now if we could go to the next page,

2   please, he just reiterates views he had expressed

3   earlier, talks about your son's escape and records

4   his belief that your son is, would represent a

11:02 5   danger if released on parole; correct?

6   A   Yes.

7   Q   In accordance with what you now say you accept was

8   his honestly held belief that your son was

9   properly convicted?

11:02 10   A   Yes.

11   Q   And again, Mrs. Milgaard, nowhere in this letter

12   does he solicit the Parole Board to keep his

13   communication with them secret from your son does

14   he?

11:02 15   A   No.

16   Q   And you have nothing, or can you point us to any

17   available evidence to suggest that the National

18   Parole Board kept this information secret from

19   your son?

11:03 20   A   I have no evidence of that, but I don't think the

21   Parole Board ever shared their file on him with

22   him, I don't think that would be their procedure

23   would it?

24   Q   Mrs. Milgaard, the procedures are that in fact the

11:03 25   Parole Board is required to share information and

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1   as we go through your son's file we see that

2   there's documentation that there is a sharing of

3   information taking place. In fact, I don't know

4   the policies in 1977, but now inmates have to sign

11:03 5   forms documenting everything has been shared with

6   them, Parole Board hearings have to be done

7   without any secrecy.

8   A   Okay. I wasn't aware of that.

9   Q   And as I said, I don't have the policy from 1977

11:03 10   and forward, but there are documentations or notes

11   in your son's file that information was shared

12   with him. Would you accept that?

13   A   Yes, if they are there.

14   Q   Mrs. Milgaard, as a matter of curiosity, did your

11:04 15   son ever tell you that he didn't know about this

16   information do you remember, or is that an

17   assumption you made as an outraged mom?

18   A   I'm trying to think back to when I talked to David

19   about it. I think I must have been -- at the time

11:04 20   of the hearing when it happened I know I was

21   totally outraged and we talked about it afterwards

22   and I would have thought that if he knew about it,

23   he would have said something at that time, but I

24   honestly have no current memory of it. Just as

11:04 25   you said, I was outraged when I found out about it

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	1		that day.
	2	Q	Mrs. Milgaard, you've indicated that you don't
	3		know what the policies of the board were at that
	4		time about either for -- you didn't know that it
11:05	5		was, the board looked for this information, you
	6		are telling us you don't know what the policies of
	7		the board were at that time about sharing
	8		information?
	9	A	No.
11:05	10	Q	But would it be fair to say that you never took
	11		the prudent step of trying to find out what the
	12		policies and practices were before you went on a
	13		rampage against my client on this point and
	14		engaged in a hostility that you hold to this day?
11:05	15	A	Probably not.
	16	Q	Okay. Mrs. Milgaard, do you accept the evidence
	17		before this Commission that the only letters
	18		written by him were those which I've just taken
	19		you through, 1972, 1974 and 1977?
11:05	20	A	Well, I accept that they are the only ones that
	21		are given to the Commission, yes, or that are
	22		available at this time.
	23	Q	Mrs. Milgaard, you know that the Commission has
	24		gotten the National Parole Board file don't you?
11:06	25	A	No, I wasn't sure of that, but --

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1   Q   I'm going to suggest to you that they have.

2   A   Okay.

3   Q   And the Commission has the Crown file?

4   A   Okay.

11:06 5   Q   And I'm going to suggest to you that there's not a

6   single iota of evidence anywhere except in your

7   book and in statements you've made to suggest that

8   Mr. Caldwell had any contact with the National

9   Parole Board or its members outside of those three

11:06 10   documented contacts.

11   A   Well, I was saying what I believed at the time.

12   Q   Okay. Mrs. Milgaard --

13   A   I mean, when that Parole Board member just, he

14   almost, he just jumped up and said, "but that

11:06 15   girl's been dead all the time and look at these

16   things," and that's when we first realized it and

17   it was just devastating to realize that they had

18   these pictures, and I can remember how outraged I

19   was, and not knowing I guess about the background

11:07 20   that you've given us here, it certainly stuck with

21   me and it really fuelled, if you will, my earlier

22   suspicions about Mr. Caldwell.

23   Q   Mrs. Milgaard, in light of what you know now, what

24   you've learned at this Commission, would you agree

11:07 25   with me that your outrage was perhaps, as a mother

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1   perhaps appropriate, but in terms of making a

2   protestation of misconduct or wrongdoing on Mr.

3   Caldwell's part, that that was an unfortunate

4   characterization by you of his actions?

11:07 5   A   I would say it was an unfortunate characterization

6   of his actions, yes.

7   Q   And would you accept that what he was doing, as

8   was found by the RCMP when they did their

9   investigation in 1993, 1994, was not at all

11:08 10   uncommon in the '70s and '80s, that they found out

11   that as a result of solicitations like that

12   booklet that we have from 1972, Crown attorneys

13   wrote to the Parole Board and expressed views on

14   cases?

11:08 15   A   I understand that now.

16   Q   And, madam, when you wrote in your book that he

17   put pictures in a brown envelope and sent them to

18   board members, would you accept now that you were

19   wrong when you put that in your book in 1999 and

11:08 20   repeated it in the revised edition in 2000?

21   A   Probably, yes.

22   Q   Mrs. Milgaard --

23   A   Incidentally, it wasn't a revised edition, all

24   that was changed -- they put it into a paperback

11:08 25   and the only thing that was changed was the fact

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1   of what had happened since the time the book was

2   written.

3   Q   Okay. Mrs. Milgaard, I have taken the opportunity

4   to review every single Parole Board decision sheet

11:09 5   with respect of your son from 19 -- the first was

6   in August 31st, 1976 when he applied for an ETA to

7   go home and there are many, and I won't go through

8   and list them unless you wish me to do so, but

9   there are many decisions about your son and there

11:09 10 are many reasons given by the board for reasons

11   why he was not granted parole. Would you accept

12   that?

13   A   Yes.

14   Q   I find a record of you being at two hearings, one

11:09 15 in 1983 and another in about 1990 with Mr. Asper?

16   A   Uh-huh.

17   Q   Would you accept, unless you want me to give the

18   list to your counsel, and I will, that nowhere in

19   any decision is the attribution for his not

11:09 20 getting parole, that Mr. Caldwell sent letters to

21   the Parole Board about him?

22   A   Oh, no, there's no -- but that was my feeling as a

23   result of the outrage of that Parole Board member.

24   Q   That was a single -- and, Mrs. Milgaard, you know

11:10 25 that Parole Board hearings are taped; right?

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1   A   Yes.

2   Q   Have you listened to the tape that you refer to

3   with respect to that Parole Board member and what

4   you describe as his outrage?

11:10 5   A   No. I didn't know we had them.

6   Q   I don't know that we do either, but do you recall

7   whether it was at the hearing in 1983 or the

8   hearing in 1990, to assist us in obtaining that

9   tape?

11:10 10   A   I have no idea.

11   Q   Okay. But, Mrs. Milgaard, you'll agree with me

12   that there was never a reason given that David

13   didn't get parole because Mr. Caldwell wrote those

14   letters to the Parole Board?

11:10 15   A   Oh, no, I've never said that.

16   Q   Okay. And would you agree with me that while you

17   disagree with some of his characterization of your

18   son, that based on the information he had

19   available to him in 1969 and 1970, that comments

11:10 20   that he made have been borne out by the record

21   before this Commission, and I'm referring to his

22   comments about concerns regarding his conduct and

23   looking at the assertion by Nichol John that he

24   raped her, the information in the statement that

11:11 25   he had from Sharon Williams, the information that

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1		Mr. Wilson reviewed with you last week that he got
2		from the Vancouver Police Department, information
3		that your son himself gave to the police?
4	A	There was some information in there, and I
5		honestly can't point you directly to it, that I
6		felt was totally wrong.
7	Q	Okay.
8	A	But other than what you've said, no.
9		COMMISSIONER MacCALLUM: What was the
10		question? I'm sorry, I don't know if you
11		finished it. Based on the information that you
12		had that Mr. Caldwell had available in '69, '70,
13		what was the rest of it?
14		BY MS. KNOX:
15	Q	Can you see anything, or can you say today, if you
16		can step back from being an outraged mother and be
17		an informed consumer, do you see anything in his
18		materials today that's not borne out by the record
19		for someone who believed it to be true at that
20		time?
21	A	I can't put my finger on it, and maybe my counsel
22		can, but it seems to me there is some information
23		in what Mr. Caldwell said that was not true.
24	Q	Mr. Commissioner, and Mrs. Milgaard, I'm going to
25		ask to have brought up document 332862.

Time stamps: 11:11 (line 5), 11:11 (line 10), 11:11 (line 15), 11:12 (line 20), 11:12 (line 25)

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1   A   I think my counsel is working on this afternoon's

2   presentation and I don't know if she heard my

3   question.

4   MS. McLEAN: Sorry, I didn't.

11:13 5   (Discussion off the record)

6   BY MS. KNOX:

7   Q   I directed Ms. Maclean's attention to what I think

8   you may be talking about.

9   Mrs. Milgaard, and for the

11:13 10   benefit of the Commission because we haven't

11   looked at these before, what's on the screen is a

12   decision of the National Parole Board?

13   A   Yes.

14   Q   It's in relation to your son David, and I can

11:13 15   indicate that we will see at the end of it that

16   it's a decision sheet dated June 6th, 1990. Okay?

17   A   Uh-huh.

18   Q   And you attended that Parole Board hearing with

19   Mr. Asper for your son; do you remember that? The

11:13 20   document, as we go through it, will show us that.

21   A   Okay.

22   Q   I've got notes of a summary. If you'll trust,

23   you'll see that I -- I hope you'll see I'm not

24   misleading you.

11:13 25   A   Okay.

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1   Q   But this was a hearing that was attended by Mr.

2   Asper as his lawyer and you as his assistant

3   according to the document. If we can continue to

4   scroll down, please. And this is a decision sheet

11:14 5   completed in accordance with the policies,

6   practices of the National Parole Board in 1990,

7   there were some changes through the years, but you

8   see what they list is the major case specific

9   factors that they are considering?

11:14 10   A   Yes.

11   Q   And one of the areas that you were concerned

12   about, and we'll come to how you responded to

13   this, is they documented that there was an

14   extensive juvenile history of problematic and

11:14 15   criminal behaviour requiring psychiatric

16   treatment, placement in juvenile facilities and

17   government wardship. Now, while you may quibble

18   about the details of that, you will agree that

19   there were records that we've gone through with

11:14 20   Mr. Carlyle-Gordge and with Dr. McDonald that show

21   in Yorkton and in a boys home and various places

22   that there was problematic behaviour and some

23   engagement in the criminal justice system?

24   A   Yes, but there were -- I don't think this is the

11:15 25   report. Do you have the other one for '83?

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1   Q   I'll come to that, but if you can stay with me

2   because there's a specific part here that refers

3   to you that I think in fact may help you. You'll

4   note that they talk about his extensive drug use

11:15 5   prior to the offence, all of which was true;

6   correct?

7   A   Yes.

8   Q   They talk about the fact that he escaped from

9   Dorchester in 1973 using a gun?

11:15 10   A   Uh-huh.

11   Q   And that he incurred a conviction for armed

12   robbery of an elderly couple?

13   A   Yes.

14   Q   Okay. They talk about him escaping on an escorted

11:15 15   temporary access pass in 1990 which was when he

16   left your home and went to Toronto?

17   A   Right.

18   Q   And where he was at large for 77 days and when he

19   was apprehended, this document says he was in

11:15 20   possession of a shotgun.

21   A   And that's untrue.

22   Q   That may very well be, but you will agree that had

23   nothing to do with my client Mr. Caldwell?

24   A   I have no idea, but that definitely was not true.

11:15 25   Q   And I don't know, I didn't check it frankly. And

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1   you'll note here that in terms of major -- sorry,

2   major case specific factors, they said:

3   "- many previous parole releases have

4   been denied due to emotional/mental

11:16 5   instability and lack of solid release

6   plans."

7   A   Yes.

8   Q   Nothing about --

9   A   -- Mr. Caldwell.

11:16 10   Q   No. Then if we could go, the next section on

11   every form is one they filled in, it's the

12   psychiatric, psychological history, and I don't

13   think we need to go through that.

14   The next section is information

11:16 15   from his case management team and the warden about

16   his progress on temporary absence passes.

17   They then go to a Phase 2, which

18   is a risk assessment criteria that they used, they

19   talk about a review of his escorted passes that

11:16 20   he's done successfully, and if we could go to the

21   next page, please, there's reference to him and

22   his family and problems with ETA's that were

23   attributed to the way they were administered I

24   think.

11:16 25   The next one, the board in

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1 making their decision were concerned that they had

2 difficulty in assessing his understanding of his

3 diagnosed medical condition, and can we agree that

4 by this we're talking about Dr. Yaren's decision

11:17 5 or his assessment that he was manic depressive?

6 A Yes.

7 Q And there's discussion of hypomania and the

8 continued institutional drug use up until a month

9 ago was a concern for the Parole Board?

11:17 10 A Yes.

11 Q You see that? If we could go to his proposed

12 release plans, they are talking about unescorted

13 temporary absences. Now, Mrs. Milgaard, it's

14 documented, and I missed it as we go through, but

11:17 15 it's indicated in the records of the Correctional

16 Service of Canada that during the course of this

17 hearing you clarified details as to his life prior

18 to the offences and you stated that reports about

19 his delinquency and lifestyle were so exaggerated

11:17 20 as to be erroneous. Do you remember telling the

21 Parole Board that some of that stuff about his

22 pre-offence history was just wrong?

23 A Yes, I do.

24 Q And do you recall that when you were

11:17 25 cross-examined by Mr. Wilson two weeks ago, that

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                    1   you acknowledged that until the time of this

                    2   Inquiry in fact, there was much information about

                    3   your son's past history that you didn't even know

                    4   about?

    11:18   5   A   That's right.

                    6   Q   And you said that as a mother it was hard for you

                    7   to know that?

                    8   A   Yes.

                    9   Q   Okay. When you spoke to the Parole Board and you

    11:18   10   made the assertions in 1990 that there was

                   11   erroneous information about his prior history, I

                   12   take it and I assume, based on your evidence, that

                   13   that was your honestly held belief at that time?

                   14   A   It was.

    11:18   15   Q   And it was your belief because you didn't know his

                   16   full history as it was documented that Mr.

                   17   Caldwell had misrepresented information to the

                   18   board?

                   19   A   Yes.

    11:18   20   Q   Mrs. Milgaard, do you accept now that in fact Mr.

                   21   Caldwell had extensive information unknown to you

                   22   that supported the conclusion by the board that

                   23   there was a troubled early history for your son?

                   24   A   Yes.

    11:18   25   Q   Okay. So when you make that accusation and you

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1   made that accusation against Mr. Caldwell and you

2   formulated your opinion that he had done a really

3   bad thing by going to the board, can I summarize

4   by saying that if you had known everything that

11:19 5   was in his file, you might have thought somewhat

6   differently?

7 A I might have, yes.

8 Q Okay. Mrs. Milgaard, in doing the perusal of the

9   file, and I'm not going to go through with you,

11:19 10   there's a long list, I copied the name of every

11   single Parole Board member that sat, as far as I

12   can determine from the file, on your son's

13   hearings from 1976, or 1977 forward to his release

14   in 1992. Do you, or can you name for us any

11:19 15   National Parole Board member who told you that

16   they received from Mr. Caldwell in brown envelopes

17   pictures of the murder scene and the body of Gail

18   Miller?

19 A No, I cannot.

11:19 20 Q When you look back over the history of the file

21   and setting aside your presumption that you must

22   have gotten the information from your lawyer, in

23   all the work that you've done on this file has any

24   individual come to you and said "that terrible

11:20 25   prosecutor sent me pictures of Gail Miller's

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1   body"?

2 A No, I never said that.

3 Q Would you agree with me that unless, in the

4   absence of such evidence, the statement that you

11:20 5   made in your book that I referred you to would

6   appear to be wrong?

7 A Well, I said in the book that he had never sent

8   them in other cases, I believe that was true.

9 Q I'm talking about him contacting, identifying new

11:20 10   board members every time your son came up for a

11   hearing and sending them pictures of Gail Miller's

12   body in a brown envelope.

13 A That's right.

14 Q Mr. Caldwell never ever did that, did he?

11:20 15 A Okay. I would show -- see, from what you have

16   shown me, that is not the case.

17 Q So would you accept that there is absolutely no

18   evidence that he ever did anything like that?

19 A Well, there's evidence that he sent pictures to

11:21 20   the parole board.

21 Q The National Parole Board.

22 A But now --

23 Q But as you said in your book, that very personal

24   vendetta of taking the time every time your son

11:21 25   was coming up for parole, number one to know his

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1   parole dates, number two to get the names of the

2   new members, and number three to prepare and send

3   them pictures in brown envelopes like a thief in

4   the night, you have no evidence of that; do you?

11:21   5   A   No, I have not.

6   Q   And you had no evidence of it when you wrote it in

7   your book?

8   A   That's what I thought.

9   Q   It's what you thought, but you had no evidence of

11:21   10   it?

11   A   That's right.

12   Q   And nowhere, if I go into McNally Robinson again

13   tonight, as I didn't do last night, is anybody

14   going to see that that was a thought or a theory

11:21   15   that you had, but it had no evidentiary

16   foundation?

17   A   That's correct.

18   Q   Mr. Commissioner, I do have and have prepared a

19   list of all of the parole board hearings and

11:22   20   decision sheets, I can provide it for the record,

21   if it's necessary I can provide it to

22   Mrs. Milgaard's counsel. It contains the name of

23   every board member, but it's there if it's needed,

24   but I don't think I need -- think I need to take

11:22   25   the time of the Commission to go through it?

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1   COMMISSIONER MacCALLUM: No, you can just

2   ask Commission Counsel to have it placed in the

3   record.

4   MS. KNOX: I'll get it to you.

11:22 5   BY MS. KNOX:

6   Q   Mrs. Milgaard, you earlier this morning said there

7   were two areas where you felt that you -- or you

8   still maintained the view that Mr. Caldwell

9   engaged in wrongdoing, the first being the

11:22 10   National Parole Board. I know you're looking at

11   your watch, and I did promise you I'm going to

12   have you out of here for lunch, and I will, I'm

13   fully on schedule, in fact it may relieve you to

14   know that I'm a bit ahead.

11:23 15 A   Good.

16 Q   Okay. Mrs. Milgaard, the other area that you

17   identified this morning was that he had knowledge

18   of Fisher and Fisher's conduct; correct?

19 A   Yes.

11:23 20 Q   Now you sat through the Inquiry process, and

21   you've seen all of the evidence that we've all

22   seen, and you've seen a letter that Deputy Chief

23   Corey wrote in 1970 to Mr. Ken MacKay saying "I

24   received a phone call from T.D.R. Caldwell saying,

11:23 25   if we had any information about Larry Fisher, that

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 1              I should send it to you"; do you remember that

 2              letter?

 3      A       Yes.

 4      Q       Mrs. Milgaard, setting aside for a moment your

 5              suspicion and your paranoia and whatever -- and I

 6              don't mean these words unkindly, but if my son was

 7              in jail I'm sure I would feel the same way -- but

 8              setting aside all of that, if you could step back

 9              from the emotions of it, do you today know of any

10              evidence anywhere in any file, or any record or

11              any statement, that would support your contention

12              or your belief that you still assert that Mr.

13              Caldwell had knowledge, in 1970, that Larry Fisher

14              had committed rapes in that neighbourhood before

15              and around the time of Gail Miller's death?

16      A       I guess it's -- I have difficulty in stepping

17              aside, as you say, because I look back to 1970,

18              and I know that Mr. Breckenridge coming forth has

19              been shown at this Inquiry to have been

20              untruthful, however that thought that he brought

21              forth about Mr. Caldwell being at a meeting and

22              the other people being at a meeting and they had

23              my son's file and Larry Fisher's file was so

24              engraved in my mind, and I pictured them all there

25              with these files together and the covering-up that
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1   took place and what happened with Mr. Karst when

2   he went down there, he said he didn't put them

3   together, none of it made any sense to me then.

4   It doesn't make any sense to me now that you could

11:25 5   have had that file, and had the information that

6   they were working with on the serial rapist, and

7   not have put two and two together, and I guess I

8   just still have a hard time dealing with it, I'm

9   sorry.

11:25 10   Q   Okay. Mrs. Milgaard, I don't take issue with the

11   fact that you have a hard time dealing with it,

12   but what I want you to do is tell me what, if

13   anything, you can point me, my client, or this

14   Commission to that would give any indication that

11:25 15   he had knowledge, in 1970, that Larry Fisher was

16   apprehended for rapes in the area and that Larry

17   Fisher was in any way possibly a suspect that

18   should have been looked at, instead of your son,

19   as the murderer of Gail Miller?

11:26 20   A   I can't point you to anything because I haven't

21   seen anything.

22   Q   Mrs. Cald -- Mrs. Milgaard, if I could go back to

23   what you were just saying, you indicated that when

24   you talked to Mr. Breckenridge you had information

11:26 25   that Mr. Caldwell was at this meeting. I say that

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 1              surprises me only because I haven't seen his name

 2              anywhere in the documentation to do with

 3              Mr. Breckenridge, and if I'm wrong on that I'm

 4              sure others will correct me, but he talked about

 5              Mr. Romanow, Mr. Kujawa, Mr. Lysyk, he never named

 6              Mr. Caldwell as a party to those meetings; did he?

 7        A     I, in my memory I thought it was, but I could be

 8              wrong on that.  I just -- to me, they were all

 9              colluding, every one of them was in collusion.  I

10              mean that was my suspicion at the time, I -- and I

11              realize in retrospect, when I go back, that it's

12              not logical, and I wish that I could release the

13              feelings that I have had, but I guess I've been

14              struggling with them for so many years that, it's

15              maybe not logical to continue on, but I've still

16              not got to the stage where I feel that someone

17              hasn't done something wrong, because David did

18              spend all those years in prison when he shouldn't

19              have.

20        Q     Mrs. Milgaard, can you accept that suspicions, in

21              order to be crystalized into facts and truth, have

22              to have some basis for them other than

23              "something's wrong here, this must be true"?

24        A     Yes, they must have, I realize that now.

25        Q     Okay.  Now over the years you have, many times and
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1		in many places, asserted that Mr. Caldwell knew
2		about Fisher; haven't you?
3	A	Yes.
4	Q	And, over the years, the basis that you've made
11:28 5		the assertion have been varied and differing, but
6		I'm gonna suggest to you that every time you took
7		what you believed to be a fact and said "he knew,
8		and I know he knew because", that fact has turned
9		out, either in the record or through evidence at
11:28 10		this Commission, to prove -- to have proven to be
11		wrong?
12	A	Yes, I believe you're right on that.
13	Q	You, at one point in time, reported, didn't you,
14		to Dave Roberts at the Toronto *Globe and Mail*,
11:28 15		that you had Caldwell -- and I can get the tape
16		reference if you wish -- but you, that you had him
17		because you knew, now, that he talked to Sidney
18		Wilson, being the anonymous informant to Mr. Wolch
19		in 1990; do you remember having -- making that
11:28 20		comment to Dave Roberts?
21	A	I don't.
22	Q	Mr. Commissioner, I don't need to bring it up
23		unless Mrs. Milgaard wishes to see it, but on tape
24		77, September 1992, the transcript starts at
11:29 25		336576, and at page 336579 Mrs. Milgaard -- and

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1		I'm summarizing -- made a mistake, made a
2		statement that 'we've got Caldwell, he interviewed
3		the anonymous caller', and that was based on what
4		turns out to be a mistake in the file because the
11:29 5		evidence shows that Mr. Milgaard (sic) never
6		interviewed or had contact with Sidney Wilson or
7		Bruce LaFreniere, or whoever he may be?
8	A	You said "Mr. Milgaard"?
9	Q	I'm sorry, Mr. Caldwell. I'm getting tired too.
11:29 10		COMMISSIONER MacCALLUM: What was the date
11		of that tape, please?
12		MS. KNOX: The tape says September 1992, I
13		haven't been able to narrow it down to a day in
14		September.
11:29 15	A	Okay.
16		COMMISSIONER MacCALLUM: 1992? All right.
17		BY MS. KNOX:
18	Q	But the record will show that you had that
19		discussion?
11:29 20	A	Yes.
21	Q	There was a point in time when you believed, based
22		on information that somebody had put out there,
23		that Mr. Caldwell had interviewed Linda Fisher?
24	A	Yes.
11:29 25	Q	And you know now that that's not true, based on

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	1		the record and the testimony of Ms. Fisher?
	2	A	Yes.
	3	Q	You -- at one point in time it was asserted that a
	4		police officer had talked to him, and I'm thinking
11:30	5		Gus Weir but I'm not sure, but you know that there
	6		is no evidence from anyone that any police officer
	7		talked to Mr. Caldwell about Larry Fisher; is
	8		there?
	9	A	I don't recall any.
11:30	10	Q	Okay. And that's important, and we have the
	11		evidence of the witnesses, but you're not aware of
	12		anything not shown on the record with respect to
	13		Mr. Caldwell having any knowledge about Fisher;
	14		are you?
11:30	15	A	No, I'm not.
	16	Q	Okay. So all of the statements that you made
	17		about him in that regard that appeared anywhere,
	18		in fact to the best of your knowledge now, are
	19		incorrect or untrue?
11:30	20	A	That's correct.
	21	Q	I think I've asked you but I'll close this area by
	22		saying if you would cast your mind back over
	23		everything you did, everything you know, and all
	24		that we have available to us, can you say, at this
11:30	25		point in time, that there is any evidence to

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1   suggest that Mr. Caldwell knew anything about

2   Larry Fisher?

3   A   I don't know of any evidence.

4   Q   Okay. Would you agree -- and I'm thinking back to

11:31   5   the evidence of Mr. Williams last week, and I've

6   referenced this with you earlier this morning --

7   that when Larry Fisher's name was brought to his

8   attention he pulled out everything from his file

9   that might reference Larry Fisher, turned it over

11:31   10   to Justice, and didn't in any way attempt to, as

11   you said you suspected he might, try to hide,

12   disseminate, or do anything to cover up the

13   existence of materials in his file that might

14   relate to another perpetrator, and in particular,

11:31   15   to Larry Fisher?

16   A   That's right.

17   Q   Would you agree with me that those actions in

18   1989-1990, just like his actions when he invited

19   Peter Carlyle-Gordge into his office in 1983 and

11:31   20   the CBC in 1985, and when he invited them to go

21   talk to police officers, are inconsistent with a

22   man who had a guilty mind or who had engaged in

23   wrongful conduct to keep an innocent young man in

24   jail?

11:31   25   A   Yes.

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1   Q   Mrs. Milgaard, I apologize, I've lost a piece of

2   paper. While I'm looking for it I'm going to ask

3   the staff to play that next clip from the *Front*

4   *Page Challenge* program and ask if you would listen

11:32 5   to it for me.

6   *(Excerpt of Tape 173)*

7   *"MRS. JOYCE MILGAARD: He was diagnosed as*

8   *a schizophrenic and committed right*

9   *after the trial. His brother said,*

10   *like, prior to this questioning he was*

11   *questioned in Regina where he was in on*

12   *a vagrancy charge, the evidence showed*

13   *that he was stripped naked and grilled*

14   *for hours and hours, at that time he*

15   *said he knew nothing about it. By the*

16   *time he got home, this brain of his had*

17   *developed some -- to the degree because*

18   *of, I guess, him being schizophrenic,*

19   *that he had lots of thoughts in his head*

20   *by the time he got home, and his brother*

21   *said if he had known he'd known anything*

22   *about the crime they would never have*

23   *believed him when he said they saw blood*

24   *on him because he simply was not*

25   *reliable.*

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1   *UNIDENTIFIED MALE SPEAKER: Uh-huh.*

2   *MRS. JOYCE MILGAARD: But that did not come*

3   *out at Court. He applied for and got*

4   *the $2,000 reward.*

5   *UNIDENTIFIED MALE SPEAKER: Oh, my.*

6   *MRS. JOYCE MILGAARD: Now we since found*

7   *out, the police kept saying "well we*

8   *didn't ask Cadrain to come in, he came*

9   *in out -- in of his own free will", we*

10   *have since found out that actually they*

11   *did. They got a priest, Father Murphy,*

12   *to talk to this young boy and say to him*

13   *"you know, Albert, there is a reward out*

14   *for this information, and the police*

15   *really think you were involved in it,*

16   *now you could really help them, if you*

17   *saw blood on David you could go to them*

18   *and tell them and you'd be eligible for*

19   *this reward". After the conversation*

20   *with the police he went into the police*

21   *station and gave that testimony --*

22   *MRS. JOYCE MILGAARD: -- I don't want to*

23   *damage him because he's a victim ..."*

24   *(End of excerpt)*

11:34 25   BY MS. KNOX:

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	1	Q	We can stop there. Mr. Milgaard, I've got myself
	2		a little bit out of order, but we can go back --
	3		as you can appreciate -- but do you remember, you
	4		remember this conversation and you remember
11:34	5		telling that producer that a priest was used by
	6		the Saskatoon Police Service to get Albert Cadrain
	7		to implicate your son in the murder?
	8	A	Yes, and I believe afterwards we found out that
	9		wasn't true, that was the first story that we got.
11:34	10	Q	Mrs. Milgaard, that's -- that interview or that
	11		discussion with the *Front Page Challenge* producer
	12		was in October of 1991; you'll agree?
	13	A	I guess, yes, if that's the date.
	14	Q	If we go back, the record will show --
11:35	15	A	Yeah.
	16	Q	-- he's talking to you about the fact that they
	17		are going to do the taping on October 5th,
	18		1991, --
	19	A	Okay.
11:35	20	Q	-- if you'll accept that. Do you recall
	21		testifying, early in the days when you started out
	22		in this dreadful process of being on the witness
	23		stand, and Mr. Hodson asking you about the
	24		knowledge that you had of why Albert Cadrain came
11:35	25		forward?

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1   A   No, I don't recall.

2   Q   Okay. Mrs. Milgaard, on I believe it was May 10th

3   Mr. Hodson took you through the transcripts of the

4   interviews that Peter Carlyle-Gordge did with

11:35 5   Father Murphy?

6   A   Yes.

7   Q   Do you remember those? He first interviewed

8   Father Murphy in 1981, the transcript number is

9   048529.

11:35 10   A   Okay.

11   Q   As a result of his contact with Father Murphy in

12   1981, when you were interviewing witnesses like

13   Nichol John and Ron Wilson, you had told them --

14   and you, and I think legitimately you believed at

11:36 15   that time that it was Father Murphy who got Dave

16   -- who got Albert Cadrain to go in by, as you

17   said, dangling reward money in front of him?

18   A   Uh-huh.

19   Q   You recall agreeing with Mr. Hodson that, in a

11:36 20   subsequent interview that was done by Mr.

21   Carlyle-Gordge with Father Murphy in 1983, that in

22   fact that was discovered to be a mistake, and what

23   Father Murphy told Peter Carlyle-Gordge in 1983,

24   and what Peter Carlyle-Gordge shared with you, was

11:36 25   that he had no contact with Albert until after Mr.

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1   Milgaard was convicted and in jail?

2   A   I remember that, yes.

3   Q   Do you remember saying to Mr. Hodson, in reference

4   to or in response to questions, as he phrased it,

11:36 5   that it was fair to say that, by the time of this

6   second interview with Mr. -- Father Murphy in

7   1983, you knew that Albert Cadrain wasn't prompted

8   by the priest to go in, and that the reward wasn't

9   the reason he gave testimony against your son?

11:37 10   A   Yes.

11   Q   You had that knowledge in 1983? That's what

12   you -- the transcript, I've pulled it, and I'm so

13   messed up here I've mixed up my pages, but that's

14   in your transcript of evidence that you gave your

11:37 15   week, the first week, May 8th, I believe on May

16   10th?

17   A   Yeah. If -- I'm trying to recall this, because I

18   know that I got some information from Peter after

19   the fact, because he went away, and whether I

11:37 20   actually found this out here, or at that time, I

21   don't remember.

22   Q   Okay.

23   A   If --

24   Q   Mrs. Milgaard, I'm not gonna take you through

11:37 25   them, but there are conversations between you and

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1		Paul Henderson and David Asper about this subject.
2	A	Yes.
3	Q	They are found on tape 17 starting at page 335929,
4		and they continue forward, there's discussion
5		between you and Dan Lett. But my -- your response
6		to Mr. Hodson and the records that you had
7		available to you --
8	A	Uh-huh.
9	Q	-- clearly showed that Father Murphy said he did
10		not entice, and he was not used by the police to
11		entice, Albert Cadrain to go in to them, and yet
12		in October or late September 1981 you're putting
13		this forward as the factual assertion for the
14		*Front Page Challenge* program; why would you do
15		that?
16	A	I don't know. I really don't.
17	Q	Mrs. Milgaard, I said to you yesterday -- and I
18		apologize if it appears to be insensitive -- that
19		in your quest to get headlines for your son,
20		sometimes you took and you sensationalized the
21		truth, whether you realized it or not, sometimes
22		you took and you changed the truth and put forward
23		lies because it got sensational headlines. Would
24		this be one of the examples where, in your zeal to
25		get your son out of jail, you forgot about the

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1		truth and you sensationalized beyond reason?
2	A	No, that never came into the *Front Page Challenge*
3		interview at any time.
4	Q	Mrs. Milgaard, I should say, just so that we're
5		clear on the record, this is your interview with
6		the producer preliminary to the program?
7	A	Yes.
8	Q	This is not a transcript of the program, and I
9		don't believe we have a tape of the program, but
10		what I am saying to you, in setting the stage with
11		this producer for your appearance on the show,
12		that you resorted to giving him false information
13		that you knew to be false?
14	A	I don't believe that was my intention at the time.
15	Q	But you know now, as you listen to yourself, that
16		that's what you did; isn't it?
17	A	I can see that I have taken that information,
18		however as I said, none of it went into the *Front*
19		*Page Challenge* show at all, there was nothing to
20		do with that.
21	Q	Okay.
22	A	And I believe you do have a tape of the *Front Page*
23		*Challenge* show.
24	Q	And that may very well be the case, I checked with
25		the staff and I know there's going to be a clip of

11:39 — 5
11:39 — 10
11:39 — 15
11:40 — 20
11:40 — 25

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1   tapes, I'm not --

2   A   Yeah, I think it's part of it.

3   Q   But I just want to be very clear to you and fair

4   to you, I don't know what you said on the actual

11:40 5   program, so that it's very clear on the public

6   record what I played for you is what you had in a

7   telephone conversation with the producer, preamble

8   to you even going to PEI, I believe you were still

9   at home?

11:40 10   A   Okay.

11   Q   Okay? So just so that I am not, in any way,

12   misleading you.

13   Mrs. Milgaard, the two concerns

14   that you referred to this morning, being the

11:40 15   National Parole Board and your belief that Mr.

16   Caldwell had engaged in wrong conduct there, you

17   agree with me now, had you known the true state of

18   the practices and policies of the National Parole

19   Board, that you might have viewed his conduct

11:41 20   differently?

21   A   Yes.

22   Q   Mrs. Milgaard, do you realize that in, I think it

23   was 1992, that the *Parole Act* was repealed, and it

24   was replaced by a new act that makes it mandatory

11:41 25   on parole officers to go and get the kind of

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1   information, from sources like Mr. Caldwell, that

2   he gave as a result of the invitation in that

3   brochure in 1972?

4   A   No, I wasn't aware.

11:41 5   Q   If you accept from me that this is ordinary

6   information looked for by the National Parole

7   Board because they consider it to be critical for

8   them to do risk assessment, would that again

9   diminish the negative spin or the negative view

11:41 10   you have of Mr. Caldwell's conduct in this regard?

11   A   Yes.

12   COMMISSIONER MacCALLUM: This is, what date

13   is that?

14   BY MS. KNOX:

11:41 15   Q   1992. Mr. Commissioner, in the RCMP investigation

16   there is reference to an interview conducted with

17   a John Bissett, B-I-S-S-E-T-T, and Mr. Bissett

18   outlined for the RCMP investigation that

19   information, I don't have the page reference, but

11:42 20   it is the conditional -- CCRA, something and

21   Conditional Release Act, that was introduced, and

22   it was introduced in legislation, according to

23   Mr. Bissett, in 1992.

24   COMMISSIONER MacCALLUM: So it's mandatory

11:42 25   for parole officers to seek such information; is

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1   there any corresponding duty upon Justice

2   officials to divulge it?

3   MS. KNOX: I don't know the answer to that,

4   and I confess I don't know the answer even having

11:42 5   been a member of the National Parole Board.

6   I do know that there has just

7   been a Board of Inquiry conducted in a case in

8   Yellowknife, in the Northwest Territories, where

9   a parole officer was killed, and one of the

11:42 10   criticisms of the staff and the system is that

11   the parole service did not get that kind of

12   information, that kind of information being

13   psychiatric records on an inmate, Mr. Ulayuk, who

14   was released by the board and subsequently killed

11:42 15   someone. That's a very recent report, I don't

16   know the details of it, but -- and I can't answer

17   your question. Maybe -- we could certainly

18   undertake to find out.

19   COMMISSIONER MacCALLUM: Yeah, the

11:43 20   psychiatric record part of it wasn't concerning

21   me, it was the process of extracting such

22   information from Justice officials who took part

23   in the trial, for example.

24   MS. KNOX: Okay. I don't know the answer,

11:43 25   but I suspect that is something we can find out.

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1   The head office for the National Parole Board for

2   the Prairies is here in Saskatoon, and that is

3   information that we could acquire, I suspect, if

4   that would be helpful?

11:43 5   COMMISSIONER MacCALLUM: Well, it is, in a

6   sense. Because it is less than self-evident to

7   me, for example, that Justice officials such

8   as -- I think that pamphlet mentioned the

9   magistrates, didn't it --

11:43 10   MS. KNOX: Uh-huh, magistrates, judges,

11   police officers, I think were the three

12   categories.

13   COMMISSIONER MacCALLUM: -- should have any

14   business in the parole part of the system.

11:43 15   MS. KNOX: Okay. I understand the caution,

16   Commissioner, and I will undertake to pursue it

17   further and to obtain information with the

18   assistance of Commission staff.

19   COMMISSIONER MacCALLUM: Okay.

11:44 20   BY MS. KNOX:

21 Q   Mrs. Milgaard, I want to conclude my questions of

22   you by moving to a final area, and I want to go

23   back to your book, 269317, and I want to refer you

24   specifically to page 269570.

11:44 25 A   And the page number?

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1   **Q**   The page number is 243.

2   *A*   Thank you.

3   **Q**   And I want to direct your attention to the

4   second-last paragraph at the bottom of 243, and

11:44 5   I'm give you a moment to read that, starting:

6   "I knew I was still getting

7   on the nerves of some people in power."

8   *A*   *(Witness reading)* Okay.

9   **Q**   If you could read down to the part that says:

11:45 10   "... Mitchell said. 'She'd better be

11   prepared to back this up with better

12   evidence than she has to this point.'"

13   *A*   Yes.

14   **Q**   Mrs. Milgaard, this is obviously you referring to

11:45 15   the information that you got from Michael

16   Breckenridge; --

17   *A*   Yes.

18   **Q**   -- do you agree? And this is your book that you

19   wrote back in 1999?

11:45 20   *A*   Telling about what went on back then.

21   **Q**   And, Mrs. Milgaard, nowhere in your book anywhere

22   do you indicate that Mr. Mitchell was right when

23   he challenged you to back that up, and that you

24   couldn't; do you?

11:46 25   *A*   No.

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1   Q   So the reader, going to McNally Robinson tonight,

2   is never going to know that, when you made that

3   terrible accusation, within a day or two days *The*

4   *Globe and Mail* reported that you were wrong, not

11:46 5   only were you wrong but your source was a bit of a

6   -- and I mean no disrespect of him -- but that

7   your source was a bit of a political zealot with

8   an agenda that appeared to be serving a purpose

9   other than yours, and that indeed, he hadn't even

11:46 10   worked at the Justice Department when he gave you

11   this information?

12   A   Unfortunately, there is a lot of things that are

13   not in my book.

14   Q   Yeah. Unfortunate for many people, including my

11:46 15   client, aren't they?

16   A   Yes.

17   Q   Mrs. Milgaard, yesterday I suggested to you that,

18   when you wrote your book in 1999 -- and I'm gonna,

19   no, sorry, before I go there.

11:46 20   Mr. Hodson passed me -- sorry --

21   Mr. Gibson passed me a document, Mr. Commissioner,

22   the document ID is 023167. And this is the RCMP

23   investigation, and he pointed me to a page number

24   that contains the information about Mr. Bissett.

11:47 25   Yes, if you go to page 108 of that report, it

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1   doesn't have a stamped document number, but within

2   that report there is the reference to John

3   Bissett, Regional Manager of the National Parole

4   Board, and it says:

11:47   5   "Bissett the Regional

6   Manager, Conditional Release Programs,

7   states it was not unusual, between 1970

8   and 1977, for a prosecutor to write to

9   the Parole Board. The Board, in fact,

11:47   10   would solicit information from any

11   agency that might have input, be it

12   positive or negative."

13   And he goes on to summarize:

14   "An Act was proclaimed in

11:47   15   1992 requiring those in the criminal

16   justice system to provide the National

17   Parole Board with information of the

18   kind provided by Caldwell."

19   That's contained in the RCMP investigation report

11:48   20   that I have given you the document ID for.

21   COMMISSIONER MacCALLUM: Well, we'll try to

22   find the document, the source document to --

23   MS. KNOX: Thank you.

24   COMMISSIONER MacCALLUM: That gives rise to

11:48   25   such an obligation.

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1   MS. KNOX: Okay.

2   BY MS. KNOX:

3   Q   Mrs. Milgaard, to go back to where I was about to

4   end, I was prefacing my question by saying that I

11:48 5   suggested to you yesterday that had you told the

6   truth, the whole truth, and nothing but the truth

7   in your book in 1999, that there wasn't a

8   conspiracy or coverup or lots of wrongdoing in

9   Saskatchewan that caused your son's conviction,

11:48 10   but that it was a combination of mistakes made,

11   what I would suggest to you the record shows are

12   honest mistakes by good men acting in a belief

13   that they had genuinely caught the right person,

14   that that wouldn't have been very sexy for selling

11:48 15   books, and you indicated, I believe, that that's

16   not the case?

17 A   No, it certainly wouldn't have been the case.

18   There's an awful lot that's not in the book that

19   was written for the book that never got in, I

11:49 20   can't tell you why some of it wasn't in, and it

21   certainly wasn't withheld because of those

22   reasons. It was my belief then, and when I wrote

23   the book I tried to write, at each time, what was

24   happening at that time.

11:49 25 Q   Mrs. Milgaard, at the risk of causing you great

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	1		offence, I'm going to suggest to you that when you
	2		became caught up in this media maelstrom that
	3		developed as a result of your efforts to free your
	4		son and to establish his innocence, that you, as
11:49	5		an individual, got caught up in the hype of the
	6		media and you wanted to continue to be part of the
	7		media, to be a bit of a media darling, as it were?
	8	A	You mean that's why I wrote the book?
	9	Q	Part of it, yeah?
11:50	10	A	No, actually no, I would say not.
	11	Q	Mrs. Milgaard, there are various tapes in the
	12		collection that we got from you where there are
	13		discussions with Mr. Asper and with others about
	14		you writing the book, and early in, I believe in
11:50	15		19 -- December, late November-December 1991,
	16		before the Supreme Court of Canada hearing, you
	17		signed a contract with a media lawyer out of
	18		Toronto, didn't you, to negotiate for you a
	19		contract for you to write a book for a price, and
11:50	20		your asking price for your retainer was $100,000?
	21	A	I don't remember that. I know that I worked with
	22		a media lawyer and the reason for working with him
	23		was because we were absolutely deluged with
	24		requests for books, for all kinds of things, and I
11:50	25		couldn't handle the number of requests and stuff

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1   that were coming and so we went to him because we

2   understood that he would look after all of that

3   and I would not be inundated with the calls that I

4   was getting at that time, and if that's the case,

11:51 5   you know, of the documentation that went to him,

6   it could be.

7 Q   Mrs. Milgaard, there's a tape in your collection

8   of tapes, tape 165, that records a number of

9   conversations. I think the man's name and your

11:51 10   lawyer in Toronto who was negotiating for you was

11   Michael Levine or something?

12 A   Yes, that's right.

13 Q   Michael Levine?

14 A   An entertainment lawyer.

11:51 15 Q   An entertainment lawyer, yes, who you signed a

16   retainer with to represent you and to obtain for

17   you a financial fee, and the number being used in

18   the tape was $100,000 to sign with a firm and a

19   writer. Do you remember that?

11:51 20 A   I remember hiring him, but my remembrance of

21   hiring him was not -- although he did act for me

22   as far as the book was concerned later, originally

23   the whole idea of hiring him was, I believe they

24   were wanting to do a movie.

11:52 25 Q   Do you remember that after you signed the contract

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1   with Mr. Levine, your David, David Milgaard, got

2   very angry at you because he had been discussing

3   with the National Film Board and a man by the name

4   of Paul Marchand doing a film and a book with the

11:52 5   National Film -- and/or book with the National

6   Film Board and he was talking about doing it for

7   free in his belief and his need to address

8   prisoner rights and issues to do with prisoner

9   rights?

11:52 10 A   No, I don't remember that.

11 Q   Mrs. Milgaard, I haven't asked the staff, and I

12   don't know if it will be possible for them to do

13   that, in light of your absence of memory I want to

14   bring up from tape 163 the transcript starting at

11:53 15   page 337218.

16   COMMISSIONER MacCALLUM: Do you want just

17   the transcript or the audio as well?

18   MS. KNOX: I don't know how hard it would

19   be to bring up the audio. If we can have the

11:53 20   audio, that would be helpful, but in fairness to

21   the staff, I didn't ask for it, I hadn't

22   anticipated that --

23   COMMISSIONER MacCALLUM: Let's look at the

24   transcript.

25 BY MS. KNOX:

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1   Q   337218. This is a discussion that you'll see

2   between yourself and David Asper?

3   MR. HODSON: Is that page 2?

4   BY MS. KNOX:

11:53 5   Q   Page 2, yes. I'm sorry, on page 47 of the small

6   text that we've got up right now. I think we'll

7   be fine with the transcript. And,

8   Mr. Commissioner, as I said, I apologize to the

9   staff, I didn't give them this clip, I hadn't

11:54 10   anticipated needing it.

11   But from the transcript you can

12   see that Mr. Asper is talking to you and he's

13   coming back from a visit with your David, if we go

14   further back in the tape if you'll accept that,

11:54 15   and he's telling you that your David is very

16   agitated about your deal with the lawyer in

17   Toronto?

18   A   Uh-huh.

19   Q   And the substance of this discussion and previous

11:54 20   discussions is that people, including Bob Bruce,

21   were telling you, or you were telling Bob Bruce

22   that David wanted to do a National Film Board

23   broadcast for free, Bob Bruce said to you why

24   don't you let him do it, and your response was

11:54 25   that you had news for him, he wasn't going to be

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1   doing it for free because you had hired a lawyer

2   and you were negotiating money for his story and

3   your story?

4   *A*   I don't recall it, but that's quite possible that

11:55 5   we did.

6   *Q*   The conversation with Bob Bruce, Mr. Commissioner,

7   is in this transcript at 336521 and at page 522

8   for the record. But you see that he reported, Mr.

9   Asper is reporting that he's very agitated?

11:55 10   *A*   Yes.

11   *Q*   And do you remember that after you had the

12   conversation with Bob Bruce and before David Asper

13   gets on this call with you, that you phoned

14   David's contact at the National Film Board, a man

11:55 15   by the name of Paul Marchand, and you told him

16   that David had signed with a lawyer to handle all

17   of your literary rights and that if the National

18   Film Board wanted it, then the number that you

19   were looking at for a fee for selling that story

11:55 20   was $100,000?

21   *A*   I don't recall that, but that's quite possible.

22   *Q*   Mrs. Milgaard, I'm going to suggest to you that

23   what Mr. Marchand said to you was that that was

24   pretty steep for the National Parole Board, but he

11:55 25   would look into it -- National Film Board, sorry,

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	1		but he would look into it?
	2	A	That's quite possible, but I know that when we did
	3		end up doing the movie and all of the information,
	4		the money went to David for when he got out, and
11:56	5		that's why I felt that it was really important for
	6		him not to give the story away to the National
	7		Film Board.
	8	Q	Mrs. Milgaard, we can go on through this tape if
	9		you wish, but I'm going to suggest to you that at
11:56	10		that time when Mr. Asper told you that David was
	11		very agitated about your deal, that he wanted the
	12		contract with Mr. Levine cancelled, that your
	13		response was that if that was what he wanted, you
	14		had a deal for him, and that you were going to go
11:56	15		out and see him that night and you were going to
	16		tell him that you would be withdrawing your
	17		support, his community support for his continued
	18		attempts to obtain his freedom. Do you remember
	19		saying that?
11:56	20	A	No, I don't.
	21	Q	Mrs. Milgaard, it's found, as we go through the
	22		transcript, at 337218.
	23	A	David had to realize at the time that we had come
	24		to the absolute end of our resources and this was
11:57	25		a need that had to be put into place, that he

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1   couldn't just give his story away.

2 Q   And in 1999 when you wrote the book, he and you

3   were no longer at the end of his resources, were

4   you, because you had achieved a settlement with

11:57 5   the Saskatchewan government?

6 A   Right, and this area that you are talking about

7   was nothing to do with the book, it was to do with

8   the films that were being offered by Global and by

9   CTV and I felt that it would provide him with the

11:57 10   money that was badly needed at that time.

11 Q   Mrs. Milgaard, whatever your motivation, would you

12   agree with me that this transcript and these

13   discussions indicate there was divergence in views

14   between you and your son as to what should be done

11:57 15   with the information and the story of his life and

16   his struggle and your struggle to get him out of

17   prison?

18 A   Yes.

19 Q   And that you opted for the financial reward and

11:58 20   you negotiated on the basis of financial reward?

21 A   I did.

22 Q   And when you wrote your book in 1999 and when the

23   chapter was added in 2002, and I won't, I haven't

24   gone through all of them, I've gone through some

11:58 25   of them, but you continued to slam, if I can use

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1   that word, and to slag people in the system,

2   including my client, despite the clear,

3   uncontroverted knowledge available to you, whether

4   you chose to look at it or not, that what you were

11:58   5   putting out in your book about them was absolute

6   lies in some respects and distortions of facts in

7   others?

8   A   No, I would not.

9   Q   You wouldn't. Why then didn't you put in that

11:58   10   when you scared the government, that Mr. Mitchell

11   challenged you, that it turned out that the

12   government was right and that at the end of the

13   day, as far as you knew, you were dealing with

14   good men who made honest mistakes as opposed to

11:58   15   the nefarious, horrible people who had, as Mr.

16   McCloskey put in the National Press, framed your

17   son for a murder he didn't commit?

18 A   I don't know.

19 Q   If you had it to do over, would you do it

11:59   20   differently?

21 A   I would probably do a lot of things differently if

22   I had to do it over, but the main thing that I did

23   do was I got my son out of prison and that to me

24   was the most important part of my job and I did

11:59   25   it.

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1   Q   Mrs. Milgaard, is it your testimony before this

2   Commission in light of that statement, that as far

3   as you are concerned, the ends, and the ends being

4   even manipulation, dishonesty, justify -- or the

11:59 5   means justify the end, that it's okay to lie?

6   A   I won't agree with any of the charges that you are

7   attributing to me, I'm sorry.

8   Q   I'm sorry, that's what I thought I understood you

9   to be saying, but thank you, those are all my

11:59 10   questions.

11   MR. HODSON: I think we have Mr. Wolch and

12   Ms. McLean left, so I presume we'll adjourn and

13   continue at 1:30.

14   COMMISSIONER MacCALLUM: 1:30, yes, thank

12:00 15   you.

16   (Adjourned at 12:00 p.m.)

17   (Reconvened at 1:43 p.m.)

18   MR. HODSON: Afternoon, Mr. Commissioner.

19   We have a slight change in plans as far as

01:44 20   scheduling.

21   I've talked to Ms. McLean and

22   Mr. Wolch who have indicated that, for a number

23   of reasons, we don't think we can get through and

24   finish Mrs. Milgaard's evidence this afternoon,

01:44 25   so we're going to defer the completion of her

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1   evidence.

2   We have Dr. Markesteyn arriving

3   this afternoon to begin his testimony tomorrow

4   morning. We had planned, for Thursday of this

01:44   5   week and Monday of next week, to play some

6   newscast videos on the record, so we'll simply

7   move those up this afternoon and play some today,

8   and then some over the next couple of weeks as we

9   have time.

01:44   10   Let me just explain, by way of

11   background, what these are and why we're playing

12   them on the record. The Commission received

13   probably 40 or 50 hours worth of recorded video,

14   recorded newscasts or programs or documentaries,

01:44   15   they were received primarily from either David

16   Milgaard or Joyce Milgaard. They relate

17   primarily to the time frame 1990 through until

18   1992 or 1993. And you will know, Mr.

19   Commissioner, with the number of witnesses we

01:45   20   have referred to, newspaper stories, quite

21   frequently with witnesses, where witnesses have

22   been quoted or have made statements, these video

23   reports are similar in nature.

24   There is a couple of concerns I

01:45   25   had as Commission Counsel. We received these

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1   videos, we did not have a practical and

2   economical way to provide all 50 hours of the

3   video tape to all counsel and have them review

4   all 50 hours, or thereabouts, to find out what

01:45   5   extent, if any, these videos might affect their

6   clients' interests, so what we did is we have

7   pared them down to a collection of about 5 1/2

8   hours of 45 clips. And our criteria in selecting

9   these are as follows; where we have a written

01:46   10   transcript on the record, we have not included

11   it, so we can simply go to a written transcript

12   of a program; secondly, we have focused on where

13   -- and the tapes relate primarily to reports

14   regarding people in the Milgaard group, if I can

01:46   15   call it that, so they are their tapes but it's

16   primarily Mr. Asper, Mr. Wolch, Joyce Milgaard,

17   David Milgaard, there are some clips of Kim

18   Campbell and a few other, Deborah Hall and some

19   other witnesses, and so that's what we've

01:46   20   received. So we've pared that down, we've

21   excluded simply news reports or reporter talk, if

22   I can put it that way, and are focusing on what

23   these people said and when they said it so that

24   that's more efficient.

01:46   25   The second purpose is to put it

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1   on the record, to have you view it, have counsel

2   view it, and as well, then, we will get an

3   official transcript of that.

4   There is one, in addition to

01:47 5   the 5 1/2 hours of clips, there is also a Global

6   documentary in 1992, a Global TV documentary

7   that's narrated by David Asper that's, I think,

8   about 90 minutes, that it's also our intent, at

9   some point, to play.

01:47 10   What's on the screen -- and I'm

11   getting paper copies brought over for all

12   counsel, and they will get an electronic copy as

13   well -- is the video number and what -- they are

14   in chronological order. Actually, you know what,

01:47 15   we've got -- what we've done here is we've got

16   the video number, which is our coding, the doc.

17   ID I believe is the actual video tape in our

18   possession, then there is the date, and we have

19   been able to, for the most part, identify the

01:48 20   exact date or arrange the dates. The source will

21   be the name of the program, the video tape

22   number, and the video time, and so with that I

23   think we will start with the video clip 1, which

24   is the March 15th, 1990 program.

01:48 25   COMMISSIONER MacCALLUM: Does this

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1   document, video tape collection, have a doc. ID

2   itself?

3   MR. HODSON: This document? No. It will

4   have a doc. ID though.

01:48   5   COMMISSIONER MacCALLUM: All right.

6   MR. HODSON: We just made one change. So,

7   with that, I think we'll play, start playing the

8   clips.

9   *(Clip VT1 played)*

01:48   10   *MS. COLLEEN WILSON: For 20 years, David*

11   *Milgaard has maintained his innocence, and so has*

12   *his mother. Joining us today is Joyce Milgaard.*

13   *Welcome to the show, Joyce.*

14   *MRS. JOYCE MILGAARD: Hi.*

01:48   15   *MS. COLLEEN WILSON: Okay. You are in*

16   *Saskatoon to -- what are you doing? There was an*

17   *article in the paper this morning, maybe let's*

18   *start right with that?*

19   *MRS. JOYCE MILGAARD: Well the article in*

01:48   20   *the paper indicated that my lawyer and I were*

21   *here to bolster up my son's case. That's really*

22   *not quite correct, I don't think it needs any*

23   *bolstering. I believe that the information that*

24   *the Minister of Justice has right now, the*

01:49   25   *forensic evidence that he has plus the new*

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1   statement, is more than enough to open up the

2   case.

3   And I guess I'm here in

4   Saskatoon basically because the Minister of

01:49   5   Justice has had that since December of 1988, and

6   I don't like to be critical of them because I

7   realize what I am asking is a very serious thing,

8   but why haven't they done something? They could

9   at least have said -- got some other experts to

01:49 10   try to refute what Dr. Ferris is saying. They

11   don't seem to have done anything. They are, they

12   are so uncommunicative, they won't tell us what

13   they are doing.

14   I know they had people out to

01:49 15   Saskatchewan doing some sort of an investigation,

16   but they won't tell us anything, and, as a

17   mother, my son's sitting there in prison, and I'm

18   only -- I feel like I'm a voice out in the

19   wilderness crying alone, you know, to "please

01:50 20   help me", but I can't just give up on him because

21   I'm absolutely certain my son is innocent.

22   MS. COLLEEN WILSON: Have you ever had a

23   doubt that perhaps he might have done it?

24   MRS. JOYCE MILGAARD: I'd have to say that

01:50 25   I really thought seriously about it. I believe

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1   *that if a person is on drugs or something like*

2   *that, that anything is possible, you have to be*

3   *realistic. But it was proven without a doubt*

4   *that these kids had no drugs that morning on the*

01:50 5   *way to Saskatoon from Regina, and without drugs*

6   *or anything like that my son absolutely could not*

7   *have done anything like that, I just -- he's just*

8   *not that kind of person. It was a vicious,*

9   *terrible thing.*

01:50 10   *MS. COLLEEN WILSON: Before we just go on*

11   *to that, Joyce, let me ask you one other thing.*

12   *There is a new Minister of Justice now; is that*

13   *going to make a difference to --*

14   *MRS. JOYCE MILGAARD: Kim Campbell? I've*

01:51 15   *written to her already, I've sent her sort of*

16   *film clips and things like that, and told her,*

17   *you know, how anxious we, as a family, are, and*

18   *would really appreciate anything that she can do.*

19   *MS. COLLEEN WILSON: Uh-huh.*

01:51 20   *MRS. JOYCE MILGAARD: It shouldn't make a*

21   *difference, if her department is investigating*

22   *it, it's a matter of putting it on her desk once*

23   *their investigation is complete.*

24   *Could I break into something,*

01:51 25   *at this point, that I really feel I want to say*

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1   in Saskatoon?

2   MS. COLLEEN WILSON: Sure.

3   MRS. JOYCE MILGAARD: And I guess this is

4   directed to the Miller family, and this is --

01:51 5   MS. COLLEEN WILSON: This is the family of

6   the girl that was murdered?

7   MRS. JOYCE MILGAARD: That's right. I feel

8   dreadful every time that we have to bring this

9   up, for that family, and I just want them to know

01:51 10   how sorry I am that I can't go away and forget

11   it, but -- because I know how hard it must be for

12   them, but my son is innocent and I just feel that

13   I must keep trying, and I feel that they, as

14   parents, must understand that I can't just give

01:52 15   up and go away. But I do want to apologize for

16   sort of bringing it up again to them.

17   MS. COLLEEN WILSON: Would it be easier for

18   everybody involved, then, if the Minister of

19   Justice just got on this and --

01:52 20   MRS. JOYCE MILGAARD: Oh yes.

21   MS. COLLEEN WILSON: -- got it solved one

22   way or the other?

23   MRS. JOYCE MILGAARD: Oh yes.

24   MS. COLLEEN WILSON: Gave you an answer?

01:52 25   MRS. JOYCE MILGAARD: Uh-huh. Because this

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1   *forensic evidence is very compelling. I mean it*

2   *says that, unequivocally, David Milgaard could*

3   *not have committed that crime.*

4   *I mean I'm not a forensic*

01:52 5   *expert, and I can't begin to go into all the*

6   *details of it and give you a rationale for it,*

7   *but that's the bottom line of it.*

8   *MS. COLLEEN WILSON: Okay. The forensic*

9   *evidence we're talking about here, Joyce, is a*

01:52 10   *semen sample; is it not?*

11   *JOYCE MILGAARD: That's right, that were*

12   *found at the scene of the crime, two drops of the*

13   *semen sample were found at the screen of the*

14   *crime, and it was alleged to have been connected*

01:52 15   *with David, and now Dr. Ferris, who is*

16   *world-renowned, is saying they were not his semen*

17   *samples.*

18   *MS. COLLEEN WILSON: Okay. Is that*

19   *something that they are able to tell because of*

01:52 20   *testing that's available today, 20 years later,*

21   *or was that something that they should have been*

22   *able to know at that time?*

23   *JOYCE MILGAARD: That's an interesting*

24   *question. We originally contacted Dr. Ferris to*

01:53 25   *do DNA, genetic fingerprinting. David had seen*

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1   *it on television and he got really excited*

2   *because he said "now there is a real chance that*

3   *I can prove my innocence".*

4   *MS. COLLEEN WILSON: Uh-huh.*

01:53 5   *MRS. JOYCE MILGAARD: "Let's get those*

6   *samples and send them out, you know, find out if*

7   *they can do this on mine." It was interesting,*

8   *we couldn't get the samples by just asking for*

9   *them, they insisted that we go to the Court.*

01:53 10   *MS. COLLEEN WILSON: Uh-huh.*

11   *MRS. JOYCE MILGAARD: They really put*

12   *roadblocks in our way, and there's been a lot of*

13   *that road-blocking all the way along in this*

14   *investigation, but we did get them out to Ferris*

01:53 15   *and, because of the age of the exhibits and how*

16   *long they had been there, they couldn't find*

17   *anything to base the DNA on.*

18   *However, he said to me "I don't*

19   *understand, Mrs. Milgaard, why you even need this*

01:53 20   *other evidence, you have more than enough*

21   *evidence right here to prove your son's*

22   *innocence". And this just about blew me away, I*

23   *couldn't believe it, I said "well what do you*

24   *mean?" And then he started to explain the*

01:54 25   *evidence to me, and I said "are you willing to*

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1   put that in writing, will you talk to my lawyer

2   about this?" and he said "of course I will".

3   MS. COLLEEN WILSON: Would he testify if

4   there were a new trial?

01:54 5   MRS. JOYCE MILGAARD: Oh yeah, oh,

6   definitely. I mean Dr. Ferris is convinced that

7   if a pathologist had been brought in at the time

8   of the trial, and our side of the picture had

9   been presented -- see, there were no witnesses

01:54 10   called for David, not one, the defence (sic) had

11   45. David wasn't even put on the stand.

12   MS. COLLEEN WILSON: We're going to have to

13   take a short break, Joyce, but we're going to

14   come right back and pursue this further. Don't

01:54 15   go away.

16   NARRATOR: The walls of Stony Mountain

17   Penitentiary, and other prisons like it, have

18   marked the limits of David Milgaard's world for

19   20 years. The parole process has just begun for

01:55 20   him through a series of day passes. One of his

21   first visits to the outside world was a trip to

22   his parents' place for dinner.

23   MRS. JOYCE MILGAARD: It's just terrific to

24   have him home, but it's very hard when he has to

01:55 25   go back. Like Christmas was, was really

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1   *something, the first time in 20 years that all my*

2   *kids and the whole family were here together, and*

3   *it was just really nice.*

4   *NARRATOR: Even at his parents' house, the*

01:55 5   *watchful eyes of his prison escort are never far*

6   *away. In jail since he was 16 years old,*

7   *Milgaard will have a lot to relearn to live on*

8   *the outside.*

9   *MR. DAVID MILGAARD: The simple things,*

01:55 10   *like rent and budgeting and stuff like that that,*

11   *I don't really have a handle on. It's gonna be*

12   *one step at a time.*

13   *NARRATOR: He's been serving a life*

14   *sentence, convicted of a murder he says he didn't*

01:56 15   *commit. The little taste of freedom his recent*

16   *passes have allowed him make him all the more*

17   *anxious to prove his innocence.*

18   *Over a year ago he submitted*

19   *evidence that supports his claim to the Federal*

01:56 20   *Justice Minister in the hopes of getting his case*

21   *reviewed. He still hasn't heard back.*

22   *MR. DAVID MILGAARD: You would think that*

23   *at this point in time, with the information that*

24   *they've got, there would be an effort to move me*

01:56 25   *as quickly as possible to the street and to the*

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1   community.

2   MRS. JOYCE MILGAARD: Why all that time?

3   They have made a mistake, admit it, and let him

4   go on with his life.

01:56   5   NARRATOR: The Federal Justice Minister has

6   the power to support his conviction, order the

7   case retried, or overturn the conviction. He is

8   also able to take his time deciding. For now,

9   David Milgaard is not going anywhere.

01:56   10   Irene O'Donnell, CKMV First

11   News.

12   MS. COLLEEN WILSON: Joyce, is David

13   bitter? Is -- he doesn't seem bitter when we see

14   him in the clips but what, as his mother, do you

01:56   15   think he's feeling?

16   MRS. JOYCE MILGAARD: In one interview

17   David has mentioned that certainly there's

18   bitterness there, but it's not the type of

19   bitterness that you want to sort of reach out and

01:56   20   hit out with. He's been able to channel that

21   very effectively.

22   It's interesting, he has

23   organized the Justice Group inside the prison,

24   he's a coordinator of that group, where he --

01:57   25   where other prisoners are helped. He's become a

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1 *very compassionate and caring man and I think*

2 *that if he hadn't, if he hadn't had that channel*

3 *of being able to look to other people that were*

4 *in worse situations than he was -- and I know*

01:57 5 *that maybe sounds ludicrous when you're in*

6 *prison, but there are so many prisoners there*

7 *that don't have a mum or a dad or a family that*

8 *believes in you and visits you as David has --*

9 *and he was able to find other people that needed*

01:57 10 *help, and he's been helping them, and that's made*

11 *a big difference.*

12 *MS. COLLEEN WILSON: I guess the big*

13 *question has to be, here, you are convinced of*

14 *your son's innocence, he maintains that he is*

01:57 15 *innocent, --*

16 *MRS. JOYCE MILGAARD: That's right.*

17 *MS. COLLEEN WILSON: -- why, how does this,*

18 *if -- let's assume then, for the moment, that he*

19 *is; how did this get pinned on him, how did he*

01:58 20 *happen to get associated with this, why him?*

21 *MRS. JOYCE MILGAARD: I honestly think it*

22 *was a case of him being in the wrong place at the*

23 *wrong time, I believe that the Saskatoon police*

24 *needed someone, and I believe that he was handy.*

01:58 25 *There was obvious -- I don't*

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1   *like to say that people have done things bad, but*

2   *let's say there was obvious pressure on the*

3   *police to find someone, and certainly the kids*

4   *that were with David at the time, all of them*

01:58   5   *maintained that nothing had happened when they*

6   *were first picked up, in fact they maintained*

7   *that strenuously for a long time.*

8   *But one witness, for instance*

9   *just let's take one witness, Nichol John. She*

01:58   10   *was picked up in Regina, picture this, she's 17,*

11   *she was brought to Regina by two big, burly*

12   *Saskatoon policemen --*

13   *MS. COLLEEN WILSON: Is she the girl that*

14   *was in the car?*

01:58   15   *MRS. JOYCE MILGAARD: That's right.*

16   *MS. COLLEEN WILSON: There were three of*

17   *them in the car?*

18   *MRS. JOYCE MILGAARD: That's right.*

19   *MS. COLLEEN WILSON: David, your son,*

01:59   20   *another fellow, and Nichol John?*

21   *MRS. JOYCE MILGAARD: Nichol John.*

22   *MS. COLLEEN WILSON: The morning of the*

23   *murder?*

24   *MRS. JOYCE MILGAARD: That's right. And*

01:59   25   *when they brought her up to Saskatoon they kept*

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1   *her all day and they drove her around and around*

2   *the city, they showed her bloodstained clothes,*

3   *they showed her knives, they showed her all the*

4   *pictures, these terrible pictures of the girl.*

01:59   5   *MS. COLLEEN WILSON: Whose bloodstained*

6   *clothes?*

7   *MRS. JOYCE MILGAARD: Gail Miller's.*

8   *MS. COLLEEN WILSON: Okay.*

9   *MRS. JOYCE MILGAARD: All of these things.*

01:59   10   *They took her and they kept her overnight, even*

11   *though they hadn't charged her, --*

12   *MS. COLLEEN WILSON: Uh-huh.*

13   *MRS. JOYCE MILGAARD: -- and at that time*

14   *they were just building a new floor in the jail*

01:59   15   *and they put her up in this floor up at the jail,*

16   *there were no other people in there, no other*

17   *women in there, and she was the only occupant,*

18   *and I guess about 2:00 or 3:00 in the morning she*

19   *just went crazy, they had to get a -- bring a*

01:59   20   *female matron in to be in with her.*

21   *MS. COLLEEN WILSON: Why did she get crazy?*

22   *MRS. JOYCE MILGAARD: Well, can you imagine*

23   *a 17-year-old-girl that's been left all alone in*

24   *this empty building and all these empty jail*

02:00   25   *cells and everything, and after being shown all*

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1   *these things that they showed her?*

2   *And then they took her out the*

3   *next day, round and round the scene of the crime,*

4   *and then, voila, she makes a statement, and that*

02:00   5   *statement said that she saw my son kill Gail*

6   *Miller, she actually watched him take a knife and*

7   *stab her in the back, that he went to grab her*

8   *purse and then, you know, and then ended up*

9   *pulling a knife from his pocket and stabbing her.*

02:00   10   *MS. COLLEEN WILSON: So it was like a theft*

11   *type of scenario?*

12   *MRS. JOYCE MILGAARD: That's what she*

13   *portrayed. However, on the stand she said that*

14   *didn't happen, and furthermore if we'd only had a*

02:00   15   *chance to cross-examine her at that point and*

16   *say, you know, "now, Ms. John, let's take a look*

17   *at this situation", but because she said she*

18   *didn't say the things in the statement --*

19   *MS. COLLEEN WILSON: Uh-huh.*

02:00   20   *MRS. JOYCE MILGAARD: -- that she said, we*

21   *couldn't do that.*

22   *And, you see, the physical*

23   *evidence was such that this girl's dress was off*

24   *and around her waist and her, like her coat was*

02:01   25   *on but her dress and everything was down around*

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1   her waist, so when she was stabbed, there were no

2   stab wounds in the back of the dress, it couldn't

3   have happened that way.

4   MS. COLLEEN WILSON: Uh-huh.

02:01 5   MRS. JOYCE MILGAARD: So the newspapers,

6   you know that when I was at the trial it was

7   terrible what the media did, I really felt that I

8   wasn't even at the same trial. But they would

9   pick something like that up and they would say,

02:01 10   you know, "witness sees stabbing", and explain

11   all this, but nobody explained that what she said

12   she saw she couldn't have seen.

13   She said that because, well, I

14   think one of the comments she said later was "I

02:01 15   would have said my own grandmother did it to just

16   get out of there.

17   MS. COLLEEN WILSON: If all these things

18   are coming out later and everything, obviously,

19   well, it appears that either people weren't aware

02:01 20   of this at the time, I don't know how that could

21   have happened, but is that what you are saying,

22   that people weren't aware, there was negligence.

23   MRS. JOYCE MILGAARD: I think that a lot of

24   things people weren't aware of. The other thing

02:01 25   that's always bothered me was during the

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1 *preliminary they found two knives at the scene of*

2 *the crime, there was the paring knife that was*

3 *found underneath the girl's body, the blade was*

4 *found, but there was evidence that there was*

02:02 5 *another knife found right near her body and it*

6 *was a bone-handled hunting knife. That*

7 *disappeared, it never was brought up again.*

8 *MS. COLLEEN WILSON: And did you know that*

9 *at the time?*

02:02 10 *MRS. JOYCE MILGAARD: Of course I did,*

11 *but --*

12 *MS. COLLEEN WILSON: What did your lawyer*

13 *say to you at the time?*

14 *MRS. JOYCE MILGAARD: I was numb at the*

02:02 15 *time. I can't even -- it's hard to tell you. I*

16 *was a young mother, we were thrust into this*

17 *situation, I didn't have any understanding of the*

18 *law, I did everything the lawyer told us, but*

19 *David was a 16-year-old boy, he's supposed to be*

02:02 20 *directing this lawyer as to how to man a defence?*

21 *Neither of us, or my husband didn't know anything*

22 *about it, and the recollection of those days were*

23 *just terrible. I just -- I couldn't believe that*

24 *they could convict someone for something they*

02:02 25 *didn't do.*

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1   MS. COLLEEN WILSON: We're going to take

2   another short break. We'll be back with Joyce

3   Milgaard in just a moment.

4   (Break in interview)

02:03 5   MS. COLLEEN WILSON: That is David

6   Milgaard. I'm talking today with his mother

7   Joyce Milgaard who's here in Saskatoon.

8   Joyce, now, you have spent a

9   lot of money and you've been maintaining your

02:03 10   son's innocence all along. Actually, in 1980 I

11   believe you came back and offered some reward

12   money for any evidence that people could come up

13   with. This must weigh on your family very

14   heavily financially.

02:03 15   MRS. JOYCE MILGAARD: It has, and I must

16   tell you that, in honesty, for the people that

17   may be watching this show, I did offer a $10,000

18   reward at that time and that was -- but that's

19   gone, I mean, it's long gone, plus everything

02:03 20   else is gone that -- I don't even own a car any

21   more, all of it has been dedicated towards this,

22   and I guess I feel really that I have been unfair

23   to my other children in so many ways because they

24   are so supportive of all this and want to help

02:04 25   David too, but, you know, they've been cheated

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1   out of so much because I've had to spend so much

2   time on this, and yet I felt impelled that I just

3   can't leave him there, and I think any parent out

4   there putting themself in a similar situation

02:04 5   could understand why you couldn't just, say, go

6   on with your life.

7   MS. COLLEEN WILSON: Can't leave it alone?

8   MRS. JOYCE MILGAARD: I can't leave it

9   alone.

02:04 10   MS. COLLEEN WILSON: No. Now, tell me

11   about how you think that this terrible wrong then

12   that you believe, if you believe he's innocent, a

13   terrible wrong, a terrible injustice has

14   happened, how could this have happened with so

02:04 15   many people involved?

16   See, this is the thing that I

17   keep coming back to. I listen to you and the

18   story sounds just incredible, how could this have

19   happened with all this evidence, and it seems

02:04 20   like some of the evidence that should have been

21   brought out at the time of the trial did not come

22   out. How did this happen? How did this escape

23   all the people that were involved in the

24   investigation in the court, in the court work,

02:05 25   the lawyers, the judge, the police?

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1   MRS. JOYCE MILGAARD: Well, as far as the

2   judge was concerned, I mean, the judge did a

3   wonderful job. At the end all anyone would have

4   to do would be to read the charge to the jury.

02:05   5   He told that jury in no uncertain terms here you

6   have credible witnesses on the one side --

7   MS. COLLEEN WILSON: Uh-huh.

8   MRS. JOYCE MILGAARD: -- saying that they

9   have seen David that morning, they saw him at

02:05 10   seven o'clock. In actual fact, he really almost

11   had a -- well, it was, it was really an alibi.

12   Mr. Rasmussen at the motel saw him at around

13   seven o'clock that morning, shortly after he

14   opened up the motel. He saw nothing wrong with

02:05 15   him, he was a normal young man, went in and asked

16   for a map. This was at the Trav-a-leer Motel.

17   At approximately seven o'clock

18   that morning the caretaker of the church saw a

19   car with the headlights looking towards the

02:05 20   church in the alley about the time that Gail

21   Miller would have been leaving to go to work,

22   about that time, so that here we have almost an

23   alibi. That got lost sight of.

24   The people that David stopped

02:06 25   to help, the Danchuks, he was with them from

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1   *seven -- oh, about 7:20 on, they saw no blood, no*

2   *indications of drugs or alcohol, they said a*

3   *polite, nice young man. That was discarded.*

4   *MS. COLLEEN WILSON: He would have had to*

02:06   5   *do it in a 20 minute period, then, between seven*

6   *and 7:20?*

7   *MRS. JOYCE MILGAARD: Uh-uh, not even that.*

8   *MS. COLLEEN WILSON: He didn't even have*

9   *that much time?*

10   *MRS. JOYCE MILGAARD: He didn't have that*

11   *much time. Gail Miller's room -- the people in*

12   *the house saw Gail Miller at about 25 or 20 to*

13   *seven, okay.*

14   *MS. COLLEEN WILSON: Uh-huh.*

02:06   15   *MRS. JOYCE MILGAARD: They said that she*

16   *said that she heard footsteps going down to the*

17   *door and she usually left around seven o'clock,*

18   *okay.*

19   *MS. COLLEEN WILSON: Uh-huh.*

02:06   20   *MRS. JOYCE MILGAARD: David is down at the*

21   *motel just after seven o'clock, but the window,*

22   *at the very most, would maybe have been, if he*

23   *had been there, which I'm sure he wasn't, could*

24   *maybe have been five minutes or a few minutes at*

02:06   25   *that time, but all the time he was with Nichol*

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1   *John and Ron Wilson except one time he got out of*

2   *the car when they supposedly went for help. Now,*

3   *David says that didn't happen and that only came*

4   *into Nichol John's statement and to Ron Wilson's*

02:07   5   *statement when they were pressured by the police,*

6   *and don't forget, Ron Wilson was in jail on other*

7   *charges and he was being threatened with being*

8   *charged with this. I can see how his statement*

9   *changed.*

02:07   10   *MS. COLLEEN WILSON: Was -- what kind of a*

11   *boy was your son as a teenager? You said that*

12   *there was no evidence of drugs or alcohol that*

13   *day. Had he been in some trouble before?*

14   *MRS. JOYCE MILGAARD: Oh, yes, and no*

02:07   15   *question in my mind, it came out in the evidence*

16   *very clearly that they hadn't had drugs because*

17   *they didn't have any money. David was not a*

18   *choir boy at that time, but he was like the*

19   *hippies in those times, you know. He had had a*

02:07   20   *girlfriend, they travelled all around, they were*

21   *smoking marijuana, things like that, but he was*

22   *not a killer, he was never vicious. David was a*

23   *tease and a tormenter, but he was never vicious,*

24   *never. He had all the girlfriends he could want,*

02:08   25   *I mean, he was an attractive young man, and the*

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1   *thought that he would even do something like this*

2   *is just totally out of character, nothing to do*

3   *with his character whatsoever.*

4   *MS. COLLEEN WILSON: The space of time then*

02:08 5   *would have been, you are saying, maybe five*

6   *minutes? It was how cold that -- it was January?*

7   *MRS. JOYCE MILGAARD: 40 below.*

8   *MS. COLLEEN WILSON: 40 below.*

9   *MRS. JOYCE MILGAARD: They claim it was*

02:08 10   *done right there in the alley, you know. Even*

11   *Dr. Ferris says that he doesn't know whether that*

12   *was physically possible to have happened.*

13   *MS. COLLEEN WILSON: Well, there was no*

14   *struggle in the snow was there?*

02:08 15   *MRS. JOYCE MILGAARD: Well, there was signs*

16   *of a scuffle in the snow, but it could have been*

17   *equally as consistent for someone having dumped*

18   *the body out of a car.*

19   *MS. COLLEEN WILSON: Is that -- is that*

02:08 20   *what you think happened? What's your theory?*

21   *MRS. JOYCE MILGAARD: I don't know what*

22   *happened that morning. I know that -- I've*

23   *always thought that someone very powerful must*

24   *have been connected with this, someone either*

02:09 25   *that had a family that was very powerful. If you*

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1   remember, in 1980 you mentioned the time that I

2   offered the $10,000 reward.

3   MS. COLLEEN WILSON: Uh-huh.

4   MS. JOYCE MILGAARD: Well, at that time we

02:09   5   started to interview witnesses in Regina and do

6   you know that the Saskatoon police had, were

7   already in Regina talking to these people and

8   they are saying don't talk to Mrs. Milgaard.

9   MS. COLLEEN WILSON: Uh-huh.

02:09 10   MRS. JOYCE MILGAARD: Why? I mean, this is

11   10 years after the time it happened. If they

12   have nothing to hide, why are they saying don't

13   talk to Mrs. Milgaard? Why will they not

14   co-operate? When this person came into the

02:09 15   police station with information that should have

16   been given to me, because they came in as a

17   result of, you know, of the 1980 flier, why

18   didn't they at least pass it on to us? But they

19   didn't.

02:09 20   MS. COLLEEN WILSON: Do you think there's a

21   possibility of a cover-up of some kind?

22   MRS. JOYCE MILGAARD: I -- I don't like to

23   say that, but, you know, I've always suspected

24   something like that. There is something going

02:10 25   on. It just doesn't make sense. Why was --

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1   *like, David gave samples, he gave a semen sample.*

2   *The semen sample from the girl's body was*

3   *discarded, it was never matched up. Why?*

4   *MS. COLLEEN WILSON: Has he ever -- has he*

02:10 5   *ever been asked to take a lie detector test? Not*

6   *that that would be with admissible.*

7   *MRS. JOYCE MILGAARD: Oh, David wanted to*

8   *take a lie director test, they wouldn't give it*

9   *to him, but he had had --*

02:10 10   *MS. COLLEEN WILSON: They wouldn't give him*

11   *a lie detector test even though he wanted to take*

12   *it?*

13   *MRS. JOYCE MILGAARD: No. They said that*

14   *it didn't mean anything. He has had a sodium*

02:10 15   *pentothal test where under sodium pentothal they*

16   *asked all these kinds of questions and David's*

17   *story remained true, you know, that he wasn't*

18   *there and that he wasn't connected with it.*

19   *There's just so many things that the public*

02:10 20   *doesn't know about. And I think that that's why*

21   *it's important that this case is re-opened and*

22   *that's why really quite truthfully I'm here*

23   *today, because if the public knows something,*

24   *send it, not to the Saskatoon Police Department,*

02:11 25   *don't go near them, go to David Asper, my lawyer*

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1   *in Winnipeg, phone him, he's waiting to take*

2   *collect calls from anyone that has any*

3   *information.*

4   *Now, vision this, it's like a*

02:11   5   *puzzle, a jigsaw puzzle. These people may not*

6   *have a lot of information. The tiniest piece of*

7   *information that they have may be the last piece*

8   *we need in this puzzle to find the real killer,*

9   *and I'm convinced that's what we have to do, just*

02:11 10   *like in the Marshall case. They wouldn't believe*

11   *him, they wouldn't believe him until they got the*

12   *real killer, and they are not believing us.*

13   *MS. COLLEEN WILSON: Would you like to see*

14   *the RCMP called into this?*

02:11 15   *MRS. JOYCE MILGAARD: Oh, you better*

16   *believe it I would.*

17   *MS. COLLEEN WILSON: How would that -- what*

18   *would have to happen for that to happen, Joyce?*

19   *MRS. JOYCE MILGAARD: Well, I don't know*

02:11 20   *whether the case would have to be re-opened, I*

21   *imagine that that would be the procedure, but I*

22   *think that the whole world should just demand*

23   *that something come of this because who's going*

24   *to sit around for 20 years in prison and claim*

02:12 25   *they are innocent when they could get out, and, I*

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1   mean, my son has been consistent in this, we've

2   been consistent in believing him, and the facts

3   in the case certainly bolster all of that and

4   show that it is, it's more than a reasonable

5   doubt and that's, we shouldn't have to present

6   the killer, just the reasonable doubt.

7   MS. COLLEEN WILSON: Would he -- if he

8   admitted that he had done this now all these

9   years later, if he said that, would then he,

10   would he get parole?

11   MRS. JOYCE MILGAARD: Oh, he could have got

12   out much earlier, there's no doubt about it. I

13   mean, he sort of confronted the Parole Board.

14   This 20 years has been a real nightmare. It's as

15   if I had been in prison all the time with David.

16   There were times -- one time I can remember

17   sitting in my living room, it was a Saturday

18   night, everyone else was in bed, and I picked up

19   the paper and read it and I discovered that my

20   son had had a jail break in New Brunswick. They

21   hadn't phoned us to let us know or anything and

22   they are telling us that he's out in the snow and

23   that the dogs are after them. Now, I had to sit

24   with that information all weekend -- I didn't

25   tell the family, I mean, I didn't want them

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1   worried about it too, I figured it was bad enough

2   that I had to go through this agony, but to find

3   out that, you know, they had been caught the next

4   day. David tried to commit suicide. There have

02:13   5   just been -- he was shot down, he was gunned

6   down, literally, by the police in Toronto.

7   MS. COLLEEN WILSON: And life in jail has

8   been difficult for him, hasn't it, in terms of

9   problems that he had when he was moved from the

02:13   10   Saskatchewan Penitentiary elsewhere?

11   MRS. JOYCE MILGAARD: To elsewhere.

12   MS. COLLEEN WILSON: Uh-huh.

13   MRS. JOYCE MILGAARD: And yet originally,

14   and this is one of the things that was very

02:13   15   strange, when he was first in Prince Albert, you

16   know, this type of a killing, normally they have

17   to keep them in protective custody. He was never

18   bothered. And I remember one man that, in

19   particular, a guard that had worked with him

02:13   20   said, you know, "How are things going," and he

21   said, "Fine, they know I'm not guilty."

22   MS. COLLEEN WILSON: So they didn't bother

23   him?

24   MRS. JOYCE MILGAARD: They didn't bother

02:14   25   him.

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1   MS. COLLEEN WILSON: But then when he was

2   moved to another penitentiary, that was when the

3   trouble started?

4   MRS. JOYCE MILGAARD: Oh, yes, because they

02:14 5   weren't aware of the case, and just on the

6   conviction alone you sort of are in a -- but

7   through the years, although he's had a very hard

8   time, people overall, no matter where they send

9   him, eventually those prison people too start to

02:14 10   believe that my son is innocent, because they can

11   see, they know what he's like.

12   MS. COLLEEN WILSON: Joyce, I'm afraid that

13   we've hardly even had time here today to scratch

14   the surface of this, there are so many more

02:14 15   things that we could talk about. The one thing

16   that complicates this is the fact that your son's

17   defence counsel at the time is now in the Court

18   of Appeal in Saskatchewan, I know that has posed

19   some difficulties for you. It seems like you are

02:14 20   running into a lot of impediments in the justice

21   system just to find the answer.

22   MRS. JOYCE MILGAARD: That's right.

23   There's some very powerful people right now,

24   everyone connected with the case is in a position

02:14 25   of power and none of them want this re-opened,

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1   you know, they don't want it re-opened, but it

2   must be in order for justice to be done.

3   MS. COLLEEN WILSON: You feel the public

4   has to help you then by contacting your lawyer

02:15 5   David Asper in Winnipeg?

6   MRS. JOYCE MILGAARD: Oh, yes, write the

7   minister and say listen, there's enough doubt

8   here that we should know more, you know, I want

9   to know more, and don't go back to newspaper

02:15 10   clippings, go back and take a look at the

11   transcripts of the trial the way we have. Give

12   me an hour of your time just with me and I'll

13   show you that it's physically impossible for my

14   son to have done this crime.

02:15 15   MS. COLLEEN WILSON: Well, Joyce, I know

16   you are going to be back here from time to time

17   in Saskatoon working towards getting this matter

18   resolved and I hope you will come back and visit

19   with us again and keep us updated because it's in

02:15 20   the interests of everyone to find out the true

21   answer for this. If in fact there is a

22   possibility that the person who murdered this

23   young woman is still at large, that would just be

24   a horrible tragedy. It's a tragic set of

02:15 25   circumstances for everyone involved as you said,

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1   *you know, the way you feel for the family of the*

2   *girl that was murdered with this having come up,*

3   *but on the other hand, you feel that you have to*

4   *do this because --*

5   *MRS. JOYCE MILGAARD: Our family feels we*

6   *must do it too, you know.*

7   *MS. COLLEEN WILSON: -- for your family.*

8   *Joyce, thanks so much for joining us.*

9   *MRS. JOYCE MILGAARD: Thanks for having me.*

02:16 10   *MS. COLLEEN WILSON: Please keep us posted.*

11   *This is a most fascinating case.*

12   *MRS. JOYCE MILGAARD: Okay, thanks.*

13   **(Clip VT1 ends)**

14   **(Clip VT2 played)**

02:16 15   *INTERVIEWER: Mr. Asper, I'm wondering, if*

16   *David Milgaard is innocent, how is it that a jury*

17   *convicted him 20 years ago?*

18   *MR. DAVID ASPER: Well, to some degree, I*

19   *think you saw in the report involving Dr. Ferris,*

02:16 20 *a lot of the evidence that purported to link*

21   *David to the scene of the crime very much went*

22   *unchallenged, so that the jury was left with an*

23   *impression of the Crown's theory of the case*

24   *that, as I say, really went unchallenged, and*

02:16 25 *many of the premises in the Crown's theory of the*

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1   *case are demonstrably false, and, in particular,*

2   *the forensic evidence which purported to link*

3   *David to the scene of the crime which the Crown*

4   *said proves unequivocally that therefore David*

02:17 5   *Milgaard was at the scene of the crime, we now*

6   *learn was a gross, at the very least, gross*

7   *misinterpretation of that evidence, and in fact*

8   *the evidence that the Crown used at the trial*

9   *excludes David as being the perpetrator of the*

02:17 10   *crime.*

11   *INTERVIEWER: Exactly what was the evidence*

12   *that convicted him?*

13   *MR. DAVID ASPER: Well, that takes a while*

14   *to explain, but I think there's a couple of basic*

02:17 15   *elements. First is the forensic evidence, there*

16   *was semen samples found at the scene of the crime*

17   *which the Crown said were David's semen samples.*

18   *We have evidence now that proves that they were*

19   *not David'S semen samples.*

02:17 20   *There was the evidence of the*

21   *people that David was with that morning which*

22   *purported to have David in or around the area*

23   *where the body was found. It's clear at the*

24   *trial that these people had no idea where they*

02:17 25   *were in Saskatoon and their description of where*

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1   they were at around the time that the Crown says

2   the murder occurred doesn't match the physical

3   description of the area where in fact the body

4   was found.

02:18 5   There was also some evidence

6   that David had reenacted the murder many months

7   after the fact. Two people who were pending on

8   very serious charges came forward during the

9   trial and claimed that they had seen David

02:18 10   reenact the murder in a motel room by flailing at

11   a pillow.

12   INTERVIEWER: Uh-huh.

13   MR. DAVID ASPER: And we've since

14   discovered that the police were aware of at least

02:18 15   one girl who was in the room who gave them a

16   statement saying nothing happened and that there

17   was another girl in the room who we've since

18   tracked down who was never interviewed by the

19   police who says also that nothing happened, so

02:18 20   the people -- everybody in the case who had a

21   motive to lie was believed and went unchallenged

22   and many of the people who had exculpatory things

23   to say about the case either never testified or

24   weren't interviewed.

02:18 25   INTERVIEWER: Mrs. Milgaard, you were there

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1 *when your son was convicted and you heard the*

2 *witnesses speak that evidence?*

3   *MRS. JOYCE MILGAARD: Yes. It was*

4 *difficult because as a young mother and with*

02:19 5 *other children and everything, we -- we didn't*

6 *have much money, we had to resort to a Legal Aid*

7 *lawyer, and I guess that's one of the reasons I*

8 *think our justice system is so unfair, there*

9 *seems to be a law for the rich and a law for the*

02:19 10 *-- well, we weren't poor, but let's say for*

11 *people that just don't have the money to go out*

12 *and hire private investigators and things like*

13 *that.*

14   *INTERVIEWER: Okay.*

02:19 15   *MRS. JOYCE MILGAARD: So for David,*

16 *although as a mother I did everything I could, I*

17 *wasn't very knowledgeable at that time.*

18   *MR. DAVID MILGAARD: I think you've done*

19 *real well, mom.*

02:19 20   *MRS. JOYCE MILGAARD: Well, honey, I did*

21 *the best I could. Basically at that time I just*

22 *followed the direction that the lawyer gave us,*

23 *and of course he was supposed to follow the*

24 *directions of David who was a 16-year-old boy, so*

02:20 25 *when you think of it, what kind of a direction is*

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1   *there in a case like that. It's difficult.*

2   *MR. DAVID MILGAARD: That's a point I would*

3   *like to make if I can there, is that, you know,*

4   *it's one sided. I mean, all the resources are*

02:20 5   *working to convict. Now, what about me, what*

6   *about my story?*

7   *INTERVIEWER: David Milgaard, I want you to*

8   *tell me about the police investigation that took*

9   *place 20 years ago.*

02:20 10   *MR. DAVID MILGAARD: This is what I'm*

11   *trying to say, you know, I told them the truth*

12   *and detectives knew that the pieces of the puzzle*

13   *did not fit. I mean, the statements are*

14   *something that could be followed right from the*

02:20 15   *beginning, everybody is telling the truth. We*

16   *were kids in that city and, you know, there are*

17   *people, very credible witnesses that saw us prior*

18   *to the murder and after the murder and the stuff*

19   *that Dave is talking about, you know, now*

02:20 20   *there's, you know, there's evidence to show that*

21   *somebody else is responsible for it. I don't*

22   *know what we have to put on somebody's plate to*

23   *get me from where I am right now to home, but*

24   *it's been taking an awful long time and I don't*

02:21 25   *think it's very reasonable, I really don't, to be*

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1   *honest.*

2   *MR. DAVID ASPER: If I can just pick up on*

3   *that. The very odd thing about the case was that*

4   *the Crown's theory, David was -- David in fact*

02:21 5   *had an alibi. At seven in the morning he and his*

6   *cohorts were on the outskirts of Saskatoon at a*

7   *motel getting directions to the place where David*

8   *was heading and the Crown's theory was that the*

9   *murder occurred at about that time.*

02:21 10   *INTERVIEWER: Uh-huh.*

11   *MR. DAVID ASPER: So that, you know, when*

12   *the manager of the motel gives David an alibi,*

13   *somehow that gets lost in the shuffle. When two*

14   *salt of the earth credible people see David about*

02:21 15   *a half hour later and spend an hour with them*

16   *because their cars both get stuck and they have a*

17   *normal conversation with David and describe him*

18   *as a polite, wonderful, delightful person, that*

19   *also gets lost in the shuffle, and this is what I*

02:22 20   *mean where everybody who had something to gain,*

21   *one person got a reward, a couple of people got*

22   *nice little deals on pending charges, a couple of*

23   *people escaped prosecution themselves on this*

24   *particular incident --*

02:22 25   *INTERVIEWER: Uh-huh.*

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1   MR. DAVID ASPER: -- they were believed and

2   the credible people weren't.

3   INTERVIEWER: David Asper, you are telling

4   me that basically the police department was under

02:22 5   pressure to nail someone, to find a reason, to

6   find a person that killed --

7   MR. DAVID ASPER: Oh, there's no question,

8   there's no question about that. There had been

9   another murder of a nurse, I think about a year

02:22 10   before this particular murder, and it was a very

11   similar modus operandi, if you will, and it

12   occurred, or the body of the deceased was found

13   close to the area where the murder in the

14   Milgaard case occurred and that murder hadn't yet

02:22 15   been solved, and then all of a sudden a second

16   murder occurs and there was a huge outcry, you

17   know, to try and find somebody who was

18   responsible.

19   MR. DAVID MILGAARD: To give you some idea

02:23 20   just how bad it was, I mean, about improper

21   police procedures, Nichol John, the one -- well,

22   all of us that were there at the time, I feel

23   that we've been victims. I mean, she had never

24   got her head straight, that's the easiest way for

02:23 25   me to say it, they actually had her locked up

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1   *without even a female matron being there in a*

2   *city jail cell unarrested and kept that way, and*

3   *it's very clear in the transcripts that she was*

4   *screaming and hollering in the middle of the*

02:23 5   *night and it's a mystery at this point why she's*

6   *screaming and hollering, but the thing is the*

7   *next day they write this statement out from her*

8   *and this is used against me, and she actually*

9   *tried, I really believe she tried to tell the*

02:23 10   *truth in the courtroom, and to the jury, you*

11   *know, it might have looked like she was trying to*

12   *protect me rather than telling the truth. It was*

13   *really unfair that things worked out the way they*

14   *did.*

02:23 15   *MRS. JOYCE MILGAARD: I know, David, that*

16   *some of the inferences have been made that Nichol*

17   *and the other witnesses are afraid of you, but in*

18   *actual fact, David and I have talked about this,*

19   *and he really feels sorry for them because he*

02:24 20   *knows what they have gone through and he realizes*

21   *that all of their stories were identical when*

22   *they first started out, they, you know, told the*

23   *truth, ah, that they weren't in that area, that*

24   *they hadn't met Gail Miller, they didn't know*

02:24 25   *her, they hadn't seen her, and then all of a*

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1   sudden -- and I can identify with this young girl

2   being taken away from her home in Regina, driven

3   with police up to Saskatoon, kept all night, and

4   then being driven round and round the scene of

02:24   5   the crime and shown the body, blood-stained

6   pictures --

7   MR. DAVID MILGAARD: It's come out now,

8   this whole thing is starting to come out.

9   MRS. JOYCE MILGAARD: -- you know, and this

02:24   10   is the thing, so it would be nice if we could

11   sort of get a reenactment done with David's side

12   of the story because that is just not the truth,

13   it's a lie.

14   INTERVIEWER: David Asper, where are we in

02:25   15   court proceedings?

16   MR. DAVID ASPER: Last December we, that's

17   December of '88, we applied under the relevant

18   provisions of the Criminal Code to the Minister

19   of Justice asking that the minister re-open the

02:25   20   case. The law gives the minister three options,

21   he can either refer the matter for specific

22   questions to a Court of Appeal, he can refer it

23   to a Court of Appeal for a rehearing as if it was

24   an appeal right after the conviction, or he can

02:25   25   order a new trial. We are still waiting for some

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1   *indication from the minister as to what's*

2   *happening. It's been very, very frustrating and*

3   *they've been very uncommunicative and very*

4   *unhelp --*

5   *(Clip VT2 ends)*

6   *(Clip VT4 played)*

7   *REPORTER: Another setback for the Milgaard*

8   *family.*

9   *NARRATOR: For years Joyce Milgaard has*

02:27 10 *been fighting to free her son David. Over two*

11   *decades ago he was convicted of a murder he says*

12   *he did not convict. The Milgaards have asked the*

13   *Federal Justice Minister to review the case, but*

14   *haven't heard back from her. Today, the*

02:27 15 *minister, Kim Campbell, was in Winnipeg and*

16   *Milgaard's family, distressed by her disclosure*

17   *that she has not reviewed the case, decided to*

18   *meet her. Irene O'Donnell reports.*

19   *MS. IRENE O'DONNELL: Joyce Milgaard has*

02:27 20 *been using every method at her disposal to battle*

21   *for her son's release. Scientific reports,*

22   *witnesses' statements and other documents that*

23   *point to her son's innocence have been sent to*

24   *the Justice Department for their review. None of*

02:27 25 *them have been answered. Tired of waiting for*

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1   *replies, Joyce Milgaard tried to make the best of*

2   *the occasion of Kim Campbell's visit to the*

3   *province by delivering the reports in person.*

4   *Only the minister can decide whether David*

02:28   5   *Milgaard's conviction should be upheld,*

6   *overturned or whether a new trial should be*

7   *ordered.*

8   *MRS. JOYCE MILGAARD: The Justice*

9   *Department so far has not given us any kind of*

02:28   10   *justice, so I sent them to the minister, but I*

11   *haven't even received a letter saying that*

12   *they've got the original statements I sent.*

13   *UNIDENTIFIED SPEAKER: As I said, the*

14   *minister will not respond to you, but I can*

02:28   15   *assure you that the information is in the hands*

16   *of the Justice Department and they are reviewing*

17   *the facts.*

18   *MS. IRENE O'DONNELL: Though visibly shaken*

19   *by the confrontation and the minister's refusal*

02:28   20   *to see her, Joyce Milgaard has lost none of her*

21   *resolve.*

22   *REPORTER: What were you hoping for when*

23   *you came down this morning?*

24   *MRS. JOYCE MILGAARD: I don't know. A*

02:28   25   *miracle maybe, just a miracle, a small one, that*

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1   *she would say, "Yes, Mrs. Milgaard, I'll look at*

2   *the report on the plane when I'm on my way back*

3   *to Ottawa." Just that she would look and give us*

4   *a break. It's been a long time.*

5   **(Clip VT4 ends)**

6   **(Clip VT5 played)**

7   *NARRATOR: In a Winnipeg hotel Justice*

8   *Minister Campbell was confronted by the mother of*

9   *a convicted killer who claims her son is*

02:29 10   *innocent. Carolyn McIntyre has the story.*

11   *MS. CAROLYN McINTYRE: Joyce Milgaard and*

12   *her daughter waited patiently for Canada's*

13   *justice minister to step off an elevator so they*

14   *could personally deliver the contents of a*

02:29 15   *forensic report that she feels will clear her*

16   *son. The minister was her last hope, but she*

17   *didn't get the response she was expecting.*

18   *THE HON. KIM CAMPBELL: I'm very -- I'm*

19   *sorry, madam, if you want your -- if you want*

02:29 20   *your son to have a fair hearing, don't approach*

21   *me personally. I'm sorry.*

22   *UNIDENTIFIED SPEAKER: You don't even want*

23   *to take a look at what she's got?*

24   *THE HON. KIM CAMPBELL: I'm sorry, but I*

02:29 25   *want her to have, her son to have a hearing that*

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1   will withstand scrutiny by the court.

2   MS. CAROLYN McINTYRE: David Milgaard was

3   convicted of murdering a Saskatchewan nurse, Gail

4   Miller, in January, 1969. He has spent the past

02:30 5   21 years in prison for a crime he says he didn't

6   commit.

7   MR. DAVID MILGAARD: I don't want

8   (inaudible), I don't want any kind of mercy, I

9   just want out, I want justice. I never did

02:30 10   anything.

11   MS. CAROLYN McINTYRE: A Vancouver

12   pathologist completed the forensic report. He

13   says it proves that semen collected at the scene

14   three days after the assault wasn't Milgaard's.

02:30 15   This report was given to the Federal Justice

16   Department in December of '88 and according to

17   Joyce Milgaard has been ignored.

18   MRS. JOYCE MILGAARD: The whole reason that

19   I came here today was to hand her the Ferris

02:30 20   report, which seems to have got lost in all the

21   channels down in Ottawa, they have had it since

22   December of '88 and they keep claiming that no

23   one has seen it, and it clearly exonerates my

24   son.

02:31 25   NARRATOR: But the Minister says a comment

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1   *at this time would jeopardize the case.*

2   *THE HON. KIM CAMPBELL: And it's very*

3   *important that be done in the fairest possible*

4   *way, and the suggestion that a Minister was*

02:31 5   *swayed by personal pleas by people who were*

6   *involved, aside from a fair and impartial review*

7   *of the evidence, I think, would be -- would not*

8   *give credit to the process, so --*

9   *NARRATOR: Milgaard's lawyer says there*

02:31 10 *should have been a response from the government*

11   *by now.*

12   *MR. DAVID ASPER: The suggestion that the*

13   *delay is because we keep providing them with new*

14   *information, in my view, is just a hollow ..."*

15   **(Clip VT5 ends)**

16   **(Clip VT6 played)**

17   *INTERVIEWER: But Milgaard has always*

18   *claimed he was innocent, that he hadn't killed*

19   *Miller, and a number of people began to take him*

02:31 20 *seriously. A year and a half ago the Justice*

21   *Department began reviewing his case, earlier this*

22   *year the RCMP opened up the investigation, and*

23   *two months ago they came up with another possible*

24   *subject -- suspect.*

02:32 25   *It could be that David Milgaard*

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1   is wrongfully convicted, but despite the new

2   evidence, the 36-year-old Winnipeg man remains

3   behind bars.

4   David Asper is Milgaard's

02:32 5   lawyer, and he's with us in our Winnipeg studio.

6   How did David Milgaard get

7   involved in this whole thing in the first place?

8   He must have been somewhere around the crime,

9   involved with the victim, in some way?

02:32 10   MR. DAVID ASPER: He was on a road trip

11   with two other friends that took them to

12   Saskatoon, they were going to visit a friend of

13   Milgaard's, they did go to Saskatoon, they did

14   visit the friend of Milgaard's, and as it turns

02:32 15   out that friend lived about a block from where

16   the body of the deceased was found.

17   INTERVIEWER: And that's the only

18   connection, I mean he was not seen near her, or

19   with her, or anything else?

02:32 20   MR. DAVID ASPER: Well initially his

21   companions had no recollection of anything

22   happening. Over the passage of time and a number

23   of police interviews, they started to develop a

24   story -- and I should state different stories --

25   INTERVIEWER: Uh-huh.

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1   MR. DAVID ASPER: -- but each of which put

2   Milgaard near the scene of the crime at or around

3   the time that the murder would have occurred.

4   Basically what happened was they said that the

02:33   5   car had gotten stuck within about 100 yards of

6   where the body was found, and that Milgaard and

7   the male driver of the car had gotten out to go

8   get help, and that was necessary for the Crown's

9   case, in a circumstantial case, to put Milgaard

02:33   10   near the scene of the crime and outside the car.

11   INTERVIEWER: But yet, you said

12   circumstantial, I'm wondering what, if any,

13   specific evidence at all; were they able to point

14   to any history, for example?

02:33   15   MR. DAVID ASPER: No.

16   INTERVIEWER: Nothing?

17   MR. DAVID ASPER: Nothing.

18   INTERVIEWER: Now this does sounds really

19   (inaudible) phenomenal that there could have been

20   a conviction in this case?

21   MR. DAVID ASPER: Oh, we would love the

22   opportunity, and I'm satisfied I can convince you

23   and anybody else based on the evidence at the

24   trial -- forget about the new evidence -- that

02:33   25   the evidence at the trial established that David

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1   *Milgaard was more than likely on the outskirts of*

2   *town when this girl was attacked. That's the*

3   *Crown's case.*

4   *INTERVIEWER: Yeah, I'm just trying to*

02:34 5   *digest that, that you think you could use that*

6   *evidence to prove that he was not even near the*

7   *scene of the crime. Well why has it taken this*

8   *long? If it was that unusual, shall we say, a*

9   *trial, you are talking 20 years before something*

02:34 10   *happens?*

11   *MR. DAVID ASPER: Yeah. Well,*

12   *unfortunately, the way things work, before the*

13   *Minister of Justice will review a case, you have*

14   *to come up with something new.*

02:34 15   *INTERVIEWER: Uh-huh.*

16   *MR. DAVID ASPER: Bear in mind that the*

17   *Saskatchewan Court of Appeal dealt with this*

18   *case, although in my view was --*

19   *INTERVIEWER: And upheld the conviction?*

02:34 20   *MR. DAVID ASPER: And upheld the*

21   *conviction, but in my view inexpertly recited the*

22   *facts of the case.*

23   *INTERVIEWER: Uh-huh.*

24   *MR. DAVID ASPER: The Supreme Court then*

02:34 25   *dealt with the case.*

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1   INTERVIEWER: And upheld?

2   MR. DAVID ASPER: And upheld, but it -- the

3   issues became more defined as they went higher up

4   in the courts, and by the time it got to the

02:34   5   Court -- Supreme Court of Canada, they were

6   dealing with the specific issue of interpreting a

7   section of the Canada Evidence Act, and not

8   dealing with the facts of the case.

9   INTERVIEWER: I believe, from what I have

02:35   10   read, his mother has gone out and looked for

11   evidence?

12   MR. DAVID ASPER: Well, that's the problem,

13   that's one of the problems with these kinds of

14   application. The Criminal Code gives a remedy

02:35   15   that someone could apply to have their case

16   re-opened, but there is no resources.

17   INTERVIEWER: Uh-huh?

18   MR. DAVID ASPER: Legal Aid Manitoba and

19   Legal Aid Saskatchewan have refused to provide

02:35   20   any resources to hire investigators or anything

21   of that nature.

22   INTERVIEWER: So they would take a case but

23   they won't pursue one?

24   MR. DAVID ASPER: Well, they may, but they

02:35   25   haven't in this case.

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1   INTERVIEWER: Oh, they have turned this one

2   down?

3   MR. DAVID ASPER: And -- until recently, of

4   course, and so Mrs. Milgaard has, since the day

02:35 5   of conviction, has never given up and --

6   INTERVIEWER: And what has she found now?

7   MR. DAVID ASPER: Well, over the years she

8   has talked to a number of witnesses who testified

9   at the trial and gotten information, I think,

02:35 10   substantially different from what these people

11   said at the trial.

12   INTERVIEWER: Uh-huh?

13   MR. DAVID ASPER: But it was never

14   crystalized into any kind of an application that

02:35 15   went to the Minister of Justice.

16   In 1988 we got a forensic

17   report that says forensic evidence used at the

18   trial was inaccurately applied, and in fact

19   excludes David Milgaard as the perpetrator, and

02:36 20   Joyce was the one, basically, who dug that report

21   out.

22   INTERVIEWER: This is the mother?

23   MR. DAVID ASPER: Yeah.

24   INTERVIEWER: So she's got that, and she's

02:36 25   now got a suspect?

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1   *MR. DAVID ASPER: Well we got a tip,*

2   *actually, at the office, and that's how this*

3   *whole thing began, and Mrs. Milgaard took the tip*

4   *and fleshed out a whole bunch of information that*

02:36 5   *we then forwarded to the Department of Justice.*

6   *And that's right, it's what she got that inspired*

7   *what's happening now.*

8   *INTERVIEWER: The Department of Justice*

9   *says that they have closed the file, not*

02:36 10   *necessarily meaning negative, but they have made*

11   *a decision and there should be something heard*

12   *fairly soon; are you assuming that's positive,*

13   *have you got any sense?*

14   *MR. DAVID ASPER: I don't assume anything,*

02:36 15   *because we've heard that before, --*

16   *INTERVIEWER: Uh-huh?*

17   *MR. DAVID ASPER: -- and it's been*

18   *extraordinarily difficult convincing the*

19   *Milgaards, at least, to believe that what we're*

02:36 20   *hearing out of Ottawa is the truth.*

21   *We heard in January that a*

22   *decision was imminent, and nothing happened, and*

23   *the Justice Department keeps coming back to this*

24   *excuse that we provide them with new information*

02:37 25   *and, therefore, they can't make a decision. And,*

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1   you know, taken to its logical extreme, that

2   means that we should not provide them with

3   information.

4   INTERVIEWER: Do you think that they're

02:37 5   stalling, do you think it's such an embarrassment

6   that they are stalling?

7   MR. DAVID ASPER: I don't know why they are

8   stalling. They have done -- they had this

9   forensic report in December of 1988, you know,

02:37 10   all they had to do is call somebody and say "is

11   this report correct" and they never did it.

12   INTERVIEWER: But you say this is the

13   longest-serving prisoner in Canada, I imagine if

14   this is reversed it's Steven Truscott all over

02:37 15   again, it's not a Donald Marshall situation in

16   terms of the racial questions, but it would be a

17   huge embarrassment?

18   MR. DAVID ASPER: Oh yeah, it's a big

19   problem.

02:37 20   INTERVIEWER: Yeah?

21   MR. DAVID ASPER: And, you know, the

22   reluctance and this plodding sort of application

23   process, I think, is a big indictment on the

24   system because, as I say, there's this section in

02:38 25   the Criminal Code that says "all right, if you've

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1   *got some problem with your conviction you can go*

2   *talk to the Minister of Justice and the Minister*

3   *of Justice can do this, that, or the other*

4   *thing", but it's a pretty hollow right (a) if*

02:38   5   *you've got no resources, you know, to do the*

6   *investigation --*

7   *INTERVIEWER: Uh-huh.*

8   *MR. DAVID ASPER: -- and (b) if it's going*

9   *to take you, you know, two years or 18 months."*

02:38   10   **(Clip VT6 ends)**

11   **(Clip VT7 played)**

12   *NARRATOR: The Milgaards say that David's*

13   *sentence has been served by the whole family.*

14   *They say it's the waiting, whether for new*

02:38   15   *forensic reports or for decisions by the RCMP or*

16   *the Justice Minister, that's made this the most*

17   *difficult of times. Your questions to Joyce*

18   *Milgaard and to David's lawyer, David Asper,*

19   *today on Coast to Coast.*

02:39   20   *INTERVIEWER: And Joyce and David are going*

21   *to stay with us for the next hour.*

22   *Was there anything out of*

23   *yesterday with your meeting with Kim Campbell, or*

24   *your encounter, shall we say, with Kim Campbell?*

02:39   25   *MRS. JOYCE MILGAARD: I don't think that --*

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1   *the only thing that I think happened is that*

2   *maybe it's made the public more aware of what's*

3   *going on and how the Justice Department is*

4   *stalling us.*

02:39   5   *INTERVIEWER: Where do you go now, Mr.*

6   *Asper?*

7   *MR. DAVID ASPER: I think that we have to*

8   *continue to wait. It's true that I think*

9   *yesterday's encounter is going to make this a*

02:39   10   *little bit higher in the public agenda and*

11   *perhaps brings it home to roost directly to the*

12   *Minister, but there is a process underway here,*

13   *and all we can hope is that what happened*

14   *yesterday, you know, will start to expedite*

02:39   15   *things. I haven't really thought about two steps*

16   *ahead, we're still hoping that something is going*

17   *to break quickly.*

18   *INTERVIEWER: Can we go a lot of steps*

19   *backwards, if you don't mind going over this and*

02:40   20   *you don't mind going over this, this case has*

21   *only come really to attention, real public*

22   *attention, I think in the last week or so. Let's*

23   *talk about 20 years ago, and what happened that*

24   *night, can you just go over it for us?*

02:40   25   *MR. DAVID ASPER: David and two friends*

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1   *went on a road trip, basically they were*

2   *16-year-old carefree hippie-type kids, they went*

3   *on a road trip, they were headed to points west,*

4   *they decided to stop in Saskatoon to pick up a*

02:40 5   *friend of Milgaard's. They arrived in Saskatoon*

6   *sometime early in the morning, they were lost,*

7   *they didn't really know the city. David had been*

8   *to this friend's house once before, and knew some*

9   *landmarks, they drove around looking for them.*

02:40 10   *They remained lost and they wound up on the*

11   *outskirts of town. Now the evidence at the trial*

12   *established that the car had become stuck at one*

13   *point, and the point at where the car had become*

14   *stuck was close to where the body of the deceased*

02:41 15   *had been found. In any event, though, they wound*

16   *up on the outskirts of town at around 7:00 in the*

17   *morning, we know that the deceased left for work*

18   *about 7:00 in the morning, and David went into a*

19   *motel, got some instructions back into the*

02:41 20   *general area that they were looking for. They*

21   *sat in the parking lot for a while, they*

22   *discussed it, they then headed back into that*

23   *area, winding up in a series of one-way streets,*

24   *and they got going the wrong way and they headed*

02:41 25   *into a back lane. They saw a car ahead of them*

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1   *stuck in the snow, it was a bitterly cold day, it*

2   *was 40 below with ice fog and whatnot. David and*

3   *the driver of the car fought as to whether they*

4   *should, or argued about whether she should stop*

02:41 5   *and help these people ahead of them, because they*

6   *might be able to provide further directions.*

7   *David prevailed, they stopped, they helped these*

8   *people, the Danchuks, wound up spending an hour*

9   *with the Danchuks in their home waiting for tow*

02:42 10   *trucks, and --*

11   *INTERVIEWER: This was after the time of*

12   *the crime, or the time of the crime?*

13   *MR. DAVID ASPER: Well, yeah, the Crown's*

14   *theory was that David had committed the murder*

02:42 15   *prior to going to the motel on the outskirts of*

16   *town.*

17   *INTERVIEWER: Okay.*

18   *MR. DAVID ASPER: All right.*

19   *MRS. JOYCE MILGAARD: And David has really*

02:42 20   *said to me afterwards, he said "mum, you have*

21   *always taught me I should always do the right*

22   *thing, and here I am being a good Samaritan" --*

23   *INTERVIEWER: Stopping and helping these*

24   *people?*

02:42 25   *MRS. JOYCE MILGAARD: Well, but it's*

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1   supposed to be after the murder, I mean, which is

2   totally ridiculous.

3   INTERVIEWER: We can get into a lot of

4   details. What evidence was there? I mean there

02:42 5   was a conviction, there have been two appeals,

6   what evidence; there must have been some

7   evidence, some motive, to connect your son to

8   this crime?

9   MRS. JOYCE MILGAARD: Well, at the start

02:42 10   there was no evidence, --

11   INTERVIEWER: Uh-huh?

12   MRS. JOYCE MILGAARD: -- there was -- and

13   at the finish there was absolutely no forensic

14   evidence at all. They took samples from my son

02:42 15   of hair, of semen, all of these things. Now

16   there was never a report brought into the

17   courtroom that linked my son in any way on what

18   would be call hard evidence.

19   INTERVIEWER: Uh-huh.

02:42 20   MRS. JOYCE MILGAARD: Okay?

21   INTERVIEWER: Uh-huh.

22   MRS. JOYCE MILGAARD: What was brought into

23   Court was the testimony of three other people who

24   originally had told the truth, had said "we

02:43 25   weren't there, we weren't, you know, we were in

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1   the area but we know nothing about it".

2   INTERVIEWER: Uh-huh?

3   MRS. JOYCE MILGAARD: Suddenly af --

4   INTERVIEWER: They changed their testimony?

02:43 5   MRS. JOYCE MILGAARD: They did.

6   INTERVIEWER: And who were these people

7   that changed their testimony, were these three

8   friends part of the group?

9   MR. DAVID ASPER: Yes. There's three basic

02:43 10   foundations for the Crown's case in this case.

11   The first foundation is Nichol

12   John and Ron Wilson. Now those are the two

13   people that David was travelling with.

14   INTERVIEWER: Uh-huh?

02:43 15   MR. DAVID ASPER: And the Crown needed

16   their evidence to put David at or near the scene

17   of the crime, away from the two of them, so as to

18   give him the opportunity to commit the crime.

19   Now, as Joyce says, initially, as far as they

02:43 20   were concerned, nothing happened, they --

21   INTERVIEWER: And what did they change

22   their testimony to?

23   MR. DAVID ASPER: Well ultimately Wilson

24   changed his testimony to have him, the car

02:43 25   getting stuck at an intersection very proximate

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1   to where the deceased had been found, and that he

2   and Milgaard had decided to get out of the car

3   and go look for help.

4   INTERVIEWER: Oh, so Milgaard had split,

02:44 5   David had split and could have done it during

6   that?

7   MR. DAVID ASPER: That's right, one goes

8   one way and one goes the other.

9   And Nichol John similarly wound

02:44 10   up giving what she called an eye-witness

11   statement at one point, which was totally --

12   MRS. JOYCE MILGAARD: It was incredible.

13   MR. DAVID ASPER: -- factually impossible,

14   and it shows you how her evidence so radically

02:44 15   changed. And she ultimately, at the trial, tries

16   to recant the statement that she gives. So

17   that's the first foundation.

18   The second foundation is the

19   forensic evidence. The forensic evidence was led

02:44 20   by the Crown attorney to establish, independent

21   of the circumstantial evidence, that David's

22   semen was found at the screen of the crime, and

23   we now know, at least from one pathologist, that

24   it's not David's.

02:44 25   INTERVIEWER: So before we take a bit, I

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1   *just want to lay out the general groundwork. You*

2   *now have a suspect, obviously we cannot mention*

3   *the name, but you, the mum, went out and became*

4   *private eye to find this suspect? There is*

02:45 5   *somebody in jail in Saskatoon now that --*

6   *MRS. JOYCE MILGAARD: In the Saskatchewan*

7   *Penitentiary.*

8   *INTERVIEWER: Sorry, in the Saskatchewan*

9   *Penitentiary, and you believe you have enough*

02:45 10   *evidence to point to this person being the real*

11   *--*

12   *MRS. JOYCE MILGAARD: Well I believe that*

13   *anyone that was with me and heard what I heard*

14   *would probably feel as we do, that it is the*

02:45 15   *right person, but after David's experience of*

16   *being railroaded I would be the last person in*

17   *the world to say this man is the real killer, I*

18   *think that is up to the Court to decide.*

19   **(Power failure - Clip VT7 paused)**

02:45 20   MR. HODSON: This is probably a job for our

21   security person to do.

22   *(Discussion off the record)*

23   COMMISSIONER MacCALLUM: We can take our

24   break, Mr. Hodson.

02:46 25   MR. HODSON: Yes, we'll take a break.

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1   (Adjourned at 2:46 p.m.)

2   (Reconvened at 3:02 p.m.)

3   MR. HODSON: Just for the benefit of

4   counsel, if they see in the screen in the top

03:02 5   left-hand corner they'll see the VT and the

6   numbered clip, so if anybody is trying to track

7   exactly where we're at they can tell by that and

8   we'll just carry on.

9   **(Clip VT7 restarted)**

03:02 10   *MR. DAVID ASPER: The comments that, if we*

11   *continue to provide information, that's gonna*

12   *delay the case, they are all hollow. The fact of*

13   *the matter is that they have had a report since*

14   *December of 1988 and they haven't done anything*

03:03 15   *with it.*

16   *INTERVIEWER: December of 1988, so we are*

17   *talking about a year and a half?*

18   *MR. DAVID ASPER: That's right.*

19   *INTERVIEWER: That's right.*

03:03 20   *MR. DAVID ASPER: And they didn't do*

21   *anything with that.*

22   *INTERVIEWER: And that has got the suspect?*

23   *MR. DAVID ASPER: No, no, the suspect came*

24   *on the scene in February of '90.*

03:03 25   *INTERVIEWER: Uh-huh.*

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1   MRS. JOYCE MILGAARD: Uh-huh. And they had

2   all that time before then. You know, if they'd

3   been doing their job I would not have had to go

4   out regarding this suspect in 1990, because they

03:03   5   had enough evidence there that my son would be

6   back before the Court and showing that he is

7   innocent.

8   It's almost as if they feel

9   that they can have these -- they are saying that

03:03 10   a parallel investigation is being done, we're

11   saying "forget it, there is no parallel

12   investigation, there shouldn't have to be, why

13   should I have to bring the killer here and put it

14   to the Justice Department before they will give

03:03 15   us Justice".

16   INTERVIEWER: What's it been like for you?

17   Is there any way to describe what it's been like

18   for you?

19   MRS. JOYCE MILGAARD: There is no way. I

03:04 20   just -- lately I have been going one day at a

21   time, --

22   INTERVIEWER: Yeah?

23   MRS. JOYCE MILGAARD: -- you know, and just

24   trying to get through it, and the rest of the

03:04 25   family too. It's been so difficult because it's

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1   as if we've all been in prison with David.

2   INTERVIEWER: Uh-huh?

3   MRS. JOYCE MILGAARD: You know, you can't

4   really plan to do anything, and yet I can't sweep

03:04 5   it under the carpet, I can't go away, I'm his

6   mum, you know, we know he's innocent, and so we

7   just feel we have to keep hammering at the door,

8   even if it's shut in our faces, so to speak.

9   INTERVIEWER: Let's take another call. I

03:04 10   think our next call is from Toronto, it's Todor

11   or Todor, I'm not quite sure how to pronounce

12   your name?

13   TODOR: Well, that's okay, doesn't matter

14   really.

03:04 15   INTERVIEWER: Okay. Well, just for the

16   record, if you could -- Todor?

17   TODOR: Todor.

18   INTERVIEWER: Okay. Go ahead?

19   TODOR: Hello.

03:04 20   MRS. JOYCE MILGAARD: Hello.

21   TODOR: Yeah. You see, this lady has my

22   sympathy for her fight to defend her son.

23   INTERVIEWER: Uh-huh.

24   TODOR: And I justifiable and say it, that

25   the law is a hard camp, she nowhere have to go,

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1   *not on the public TV. And I'm wondering, my*

2   *question is to Newsworld, what the heck they*

3   *think? They have a microphone, decide to have a*

4   *(inaudible) justice, but not (inaudible) to use*

5   *the court. I have full confidence the court may*

6   *say sometime, should be, that there is a way to*

7   *put it on, or put it on TV, it will be a lot of*

8   *money.*

9   *INTERVIEWER: Okay.*

10   *TODOR: But broadcast it for the people.*

11   *INTERVIEWER: Okay.*

12   *TODOR: They make mistake sometime, could*

13   *be, but there is a way to correct it.*

14   *INTERVIEWER: Okay.*

03:05 15   *TODOR: But put them on TV, and using our*

16   *money, --*

17   *INTERVIEWER: Okay.*

18   *TODOR: -- broadcast it for the people,*

19   *I --*

03:05 20   *INTERVIEWER: Fair enough, get your point,*

21   *and I think what we're talking about here is*

22   *we're not trying the case here, we're talking*

23   *about delays; that's your point?*

24   *MR. DAVID ASPER: Yeah, I agree with what*

03:05 25   *the caller is saying, and I can assure the caller*

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1   *that since December of 1988 we have absolutely*

2   *played it by the rules. We have dealt in fairly*

3   *strict confidence with the Department of Justice,*

4   *we have filed applications properly, we've done*

03:05   5   *everything properly, and it gets to the point --*

6   *and -- where you cross a threshold that, where*

7   *nothing is being done, you have to try something*

8   *unconventional to bring pressure.*

9   *INTERVIEWER: Is this dangerous though?*

10   *MR. DAVID ASPER: Well --*

11   *INTERVIEWER: Is this jeopardizing the*

12   *whole thing by you being here, by you going up to*

13   *Kim Campbell yesterday?*

14   *MRS. JOYCE MILGAARD: I don't think so,*

03:06   15   *because, well for one thing, I mean I went to*

16   *Saskatoon and found this, who we believe is the*

17   *real killer myself, but I didn't release that to*

18   *the public.*

19   *INTERVIEWER: Uh-huh?*

03:06   20   *MRS. JOYCE MILGAARD: That came out*

21   *inadvertently. I mean, I'm very grateful for*

22   *what John Harvard did in bringing it up in The*

23   *House --*

24   *INTERVIEWER: Uh-huh.*

03:06   25   *MRS. JOYCE MILGAARD: -- and what he is*

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1   doing, but the point is that was confidential

2   information that we are keeping in confidence.

3   I could have been on lots of

4   television stations before this, and we have sat

03:06 5   back patiently waiting for the Minister of

6   Justice to act on this, all of the different

7   Ministers of Justice, because it goes from one to

8   the other, and nothing is done. So maybe you can

9   understand, out there, why we get a little

03:07 10   impatient and say "it's not being done, we have

11   to talk to people".

12   INTERVIEWER: Okay.

13   MRS. JOYCE MILGAARD: Okay.

14   INTERVIEWER: Okay, let's go to Toronto,

03:07 15   this is Paul. Hi, Paul.

16   PAUL: Hi. I've just been watching this on

17   the TV set, and it really kind of alarms me,

18   because when I see this kind of thing happening

19   with this gentleman here, with Donald Marshall

03:07 20   and with Steven Truscott and other people that

21   have been railroaded in this manner in the

22   Canadian justice system, I think to myself "well

23   what, how, how can I avoid something like this

24   happening to me", you know.

25   INTERVIEWER: Uh-huh.

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1   PAUL: And --

2   MRS. JOYCE MILGAARD: And you really can't,

3   so be careful.

4   INTERVIEWER: Well I should ask some hard

03:07   5   questions here too, because I -- you know, we're

6   not here to defend or convict anybody, but tell

7   us about your son David at 17? Now 17, 1969, I

8   forget what you called him, Mr. Asper, but a sort

9   of wild and crazy hippie, was it? I mean was he

03:07 10   stoned, was he doing a lot of drugs?

11   MRS. JOYCE MILGAARD: Okay.

12   INTERVIEWER: I mean what kind of a kid was

13   he?

14   MRS. JOYCE MILGAARD: David was no choir

03:08 15   boy, and I'm the first, very first person to

16   admit that.

17   INTERVIEWER: Uh-huh?

18   MRS. JOYCE MILGAARD: But my son was never

19   violent. If there had been drugs, if through the

03:08 20   evidence there had been drugs at the time -- they

21   didn't have any money or I'm sure they possibly

22   would have had drugs, because David was smoking

23   marijuana and doing these things.

24   INTERVIEWER: Uh-huh?

03:08 25   MRS. JOYCE MILGAARD: And, ironically, I,

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1   as his mother, said to him, "you know, you have

2   got to be careful of the company you keep".

3   INTERVIEWER: Uh-huh.

4   MRS. JOYCE MILGAARD: If he had been

03:08 5   keeping better company, there is no way that they

6   could have even, you know, convicted him at that

7   time. But he was never violent, he didn't

8   demonstrate --

9   INTERVIEWER: Did he have any kind of a

03:08 10   record? I don't know if I'm -- it's appropriate

11   to ask that?

12   MRS. JOYCE MILGAARD: David had a record of

13   having -- of smoking marijuana.

14   INTERVIEWER: Uh-huh.

03:08 15   MRS. JOYCE MILGAARD: At one time, as a

16   youth, he and another boy in the town that we

17   lived in, they took a person's car out of the

18   garage and did a joyride, but that's it.

19   INTERVIEWER: Uh-huh?

03:09 20   MRS. JOYCE MILGAARD: I mean they had

21   nothing there, no history or any of those types

22   of things, but that didn't matter because he was

23   in the wrong place at the wrong time.

24   INTERVIEWER: Uh-huh?

03:09 25   MRS. JOYCE MILGAARD: And that's why I said

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1   *to the caller, it could happen to you, and I*

2   *think that we have to change the justice system.*

3   *It has to provide so that if you do get in*

4   *trouble, that there is an avenue, instead of*

03:09   5   *being up against the Crown with all its money and*

6   *all the people he could send out to convict David*

7   *we should have had someone there on our side that*

8   *could go out and work for us. We didn't have.*

9   *INTERVIEWER: That's a -- there's so much I*

03:09   10   *want to ask you, I want to get calls through.*

11   *This is Saskatoon, a call from*

12   *Saskatoon, and it's Parvez or Parvez? Parvez,*

13   *hello?*

14   *PARVEZ: Hello.*

03:09   15   *INTERVIEWER: Hi. Are you familiar with*

16   *this crime? I guess, obviously it's a crime,*

17   *somebody did it.*

18   *PARVEZ: Well I have read a little bit*

19   *about it in the newspaper in the last few days.*

03:09   20   *INTERVIEWER: Do you have a question?*

21   *PARVEZ: Not quite, a comment, a comment*

22   *that was alluded to a little bit, a little while*

23   *ago by a caller.*

24   *INTERVIEWER: Uh-huh.*

03:10   25   *PARVEZ: And I was wondering if all the*

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1   *people involved in this situation are aware of*

2   *the fact that this may be, in part, a political*

3   *situation right now. So soon after the Donald*

4   *Marshall Inquiry and Commission it may be a*

03:10 5   *resistance on the part of all levels of police*

6   *and Justice Department to avoid that kind of*

7   *situation, to get involved in the -- in an*

8   *inquiry that's --*

9   *INTERVIEWER: Well it certainly --*

03:10 10   *PARVEZ: -- paying damages and whatnot?*

11   *INTERVIEWER: It's certainly a thought.*

12   *What are your thoughts on that, Mr. Asper?*

13   *MR. DAVID ASPER: I think that --*

14   *INTERVIEWER: Easy to say, I suppose, I*

03:10 15   *mean I --*

16   *MR. DAVID ASPER: Yes, it's very easy to*

17   *say, but --*

18   *MRS. JOYCE MILGAARD: Yes. I don't even*

19   *want to think that way, I've just got to pray*

03:10 20   *that Justice is right.*

21   *MR. DAVID ASPER: But put Marshall aside,*

22   *there is a systemic problem, and it's true of*

23   *most government activity.*

24   *INTERVIEWER: Uh-huh.*

03:11 25   *MR. DAVID ASPER: When government makes a*

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1   *mistake, and in this case it's the prosecution*

2   *arm of government, --*

3   *INTERVIEWER: Uh-huh.*

4   *MR. DAVID ASPER: -- there is a very deep*

03:11 5   *reluctance to admit making a mistake, especially*

6   *where the consequences are so great.*

7   *INTERVIEWER: Uh-huh?*

8   *MR. DAVID ASPER: Because immediately*

9   *people want to identify good guys and bad guys*

03:11 10   *and point the fingers, so that, that provides us*

11   *a barrier, and --*

12   *INTERVIEWER: But isn't it easier to say, I*

13   *mean this is a mistake of 20 years ago, can they*

14   *not -- I mean a gentlemen's argument, wouldn't*

03:11 15   *they be able to say "we made a mistake, whoever*

16   *was in power made a mistake 20 years ago"?*

17   *MRS. JOYCE MILGAARD: Yes, but those people*

18   *that made the mistakes 20 years ago, --*

19   *INTERVIEWER: They are still around?*

20   *MRS. JOYCE MILGAARD: -- they are still*

21   *around, those people are in power right now. The*

22   *investigating officer is now the Chief of Police*

23   *in Saskatoon, the Caldwell --*

24   *INTERVIEWER: So possibly, potentially, I*

03:11 25   *underline potentially, reputations at stake here?*

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1   MRS. JOYCE MILGAARD: Darn right.

2   INTERVIEWER: Okay, let's take a break, and

3   we'll come back and take more calls and --

4   **(Clip VT7 ends)**

03:12 5   **(Clip VT8 played)**

6   INTERVIEWER: Why did they, why did they --

7   take us back to 1969. With such little evidence,

8   even if you take those testimonies, nobody put

9   him at the scene of the crime, there was no

03:12 10   eyewitness, nothing like that, why -- why were

11   they able to get a conviction, why did they press

12   so hard?

13   MR. DAVID ASPER: That's a pretty tough

14   question. I -- there was, I think, a lot of

03:12 15   pressure on the police department to find

16   somebody and convict somebody. You've got to

17   remember we're talking about Saskatoon in 1969

18   with a very brutal rape and murder.

19   INTERVIEWER: Yeah?

03:12 20   MR. DAVID ASPER: Another nurse had been

21   murdered in Saskatoon a couple years earlier, and

22   that crime hadn't been solved either, and it

23   became very topical, and as they were able to

24   sort of point the finger at somebody, a hippie

03:12 25   with long hair who might be associated with the

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1   use of drugs --

2   INTERVIEWER: Yeah, if one remembers the

3   times, yeah, they were different times?

4   MRS. JOYCE MILGAARD: That's right.

03:13 5   MR. DAVID ASPER: -- it became very easy

6   and, you know, the case got extreme notoriety at

7   the time --

8   INTERVIEWER: Uh-huh?

9   MR. DAVID ASPER: -- and, you know --

03:13 10   INTERVIEWER: Wasn't anybody standing up

11   for David then? What kind of defence counsel did

12   he have?

13   MRS. JOYCE MILGAARD: Well, the defence

14   counsel I can't say too much about, because he's

03:13 15 the Chief Justice in Saskatchewan right now.

16   INTERVIEWER: Uh-huh.

17   MR. DAVID ASPER: And the less said the

18   better on that.

19   MRS. JOYCE MILGAARD: Okay.

03:13 20   INTERVIEWER: Okay, I -- we won't say

21   anything.

22   MRS. JOYCE MILGAARD: But other than the

23   fact that, in fairness to him, I don't think

24   that -- I mean there is a Milgaard precedent.

03:13 25 The trial was turned around by the testimony that

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1   *was given of a witness that was an adverse*

2   *witness, and a precedent came out of it, it never*

3   *happened before. And in fairness to Mr. Tallis,*

4   *I think that the fact that all of a sudden the*

03:13   5   *law has changed on you in the middle of a trial,*

6   *maybe he would have handled his defence*

7   *differently.*

8   *INTERVIEWER: Uh-huh, okay.*

9   *MRS. JOYCE MILGAARD: You see, my son was*

03:13   10   *never on the stand.*

11   *INTERVIEWER: But there was an appeal,*

12   *there were two appeals, to the Appeal Court in*

13   *Saskatchewan, to the Supreme Court, two new*

14   *courts, three courts?*

03:14   15   *MRS. JOYCE MILGAARD: No, but I read the*

16   *appeals, and if I read the appeal that was*

17   *written I'd have thought my son was guilty.*

18   *INTERVIEWER: Uh-huh.*

19   *MRS. JOYCE MILGAARD: I mean the appeals*

03:14   20   *are based on little tiny facts, they won't let*

21   *you -- they won't look at the large picture.*

22   *INTERVIEWER: Uh-huh.*

23   *MRS. JOYCE MILGAARD: And --*

24   *MR. DAVID ASPER: You see that --*

03:14   25   *INTERVIEWER: Uh-huh?*

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1   MR. DAVID ASPER: -- you see that in the

2   way that the Saskatchewan Court of Appeal recited

3   the facts of the case in its judgement in a

4   written decision. They inexpertly recount the

03:14   5   facts, and if you compare what they say with the

6   actual evidence at the trial, there is a huge

7   disparity. And the problem is we don't know what

8   was argued at the Saskatchewan Court of Appeal

9   because, at the time, you didn't have to submit

03:14   10   written arguments.

11   INTERVIEWER: Oh?

12   MR. DAVID ASPER: And by the time it got to

13   the Supreme Court of Canada they were arguing a

14   narrow, single issue of law, which is how do you

03:14   15   interpret Section 9(2) of the Evidence Act.

16   So --

17   INTERVIEWER: It's not as if the whole

18   trial was reviewed?

19   MRS. JOYCE MILGAARD: No.

20   INTERVIEWER: Okay.

21   MRS. JOYCE MILGAARD: I mean they couldn't

22   tell about the missing knife that disappeared out

23   of the policeman's locker, I mean they had two

24   knives, one disappeared. They never mentioned

03:15   25   the discarded semen. There were lots of things

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1   *that were not mentioned, and that's what I think*

2   *the public should know about.*

3   ***(Clip VT8 ends)***

4   ***(Clip VT9 played)***

03:15   5   *"INTERVIEWER: Receive a call from Toronto.*

6   *This is Ken?*

7   *KEN: Yeah, hi, how are you.*

8   *INTERVIEWER: Yeah, go ahead?*

9   *KEN: First of all, I have the deepest*

03:15   10   *sympathy for David's mother, --*

11   *MRS. JOYCE MILGAARD: Thank you.*

12   *KEN: -- and certainly the case should be*

13   *re-opened. But all I'm hearing here is that*

14   *everybody has a duty, it seems to me that maybe*

03:15   15   *Mr. Tallis has a duty. This is a man --*

16   *MR. DAVID ASPER: You know about Mr.*

17   *Tallis, do you?*

18   *KEN: Well --*

19   *INTERVIEWER: I don't, I've got, I've got a*

03:15   20   *lawyer here, I am hearing we shouldn't be talking*

21   *about an individual, so I'm --*

22   *KEN: I think we should, I think there*

23   *should be some publicity on this. I mean this is*

24   *a public relations problem. Here is some guy who*

03:15   25   *should at least write to admit yes there was a*

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1 *problem, and yes I am all in favour of opening*

2 *this up, and if he loses his job because he says*

3 *that -- you know, if poor David was a forest or a*

4 *whale, there would be a whole bunch of people*

03:16 5 *protesting this.*

6 *MR. DAVID ASPER: Well, okay, let me just*

7 *say Tallis is in a very difficult position*

8 *because he is now on the Court of Appeal and the*

9 *case may be referred back to that very Court.*

03:16 10 *Okay. So he has got a very practical problem*

11 *about dealing with this case.*

12 *Secondly, I don't want to*

13 *criticize, and I don't think Tallis is open to*

14 *criticism as to what happened at the trial.*

15 *MRS. JOYCE MILGAARD: And you haven't*

16 *criticized him.*

17 *INTERVIEWER: And you have not criticized*

18 *him.*

19 *MR. DAVID ASPER: I mean, you've got to*

03:16 20 *bear in mind there was all kinds of unusual*

21 *things that happened at this trial. In the*

22 *middle of the preliminary inquiry -- sorry, the*

23 *beginning of the preliminary inquiry the Criminal*

24 *Code was changed to provide that all evidence*

03:16 25 *taken at the preliminary inquiry was not the*

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1   subject of publication because you don't

2   (inaudible) of potential jurors.

3   INTERVIEWER: Uh-huh.

4   MR. DAVID ASPER: That law came into effect

03:16 5   the day Milgaard's prelim started.

6   INTERVIEWER: So you have a unique

7   situation?

8   MR. DAVID ASPER: And they didn't ban

9   publicity.

03:16 10   MRS. JOYCE MILGAARD: And all the publicity

11   was there.

12   INTERVIEWER: Ah.

13   MRS. JOYCE MILGAARD: Now, we didn't get a

14   change of venue either.

15   INTERVIEWER: Ah.

16   MRS. JOYCE MILGAARD: Which is something

17   now I think we should have had.

18   MR. DAVID ASPER: A week before --

19   INTERVIEWER: This is like a mystery novel.

03:16 20   MR. DAVID ASPER: It is.

21   INTERVIEWER: I mean, it's incredible the

22   details that are in this.

23   MR. DAVID ASPER: It is. Now, to imagine

24   what Tallis was dealing with, he's got the

03:16 25   problems with the Section 9(2) of the Evidence

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1   Act, the very technical problem --

2   INTERVIEWER: Uh-huh.

3   MR. DAVID ASPER: -- that he knows is

4   coming. A week before the trial starts the

03:17 5   prosecutor lines up two guys who are going to

6   come to the trial and testify that David had

7   reenacted the murder in a motel room many months

8   later.

9   MRS. JOYCE MILGAARD: Who just happened to

03:17 10   have charges against them.

11   MR. DAVID ASPER: Right out of left field.

12   So, you know, in the midst of preparing and

13   psyching himself for the trial, he keeps getting

14   hit from all sides.

03:17 15   INTERVIEWER: I'm going to ask you, if this

16   thing is opened up again and these two witnesses

17   that changed their testimony regarding your son

18   are brought back, what are they going to say this

19   time? Are you not going to be confronted with

03:17 20   the same thing?

21   MRS. JOYCE MILGAARD: No. I mean, Nichol

22   John, whose testimony was heard in the act, I

23   mean, she said in no uncertain terms that -- I

24   think the way she put it was "I would have said

03:17 25   my own grandmother did it." By the time the

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1   *police had finished taking her all the way up to*

2   *Saskatoon from Regina, holding her overnight*

3   *without even being charged, I mean, that's*

4   *illegal to begin with, but a 17-year-old girl,*

03:18   5   *showing her knives and bloody clothes and all of*

6   *these things --*

7   *MR. DAVID ASPER: Pictures.*

8   *MRS. JOYCE MILGAARD: -- pictures, the*

9   *whole ball of wax, until suddenly in the middle*

03:18   10 *of the night, I mean, she was screaming, they had*

11   *her up on the range, a new cell block, there*

12   *wasn't another prisoner in there, all by herself,*

13   *she's left there all night long. About three she*

14   *started to scream, they had to get a matron in,*

03:18   15 *and then what happens the next morning, they take*

16   *her out to the scene of the crime. Voila, they*

17   *have a statement.*

18   *(Clip VT9 ends)*

19   *(Clip VT10 played)*

03:18   20   *REPORTER: ... David Milgaard case.*

21   *Milgaard has spent 21 years in jail for the 1969*

22   *murder of a Saskatoon nursing assistant, a crime*

23   *he says he did not commit. Milgaard's lawyer*

24   *says the department's final report should be on*

03:18   25 *Justice Minister Kim Campbell's desk in a matter*

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1   *of days, but before the Minister sees the report,*

2   *she may hear from Milgaard's mother on the radio.*

3   *Paul Taylor reports.*

4   *MR. PAUL TAYLOR: From a converted church*

03:19 5   *in Winnipeg's core, the strains of a mother's*

6   *prayer.*

7   *MRS. JOYCE MILGAARD: (Singing)*

8   *"Everyone knows that people have lied."*

9   *It just came in the middle of the night. I was*

03:19 10   *sleeping and the first two lines came into my*

11   *head. I woke up and I thought I don't know*

12   *anything about writing a song, and yet that's the*

13   *thought that was coming, to write this song. I*

14   *went back to sleep, half an hour later, third*

03:19 15   *line.*

16   *MR. PAUL TAYLOR: There have been 23 years*

17   *of restless nights for Joyce Milgaard. She*

18   *fought often alone to win the freedom of her son*

19   *David, convicted of a murder she says he didn't*

03:19 20   *commit. New evidence and a new justice*

21   *department investigation hasn't yet sparked a*

22   *release. She hopes this song will help change*

23   *the mind of Justice Minister Kim Campbell.*

24   *MRS. JOYCE MILGAARD: I'm not meaning it as*

03:19 25   *a slam, I'm sending it as one mother to another.*

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1   (Singing)

2   "He is not guilty

3   You have no proof

4   How can you stand there so cold and

03:20 5   aloof."

6   MR. DAVID ASPER: Two things; one, what's

7   the Minister of Justice going to do, sue Mrs.

8   Milgaard? Let her, you know. And the second

9   thing is truth is a defence.

03:20 10 **(Clip VT10 ends)**

11 **(Clip VT12 played)**

12   REPORTER: ... has spent 21 years in prison

13   for the 1969 murder of a woman in Saskatoon.

14   Today his statement was released by the key

03:20 15   witness at his trial. The man, Albert Cadrain,

16   now admits to having serious psychiatric problems

17   at the time he testified against Milgaard.

18   MRS. JOYCE MILGAARD: It's wonderful to

19   find out that the truth is coming out.

03:20 20   REPORTER: Joyce Milgaard remembers Albert

21   Cadrain as a 16-year-old everyone called Shorty.

22   He was with her son David on their trip to

23   Saskatoon in 1969. When he heard about the

24   murder of Gail Miller, Cadrain told his brother

03:21 25   he remembered seeing blood on Milgaard's pants.

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1   *Cadrain called the police.*

2   *In a statement released today*

3   *by Milgaard's family, Cadrain says:*

4   *"I was questioned that day for 10 to 12*

03:21   5   *hours...*

6   *I felt the police were accusing me of*

7   *the murder...*

8   *When they finally brought me home late*

9   *that night, I was mentally drained and*

03:21 10   *shaking.*

11   *...they put me through hell and mental*

12   *torture."*

13   *Cadrain's emotional problems led to his voluntary*

14   *commitment.*

03:21 15   *But he still served as the*

16   *Crown's key witness in the trial and the defence*

17   *was never told of his emotional problems.*

18   *Milgaard's lawyer says given Cadrain's mental*

19   *state, his testimony was unreliable.*

03:21 20   *MR. DAVID ASPER: When he gives us this*

21   *particular statement, what he's saying to us is*

22   *this is what happened to me and I don't know*

23   *whether what I said was the truth or not.*

24   *REPORTER: Joyce Milgaard says Albert*

03:21 25   *suffered from delusions, believed he had psychic*

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1   powers and at one point told his brother about a

2   vision.

3   MRS. JOYCE MILGAARD: He actually had a

4   vision of the Virgin Mary with her foot on a

03:21 5   serpent and the serpent's head was that of David

6   Milgaard.

7   REPORTER: Cadrain's statement has been

8   sent to Ottawa. Despite failed attempts in the

9   past to get the Justice Department to review the

03:22 10   case, Asper says things are turning around.

11   MR. DAVID ASPER: A change for the positive

12   within the past week or 10 days and I think that

13   we're now satisfied that we have captured the

14   attention of the Department of Justice.

15 **(Clip VT12 ends)**

16 **(Clip VT13 played)**

17   MR. MAURY POVICH: Mother's always think

18   their sons can do no wrong, but this time, one

19   mom set out to prove that her boy was not a

03:22 20   killer and rapist.

21   Our Steve Dunlevy has a story

22   of a woman who put everything on the line for the

23   love of her son.

24   MR. STEVE DUNLEVY: For 21 years he has

03:22 25   screamed in the tiny wilderness of a jail cell

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1   *that he is guilty only of being innocent.*

2   *MR. DAVID MILGAARD: They knew I wasn't*

3   *guilty and they were trying to make me look*

4   *guilty. That's as straight as I can say it. And*

03:23 5   *those people are around today.*

6   *STEVE DUNLEVY: His name is David Milgaard,*

7   *and at the age of 38 he has seen the flower of*

8   *his youth and his most ambitious years wither*

9   *before it bloomed.*

03:23 10   *MR. DAVID MILGAARD: I felt I was dying a*

11   *little bit every day in the place.*

12   *MR. STEVE DUNLEVY: At the age of 16 when*

13   *most kids are preparing for their final stretch*

14   *in high school, he found himself preparing for a*

03:23 15   *frightening stretch in jail that would brand him*

16   *a monster.*

17   *MRS. JOYCE MILGAARD: I really watched my*

18   *boy turn into a man just -- and he's done it*

19   *inside of a jail cell all by himself without us.*

20   *"JOYCE MILGAARD: Okay, what about*

21   *stickers?"*

22   *MR. STEVE DUNLEVY: Joyce Milgaard, for the*

23   *21 years her son has been in jail, she, like her*

24   *son, screamed only that he was guilty of*

03:23 25   *innocence, and for over two decades worked like a*

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1   *private detective to prove what she believed in*

2   *her heart to be true: Her son was innocent. She*

3   *was a gumshoe mom.*

4   *This is where they are still*

03:24   5   *trying to forget the horror of 21 years ago when*

6   *authorities uncovered the body of student nurse*

7   *Gail Miller. She had been brutally stabbed and*

8   *raped. This doesn't happen in Saskatoon, Canada.*

9   *MR. DAVID ASPER: Never in the history of*

03:24   10   *Canadian justice has anyone served a sentence of*

11   *21 years and then found to be innocent.*

12   *MR. STEVE DUNLEVY: Lawyer, David Asper,*

13   *joined forces with Milgaard's mother in a*

14   *campaign that has the public and some officials*

03:24   15   *appalled at how the young 16-year-old could fall*

16   *through the cracks of what is normally impeccable*

17   *justice.*

18   *MR. DAVID ASPER: The way the investigation*

19   *was conducted are showing that there are some*

03:24   20   *major, major flaws in the way that criminal*

21   *justice is administered in Canada.*

22   *MR. STEVE DUNLEVY: In the tiny town of*

23   *Saskatoon, the case revolved around two eye*

24   *witnesses who placed Milgaard near the scene of*

03:24   25   *the crime. Both recanted their testimony saying*

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1   *they were questioned by cops who threatened to*

2   *implicate them in the murder, but there was more.*

3   *Semen samples were taken from the victim; semen*

4   *samples were taken from David Milgaard;*

03:25   5   *investigators never tried to match the two, but*

6   *then something amazing happened.*

7   *MR. DAVID ASPER: The forensic evidence at*

8   *the trial, the only physical evidence that*

9   *purported to link Milgaard to the scene were two*

03:25   10   *yellowish clumps of frozen material found in the*

11   *snow four days after the girl's body had been*

12   *found.*

13   *DR. PETER MARKESTEYN: What is the most*

14   *common source of yellow -- yellowish -- yellow*

03:25   15   *stains in snowbanks? Well that, in Canada at*

16   *least, is dog urine.*

17   *MR. DAVID ASPER: What they tendered as*

18   *Milgaard's semen was, in fact, fido's urine.*

19   *MR. STEVE DUNLEVY: But there was more from*

03:25   20   *this woman, Linda Fisher, who remembers, on the*

21   *morning the body was found, her husband Larry had*

22   *been out all night. He had mysteriously changed*

23   *his clothes. Her paring knife was missing from*

24   *their kitchen and his wallet was missing.*

03:26   25   *MS. LINDA FISHER: I was mad from his night*

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1   *out and we started arguing. Finally I guess I*

2   *was going to start making dinner and I was*

3   *looking for my paring knife and I couldn't find*

4   *my paring knife and just then the Gail Miller*

03:26 5   *murder came on the news saying some woman was*

6   *stabbed and so I said, "well, you were probably*

7   *the one that stabbed that nurse," and -- "because*

8   *my paring knife is missing here," I said, and*

9   *then Larry just looked at me and his face drained*

03:26 10   *and he just stopped and he usually argues back.*

11   *MR. STEVE DUNLEVY: But in that*

12   *neighbourhood two years later Larry Fisher*

13   *confessed to cops that he raped three women in*

14   *the three months before Milgaard was picked up*

03:26 15   *for the nurse's murder and rape. Fisher would*

16   *admit to two other rapes in Winnipeg. David*

17   *Milgaard had only been in town 24 hours. Cops*

18   *made no attempt to link the nurse rape/murder to*

19   *the serial rapes committed by Larry Fisher.*

03:27 20   *MR. DAVID ASPER: I think that Larry Fisher*

21   *is the real killer.*

22   *MR. STEVE DUNLEVY: While David Milgaard*

23   *sits in this jail, Larry Fisher, serving life,*

24   *had been committed to this psychiatric*

03:27 25   *institution in Saskatoon. We tried to arrange a*

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1   *meeting, but were told my authorities Fisher had*

2   *suddenly been moved elsewhere to a confidential*

3   *institution. Milgaard paces his cell floor.*

4   *MR. DAVID MILGAARD: They knew I wasn't*

03:27 5   *guilty and they were trying to make me look*

6   *guilty. That's as straight as I can say it. And*

7   *those people are around today. I was trying to*

8   *help.*

9   *MR. STEVE DUNLEVY: Milgaard could have*

03:27 10   *been paroled after eight years if he admitted*

11   *guilt, but he has steadfastly refused. He wants*

12   *a clean slate.*

13   *MR. DAVID MILGAARD: I like me and I want*

14   *to get out and do what I can just to enjoy my*

03:28 15   *life and to maybe in some way help others and*

16   *that's my game plan for the future.*

17   *MR. DAVE SCOTT: It's presently being*

18   *reviewed by our federal solicitor general's*

19   *department and when we get a case that's being*

03:28 20   *reviewed by our highest legal agency in Canada,*

21   *we're not going to interfere by making public*

22   *comments about our thoughts of the investigation.*

23   *MRS. JOYCE MILGAARD: Right now I think*

24   *it's all politics, I think we're an embarrassment*

03:28 25   *to the Canadian government and they want us to go*

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1   *away, but I have news for them, if I am 90 years*

2   *old and they haven't opened the door of that*

3   *prison for my son, I'll still be there knocking*

4   *at that door because we're not going to give up.*

03:28 5   *MR. MAURY POVICH: Go get 'em.*

6   **(Clip VT13 ends)**

7   **(Clip VT14 played)**

8   *REPORTER: Within a few days the Federal*

9   *Justice Department is expected to rule on a man's*

03:29 10   *freedom. David Milgaard has spent two decades in*

11   *prison for the murder of Gail Miller, a young*

12   *nursing assistant in Saskatoon. Milgaard insists*

13   *he didn't do it.*

14   *Tonight The Fifth Estate will*

03:29 15   *lay out new evidence that makes a powerful case*

16   *for a new trial, evidence that raises questions*

17   *about who really killed Gail Miller. There are*

18   *witnesses who have changed their testimony, new*

19   *witnesses have come forward, and now there may*

03:29 20   *even be a new suspect.*

21   *NARRATOR: Her body was found January 31st,*

22   *1969. Exactly one year later David Milgaard was*

23   *sentenced for the crime. He was 17 years old.*

24   *REPORTER: What was your reaction when they*

03:29 25   *came back and they said guilty?*

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1   MR. DAVID MILGAARD: I turned around and I

2   saw my father, he was a very big man, and I just

3   seen him look completely weak, and that scared me

4   more than anything else like I've ever seen in my

03:30   5   life.

6   NARRATOR: The sentence was prison for life

7   and for 20 years now Milgaard has been serving

8   it. He's grown up behind bars, from a frightened

9   teenager into an angry man, angry because from

03:30   10   the first day he walked into prison, Milgaard has

11   maintained his innocence. Through two appeals

12   that were rejected, through two escapes that

13   failed, he has always said he was a victim of

14   circumstance and a small town that was demanding

03:30   15   a conviction.

16   MR. DAVID MILGAARD: The newspapers are

17   just talking blood, rape, everybody is up in the

18   air about it.

19   REPORTER: So you think they were just

03:30   20   desperate to convict somebody and you happened to

21   be it?

22   MR. DAVID MILGAARD: Saskatoon was

23   desperate to convict somebody and they did

24   convict me, yes.

03:30   25   NARRATOR: What follows is a recreation of

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1   the Crown's case. The transcript says Milgaard

2   arrived in Saskatoon the morning of the murder.

3   He was with two friends on the way from Regina to

4   Vancouver where he admits they were hoping to buy

03:31   5   drugs.

6   They weren't angels, two years

7   earlier Milgaard spent time in a reformatory

8   after he was picked up for joyriding, but he had

9   no criminal record. His friend Ron Wilson,

03:31   10   however, had just gotten out of jail, it was his

11   car they were riding in that day, accompanied by

12   Nichol John, a girl Milgaard says he met in a

13   Regina park.

14   The Crown says it was about

03:31   15   6:30 in the morning when the three drove into

16   town looking for the house of another friend of

17   Milgaard's. But Milgaard had only been there

18   once before. They came across a woman in a black

19   coat and asked for directions, but she couldn't

03:32   20   help them.

21   As they attempted to turn

22   around, the car got stuck on some ice. When they

23   couldn't push it out, the Crown says Wilson and

24   Milgaard went for help, Milgaard in the direction

03:32   25   of the woman they had just seen.

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1   *According to the Crown, that*

2 *woman was Gail Miller, a 20-year-old nursing*

3 *assistant on her way to work. She was last seen*

4 *alive that morning at her home at quarter to*

03:32   5 *seven.*

6   *At 10 past seven Milgaard was*

7 *seen, but it was here, at a motel several miles*

8 *away from the neighbourhood. He had stopped to*

9 *get a map. By that time, the Crown says, he had*

03:32 10 *already killed Gail Miller, stabbed her 14 times*

11 *and left her body in a lane.*

12 *REPORTER: 21 years after Gail Miller's*

13 *body was found in this alley, there are still*

14 *questions about David Milgaard's conviction. At*

03:32 15 *the time of his trial, there was little physical*

16 *evidence to implicate him, no fingerprints, no*

17 *footprints, no eye witnesses. On top of that,*

18 *there were questions about timing. According to*

19 *the testimony, Milgaard had only between 10 and*

03:33 20 *20 minutes to find Gail Miller, rape and murder*

21 *her and get out of the neighbourhood.*

22 *NARRATOR: There are questions too about*

23 *Milgaard's behaviour that morning. After getting*

24 *the map, he and his friends returned to the*

03:33 25 *neighbourhood, stopping to help another car in*

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1   trouble. If Milgaard had just killed someone,

2   you might expect he would be nervous, agitated,

3   but the people he helped say no.

4   MRS. SANDRA DANCHUK: He was polite, he was

03:33 5   subservient and just seemed like a nice fella.

6   That was all there was to it.

7   NARRATOR: Alecia (sic) Danchuk and her

8   husband Walter testified at the trial.

9   MR. WALTER DANCHUK: He looked like a very

03:33 10   nice fella, he was calm and he didn't look

11   nervous or anything in that time, just a nice

12   kid.

13   NARRATOR: In the end, what put Milgaard

14   behind bars was the testimony of his three

03:33 15   friends. When police first questioned them, all

16   three denied any knowledge of the murder. None

17   of them said anything to implicate Milgaard, but

18   then one by one their stories changed.

19   First was Albert Cadrain.

03:34 20   Three weeks after he was questioned he went back

21   to police and told them that when Milgaard

22   finally arrived at his house that morning, there

23   was blood on his shirt and pants. Cadrain later

24   collected $2,000 that had been offered as a

03:34 25   reward.

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1   The next story to change was

2   Ron Wilson. After repeated police questioning,

3   he too said he saw blood on Milgaard. What's

4   more, he had seen him with a paring knife, one

03:34   5   that matched the description of the murder

6   weapon. In a written statement, he went further

7   still, saying that later in the trip in Calgary

8   Milgaard told him he had hit a girl in Saskatoon,

9   grabbed her purse, jabbed her with a knife, but

03:34 10   thought she would be okay.

11   But the most damning evidence

12   came from Nichol John. Again, after repeated

13   questioning, she corroborated the story about the

14   knife. Then she claimed to have seen the whole

03:35 15   thing. When the two boys went for help that

16   morning, John was left in the car. She says she

17   watched as Milgaard dragged a woman into the

18   alley and stabbed her with a knife. At that

19   point, she says, she ran.

03:35 20   REPORTER: Both Cadrain and Wilson said

21   that you had blood on your clothes. Did you?

22   MR. DAVID MILGAARD: I had no blood on my

23   clothes.

24   REPORTER: Both Wilson and John said you

03:35 25   had a paring knife. Did you have a pairing

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1   knife?

2   MR. DAVID MILGAARD: I had no paring knife.

3   REPORTER: John says she saw you stab a

4   woman. Did you stab a woman?

03:35 5   MR. DAVID MILGAARD: I never stabbed a

6   woman.

7   REPORTER: In fact, by the time Nichol John

8   took the stand at the trial, she could no longer

9   say he had stabbed a woman either. She refused

03:35 10   to repeat what she told police in her statement

11   and when she was asked about it, she said she

12   couldn't remember. Milgaard maintains this

13   proves she was intimidated by police and now, 20

14   years after the trial, there are new doubts about

03:36 15   the other witnesses, their credibility and how

16   police treated them.

17   NARRATOR: Shortly after the trial, Albert

18   Cadrain ended up in the hospital. It was the

19   beginning of what his family says has been a long

03:36 20   series of emotional problems, and even today he

21   remembers the stress.

22   MR. ALBERT CADRAIN: I used to spit blood

23   every five minutes all day long. I started

24   getting ulcers and I was spitting blood every

03:36 25   five minutes, I would just cough and spit.

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1   *NARRATOR: Nevertheless, Cadrain stands by*

2   *his story of seeing blood on Milgaard, but it now*

3   *appears that in the days before the trial,*

4   *Cadrain was seeing a lot of things, visions in*

03:36   5   *which David Milgaard was a snake, for instance.*

6   *That's according to his brother Dennis who now*

7   *wonders if Cadrain should have been called as a*

8   *witness at all.*

9   *MR. DENNIS CADRAIN: To me, you know, I*

03:36   10   *don't know, I don't know how much weight you can*

11   *give to somebody that's emotionally destroyed.*

12   *NARRATOR: And since then, Ron Wilson has*

13   *come forward to say his testimony shouldn't be*

14   *given any weight either because he lied. The*

03:37   15   *Fifth Estate has obtained a copy of a statement*

16   *he made to the Justice Department in July. In it*

17   *he says he lied about seeing blood on Milgaard's*

18   *clothes, lied about Milgaard having a paring*

19   *knife, and as for the conversation in which*

03:37   20   *Milgaard supposedly told him he had hit a girl in*

21   *Saskatoon, Wilson now calls that "bullshit".*

22   *He says at the time he was*

23   *questioned he was messed up on drugs and police*

24   *took advantage of that to plant a story. In his*

03:37   25   *statement to the Justice Department, Wilson said*

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1   *he was coerced.*

2   *"RON WILSON: I was scared that if they*

3   *weren't going to charge David with this,*

4   *they were going to charge me."*

03:37   5   *REPORTER: Can I ask you about David*

6   *Milgaard?*

7   *UNIDENTIFIED SPEAKER: (Inaudible - door*

8   *slams)*

9   *NARRATOR: Today, none of the officers*

03:37   10   *involved in the original investigation will talk*

11   *publicly, not even the man Ron Wilson accuses of*

12   *coercion. Privately, though, retired detective*

13   *Ed Karst says he welcomes a judicial review.*

14   *And the review is what David*

03:38   15   *Milgaard and his mother have been fighting for.*

16   *MRS. JOYCE MILGAARD: (Singing)*

17   *"Please, Madam Minister, listen to me*

18   *Please, Madam Minister, set David free."*

19   *NARRATOR: In a tireless campaign that*

03:38   20   *began the day her son went to jail, Joyce*

21   *Milgaard has played publicist and detective, but*

22   *it has not made her popular with the police or*

23   *the woman who will decide her son's fate.*

24   *Justice Minister Kim Campbell refuses to speak*

03:38   25   *with her directly.*

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1   THE HON. KIM CAMPBELL: I'm very -- I'm

2   sorry, madam, if you want your -- if you want

3   your son to have a fair hearing, don't approach

4   me personally. I'm sorry.

03:38 5   MRS. JOYCE MILGAARD: I'm doing what I have

6   to do. If they had done a proper investigation

7   in the first place, none of this would be

8   happening today.

9   NARRATOR: A case in point, four years ago

03:39 10   Mrs. Milgaard found Deb Hall, a witness to a

11   crucial part of the Crown's case who the police

12   had never talked to.

13   A few weeks before Milgaard was

14   arrested, Hall attended a party in a motel room,

03:39 15   a party at which the Crown says Milgaard

16   reenacted the crime. That information came from

17   two witnesses, Craig Melnyk and George Lapchuk,

18   both of whom were facing charges at the time.

19   REPORTER: In tonight's news, the police

03:39 20   investigation into the Gail Miller murder

21   continues.

22   NARRATOR: They said that when a story

23   about the Miller murder came on the news,

24   somebody starting teasing Milgaard, who by then

03:39 25   was known to be a suspect. According to Lapchuk

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1 and Melnyk, Milgaard then jumped up, grabbed a

2 pillow and began stabbing it with his fist.

3 "Yes, I stabbed her," Lapchuk quoted him as

4 saying. "I killed her. I stabbed her 14 times

03:39 5 and then she died."

6   MS. DEBORAH HALL: He was fluffing it, so

7 he was doing this sort of thing, and then he

8 flipped it behind his back.

9   NARRATOR: That's how Deb Hall remembered

03:40 10 it, but she didn't testify. She didn't even know

11 until 10 years later that Milgaard had been

12 convicted. She still thinks he was joking.

13   MS. DEBORAH HALL: Absolutely 100 percent

14 positive he was not serious myself. It would

03:40 15 have scared me, I would have been out of there

16 like I was lit on fire and I didn't think

17 anything of it at all.

18   NARRATOR: Deb Hall was the first weapon in

19 Milgaard's arsenal against the Justice

03:40 20 Department. Since then, his lawyers have

21 collected two forensic opinions that criticize

22 the evidence police used to build a case against

23 him. Combine that with Ron Wilson's recantation

24 and Hersh Wolch says the conviction should not be

03:40 25 allowed to stand.

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1   MR. HERSH WOLCH: Put the whole story in a

2   courtroom setting now before 12 people and there

3   isn't a shred of a case against David Milgaard.

4   REPORTER: If Justice Minister Kim Campbell

03:40 5   decides to re-open the Milgaard case, she has two

6   options, she can order a retrial or she can refer

7   it to an appeal court for a decision. Either way

8   the test becomes is there a reasonable doubt

9   David Milgaard is innocent. That's what he has

03:41 10   to prove, he doesn't have to prove who really

11   killed Gail Miller. But the fact is someone did

12   and now the Milgaard camp thinks they know who

13   that is.

14   NARRATOR: Last March an anonymous phone

03:41 15   tip led Joyce to this woman. Her name is Linda

16   Fisher and for many years now she too has

17   believed in David Milgaard's innocence.

18   MS. LINDA FISHER: The evidence to me

19   points more to Larry with his record.

03:41 20   NARRATOR: Larry is Larry Earl

21   Fisher (break in tape) married to for three

22   turbulent years in the late '60s. In 19 (break

23   in tape) in Winnipeg on charges of rape and soon

24   confessed to four previous sexual assaults.

03:41 25   Three of them, it turns out, took place in

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1   *Saskatoon.*

2   *On the morning Gail Miller was*

3   *murdered, David Milgaard and his friends were*

4   *looking for a house in Saskatoon, the house of*

03:42 5   *Albert Cadrain. This was it, a block and a half*

6   *away from where Gail Miller's body was found, but*

7   *the Cadrains weren't the only tenants in the*

8   *house back then, there was an apartment in the*

9   *basement and in 1969 it was occupied by Larry*

03:42 10   *Fisher and his wife.*

11   *Today Linda Fisher has vivid*

12   *memories of the morning of the murder. She and*

13   *Larry were having yet another fight, she says,*

14   *when a news report came on the radio. In the*

03:42 15   *heat of the moment she accused him of murdering*

16   *Gail Miller.*

17   *MS. LINDA FISHER: I said, "Well, Larry,*

18   *you probably, it was probably you that killed the*

19   *nurse."*

03:42 20   *REPORTER: And what was his reaction when*

21   *you accused him?*

22   *MS. LINDA FISHER: Well, he just looked at*

23   *me and his colour just drained, he just stopped,*

24   *he quit arguing and he just looked like he was*

03:42 25   *caught.*

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1   REPORTER: Did you kill Gail Miller?

2   MR. LARRY FISHER: No, I did not. I had

3   nothing to do with that death.

4   NARRATOR: This is Larry Fisher today. He

03:43 5   first went to jail in 1971. He's still here

6   because when he was let out in 1980 he raped and

7   almost killed another woman. Unlike his ex-wife,

8   he says he doesn't remember the morning Gail

9   Miller was killed, not the murder, nor the

03:43 10   accusation.

11   REPORTER: It seems strange that a wife

12   would say to her husband "I think you killed a

13   woman," and yet you don't remember.

14   MR. LARRY FISHER: No.

03:43 15   REPORTER: Those sorts of things were said

16   every day in your house?

17   MR. LARRY FISHER: Christ, everything

18   happened in our house.

19   NARRATOR: In a statement she gave to a

03:43 20   private investigator, Linda Fisher said the other

21   thing that makes her suspect her former husband

22   is the fact that Gail Miller was killed with a

23   knife.

24   REPORTER: And did you use knives when you

03:43 25   committed those assaults?

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1   *MR. LARRY FISHER: Not all of them.*

2   *REPORTER: How many of them?*

3   *MR. LARRY FISHER: I would rough it out*

4 *about two, maybe three.*

03:43 5   *REPORTER: And what kind of knife did you*

6 *use?*

7   *MR. LARRY FISHER: Just about any type I*

8 *could use.*

9   *REPORTER: Did you ever use a paring knife*

03:44 10 *in any of those other assaults?*

11   *MR. LARRY FISHER: I used one in Winnipeg.*

12   *REPORTER: In Winnipeg?*

13   *MR. LARRY FISHER: Yes.*

14   *REPORTER: The facts add up to a very*

03:44 15 *damning picture. First of all, you have a*

16 *history of brutal rapes, in some cases you did*

17 *use a knife, and then you lived a block and a*

18 *half away from where Gail Miller's body was*

19 *found. Doesn't that make you a logical suspect?*

03:44 20   *MR. LARRY FISHER: I fully agree with you,*

21 *but the cops have already had my name for 21*

22 *years. Now, if they had some concrete evidence,*

23 *why didn't they charge me 21 years ago.*

24   *NARRATOR: Linda Fisher says it's because*

03:44 25 *they didn't do their homework. 10 years ago she*

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1   went to police with her suspicions. She never

2   heard from them again.

3   REPORTER: Do you believe he's guilty?

4   MR. DAVID MILGAARD: I may feel he's

03:44   5   guilty, but I don't want to say the man is

6   guilty --

7   REPORTER: Why not?

8   MR. DAVID MILGAARD: -- when I don't know

9   it. Maybe because of my own situation.

03:44   10   NARRATOR: 20 years later David Milgaard

11   knows that one way or another his situation is

12   about to change. If the minister re-opens his

13   case, there is hope. If not, he will remain in

14   his cell at the mercy of the Parole Board.

03:45   15   Since 1960 there have been

16   hundreds of applications to the minister, but

17   only 14 have been re-opened, and in only six of

18   those were the charges dropped. The odds were

19   against him, but Milgaard continues to hope.

03:45   20   REPORTER: What's the most you are hoping

21   for?

22   MR. DAVID MILGAARD: The most I'm hoping

23   for? Somebody comes up to me and says, "David,

24   we got a phone call, a decision has been made,

03:45   25   they've exonerated you, go home." That's the

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1 *best thing that could happen for me.*

2 *(Clip VT14 ends)*

3 *(Clip VT15 played)*

4 *INTERVIEWER: ... crime he says he didn't*

03:46 5 *commit. An announcement of a new trial that he*

6 *hopes will clear him may be just around the*

7 *corner. Within the next few weeks, the Federal*

8 *Justice Minister is expected to rule on*

9 *Milgaard's fate. In a few minutes I'll talk to*

03:46 10 *Milgaard's lawyer about a meeting he attended*

11 *yesterday in Ottawa with Justice Department*

12 *officials, but first Sharon Basaraba has this*

13 *background report.*

14 *MS. SHARON BASARABA: January 31st, 1969*

03:46 15 *Saskatoon police discover the body of 20-year-old*

16 *Gail Miller. The nursing assistant had been*

17 *repeatedly stabbed, her body dumped in the snow.*

18 *Exactly one year later*

19 *17-year-old David Milgaard is convicted of*

03:46 20 *murder, sentenced to life in prison. For the*

21 *past 21 years Milgaard has maintained his*

22 *innocence.*

23 *MR. DAVID MILGAARD: I want out of this*

24 *place very badly, I don't belong here, and I'll*

03:47 25 *get out.*

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1　　　　　　MR. DAVID ASPER:　What time was he

2　arrested; do you know?

3　　　　　　MR. HERSH WOLCH:　About 2:30.

4　　　　　　MS. SHARON BASARABA:　Lawyers Hersh Wolch

03:47　5　and David Asper say new evidence clears their

6　client.

7　　　　　　MR. HERSH WOLCH:　The evidence that was

8　against him has been destroyed completely, there

9　is nothing left.

03:47　10　　　　　　MS. SHARON BASARABA:　In December of 1988

11　they filed this application to the Federal

12　Justice Minister to re-open the Milgaard case.

13　The report suggests that all five witnesses who

14　incriminated Milgaard lied.　One says he perjured

03:47　15　himself because of police pressure, others may

16　have struck deals with the police in exchange for

17　their testimony.

18　　　　　　　　　　The report also takes aim at

19　what little physical evidence there was linking

03:47　20　Milgaard to the murder.

21　　　　　　MR. HERSH WOLCH:　The way the matter is

22　now, I would take this matter in front of any 12

23　people anywhere, with no fear of any kind of

24　conviction.

03:48　25　　　　　　MS. SHARON BASARABA:　In their report the

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1   *lawyers cast further doubt on Milgaard's guilt by*

2   *introducing a new suspect. His name is Larry*

3   *Fisher, a man with a record of brutal rapes and,*

4   *in one case, attempted murder. He lived just*

03:48 5   *over a block from where Gail Miller's body was*

6   *found, in the same house where David Milgaard was*

7   *staying. In the months preceding her murder*

8   *Fisher had committed two sexual assaults and one*

9   *indecent assault. At least two of his victims*

03:48 10   *lived in the same neighbourhood as Gail Miller.*

11   *INTERVIEWER: And did you use knives when*

12   *you committed those assaults?*

13   *MR. LARRY FISHER: Not all of them.*

14   *INTERVIEWER: How many of them?*

03:48 15   *MR. LARRY FISHER: I'd roughly say about*

16   *two, maybe three.*

17   *INTERVIEWER: And what kind of knife did*

18   *you use?*

19   *MR. LARRY FISHER: Just about any type I*

03:48 20   *could use.*

21   *MR. HERSH WOLCH: Now we're not saying*

22   *Fisher did it, what we're saying is that the*

23   *evidence against Fisher is such that it should*

24   *raise more than a doubt that Milgaard did it.*

03:48 25   *MS. SHARON BASARABA: Some of those doubts*

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1   are reflected inside the Conservative Party.

2   This internal report from the office of Tory MP

3   Felix Holtmann state "it will be embarrassing to

4   the legal system should it be determined that

03:49   5   Milgaard is not guilty". Just as embarrassing

6   for the Justice Department, it says, if it is

7   revealed that that department sat on the December

8   1988 appeal to the Minister. The report urges

9   the Justice Minister to move immediately.

03:49   10   The report was written last

11   spring. Two months later, Liberal MP John

12   Harvard raised the matter in the House of

13   Commons.

14   MR. JOHN HARVARD: When is this Minister

03:49   15   going to take her responsibility seriously and

16   decide what is she going to do about David

17   Milgaard?

18   MS. SHARON BASARABA: Joyce Milgaard,

19   David's mother, has also tried to get the

03:49   20   attention of the Justice Minister ...

21   (Clip VT15 ends)

22   (Clip VT16 played)

23   INTERVIEWER: Milgaard is still awaiting a

24   decision from the Justice Department. His

03:50   25   lawyers were in Ottawa yesterday to talk to

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1   *Justice officials, and I had a chance to speak*

2   *with Hersh Wolch a short time ago about how that*

3   *meeting went.*

4   *Mr. Wolch, I understand you*

03:50   5   *spent six hours with them in your meeting, can*

6   *you give us some idea of how it went?*

7   *MR. HERSH WOLCH: Well, we did have a*

8   *meeting, but I must tell you that, obviously I*

9   *just got back, I haven't had an opportunity to*

03:50   10   *talk about it with David Milgaard, and he's the*

11   *first person who should know what happened; and,*

12   *secondly, I would expect that the meeting was of*

13   *a confidential nature at this point in time at*

14   *least, so those are two of the problems I have in*

03:50   15   *answering your question.*

16   *INTERVIEWER: Without getting into*

17   *specifics, then, can you tell us whether you feel*

18   *optimistic?*

19   *MR. HERSH WOLCH: I always have. Nothing*

03:50   20   *has changed. I've always been very optimistic*

21   *regarding the outcome of this matter.*

22   *INTERVIEWER: They have been spending the*

23   *last few months out doing interviews with*

24   *witnesses and that sort of thing; do you feel*

03:50   25   *they are on the right track?*

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1   *MR. HERSH WOLCH: I would hope so, I mean*

2   *it's hard to get off track in this matter,*

3   *it's in my mind a very clear-cut matter.*

4   *INTERVIEWER: Is there anything you think*

03:51 5   *they have missed?*

6   *MR. HERSH WOLCH: We'll find out*

7   *eventually.*

8   *INTERVIEWER: But, from your meeting with*

9   *them yesterday, do you feel that there's anything*

03:51 10   *that they've missed?*

11   *MR. HERSH WOLCH: Well, if I felt there was*

12   *something they would have missed, I would have*

13   *told them.*

14   *INTERVIEWER: Did you have occasion to do*

03:51 15   *that?*

16   *MR. HERSH WOLCH: We had a good meeting.*

17   *INTERVIEWER: Okay. Mr. Wolch, can you*

18   *tell us what happens now? I understand this*

19   *report goes to Kim Campbell's desk next week, and*

03:51 20   *she has a number of options, what are those?*

21   *MR. HERSH WOLCH: Well, okay, hopefully the*

22   *report will go next week, we haven't got control*

23   *over that. But assuming that to be the case, she*

24   *can -- I guess there really are two main options.*

03:51 25   *One is to order a review, perhaps by an appellate*

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1   court, it could be Saskatchewan Court of Appeal,

2   it could be the Supreme Court of Canada; or she

3   can reject the application entirely.

4   INTERVIEWER: Or could she order his

03:51   5   release as well?

6   MR. HERSH WOLCH: She could, but that's

7   very unlikely, that is -- normally the Minister

8   of Justice prefers to have a Court make the final

9   determination.

03:52   10   INTERVIEWER: What do you think is the most

11   likely scenario?

12   MR. HERSH WOLCH: Well I'm hoping that the

13   scenario will be what is just, and just is a

14   review, and eventually exoneration.

03:52   15   INTERVIEWER: Would you prefer a review

16   between a particular Court?

17   MR. HERSH WOLCH: I really, from my point

18   of view, I don't care who reviews it. I trust

19   the courts, the appellate courts, and I would

03:52   20   expect the result to be the same no matter where

21   we went.

22   INTERVIEWER: And, if a review is ordered,

23   does that mean that David Milgaard would then be

24   eligible for bail?

03:52   25   MR. HERSH WOLCH: I believe so, yes.

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1   INTERVIEWER: Can you tell me, I mean a lot

2   has happened in the last few months, he has been

3   in prison for 21 years, but what has happened to

4   him in the last few months, is he excited about

03:52   5   all this, or is the tension getting, you know,

6   affecting him?

7   MR. HERSH WOLCH: That's for him to say,

8   basically, but he's coping better than I would.

9   I don't know what to tell you.

03:53 10   INTERVIEWER: So he's optimistic as well?

11   MR. HERSH WOLCH: I guess I have to talk to

12   him first, I mean, it's a difficult situation.

13   INTERVIEWER: All right, Mr. Wolch, well

14   thank you for this.

03:53 15   **(Clip VT16 ends)**

16   **(Clip VT17 played)**

17   INTERVIEWER: ...Justice Minister Kim

18   Campbell to re-open the investigation. Joyce

19   Milgaard joins me now from our Ottawa studio.

03:53 20   Joyce Milgaard, just to quickly

21   go over the case, Gail Miller was skilled January

22   31st, 1969, your son was convicted of her murder

23   and rape on January 31st of the following year,

24   he has spent the last 20 years at Stony Mountain

03:53 25   Penitentiary in Manitoba.

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1   *He and you have maintained all*

2   *along that he was innocent, you have appealed to*

3   *the Justice Minister to re-open the*

4   *investigation, what new evidence do you have to*

03:53 5   *present to Justice Minister Kim Campbell that*

6   *will re-open this investigation?*

7   *MRS. JOYCE MILGAARD: Well, let me clarify*

8   *this very quickly, I don't have any new evidence*

9   *that Kim Campbell doesn't have. What I am*

03:54 10 *bringing to Ottawa today is a report that clearly*

11   *demonstrates my son is innocent.*

12   *Kim Campbell has not seen a*

13   *report, her department has not been able to put*

14   *one together for her, we have and it's here.*

03:54 15   *INTERVIEWER: I have a report in my hands*

16   *that was compiled by Centurion Ministries of*

17   *Princeton, New Jersey, they are people who say*

18   *that they are seeking Justice for the innocent.*

19   *MRS. JOYCE MILGAARD: I've lost the sound.*

03:54 20   *INTERVIEWER: Oh, I'm sorry, perhaps we can*

21   *get it back.*

22   *The report that Joyce Milgaard*

23   *is talking about is one that has been compiled by*

24   *Centurion Ministries out of Princeton, New*

03:54 25 *Jersey. They are an organization very much like*

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1   the John Howard Society, they seek justice for

2   the innocent in prison. She compiled this report

3   in the Last few months and is going to be

4   presenting it today to several MPs.

03:54   5   Joyce Milgaard, can you hear me

6   again?

7   MRS. JOYCE MILGAARD: I can't hear you in

8   my ear.

9   INTERVIEWER: All right. We're having a

10   little bit of a problem. Perhaps what we'll do

11   is we'll cut away for a short break and we'll try

12   to come back with Joyce Milgaard.

13   MRS. JOYCE MILGAARD: I have you now.

14   INTERVIEWER: Oh, yeah, you have me now?

03:55   15   MRS. JOYCE MILGAARD: I do.

16   INTERVIEWER: All right, very good, just a

17   little bit of a technical problem.

18   This report from Centurion

19   Ministries that was compiled, why did you go to

03:55   20   them to try to investigate this case?

21   MRS. JOYCE MILGAARD: Actually, because I

22   couldn't get any help from anyone else.

23   INTERVIEWER: You had approached the

24   Justice Minister asking them to investigate

03:55   25   irregularities in testimony, there were

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1   recantations of certain testimony by some of the

2   people who testified against your son in the

3   trial?

4   MRS. JOYCE MILGAARD: That's right.

03:55 5   INTERVIEWER: Can you tell us about that,

6   can you tell us people -- about people who say

7   that they have lied now or perhaps were coerced

8   by the police?

9   MRS. JOYCE MILGAARD: Ron Wilson, who was

03:55 10   one of the first witnesses, he was giving damning

11   testimony, and now he has come forward -- excuse

12   me, I'm just taking this out of my ear because I

13   keep hearing myself talk. Ron Wilson came

14   forward and he was saying that David had blood on

03:56 15   him, he had a knife at the time of the murder,

16   you know, similar to the one that was seen, he

17   also said that he -- David told him he got a girl

18   or killed a girl. Now he's come forward and said

19   he lied, that none of that was the truth.

03:56 20   I'm going to put that back so I

21   can hear you.

22   INTERVIEWER: All right. Now we've got you

23   now. As well, there seems to be a new -- there

24   seems to be evidence that points towards another

03:56 25   person. Linda Fisher has given you a sworn

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1   statement saying that she believes her husband,

2   Larry Fisher, may somehow be implicated in this

3   case?

4   MRS. JOYCE MILGAARD: That's correct. As a

03:56 5   matter of fact it really upsets me that I have to

6   talk about Larry Fisher. I don't believe that we

7   should have to give the Minister of Justice, or

8   her department, the real killer.

9   This report proves that my son

03:57 10 is innocent. Forensic science evidence, new

11   witnesses that are giving this testimony, there's

12   more than enough evidence there to demonstrate

13   he's innocent.

14   Now the very fact that they are

03:57 15 taking this long indicates that there is a need

16   for this case to be opened up and reviewed.

17   Justice must be seen to be done, you know, it's

18   just wrong what they are doing. And I guess the

19   reason I'm coming to Parliament Hill today is so

03:57 20 that they can see I'm a real person, my son's a

21   real person, you know, we're not just a name,

22   we're not -- he's not just a number. I want my

23   son back for Christmas. You know, it's been 21

24   years since my family have sat down together at a

03:57 25 Christmas dinner.

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1   *INTERVIEWER: Joyce Milgaard, if indeed the*

2   *investigation is re-opened and your son is*

3   *exonerated, will you be looking for anything from*

4   *the Province of Saskatchewan?*

03:57   5   *MRS. JOYCE MILGAARD: I believe that the*

6   *people in Saskatchewan, in the Province of*

7   *Saskatchewan, the police at the time that coerced*

8   *these witnesses, I believe that they should be*

9   *taken to task. I believe that there are a lot of*

03:58   10   *people there now that don't want this case*

11   *re-opened, they are wanting to get it shoved off*

12   *under the carpet, and I guess that's why we're*

13   *coming to the people and going as public as we*

14   *have, because we can't seem to get the government*

03:58   15   *to realize that there is a human being involved*

16   *here. They are saying "we've only had it two*

17   *years", could they realize what two years is like*

18   *in a life that's been in for -- my son's been*

19   *there since he's been 16 years old, he hasn't*

03:58   20   *known anything else but prison all these years.*

21   *And for the last two years, knowing we have had*

22   *this evidence that releases or should release*

23   *him, every day is another day of agony.*

24   *INTERVIEWER: Joyce Milgaard, thanks for*

03:58   25   *being with us, we apologize for the technical*

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1   problems.

2   MRS. JOYCE MILGAARD: Okay.

3   **(Clip VT17 ends)**

4   **(Clip VT18 played)**

03:59 5   INTERVIEWER: Good evening, everyone. In

6   the news tonight, the Federal Justice Department

7   has rejected David Milgaard's application for a

8   new trial.

9   Milgaard has been in prison for

03:59 10   21 years for a murder he says he didn't commit.

11   The Federal Justice Minister says there is not

12   enough evidence for a new trial. Allan Habbick

13   reports.

14   MR. ALLAN HABBICK: David Milgaard's sister

03:59 15   and his lawyer walked in silence towards Stony

16   Mountain Penitentiary today. The carried with

17   them the news that Milgaard will not get a new

18   trial.

19   MR. DAVID ASPER: Well it convinces me that

03:59 20   an unfair process will always conclude in an

21   unfair result. An innocent man continues to be

22   imprisoned, and that hurts me in my heart, and

23   I'm quite shocked, really, I really didn't expect

24   it.

03:59 25   MR. ALLAN HABBICK: David Milgaard has been

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1 *in prison since 1969 when he was convicted of*

2 *murdering a Saskatoon nursing assistant, Gail*

3 *Miller. In recent months the evidence which put*

4 *Milgaard behind bars has been challenged.*

04:00 5 *Witnesses have changed their testimony, forensic*

6 *evidence has been disputed. After 22 years*

7 *Milgaard thought he had a chance at freedom.*

8 *MR. DAVID MILGAARD: I'm afraid of not*

9 *getting out. I don't like to be here forever.*

04:00 10 *MR. ALLAN HABBICK: The Minister of Justice*

11 *is not convinced of Milgaard's innocence. In a*

12 *written statement today Kim Campbell said in some*

13 *instances there are no reasonable grounds to*

14 *believe that the new evidence made available*

15 *would have affected the verdict of the jury at*

16 *trial. In some cases, she says, the information*

17 *provided was simply unreliable.*

18 *THE HON. KIM CAMPBELL: I'm convinced that*

19 *the trial process was fair, I'm convinced that*

04:00 20 *there was no evidence of a miscarriage of*

21 *justice.*

22 *MR. ALLAN HABBICK: Asper says that news*

23 *hit Milgaard hard.*

24 *MR. DAVID ASPER: He's naturally quite*

04:00 25 *upset, and his comment really is that "there*

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1   can't be Justice in Canada if this case doesn't

2   get re-opened".

3   MR. ALLAN HABBICK: Milgaard's sister says

4   there is one person who can prove her brother's

04:01 5   innocence, the real killer.

6   MS. SUSAN MILGAARD: And I don't know how

7   someone can sleep for 23 years knowing that he

8   not only took Gail's life, but he's taken my

9   brother from my family.

04:01 10   MR. ALLAN HABBICK: The Milgaards say they

11   will not give up. They have two more options,

12   ask the Federal Court of Appeal to overturn the

13   Minister's decision, or ask the Saskatchewan

14   Court of Appeal to re-open the case because of

04:01 15   new evidence.

16   Allan Habbick, CBC News,

17   Winnipeg.

18   INTERVIEWER: Milgaard's mother was working

19   in the United States when the news broke. Joyce

04:01 20   Milgaard immediately flew back to Winnipeg. Upon

21   her arrival she expressed bitter disappointment

22   with the decision, but vows the fight to free her

23   son would continue.

24   MRS. JOYCE MILGAARD: I'm kind of aching, I

04:01 25   don't want to -- I just don't want to go even see

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1   *him because I feel I've failed him, but I know*

2   *I'll feel better tomorrow and I'll start again.*

3   *All we know is that it's just not justice, it's*

4   *wrong, so it can't stand up. I think it was a*

04:02   5   *political decision and a coverup, it's -- all we*

6   *asked for was our day in --*

7   *(Clip VT18 ends)*

8   *(Clip VT19 played)*

9   *INTERVIEWER: ... prison for the rape and*

04:02   10   *murder of a Saskatoon nursing assistant. He*

11   *continues to plead innocence. Two weeks ago, his*

12   *request for a new trial to the Federal Justice*

13   *Minister was rejected, today David Milgaard*

14   *responded to that refusal. Radeen Carter has*

04:02   15   *this report.*

16   *MS. RADEEN CARTER: Convicted murderer*

17   *David Milgaard and his lawyer have formally*

18   *responded to Federal Justice Minister Kim*

19   *Campbell's rejection of a new trial. Milgaard*

04:03   20   *says it makes no sense.*

21   *MR. DAVID MILGAARD: There is no honest*

22   *explanation for the Justice Department's failure*

23   *to add up all the facts correctly. I feel that's*

24   *the truth in my heart.*

04:03   25   *MS. RADEEN CARTER: Milgaard and counsel,*

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1   *David Asper, say their next move will be to force*

2   *the government to recognize what they call a*

3   *breakdown in the judicial system.*

4   *MR. DAVID MILGAARD: We now challenge the*

04:03   5   *Justice Department and Kim Campbell, the Minister*

6   *of Justice, to come out from behind their closed*

7   *doors. We challenge them to show the country how*

8   *it was possible for me to commit the crime at*

9   *all.*

04:03   10   *MS. RADEEN CARTER: During the news*

11   *conference Milgaard's mother, Joyce, passed on a*

12   *message from the John Howard Society supporting*

13   *their fight for justice.*

14   *MRS. JOYCE MILGAARD: The David Milgaard*

04:03   15   *Support Group today officially declared war on*

16   *the minister of injustice, Kim Campbell, and her*

17   *department. The supporters of David will not*

18   *stop fighting until justice is done.*

19   *MR. DAVID ASPER: I guess the obvious*

04:04   20   *question, and we have been asked it already*

21   *numerous times, is "what now". We subscribe to*

22   *the belief that the decision of the Minister of*

23   *Justice is an outrage, it was wrong, either she*

24   *had very bad advice and didn't, herself, perform*

04:04   25   *the due diligence that would be required of her*

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1   *office, or she is as much a co-conspirator, an*

2   *active co-conspirator in this act of injustice.*

3   *MS. RADEEN CARTER: Asper plans to launch*

4   *an action in the Federal Court of Canada*

5   *challenging Campbell's decision, he will also*

6   *file an appeal to the Saskatchewan Court system,*

7   *and he will write a line-by-line analysis of the*

8   *decision to show where the Minister is wrong.*

9   *Meanwhile, David Milgaard faces*

04:04   10   *the parole board Wednesday, but he says nothing*

11   *will make him give in.*

12   *MR. DAVID MILGAARD: I am an innocent man,*

13   *yes.*

14   *MS. RADEEN CARTER: Radeen Carter, CKY News*

04:05   15   *Hour.*

16   **(Clip VT19 ended)**

17   **(Clip VT20 played)**

18   *INTERVIEWER: Mr. Asper, why don't you give*

19   *us details of the new development?*

04:05   20   *MR. DAVID ASPER: Well earlier this week*

21   *the family of the deceased contacted my office*

22   *and provided me with a written statement*

23   *expressing their concerns over what's been*

24   *happening with this particular case. I can read*

04:05   25   *you exactly what they have said to us?*

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1   INTERVIEWER: Yes, go ahead.

2   MR. DAVID ASPER: They say:

3   "In light of the new evidence presented

4   to us by Centurion Ministries we feel

04:05 5   that there is reasonable doubt as to the

6   guilt of David Edgar Milgaard. We are

7   making this statement simply because we

8   want Justice to prevail."

9   Now what happened was --

04:05 10   INTERVIEWER: Centurion Ministries is the

11   non-profit organization in the States that's been

12   helping Joyce Milgaard?

13   MR. DAVID ASPER: Exactly. Once the

14   Minister rejected our application we were

04:05 15   reeling, frankly, and thinking about what to do,

16   and we decided that there was some loose ends

17   from the original investigation, from our side of

18   it, and Centurion Ministries went out and

19   prepared a profile of the person that we think is

04:06 20   the likely perpetrator of this crime.

21   INTERVIEWER: Uh-huh?

22   MR. DAVID ASPER: Some of the findings that

23   Centurion made were absolutely stunning, and

24   armed with that information as well as all of the

04:06 25   original information in support of our

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1   *application Jim McCloskey, who is the founder of*

2   *Centurion Ministries, went to the Miller family*

3   *and told them what we had, and --*

4   *INTERVIEWER: Mr. Asper, I mean the Miller*

04:06   5   *family has been very reluctant to become*

6   *involved, they haven't made any statements that I*

7   *am aware of; why are they becoming involved now?*

8   *MR. DAVID ASPER: Well, as I say,*

9   *ultimately we went to the Miller family, and we*

04:06   10   *wanted to make them privy to what was going on.*

11   *You have to bear in mind that,*

12   *from the outset, Mrs. Milgaard has wanted us to*

13   *go to the family, the Miller family, and almost*

14   *apologize for dragging this case up again, and we*

04:06   15   *weren't certain that that would be inappropriate*

16   *at the early stages. Now, you know, where it's*

17   *been so publicized, we thought it would be*

18   *appropriate to tell them exactly where we were*

19   *coming from, and that's what happened, and as a*

04:07   20   *result of that meeting they have issued this*

21   *statement.*

22   *INTERVIEWER: So they believe this new*

23   *evidence that Centurion Ministries has come up*

24   *with is more compelling that anything they have*

04:07   25   *heard before?*

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1   MR. DAVID ASPER: Well they think it, in --

2   combined with everything else, yeah, perhaps

3   pushed them over the hill, if you will, and they

4   now have, as they say, reasonable doubt as to the

04:07   5   guilt of David Milgaard.

6   INTERVIEWER: What can you do, Mr. Asper,

7   with that letter? Does it help your case at all?

8   MR. DAVID ASPER: Well I can tell you that

9   earlier this week we deposited with the

04:07   10   Department of the Attorney General in

11   Saskatchewan a significant amount of information,

12   namely the original information that we filed to

13   the federal Department of Justice, but as well

14   the profile of the perpetrator, the person who we

04:07   15   believe is the perpetrator, as well as this

16   statement, so that we're asking them to assess

17   it. And, in addition, I think that we're

18   seriously considering the possibility of

19   reapplying to the Minister of Justice in the hope

04:08   20   that she'll have a second look at this and in the

21   hope that we can maybe bypass some of the

22   bureaucracy that impeded the first application.

23   INTERVIEWER: So your preference would be,

24   what, to have the Justice Minister look again at

04:08   25   the case, or to have another trial?

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1   MR. DAVID ASPER: Well, in applying to the

2   Minister of Justice we're asking for a new

3   hearing, we're not asking for a declaration of

4   innocence. So that, you know, my preference

04:08 5   would be that the Minister of Justice re-open the

6   case. We may augment our application if the

7   Attorney General of Saskatchewan thinks that what

8   we've done is persuasive.

9   INTERVIEWER: Okay. Thank you very much,

04:08 10   Mr. Asper.

11   DAVID ASPER: My pleasure.

12   **(Clip VT20 ends)**

13   **(Clip VT21 played)**

14   INTERVIEWER: Joining me now from Winnipeg,

04:08 15   David Asper, David Milgaard's lawyer, and his

16   mother, Joyce Milgaard, joins us from Vancouver.

17   Good afternoon to both of you.

18   BOTH: Good afternoon, Ralph.

19   INTERVIEWER: All right. David Asper, why

04:09 20   don't we start with you. The family of the

21   victim, the Miller family, is now saying that

22   there may be some doubt as to whether or not

23   David Milgaard is, indeed, guilty of this crime.

24   Was there anything that you said to them or

04:09 25   showed them that helped change their minds?

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1   MR. DAVID ASPER: Well it was actually

2   Mrs. Milgaard initially, and then Jim McCloskey

3   who has been leading the investigation, that

4   showed them the latest information developed with

04:09   5   relation to a serial rapist that was operating in

6   Saskatoon at the time that the Miller murder

7   occurred, and when they reviewed this new

8   evidence, the precise details of the MO of these

9   crimes, in conjunction with everything else that

04:09   10 we've provided to the Department of Justice, they

11 expressed their doubt.

12   INTERVIEWER: All right. Now the serial

13 rapist you are talking about is Larry Fisher;

14 correct?

04:09   15   MR. DAVID ASPER: That's right.

16   INTERVIEWER: All right. Now Larry Fisher

17 is in jail right now in British Columbia, Joyce

18 Milgaard, a lot of people are throwing his name

19 around; what makes you so sure he is the man who

04:09   20 did this as opposed to your son?

21   MRS. JOYCE MILGAARD: Well, I don't even

22 like to say that Larry Fisher is the man, and yet

23 after being out -- I have just come back from a

24 trip with the investigator, I have interviewed

04:10   25 all of Larry Fisher's victims, and that's

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1   actually all these women that I talked with --

2   I'm convinced, after that, that there is no

3   question. The evidence is so similar, and almost

4   identical to that of the Gail Miller case, that

04:10   5   if you put this on a chart without any names

6   there is no question that anyone looking at it

7   would see it must have been him.

8   INTERVIEWER: All right. David Asper, let

9   me ask you on the legal side of a question like

04:10   10   this, just because someone has committed crimes

11   that are similar, if not very similar to another

12   crime, surely that doesn't mean that they are

13   guilty of the crime in question, you have to have

14   some sort of physical evidence attaching them to

04:10   15   the murder scene; why do you feel comfortable

16   talking about Larry Fisher this way?

17   MR. DAVID ASPER: First of all, under the

18   principle of similar act evidence, which is an

19   established principle in Canadian law, there need

04:11   20   not necessarily be physical evidence linking

21   someone to the crime.

22   But I want to make it very

23   clear, Ralph, that it's not our duty to prosecute

24   and to convince everybody beyond a reasonable

04:11   25   doubt that Larry Fisher did it. What we have to

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1   *do is disprove that David Milgaard did it, and so*

2   *that the cumulative effect of all of Fisher's*

3   *activity, if placed before a jury, would at the*

4   *very least place reasonable doubts in their mind,*

04:11 5   *as it did in the minds of the Miller family, that*

6   *David Milgaard committed it.*

7   *You have to remember, Fisher is*

8   *clothed entirely with the presumption of*

9   *innocence, and the burden of proof against him is*

04:11 10   *proof beyond a reasonable doubt. All we have to*

11   *do in the Milgaard case, it seems to me, is raise*

12   *reasonable doubt.*

13   *INTERVIEWER: Now we have a situation where*

14   *there was appeals to the Justice Minister, Kim*

04:11 15   *Campbell, and Joyce Milgaard, I know that you*

16   *sort of, at one point you were chasing Kim*

17   *Campbell down a hallway asking to have the case*

18   *seen, and she said that "you know, if you do this*

19   *you are going to endanger the chances". Well it*

04:12 20   *seems you've gone through the proper channels and*

21   *the Justice Department and the Minister are*

22   *saying that there is no grounds for a new trial;*

23   *where does that leave you?*

24   *MRS. JOYCE MILGAARD: Well, I think that it*

04:12 25   *leaves us right back in the public, and I think*

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1   *it means that the public has got to start asking*

2   *questions. They have to ask questions, for*

3   *instance, about the four victims in Saskatoon,*

4   *why were they never told that the serial rapist*

04:12 5   *that was operating in Saskatoon, why were they*

6   *never told that he had pled guilty to their*

7   *crimes? When I went out and met with these*

8   *victims do you know, Ralph, that they had not*

9   *even been told that this man had been caught,*

04:12 10   *that he had pled guilty?*

11   *INTERVIEWER: Well why do you think they*

12   *haven't been told?*

13   *MRS. JOYCE MILGAARD: Well take a look at*

14   *where the man lived, right in the neighbourhood*

04:12 15   *with Gail Miller and these other girls, and it's*

16   *very clear that anyone in Saskatoon that knew*

17   *that he had confessed to these crimes would also*

18   *draw the inferences that we are.*

19   *MR. DAVID ASPER: Now if I can just jump in*

04:13 20   *here, Ralph, I think you have to appreciate that*

21   *the people who initially reached the conclusion*

22   *that there may have been an effort to, by the*

23   *police to cover their tracks, were the*

24   *investigators from Centurion Ministries.*

04:13 25   *Now these are people with*

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1   extensive experience dealing with wrongful

2   convictions and --

3   INTERVIEWER: Now Centurion Ministries are

4   from the United States and they have had eight

04:13 5   overturned convictions in the United States;

6   right?

7   MR. DAVID ASPER: That's right.

8   MRS. JOYCE MILGAARD: That's right.

9   MR. DAVID ASPER: And their field

04:13 10   investigator, in this particular case Paul

11   Henderson, is a Pulitzer Prize-winning

12   investigator, investigative journalist who has

13   had plenty of experience in this kind of case,

14   and they are able to look at what happened in

04:13 15   this particular case and relate it to what

16   they've seen occur in other case, particularly in

17   the United States, and reached the conclusion

18   that everything points not only to a frame of

19   David Milgaard, but to a coverup.

04:13 20   INTERVIEWER: Now, Joyce, let me ask you

21   something. There's some things that you read in

22   the report that, I don't know, your son must have

23   answered these questions for you, but there were

24   blood, bloodstains on clothes and things like

04:14 25   that. Has David ever told you why there was

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1   *blood on his clothes and why those clothes were*

2   *thrown away?*

3   *MRS. JOYCE MILGAARD: There were no blood*

4   *on his clothes and the clothes were not thrown*

04:14   5   *away, and --*

6   *INTERVIEWER: Well, the witnesses say there*

7   *were, is that --*

8   *MRS. JOYCE MILGAARD: The witnesses that*

9   *said that there were blood on David's clothes now*

04:14 10   *have come forward and said "I lied about seeing*

11   *blood on David's clothes, the police pressured me*

12   *and so I lied".*

13   *INTERVIEWER: Okay, well the Justice report*

14   *says that it doesn't quite go that way, that*

04:14 15   *there's conflicting reports, that there's*

16   *different things being said. It just seems that*

17   *there's so much gray area here that it's hard for*

18   *them to press for another trial, but how*

19   *confident are you that you are going to get*

04:14 20   *another trial? I mean, you've already been*

21   *turned down by the Justice Minister, you are*

22   *hoping for public pressure; do you think that you*

23   *will be able to get your son out of prison?*

24   *MRS. JOYCE MILGAARD: I'm absolutely*

04:14 25   *confident that, as the public learns of this new*

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1   *information, that they are going to say we must*

2   *have a new trial. I mean, we're not asking Kim*

3   *Campbell to say David Milgaard is innocent, give*

4   *us our day in Court. The procedure is so flawed*

04:15   5   *we don't even know what Kim Campbell got to look*

6   *at, we don't know what she gave to the judge, is*

7   *that Canadian Justice? It's so wrong.*

8   *MR. DAVID ASPER: And I think I should make*

9   *the point that -- and it's implicit in your*

04:15   10   *question -- so long as there are two versions of*

11   *truth, if you will, that are capable of arising*

12   *out of the same factual circumstance, so in this*

13   *case there's the Justice Department's version of*

14   *truth --*

15   *INTERVIEWER: Right.*

16   *MR. DAVID ASPER: -- and then there's our*

17   *version of truth, so long as that's the state of*

18   *affairs that seems to me to be the best evidence*

19   *of the rightness of the need to have this thing*

20   *heard in a neutral forum, --*

21   *INTERVIEWER: All right.*

22   *MR. DAVID ASPER: -- and put it in front of*

23   *a judge.*

24   *INTERVIEWER: We've run out of time, I*

04:15   25   *thank you both, bye-bye.*

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1   BOTH: Bye-bye.

2   **(Clip VT21 ends)**

3   **(Clip VT22 played)**

4   INTERVIEWER: Joyce Milgaard and lawyer

04:15 5   David Asper are standing by in our studios in

6   Winnipeg.

7   Joyce Milgaard, you went to

8   Justice Minister Kim Campbell with this new

9   information from the Centurion Ministries asking

04:16 10 her to open up a new trial for your son, she

11   refused, in February she said there was no reason

12   to have a new trial, but yet you still believe

13   there is. Why?

14   MRS. JOYCE MILGAARD: Well, I've always

04:15 15 believed with the new evidence that we gave her

16   that there was more than enough there, but now

17   the Centurion Ministries sent an investigator

18   again up to Canada. We went out and we visited

19   with the victims of all the serial rapist victims

04:16 20 right across Canada and it was just an experience

21   that I didn't want to do, but -- and very hard to

22   do, but it's overwhelming, the information that

23   we have found from this.

24   INTERVIEWER: David Asper, let's just step

04:16 25 back for a second if we could. Joyce Milgaard

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1   *mentioned a serial rapist. What new evidence do*

2   *you have and how does it tie into a series of*

3   *rapes that were committed in the Saskatoon area*

4   *around the same time that Gail Miller was killed?*

04:16   5   *MR. DAVID ASPER: Gail Miller was killed on*

6   *January 31st, 1969. In October and twice in*

7   *November of 1968 two rapes and an indecent*

8   *assault were committed in Saskatoon. By the*

9   *middle of December of '68 the police had*

04:16   10   *published a warning in the local newspapers*

11   *telling women about the fact that this rapist was*

12   *on the loose and that his M.O. was to first chat*

13   *with women and then to drag them into alleys. Of*

14   *course Gail Miller was then murdered January*

04:17   15   *31st, '69 and at that point, shortly after the*

16   *murder, the police were again quoted in the*

17   *papers as investigating the possibility that the*

18   *person who had committed the murder was also the*

19   *rapist, so that the police themselves established*

04:17   20   *the link back at the time and, as Joyce*

21   *indicated, what we did was to pursue the precise*

22   *details of each of the attacks of this individual*

23   *and what we discovered was a striking similarity*

24   *between the rapes that he committed and*

04:17   25   *ultimately a rape and attempt murder and what*

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1   happened to Gail Miller on January 31st, 1969.

2   Now, the effect of that, and I

3   have to stress, is not to establish anybody

4   else's guilt, the effect of it is to disprove

04:17 5   that David Milgaard did it, and of course the

6   jury never had the benefit of hearing about the

7   crimes that this individual committed both before

8   and after the murder of Gail Miller.

9   INTERVIEWER: Joyce Milgaard, you say that

04:18 10   this new evidence that you have is compelling

11   enough that the family of Gail Miller has since

12   perhaps changed their mind a bit about the

13   circumstances of January 31st, 1969. You met

14   with them, you have a letter from them. What did

04:18 15   they say to you?

16   MRS. JOYCE MILGAARD: Well, I actually met

17   with one member of the family, Reverend McCloskey

18   went out and met with the entire family, and he

19   will be meeting with the press to give his views

04:18 20   on that interview. I was so touched and grateful

21   that they came forward and have indicated that

22   there's more than a reasonable doubt that my

23   David is guilty and they feel that the trial, you

24   know, that the case should be re-opened. I

04:18 25   believe they said that they felt that justice

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1   must prevail.

2   INTERVIEWER: So this is from the family of

3   the victim, people who ordinarily would want your

4   son put away until he died?

04:19 5   MRS. JOYCE MILGAARD: That's right.

6   MR. DAVID ASPER: I was just going to say,

7   it's pretty unusual that you can safely have the

8   family of the victim on the jury, and we can say

9   that in this case.

04:19 10   INTERVIEWER: But the person that you have

11   to convince is the justice minister, and just a

12   few months ago she refused, saying that the

13   forensic evidence wasn't there, the recanting of

14   testimony didn't seem credible, other evidence

04:19 15   that came to light since the murder doesn't seem

16   to be credible at all. How do you convince her

17   that you have a new trial?

18   MR. DAVID ASPER: Well, shortly after we

19   got the minister's decision, Mr. Wolch, who has

04:19 20   been the senior counsel on this case, wrote back

21   to the minister and in a very detailed way

22   illustrated to her how the findings that she made

23   in her letter to us were just wrong, and we made

24   a couple of requests in our response, but the

04:19 25   main request was that she respond to the letter,

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1   *just acknowledge receipt of it, and we haven't*

2   *even received that, so it's a very valid*

3   *question, and the recent comments coming out of*

4   *justice, which to the effect that, oh, the case*

04:20   5   *has been investigated, there's nothing new and*

6   *the decision stands, bespeaks an attitude that*

7   *sort of became evident early on when the*

8   *believers in David's innocence were compared to*

9   *those who believed that Elvis Presley was alive.*

04:20   10   *So I don't know, I mean, it's*

11   *not an easy answer. One would hope that as we*

12   *keep pilings things on, the minister will be*

13   *inescapably drawn to doing the right thing.*

14   *Although, you know, there's lots of people who,*

04:20   15   *for years now, have been telling her that the*

16   *right thing, based on what they had at that time,*

17   *was to re-open the case.*

18   *INTERVIEWER: Now, we may be getting away*

19   *from justice here a little bit into the political*

04:20   20   *arena, but Winnipeg Liberal MP John Harvard says*

21   *he believes the government doesn't want to*

22   *re-open the case because they don't want another*

23   *Donald Marshall on their hands. Is there any*

24   *validity in that?*

04:20   25   *MRS. JOYCE MILGAARD: I think it's very*

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1   *clear that if the Marshall case recommendations*

2   *for an independent council had been put into*

3   *effect, David would be out right now. The*

4   *secrecy that surrounds the Justice Department --*

04:21 5   *this is Canada, we're supposed to have open*

6   *information. Even under the Freedom of*

7   *Information Act we can't determine what the*

8   *minister saw, what the minister gave to the judge*

9   *to look at, and that's wrong. The system must*

04:21 10   *change so that that flexibility, that openness is*

11   *there.*

12   *MR. DAVID ASPER: You know, the*

13   *recommendations and findings of the Marshall*

14   *Commission were made available in December of*

04:21 15   *'89, a year after our initial application was*

16   *provided to justice, and yet the Minister of*

17   *Justice, and Mr. Harvard is quite correct, the*

18   *Minister of Justice has done nothing to act on*

19   *the very gut-wrenching findings of the Marshall*

04:21 20   *Commission, and consequently many people who are*

21   *in David's position are going to encounter a*

22   *Minister of Justice who approaches the cases in*

23   *many ways the same way that the police did and*

24   *the original prosecutors did at the time of the*

04:22 25   *original prosecution and conviction.*

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1   *INTERVIEWER: Obviously you are going to*

2   *keep fighting for this. David Asper and Joyce*

3   *Milgaard, thanks for being with us this morning*

4   *from Winnipeg.*

04:22   5   *MRS. JOYCE MILGAARD: Thank you.*

6   *MR. DAVID ASPER: Thank you.*

7   **(Clip VT22 ends)**

8   **(Clip VT23 played)**

9   *REPORTER: Good evening. In the news, an*

04:22   10   *independent investigator's report on the David*

11   *Milgaard case has been handed over to Federal*

12   *Justice Minister Kim Campbell. The report's*

13   *author says it lays out graphic evidence that*

14   *proves conclusively that David Milgaard did not*

04:22   15   *and could not have killed Saskatoon nursing*

16   *assistant Gail Miller in 1969.*

17   *Milgaard has spent 22 years in*

18   *jail for the murder and is making his second*

19   *application for a new trial. Glen Cassie*

04:22   20   *reports.*

21   *MR. GLEN CASSIE: The Milgaard family and*

22   *their lawyers say that the incredible ordeal of*

23   *David Milgaard and his fight for freedom began*

24   *with the shoddy investigation done by the*

04:23   25   *Saskatoon police.*

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1   MR. DAVID ASPER: None of this would be

2   necessary without the Saskatoon police and that's

3   where this whole case began.

4   MR. GLEN CASSIE: This latest investigation

04:23 5   led by the U.S. based Centurion Ministries says

6   extensive interviews with every victim of

7   convicted rapist Larry Fisher shows that each

8   case bore a striking resemblance to that of the

9   murder of Gail Miller.

04:23 10   MR. JIM McCLOSKEY: ...then you compare how

11 they were assaulted to how Gail Miller was

12 assaulted and the timing and the age of the

13 victims and the location of the victims, to me

14 it's indisputable.

04:23 15   MR. GLEN CASSIE: The family says the

16 difference between this application and the one

17 Justice Minister Kim Campbell turned down is the

18 amount of evidence.

19   MR. DAVID ASPER: This kind of information

04:23 20 so radically casts her doubts about the first

21 application in a different light that it would be

22 very difficult for her to uphold the original

23 decision.

24   MR. GLEN CASSIE: Frustration is building

04:24 25 in the Milgaard camp. David is said to be

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1 *receiving medical treatment for depression at the*

2 *infirmary in Stony Mountain Penitentiary while*

3 *the fight for his freedom continues outside the*

4 *prison walls.*

04:24 5 *MR. DAVID ASPER: The Department of Justice*

6 *is as committed to justice as it is to avoiding a*

7 *mess and what's happened in this case is a very*

8 *big mess.*

9 *MR. GLEN CASSIE: The report has also been*

04:24 10 *delivered to the Saskatchewan Attorney General's*

11 *Department in the hopes that that province might*

12 *re-open the case. The family says the only thing*

13 *in their way is the number of people who made*

14 *their reputation and their careers on the*

04:24 15 *Milgaard case.*

16 *Glen Cassie, CKY News Hour.*

17 **(Clip VT23 ends)**

18 MR. HODSON: This would be an appropriate

19 spot to break, I think the next one is a little

04:24 20 longer, so Dr. Markesteyn will be on tomorrow

21 morning at nine.

22 COMMISSIONER MacCALLUM: Thank you.

23 (Adjourned at 4:25 p.m.)

24

25

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