

# Chapter 16

## Michael Breckenridge Allegations

**Mar-21-1992**

Hersh Wolch receives a letter from Michael Breckenridge who says that there was a cover-up in the handling of the Fisher and Milgaard cases.

**Apr-20-1992**

Hersh Wolch writes to the provincial and federal Ministers of Justice to request that an Inquiry be ordered and that David Milgaard be compensated.

**Sep-16-1992**

Hersh Wolch writes to the federal Minister of Justice enclosing a statement provided by Michael Breckenridge and requesting an Inquiry.

**Oct-9-1992**

Saskatchewan Justice announces that allegations of wrongdoing will be referred to the RCMP for investigation.

**Apr-16-1992**

David Milgaard is released from jail. The Attorney General of Saskatchewan states that David Milgaard will not be compensated and an Inquiry will not be ordered.

**Jun-14-1992**

Joyce Milgaard and an investigator meet with Michael Breckenridge.

**Sep-19-1992**

Joyce Milgaard, David Milgaard and Hersh Wolch hold a news conference alleging wrongdoing and a cover-up by police and Saskatchewan Justice officials.

Following the Supreme Court Reference, Milgaard found himself at liberty, legally presumed innocent, but not compensated and not exonerated. The Milgaards therefore set out to demonstrate that his conviction was the product of wrongdoing by police and prosecution and that the fact of his wrongful conviction had been covered up by Saskatchewan Justice officials and other government figures.

On April 8, 1992, Donella Hoffman of the Saskatoon StarPhoenix reported Hersh Wolch as saying that T.D.R. Caldwell, Serge Kujawa and Joseph Penkala all knew about Fisher in October of 1970 when he confessed to several Saskatoon sexual assaults. Caldwell, speaking for himself, says that this is not correct, nor is the statement attributed to Wolch in another StarPhoenix article published on April 22, 1992, that Caldwell knew about the Fisher evidence. I accept Caldwell's evidence.

Referred to his allegation that Kujawa had both the Milgaard and Fisher files before him, David Asper conceded that he did not know the contents of the files, that the Milgaard file consisted only of the transcript of the trial and notice of appeal (which had no mention of Fisher), and that the Fisher file was nothing but four indictments and some correspondence with no mention of Milgaard.

In a Winnipeg Free Press article dated April 22, 1992, entitled "Milgaard lawyers heap scorn on Kujawa", Wolch and Asper are reported as saying that Kujawa was "either incompetent or dishonest when he failed to disclose key evidence that may have kept David Milgaard from a 1970 murder conviction...".<sup>1</sup> This came soon after Saskatchewan Attorney General Bob Mitchell refused a request for a public inquiry.

Challenged on this at the inquiry, Asper said that if Kujawa did not withhold anything, he apologizes to him. There was not, and is not, a shred of evidence that Kujawa withheld anything, and his competence was beyond question.

While the Supreme Court hearings were still ongoing, Wolch was in receipt of a letter dated March 21, 1992,<sup>2</sup> from an individual by the name of Michael Breckenridge:

March 21, 1992  
1028 Athol Street,  
Regina, Sask.  
S4T 3B9

Mr. Hersh Wolch,  
I have been watching with interest the David Milgaard case since I worked in the Attorney Generals Dept. in Sask. at the time of those cases ( Fisher and Milgaard). My job was to process the criminal files. Serge Kujawa had just been appointed Chief Crown Prosecutor for party loyalty. Roy Romanow had just been elected and appointed Attorney General and wanted to make a name for himself. Attorney General was Romanows law partner in Saskatoon.

At the time of these cases there were many closed door meetings between Romanow, Ken Lysyk -Deputy Minister and Serge Kujawa all because discrepancies in the two cases. I remember delivering both cases to Serge at the same time. The general feeling in the Dept. at the time was that these were to high profile cases that the N.D.P. could appear to get great political milage from as part of there law and order platform. They figured that since they were the gov't nobody would ever question the findings of their court system. Since then, like now, their only objective was to govern at any cost.


Some other people in the Dept. that can attest to this are Mr. Dale Richter now with C.S.I.S. living in Quebec, Mr. Dave Wolbaum now working at the P.C.C. in Regina and Mr. Maurice Herauf now a lawyer in Regina.

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Today, I would suggest that there is a cover up by the present administration to hide the sins of the Blakeney regime. I would also suggest that that main motivation is political as opposed to legal. With people like Ned Shillington, Loiuise Simard and Serge Kujawa all part of both the present and past regimes they have too much to lose by having that association made.

All of these people have deep rooted beliefs that the system is more important than any individual rights and they will now do everything they can to change the law to eliminate those rights. I would suggest you use all the resouces at your disposal to push for an inquiry held by anyone outside the N.D.P. system in Sask., B.C.,Ont., otherwise it will never recieve an impartial hearing. These people will use every means at their disposal to make sure that they stack the deck in their favor.

My phone number is (306) 757-9183

Yours Truly  
  
Mike Breckenridge

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The letter was not presented to the Supreme Court, notwithstanding its sensational content suggesting irregularities and cover-up in the Milgaard and Fisher cases. We have not been able to determine whether Wolch saw the letter at the time or simply decided not to use it.

Asper dealt with it on May 1, 1992,<sup>3</sup> by which time he had spoken to Breckenridge. Asper could not help at the Inquiry, saying only that it is possible that they decided that it was something not worth pursuing at that point,<sup>4</sup> but on the other hand, they might have been too swamped with other material to take notice of it.

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Records indicate that on May 11, 1992, Milgaard counsel requested a private investigator to look into the matter.<sup>5</sup> Breckenridge gave a written statement to Bob Perry of Robinson Investigations on May 22, 1992, and it is reproduced below:<sup>6</sup>

STATEMENT

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As to events surrounding the Milgaard Case:

I was hired to the Blakeney gov't in approximately 1970 or 1971. I started in the Dept. of Ind and Commerce, the minister was Kim Therson. After approximately 6 mos. there I transferred to the Attorney Generals' dept under Roy Romanow. Here I stayed until my job was threatened by Serge Kujawa. Then I transferred to the Highway Traffic Board in Moosomin under Robert Hogg.

All positions in the provincial gov't were received because I was a card carrying member of the N.D.P. at that time. At first the positions were temporary and then made permanent. When a position was found where you were most useful you were appointed by Order in Council if you ranked high enough in the party or were told to write a Public Service Commission exam to legitimise your appointment, the same as is being done today. I wrote the exam.

After working within the dept for some time trust of the minister and others was gained. I went from working 8 hours a day in criminal records to running errands for the minister that were party business. All during this time in the dept. Serge Kujawa was Chief Crown Prosecutor and Bill Logan was liason officer between police dept's.

My specific job was to receive the mail and date it, sort it, place file numbers on it, direct it to the proper attorney, and match it to the proper file for filing. In order to do this all correspondence had to be read. At first this was menial boring work but that changed as we began to get mail marked everything from "Private and Confidential" to "Eyes Only" that was directed to Mr. Romanow.

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may 22/92  
M. Breckenridge

5 Docid 156898.  
6 Docid 004012.

P.2. 69

We didn't open this mail but usually ended up getting it back for filing. Sometimes this would be quite soon other times it might be months before it returned to our section for filing. Often when this mail arrived we had to pull the corresponding file and take it to the ministers office or Serge's office as he usually made the final decision in consultation with the minister and whoever else in the dept that needed to know. We were often aware of these meetings because after we delivered the file the attorneys would meet behind closed doors and our section was told to stay away from that meeting, although, there were times when they would request another file at the same meeting. This often happened with the Milgaard and Fisher files. Also there was a paper shredder kept in the ministers office that was used quite extensively in cases of very sensitive material that <sup>would</sup> do damage to the gov't, in such cases, I was told that the gov't could claim ignorance of this matter thereby escaping any political heat.

On the Milgaard case it was brought to my attention by Dave Wolbaum that according to the information we had been receiving it was becoming very evident that the Milgaard case was a mistake. From the correspondence we were filing our section was convinced that there was error made in the Milgaard case and this was brought Serge Kujawa's attention. We were told basically to mind our own business if we valued our jobs. After being told that our section began to apply for transfers or to find new jobs. This was done by everyone except Patricia Styles, who was the section head.

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May 22/92  
M. Breckenridge

Perry reported back to Milgaard counsel on May 26, 1992,<sup>7</sup> with an unfavourable opinion as to the reliability of Breckenridge.

Asper told us that he could not remember the report but conceded that it and his conversation with investigator Perry caused him to doubt Breckenridge's credibility, such that he would not have endorsed him.

The investigator's report was known to Joyce Milgaard on June 12, 1992. She and Perry met with Breckenridge on June 14, 1992, but nothing was done about the matter for some months.

On September 16, 1992, Wolch sent the Breckenridge statement to federal Minister of Justice Kim Campbell, calling for a public inquiry, relating an incident told to Joyce Milgaard and an investigator by an informant who claimed to have re-filed the Fisher and Milgaard files after a meeting with Mr. Romanow, attorneys in the Attorney General's office and police officials. Wolch said "...we know that the evidence of Larry Fisher was suppressed".<sup>8</sup>

Wolch did not name the informant, and declined to give it to Bruce MacFarlane of Justice Canada in response to his request of September 21, 1992. As a result, Williams gave Pearson the task of investigating the matter.<sup>9</sup> He soon learned the identity of the informant.

Breckenridge had mentioned Patricia Styles and David Wollbaum in his statement, so Pearson contacted them and took their statements.<sup>10</sup> Styles confirmed that Breckenridge had worked in the office. She said that during 1970-1972 inclusive, there was no talk in the office about the Milgaard case, nor was there concern about his conviction or a miscarriage of justice. She recalled no mention by Breckenridge of the Milgaard case or of seeing Fisher or Milgaard file material (although there could have been some). She had no knowledge of mistakes, cover-ups or a miscarriage of justice taking place with the investigation or prosecution of David Milgaard's matter. She recalls no conflict between the clerks and Kujawa over the Milgaard file.

Wollbaum<sup>11</sup> said that Styles was his supervisor. He recalled neither Milgaard nor Fisher from that time. He socialized with Breckenridge but he could not recall Breckenridge mentioning Fisher or expressing concerns about the Milgaard file nor any other employee, for that matter. He had no memory of discussion about the Milgaard case being a mistake, or that the error had been brought to Kujawa's attention, or that their jobs were threatened. He believed that what Breckenridge said was untrue.

Needless to say, Sergeant Rick Pearson found the allegations to be serious but they were not supported by Styles or Wollbaum.

Joyce Milgaard resolved to hold a press conference to publicize the Breckenridge allegations, and there was to be a press release as notification of the press conference.

The press conference was held on the same day that investigator Pearson was interviewing Styles and Wollbaum, named as persons with knowledge about the allegations.<sup>12</sup> The essence of the press

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7	Docid 213939.
8	Docid 004064.
9	Docid 117922.
10	Docid 117927, 117922 at 932.
11	Docid 117922 at 932.
12	Docid 004014 and 004019.

conference<sup>13</sup> was expressed by Joyce Milgaard when she said that the Fisher evidence was suppressed – “Pure and simply put, a coverup”.<sup>14</sup> Speaking of their informants’ allegations, Wolch said, “It’s simply more evidence of what we know to be a fact...the coverup was established a long time ago and this is just one more piece in the puzzle that’s all it is”.<sup>15</sup>

Not surprisingly, the informant’s allegations against Roy Romanow prompted some close questioning by the press of Joyce Milgaard. Asked why this person had not come forward during the Supreme Court hearings, Wolch interjected, “...it wouldn’t have been relevant to the Supreme Court. It simply wasn’t relevant”.<sup>16</sup>

Further inquiry into this questionable assertion was headed off by interjections from the Milgaards. Why evidence that the Attorney General and senior Justice officials were suppressing Fisher information to protect the Milgaard conviction would not be relevant to the safety of that conviction is beyond explanation. The Breckenridge allegations were not produced until the Supreme Court hearings were concluded. The reporter’s question related to that fact, obviously voicing a concern about credibility.

Joyce Milgaard would not give her informer’s name to the reporters, saying, “...he is not prepared to have every one of you reporters go out and you know talk to him. So we would like him at this time to at least be able to talk uh quietly to the Department of Justice and bring all these facts out”.<sup>17</sup> Nobody asked her, as they might have, why she called the press conference if a meeting between the informant and the Justice Department was the desired route.

Immediately following the news conference, Pearson conducted a search of Breckenridge’s employment history with the Government of Saskatchewan.<sup>18</sup> On September 22, 1992, he learned that Breckenridge was not employed at the relevant time. Instead, Breckenridge’s employment record showed that he was employed by the Attorney General’s Department from October 3, 1973, to June 29, 1975,<sup>19</sup> long after the events he described in his statement were supposed to have happened, leading to the conclusion that he fabricated them. Regardless, the Milgaards’ informant’s “evidence” was published.

Breckenridge was almost immediately discredited in the press when it was learned, in the days following the news conference, that he did not work in the department at the relevant time.

Pearson’s notes chronicle the furor caused by the accusations. Discussions were held at the Deputy Minister level. Being involved in other matters, Pearson handed off the file.<sup>20</sup>

The publication of the Breckenridge allegations through the press conference was a costly blunder for several reasons. Firstly, the allegations were false and damaging to reputations. Secondly, the attack on reputations of respected public officials was counter-productive to the reopening effort, and thirdly, the investigation of the allegations in the RCMP project “Flicker” resulted in a major public expense. In her testimony at the inquiry, Joyce Milgaard said she now regrets having held the press conference and making the untrue disparaging remarks.

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13	Docid 334827.
14	Docid 334827 at 831.
15	Docid 334827 at 832.
16	Docid 334827 at 840.
17	Docid 334827 at 848.
18	Docid 004193.
19	Docid 004193 at 202.
20	Docid 057344.



She was able to give us some insight into why she proceeded with publication of the allegations, and we heard from a number of government officials, whose evidence I will review, as to how these allegations were received.

Prior to bringing forward the Breckenridge allegations, Joyce Milgaard's suspicions extended to the Governor General.<sup>21</sup> She freely admitted at the Inquiry that she was "looking for dirt"<sup>22</sup> on anyone, including Tallis, then a judge of the Saskatchewan Court of Appeal.

Joyce Milgaard could not explain to us why the Breckenridge allegations were held back for a time, saying that she heard about them almost as soon as Wolch did and thought it important to get it out to the public. She was grateful to learn that Breckenridge had an axe to grind with the government in power.

According to private investigator Perry's correspondence, he gave Joyce Milgaard a copy of his report, discussed the case with her, and then arranged a meeting with Breckenridge for June 14, 1992. She and Perry met Breckenridge for two and a half hours and discussed the allegations in full. Breckenridge mentioned the additional names of MacKay, Gerry Allbright and Peter Glendenning, and Joyce Milgaard asked him about his knowledge of Ray Hnatyshyn, Caldwell, Tallis, Disbury and E.C. Boychuk.

Questioned about the contents of Perry's letter at the Inquiry, Joyce Milgaard said that she could not remember getting the report, meeting Perry, or what Breckenridge looked like. I do not believe her. She does not remember checking his story with the co-worker he named and says only that she wanted his story to be true. She admitted that the allegation about the closed door meetings by officials considering the Fisher and Milgaard files in a room with a paper shredder fit the allegations her group was making about the missing files.

Wollbaum had denied the Breckenridge allegations before the press conference, but Joyce Milgaard said that she did not know this. She could not explain why, despite her meetings with Perry and Breckenridge in June, she did not have her press conference until September of 1992, except possibly that it was held to counter Minister Mitchell's response to the letter writing campaign of her supporters. She regarded Mitchell's resort to the Supreme Court decision to be yet another cover-up. Whatever her perception was, Mitchell's attitude was a measure of the reliance placed upon the decision of the Supreme Court by Saskatchewan in not reopening the investigation into the death of Gail Miller.

Joyce Milgaard told us that Saskatchewan and her group held opposite views on the meaning of the Supreme Court decision and when Saskatchewan would not see it their way, they went to the press. She said that Wolch expressed no concerns to her about Breckenridge's credibility. She had, however, taken advice from Greg Rodin who had replaced Asper at the law firm. Rodin's September 16, 1992 memo to Joyce Milgaard said that Breckenridge was employed at the Attorney General's department at relevant times and said that "It is our assessment of Mr. Breckenridge's evidence that it fits in with the known and proven facts".<sup>23</sup>

Joyce Milgaard admitted to us that she had only assumed that a check had been made on Breckenridge's employment when she told the press conference that it had been done.

Wolch had earlier written to Saskatchewan Attorney General Mitchell on August 27, 1992, saying that evidence that could have affected the verdict of the jury was "...willfully suppressed by the Crown

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21 Docid 156905.

22 T32087.

23 Docid 048306.

Attorney's office".<sup>24</sup> Joyce Milgaard gave this letter to the media. She admitted to us that her purpose was to pressure government into ordering an inquiry. Allegations against important people would get front page attention.

She admitted having read the unfavorable Perry report on Breckenridge prior to the press conference.<sup>25</sup> She told Murray Sawatsky in February of 1993 that "...when we started digging we were finding that he wasn't where he said he was at the time."<sup>26</sup> – this prior to the press conference. Confronted at the Inquiry with this, Joyce Milgaard said "I should have been a lot more suspicious and a lot more careful."<sup>27</sup> She agreed that independent verification was not pursued and that it was not surprising that the Saskatchewan government did not give her what she wanted.

It is abundantly clear from her evidence that Joyce Milgaard suspected a cover up, saw how well the Breckenridge allegations fit into her idea of how it had occurred, and chose to believe them notwithstanding the indications that the informer was not credible.

When interviewed by the RCMP, Wolch suggested that he considered "that clerk"<sup>28</sup> to be the least important bit of evidence they had. One could hardly blame him for trying to disassociate himself from the embarrassing Breckenridge allegations.

Major government officials of the day like Kujawa, Blakeney, Romanow and Lysyk were interviewed by the RCMP, and categorically denied the allegations of cover-up of evidence.<sup>29</sup>

A number of witnesses commented upon the reaction of Saskatchewan Justice officials and others to the publication of the allegations. Their evidence sheds light upon the question of how the reopening effort was affected.

Kenneth MacKay, formerly of Saskatchewan Justice, could not remember Breckenridge as an employee. He was aware of the allegations and confirmed the comments he made to the RCMP<sup>30</sup> – that to suggest a cover up in the handling of the Fisher files was "pure nonsense".<sup>31</sup>

MacKay said he had worked for six or seven Attorneys General and every one of them took the traditional position of not being involved in cases on a day-to-day basis. If it were necessary to respond in the legislature, they would be given briefing notes. He recalled no meeting involving Lysyk, Kujawa and Romanow, and would be astonished if Kujawa had warned employees to keep quiet. Those in question did not even work for him.

MacKay pointed out that if one wanted to suppress evidence, the last persons to go to for help would be senior politicians who must always be careful not to leave themselves open to charges of political interference. I accept MacKay's evidence.

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24	Docid 162865.
25	Docid 213939 at 940.
26	Docid 331214 at 278.
27	T32209.
28	Docid 023046.
29	Docid 022706, 035894, 022852, 022802.
30	Docid 034803.
31	Docid 034803 at 807.

Kujawa testified at the Inquiry that Breckenridge was “a very disabled fellow”<sup>32</sup> who approached people over strange things. After leaving the department he came to Kujawa’s office seeking large donations of money for great causes and yet, said Kujawa, this is the man whose statement Wolch adopted and publicized on television, and sent to the Minister of Justice<sup>33</sup> on September 16, 1992.

Personally, said Kujawa, he never had a closed door meeting with Romanow and Lysyk as alleged by Breckenridge in his March 21, 1992 letter to Wolch<sup>34</sup> and his May 22, 1992 statement to Perry.<sup>35</sup>

Kujawa said that nobody from the Milgaard group came to him for his reaction to the allegations, which he denied absolutely but which were continued by Joyce Milgaard in the Regina Leader-Post on September 21, 1992,<sup>36</sup> and September 24, 1992.<sup>37</sup> I accept his denial.

On the federal side, Williams testified about the Breckenridge statement which he received from the Minister’s office and sent to Pearson for checking on September 17, 1992.<sup>38</sup> To him, it seemed just a further step in the saga. David Milgaard was out of prison, and now the conspiracy allegation was being used as a springboard to compensation.

Williams concluded that the allegation had no merit. Breckenridge was not working where he said he was at relevant times, and the timing of the alleged meetings, being after appeals were concluded, made no sense. He was dismayed by the press conference.

Murray Brown testified as to the Saskatchewan reaction. Until he read the Breckenridge allegations<sup>39</sup> in the press, Brown said that except for supporters Dan Lett and Dave Roberts, the media was not paying much heed to the Milgaard group. He explained that Public Prosecutions decided to investigate the Breckenridge allegations, not to reopen the Gail Miller murder investigation because of them. They were surprised to see the scope of the RCMP investigation widened, and when the report came back in 1994, finding no merit to the Breckenridge allegations, Public Prosecutors were left with even more reason to believe that David Milgaard was guilty.

I conclude that even if Saskatchewan Justice had seen reason to reopen the investigation into the death of Gail Miller following the Supreme Court Reference in 1992, a criminal investigation was already underway dealing primarily with allegations of official wrongdoing, but collaterally with the investigation into the death of Gail Miller.

Brown did not use understatement in describing his reaction to the “Breckenridge stunt,”<sup>40</sup> as he called it. It was, he said, so outrageously dishonest and malicious that it should not even be replied to. It revealed a level of desperation that he did not think existed. It was all about grubbing for money. This was not about freeing Milgaard or getting a declaration of innocence. It was about getting compensation for which they were prepared to do anything. From that point forward, he said, he would not have believed a word they said if they marched in with the Pope. Regardless, Saskatchewan Justice decided that the RCMP should look into it.

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32	T26326.
33	Docid 004064.
34	Docid 159537.
35	Docid 004012.
36	Docid 229084.
37	Docid 162260.
38	Docid 334823, 004064.
39	Docid 334870 at 872.
40	T38034.

**Conclusions**

The Breckenridge allegations were false and known to be so throughout the Saskatchewan justice system. Their publication destroyed the credibility of the Milgaard group, and the press conference, as I find from Brown's evidence, killed any chances of Saskatchewan agreeing to reopen the investigation into the death of Gail Miller, before they did so of their own accord when the DNA results were announced in July 1997.