

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

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

\*\*\*\*\*

On Tuesday, May 30th, 2006

Volume 154

Inquiry Proceedings



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**Appearances:**

*Mr. Hersh Wolch, Q.C.,*            **for** Mr. David Milgaard  
*Ms. Joanne McLean,*            **for** Ms. Joyce Milgaard  
*Ms. Lana Krogan-Stevely and Mr. Graeme Mitchell, Q.C.,*  
   **for** Government of Saskatchewan  
*Ms. Catherine Knox,*            **for** Mr. T.D.R. (Bobs) Caldwell  
*Mr. Garrett Wilson, Q.C.,* **for** Mr. Serge Kujawa  
*Mr. Pat Loran, Esq.,*            **for** the Saskatoon Police Service  
*Mr. Chris Boychuk, Esq.,* **for** Mr. Eddie Karst  
*Mr. Bruce Gibson, Esq.,*       **for** the RCMP  
*Mr. Eamon O'Keefe, Esq.,* **for** Mr. Larry Fisher  
*Mr. David Frayer, Q.C. and Ms. Jennifer Cox,*  
   **for** Minister of Justice  
   (Canada), The Hon. Vic Toews  
*Mr. Marshall Hopkins, Esq.,* **for** Justice Calvin Tallis  
   (Retired)



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Transcript of Proceedings

(Reconvened at 9:05 a.m.)

COMMISSIONER MacCALLUM: Good morning.

ALL COUNSEL: Good morning.

JOYCE IOLA MILGAARD, continued:

BY MR. HODSON:

Q Good morning, Mrs. Milgaard.

A Good morning, Mr. Hodson.

Q If we could call up 162865, please, and yesterday when we finished off, yesterday afternoon, we were talking about what was transpiring during the summer months of 1992, we talked about the April 14th, '92 decision of the Supreme Court and you described for us what your thoughts were about the decision and what followed and I think what you told us is that in the following months a couple of things happened; one, I think you said you realized the impact of the Supreme Court of Canada decision and what that would have on the remaining efforts to both clear David's name and get compensation?

A Correct.

Q Correct? Secondly, the media campaign -- or the media coverage, if I can call it that, I think you told us died down a bit because the issues that



1           you had previously raised in the media had in some  
2           respects then, at least according to some people,  
3           answered by the Supreme Court decision; is that  
4           fair?

09:06 5           A           Yes.

6           Q           And third, I think you told us as well that your  
7           supporters were writing to the provincial  
8           government, and I think --

9           A           That's right.

09:07 10          Q           -- at your request, in some cases at your request  
11           or your group's request. You were trying to  
12           mobilize people to put pressure on the provincial  
13           government; is that fair?

14          A           Yes. Actually, I don't think that I actually went  
09:07 15           out to the groups to ask them to do this, this was  
16           something they were outraged about themselves and  
17           really mobilized themselves, the Ottawa group in  
18           particular, Sigrid Macdonald was out there and  
19           really, I think she not only organized her group,  
09:07 20           but I think she talked to other groups across the  
21           country as well to encourage them.

22          Q           Right. And I think with respect to Sigrid  
23           Macdonald in particular, I will show you a letter  
24           in a moment, I think she wrote to Mr. Asper  
09:07 25           expressing her concern and what can I do and Mr.



1 Asper wrote her back and said write to Bob  
2 Mitchell, write to the justice minister; is that  
3 correct?

4 A That's correct.

09:08 5 Q And so the public were looking at things to do and  
6 in some cases would you agree that you or your  
7 counsel would inform the public to write letters  
8 to the justice minister?

9 A That's right.

09:08 10 Q And so for next phase when we talk justice  
11 minister, I'll try and say Saskatchewan justice  
12 minister, but I will be referring to Bob Mitchell,  
13 the Saskatchewan justice minister.

14 A Right.

09:08 15 Q Now, here's a letter, August 27, 1992, from Mr.  
16 Wolch to Bob Mitchell, or to Robert Mitchell, and  
17 we had talked yesterday about the events, I think  
18 April, May, June, and you had told us or  
19 acknowledged that there was a bit of a letter  
09:08 20 writing debate going on between your counsel and  
21 Mr. Mitchell regarding what the Supreme Court of  
22 Canada decision meant and what it didn't mean; is  
23 that correct?

24 A That's correct.

09:08 25 Q And so here Mr. Wolch is writing and says:



1 "Apparently a Ms. McDonald wrote to you  
2 on June 14th, 1992. You replied to her  
3 by letter, a copy of which is attached  
4 hereto for your ease of reference. I  
09:09 5 have received a copy thereof, presumably  
6 because of references to me contained in  
7 your letter. It is clear that the  
8 information being provided to you, which  
9 has formed the basis of your reply, is  
09:09 10 simply inaccurate."

11 And I think you told us this is Ms. Sigrid  
12 Macdonald; is that right?

13 A That's right.

14 Q And she was in Ottawa and was part of your support  
09:09 15 group; is that right?

16 A She was the head of the Ottawa support group.

17 Q And so she would have been involved prior to the  
18 Supreme Court decision then in assisting?

19 A Oh, yes.

09:09 20 Q And if we can just go back, what I will do, Mrs.  
21 Milgaard, is just go through the references to  
22 these letters and then I will come back to this  
23 letter, so if we could go first to 165260, and,  
24 Mr. Commissioner, I'm just going to walk through  
09:10 25 the sequence of letters that led up to Mr. Wolch's





1 letter, I don't propose to call them all up, but I  
2 will give you doc. IDs, so it's 165260. Actually,  
3 165259 is the doc. ID. Actually, if we can just  
4 go back to 259 for a moment, please. And so this  
09:10 5 is a letter that Ms. Macdonald wrote April 27th,  
6 1992 to Mr. Wolch and it talks about her concerns  
7 and expressing concerns about what the Supreme  
8 Court decision meant. And then if we can go to  
9 the next page, which is Mr. Asper's reply of May  
09:11 10 5, 1992, just call that out, and Mr. Asper tells  
11 Ms. Macdonald:

12 "Our biggest concern is that  
13 Saskatchewan cannot hold a new trial  
14 because there is no evidence against  
09:11 15 David Milgaard. However, when the Larry  
16 Fisher and other fresh evidence became  
17 available in October of 1970, a new  
18 trial was in fact practicable, and more  
19 importantly, the mistake in the Milgaard  
09:11 20 case was correctible. We think it  
21 important to find out why nothing was  
22 done at that time, leaving David  
23 Milgaard at the present unable to clear  
24 his name completely."

09:11 25 And I think that, would that fairly represent the



1 concern at the time?

2 A Yes, it was.

3 Q And then:

4 "In terms of what you might do to  
09:11 5 support us, I would suggest that you  
6 write to either the Attorney General of  
7 Saskatchewan (Robert Mitchell) or the  
8 Premier, and voice your concerns to  
9 them. In the near future, we will be  
09:12 10 mounting a more organized effort, and I  
11 will hang on to your letter so that we  
12 can advise you in due course."

13 And so is it correct that at this time, at least  
14 Mr. Asper on your behalf, or your David's behalf,  
09:12 15 would be telling supporters to write to the  
16 Government of Saskatchewan and that you would be  
17 mobilizing a more organized effort?

18 A That's correct.

19 Q And would it be correct to say that the more  
09:12 20 organized effort would be to put pressure on the  
21 Saskatchewan government to either call an inquiry  
22 or to do something that would allow David to clear  
23 his name and receive compensation?

24 A Yes.

09:12 25 Q If we can then go to 026768, and I appreciate that



1           these letters may or may not have been brought to  
2           your attention, but they are simply the, I just  
3           want to go through the chronology, Mrs. Milgaard,  
4           to set the stage for Mr. Wolch's letter to  
09:12 5           Mr. Mitchell. So then after that, May 7th, a  
6           couple of days after Mr. Asper's letter, this is a  
7           letter from Sigrid Macdonald to Mr. Mitchell where  
8           she says:

9                        "This leaves David in a state of legal  
09:13 10                   limbo: on one hand, he is free and thus  
11                   seemingly innocent to the crime in  
12                   question. On the other hand, he is  
13                   prevented from having a re-trial which  
14                   would formally clear his name and from  
09:13 15                   applying for any type of compensation."

16           And that would be again pretty close to the  
17           position that you were taking or your group was  
18           taking?

19           A           That's correct.

09:13 20           Q           And then down at the bottom Ms. Macdonald writes:

21                        "Milgaard deserves the chance to  
22                   exonerate himself. There should be a  
23                   public inquiry into the handling of his  
24                   original trial in 1970 and Milgaard  
09:13 25                   should be well compensated for 23



1                   needless years of suffering. You and  
2                   the federal Justice Minister Campbell  
3                   have the power to do this. You have the  
4                   ability to give Milgaard that chance to  
09:13 5                   clear his name and to restore the  
6                   public's faith in the legal system."

7                   And so again that would be consistent with the  
8                   position that you and others on behalf of your  
9                   son put forward?

09:13 10           A           Yes.

11           Q           Then if we can go to 026767, this is Mr. Mitchell,  
12                   Minister Mitchell's response to Sigrid Macdonald,  
13                   and it says as follows:

14                   "I have enclosed a copy of the decision  
09:14 15                   of the Supreme Court of Canada for your  
16                   information. You will note that the  
17                   Court did not say that there has been a  
18                   miscarriage of justice. Rather, the  
19                   Court said that the continued conviction  
09:14 20                   would amount to a miscarriage of justice  
21                   if an opportunity was not provided for a  
22                   jury to consider the fresh evidence.  
23                   The Federal Minister of Justice has  
24                   followed the recommendation that a new  
09:14 25                   trial be ordered and I have acted on the



1 suggestion that a stay be entered.

2 You will also note in the  
3 decision that the Court said there was  
4 no evidence presented that the police or  
09:14 5 the Crown acted improperly. The Court  
6 also indicated that they were not  
7 satisfied on a preponderance of all the  
8 evidence, that David Milgaard is  
9 innocent of the murder.

09:14 10 The inquiry by the Supreme  
11 Court was thorough in every respect. At  
12 the conclusion of the hearing the Chief  
13 Justice himself noted that no stone had  
14 been left unturned. In these  
09:15 15 circumstances, and on the basis of all  
16 the evidence available to me, I came to  
17 the decision that there would be no  
18 inquiry and that no compensation would  
19 be offered."

09:15 20 And would you agree that this was the similar  
21 position that the minister gave directly to your  
22 counsel back in April; correct?

23 A That's correct.

24 Q And so now it appears that, it appears that your  
09:15 25 supporters were sending letters to the minister



1 and the minister was responding in like fashion to  
2 the supporters?

3 A Yes, he was.

4 Q And I don't propose to go through them, I may go  
09:15 5 through them with Murray Brown when he testifies,  
6 but I think in almost every case where a member of  
7 the public wrote in expressing concern, the  
8 minister would send a fairly detailed letter such  
9 as this back to the member of the public enclosing  
09:15 10 a copy of the Supreme Court decision and saying  
11 similar to what's in this letter, that all these  
12 issues were considered and the court didn't find  
13 that David was innocent?

14 A That's correct.

09:16 15 Q And you would have become aware of that through  
16 your supporters, that these letters were coming  
17 back?

18 A They sent copies to me of what was coming back and  
19 that made me even more outraged because I felt  
09:16 20 they had to be dealt with.

21 Q Okay. And why were you outraged?

22 A Because I felt that he had absolutely the wrong  
23 slant on, or interpretation of that decision in  
24 many cases.

09:16 25 Q And so --



1           A           And I think that when I talked to Hersh and David,  
2                       at that point Hersh started writing letters back  
3                       and putting our point of view, if you will,  
4                       across.

09:16 5           Q           Okay. So here's the May 29th letter to Sigrid  
6                       Macdonald. If we can go to 165266, this is a  
7                       letter from Mr. Asper to Sigrid Macdonald and it  
8                       looks as though -- I don't have a copy of the June  
9                       1 letter, but it appears that Sigrid Macdonald  
09:17 10           sent Mr. Asper the May 29th letter from Bob  
11                      Mitchell. Actually, I do have that, I'm sorry, we  
12                      don't need to call it up, but it's 165 --  
13                      actually, we will call it up, 165264. So here's  
14                      the letter and you'll see there:

09:17 15                     "... I got a very discouraging letter  
16                       from Mr. Mitchell today. He seems to be  
17                       quite convinced that the Supreme Court  
18                       hearing was sufficient and that there is  
19                       no need for an enquiry or compensation."

09:17 20           So it looks like Ms. Macdonald sent her reply  
21                      from Mr. Mitchell to Mr. Asper. If we can go  
22                      back to 165266, Mr. Asper then on June 5, 1992  
23                      writes back and provides the following, a portion  
24                      of the Chief Justice from the transcript:

09:18 25                     "The first ... is a portion in which the



1 Chief Justice of the Supreme Court of  
2 Canada makes it quite clear that the  
3 proceedings before the Supreme Court  
4 were not designed to be an inquiry. The  
09:18 5 second excerpt is a portion of the  
6 opening statement made by the lawyers  
7 representing the Federal Government of  
8 Canada. You will note that the lawyer  
9 says, "This is not, however, as Your  
09:18 10 Lordship has also pointed out, a Royal  
11 Commission of Inquiry looking into every  
12 aspect of the administration of justice  
13 which can be touched on in this case."

14 The repeated suggestions by the  
09:18 15 Attorney General for Saskatchewan that  
16 the Supreme Court hearing was, in fact,  
17 an inquiry, are obviously a misstatement  
18 of the true fact and I suspect just an  
19 excuse to avoid getting into a very  
09:18 20 messy inquiry which I am confident would  
21 expose clear wrongdoing by the named  
22 players at the time of the Milgaard  
23 prosecution."

24 And would it be fair to say at this time, Mrs.  
09:18 25 Milgaard, that your group and certainly your





1 lawyer in this case, Mr. Asper, were trying to  
2 get your message out to the public as well, that  
3 lookit, don't accept or believe what Minister  
4 Mitchell is saying about the Supreme Court  
09:19 5 decision, he's wrong, we're right and the reason  
6 they are not agreeing with our view is because  
7 they want to avoid a messy inquiry that would  
8 show clear wrongdoing by their people?

9 A Yes, I think so, and at the very first it said  
09:19 10 something about the *Toronto Star*. Was there an  
11 editorial or something?

12 Q Yes. I don't have a copy of that, I believe there  
13 was also a piece in the *Toronto Star*, I can find  
14 that for you.

09:19 15 A Because I think that both newspapers were very  
16 explicit about their reaction to those kind of  
17 letters as well.

18 Q And did you go to the newspapers again with your  
19 position saying lookit, we think the government is  
09:19 20 wrong and here's our position?

21 A No, I believe that those letters were done because  
22 the papers were aware of what was going on.

23 Q Okay. I'll see if I can find that *Toronto Star*  
24 article, we can maybe come back to that. So again  
09:20 25 would you agree though at this time that there was



1 a bit of a campaign, if I can call it that, with  
2 the public in both you or your group and the  
3 Government of Saskatchewan debating not only  
4 directly, but with members of the public --

09:20 5 A Yes, they were.

6 Q -- here's what this decision means?

7 A Yes.

8 Q And it appears from this letter that where members  
9 of the public came forward and said "we want to  
09:20 10 help", that your group said "lookit, here's who  
11 you should write to, and here's some information  
12 that might assist you in your efforts"?

13 A Absolutely.

14 Q And then if we go to 027095. This is Sigrid  
09:20 15 Macdonald's June 14th letter to Mr. Mitchell, and  
16 she encloses the excerpts of the transcript that  
17 Mr. Asper had sent to her, saying:

18 "I also have my own copies of  
19 a few pages of the Court's transcripts  
20 ...",

21 and goes on to recite what is in there, and:

22 "Thus, it is unfortunate that  
23 the Supreme Court did not find David  
24 Milgaard completely innocent of the  
09:21 25 crime in question BUT the Court was in



1 no position to make such a  
2 determination. The Court only addressed  
3 themselves to the issue ... or the  
4 issues of police ...",

09:21 5 misconduct:

6 "... and disclosure laws."

7 A I can't read the --

8 Q Let me just try that again. Yeah:

9 "The Court only addressed themselves to  
09:21 10 the issue of a possible miscarriage of  
11 justice; they did not directly or  
12 thoroughly address the issues of police  
13 ...",

14 misconduct:

09:21 15 "... and disclosure laws. In fact, Mr.  
16 Milgaard's lawyers were told to lead  
17 their defense toward the issue of the  
18 conviction, not toward the role of the  
19 law enforcement agencies."

09:21 20 And it would appear that that position that Ms.  
21 Macdonald is putting forward to the Minister  
22 would have come from Mr. Asper; is that correct?

23 A I'm sure it would have, yes.

24 Q And then, lastly, if we can go to 162851. And so  
09:22 25 in response to that, Mr. Mitchell wrote back to



1 Ms. Macdonald, and this is the letter that is  
2 referred to in the very first letter I started  
3 with, Mr. Wolch's letter to the Minister, and I  
4 think this is where Mr. Wolch expressed concern.  
09:22 5 The Minister says:

6 "I appreciate the reference  
7 you make to what the Court said in its  
8 openings remarks. However, a look at  
9 the complete record will show that the  
09:22 10 Court did conduct the most thorough  
11 inquiry imaginable. Mr. Milgaard's  
12 counsel was given the broadest possible  
13 latitude in calling whatever evidence he  
14 thought would establish his allegations  
09:22 15 that his client had been the subject of  
16 police or crown wrongdoing and that  
17 Larry Fisher was the guilty party. Not  
18 once was Mr. Milgaard's counsel told he  
19 could not call the evidence he wanted  
09:22 20 and not once was he refused a subpoena  
21 for any witness he thought might be  
22 helpful.

23 Since you apparently have  
24 access to the transcript of the Court  
09:22 25 proceedings, you will note that Mr.



1 Milgaard's counsel did call two police  
2 officers and did go into the police  
3 investigation. All other police  
4 officers involved with these cases would  
09:23 5 have been available had his counsel  
6 wanted them to testify. Additionally,  
7 an examination of the testimony given by  
8 Mr. Milgaard's trial counsel, will  
9 indicate that the aspect of disclosure  
09:23 10 was also covered in the Supreme Court.  
11 Further evidence was available from the  
12 trial prosecutor if they wanted to call  
13 him. Mr. Wolch chose not to call  
14 further police officers nor the  
09:23 15 prosecutors who handled the case. At no  
16 time did the Court tell him he could not  
17 do so. Indeed, at the end of the  
18 hearings, the Chief Justice noted that  
19 no stone had been left unturned."  
09:23 20 And so, let me pause there, and then finished  
21 off:  
22 "I am satisfied that when the whole  
23 Court record is examined, it is clear  
24 that there was in fact a very thorough  
09:23 25 examination of this matter and that a



1 further inquiry would simply be futile  
2 duplication. I regret therefore, that I  
3 cannot be of further assistance to you."

4 And so I take it that this letter, or letters  
09:23 5 like it, would have been brought to your  
6 attention around the time?

7 A Yes, they would have been.

8 Q And what was your response to this position that  
9 Mr. Mitchell was taking about, I think if I can  
09:24 10 summarize, saying "lookit", to the public, "David  
11 Milgaard's lawyer could have called all these  
12 witnesses if he had chose and he chose not to"?

13 A I would have said it wasn't true.

14 Q Okay. And that --

09:24 15 A Because I remember we were trying to get Mackie,  
16 we were trying to get others, and we couldn't get  
17 them for the -- out of town or, you know, there  
18 were different reasons given at the time. But I,  
19 I would have certainly said this was not true.

09:24 20 Q Did it concern you that the Minister of Justice  
21 was telling members of the public that the issues  
22 of police misconduct, Crown misconduct, and your  
23 son's innocence had been fully before the Supreme  
24 Court of Canada and fully dealt with?

09:24 25 A Yes, it was, because I felt it wasn't true.



1 Q And was it also your concern that, because the  
2 decision was unfavourable in all three  
3 respects, --

4 A Yes.

09:24 5 Q -- in other words that the Supreme Court said no  
6 police misconduct, no Crown misconduct, and  
7 failing to find that David was probably  
8 innocent; --

9 A That's right.

09:25 10 Q -- would that also be one of the reasons you  
11 did -- you had concern about the position?

12 A Well, naturally.

13 Q If we can go back to 162865. And so this is where  
14 we started, so this is where Mr. Wolch writes  
09:25 15 directly to the Minister again in August, and  
16 about the Ms. Macdonald letter, and he got a copy  
17 of it, and he deals with that. So it appears,  
18 yesterday, we -- I asked you the question "what  
19 was happening during June, July, August of 1992",  
09:25 20 and it would appear that, amongst other things,  
21 members of the public were being mobilized and  
22 writing to the Minister, and the Minister was  
23 responding in a manner that you took exception to?

24 A That's correct.

09:25 25 Q And so here, in August, Mr. Wolch addresses it --



1           just go to the next page -- and in this letter  
2           Mr. Wolch says to Mr. Mitchell, and again, I don't  
3           want to get into you interpreting Mr. Wolch's  
4           position, the letter is what it is, I just simply  
09:26 5           want to raise a couple of points with you. It  
6           says:

7                               "Since the Larry Fisher  
8           evidence came to light in October, 1970,  
9           the Crown was aware in October of 1970  
09:26 10          that there existed credible evidence  
11          which could reasonably be expected to  
12          have affected the verdict of the jury  
13          considering the guilt or innocence of  
14          David Milgaard. This evidence was  
09:26 15          wilfully suppressed by the Crown  
16          Attorney's office."

17          So it looks like, at this point, there is an  
18          allegation made by Mr. Wolch to the Minister of  
19          Justice that Crown attorneys wilfully suppressed  
09:26 20          information; --

21          A           Yes.

22          Q           -- correct? And the government's response to  
23          that, I think in other letters, was that issue was  
24          squarely before the Supreme Court of Canada and  
09:26 25          they said there was no Crown misconduct; is that





1 fair that that was their position?

2 A That was their position.

3 Q And then:

4 "The result of the

09:27 5 suppression of this evidence is that,  
6 since October 1970, the continued  
7 conviction of David Milgaard has  
8 amounted to a miscarriage of justice. I  
9 can identify no intervening event in the  
09:27 10 22 years following October 1970 which  
11 could have given rise to some new  
12 miscarriage of justice. Clearly the  
13 miscarriage occurred in October 1970 and  
14 clearly this is the miscarriage referred  
09:27 15 to by the Supreme Court of Canada."

16 And I think the position taken by the government  
17 at this time is that the Supreme Court of Canada  
18 never said there was a miscarriage of justice,  
19 they said there would be if David wasn't given an  
09:27 20 opportunity to have a new trial; is that your  
21 understanding?

22 A Yes, it is.

23 Q And so that was one difference; and, secondly, the  
24 government was saying that even though this  
09:27 25 information was available in October 1970, the



1 Supreme Court of Canada did not say that there was  
2 a failure or a breach on the part of the Crown or  
3 the authorities in failing to give it to David or  
4 his counsel; that was their position?

09:28 5 A That was their position.

6 Q And your position was that because they identified  
7 it as being relevant, that it should have been,  
8 and since it wasn't it therefore must have been  
9 suppressed and misconduct?

09:28 10 A Yes.

11 Q And then Mr. Wolch again says to Mr. Mitchell:

12 "The Supreme Court of Canada  
13 has specifically stated that it was not  
14 their mandate to assess blame. In order  
09:28 15 to properly deal with the reference,  
16 however, blame was assessed by  
17 implication. That blame falls squarely  
18 upon the Crown Attorney's office for  
19 suppressing the Larry Fisher evidence.  
09:28 20 Public statements made by your Mr.  
21 Kujawa can only reinforce this  
22 conclusion."

23 And I think, is it fair to summarize, your  
24 position was that the Supreme Court of Canada, by  
09:28 25 implication, said that the Crown attorney's



1 office committed wrongdoing or misconduct?

2 A Yes.

3 Q And the government's position was the Supreme  
4 Court of Canada decision actually cleared the  
09:28 5 Crown attorneys of any wrongdoing, --

6 A Yes.

7 Q -- would be the debate? And then Mr. Wolch says:

8 "I do not accept the

9 proposition that a miscarriage of

09:29 10 justice cannot occur without

11 culpability. If an innocent person is

12 given a fair trial and is then

13 convicted, is it not a miscarriage of

14 justice? In any event, the culpability

09:29 15 so found by the Supreme Court of Canada

16 in this case emanates from the cover up

17 that followed."

18 So it appears, here, that Mr. Wolch is saying to

19 Mr. Mitchell that not only was there wrongdoing

09:29 20 and misconduct by the Crown, there was a coverup

21 by the Crown?

22 A That's correct.

23 Q And again, as far as this letter to the Minister,

24 would this be a case where Mr. Wolch would be

09:29 25 dealing with these subject matters and, although



1 he may have advised you what he was doing, that it  
2 would be basically his letter and his position on  
3 your son's behalf, and on your behalf, as opposed  
4 to you sitting down and telling him what to write?

09:30 5 A Oh, I definitely would never tell Hersh what to  
6 write. I mean we would -- he would have discussed  
7 it with me, he may have shown me the letter before  
8 it went, I don't recall whether he did or not, but  
9 that was the case in most cases, it would be  
09:30 10 something he would suggest and we'd look at.

11 Q And so, again, the date of this letter is August  
12 27th, 1992; would it be correct to say that at  
13 this time there was basically a stalemate in that  
14 your view -- and when I say "your" I'm talking you  
09:30 15 and your lawyers' view -- of what the Supreme  
16 Court of Canada decision meant, and the Government  
17 of Saskatchewan's view, were very different, in  
18 fact?

19 A Absolutely the opposite.

09:30 20 Q And the Government of Saskatchewan was not moving  
21 off their position?

22 A That's right.

23 Q And that position, if it was maintained, meant no  
24 clearing of David's name and no compensation?

09:30 25 A That's right.



1 Q And so is it correct to say that you needed  
2 something to cause them to change their position?

3 A We did.

4 Q And, again, is that what the Michael Breckenridge  
09:30 5 press conference was designed to do?

6 A Yes, I believe that would probably have been the  
7 main purpose of it.

8 Q And that would be to go public and say "the  
9 Premier of the province and high-ranking Justice  
09:31 10 officials were involved in misconduct in the  
11 handling of these files and a coverup?"

12 A And a coverup. And you know, Mr. Hodson, it's  
13 important to understand that I believed, when  
14 Mr. Breckenridge came forward -- it -- and we got  
09:31 15 that information, and then as we were in the midst  
16 of what was going on, but then as a result of the  
17 decision and Saskatchewan taking the position it  
18 was and I -- and a position absolutely directly  
19 the opposite of what we had, it seemed a wonderful  
09:31 20 opportunity to use that information and get it out  
21 to the public and let them see what was going on,  
22 and it just sort of answered all the suspicions  
23 that I had had --

24 Q Right.

09:32 25 A -- about what was going on.



1 Q If we could just talk about the timing for a  
2 moment then -- and I touched on this a bit  
3 yesterday -- do you -- can you elaborate or  
4 explain the timing of the press conference in this  
09:32 5 respect; Mr. Breckenridge's first letter is March  
6 21, 1992, May of '92 he meets with the private  
7 investigator, gives a second statement, on June  
8 15th or 14th, '92 you meet with him, and it would  
9 appear that all the information you made public on  
09:32 10 September 19th, 1992 you had on June 14th, 1992;  
11 is that correct?

12 A That's probably correct, but --

13 Q Sorry, June 12th, I guess?

14 A Yeah, okay. But what we were doing at that time  
09:32 15 was mobilizing, and to mobilize the entire  
16 country -- and that was every province -- I was  
17 working with all of those various support groups  
18 and trying to get them to send their letters in  
19 and everything done. We thought that we could do  
09:33 20 it by letter --

21 Q But was --

22 A -- and it obviously wasn't happening.

23 Q Was it a case that, I guess what I am trying to  
24 understand is what, what events transpired in July  
09:33 25 and August and early September of 1992 that caused



1           you to go with the Breckenridge information, to  
2           make it public, or what -- or, conversely, why  
3           wasn't it released in mid-June 1992, and was it a  
4           case of the fact that the letters that the  
09:33 5           government, and in particular Mr. Mitchell --

6           A       It was his replies back.

7           Q       Okay, that -- so let's focus on that for a moment.  
8           Is it the case that you had the information in  
9           June '92 but, for whatever reason, decided you  
09:34 10           wouldn't go public with it and took the approach  
11           of "let's write letters to the Minister and get  
12           the public to write letters to the Minister to see  
13           if that works"?

14          A       Yeah, and we thought that would work, and that we  
09:34 15           could get it opened.

16          Q       And then, when it didn't work, was the  
17           Breckenridge press conference a reaction to the  
18           position taken by Bob Mitchell in his letters to  
19           your lawyers and to the public?

09:34 20          A       Yes, it was a reaction of outrage.

21          Q       And so you didn't like his responses, therefore go  
22           public with allegations against his government,  
23           his Premier, and his office, with the hope that  
24           his position would be discredited in the eyes of  
09:34 25           the public?



1 A Yes, and hopefully in the eyes of Federal Justice,  
2 at that point.

3 Q And is it fair to say that based on -- at least at  
4 the end of August 1992, when you got the letters  
09:34 5 back from Bob Mitchell, that it was clear to you  
6 and your group that -- and you'll recall  
7 yesterday, after the Supreme Court of Canada  
8 decision you told me that the only party that  
9 could now give you your remedy of clearing David's  
09:35 10 name and the compensation was the Government of  
11 Saskatchewan?

12 A Yes.

13 Q And now, August of 1992, is it correct to say that  
14 you now realized, you and your group realized that  
09:35 15 the person that you needed to give you that remedy  
16 was not going to, in fact was taking a position  
17 that you strongly disagreed with?

18 A That's correct.

19 Q And, therefore, you weren't going to get your  
09:35 20 remedy from them unless you could either shake  
21 them up a bit or get someone else to intervene and  
22 make them give you the remedy?

23 A Yes, we realized that we would have to have  
24 someone else intervene.

09:35 25 Q And so was it a case -- and I'll show you these





1 letters in a moment -- I think in conjunction with  
2 the Breckenridge press conference Mr. Wolch also  
3 wrote a letter to Bruce MacFarlane at Federal  
4 Justice saying, "lookit" --

09:35 5 A Yes.

6 Q -- "we have a real problem here in Saskatchewan,  
7 because we now have information of misconduct by  
8 senior Crown officials, the Premier, and we need  
9 you Feds, Federal Justice, to come in and inquire,  
09:36 10 because these people cannot be trusted to inquire  
11 into themselves"?

12 A That's correct.

13 Q And so the advantage of the Breckenridge  
14 information, if I could call it that, not only  
09:36 15 would it discredit the provincial government and  
16 Mr. Mitchell, correct, --

17 A Correct.

18 Q -- it would also give you a basis to go to the  
19 Federal Government and say "lookit, you people  
09:36 20 better step in and make the decisions and help us  
21 get the remedy, because the people who would  
22 normally give us the remedy are adverse to us"?

23 A That's right.

24 Q And so by having allegations going right to the  
09:36 25 top of the provincial government, namely



1 Mr. Romanow, you would have known that, lookit,  
2 the Government of Saskatchewan -- you told us this  
3 yesterday -- they obviously can't inquire into  
4 themselves?

09:36 5 A That's right.

6 Q And again, as far as the timing, do you recall  
7 whether there was any discussion in June of '92  
8 with Mr. Asper, Mr. Wolch, about not going public  
9 with the Breckenridge information because it may  
09:36 10 not be credible or it may need to be checked?

11 A I don't recall any discussion like that.

12 Q And do you know why -- I don't think the record, I  
13 think the evidence of Mr. Perry, at least through  
14 his statements and the record, reflect that from  
09:37 15 and after your June 12th, '92 meeting until the  
16 September 19th, 1992 press conference there does  
17 not appear to be any further inquiries or checking  
18 into the Breckenridge statement; is that correct?

19 A That -- I have no knowledge of anything else.

09:37 20 Q And do you know why that was the case, why for  
21 example, Mr. Wollbaum wasn't followed up with, and  
22 some of the other people that Mr. Breckenridge  
23 said could corroborate his story were not  
24 contacted?

09:37 25 A Well I think we were so deeply involved in what we



1           were doing at that present time that that just  
2           sort of took to the sidelines, at that point, --

3           Q       And --

4           A       -- until we were prepared to go ahead with it.

09:37 5           Q       Okay. If we could go to 162465, please. And this  
6           is a document I went through with Mr. Asper, this  
7           is a fax to you -- if we can go to the next page,  
8           September 9th, 1992 -- and he is giving you a  
9           draft release and refers to a phone conversation.  
09:38 10          If we can go to the next page, this is Mr. Asper,  
11          it's either he has revised it or he has drafted  
12          it, I don't know whether he was able to say for  
13          sure; do you recall how this came about and what  
14          this was?

09:38 15          A       I'd have to read it, I'm sorry, can --

16          Q       Sure, yes.

17          A       -- can it be blown up a little bit so I can see  
18          what it is?

19          Q       It's, I'm sorry, it's the draft news release for  
09:38 20          the -- related to the press conference you were  
21          going to have on the Breckenridge information?

22          A       Oh, okay. (Witness reading) Back to the  
23          question?

24          Q       Do you recall how or why Mr. Asper became involved  
09:39 25          in this news release or what this related to?



1 A Well this was the news release, I guess, that we  
2 were going to use.

3 Q And do you know if you would have drafted  
4 something and sent to it him, or would he have  
09:39 5 drafted this, do you remember?

6 A I have no idea.

7 Q Well --

8 A I think this would be something that he would have  
9 drafted.

09:39 10 Q And, again, would that have been the practice on  
11 news releases, you'd rely upon him to do the  
12 drafting?

13 A Yes. Sometimes I, sometimes David and I would  
14 come up with something that we thought we would  
09:39 15 like to do, and then David Asper would sort of go  
16 through it and make sure it was all right.

17 Q And would that be his area of expertise in -- as  
18 between the two of you, was --

19 A Oh, yes.

09:40 20 Q And so is it likely, then, that this was something  
21 that, although you may have had a discussion with  
22 him about what your thoughts were, you would rely  
23 upon him to put pen to paper and put the words  
24 down right?

09:40 25 A Yes.



1 Q And here, I want to see if this accurately  
2 reflects the thinking at the time, it says:

3 "Meanwhile, the fight for  
4 David's demand for justice carries on.  
09:40 5 Following the call by Mr. Wolch for a  
6 formal enquiry in Saskatchewan, an  
7 active letter writing campaign has been  
8 undertaken. Many of those who supported  
9 David's call for a new hearing continue  
09:40 10 to support the call for an enquiry."

11 And I think that's what you told us earlier, that  
12 that's what was happening in the spring and  
13 summer months of '92, is that correct?

14 A Yes.

09:40 15 Q And then:

16 "The response of the  
17 Government of Saskatchewan has been to  
18 try to ignore the problem. Attorney  
19 General Bob Mitchell's response to those  
09:40 20 who have written to him supporting an  
21 enquiry is misleading and blatantly  
22 false. Rather than paraphrasing the  
23 issue, we attach for your consideration  
24 correspondence which amply demonstrates  
09:41 25 the attitude of the Government of



1 Saskatchewan."

2 And, again, that would have been -- would that  
3 have been your position at the time, that  
4 Mr. Mitchell's letters to the public were  
09:41 5 misleading and blatantly false?

6 A Yes.

7 Q And I think, when we get to the Breckenridge press  
8 conference, you provided copies of Mr. Mitchell's  
9 letters, and your lawyers' letters as well, to the  
09:41 10 public and to the media; did you not?

11 A Yes, we did.

12 Q And then:

13 "In addition ...",

14 if we scroll down:

09:41 15 "... to the letter-writing campaign, the  
16 investigation into wrong doing by the  
17 Government of Saskatchewan has continued  
18 in earnest. The core group of  
19 volunteers in the Winnipeg support group  
09:41 20 have continued the analysis of  
21 government files and in addition  
22 information has been provided to Mr.  
23 Wolch's office covering a wide spectrum  
24 including potentially implicating the  
09:41 25 current premier of Saskatchewan in his



1                   former capacity as Attorney General for  
2                   Saskatchewan.

3                   Investigators have been  
4                   retained and these matters are being  
09:41 5                   pursued with great vigour."

6                   And can you tell, what would 'the core group of  
7                   volunteers in the Winnipeg support group', what  
8                   would they have been doing as far as the analysis  
9                   of government files; do you know what that  
09:42 10                  relates to?

11           A       Well I think it would have been like Bob Bruce and  
12                   Barb Degen, a bunch of the people that were  
13                   involved on a daily basis, they would have been  
14                   pulling all -- all of the files from the  
09:42 15                  government, they would have been -- all the  
16                   letters and everything, and comparing them and  
17                   showing them, and I think they were also working  
18                   on putting these letters together. And then our  
19                   office was deluged with people that had written  
09:42 20                  in, like, to the government, and then they were  
21                   writing back to us, so these corps of volunteers  
22                   would be responding, also, to those people that  
23                   were getting letters and telling them "eh, this is  
24                   really, what they're saying is not true", and then  
09:43 25                  sending them back what we felt was the truth.



1 Q Okay. And then, here, I think you would agree  
2 that this reference to 'the information provided  
3 to Mr. Wolch's office' would be the Breckenridge  
4 information?

09:43 5 A Yes.

6 Q Now this sentence here:  
7 "Investigators have been retained ...",  
8 presumably that would have been Robinson  
9 Investigations?

09:43 10 A Yes.

11 Q "... and these matters are being pursued  
12 with great vigour."

13 Now I appreciate these are Mr. Asper's words, but  
14 what investigations were being pursued with  
09:43 15 respect to the Breckenridge information at this  
16 time, and indeed after the June 12th, '92 meeting  
17 you had with him?

18 A I don't know of any that were being pursued at  
19 that time, because I had no money for  
09:43 20 investigators, and if the firm was doing it they  
21 would have been paying for it because I had  
22 completely run out of money at that point.

23 Q So is your evidence that lookit, you, Joyce  
24 Milgaard, don't know whether there were any  
09:44 25 investigations being pursued with great vigour?





1 A Well I'm sure that, if David said that, then he  
2 must have had someone out doing that.

3 Q But you don't have any knowledge of what --

4 A I have no knowledge of any of that at that point.

09:44 5 Q Of any investigation taking place after your June  
6 12th, '92 meeting with Michael Breckenridge; is  
7 that correct?

8 A I don't.

9 Q Okay. If we can go to the next page. And then  
09:44 10 here is:

11 "Some examples of information  
12 obtained as a result of further analysis  
13 of government files include:

14 1. A second knife found at the scene of  
09:44 15 the murder which may have played an  
16 important role and which  
17 mysteriously went missing at the  
18 time of trial was, in fact, ordered  
19 released during the trial by  
09:44 20 Mr. T.D.R. Caldwell, the Crown  
21 Attorney prosecuting David Milgaard.  
22 This was a knife that had been  
23 seized from the scene of the crime,  
24 retained as an exhibit by police  
09:45 25 officers and entered as an exhibit



1 by the Crown at the preliminary  
2 enquiry."

3 Now, we saw this issue before, can you elaborate  
4 on why this issue was coming up at this point?

09:45 5 A I really can't. I read that last night, and I  
6 looked at it and in hindsight when you go back the  
7 knife now doesn't seem very important, but I  
8 remember at the time it just seemed so suspicious  
9 that this second knife had disappeared and it  
09:45 10 wasn't around, and then went missing at the time  
11 of the trial, and that's -- these were the  
12 government files that they were going through. A  
13 lot of the files that had been given to us had  
14 information that we really hadn't had before, so  
09:45 15 this would have been information that they found  
16 in the files about the knife, and I guess David  
17 felt that this was an important aspect to bring  
18 out, just another suspicious circumstance, if you  
19 will.

09:46 20 Q Now I appreciate this isn't your drafting, but are  
21 you able to tell us what information was found in  
22 the government files that showed that the knife  
23 mysteriously went missing at the time of trial and  
24 was ordered released during the trial by Mr.  
09:46 25 Caldwell?



1       A       I have no idea where that came from, other than it  
2               would have been some of the files that we -- had  
3               been released to us, I guess, during the Supreme  
4               Court.

09:46 5       Q       Would the efforts at this time be to focus on, I  
6               think you told us earlier that the party that you  
7               were adverse to at this time, or you were pursuing  
8               and putting public pressure on, was the Government  
9               of Saskatchewan?

09:46 10      A       Right.

11      Q       And would it be correct to say that, when your  
12               volunteers or your lawyers or whatever went poring  
13               through the files, it would be "lookit, if we can  
14               find anything" --

09:47 15      A       Yeah.

16      Q       -- "that suggests a Government of Saskatchewan  
17               person has committed misconduct, that would be  
18               helpful in our cause, because we're trying to  
19               discredit the Government of Saskatchewan"?

09:47 20      A       Absolutely.

21      Q       And so anything that you can find in there that  
22               might discredit Mr. Caldwell or Mr. Kujawa would  
23               fit well with your campaign to go public, to put  
24               pressure on Bob Mitchell?

09:47 25      A       That's right.



1 Q And then we have the:

2 "(Insert the Sidney Wilson/Eugene  
3 Williams information.)"

4 And then I'm going to go to -- see if I can put  
09:47 5 -- well, actually, I'll leave that for a moment.

6 This, I think, relates to a  
7 memorandum regarding whether Sidney Wilson had  
8 gone to the police or Mr. Caldwell back way back  
9 in the investigation; do you remember thinking  
09:47 10 that for a time?

11 A Yes, we did.

12 Q And what do you recall about that?

13 A Not very much, other than that we thought that  
14 they had the information and had done nothing with  
09:48 15 it.

16 Q Right, and I'll show you a document in a moment  
17 that I think might assist your memory there. So,  
18 here, this concludes:

19 "From December 1988 until November 1991  
09:48 20 the Government of Canada stonewalled the  
21 Milgaards and refused to admit the  
22 existence of a problem in this case.  
23 The refusal by Saskatchewan to provide  
24 justice for David Milgaard serves only  
09:48 25 and inspiration. The Government of



1 Saskatchewan has become destructive of  
2 the ends of justice and it is the right  
3 of the people therefore to persuade,  
4 alter or abolish it."

09:48 5 And would it be correct to say that this is now  
6 the new target?

7 A Mandate.

8 Q And so the Government of Saskatchewan is now who  
9 -- would it be fair to say that, much like you did  
09:48 10 with your campaign against Federal Justice, you  
11 were now mounting a similar-type campaign against  
12 Saskatchewan Justice?

13 A That's right.

14 Q And would it be correct -- and, again, I think you  
09:48 15 told us, on the Federal Justice campaign, that you  
16 went to the public aspect of it when you couldn't  
17 get the Federal Government to see matters your  
18 way?

19 A That's right.

09:49 20 Q Similarly with the Saskatchewan Government, is it  
21 correct to say that you waged the media campaign  
22 or the public campaign when you or your group  
23 could not get the government to see matters your  
24 way, the Government of Saskatchewan?

09:49 25 A That's right.



1 Q If we can go to 004064. And this is September  
2 16th, 1992, and this is a letter from Mr. Wolch to  
3 Kim Campbell, and just so that we have the dates  
4 in order here September 19th is the date of the  
09:49 5 Breckenridge press conference so this is three  
6 days prior.

7 A Okay.

8 Q And it refers to the earlier letter of April 20th:

9 "... at which time we advised you that  
09:50 10 we were requesting that the Attorney  
11 General for Saskatchewan order an  
12 inquiry into the Milgaard matter. We  
13 also advised you that while we felt that  
14 there was a federal interest in  
09:50 15 conducting an inquiry, we also felt that  
16 the primary responsibility for ordering  
17 the Inquiry belonged to the Provincial  
18 Government."

19 And I think, Mrs. Milgaard, at this time the  
09:50 20 federal government did not respond to the April  
21 20th, 1992 letter, at least I don't think they  
22 did. If they did, they didn't write back and say  
23 we're going to call an inquiry?

24 A That's right.

09:50 25 Q That's right?



1 A Uh-huh.

2 Q So they had not responded favourably to your  
3 request to them of April 20th to step in and call  
4 an inquiry?

09:50 5 A That's correct.

6 Q And so here Mr. Wolch says:

7 "However, new evidence has been obtained  
8 which makes it imperative that the  
9 Federal Government order an inquiry into  
09:50 10 the entire Milgaard matter. Briefly,  
11 this evidence consists of a witness who  
12 was a former employee of the  
13 Saskatchewan Attorney General's  
14 Department who has come forward with  
09:51 15 information concerning activities in the  
16 Department shortly after David  
17 Milgaard's conviction. Enclosed please  
18 find a photocopy of the statement which  
19 this witness has provided to a private  
09:51 20 investigator in Saskatchewan."

21 Let me just pause there. We talked about this a  
22 bit earlier, and I think this was part of your  
23 plan, that the Breckenridge information, because  
24 of who it alleged had committed wrongdoing;  
09:51 25 namely, the current premier of the province,



1           allowed you to go to Kim Campbell and say lookit,  
2           because of who the allegations are against, it's  
3           imperative that you order an inquiry?

4           A       Absolutely.

09:51 5           Q       Do you recall at this time whether Mr. Wolch  
6           expressed any concern to you about the credibility  
7           of the Michael Breckenridge information referred  
8           to in his letter to Minister Kim Campbell?

9           A       Would you repeat that?

09:51 10          Q       Yes. Do you recall either -- let's talk  
11          specifically at this time, let's talk prior to the  
12          press conference. Do you have any recollection of  
13          Mr. Wolch expressing to you any concern about the  
14          credibility of Michael Breckenridge or the  
09:52 15          information that Mr. Breckenridge provided?

16          A       No.

17          Q       Go down --

18          A       In all honesty, you know, if he did say something  
19          to me at the time, I was so fired up about the  
09:52 20          information and feeling that it was an answer from  
21          heaven, if you will, that here we had somebody  
22          that had the information that I had suspected all  
23          along was going on and that we had an opportunity  
24          to get it out into the public, but I honestly  
09:52 25          can't remember him saying anything.





1 Q And then Mr. Wolch's letters goes on to say:

2 "It is clear from this statement that  
3 some information came to the attention  
4 of this witness which suggested that  
09:52 5 there was a mistake made in the Milgaard  
6 case. This witness brought this  
7 information to Mr. Kujawa's attention,  
8 and was told to mind his own business if  
9 he valued his job. The witness also  
09:53 10 indicated that by virtue of the filing  
11 which was required in his position, he  
12 became aware that meetings were held  
13 where both the Milgaard and Fisher files  
14 were considered together. These  
09:53 15 meetings were behind closed doors and  
16 involved senior attorneys in the  
17 Attorney General's office."

18 And then:

19 "Mrs. Milgaard, along with the  
09:53 20 investigator in question, met with this  
21 witness to follow up on the information  
22 contained in the statement. The witness  
23 described an incident which involved his  
24 refiling the Milgaard and Fisher files,  
09:53 25 which were requested for a meeting which



1                   was attended by Mr. Romanow, attorneys  
2                   in the Attorney General's office, and  
3                   police officials."

4                   And so presumably you would have advised Mr.

09:53 5                   Wolch of what you learned in your meeting with  
6                   Mr. Breckenridge and Bob Perry?

7           A        Yes, and, you know, the thought of digging a  
8                   little deeper and going in and seeing the other  
9                   witnesses and everything, after my experience with  
09:54 10                  what happened in my investigation, my earlier  
11                  investigations and going out, I really felt, they  
12                  almost said that I was tainting their  
13                  investigation before, so for me to take this  
14                  information and head out and investigate it the  
09:54 15                  way I did earlier, I felt that that would be wrong  
16                  for me to do at that point and I think, thought it  
17                  was really important that the government be  
18                  checking that out, not me.

19       Q        Why then did you meet with Mr. Breckenridge?

09:54 20       A        Well, I had to meet with him to make sure, you  
21                  know, that I needed to see him and know that he  
22                  was not just some sort of crazed nut, I wanted to  
23                  just sort of verify what he was saying to me, and  
24                  I felt when I talked to him, because sometimes  
09:55 25                  people have axes to grind of their own, but if he



1           had some information there that would be helpful  
2           to us, I felt I should follow it up. However, to  
3           follow up all the other people in the office that  
4           he mentioned, the people that he mentioned, I felt  
09:55 5           that it was important to turn that over right away  
6           and let them follow it up.

7           Q       Okay. Now, you've got his original statement?

8           A       Uh-huh.

9           Q       Original letter, your lawyers hired a private  
09:55 10           investigator?

11          A       Yes.

12          Q       They got a second statement, the private  
13           investigator met with him. At that point, I'm  
14           trying to understand the distinction between  
09:55 15           Mr. Breckenridge and, for example, David Wolbaum,  
16           at that point you felt it appropriate for you to  
17           go meet with Mr. Breckenridge?

18          A       Yes, I did.

19          Q       And you weren't concerned with your meeting  
09:56 20           somehow tainting his information?

21          A       No, because that was my original contact with him,  
22           but if I had then gone ahead and started  
23           contacting all the other people he talked about,  
24           then I would have been in the same position that  
09:56 25           the RCMP put me in before, they would say that I



1 had, you know, influenced the investigation.

2 Q And if you had gone to Mr. Wolbaum, what would the  
3 difference be if you had interviewed Mr. Wolbaum  
4 versus interviewing Mr. Breckenridge?

09:56 5 A Mr. Breckenridge was the one that wrote the  
6 letter.

7 Q Right.

8 A So he was the natural one to interview.

9 Q If we can go to the next page, and here, this is  
09:56 10 again Mr. Wolch's letter to Kim Campbell, it says:

11 "Mr. Mitchell has not seen fit to order  
12 an Inquiry into the Milgaard matter, nor  
13 does he seem inclined to do so. In  
14 light of the evidence linking the  
09:56 15 present Premier of the Province of  
16 Saskatchewan to the Milgaard case, we  
17 would suggest that it would be  
18 impossible for the Milgaard family to  
19 obtain any form of impartial inquiry in  
09:57 20 the Province of Saskatchewan. A full  
21 and proper inquiry into this matter is  
22 absolutely essential to deal with this  
23 new evidence and with other issues which  
24 need to be addressed."

09:57 25 And then requests the entire matter be subject to



1 a federal inquiry and including the issue of  
2 compensation; is that correct?

3 A That's correct.

4 Q And so at this time it appears that you are  
09:57 5 moving, shifting your venue to now the federal  
6 government because the provincial government won't  
7 give you an inquiry, won't deal with the  
8 compensation, you are now going to the federal  
9 government saying now that we've got evidence that  
09:57 10 links Premier Romanow to the Milgaard matter, we  
11 need you people, the feds, to deal with the issue?

12 A Yes.

13 Q So you started there, with the feds, you went to  
14 the province, now you are back with the feds  
09:57 15 saying because of this Breckenridge information we  
16 now need you to step in?

17 A Yes.

18 Q And prior to the Supreme Court of Canada decision,  
19 would you have envisioned that you would be going  
09:57 20 to the Federal Justice Department who you had  
21 battled with, for lack of a better word, for years  
22 for justice, that now you are going back to them  
23 to say lookit, we now need you to help us and we  
24 would like the Federal Justice Department to  
09:58 25 inquire into this matter?



1 A No. It was a nightmare. When I look back, it  
2 just seemed that there would be one thing after  
3 another thing after another thing and yet at that  
4 particular time my son is running around the  
09:58 5 countryside, he's being picked up by the police,  
6 there had been all sorts of things happening and  
7 he was suffering and the whole family was and it  
8 just had to be resolved and so I was going  
9 anywhere I could because I felt that we hadn't got  
09:58 10 justice at the Supreme Court and I wanted justice  
11 for my son.

12 Q And so my question relates, though, and you will  
13 recall earlier I think after Kim Campbell's  
14 decision, I think your group branded her the  
09:59 15 minister of injustice?

16 A Oh, we did.

17 Q And other comments about the federal minister of  
18 justice, and here we are in September of '92 now  
19 going back to that group, the federal minister of  
09:59 20 justice, indeed to Kim Campbell, saying because of  
21 what we're getting from the provincial government,  
22 we don't like it, we need you to step in and help  
23 us, and my question was trying to get your views  
24 on --

09:59 25 A That was very hard to do. Is that what you want



1 me to say?

2 Q Well, no, I'm asking for what your thinking was at  
3 the time.

4 A It was the only -- it was the only course that we  
09:59 5 had.

6 Q And was it the only course you had because the  
7 Province of Saskatchewan was relying upon the  
8 Supreme Court of Canada decision?

9 A In a way that we felt was inappropriate.

09:59 10 Q Okay. And so your only recourse was to go to  
11 another government to see if you could --

12 A -- do something that way.

13 Q 048306, and this is a memo from Greg, and I think  
14 it's Greg Rodin, and it's my understanding Mr.  
10:00 15 Rodin replaced David Asper in his role as  
16 assisting Mr. Wolch on this matter; is that  
17 correct? Greg Rodin was a lawyer at the Wolch  
18 firm at the time?

19 A Yes, he was.

10:00 20 Q And I think the evidence we heard from Mr. Asper  
21 is that in and around September of 1992 he left  
22 the practice of law and left the Wolch firm?

23 A Yes.

24 Q And am I correct that Greg Rodin would have in  
10:00 25 some respects stepped into the position of



1 assisting Mr. Wolch on this matter?

2 A Yes, and yet my memory of Mr. Rodin was that he  
3 was dealing more with the lawsuit later.

4 Q Right. And that came a year later, but at this  
10:00 5 time, this is I think where we're first introduced  
6 to Mr. Rodin, is September of 1992?

7 A That's probably accurate.

8 Q And he would have had more significant involvement  
9 later in the civil suit; is that right?

10:01 10 A Yes, that's right.

11 Q And so here it says:

12 "Further to your request that I  
13 articulate your position with respect to  
14 the above noted matters, I would advise  
10:01 15 as follows:"

16 And so it's "Re: Mike Breckenridge, Sidney  
17 Wilson, T.D.R. Caldwell/knife evidence," and  
18 those are the matters raised in David Asper's  
19 press release.

10:01 20 A Okay.

21 Q And is it correct that --

22 A Who is this memo to?

23 Q To you.

24 A Okay, all right.

10:01 25 Q And what it appears, and please tell me if this is





1 correct, it appears that prior to the Breckenridge  
2 press conference, you went to your lawyers and  
3 said articulate my position with respect to  
4 Breckenridge, Sidney Wilson, T.D.R. Caldwell and  
10:01 5 the knife evidence; is that right?

6 A Yes. I wanted to know what I was allowed to say.

7 Q Why?

8 A Well, I wanted to be sure that I was saying the  
9 right things and the truthful things.

10:02 10 Q Okay. So is it correct that you would have gone  
11 to your lawyers and said lookit, before I go have  
12 this press conference, tell me what my position is  
13 so I don't step outside the line?

14 A That's right.

10:02 15 Q And was that something you had done in the past  
16 with your law firm?

17 A Absolutely.

18 Q And so here with Mike Breckenridge Mr. Rodin  
19 writes:

10:02 20 "... is a former employee of the  
21 Saskatchewan Attorney General's office.  
22 He was employed by the Saskatchewan  
23 Attorney General's office in and around  
24 1971, when --"

10:02 25 A Can this be blown up a little bit on the screen,



1           please?

2           **Q**       Oh, sure, yeah. Get that a little larger there.  
3                   Is that better?

4           **A**       Uh-huh.

10:02 5           **Q**       And it says:

6                   "He was employed by the Saskatchewan  
7                   Attorney General's office in and around  
8                   1971 when Roy Romanow was Attorney  
9                   General. His duties largely involved  
10:03 10                  obtaining and refiling files within the  
11                  Department. In the course of his  
12                  employment he would be aware of what  
13                  particular files were being considered  
14                  by various members of the Attorney  
15                  General's Department, including the  
16                  Attorney General."

17           And then I think Mr. Breckenridge, or this  
18           person -- I think what happened is someone  
19           crossed out his name and put "this person" so  
10:03 20           that you didn't say his name in the press  
21           conference, but:

22                   "This person came forward to us. We did  
23                   not seek him out. Mr. Breckenridge  
24                   indicates that Mr. Romanow, Mr. Kujawa,  
10:03 25                  and other senior police and Crown



1 officials met to discuss the Milgaard  
2 and Fisher files together. He would be  
3 in a position to know that both files  
4 were considered together because it  
10:03 5 would be his job to obtain these files  
6 and refile them."

7 And then this is your handwriting, it says "we  
8 checked"; is that correct?

9 A Yes.

10:03 10 Q And do you know when you would have written that  
11 and what it referred to?

12 A I have no idea, but I imagine it would have been  
13 that we had checked that he was actually, that he  
14 actually worked with files of some sort and  
10:04 15 refiling them, that he was a file clerk or  
16 something in the department.

17 Q And I think this, I think we see some of the  
18 language in this memo repeated, not verbatim, but  
19 pretty close in the press conference. Would you  
10:04 20 have used this memo to either, number one, make a  
21 set of notes for you to read from at the press  
22 conference, or two, actually refer to this memo  
23 when you were speaking at the press conference?

24 A When I was speaking at the press conference I  
10:04 25 believe I had something typed out that we handed



1 out, the words that I was saying I believe were  
2 typed out for me and I was reading from them and  
3 giving it to the press at the same time, so I  
4 think there was a typed.

10:04 5 Q And that typed version of what you read out would  
6 have relied in part upon this memorandum from Mr.  
7 Rodin?

8 A Yes, it would have.

9 Q And then you -- scroll down, you say:

10:04 10 "We wish to make it perfectly clear --"  
11 Or Mr. Rodin does:

12 "We wish to make it perfectly clear that  
13 Mr. Breckenridge is not "our" witness.  
14 Mr. Breckenridge himself is unconnected  
10:05 15 with the Milgaard family. It is our  
16 assessment of Mr. Breckenridge's  
17 evidence that it fits in with the known  
18 and proven facts. As the Supreme Court  
19 of Canada has indicated, the Larry  
10:05 20 Fisher evidence came to light and was  
21 available in October of 1970, when  
22 police interviewed Larry Fisher. The  
23 Supreme Court has already determined  
24 that this was credible evidence which  
10:05 25 could reasonably have been expected to



1 affect the verdict of the jury.

2 Mr. Justice Tallis testified at the

3 Supreme Court hearing, where he

4 indicated that the Larry Fisher evidence

10:05 5 was not, at any time, disclosed to him."

6 Can you tell us what the known and proven facts

7 were that either Mr. Rodin or you were relying

8 upon at this time? I think you used the same

9 language at the press conference.

10:05 10 A I have no idea. "It fits with the known and  
11 proven facts." Well, it fit with the facts that,  
12 the Fisher files, and those were available, all of  
13 those things, it fit with the fact that Kujawa  
14 would have had the files because he was the one  
10:06 15 that did the appeal, like, these were the facts,  
16 okay, so I imagine it fits with the known and  
17 proven facts. We knew all of these facts, that  
18 Kujawa had to have the file because he was the one  
19 that went to court --

20 Q So this --

21 A -- with them.

22 Q I'm sorry.

23 A So all of those things would have fit in together.

24 Q So would the known and proven facts, prior to  
10:06 25 Mr. Breckenridge's information, the known and



1 proven facts would be that Mr. Kujawa handled  
2 David Milgaard's appeal and also handled Larry  
3 Fisher's charges?

4 A Appeal, yes.

10:07 5 Q So that he would have been involved in both files?

6 A Yes.

7 Q And can you think of any other known and proven  
8 facts that fit with Mr. Breckenridge's evidence?

9 A No. I imagine that was probably what that  
10:07 10 statement meant.

11 Q Okay. Then if we can scroll down, and then:

12 "Accordingly, it is established that the  
13 evidence came to light in October of  
14 1970, and that this evidence was not  
10:07 15 disclosed. What has not been  
16 established, and what has not been the  
17 subject of any inquiry to date, is the  
18 process which led to the non-disclosure  
19 in question. Mr. Breckenridge's  
10:07 20 evidence indicates that the Attorney  
21 General and senior officials considered  
22 the matter of the Larry Fisher evidence  
23 as it relates to David Milgaard. Since  
24 there was no disclosure, we can only  
10:07 25 assume that the decision was made during



1                   this meeting not to disclose the  
2                   evidence."

3                   And again, would that have been the thinking at  
4                   the time since, based on what Mr. Breckenridge  
10:08 5                  had said, that they had actually made the  
6                   connection and considered the files --

7           A       And decided to just cover it up, yes.

8           Q       And then --

9           A       And --

10:08 10          Q       I'm sorry.

11          A       Because I had been going on and on and on and  
12                  fighting and fighting and fighting to get David  
13                  out, the thought that there was some power,  
14                  somebody in power trying to set me back all the  
10:08 15               time, it just really fed right in with this.

16          Q       And then the memo goes on to say:

17                         "On the face of it, therefore, it would  
18                         appear that the Breckenridge evidence  
19                         certainly is credible evidence fitting  
10:08 20                         in with the known facts."

21                  Let me pause there. Would that have been then  
22                  what your law firm was advising you then about  
23                  their view of it?

24          A       Yes.

10:08 25          Q       And then:



1 "We believe that an inquiry is necessary  
2 to further explore other witnesses who  
3 may have knowledge of these particular  
4 meetings, and to deal with other serious  
10:08 5 concerns relating to the suppression of  
6 the Larry Fisher evidence."

7 And again, that would be the connection between  
8 the Breckenridge information and the desire for  
9 an inquiry; correct?

10:09 10 A Correct.

11 Q And then we go to the Sidney Wilson information, I  
12 don't need to go through that, that's the phone  
13 call.

14 A Yes.

10:09 15 Q But the next page says:

16 "There is a police report which  
17 indicates that Sidney Wilson was in fact  
18 interviewed by the police and by T.D.R.  
19 Caldwell, the Crown Attorney who  
10:09 20 prosecuted David Milgaard at trial. The  
21 date of this interview was not  
22 disclosed, however, it must have been at  
23 about the time that Sidney Wilson first  
24 approached the police with the  
10:09 25 information he had.





1                   This information is  
2                   significant, but in my opinion does not  
3                   really add much to the proven facts. We  
4                   can already establish that the police  
10:09 5                  department and the Crown Attorney's  
6                  office suppressed the Larry Fisher  
7                  evidence in October of 1970. Sidney  
8                  Wilson himself would not have come  
9                  forward and been interviewed by Mr.  
10:09 10               Caldwell until some time after that  
11               date. Accordingly, Mr. Caldwell's  
12               involvement with Sidney Wilson does  
13               nothing more than confirm what we  
14               already know, that is that the Crown and  
10:10 15              police had information relating Larry  
16              Fisher to the murder of Gail Miller, but  
17              chose not to disclose it.

18                   I believe that this evidence is  
19                   relevant and important evidence, and it  
10:10 20                  will certainly be used, however it  
21                  really does little more than confirm  
22                  what we already know and what we can  
23                  already establish."

24                  Now, again, does that assist your memory about  
10:10 25                  this Sidney Wilson information and how that fit



1 in, what Mr. Rodin --

2 A Yes, that's how we felt it fit in.

3 Q And at the time you thought that based on the  
4 police report, that Sidney Wilson being -- and at  
10:10 5 this time no one knew who Sidney Wilson was?

6 A That's right.

7 Q It wasn't until a year later, but whoever Sidney  
8 Wilson was, you believed and your lawyers believed  
9 that Mr. Caldwell had interviewed him and got  
10:10 10 similar information --

11 A -- and did nothing about it.

12 Q And did nothing about it?

13 A Right.

14 Q And that that would be another ground of Crown  
10:10 15 misconduct that you would be putting forward?

16 A Absolutely.

17 Q Now if we can go to 025658, this is the police  
18 report that Mr. Rodin is referring to in his  
19 letter, and I'm not sure if we've been through  
10:11 20 this before. This is E120 and I believe, Mrs.  
21 Milgaard, this was a document that was part of the  
22 Saskatoon City Police file that was disclosed to  
23 your counsel or to you around the time of the  
24 Supreme Court reference, so December, 1991 I  
10:11 25 believe.



1 A We wouldn't have had it before that, right.

2 Q Right. Or at some point prior.

3 A Uh-huh.

4 Q And what it talks about is:

10:11 5 "03 01 --"

6 Which I think is March 1,

7 "-- at 0930 hours returned call to

8 Eugene Williams, Justice Department,

9 Ottawa. Mr. Williams' advice is that a

10:11 10 Sidney Wilson approached council for

11 David Milgaard, claiming that:"

12 He anonymously provided information, etcetera,

13 and this information here tracks identical to the

14 February 28th, 1990 memo of Eugene Williams and

10:12 15 his phone call to the Saskatoon City Police, or

16 his phone call with David Asper and his phone

17 call with the city police, we looked at this

18 before where we also saw that, and it says:

19 "He was not only interviewed by police,

10:12 20 but also by Mr. T.D.R. Caldwell, Crown

21 Prosecutor. Williams will be making a

22 formal inquiry by letter, and requests

23 that our file be reviewed to determine

24 any reference to the information Wilson

10:12 25 claims to have provided."



1 And then:

2 "03 03 1990, Gail Miller murder file  
3 assigned to Constable Farion, Analyst,  
4 for review and perhaps for indexing at a  
10:12 5 later time."

6 And I'm going to suggest, Mrs. Milgaard, that  
7 what you and your lawyers were relying upon to  
8 support your contention in the September 16th,  
9 1992 memo that T.D.R. Caldwell had in fact  
10:13 10 interviewed Sidney Wilson was in fact --

11 A Would have been this.

12 Q Was the 1990 -- yes, it's this document, it's a  
13 1990 report when Mr. Williams phoned the city  
14 police and relayed the information that Mr. Asper  
10:13 15 had provided to him.

16 A Yes.

17 Q That Mr. Williams and Mr. Asper I think both said  
18 isn't correct, that Sidney Wilson did not say he  
19 was interviewed by T.D.R. Caldwell; correct, or  
10:13 20 are you aware of that?

21 A I'm not aware of that.

22 Q Okay. So this would be the source. This document  
23 would be the police report then --

24 A -- that we were using.

10:13 25 Q And on the basis of this comment here, you were



1           relying upon the fact that Mr. Caldwell had  
2           interviewed Sidney Wilson at some point?

3           A       Yes.

4           Q       Did you become aware at some point that the  
10:13 5           information that you were relying upon in this  
6           police report got into the police report by virtue  
7           of what Mr. Asper had said to Mr. Williams or what  
8           Mr. Williams had understood from Mr. Asper?

9           A       Not until we got the information here at the  
10:13 10          inquiry.

11          Q       Okay. Now if we can go back to 048307, and again  
12          I take it that much like the Breckenridge  
13          information, would that have been the fact that  
14          Sidney Wilson, whoever he was, had gone to Mr.  
10:14 15          Caldwell and been interviewed and covered up,  
16          would that have been something that you believed  
17          because that's what you believed before you  
18          received the information?

19          A       Yes. I mean, it all fit, so if someone comes  
10:14 20          forward with information that just is outrageous  
21          and doesn't fit in with what you've been thinking,  
22          you would maybe check it out a little more  
23          carefully. Because this fit, I really took it to  
24          heart right away.

10:14 25          Q       And actually this also says, refers to the fact



1           that Sidney Wilson was in fact interviewed by the  
2           police and I think in that document it makes  
3           reference to Sidney Wilson saying he went to the  
4           police.

10:15 5           A           Yes.

6           Q           The evidence we've heard at the Commission is that  
7           he actually went to the RCMP in 1986 as opposed to  
8           the Saskatoon City Police.

9           A           Yeah, but of course if he said police, we would  
10:15 10          think police.

11          Q           Saskatoon City Police?

12          A           Yes.

13          Q           And then here, Evidence Relating to T.D.R.  
14          Caldwell and the Missing Knife:

10:15 15                 "This is potentially very significant  
16                 evidence. I would ask that you discuss  
17                 this matter with Bob Bruce, who has  
18                 intimate familiarity with the trial  
19                 transcript relating to this issue. It  
10:15 20                 is clear that Mr. Caldwell did not  
21                 advise the Court, at the time that the  
22                 missing knife was the subject of  
23                 testimony, that he had in fact  
24                 instructed that the knife be released to  
10:15 25                 Constable Ian Oliver. Since he gave



1           those instructions, he must have known  
2           to whom the knife was released.

3           Accordingly, it appears that Mr.

4           Caldwell deliberately misled the Court

10:15 5           as to the whereabouts of the missing

6           knife. Obviously a missing knife in a

7           case where death was occasioned by

8           stabbing, is an extremely important

9           piece of evidence. At this point I

10:15 10          would handle this issue simply by

11          pointing out that Mr. Caldwell obviously

12          had a duty to advise the court that he

13          knew where the knife was when the fact

14          that it was missing was disclosed. He

10:16 15          did not disclose to the Court that he

16          instructed that the knife be released to

17          Constable Oliver. He therefore misled

18          the Court. Further investigations are

19          required to clarify the significance of

10:16 20          this evidence."

21          Now, we've covered this subject on a number of

22          occasions. Does this assist you in recalling

23          anything else about where you or Mr. Rodin or

24          your lawyers got this information that Mr.

10:16 25          Caldwell deliberately misled the court as to the



1                   whereabouts of the missing knife?

2           A           I think this would have been information that we  
3                   got with Bob Bruce because he was going through  
4                   all of the records and all of the transcripts and  
10:16 5                   everything and he felt very strongly about this, I  
6                   can remember that aspect of it, and that's why I  
7                   wanted Greg to speak to him because he did feel  
8                   very strongly about it and felt we should be  
9                   focusing on it.

10:16 10          Q           And Bob Bruce was a volunteer?

11          A           Yes, he was.

12          Q           And what background did he have; do you know?

13          A           He fixed cars. He became -- he had a lot of  
14                   knowledge of VCRs and tapes and things like that,  
10:17 15                   he became our media man in that he kept every  
16                   tape, he would retape interviews and things like  
17                   that, he sort of kept all of those things  
18                   together. He was just an individual that -- his  
19                   mom was a member of my church and he got involved  
10:17 20                   in the case and he came out and he worked from  
21                   morning till night and he would go through  
22                   transcripts and he would -- he had a very  
23                   analytical mind, but he also would zero in on  
24                   something that somebody else would not think  
10:18 25                   important and he would spend a great deal of time





1 on it, but he was so helpful in the work that he  
2 did.

3 Q And I think your evidence is that the missing  
4 knife was an area that he had a particular keen --  
10:18 5 well, he had keen thoughts on that or suspicions?

6 A Absolutely.

7 Q And we saw earlier, I think you and Mr. Asper had  
8 initially raised that back on March 15th, 1990 --

9 A Right.

10:18 10 Q -- is when it first came out, and that would have  
11 been before Mr. Bruce came along though, I think  
12 Mr. Bruce came along later didn't he?

13 A No, I think he would have been there by then.

14 Q Okay.

10:18 15 A Yeah. He was involved almost from the start.

16 Q And as well, based on my read of some of his  
17 documents in the database, he was also one who had  
18 strong suspicions about conspiracy by government  
19 officials?

10:18 20 A Absolutely.

21 Q And in addition to those people you named, he  
22 investigated virtually every government employee  
23 that had any involvement in this file to try and  
24 connect them to the conspiracy?

10:19 25 A Yes, he did.



1 Q And is it fair to say that he had a strong belief  
2 that many people had been involved in government  
3 in a conspiracy?

4 A Yes.

10:19 5 Q And is it fair to say, I think probably every  
6 person involved in the investigation and  
7 prosecution I think in Mr. Bruce's view were part  
8 of the conspiracy; is that correct?

9 A Yes.

10:19 10 Q Now, when I look at the transcript of the press  
11 conference, I don't believe there's any mention of  
12 the knife at the press conference, and I stand to  
13 be corrected on that, but assuming that to be  
14 true, did something happen between September 16th,  
10:19 15 1992 and September 19th, 1992 where you decided  
16 not to raise the missing knife at the press  
17 conference?

18 A I can't recall other than the fact that I think  
19 that we maybe had just trimmed everything because  
10:19 20 it's important that you not focus on too many  
21 things.

22 Q Who would have been the trimmer?

23 A Probably David Asper.

24 Q Now, Mr. Asper says that he was in Australia at  
10:20 25 the time, he had left I think shortly after



1 September 8th and he was not present at the press  
2 conference. Now --

3 A And he didn't get any calls from me in Australia?

4 Q You know, I don't think he could recall having any  
5 involvement with the press conference was his  
6 evidence. Now, is it your memory that he did,  
7 that he would have been involved in reviewing --

8 A I very seldom did anything, even when David wasn't  
9 involved in the case, with the media, that I  
10 didn't run it by him first, so I would be very  
11 surprised. But, if he was in Australia, it's  
12 possible he was safe from me.

13 Q And so do you have a recollection of who you ran  
14 it by?

15 A No, I do not. I imagine it would have been Hersh  
16 and Greg and we probably, in discussion, went over  
17 it and felt that, you know, better to focus, I  
18 have some memory of thinking that we had to maybe  
19 not be all over the place, but be focused on a  
20 couple of things.

21 Q And so, after this memo from Mr. Rodin, you would  
22 have prepared a typed transcript --

23 A Yes.

24 Q -- for you to read at the press conference --

25 A Yes.



1 Q -- and hand out, and the creation of that typed  
2 transcript, I think your evidence is that you  
3 would have reviewed that possibly with Mr. Asper,  
4 although you don't have a recollection?

10:21 5 A No, I don't have a recollection.

6 Q And you say that because he's normally the person  
7 that would do that?

8 A Yes.

9 Q And if he was in Australia and you didn't talk to  
10:21 10 him, then it would have been Mr. Wolch or  
11 Mr. Rodin that you would have reviewed this with,  
12 and to get some final okay about the finished  
13 product; is that fair?

14 A Yes, that's right.

10:21 15 Q And is that your practice in these press  
16 conferences that you would huddle with your  
17 advisors and go over what would be said and what  
18 wouldn't be said and how it would be said in those  
19 things?

10:21 20 A Yes, because it was -- I didn't want to say  
21 anything that was incorrect or wrong.

22 Q And in this case, not saying that some of your  
23 other press conferences were not important, but in  
24 this case you were making allegations against the  
10:22 25 current premier of the province; correct?



1 A Yes.

2 Q And did you have a heightened concern that we  
3 better make sure, or I, Joyce Milgaard, better  
4 make sure that I am not stepping over any lines  
10:22 5 here?

6 A That's right.

7 Q And so is it correct to say that you may have  
8 spent a bit more time --

9 A I think we spent a lot of time to make sure of  
10:22 10 that.

11 Q To make sure that what you were saying was  
12 appropriate to say?

13 A That's right.

14 Q And, again, that would have been either Mr. Asper,  
10:22 15 Mr. Wolch, and/or Mr. Rodin?

16 A That's correct.

17 Q If we could go to 219290. And here is the news  
18 release, the September 18th, 1992, indicating  
19 where the news conference will be held.

10:23 20 "Copies of a letter to the Minister of  
21 Justice containing new evidence that  
22 supports an application under the  
23 Federal Inquiries Act will be released."

24 And that was, I think, the Federal Minister of  
10:23 25 Justice; right?



1 A Right.

2 Q And we saw, already, the September 16th letter to  
3 Kim Campbell from Mr. Wolch --

4 A Yes.

10:23 5 Q -- that includes the Breckenridge information and  
6 that says "we've implicated the Premier and we  
7 need you, Federal Minister, to call an inquiry to  
8 deal with their wrongdoing and compensation"?

9 A Yes.

10:23 10 Q So the idea was then to go public on the 19th and  
11 say "okay", disclose your letter to the Minister,  
12 saying "we've informed the Federal Minister about  
13 wrongdoing in Saskatchewan, we've demanded an  
14 inquiry", and then not only put pressure on the  
10:23 15 provincial government, but also put pressure on  
16 the Federal Minister; --

17 A Yes.

18 Q -- is that fair?

19 A That's fair.

10:23 20 Q And saying -- going public a couple days later  
21 saying, "we've asked for it, media and public, you  
22 better go to the Federal Minister and say why  
23 isn't she calling a federal inquiry"?

24 A Yes.

10:24 25 Q And:



1 "David with other members of the  
2 Milgaard family and Hersh Wolch will be  
3 in attendance."

4 Why was Mr., why was Mr. Wolch in attendance at  
10:24 5 the press conference?

6 A He was my lawyer.

7 Q Okay. And:

8 "David and Mrs. Milgaard will be  
9 available for background shots etc  
10:24 10 should they be required ... Mr. Wolch  
11 will be available after the press  
12 conference for any questions."

13 And again, just for the sake of the record, I  
14 think as well if we could go to 218852. And I  
10:24 15 think this is a pamphlet that somebody put out  
16 just advertising for -- or was this part of the  
17 festival that this came about, or was there --

18 A Yeah, well, we, John Howard Society and the  
19 support group, had this Festival of Freedom.

10:25 20 Q And was the purpose of the Festival of Freedom to  
21 highlight the press conference?

22 A It was, and it was to get all the supporters out,  
23 so that the press would see how many supporters we  
24 had.

10:25 25 Q And what kind of turnout did you have?



1 A Oh, an amazing amount of turnout, and all of these  
2 people, Bob King, Dean Gunnarson, like they -- Bob  
3 King wrote a song about David, all of these people  
4 came out, and Bill Brace, all of them, they came  
10:25 5 out and performed free of charge for this  
6 occasion. It was wonderful. I had forgotten, so  
7 we obviously even had free lunch, I don't know how  
8 that took -- some of the volunteers must have put  
9 that all together.

10:25 10 Q If we could just go to another document, if we  
11 could go to -- sorry, I don't have the doc. ID --  
12 331278. It's the RCMP interview of Mrs. Milgaard  
13 in February of 1993, and this is an interview I  
14 think we touched on --

10:26 15 COMMISSIONER MacCALLUM: This is the doc.  
16 ID, 331214?

17 BY MR. HODSON:

18 Q Yes, it is, 331214. And I'll deal with the  
19 formalities of this a bit later, but in February  
10:26 20 of 1993 you were interviewed by the RCMP in  
21 connection with their investigation; is that  
22 correct?

23 A Okay.

24 Q And do you remember that, meeting with them for I  
10:26 25 think a couple of days with Inspector Sawatzky?





1 A Yes, I do.

2 Q And here he asks you about going through the  
3 Breckenridge information, and so here they're  
4 talking about:

10:27 5 "... one thing ... we haven't talked  
6 about ...",

7 this is you talking:

8 "... what's his name? He was on for -  
9 the guy that we interviewed." "...  
10:27 10 Breckenridge."

11 "... because, you know, we had some ...  
12 concerns there about ... the fact that  
13 ... when we started digging we were  
14 finding that he wasn't where he said he  
10:27 15 was at the time. Now, if in fact he  
16 wasn't, where did he get this  
17 information on ...",

18 that should be Kujawa, we'll hear about Kujawa  
19 this afternoon.

10:27 20 "Was it's just common, was it something  
21 that he, like he did work in the  
22 department. Was it something he picked  
23 up ...",

24 And then to the next page:

10:27 25 "Yeah, that's right I think he, if he



1 didn't witness it personally, maybe  
2 somebody has told him about it and that  
3 he's bringing it forward, so, there's no  
4 doubt we're gonna have to sit down with  
10:27 5 him and have a thorough interview and  
6 find out exactly where he got this so  
7 that we know where to go."

8 That's the RCMP. And then you say:

9 "... yes, they were."

10 There:

11 "... yes, they were. Those we did check  
12 out, Chris."

13 And I think your son Chris is with you.

14 "I knew for sure those were, that's the  
10:27 15 only thing that we did check out and the  
16 people that they mentioned were there at  
17 that time, we checked and found out that  
18 they were there at that time, so this is  
19 why ... on, at first flush, it seemed  
10:28 20 good and I needed something right at  
21 that time to really go public with and  
22 force the issue with it and so that's  
23 why I went public. Then we did some  
24 further digging ... digging, and it  
10:28 25 looked like he actually was not in that



1 position at that time. So, but, I mean,  
2 he couldn't have just manufactured the  
3 information because it fit in too well  
4 with all the facts that we know about  
10:28 5 ... and it fit in with the file going  
6 back and forth now. I mean, for someone  
7 to come forward out of the blue with  
8 that kind of information to you and I'm  
9 sure you, you have the correspondence  
10 ..."

11 "... between him and Hersh ..."

12 "So for him to write in and tell us  
13 stuff like that, you know ... he's got,  
14 he's got it from somewhere."

10:28 15 And then:

16 "Yeah, when we ... went, when Bob and I  
17 went to Winnipeg ... Mr. Wolch was quite  
18 quick to point out that - look at, what  
19 some of this, some of this stuff that  
10:28 20 this guy says, he couldn't have  
21 personally did it himself but he may  
22 have obtained it from ... other places  
23 ...",

24 he could have heard things, etcetera. And so,  
10:28 25 again, this would be February of 1993; do you



1 recall, did you go out and check the other names  
2 in Breckenridge's statement to see that they  
3 worked in the department at the time?

4 A I think we must have. I don't recall this at all,  
10:29 5 but I'm sure, if I had said to the RCMP that I did  
6 it, I must have done it.

7 Q And that would be the Wollbaums, the Herauf, --

8 A Yes.

9 Q -- what's the other name, Patricia Styles?

10:29 10 A Yes.

11 Q And I think you told us earlier, and Mr. Perry  
12 confirmed this in his evidence to the RCMP, that  
13 he never checked Breckenridge's employment with  
14 the government, and my question is, if you did  
10:29 15 check everybody else, why didn't you check  
16 Breckenridge's? In other words, if you went to  
17 verify that Dave Wollbaum, Patricia Styles,  
18 Maurice Herauf worked with the government in 1970  
19 and '71, why didn't you also, or whoever was doing  
10:29 20 this for you, also check that Mr. Breckenridge  
21 worked there at the time?

22 A Well it may have been that just a phone call was  
23 all that was necessary to find out that  
24 information, and not the investigator. I think  
10:29 25 the investigator went back afterwards, and that's



1           when we found out that he wasn't there.

2           Q       Okay. I think, and again I'll get to the  
3           document, I think the -- well, I thought yesterday  
4           you said you maybe didn't know until this Inquiry  
10:30 5           that he hadn't worked there at that time?

6           A       Well, from this letter here, it seems that I did  
7           know.

8           Q       Okay. I'll show you some newspaper articles that  
9           may assist your memory on that. I think this  
10:30 10           is -- the next item, Mr. Commissioner, is the tape  
11           of the news conference, so it's probably an  
12           appropriate spot to break.

13                   *(Adjourned at 10:30 a.m.)*

14                   *(Reconvened at 10:50 a.m.)*

10:50 15           BY MR. HODSON:

16           Q       Just before we play the tape, if I could call up  
17           165266. And I touched on this earlier, and you  
18           pointed out there was a reference to an editorial  
19           from the -- if we could just call it out -- this  
10:50 20           is June 5, '92 from Mr. Asper to Ms. Sigrid  
21           Macdonald and enclosed an editorial that recently  
22           appeared in the *Toronto Star*. And I think you  
23           testified this morning that, in addition to your  
24           efforts and your supporters' efforts writing to  
10:50 25           the Minister, that some of the newspaper



1 editorials were also writing articles in support  
2 of your position?

3 A Yes, they were.

4 Q And at the break we were able to locate I think  
10:51 5 the *Toronto Star* editorial, and I showed this to  
6 you at the break, and I think you confirmed that  
7 this is likely what Mr. Asper sent to Sigrid  
8 Macdonald, or at least what you were referring to  
9 when you talk about the editorials. And it's  
10:51 10 217256, and it's a May 15th, 1992 *Toronto Star*  
11 editorial. And it says:

12 "For spending 23 years in  
13 jail for a crime the Supreme Court of  
14 Canada doubts he committed, David  
10:51 15 Milgaard deserves compensation.

16 A federal-provincial agreement,  
17 however, limits compensation to victims  
18 of the criminal justice system only if  
19 they are proven innocent. But Milgaard  
10:51 20 will never have the opportunity to do  
21 so.

22 Ignoring a recommendation of  
23 the Supreme Court, the Saskatchewan  
24 government has decided against holding a  
10:51 25 new trial in connection with the murder



1 of a woman in Saskatoon in 1969.

2 Nor would it appoint a special  
3 prosecutor to pursue his claim that  
4 another man committed the crime - a  
10:52 5 claim given credence by the Supreme  
6 Court. Caught in this legal no-man's  
7 land, Milgaard is denied his monetary  
8 due.

9 As the London Sunday Times said  
10:52 10 in reference to innocent Britons wrongly  
11 jailed: 'Only the law, it seems, can  
12 ruin a man's life and never have to say  
13 I'm sorry.'

14 That shouldn't be allowed to  
10:52 15 happen in any nation that treasures  
16 justice and morality."

17 So this would be one of the type of editorial  
18 that you talked about earlier; is that correct?

19 A Yes. So it wasn't just ourselves that felt there  
10:52 20 was a travesty of justice, it -- you know, the  
21 papers were picking up on it too, and when you  
22 think that Fisher is free, a rapist is running  
23 around free, it's scary.

24 Q Okay. Next the, Mr. Commissioner, I propose to  
10:53 25 play the audio tape of the press conference, and



1 do we have the doc. ID for the tape? I have it  
2 for the transcript, but the doc. ID for the tape  
3 is 337470, and so this is the audio tape. The  
4 transcript is 334827, and the transcript we have  
10:53 5 referred to, or has been referred to with other  
6 witnesses. The people speaking at the press  
7 conference are David Milgaard, Mrs. Joyce  
8 Milgaard, Hersh Wolch, and unnamed reporters. So  
9 I think the tape, the audio tape is 32 minutes  
10:53 10 long, and we'll play that, and then I'll have some  
11 questions.

12 **(Press conference tape re: Breckenridge played)**

13 "DAVID MILGAARD: First of all I hope  
14 everybody in the back and all the way  
10:53 15 around can hear ... ah we thank you very  
16 much from the bottom of our hearts for  
17 being here as family. That means a lot  
18 to me. I know it means a lot to all of  
19 us that ah that you're out here and that  
10:54 20 you're supporting us. It's been a very  
21 long hard struggle for ah for everyone  
22 to ah have gone through what we've gone  
23 through. I've lived inside prison for  
24 almost 23 years and if it wasn't for my  
10:54 25 mum, basically, now being there with me





1 and all my family, trying to keep me on  
2 track and holding me to things are good.  
3 Ah ... this would never ah would have  
4 happened. I would never be free. And  
10:54 5 if it wasn't for all you people out  
6 there today? and the people you know  
7 that are watching right now that have  
8 listened and tried to help in different  
9 ways, I still wouldn't be free. But the  
10:54 10 most important point I feel is the fact  
11 that you know, people today, in looking  
12 at the case and for long as this has  
13 gone on, you know, haven't really got  
14 the complete truth, haven't got behind  
10:55 15 closed doors in ways that we would like  
16 people to know what took place because I  
17 never killed anyone, and that means an  
18 awful lot to me and my family that  
19 everybody knows the truth.

10:55 20 VOICE: Here, here.

21 DAVID MILGAARD: I would very much, ah, I  
22 guess at this point ah I'd like to  
23 welcome my mum, ah have a chance to say  
24 something that has taken place and our  
10:55 25 strongest hope is that the Prime



1 Minister and other people that this  
2 matter has been brought to their  
3 attention that they do something about  
4 the matter my mother has to talk about  
10:55 5 today because it's very important.

6 JOYCE MILGAARD: Okay."

7 (Unrelated interruption)

8 "I want to keep this as simple as  
9 possible. I'm going to try to speak up  
10:56 10 for the people that are in the back.  
11 Unfortunately, we don't have a mike that  
12 goes out to you. Ah, ... the press will  
13 be given a package of information and in  
14 it will be several letters.

10:56 15 First of all, I would like to  
16 thank all of you that wrote to the  
17 Saskatchewan Government, and I want you  
18 to know that what Bob Mitchell wrote  
19 back to you is not true. We were so  
10:56 20 upset when we read what he had written  
21 that we had Mr. Wolch write him a  
22 letter. Now his answer to Mitchell is  
23 included in the package. I'd like to  
24 tell you about these letters because you  
10:56 25 people won't get to see them.



1 Now this letter is not the  
2 reason we called the press conference,  
3 so if you journalists are worrying at  
4 this point, you can stop. But it is one  
10:57 5 that we feel is important so I'll start  
6 with it.

7 It's a letter from Bob  
8 Mitchell, the Attorney General of  
9 Saskatchewan to a supporter asking for  
10:57 10 an inquiry ... and it has the Minister's  
11 answer. Mitchell says to our supporter,  
12 'the record shows the Court conducted  
13 the most thorough inquiry imaginable'.  
14 The Chief Justice says on record 'this  
10:57 15 is not an inquiry'.

16 Mr. Mitchell says our lawyer  
17 'was given the broadest possible  
18 latitude in calling whatever evidence he  
19 wanted that would establish David has  
10:57 20 been subject of police or Crown wrong  
21 doing', Hersh Wolch says 'the Chief  
22 Justice said in chambers to all counsel  
23 that the question for the Court to  
24 answer did not involve any inquiry into  
10:58 25 police misconduct and that there should



1 be no effort made to focus on that  
2 area'.

3 Mr. Mitchell said 'not once was  
4 Milgaard's counsel told he could not  
10:58 5 call the evidence he wanted', Hersh  
6 tells of an incident where the Chief  
7 Justice clearly indicated a document  
8 could be used to establish David's  
9 innocence, but could not be used to  
10:58 10 impugn the police conduct in the matter,  
11 since that was beyond the scope of the  
12 reference.

13 Mr. Mitchell says 'all police  
14 officers would have been available had  
10:58 15 he wanted to call them', Hersh points  
16 out that he specifically asked for  
17 Mackie and Short as witnesses, - two  
18 police officers, and was told that  
19 Mackie was in the States and they  
10:59 20 couldn't locate him, and that Short was  
21 ill.

22 Hersh also indicates that the  
23 Supreme Court of Canada stated that it  
24 was not their mandate to assess blame.  
10:59 25 He points out that blame was assessed by



1                   implication and that the blame falls  
2                   squarely upon the Crown attorney's  
3                   office for suppressing the Larry Fisher  
4                   evidence. Public statements made by Mr.  
10:59 5                  Kujawa can only reinforce this  
6                   conclusion. Mr. Mitchell is totally  
7                   disregarding the facts, and I lost a  
8                   page ...

9                  DAVID MILGAARD: Maybe this one.

10:59 10               JOYCE MILGAARD: Okay, oh the facts on the  
11                   evidence we gave him in April ... in his  
12                   reply to our supporters and to us. We  
13                   asked for a meeting with him, then and  
14                   also in our last letter, and we have  
11:00 15               received no response. This is justice.  
16                   The new information is in this letter.  
17                   It was sent on Thursday to the Justice  
18                   Minister, Kim Campbell.

19                           A man who worked in the  
11:00 20                  Saskatchewan Attorney General's office  
21                   in and around 1970 when Roy Romanow was  
22                   Attorney General, wrote to us. He  
23                   explained he worked with files, reading  
24                   them, pulling them out for meetings, and  
11:00 25               re-filing them afterwards. He knew what



1 - who was seeing what. His letter urged  
2 us to get an outside inquiry. He said  
3 we would never receive an impartial  
4 hearing with the Saskatchewan  
11:01 5 Government. He told of delivering the  
6 Milgaard and Fisher files, together, to  
7 Serge Kujawa. He told of meetings  
8 behind closed doors with Roy Romanow,  
9 Kujawa, and other senior police and  
11:01 10 Crown officials with the Milgaard and  
11 Fisher files. We wanted to be clear  
12 that this is not our, quote, 'witness'.  
13 He is unconnected with the Milgaard  
14 family. What he says, however, fits in  
11:01 15 with the known and proven facts.

16 The Supreme Court said the  
17 Larry Fisher evidence that the police  
18 had in 1970 was credible evidence which  
19 could affect the verdict of the jury.  
11:01 20 Justice Tallis said they never ever told  
21 him about Larry Fisher. Somebody  
22 suppressed that evidence and there has  
23 been no inquiry into it to see just how  
24 this happened.

11:02 25 This new evidence says that



1                   these people had the files together.  
2                   Since there was no disclosure, we can  
3                   only assume a decision was made to  
4                   suppress it. Pure and simply put, a  
11:02 5                   coverup.

6                   We are not asking for an  
7                   inquiry based just on this new evidence  
8                   but based on the evidence that was  
9                   presented to Mr. Mitchell in April.  
11:02 10                  There is ample evidence in that letter  
11                  alone to justify an inquiry. We want an  
12                  inquiry, we want the right questions  
13                  asked, we want answers. We ask all the  
14                  people here, and right across Canada who  
11:03 15                  have supported us in the past, to once  
16                  again help us. Send a letter to the  
17                  Minister of Justice, send one to the  
18                  Prime Minister, call your Member of  
19                  Parliament, and if you happen to be in  
11:03 20                  Mr. Harvard's riding you won't have to  
21                  call him because he's right here. Urge  
22                  a speedy inquiry. Thank you.

23                  Now I have copies of these  
24                  letters with the information that went  
11:03 25                  out to the Justice Minister for the



1 press and, ah, if you would hand them  
2 out that would be great. Okay.

3 HERSH WOLCH: We said I'll answer  
4 questions, that doesn't force you to ask  
11:03 5 questions.

6 Q What is the significance of the letters  
7 you have from - legally?

8 HERSH WOLCH: It's simply more evidence of  
9 what we know to be a fact. Ah, ah umm I  
11:04 10 take a bit of a different view then  
11 Joyce. I think the letter simply adds  
12 one extra feature of evidence, but the  
13 coverup was established a long time ago,  
14 and this is just one more piece in the  
11:04 15 puzzle, that's all it is.

16 Q What about the involvement of, ah,  
17 Romanow?

18 HERSH WOLCH: Time will tell, I - the  
19 coverup was there, the question was who  
11:04 20 covered it up, is more important to be  
21 found out. Ah, umm, the difficulty we  
22 have is that, umm, you have a situation  
23 where we know David spent 23 years in  
24 jail. There is another individual out  
11:04 25 there somewhere who we believe committed





1 the crime, ah, the Miller family right  
2 now has, ah, I guess, an unsolved  
3 murder, and the Attorney General for  
4 Saskatchewan says that justice has  
11:04 5 triumphed. There is something  
6 questionable about that given that  
7 background. And then you have the  
8 person in charge of the case saying that  
9 the system's more important, ah, than  
11:05 10 correcting wrongs. You put that all  
11 together, ah, and you -- it cries out  
12 for a full inquiry into what transpired.  
13 And now we have more evidence of coverup  
14 but I think we have that from the very  
11:05 15 mouth of Mr. Kujawa when he went on  
16 television and acknowledged he had both  
17 files.

18 Q Is the Premier of Saskatchewan directly  
19 involved in this, is he lying?

11:05 20 HERSH WOLCH: I have ... I'm not saying  
21 that.

22 Q What are you say then, Joyce? Is that  
23 what you are saying?

24 JOYCE MILGAARD: What we're saying is we  
11:05 25 have information that says Roy Romanow,



11:05

1 and this is what we have said in the  
2 letter to the Minister of Justice - that  
3 he was in these meetings. Now I'm not  
4 about to judge his evidence. Ah, I met  
5 with him, and I thought that, uh, he was  
6 credible. I met with him and private  
7 investigators. We made sure that he was  
8 employed where he said he was at that  
9 time, and that the people he mentioned  
10 were also employed and that he in fact  
11 did the things that he said he did, but  
12 he's the one that has come forward and  
13 said that Roy Romanow was in these  
14 meetings behind closed doors. I think  
15 that Hersh properly has sent that  
16 information to the Minister of Justice  
17 and he's indicated how can we get an  
18 impartial hearing in Saskatchewan if  
19 that is a fact. So, the Justice  
20 Department, the federal, ah government -  
21 if they put an inquiry into place then  
22 we will find out exactly what is true.

23 Q Are you saying - that if this letter is  
24 valid.

25 JOYCE MILGAARD: That's right.



1 Q Assuming that it's valid, you've done  
2 the investigation? Okay...

3 JOYCE MILGAARD: We've been out, I've been  
4 out to see him.

5 Q Okay, if that's true are you saying that  
6 Roy Romanow was deliberately involved  
7 and knew that David Milgaard was  
8 innocent of this crime and he knew that  
9 the wrong man was in prison?

10 JOYCE MILGAARD: Perhaps I can tell you  
11 what this man told me, very succinctly.  
12 I mean he described and I've got it in  
13 my private, ah sort, of my additional  
14 comments there. He described what took  
15 place after one of these closed door  
16 meetings. Now Roy Romanow was in this  
17 meeting, okay. Kujawa was in the  
18 meeting, senior police officials were in  
19 that meeting. They come out after this  
20 session and uh, they had only two files  
21 in there. Like this man is responsible  
22 for what goes in and the only files that  
23 they had in this meeting were the  
24 Miller, Milgaard file and the Fisher  
25 file. He described a scenario where



1           someone else in the department seeing  
2           the files that Serge was returning said,  
3           - "gee it looks like there's been a  
4           travesty of justice in this Milgaard  
5           case now that we have the Fisher  
6           information". He said Kujawa in no  
7           uncertain terms told him to mind his own  
8           business, to keep his mouth shut, if he  
9           wanted to continue working there. And  
10          then looking around the room at that  
11          everyone who was there he said "and that  
12          goes for the rest of you too, if you  
13          know what's good for you." Now...

14          DAVID MILGAARD: I think it's important to  
15          note that in asking the Prime Minister,  
16          Mr. Mulroney about ah having this whole  
17          matter given, ah, ah, very close type of  
18          scrutiny, an independent type of  
19          scrutiny, you you're placing a lot of  
20          emphasis on my mother you know, saying  
21          now is this exactly the way things are.  
22          Ah, our our initial inquiry and all the  
23          rest of it, you know, this is the scope  
24          of the matter but it's our request that  
25          something be done immediately. You know



1 and we've asked the Prime Minister to do  
2 something like that, so it's independent  
3 of the people themselves so they aren't  
4 investigating themselves again.

5 Q Can I ask you when exactly that meeting  
6 took place? Was it after David's  
7 conviction but before his appeal.

8 JOYCE MILGAARD: Yeah, it was during 1971  
9 that these meetings took place when ala  
10 like the, they had both the files  
11 together at that time. And I guess a  
12 decision would have had to have been  
13 made. This man said that ah....

14 Q Was this before the conviction, or after  
15 when was this made?

16 JOYCE MILGAARD: Oh, it was after the  
17 conviction ... Oh ....

18 Q After the conviction? And then this  
19 information came up?

20 JOYCE MILGAARD: Oh, it was after David's  
21 conviction.

22 Q And Roy Romanow knew that the Fisher, I  
23 believe that's what you are telling me  
24 that Roy Romanow knew that there was  
25 something fishy going on here regarding



1           having this extra information with  
2           Fisher, and he buried it?

3           JOYCE MILGAARD: All I know is that Roy.

4           Romanow, Serge Kujawa, and other senior  
5           officials met with those two files.

6           Serge Kujawa says we never ever, - I  
7           never ever put them together. Now they  
8           told these people that put it together,  
9           or he told these people according to our  
10          source, that ah they had put it together  
11          because the file clerks had put it  
12          together and they, I mean their reaction  
13          you can imagine if you had just been  
14          told that these people just went back to  
15          their desks very quietly but their  
16          mouths sort of dropped open after this  
17          remarks from Serge and he explained that  
18          to us, our source said that shortly  
19          after that every one of those people in  
20          that department with the exception of  
21          one woman transferred out of Serge's  
22          department.

23          Q     So is this person, your source still  
24          working in the ....?

25          JOYCE MILGAARD: No he's not.



1 Q Is he a lawyer?

2 Q Is he retired?

3 Q Is he a lawyer?

4 JOYCE MILGAARD: He's retired, no he's not  
5 a lawyer.

6 Q What is that man's name?

7 JOYCE MILGAARD: We cannot release his  
8 name. We have released it naturally, to  
9 the Minister of Justice, - ah we have  
10 sent her a copy of his statement. Ah,  
11 what we are asking for, is a federal  
12 inquiry where someone independent of  
13 Saskatchewan and independent of the  
14 government can go out meet with this man  
15 and question him and judge his evidence.  
16 That's not up to us, that's up to an  
17 inquiry.

18 Q But you've already done that?

19 Q You've got a lawyer in respect of the  
20 meeting....

21 JOYCE MILGAARD: Pardon.

22 Q If he's not a lawyer what was he doing  
23 at that particular meeting?

24 JOYCE MILGAARD: He wasn't in the meeting  
25 John, he was, he's just describing that



1                   these meetings took place and the only  
2                   two files they had in the meeting was  
3                   the Miller files, Fisher like and  
4                   David's.

5                   Q    You've met with him and your private  
6                   investigator?

7                   JOYCE MILGAARD:  Oh, yes, I've met with  
8                   him.  And he's - well I've got to tell  
9                   you that people said to me why do you  
10                  think he came forward?  I think  
11                  everybody has an axe to grind with  
12                  government and this man may have his axe  
13                  to grind, I don't know.  But what  
14                  impressed me about him and what makes me  
15                  think he's credible is that he named  
16                  names, like in his statement of other  
17                  people that were witness to this  
18                  conversation with Kujawa when he said  
19                  this.  Now someone that is telling lies  
20                  they get to be very very vague about  
21                  things you know.  And they say, oh well,  
22                  I don't know who was there, I don't know  
23                  who said what.  This man has named names  
24                  and I think that it's important for that  
25                  to be followed up.  And, quite frankly I





1                   didn't want to taint the evidence  
2                   because you know, that that could have  
3                   been the position government would take  
4                   if I'd been out interviewing them.

5           Q     Did he tell you why he was coming  
6                   forward now?

7           JOYCE MILGAARD:   Well he actually came  
8                   forward to urge us to get an independent  
9                   inquiry.  Ah, he didn't come forward  
10                  with this information we went out to  
11                  talk to him after we got his letter.

12          Q     When did he send the letter to you?

13          JOYCE MILGAARD:   That was ah, would have  
14                  been in May.  It was after David was  
15                  out.

16          Q     Why didn't he come forward during the  
17                  Supreme Court hearings?

18          JOYCE MILGAARD:   I don't know.  That isn't  
19                  a question I asked him Allan.  I was  
20                  very shocked at the time, ah.

21          Q     Did you ask him why he didn't come  
22                  forward?

23          HERSH WOLCH:   Allan, just on that  
24                  question, it wouldn't have been relevant  
25                  to the Supreme Court.  It simply wasn't



1                   relevant.

2                   Q     I was wondering ....

3                   HERSH WOLCH: I'm not saying it affected  
4                   him, but it wouldn't even have been  
5                   admissible.

6                   Q     But why wouldn't he have come forward  
7                   during all the publicity of the last  
8                   year ....

9                   HERSH WOLCH: That's the kind of thing  
10                  that should be asked at an inquiry. The  
11                  whole issue...

12                  Q     ... Roy Romanow...

13                  DAVID MILGAARD: I think the most  
14                  relevant thing to me and to my family at  
15                  this point is that we have a prompt  
16                  response from government in relation to  
17                  this matter. And obviously as my mum  
18                  has said you you've citing peoples names  
19                  that have heard you know, what Kujawa  
20                  has said in relation to these files and  
21                  Romanow and all the rest of it. What we  
22                  need to have is this isolated and taken  
23                  apart piece by piece to find out exactly  
24                  what the truth is and that's our biggest  
25                  request right here today is to have a



1 prompt response from government - the  
2 Minister of Justice and Prime Minister  
3 himself.

4 Q What are you saying about the Premier of  
5 Saskatchewan?

6 JOYCE MILGAARD: I'm just giving you the  
7 information that our source gave us.  
8 I'm giving you the letter that we sent  
9 to the government. We didn't judge him  
10 and I'm not, listen I'm not going to put  
11 myself into a position of judging the  
12 Premier of Saskatchewan but this source  
13 does say that he attended these meetings  
14 with those files so I think these  
15 questions need to be asked.

16 Q Do you believe the Saskatchewan  
17 government's response to calls for an  
18 inquiry has been tempered in any way by  
19 Roy Romanow's involvement?

20 JOYCE MILGAARD: It seems to me that ah if  
21 Mr. Romanow is involved as our source  
22 implies then, ah, certainly, it would be  
23 - it would certainly answer a lot of the  
24 questions that people had in mind why  
25 maybe Kujawa was never disciplined for



1 his remarks and things like that.

2 HERSH WOLCH: One thing that's obvious is  
3 that the reasons so far given for not  
4 calling an inquiry are not valid. The  
5 reasons given to date such as it was all  
6 covered in the Supreme Court is simply  
7 not valid. It was the Supreme Court  
8 that said that credible evidence came  
9 forward in 1970 and in effect got buried  
10 then. Ah to now say we're not going to  
11 have an inquiry because everything was  
12 canvassed in the Supreme Court is not a  
13 valid reason. There has never been a  
14 valid reason given for not having an  
15 inquiry. In fact, the inquiry was  
16 turned down before we even asked for it.  
17 If you'll recall the answer was no  
18 before we asked. And uh, here's one  
19 more piece of evidence that comes  
20 forward that makes it to us pretty  
21 obvious that an inquiry should come from  
22 a federal source.

23 Q I would think if there were two files in  
24 a room in 1971 and their sitting down  
25 and looking at these two files wouldn't



1                   you have been amazed, who do you think  
2                   they (inaudible)

3                   HERSH WOLCH: Anybody who put their two  
4                   files together ah should come to the  
5                   conclusion that Fisher is the person  
6                   responsible and Milgaard isn't, if you  
7                   put the two files together that's your  
8                   conclusion. At the very least  
9                   considerable doubt in David's case. At  
10                  the very least.

11                 Q    Why, couldn't they have looked at these  
12                   files and said there is still a stronger  
13                   case against David Milgaard?

14                 HERSH WOLCH: It's impossible, doing it  
15                   with a clear and open mind. I mean, ah  
16                   and the files don't forget overlap.

17                 JOYCE MILGAARD: Plus it wasn't there job  
18                   to do that, was it Hersh.

19                 HERSH WOLCH: No, but don't forget if you  
20                   were to go into the ah um Fisher victims  
21                   ah they played a major part in the  
22                   investigation on the Gail Miller murder.  
23                   They were taken to look at photographs  
24                   and everything else. They were  
25                   involved. So the files overlapped



1                    anyway. Uh and you can't miss to put  
2                    them both together.

3                    Q     Why do you think that Romanow and Kujawa  
4                    buried this information shortly after  
5                    David Milgaard's conviction in 1970?

6                    HERSH WOLCH: All I can say is that Mr.  
7                    Kujawa has publicly stated ah ah rather  
8                    shockingly that the system is more  
9                    important than the innocence of one man.  
10                  That the system has to be protected over  
11                  the individual. He has said it. That's  
12                  his own words as you've all heard. That  
13                  perhaps answers your question.

14                  Q     Do you think that that's the attitude  
15                  that Romanow had then in 1970 as  
16                  Attorney General of Saskatchewan?

17                  HERSH WOLCH: I don't know.

18                  Q     Do you think it might have been, Joyce?

19                  JOYCE MILGAARD: I can't judge Mr. Romanow  
20                  on that either, you know if possible....

21                  Q     You're telling me that Roy Romanow knew  
22                  that David Milgaard was innocent in  
23                  1971, he had both files, so that you're  
24                  saying that it's the only conclusion he  
25                  could have made out of it and because of



1                   that your son has spent twenty odd years  
2                   in prison?

3                   JOYCE MILGAARD: I'm not telling you that  
4                   at all.

5                   DAVID MILGAARD: That's conclusionary what  
6                   you're what you're saying there....

7                   HERSH WOLCH: There's a witness who says  
8                   that.

9                   JOYCE MILGAARD: There's a witness that  
10                  says that. What what we're trying to,  
11                  certainly, we are saying that we have a  
12                  witness that says that. We want that  
13                  witness investigated by an independent  
14                  inquiry, and, we want them to draw their  
15                  conclusions because there are other  
16                  people that attended those meetings and  
17                  so this has got to come out. But don't  
18                  say I have to that I'm not telling you  
19                  that because I'm not.

20                  Q     Can I say you're implying it?

21                  (Laughter)

22                  JOYCE MILGAARD: I would say that the  
23                  evidence is implying it, yes.

24                  HERSH WOLCH: I can't emphasize strongly  
25                  enough it's part of an overall picture.



1                   It's one piece in a much broader  
2                   picture.

3           Q     Is the evidence ....(inaudible)

4           HERSH WOLCH:   Why he's no I mean he says  
5                   he was an eye witness.   I mean I think  
6                   David was convicted on weaker evidence  
7                   then that.

8           Q     Why is this then not included in the  
9                   package of information?

10          JOYCE MILGAARD:   Because it has a number  
11                   of names of the people that he claimed  
12                   were working in the Department at the  
13                   time and we wanted that to go to the  
14                   Minister of Justice and for those ah  
15                   people to be contacted and all of this  
16                   information brought out into the open.  
17                   So the ball right now is right back in  
18                   the federal government court.

19          Q     Any response from there...?

20          JOYCE MILGAARD:   In fairness we faxed it  
21                   on Thursday to her and my other letter  
22                   that I put to the Prime Minister, - ah,  
23                   that went out on Friday.

24          HERSH WOLCH:   Joyce may not know this but  
25                   I did receive a call from Ottawa that,





1                   ah, the Justice Minister is being made  
2                   aware - she was tied up somewhere else -  
3                   but they are taking it very seriously  
4                   and looking at it very seriously and  
5                   that's about, as far as they can go.  
6                   They acknowledged they got it and that  
7                   was quite proper.

8                   Q     You got this letter back in May. Why  
9                   are we discussing it now? Why wasn't  
10                  action taken earlier?

11                 JOYCE MILGAARD: Well it took a long time  
12                 for us to even find this like you know  
13                 to go through this. Quite frankly my  
14                 part of the problem is funding, uh, it  
15                 takes money for a private investigator  
16                 and that's something we haven't got a  
17                 lot of any more. So ah....

18                 HERSH WOLCH: Or ever did.

19                 JOYCE MILGAARD: Yes. And the private  
20                 investigator, ah, we had to get one, he  
21                 would go out and do a little bit and  
22                 then when I had a bit more money he'd go  
23                 out and do a little bit more. But ah,  
24                 it's taken awhile. And....

25                 Q     Sorry to interrupt you....



1 JOYCE MILGAARD: Sorry.

2 Q For the background of this source. How  
3 long did this person worked, this man  
4 worked for in the Justice Department I  
5 assume he was an officer worker.

6 JOYCE MILGAARD: Yeah, he was in the  
7 Department for a number of years.

8 Q Did he ask to remain anonymous?

9 JOYCE MILGAARD: Pardon.

10 Q Did he ask to remain anonymous?

11 JOYCE MILGAARD: He, he is quite ah  
12 prepared to give evidence in court.  
13 He's prepared to talk to anyone ah you  
14 know from the Justice Department or  
15 anyone in an inquiry, and ah but he is  
16 not prepared to have every one of you  
17 reporters go out and you know talk to  
18 him. So we would like him at this time  
19 to at least be able to talk uh quietly  
20 to the Department of Justice and bring  
21 all of these facts out.

22 DAVID MILGAARD: I have something I'd like.  
23 to say you know ah it's oh, been an  
24 awful long ah very long affair all of  
25 this, and ah I think its somethin' that



1 we'd all like to get behind us. And  
2 it's our hope that, ah, in this in this  
3 set of circumstances and, ah, with this  
4 new information that ah maybe, maybe the  
5 Prime Minister's office maybe the  
6 Minister of Justice ah, can act really  
7 promptly here and establish, you know,  
8 just what the circumstances are. Ah I'd  
9 very much like to get this all behind me  
10 and I'd like to go on living my life in  
11 a normal way. I'm sure that my family  
12 would too. We, ah, we really appreciate  
13 the fact that all the people in the  
14 country, all the people here today at  
15 the Freedom Fest will you know, ah are  
16 here in our corner but ah we really  
17 would like to be able at some point in  
18 the future, just to be normal kind of  
19 people without having to continue this  
20 fight in some ways and it's possible now  
21 that this may just happen as a result of  
22 what my mother has done.

23 Q Mr. Milgaard how did this source know  
24 that ah ah the Premier of Saskatchewan  
25 was in this meeting? How did he know



1                   that these people ....?

2                   JOYCE MILGAARD: Well, you see, normally  
3                   what happens and these were questions  
4                   that I asked. Normally what happens  
5                   they deliver the files right into the  
6                   meeting. Ah, and you know doors are  
7                   opened. The in and out as they need  
8                   files they call them in. But in these  
9                   particular meetings he said they were  
10                  quite different. In these particular  
11                  meetings, ah, he would see the people go  
12                  into the meeting okay and the only two  
13                  files that went in were these two files.  
14                  Now, this incident that he described to  
15                  me was after ah, Roy Romanow left the  
16                  meeting, and, after the other officials  
17                  left the meeting and when Serge Kujawa  
18                  was returning the files to them right  
19                  there. And that's when this whole  
20                  incident happened that he described to  
21                  me. And he said that there were many  
22                  meetings like that.

23                  Q     One more question. Let me ask you.

24                  JOYCE MILGAARD: Yeah.

25                  Q     Many meetings over a what were....



1 JOYCE MILGAARD: There were many meetings  
2 that were held with these files with  
3 these two files.

4 Q Was this over a number of days or weeks?

5 JOYCE MILGAARD: He mentioned it was over  
6 a number of weeks that they were  
7 discussing it. I'm just going to finish  
8 because I, I do want to indicate that I  
9 have written to the Prime Minister and  
10 I've said it seems only right and proper  
11 completely independent of the Justice  
12 Department should be appointed to  
13 investigate this latest information  
14 there could then be no question as to  
15 justice being done and I thanked him for  
16 you know I wanted to express how  
17 grateful I was for his assistance last  
18 fall and to point out that there are  
19 many Canadians as well as people in  
20 other countries that will be watching to  
21 see what happens in this case. Now  
22 justice must be seen to be done and I'm  
23 I'm urging him to use his good office to  
24 do just that and I'm urging the press  
25 support here to go out and find all the



1 other people that were aware of what was  
2 going on and ask the questions that need  
3 to be asked.

4 Q You said that he gave you other names,  
5 the source gave you other names of  
6 people in the Department....

7 JOYCE MILGAARD: That's right.

8 Q Have you contacted them?

9 JOYCE MILGAARD: We ascertained that these  
10 people did in fact Allan, work in the  
11 Department at that time and that they  
12 also transferred out.

13 Q \_\_\_\_\_ other people have heard the  
14 conversation with Kujawa?

15 JOYCE MILGAARD: That's right but I've not  
16 contacted them because --- Well funds  
17 are a big issue of it to go out and  
18 properly contact people like that, and  
19 plus you know the thought of this - ah  
20 if I get involved in it automatically  
21 they seem to feel that I've tainted a  
22 witness you know. There was a lot in  
23 the Supreme Court, oh yes and Mrs.  
24 Milgaard came to see you didn't I. And  
25 they always pointed that out, so I think



1                   it's really important that I I keep out  
2                   of this and let the proper officials  
3                   investigate and that's what we're doing.

4           Q       And let their conscience bring them to  
5                   you...

6           JOYCE MILGAARD:   And I think maybe their  
7                   conscience will may be bring other  
8                   people out to.

9           Q       Has Romanow ever denied knowing about  
10                  these two letters at the same time.

11          HERSH WOLCH:   Mr. Romanow.

12          Q       Did I say Romanow?

13          HERSH WOLCH:   Kujawa.

14          Q       I meant Romanow.

15          JOYCE MILGAARD:   No, I've not talked to  
16                   Mr. Romanow about this.   I mean I didn't  
17                   feel that was my place to interview him  
18                   any more then the other people.   Okay  
19                   and that's it and if you want ah  
20                   someone...."

21          **(Press conference ends)**

22          BY MR. HODSON:

23          Q       Now, I think you told us earlier that the purpose  
24                   of this press conference, I think there were a  
25                   couple of purposes, one was to get a media

11:26



1 reaction and a public reaction to put pressure on  
2 both the federal and provincial governments; is  
3 that fair?

4 A Correct.

11:26 5 Q And I think the second objective was to get an  
6 inquiry?

7 A Yes.

8 Q Some process that would allow David's name to be  
9 cleared and to get compensation; is that fair?

11:26 10 A Yes.

11 Q Now, as far as the media reaction and the public  
12 reaction, was it what you expected or --

13 A Yes. It was amazing.

14 Q And is it fair to say that after this press  
11:26 15 conference, the media would have been flooded with  
16 reports of these allegations?

17 A Yes.

18 Q And was that something you knew going in, that  
19 making allegations against a premier of a province  
11:26 20 of wrongdoing, that that would get front page  
21 attention?

22 A Well, yes, we hoped it would.

23 Q And you were not disappointed in the coverage that  
24 came I take it?

11:27 25 A No.





1 Q And on the second front, the government response,  
2 I think, was shortly after this press conference,  
3 was not to order an inquiry, but rather the  
4 provincial government asked the RCMP to conduct a  
11:27 5 criminal investigation into the allegations of  
6 criminal wrongdoing that came out of this public  
7 press conference?

8 A That's correct.

9 Q And was that something different than what you had  
11:27 10 hoped for?

11 A Well, yes.

12 Q And was it something that was not as good as an  
13 inquiry?

14 A Definitely it wasn't as good as an inquiry.

11:27 15 Q And the RCMP investigation couldn't clear David's  
16 name, nor could it provide a mechanism for him to  
17 get compensation?

18 A That's right.

19 Q And is it fair to say that the, and we'll get into  
11:27 20 the RCMP investigation a bit more, it's been  
21 called the Flicker investigation, that that's not  
22 something that --

23 A It flickered, it didn't burn.

24 Q That's not something that you wanted out of the  
11:28 25 Breckenridge allegations?



1 A No.

2 Q If we can just go back to the transcript, 334827,  
3 and I know that you and Mr. Wolch, and I think Mr.  
4 Asper and others, met with the RCMP at some length  
11:28 5 and turned over your information to them, but is  
6 it correct to say that you may not have had the  
7 same enthusiasm about the RCMP investigation  
8 because it did not fit with your objectives;  
9 namely, compensation and to clear David's name?

11:28 10 A Probably.

11 Q I want to go through parts of this press  
12 conference, if we can go to the next page, and it  
13 appears that in addition to the press conference,  
14 you also provided a package of the letters between  
11:29 15 Mr. Wolch and Mr. Mitchell to the public and to  
16 the media; is that correct?

17 A That's correct.

18 Q And specifically the letters that Mr. Wolch had  
19 written back to Bob Mitchell, and I think that was  
11:29 20 162865, you say his answer to Mitchell is included  
21 in the package. Call up 162865, and that's the  
22 August 27th letter, I believe that was the letter  
23 back; is that correct?

24 A That's correct.

11:29 25 Q And so again we went through that, but on the next



1 page, and I think this is where I think in Mr.  
2 Wolch's comments at least in the press conference  
3 he talks about the cover-up, I think his words  
4 were having already been established before  
11:30 5 Breckenridge, but this would be the information  
6 then that would have been given, the suppression  
7 of evidence and that type of -- well --

8 A I can't see it, I'm sorry.

9 Q Sorry, if we could just call out that part,  
11:30 10 please. And this is where in his letter to  
11 Mr. Mitchell he says:

12 "The evidence was willfully suppressed  
13 by the Crown attorney's office."

14 So this would be the information then that would  
11:30 15 be part of the public pronouncement on September  
16 19th, 1992?

17 A Yes.

18 Q And so in addition to -- and in addition to  
19 Mr. Breckenridge's allegations, you were alleging  
11:30 20 other misconduct or wrongs as well; is that fair?

21 A Yes, that's fair.

22 Q If we can go back to the transcript, go to page  
23 829, and I think here you talk about a letter from  
24 a supporter and then you go at the press  
11:31 25 conference and talk about Mr. Mitchell's reply



1           that upset you, and would it have been the Sigrid  
2           Macdonald, the exchange of letters that you and I  
3           went through this morning, would that be likely  
4           what was in the package and likely what you are  
11:31 5           talking about here?

6           A       It probably was, although he did it to many of the  
7           support groups.

8           Q       Right. And then if we can scroll down here, you  
9           talk about what Mr. Mitchell is saying, and would  
11:31 10           it be correct to say that unlike -- I think what  
11           Mr. Asper said in your dealings with the federal  
12           government, that they basically didn't respond  
13           publicly at all, didn't put forward their position  
14           to advance their position in the media and in the  
11:31 15           public?

16          A       Right.

17          Q       Do you remember that being the case?

18          A       Yes.

19          Q       And would you agree with that?

11:31 20          A       Yes, I would.

21          Q       Now, when you are dealing with the Saskatchewan  
22               government, would it be correct to say that the  
23               Saskatchewan government was actually out with both  
24               your supporters and the media putting forward a  
11:32 25               fairly strong position about their views of the



1 Supreme Court decision in response to your views?

2 A Yes, they were.

3 Q And that's something you hadn't encountered in  
4 your previous dispute with the federal government;  
11:32 5 is that fair?

6 A That's fair.

7 Q And so was part of this press conference to try  
8 and discredit Mr. Mitchell and the position that  
9 he was putting forward?

11:32 10 A Absolutely, to let people know the real facts.

11 Q And in part this related to the debate between Mr.  
12 Wolch and the government and their counsel as to  
13 what was allowed at the Supreme Court and what  
14 wasn't allowed?

11:32 15 A That's correct.

16 Q And the next page, I think this is maybe echoing  
17 what was in the August 27th letter to  
18 Mr. Mitchell, but saying:

19 "... that the Supreme Court of Canada  
11:33 20 stated that it was not their mandate to  
21 assess blame. He --"

22 Presumably being Hersh,

23 "-- points out that blame was assessed  
24 by implication and that the blame falls  
11:33 25 squarely upon the Crown attorney's



1 office for suppressing the Larry Fisher  
2 evidence."

3 And I think that's right out of his letter to Bob  
4 Mitchell; is that correct?

11:33 5 A Yes, that's correct.

6 Q Go to the next page, again we see this reference  
7 here about fitting in with the known and proven  
8 facts, and would that just be taken from Mr.  
9 Rodin's earlier memo or some replication of that?

11:33 10 A Probably, yes.

11 Q And I asked you this before about what were the  
12 known and proven facts, and would your answer to  
13 the comment at the press conference be the same as  
14 the comments in Mr. Rodin's memorandum?

11:34 15 A Yes, I think so.

16 Q And here you talk about somebody suppressing  
17 evidence, and would it be correct to say that your  
18 understanding or view of suppressing evidence is a  
19 deliberate act of misconduct, in other words,  
11:34 20 having something and deliberately not provide it;  
21 is that correct?

22 A Yes. I mean, it just -- the more you look at it  
23 and see the people that had that Larry Fisher  
24 evidence, I mean, Mr. Karst had the evidence when  
11:34 25 he went down and he didn't put two and two



1 together he said, and then Kujawa has this  
2 evidence and he didn't put two and two together.  
3 I mean, how many times do you have this brought  
4 forward and nobody puts it together? It just  
11:34 5 doesn't make any kind of sense. I mean, we put it  
6 together pretty fast and I think everybody else  
7 does too that looks at it.

8 Q And what Mr. Breckenridge provided to you, I think  
9 you told us, is that he said "I was there when  
11:35 10 they put 2 and 2 together"?

11 A Yes.

12 Q And up until that point you had the people  
13 involved saying "I never connected the two, I  
14 never put them together"?

11:35 15 A That's right.

16 Q And I think you told me earlier that, if they had  
17 not made the connection, then it would be more  
18 difficult to say that they deliberately suppressed  
19 the information because they hadn't connected it;  
20 is that right?

21 A That's right.

22 Q So it was important to get the connection to  
23 support your argument that there had been  
24 suppression?

11:35 25 A Yes.



1 Q And that's what Mr. Breckenridge gave you?

2 A That's correct.

3 Q If we can then go to the next page -- or I'm  
4 sorry, just go back, I'm sorry, 832. And, here:

11:36 5 "We are not asking for an inquiry based  
6 just on this new evidence but based on  
7 the evidence that was presented to  
8 Mr. Mitchell in April."

9 And I think 026935, if we could just call that  
11:36 10 up, that's the April letter to Mr. Mitchell that  
11 I went through with you. This was the very first  
12 letter -- if we can go to the next page -- and  
13 this goes through the players and the  
14 prosecution -- and the next page -- Mr. Karst,  
11:36 15 Mr. Caldwell, Mr. Kujawa, and I think this is --  
16 this was the first letter from Mr. Wolch to  
17 Mr. Mitchell saying "here are all the people who  
18 we think have committed wrong and this is why  
19 there ought to be an inquiry"?

11:36 20 A Yes.

21 Q And so I take it this would have been the letter,  
22 both referred to in the September 19th press  
23 conference, and would have been one of the letters  
24 that you and your group would have provided to the  
11:37 25 public and to the media?





1 A Yes, it was.

2 Q And go back to 334832. And, again, just there it  
3 says:

4 "... I have copies of these letters with  
11:37 5 the information that went out ... for  
6 the press ... if you would hand them out  
7 ..."

8 And go to the next page, if we can go to 334834,  
9 and here's where you talk about your meeting and  
11:37 10 your assessment of Breckenridge. You say:

11 "... I met with him and ... I thought  
12 that he was credible."

13 And is that accurate, is that --

14 A I did, uh-huh.

11:37 15 Q And it says:

16 "I met with him and private  
17 investigators.",

18 plural. I think the record suggests only Bob  
19 Perry was there; do you recall if there was more  
11:38 20 than one investigator there?

21 A No, one investigator was there.

22 Q Okay. And then you say:

23 "We made sure that he was employed where  
24 he said he was at that time ...";

11:38 25 who is the "we" you are referring to there and



1           who did make sure that he was employed where he  
2           said he was at that time?

3       A       Well, if you remember -- actually, we just dealt  
4       with that -- that was that memo from Greg Rodin.

11:38 5       Q       So did you rely upon your lawyers' advice that  
6       that had been done?

7       A       Yeah, because in that first section it said that  
8       -- it told, you know, that -- what his duties  
9       were, and that he was in that department, I would  
11:38 10      have relied on that.

11      Q       Okay. So is the "making sure that he was employed  
12      where he said he was at the time" based on what  
13      Mr. Breckenridge told you?

14      A       I'm sorry, try that again?

11:38 15      Q       Okay. Is what you are saying here when you say:  
16                    "We made sure that he was employed where  
17                    he said he was at that time ...",  
18      was that relying upon Mr. Breckenridge saying to  
19      you "lookit, I worked there at the time", was  
11:39 20      that --

21      A       Yes, I relied on that.

22      Q       Okay.

23      A       And then I also relied on that Greg -- that we had  
24      it checked out.

11:39 25      Q       Okay. So, so in addition to Mr. Breckenridge



1 saying he worked there, when you are telling the  
2 public and the media here that:

3 "We made sure that he was employed where  
4 he said he was at that time ...",

11:39 5 are you suggesting that, in fact, corroborating  
6 what he had told you going beyond what  
7 Breckenridge told you; is that what you were  
8 saying?

9 A I don't understand the question.

11:39 10 Q Okay. If Mr. Breckenridge says to you "I worked  
11 with the Department of Justice in 1970-'71", --

12 A Uh-huh.

13 Q -- then you would have some evidence that he  
14 worked there, that would be his evidence?

11:39 15 A That would be his evidence.

16 Q And when you say:

17 "We made sure that he was employed where  
18 he said he was at the time ...";

19 did you make sure by asking him, --

11:39 20 A No, we --

21 Q -- or did you go further?

22 A We made sure, I made sure, because I got the  
23 information from Greg Rodin. If you remember the  
24 memo that we went over, --

11:40 25 Q Right?



1       A       -- Greg Rodin told me that he was a formal  
2       employee and what his duties were, and of the  
3       employment and everything there, so I had that, we  
4       checked that.

11:40 5       Q       And when you say "we" are you talking your lawyers  
6       then?

7       A       Yes.

8       Q       And do you know where they checked or what they  
9       checked?

11:40 10      A       No, I have no idea, but that was the information  
11      that I got back.

12      Q       And as far as you, Joyce Milgaard, you met with  
13      him, you received the information from him, --

14      A       Yeah.

11:40 15      Q       -- but I think your evidence is you didn't make  
16      any inquiries --

17      A       No, I didn't.

18      Q       -- and you weren't there? Okay. And here you  
19      say:

11:40 20                   "... and that the people he mentioned  
21                   were also employed and that he in fact  
22                   did the things that he said he did ..."  
23      And, again, I touched on this earlier; did you or  
24      did someone with your lawyers confirm that the  
11:40 25      people Breckenridge mentioned were also employed



1 with the government?

2 A I believe phone calls were made to make sure that  
3 they were employed with the government at that  
4 time.

11:41 5 Q Do you know who made the phone calls?

6 A No, I don't, but I take you back to that memo when  
7 Greg said that had been checked.

8 Q And so your understanding was that there had been  
9 some verification by your lawyers of his  
11:41 10 employment?

11 A Yes.

12 Q Go to the next page. And, again, this is a  
13 question from a reporter:

14 "... if that's true are you saying that  
11:41 15 Roy Romanow was deliberately involved  
16 and knew that David Milgaard was  
17 innocent of this crime and he knew that  
18 the wrong man was in prison?"

19 And I think, after some to'ing and fro'ing,  
11:41 20 essentially what you say, well, that's certainly  
21 what this witness says, and we believe this  
22 witness to be credible, and we've sent his  
23 information, which we believe to be true, to the  
24 Federal Minister of Justice to do something about  
11:42 25 it; is that a fair summary?



1 A That's a fair summary.

2 Q And I take it you would have known that making  
3 that type of, or being involved in the delivery of  
4 that type of allegation to the Federal Minister of  
11:42 5 Justice, would be significant --

6 A Yes.

7 Q -- and that it was a serious allegation? If we  
8 can go down to here you say, you talk about, you  
9 say:

11:42 10 "... I can tell you what this man told  
11 me, very succinctly."

12 Describe what took place.

13 "Now ... Romanow was in this meeting ...  
14 Kujawa was in the meeting, senior police  
11:42 15 officials were in that meeting."

16 Can you elaborate on that? I don't think that's  
17 in his statement, I could be wrong on that, but I  
18 don't think there were police officers mentioned  
19 in his statement. When you met with him did he  
11:42 20 expand what was in the written statement?

21 A He just said "senior police officers", and I can  
22 remember that.

23 COMMISSIONER MacCALLUM: You are speaking  
24 about Breckenridge here?

11:43 25 A Yes.



1 BY MR. HODSON:

2 Q Yes. So you have a recollection of  
3 Mr. Breckenridge saying to you senior police  
4 officers were in this meeting?

11:43 5 A Yes, and I don't think I would be saying that if  
6 -- I don't have a recollection of that right now,  
7 at this moment, --

8 Q Okay.

9 A -- however I must have had that recollection for  
11:43 10 me to say that at that particular public  
11 meeting, --

12 Q Okay.

13 A -- because it was close to the time.

14 Q So, so today you don't, you don't recall what he  
11:43 15 said to you, whether he mentioned it or not?

16 A No.

17 Q But you are assuming that, since you said it at  
18 the press conference, you must have had that  
19 information at the time?

11:43 20 A Yes. Otherwise, I wouldn't have said it.

21 Q And if it's not in, if it's not in the written  
22 statement and the letter he gave to Mr. Wolch,  
23 then is it fair that you are assuming you must  
24 have got that in your meeting with him?

11:43 25 A Yes, I'm assuming that's where I would get it.



1 Q And again, if we can scroll down here, again this  
2 goes I think a bit beyond what's written in the  
3 statement:

4 "... where someone else in the  
5 department seeing the files Serge was  
6 returning said - 'gee it looks like  
7 there's been a travesty of justice in  
8 this Milgaard case now that we have the  
9 Fisher information'."

10 And, again, do you have a memory of  
11 Mr. Breckenridge saying that in your meeting with  
12 him?

13 A Not at this moment.

14 Q And same answer as before, if you repeated that at  
15 the press conference and if it's not in his  
16 written statement, then you are assuming it would  
17 have been something --

18 A It would have been something that he gave me at  
19 that time, yes.

20 Q That he gave you verbally when you met with him?

21 A Yes.

22 Q Next page. And a reporter asks about when the  
23 meeting took place, and you said:

24 "Yeah, it was during 1971 that these  
25 meetings took place ..."





1           that:

2                   "... they had ... the files together

3                   ..." ,

4           and that would have been the time frame that you

11:44 5           already knew Mr. Kujawa was dealing with both

6           David Milgaard's file and the Fisher file?

7       A       Yes.

8       Q       And so that would be important, it would be

9           important for your theory -- before you heard from

11:45 10          Mr. Breckenridge it would be important for your

11          theory that someone in high places had made the

12          connection and covered up, for that to have

13          happened before David and Larry Fisher's cases

14          were concluded; correct?

11:45 15       A       That's correct.

16       Q       And so here you are asked that question, and your

17          understanding was that what Mr. Breckenridge

18          described in the meeting to you and in his

19          statement is something he said happened in 1971?

11:45 20       A       That's right.

21       Q       33482 -- or pardon me -- 334840. Here a reporter

22          asks, actually, the same question I asked you

23          earlier:

24                   "Why didn't he come forward during the

11:46 25                  Supreme Court hearings?"



1 And I think he did, the letter at least is dated  
2 March of '92. You said:

3 "I don't know. That isn't a question I  
4 asked him Allan. I was very shocked at  
11:46 5 the time ...",

6 and then Mr. Wolch says:

7 "... it wouldn't have been relevant to  
8 the Supreme Court, it simply wasn't  
9 relevant."

11:46 10 Do you recall any discussions about  
11 Mr. Breckenridge's allegations of a frame or of a  
12 coverup not being relevant at the Supreme Court,  
13 or is that something Mr. -- would that be Mr.  
14 Wolch's area to deal with?

11:46 15 A I think that would have been Mr. Wolch's area to  
16 deal with.

17 Q If we can go to 334842. Here you are asked a  
18 question about -- and I think you told us at this  
19 point you had been disappointed that in fact the  
11:46 20 Saskatchewan Government, almost from the day after  
21 the Supreme Court decision, came out and said "we  
22 are not calling an inquiry and we're not paying  
23 compensation", and here the question is do you  
24 think that that response, which you don't like, is  
11:47 25 in some way connected to Mr. Romanow's



1 involvement, and you say:

2 "It seems to me that ... if Mr. Romanow  
3 is involved as our source implies then  
4 ... certainly, it would be - it would  
11:47 5 certainly answer a lot of the questions  
6 that people had in mind why maybe Kujawa  
7 was never disciplined ..."

8 And then Mr. Wolch says:

9 "One thing that's obvious is that the  
11:47 10 reasons so far given for not calling an  
11 inquiry are not valid. The reasons  
12 given to date such as it was all covered  
13 in the Supreme Court is simply not  
14 valid."

11:47 15 And would this information that you and Mr. Wolch  
16 provide to the media, would it be designed to say  
17 this, "lookit, we want the media and the public  
18 to" -- you want to discredit Mr. Mitchell's  
19 position, and him himself, and say -- and either  
11:47 20 say or imply that "lookit, the reason they  
21 haven't called an inquiry is because they were  
22 involved in misdeeds and they are trying to cover  
23 up"?

24 A And I believed that.

11:48 25 Q And so, in addition to putting forward the



1 misdeeds, you are now putting out in the public  
2 domain "here's the reason they won't call an  
3 inquiry, it's not because the Supreme Court is an  
4 answer, it's because Mr. Mitchell is covering up  
11:48 5 for Mr. Romanow and Mr. Kujawa"?

6 A That's correct.

7 Q And, therefore, giving a reason in the public  
8 domain for people to perhaps look unfavourably on  
9 the government's response to your demands?

11:48 10 A Yes.

11 Q And so, with this information out there, instead  
12 of, when a reporter or someone says "lookit, isn't  
13 the Supreme Court decision an answer, isn't the  
14 government's position correct", you could now  
11:48 15 counter that and say "yeah, but the reason they  
16 didn't is because they're covering up for their  
17 own government's misconduct"?

18 A Yes.

19 Q Go to 334851. You are asked a question about the  
11:49 20 other names. You had said earlier in the press  
21 conference one of the reasons you felt this fellow  
22 was credible was that he named names, and you --  
23 and the reporter says:

24 "You said that he gave you other names,  
25 the source gave you other names of



1 people in the Department ...

2 MRS. MILGAARD: That's right.

3 Q Have you contacted them?"

4 And you say:

11:49 5 "We ascertained that these people did in  
6 fact Allan, work in the Department at  
7 that time and that they also transferred  
8 out."

9 And, again, do you have a memory of doing that or  
11:49 10 are you relying upon what was in the memo from  
11 your lawyers?

12 A I would have been relying on what I got from the  
13 lawyers on that.

14 Q So at this time, according to this statement, you  
11:49 15 believed that inquiries had been made to ensure  
16 that every person that Michael Breckenridge said  
17 worked with him at the Department of Justice in  
18 1971, at the time, in fact did work there and that  
19 they did, in fact, transfer out?

11:50 20 A Yes, obviously that was my belief at the time.

21 Q And that wasn't you, that was someone who was  
22 helping you did that?

23 A Yes.

24 Q And so that would have been, I think you said,  
11:50 25 phone calls not directly to these people but phone



1 calls somewhere to verify that Wollbaum, Styles,  
2 Herauf worked with the government in 1971?

3 A Right.

4 Q Do you know if anybody, when they made those  
11:50 5 inquiries to say "did Wollbaum, Herauf and Styles  
6 worked in the government in 1971", did they also  
7 ask "did Michael Breckenridge work in the  
8 government in 1971"?

9 A I have no idea, but I would assume that that would  
11:50 10 have all been checked.

11 Q Go to the next page. And you say, when you are  
12 asked about whether you contacted these people,  
13 you said, no, funds are an issue, plus:

14 "... I think it's really important that  
11:51 15 I ... keep out of this and let the  
16 proper officials investigate and that's  
17 what we're doing."

18 "And I think maybe their conscience will  
19 may be bring other people out to."

11:51 20 And so again, at the time, did you feel any need  
21 to go talk to these other people simply to verify  
22 what was very serious allegations you were  
23 publicly making? I appreciate your concern about  
24 not wanting to taint, taint it, what you have  
11:51 25 told us earlier, --



1 A Well --

2 Q -- but did you have any concern, yourself, that  
3 the information you had from Mike Breckenridge  
4 maybe ought to be corroborated or verified with  
11:51 5 these other witnesses before it's made public?

6 A No, I felt that what we had was enough to bring it  
7 public.

8 Q Okay. And was that a view shared by your advisors  
9 and your lawyers and the group, group of you who  
11:51 10 put this together?

11 A Obviously it would be because, otherwise, we  
12 wouldn't have gone forward.

13 Q If we can go to 229694.

14 A It was the only way that we could see of getting  
11:52 15 this out into the open, it was like we were  
16 fighting against a wall that was pushing us back,  
17 trying to get David's innocence established.

18 Q And so are you telling us that it wasn't so much,  
19 I mean although it was important to investigate  
11:52 20 the specifics of what Mr. Breckenridge said, that  
21 it was sort of a step above that, it was really  
22 lookit, it's just something that's big, --

23 A Yes.

24 Q -- we can put it in the public domain again, and  
11:52 25 somehow or some way give us our remedy, being



1 compensation and clearing his name?

2 A That's right.

3 Q And so, really, it was a road that would get you  
4 there, and you weren't so much concerned about the  
11:52 5 type of road or investigating the road, but you  
6 knew that it would likely take you to your  
7 destination; is that a fair way to put it?

8 A That's a very fair way of putting it.

9 Q And so, when you made it public, that was your  
11:53 10 objective?

11 A It was.

12 Q Here is -- I'll only go through some of these  
13 media articles, I think you've told us that this  
14 was widely reported?

11:53 15 A It was.

16 Q And were there -- I take it a number of the people  
17 that, a number of the reporters that you had  
18 developed relationships with in your earlier  
19 efforts with the Federal Minister would have been  
11:53 20 at the press conference, or been in touch with you  
21 at the time?

22 A Oh, they were at the press conference.

23 Q And I think this is the Sunday, the press  
24 conference was Saturday, September 19th, this was  
11:53 25 the Sunday paper, and *coverup alleged*, and it





1           refers to the letter sent to Kim Campbell, Wolch  
2           asked for a federal inquiry because the new  
3           evidence linking Romanow to the case makes it  
4           impossible for Milgaard to obtain any form of  
11:54 5           impartial inquiry in Saskatchewan, and that would  
6           have been the desired effect, to say "lookit, we  
7           don't want Saskatchewan to deal with this because  
8           we don't like their attitude or the position of  
9           the Supreme Court judgement"?

11:54 10          A           That's right.

11          Q           And go back to the full page. And I presume that  
12           you knew, in making allegations against the  
13           Premier and Mr. Mitchell and Mr. Kujawa, who was a  
14           sitting MLA at the time, that this would be  
11:54 15           political ammunition for those who were in  
16           opposition or who were not part of the government;  
17           is that fair?

18          A           I don't know that it was in my thought, that I --

19          Q           Let me just --

11:54 20          A           Probably, I --

21          Q           Sorry, let me back up. Remember when you were  
22           dealing with Kim Campbell and how John Howard, Kim  
23           Campbell, the Conservative Minister, and how John  
24           Howard, the Liberal MP, was part of your efforts  
11:54 25           to put pressure on her?



1 A Yes.

2 Q And is it correct to say that in the Federal  
3 Justice campaign, if I can call it that, that  
4 Opposition members, and indeed even some  
11:55 5 Conservative members, may have been involved, but  
6 that was one of the --

7 A Many, many of the Conservative members were after  
8 Kim Campbell to open up the case, as well as the  
9 Speaker of the House.

11:55 10 Q But you knew, and is it correct to say that you  
11 knew, in making allegations against the Premier,  
12 that that would cause other critics of the Premier  
13 to come forward and put pressure on him?

14 A Oh, absolutely.

11:55 15 Q And so, here, I think we see Mr. Mitchell's  
16 response, 'will study and decide upon a course of  
17 action', and I'll show you his comments in the  
18 following days, 'Opposition Justice Critic Don  
19 Todd said the government must call a public  
11:55 20 inquiry into the matter, the Premier's credibility  
21 is at stake, this thing will never be put to rest  
22 until there is a review of the whole process.'

23 And so, again, that would have  
24 been one of the desired outcomes is to say  
11:55 25 "lookit" --



1 A Yes.

2 Q -- "Mr. Premier, your credibility is at stake  
3 here, you better cause something to be done"?

4 A Yes.

11:56 5 Q If we can then go 327846. And this is, again,  
6 September 20th, so this is the Sunday edition, I  
7 think, of the *Calgary Herald*, coverup evidence,  
8 and here:

9 "Milgaard's lawyers insist  
11:56 10 prosecutors at his original trial must  
11 have seen the connection between the  
12 Miller murder and the pattern of crimes  
13 committed by Fisher, who was in  
14 Saskatoon at the time.

11:56 15 Joyce Milgaard said the new  
16 evidence appears to prove that.

17 'This new evidence says that  
18 these people had these files together -  
19 there were only two files in there,' she  
11:56 20 said. 'We can only assume a decision  
21 was made to suppress it.

22 'Pure and simply put - a  
23 coverup.' "

24 Would it be fair to say that, after the press  
11:56 25 conference that we listened to, that there would



1           have been further communications between you and  
2           Mr. Wolch and your son David with the media in  
3           the days that followed about this new  
4           information?

11:57 5       A       Yes.

6       Q       And so, after the press conference, there would  
7           have been private interviews with media people --

8       A       Yes.

9       Q       -- you would have been involved in?

11:57 10      A       Yes.

11      Q       And Mr. Milgaard and Mr. Wolch?

12      A       Yes.

13      Q       Okay. If we can then go to 327909. And would you  
14           have followed the media -- you would have been  
11:57 15      tracking the media and following it, I presume?

16      A       Yes, Bob Bruce would have put all these things  
17           together for us.

18      Q       This is *The Globe and Mail* article, and Dave  
19           Roberts I think was the Manitoba bureau chief, and  
11:57 20      he would have been at the press conference; --

21      A       Yes, he was.

22      Q       -- do you recall him being there? And *Milgaard*  
23           *demands independent probe*, this is on Monday,  
24           September 21, 1992, the *Globe* doesn't publish --  
11:57 25      or didn't publish, at the time, a Sunday paper, so



1           this would be their first report, and goes through  
2           the details. If we could go down to the bottom,  
3           please, Mr. Roberts writes:

4                               "A spokesman for Mr. Romanow,  
11:58 5           John Millar, said Saskatchewan officials  
6           believe the file clerk did not work in  
7           the department until 1973. In an  
8           earlier interview with *The Globe and*  
9           *Mail*, the man said he worked in the  
11:58 10          department in 1972."

11          And so it would appear that on the Monday after  
12          the Saturday press conference *The Globe and Mail*  
13          reported that, based on information from the  
14          government, number one that Breckenridge didn't  
11:58 15          work there until 1973, and secondly they talked  
16          to Breckenridge directly who said "well it was  
17          maybe '72". Do you have any knowledge or  
18          information as to -- well, look, start with a  
19          couple of questions. I think at the press  
11:58 20          conference you did not provide Breckenridge's  
21          name to the media; is that correct?

22          A          No, we did not.

23          Q          Did you provide it to Dave Roberts?

24          A          I don't recall providing it to Dave Roberts, but  
11:58 25          if Dave Roberts got it, he could have got it



1 through the lawyers.

2 Q Okay. Do you have any knowledge as to whether  
3 that information was given to him or any other  
4 reporter?

11:58 5 A No, I don't have any direct knowledge of it, but  
6 we sometimes would give information to the *Globe*.

7 Q And it would appear that Mr. Roberts phoned the  
8 government and was told, at least by Monday, that  
9 Mr. Breckenridge didn't work there; would you  
11:59 10 agree with that?

11 A That's what it looks like.

12 Q And would you have read this article at the time  
13 do you think?

14 A More than likely.

11:59 15 Q And so would this have been when you became aware  
16 that Mr. Breckenridge may not have worked there in  
17 1971?

18 A It's quite possible.

19 Q And do you recall being surprised by that or  
11:59 20 concerned, at all, by that at the time?

21 A I don't really recall the article, but if I put  
22 myself back in there in time and was reading this,  
23 I certainly probably would have been upset by it,  
24 yes.

11:59 25 Q Do you recall -- let me just go back to your



1 recollection, not to what you think might have  
2 happened, but I think you told us you were  
3 convinced that Mr. Breckenridge was telling you  
4 the truth?

11:59 5 A Right.

6 Q You go public with this, and you think this is the  
7 information that's gonna get you an inquiry, and  
8 it would appear, within a day or two, that the  
9 media have made a phone call to the government and  
12:00 10 the government has said "this fellow doesn't work  
11 here" or "didn't work there at the time"?

12 A At the time. And I think possibly, it's possible  
13 that when I read this I thought "well he's got it  
14 from someone, he maybe got it from someone else in  
12:00 15 the department, maybe he's passing on a story from  
16 someone else".

17 Q Okay. But he said to you "I worked there in  
18 1971"?

19 A Yeah.

12:00 20 Q "I was present, I observed Mr. Romanow/Mr. Kujawa  
21 in a room with the two files, and this is what I  
22 heard from him and this is what I observed"?

23 A Right.

24 Q And so, if he didn't work there in 1971, then what  
12:00 25 he told you had to be a lie?



1 A It had to be a lie, or it could have been based on  
2 information that he got from someone else, and I  
3 think that's what I thought at the time. I  
4 thought well, if he didn't work in the department  
12:00 5 there how did he get this information, because I  
6 really believed the information that he was  
7 giving.

8 Q Okay. But the information --

9 A Okay.

12:01 10 Q -- was that he personally observed it and heard  
11 it?

12 A Yeah, but the information that he was giving was  
13 that there were meetings held by these men, all  
14 right, and that these men held these meetings and  
12:01 15 that these files were there. Well maybe if he  
16 didn't have -- maybe he put himself in the picture  
17 to be important, it may be that he didn't -- he  
18 wasn't there but he'd heard it, because he  
19 actually worked in the department, and that may  
12:01 20 have been afterwards when we got this information.  
21 It would be the only sort of rational explanation  
22 for it, because I believed the information, Mr.  
23 Hodson.

24 Q Uh-huh. And I'm trying to understand, though,  
12:01 25 when you believed the information, that when you





1           learned -- and I'm still not clear when you  
2           learned that Mr. Breckenridge didn't work there  
3           when he said he did, and does this newspaper  
4           article assist you at all in refreshing your  
12:01 5           memory on that?

6           A       Well, this re -- obviously, when this came out I  
7           would be looking for some rationale, but in my  
8           mind I would still be believing that the meetings  
9           took place.

12:02 10          Q       Did you ever go back to Mr. Breckenridge and say  
11           "lookit, I read in the paper you didn't work there  
12           at the time, how come you told me you did"?

13          A       No, I have no recollection of going back to  
14           Mr. Breckenridge --

12:02 15          Q       Okay.

16          A       -- whatsoever.

17          Q       Did this information, in any way, deter you from  
18           the position you advocated at the September 19th  
19           press conference, that there was a deliberate  
12:02 20           coverup?

21          A       No, because I've always believed there was a  
22           deliberate coverup. I believe it today, Mr.  
23           Hodson.

24          Q       So the fact that Mr. Breckenridge's information  
12:02 25           may not have been credible, may not have been



1 credible, would not have changed your view on what  
2 you put forward at the press conference?

3 A That's right.

4 Q If we can go to 334870. And this is a letter from  
12:03 5 Mr. MacFarlane to Mr. Wolch on the Monday,  
6 September 1, asking for the name of the  
7 individual, and actually if we can -- were you  
8 aware that Mr. Wolch was cor -- I presume you  
9 were -- corresponding with the Federal Government  
12:03 10 about the Breckenridge statement, I mean you  
11 wanted the Federal Government to check out  
12 Breckenridge; didn't you?

13 A Yes, we did.

14 Q If we can go to 229696. And this is a *Leader-Post*  
12:04 15 article of September 22, 1992, so this is on the  
16 Tuesday, and here is where Mr. Mitchell calls your  
17 allegations slander and says:

18 "I think this is scandalous  
19 and (Joyce Milgaard) better be prepared  
12:04 20 to back that up, I think, with better  
21 evidence than she has to this point,'  
22 Mitchell said, calling the allegation of  
23 a cover-up slanderous.

24 When asked whether he harbours  
12:04 25 doubts the unnamed file clerk even



1 exists, Mitchell responded that he does.

2 Until he is provided with the  
3 person's name, Mitchell said, there's  
4 nothing more he can do."

12:04 5 And I think at this point the Government of  
6 Saskatchewan had been provided, or there had been  
7 inquiries made by Sergeant Pearson and others  
8 that had verified the fact that he didn't work  
9 there at the time.

10 A Right.

11 Q Did you become aware of this type of response from  
12 the government in response to your allegations?

13 A Yes. Can you go down a little farther, I can't  
14 quite see what he says?

12:05 15 Q Yeah. He says until:

16 "He said he anticipates the  
17 controversy will continue until someone  
18 pays Milgaard compensation for the 23  
19 years he spent in prison. 'I think  
12:05 20 until that, we'll see efforts to keep  
21 this thing cranked up.'"

22 A Okay.

23 Q And would that be an accurate observation on his  
24 part?

12:05 25 A Definitely. I wasn't going to go away.



1 Q But his observation is until, until someone pays  
2 Milgaard compensation:

3 "... we'll see efforts to keep this  
4 thing cranked up.'"

12:05 5 Would that have been a fair observation on his  
6 part, or a correct one?

7 A No, because it was never about the compensation,  
8 as much as it was that an injustice was done.

9 Q The clearing of his name?

12:05 10 A That's right.

11 Q And I think you told me earlier -- and correct me  
12 if I'm wrong -- that as part of the clearing of  
13 his name, though, that compensation was also an  
14 important part of that?

12:06 15 A It was an important part of it, but I think that  
16 it was the injustice of it all, that I felt I was  
17 working for justice.

18 Q I see it's 12:00 (sic), Mr. Commissioner.

19 Just, if I may, at 1:30 we'll  
12:06 20 deal with the constitutional arguments and we'll  
21 just have Mrs. Milgaard's evidence in abeyance for  
22 20 minutes or so.

23 (Adjourned at 12:07 p.m.)

24 (Reconvened at 1:34 p.m.)

25 **(Submissions on constitutional limitations)**



1 MR. HODSON: Good afternoon, Mr.  
2 Commissioner. I thought I would just introduce  
3 this issue and give a bit of background. We will  
4 now deal with the determination of constitutional  
01:35 5 limitations and I will not be making formal  
6 submissions on the issue, but rather will set out  
7 a bit of background and history on this, identify  
8 what the issues are and introduce the parties who  
9 will be making submissions.

01:36 10 This Commission of Inquiry is a  
11 provincial Commission of Inquiry created by the  
12 Government of Saskatchewan and therefore its  
13 constitutional reach is limited in some respects  
14 because it's a provincial inquiry. As you know,  
01:36 15 we have heard evidence that David Milgaard's  
16 application went, or two applications went to the  
17 Federal Justice Minister and that the Justice  
18 Department and justice ministers were involved to  
19 a significant degree in dealing with his  
01:36 20 applications and so the question, or the  
21 constitutional question is the extent, is to  
22 determine the extent to which this Commission of  
23 Inquiry can inquire into matters involving the  
24 activities of the Federal Justice Minister and  
01:36 25 the Federal Department of Justice and this issue



1 was raised back in December of 2004 before --  
2 actually, in June of 2004 before we started  
3 hearings. The Commission published a position  
4 paper to the parties indicating here's how we  
01:37 5 initially interrupt our Terms of Reference,  
6 here's where we think we are entitled to and must  
7 go.

8 We received submissions of the  
9 parties, including from the federal government  
01:37 10 and provincial government. In that paper we  
11 identified this constitutional, potential  
12 constitutional limitation saying that there may  
13 be a line out there that we cannot cross, there  
14 may be some matters involving the Federal Justice  
01:37 15 Department, the Federal Justice Minister that are  
16 outside the constitutional bounds of this  
17 Inquiry.

18 We received feedback from both  
19 the provincial and federal government who in  
01:37 20 essence agreed that yes, we're entitled to get  
21 into some aspects of it, there is a line and it's  
22 best to address where the line is drawn at a  
23 later date. That later date is now.

24 The second issue that I should  
01:37 25 point out is the interpretation of the Terms of



1 Reference and we have put out on May 18th, 2006,  
2 I sent out a document to all parties with some  
3 background information, and if we could actually  
4 maybe call that up, I think it is the -- yes,  
01:38 5 here's the document, and there are a bit of  
6 background information here, but on the Terms of  
7 Reference, I just will point out a couple of  
8 things.

9 Basically I think what we as a  
01:38 10 Commission have concluded, or how we have  
11 interpreted our Terms of Reference is that but  
12 for any constitutional limitations and but for  
13 solicitor/client privilege, which I'll deal with  
14 in a moment, that most if not all of the  
01:38 15 activities of Federal Justice officials and the  
16 minister fall within the Terms of Reference which  
17 are our guide to what we do, and again this was  
18 sent out to the parties, and then on the next  
19 page there's just a couple of paragraphs that I  
01:38 20 should point out and I will read them because I  
21 think they spell out the most significant part of  
22 where the Section 690 proceedings are relevant.

23 And at paragraph 10:

24 "One of the functions the Federal

01:39 25 Justice Officials and the Minister in



1 responding to the s.690 applications was  
2 to gather and assess information  
3 relevant to the applications. To the  
4 extent that the information gathered and  
01:39 5 assessed by Federal Justice Officials  
6 was information relevant to the  
7 re-opening of the investigation and was  
8 received by police and Saskatchewan  
9 Justice, the information (source and  
01:39 10 reliability) is relevant to the  
11 Commission's Terms of Reference."

12 Paragraph 11:

13 "The investigation of and responses to  
14 the s.690 applications by the Minister  
01:39 15 and the decision of the Supreme Court of  
16 Canada in the Reference case were, to  
17 some extent, relied upon by the police  
18 and Saskatchewan justice in their  
19 decision not to re-open the  
01:39 20 investigation. The Minister's  
21 investigation of and response to the two  
22 applications and the Supreme Court  
23 Reference case are therefore relevant to  
24 this aspect of the Terms of Reference."

01:39 25 And so that is where I think the most significant





1 relevance is with respect to what Federal Justice  
2 did, and lastly, there's mention made as well  
3 that this Commission is to make recommendations  
4 regarding the administration of criminal justice  
01:40 5 in the Province of Saskatchewan and certainly  
6 there are matters relating to the setting aside  
7 of a wrongful conviction in this province that  
8 may be touched on by some of the evidence of  
9 these justice officials.

01:40 10 So the constitutional question  
11 is essentially this, to what extent should our  
12 Terms of Reference be interpreted to have limits  
13 to the constitutional scope of where we can go.

14 The reason we're raising it  
01:40 15 today is that we're scheduled to have Eugene  
16 Williams testify later this week or next week and  
17 so I think the parties are looking for some  
18 guidelines or information about where this line  
19 ought to be drawn.

01:40 20 There's one other document that  
21 I should bring up, that is an outline, 337974,  
22 and I won't go through this, but essentially this  
23 is a document that I prepared that set out all  
24 the various subject areas that could be canvassed  
01:41 25 with Federal Justice officials and it was



1 provided to assist the parties in making their  
2 submissions and in particular for the Federal  
3 Justice lawyers to say what areas here do you say  
4 are outside the constitutional bounds.

01:41 5 The last point I wish to bring  
6 up is the issue of solicitor/client privilege.  
7 The Federal Justice Minister has asserted  
8 solicitor/client privilege with respect to  
9 various documents and communications between  
01:41 10 justice lawyers and the Federal Minister.

11 They've provided that position to the Commission  
12 in a letter dated April 14th of this year. That  
13 issue at their request will be put aside until  
14 after the constitutional issue is decided and so  
01:41 15 once you rule on the constitutional limits, we  
16 will then go to the next step and say to what  
17 extent does privilege preclude us from getting  
18 into certain areas of advice.

19 I think the parties that I  
01:42 20 canvassed, I advised all parties that they were  
21 entitled to make oral and written submissions.  
22 I'm advised that Mr. Frayer, who is here on  
23 behalf of Federal Justice, has filed a written  
24 application last week, he's filed a rebuttal as  
01:42 25 well to the provincial position this afternoon.



1 He will speak first. Next, Graeme Mitchell, who  
2 I can introduce now, from the Department of  
3 Justice Saskatchewan, will be here to address the  
4 submissions on behalf of the Government of  
01:42 5 Saskatchewan, and then I believe Mr. Wolch may  
6 have some submissions on behalf of David Milgaard  
7 with respect to these issues. No other party has  
8 expressed a desire to be heard on that matter.

9 So with that, I will call upon  
01:42 10 Mr. Frayer.

11 MR. FRAYER: Thank you, Mr. Commissioner.  
12 Yes, Mr. Hodson has outlined in fairly succinct  
13 form the issue before you this afternoon. I  
14 might say at the outset that I would observe that  
01:43 15 the motion is not intended in any way to impede  
16 the work of this Inquiry.

17 It says, Mr. Hodson has  
18 outlined a request to have the constitutional  
19 limitations of this provincial inquiry looking  
01:43 20 into the actions of federal government officials  
21 defined before any Federal Justice witnesses are  
22 called, and as you heard from Mr. Hodson, Mr.  
23 Williams is likely to start his evidence either  
24 later this week or early next week and to that  
01:43 25 end, to show sort of the continuing spirit of



1 co-operation with respect to the Inquiry, Mr.  
2 Hodson and I have spent some considerable time in  
3 interviewing and preparing Mr. Williams, there's  
4 still a fair amount of work to be done as you can  
01:43 5 appreciate, but we have gone through some  
6 interviews of him and we expect that he will be  
7 ready to proceed, as Mr. Hodson has indicated,  
8 either later this week or at the commencement of  
9 next week's activities.

01:44 10 As you are well aware too,  
11 constitutional limitations are not subject to  
12 waiver or negotiation. Now, as I've said to  
13 date, the Minister of Justice of Canada has  
14 co-operated fully with the Inquiry since standing  
01:44 15 was granted back in early March, 2005. We've  
16 provided a substantial number of documents, we've  
17 fully participated in the Inquiry since standing  
18 was granted and as has been noted, we've provided  
19 actually two witnesses who we expect will be  
01:44 20 called during the course of the Inquiry, the  
21 first of those is Mr. Williams, the second of  
22 those is Mr. Fainstein, who will likely be called  
23 at some later stage.

24 By way of background, it's  
01:44 25 clear that you, Mr. Commissioner, are very much



1           aware of the constitutional limitations that  
2           obtain in situations like this and I hearken back  
3           to some comments you made very early on in these  
4           proceedings, back on April the 20th of 2004, and  
01:45 5           I quote from what you said:

6                   "The reach of our Commission is  
7                   constitutionally limited to matters  
8                   within the jurisdiction of the  
9                   legislature. We cannot infringe on  
01:45 10                  federal power or the criminal law or  
11                  procedure, we cannot investigate the  
12                  internal workings of a federal  
13                  institution."

14           I think that's a recognition of what the Supreme  
01:45 15           Court of Canada said in the *Keable* decision which  
16           is the decision upon which the Minister of  
17           Justice Canada primarily relies to say where the  
18           line should be drawn with respect to a provincial  
19           inquiry looking into the work of a federal  
01:45 20           department or institution.

21                   And once again, you recognized  
22           this particular limitation in an observation you  
23           made back on November 29th of 2005 where we were  
24           dealing then with a solicitor/client privilege  
01:46 25           issue and you said:



1 "The federal government of course is in  
2 a special position here constitutional."

3 So I think with respect, that there is a  
4 recognition that there are certain constitutional  
01:46 5 limitations that have to be abided by when it  
6 comes to looking at the operation of a federal  
7 institution.

8 Now, insofar as the position of  
9 the Minister of Justice is concerned, on May the  
01:46 10 23rd we filed with the Commission through Mr.  
11 Hodson a four page document which is essentially  
12 the brief upon which I'm relying this afternoon  
13 and would ask you, Mr. Commissioner, to consider  
14 that as essentially setting out the position of  
01:46 15 the Minister of Justice Canada.

16 If I might just make brief  
17 reference to that particular document and sort of  
18 highlight a couple of areas of it, and reading  
19 from the first page, although I note the pages  
01:47 20 aren't numbered:

21 "At present, the two proposed Federal  
22 witnesses ..."

23 Are those that I've mentioned. It goes on near  
24 the end:

01:47 25 "To the extent that the facts gathered



1 by these individuals and their testimony  
2 will assist the Commission with it's  
3 work, the Attorney General does not  
4 object to their being called, within the  
01:47 5 appropriate constitutional boundaries."

6 It goes on:

7 "As Commission counsel has already  
8 indicated, any outstanding issues with  
9 privilege will be dealt with after  
01:47 10 constitutional matters have been  
11 decided."

12 And I think that's, at least insofar as the  
13 Minister of Justice is concerned and Commission  
14 Counsel, and he's already given you that position  
01:47 15 this afternoon, that the understanding here today  
16 is that the constitutional limitation is the only  
17 part of this motion that's before the Inquiry.

18 Now, with respect to the  
19 constitutional limits of a provincial Commission  
01:48 20 of Inquiry, on page 2 there's a quote from Keable  
21 which is the case that essentially is relied upon  
22 by the Minister of Justice, and it says:

23 "A Provincial commission of inquiry can  
24 not inquire into the policies,  
01:48 25 procedures, rules, administration or



1 management of a Federal institution or  
2 entity."

3 Which is a fairly comprehensive prohibition  
4 against a provincial Commission of Inquiry  
01:48 5 inquiring into those areas. What I might say the  
6 judgment lacks is any reference to any definition  
7 of any of the meanings of those words, but I  
8 suppose at some stage or other should the issue  
9 arise, I'll be asking, Mr. Commissioner, for your  
01:48 10 ruling as to whether it comes under one of those  
11 particular headings as set out in *Keable*.

12 COMMISSIONER MacCALLUM: Yes. I think, Mr.  
13 Frayer, that you can't expect too much from me in  
14 terms of guidelines which are very specific,  
01:48 15 because in large measure they will be fact driven  
16 by what we hear from a witness and then it will  
17 be up to me to decide whether what he's saying is  
18 a proscribed area as being under -- as being  
19 administration or rule or procedure or whatever,  
01:49 20 so I'll do my best to give some guidelines, but I  
21 can't promise that they will answer all the  
22 questions at the time.

23 MR. FRAYER: I'm sure you will. It doesn't  
24 assist in terms of, as I say, defining any of  
01:49 25 those areas. I suppose you can look at the plain





1 meaning of some of those words and say that the  
2 particular evidence attempted to be adduced is  
3 evidence that may fall under one of those  
4 headings, so --

01:49 5 COMMISSIONER MacCALLUM: Yes.

6 MR. FRAYER: And we have set out in fair  
7 detail in response to the document that was  
8 prepared by Commission Counsel and provided to  
9 all the parties the outline of areas to be  
01:49 10 covered in examination of Federal Justice  
11 witnesses, and I'm not going to go through all of  
12 those with you this afternoon, you have our  
13 position as set out there with respect to those  
14 witnesses, and of course we have the conclusion  
01:50 15 which is essentially here, that the minister  
16 respectfully requests a ruling on the general  
17 scope of the constitutional boundaries of this  
18 Commission of Inquiry along with a ruling on the  
19 specific areas as identified in part 2 of the  
01:50 20 submission to facilitate the minister's  
21 co-operation at the Inquiry. These matters  
22 should be dealt with prior to any federal  
23 witnesses giving evidence, and so on, so that's  
24 why this particular motion is being made this  
01:50 25 afternoon shortly in advance of Mr. Williams'



1 appearance here later this week or early next  
2 week.

3 Now, with respect to the  
4 position taken by the Government of Saskatchewan,  
01:50 5 I was kindly provided with a copy of their  
6 submission this morning and there was an  
7 opportunity to review it and to get some  
8 assistance with respect to its contents and we  
9 have prepared a response on behalf of the Federal  
01:50 10 Minister of Justice to the constitutional  
11 submissions of the Government of Saskatchewan  
12 which is a document that, in fairness, I just  
13 gave Mr. Mitchell just before proceeding this  
14 afternoon for his review and I'm not certain  
01:51 15 whether he's had a chance to digest it, but it  
16 has some comment with respect to some of the  
17 issues raised in that brief that he's going to  
18 make submissions on shortly.

19 So the position is as set out  
01:51 20 in that four page document, Mr. Commissioner, and  
21 unless you have any further questions, that's my  
22 submission and brief.

23 COMMISSIONER MacCALLUM: Thank you very  
24 much. I just have one, is there any agreement on  
01:51 25 the proper pronunciation of K-E-A-B-L-E?



1 MR. FRAYER: Well, assuming it comes out of  
2 Quebec, I call it Keable.

3 COMMISSIONER MacCALLUM: That's what I've  
4 always heard, but I've heard people say Keable  
01:51 5 and I thought maybe it would be uniquely  
6 Saskatchewan.

7 MR. FRAYER: It may be, and it even found  
8 its way into a document this morning.

9 COMMISSIONER MacCALLUM: Okay. Keable is  
01:51 10 your version?

11 MR. FRAYER: That's my version.

12 COMMISSIONER MacCALLUM: Okay.

13 MR. FRAYER: Thank you.

14 MR. MITCHELL: Thank you, Mr. Commissioner.  
01:52 15 On behalf of the Government of Saskatchewan, my  
16 colleague filed a written submission, a draft  
17 written submission with, I understand, with you  
18 and with Mr. Hodson and other parties and I  
19 understand that an executed copy of that document  
01:52 20 has been filed and we are relying simply on that.  
21 I do not propose, Mr. Commissioner, to go through  
22 it with you today. I believe the document itself  
23 speaks for itself and sets out the position of  
24 the government with respect to the Federal  
01:52 25 Department of Justice's objections as clearly as



1 we can. I would be happy, of course, to answer  
2 any questions that you may have,  
3 Mr. Commissioner, arising from that.

4 I just wanted to make a couple  
01:53 5 of comments with respect to the reply that has  
6 been, or the response to our document that has  
7 been filed on behalf of the Federal Department of  
8 Justice, Mr. Frayer was kind enough to give me a  
9 copy just before we resumed this afternoon, and I  
01:53 10 note really we're not all that far apart on  
11 certain aspects of this claim. Certainly he does  
12 agree with me that solicitor/client privilege  
13 issues and the framing of those issues as  
14 privilege issues are really of no particular help  
01:53 15 to you as a Commissioner for assessing the  
16 constitutional parameters of a provincial  
17 Commission of Inquiry.

18 In respect to their response to  
19 paragraph 10 of the government brief, I'm quoting  
01:53 20 here, the federal department suggests in response  
21 to paragraph 10, and I quote:

22 "The Government of Saskatchewan is  
23 suggesting that the only limits upon  
24 this Inquiry are the claims of solicitor  
01:54 25 client privilege."



1 With respect, we're not being that expansive. We  
2 do accept that there are limits upon a provincial  
3 Commission of Inquiry, what they can do in  
4 respect of the internal operations, management,  
01:54 5 administration of a federal entity such as the  
6 Federal Department of Justice. In our respectful  
7 submission, in this particular case, in this  
8 particular inquiry that is before you, that you  
9 do have a broad scope to inquire into what  
01:54 10 happened specifically with respect to the  
11 applications brought by Mr. Milgaard under  
12 Section 690 and it gives you a fair range of  
13 opportunity in our submission to inquire into  
14 what transpired.

01:55 15 Where the Government of  
16 Saskatchewan would draw the line and agree with  
17 the Government of Canada is that you cannot, as a  
18 provincial Commission of Inquiry, then embark  
19 upon what we have described in the brief as a  
01:55 20 general systemic review of that process either at  
21 the time Mr. Milgaard filed his applications with  
22 the Minister of Justice or at the present time  
23 how those applications are dealt with by the  
24 Federal Department of Justice, but with respect  
01:55 25 to how the application process worked out in this



1 particular matter, in our respectful submission  
2 you do have a broad scope and you do have the  
3 opportunity, subject of course to valid claims of  
4 solicitor/client privilege, and I suspect there  
01:55 5 will be quite a few of those, you will have an  
6 opportunity to investigate, as a matter of  
7 context, background and fuller appreciation of  
8 what transpired.

9 As we've said in our  
01:56 10 submission, it is the hope of the government that  
11 in setting up this Inquiry and receiving the  
12 recommendations of you as Commissioner that we  
13 will have a much better understanding of what  
14 went wrong with the administration of justice in  
01:56 15 this particular matter and we believe it is  
16 important for you to have the opportunity to  
17 investigate how the Section 690 applications  
18 proceeded and the fall-out from those occurred.

19 Subject to any questions,  
01:56 20 Mr. Commissioner, that you may have, those are  
21 the submissions on behalf of the government.

22 COMMISSIONER MacCALLUM: Mr. Mitchell, on  
23 page 2, starting on page 2 of your written  
24 submission, you say:

01:56 25 "Saskatchewan wants the Commissioner to



1 inquire into, and make recommendations  
2 about, all aspects of the administration  
3 of criminal justice in Saskatchewan  
4 which may have contributed to the  
01:57 5 wrongful conviction of David Milgaard.  
6 This would include actions taken by the  
7 Department of Justice (Canada) that  
8 might have affected decisions made by  
9 police, prosecutors and other justice  
01:57 10 officials in Saskatchewan about this  
11 matter."

12 Now, I find that, with respect, not only helpful,  
13 but straightforward, except that, you know, to  
14 boil it down a little further, what sort of  
01:57 15 actions, would actions include policy decisions,  
16 for example? For example, witness X did such and  
17 such, that would be relevant, I would determine  
18 it would be relevant, and that it might have  
19 affected decisions taken by Saskatchewan police  
01:57 20 or justice officials, but would the action, would  
21 the reason for the action taken be an admissible  
22 line of inquiry which is getting into a bit of a  
23 policy issue?

24 MR. MITCHELL: And this is where the line  
01:57 25 gets a bit blurred and I readily concede that,



1 Mr. Commissioner. It is our position that you do  
2 have the authority to inquire about, for example,  
3 and as a hypothetical, if witness X was saying we  
4 followed this process because it was in keeping  
01:58 5 with our policy with respect to this particular  
6 aspect of a Section 690 application, it would be  
7 our position that that's a legitimate area of  
8 inquiry. I think where the line, when you bump  
9 up against what we would say is the  
01:58 10 constitutional line between a valid area of  
11 inquiry for you and an ultra vires area of  
12 inquiry, would be then if you were then to try  
13 and inquire but why is this policy in place, is  
14 this the best policy, how might this policy be  
01:58 15 better.

16 COMMISSIONER MacCALLUM: Yes.

17 MR. MITCHELL: I think that, in our  
18 respectful submission, that is where you hit the  
19 line.

01:58 20 COMMISSIONER MacCALLUM: Yes. You would  
21 also get into a doubtful area when it comes to  
22 advice given to witness X for doing such and such  
23 a thing and if he said, "well, I did it because I  
24 was advised," "well, what were you advised," he  
01:59 25 would say "sorry, I can't tell you that because





1           that's a matter that the administration is  
2           proscribed by Keable," but really that's not an  
3           answer, I mean, it almost begs the question "my  
4           action is justified because I am advised that it  
01:59 5           was justified," and it's very unhelpful at the  
6           very least. Whether or not it's constitutional  
7           or not I don't know.

8           MR. MITCHELL: It would be our position  
9           that as Commissioner you should try and view this  
01:59 10          as broadly as you can.

11          COMMISSIONER MacCALLUM: Yes.

12          MR. MITCHELL: Understanding, of course,  
13          that there is a certain area that you can't  
14          trespass into. In our respectful submission that  
01:59 15          is a systemic review.

16          COMMISSIONER MacCALLUM: Yes, and secondary  
17          where it's likely to come into play I think is in  
18          the area of recommendations.

19          MR. MITCHELL: Yeah.

01:59 20          COMMISSIONER MacCALLUM: And at that point  
21          if I try to make recommendations which invade  
22          federal jurisdiction which trench upon federal  
23          jurisdiction, I'm sure to receive complaints  
24          about it, and I would like to know in advance  
02:00 25          what the limitations are, so those things are not



1 very easy to verbalize at this moment I must say.

2 MR. MITCHELL: Yeah, I agree with you, it's  
3 difficult to deal with this as hypotheticals.

4 COMMISSIONER MacCALLUM: Yes.

02:00 5 MR. MITCHELL: And I certainly appreciate,  
6 and the government certainly does appreciate the  
7 difficulties you would have as a Commissioner  
8 trying to craft your report and particularly your  
9 recommendations --

02:00 10 COMMISSIONER MacCALLUM: Uh-huh.

11 MR. MITCHELL: -- on these particular  
12 aspects of this matter, but we would urge you to  
13 use as broad a scope as you can, as you feel you  
14 are entitled to constitutionally, and our view is  
02:00 15 that you do have a fair latitude, but not an  
16 all-embracing latitude to deal with that.

17 COMMISSIONER MacCALLUM: Well, I was  
18 thinking, as a matter of fact, that if I am to  
19 err at this stage of the proceedings, I should do  
02:01 20 so on the side of inclusion which is in the  
21 spirit of a public inquiry, but leave it open to  
22 counsel at the end of the inquiry when it comes  
23 to the recommendation stage to argue that while  
24 you heard that and that was the evidence, but  
02:01 25 nevertheless it shouldn't -- it now appears that



1           it's unconstitutional, it shouldn't be a part of  
2           your recommendations.

3           MR. MITCHELL: And with respect,  
4           Mr. Commissioner, that seems like a very prudent  
02:01 5           way to approach because at least at that point  
6           there will be a factual basis upon which you can  
7           then apply these standards. Even now at this  
8           stage of the inquiry we're still a little bit in  
9           a hypothetical area, not so much of course as we  
02:01 10          were at the outset, but certainly right now we  
11          are still dealing somewhat with hypotheticals.

12          COMMISSIONER MacCALLUM: Thank you,  
13          Mr. Mitchell.

14          MR. MITCHELL: Thank you, Mr. Commissioner.

02:01 15          COMMISSIONER MacCALLUM: And Mr. Wolch?

16          MR. WOLCH: Mr. Commissioner, having heard  
17          My Friend from the Province of Saskatchewan, I  
18          can indicate that we agree with his position and  
19          don't feel necessary to repeat it. What he said  
02:02 20          and the comments that the Commissioner said in  
21          reply are such that I don't feel I have to go  
22          through a submission.

23                   I might, though, just make one  
24          observation and that is that Commission Counsel,  
02:02 25          who is exceptionally familiar with where we're



1 heading and what's required, has prepared an  
2 outline and obviously a lot of care and time went  
3 into that and Commission Counsel obviously is of  
4 the view that it's relevant to this Inquiry, that  
02:02 5 it's important to this Inquiry, and we accept  
6 that, so any limitation on relevant evidence we  
7 discourage and we're encouraged by your words  
8 about inclusion, so accordingly, we stress that  
9 it is relevant and we also stress that we are  
02:03 10 interested in one case, the *Milgaard* case and  
11 what happened there, our interest does not go  
12 into the department's handling of other cases and  
13 we don't really care, we care what happened here,  
14 and that's what we want to find out, and so we  
02:03 15 simply urge the Commission to accept the  
16 Saskatchewan position which we adopt.

17 Thank you.

18 COMMISSIONER MacCALLUM: Thanks, Mr. Wolch.

19 MR. HODSON: I think those are all the  
02:03 20 submissions, Mr. Commissioner, and might I  
21 suggest we just take a short adjournment to allow  
22 Mrs. Milgaard to return to the stand.

23 A I'm here.

24 MR. HODSON: Oh, sorry, okay, no short  
02:04 25 adjournment required.



JOYCE IOLA MILGAARD, continued:

BY MR. HODSON:

Q If I could call up 162867, please. When we  
adjourned at noon, Mrs. Milgaard, we were dealing  
with the news media coverage after the  
Breckenridge information that came about, and we  
had gone through a couple of newspaper articles of  
September 21, and so here's a letter of September  
22, 1992 from the -- I think this is from  
Mr. Wolch, yeah -- from Mr. Wolch to  
Mr. MacFarlane, and so this would be three days  
after the press conference and right around the  
time of the press coverage, and it looks as though  
Mr. Wolch would have had discussions with Mr.  
MacFarlane about the requested inquiry; is that  
fair? Maybe just call this up and take a look at  
--

A If we can take a look at it, I haven't seen it.

Q Sure. About:

"... had a chance to discuss the matter  
with Mrs. Milgaard. She instructs me  
that her position is that the Minister  
of Justice should order an independent  
inquiry.

Mrs. Milgaard's concern, which



1 I share, is that the inquiry should be  
2 conducted in the usual manner, in a  
3 public forum, and without any  
4 preconceived notions or disposition. By  
02:06 5 this we mean that individuals who have,  
6 for example, previously recommended that  
7 the Milgaard case not be reopened should  
8 not be asked to participate in any  
9 decision-making process."

02:06 10 And so is it fair to say, at this point, your  
11 position was 'I want Federal Justice to order an  
12 inquiry but I don't want anybody who was involved  
13 in the last two applications being involved in  
14 it'?

02:06 15 A Correct.

16 Q And then he says:

17 "I realize that the above  
18 creates difficulties ..."

19 He says:

02:06 20 "We know there has been a coverup, and  
21 the question of compensation for David  
22 Milgaard has never been properly  
23 addressed. The reasons advanced by  
24 Mr. Mitchell in the enclosed  
02:07 25 correspondence is simply not accurate.



1 Frankly, I feel this potential witness  
2 is far less important on the issue of a  
3 coverup than Mr. Kujawa's public  
4 utterances (sample videotape enclosed)."

02:07 5 And at this point there was at least one  
6 newspaper article that said Mr. Breckenridge  
7 didn't work at the Government of Saskatchewan at  
8 the time, in '71; do you know if this would have  
9 been -- do you have any recollection or are you  
02:07 10 able to give us any guidance as to whether at  
11 this time, September 22, that would have been  
12 known by you or by Mr. Wolch or by Mr. Rodin or  
13 others?

14 A I have no idea of that at this time.

02:07 15 Q And here it says:

16 "My instructions regarding  
17 the name and address of the informant  
18 are to ascertain the manner in which the  
19 entire matter will be investigated. We  
02:07 20 feel he should be part of a broader  
21 picture. We would like an opportunity  
22 to provide the investigator with a great  
23 deal of additional information which, in  
24 part, may have been forwarded to your  
02:07 25 Minister as copies of material forwarded



1 to Saskatchewan on April 20, 1992."

2 And was it the case, am I correct in reading  
3 this, that "lookit, the Breckenridge information  
4 is just a small part of it, that gets us in the  
02:08 5 door, but once in the door we want to deal with a  
6 whole bunch of other things"?

7 A Correct.

8 Q And is there a sense of even downplaying  
9 Mr. Breckenridge at this point, or was that your  
02:08 10 view at the time, or --

11 A I don't think so.

12 Q If we could now go to 054611. I just want to go  
13 through, this is a report and we've read this into  
14 the record before, this is an interview that the  
02:08 15 RCMP did with Bob Perry, a private investigator  
16 who was with you on June the 12th, 1992 when you  
17 interviewed Michael Breckenridge; you remember who  
18 Mr. Perry was?

19 A Yes, I do.

02:09 20 Q And if we can go to page 054613. And I appreciate  
21 that you have already told us you do not have  
22 much, or any recollection of the meeting with him,  
23 but I want to read you certain parts of what  
24 Mr. Perry says and ask you whether you are able --  
02:09 25 whether this refreshes your memory about the





1 meeting or whether you are able to agree or  
2 disagree. Now this is the first interview that he  
3 conducted with him, you were not present, and he  
4 says:

02:09 5 "During the course of this interview  
6 Mr. Breckenridge bounced all over the  
7 place, rambling on about things that had  
8 nothing to do with the issue at hand.  
9 Mr. Perry described a somewhat confusing  
02:09 10 interview in which Mr. Breckenridge  
11 could not seem to stay on track and  
12 which sounded alot like the initial  
13 interview I had with him in May of this  
14 year. While the interview did produce  
02:09 15 details concerning the allegations, the  
16 interview finally came to the point that  
17 Mr. Perry asked Breckenridge to go and  
18 sit down, give the matter some more  
19 thought and then put a statement  
02:10 20 together himself.

21 During the May 14th interview  
22 Breckenridge gave a very confusing  
23 employment history that was hard to  
24 follow and suggested overlapping periods  
02:10 25 of employment at different jobs.



1 Breckenridge suggested that he was with  
2 the Justice Dept., in 1970 or 1971."

3 Now was any of that information, do you have any  
4 recollection of Mr. Perry giving you that  
02:10 5 information or that assessment at the time?

6 A None at all.

7 Q When you met with him, I think you met with him on  
8 June 12th before you met with Mr. Breckenridge, is  
9 that right?

02:10 10 A I believe so, yes, from the records.

11 Q And do you have any recollection of what Mr. Perry  
12 may have discussed with you, at all, in  
13 preparation for that meeting?

14 A No, I do not.

02:10 15 Q Would you have asked Mr. Perry about his thoughts  
16 about Mr. Breckenridge and the information; is  
17 that --

18 A I'm sure I would have. And this says on May the  
19 14th?

02:10 20 Q Yeah, this is the very first interview that he  
21 conducted, you were not present at this interview.

22 A Okay.

23 Q I'm coming to that one.

24 A Okay.

02:11 25 Q What I was trying to understand was that here's



1 what Mr. Perry says, "here's my impression", --

2 A Uh-huh.

3 Q -- or "here's my impression" and here's what  
4 Mr. Breckenridge said to him?

02:11 5 A Well I'm sure that, if we had a meeting, that he  
6 would tell me that, but I have no recollection of  
7 it.

8 Q Okay. Fair enough. Go to the next page, please.  
9 And here's where Mr. Perry describes to the RCMP  
02:11 10 the second meeting.

11 "On the 14th of June, 1992, Mr. Perry,  
12 along with Mrs. Milgaard, met with  
13 Mr. Breckenridge again and on this  
14 occasion the time spent with  
02:11 15 Mr. Breckenridge lasted 2 1/2 hours. It  
16 would appear that nothing significant  
17 was learned beyond that which was  
18 obtained in the original interview and  
19 which was contained in Breckenridge's  
02:11 20 statement."

21 Again, are you able to comment on that piece of  
22 information, do you take issue with that?

23 A No, but he doesn't say that he was bouncing all  
24 over the place in this one, and I didn't -- my  
02:12 25 recollection of the man, of Breckenridge, was not



1           that kind of a recollection. I thought we had a  
2           pretty good, steady person, so when I read on the  
3           one hand -- sorry --

4           Q       That's all right.

02:12 5           A       -- that he was bouncing all over the place, that  
6           really doesn't compute with what -- I felt we had  
7           a -- somebody good, solid, that we were going to  
8           present.

9           Q       And I think you told us earlier that he was  
02:12 10          telling you things that, before you even talked to  
11          him, you believed to be true?

12          A       Yes, because he was naming names.

13          Q       And then, here, it's reported that:

14                   "Beyond being instructed to interview,  
02:12 15                  (two meetings in total) obtain a  
16                  statement and get a feeling for what  
17                  Breckenridge had to say, Mr. Perry  
18                  received no additional instructions to  
19                  conduct any further  
02:13 20                  inquiries/investigation. Mr. Perry was  
21                  not asked to interview any further  
22                  potential witnesses, based on the names  
23                  provided by Breckenridge, nor was he  
24                  asked to make any inquiries concerning  
02:13 25                  Breckenridge's period of employment with



1 the A.G.'s Dept. Mr. Perry does not  
2 know whether or not Mrs. Milgaard, or  
3 anyone else acting on her behalf, made  
4 any inquiries to determine the veracity  
02:13 5 of Breckenridge's claim concerning when  
6 he was with the A.G.'s Dept. Mr. Perry  
7 also has no idea whether or not  
8 Mrs. Milgaard, Mr. Asper or Mr. Wolch  
9 were aware of the fact that Breckenridge  
02:13 10 was not in the A.G.'s Dept., at the time  
11 referred to in Mr. Wolch's letter to Kim  
12 Campbell and as stated in the referred  
13 press conference."

14 And, again, do you agree with what is reported  
15 here and attributed to Mr. Perry?

16 A Yes, I would.

17 Q And so, namely, that I think what Mr. Perry is  
18 saying is he was not asked to interview any of the  
19 witnesses or locate any of the witnesses named by  
02:13 20 Mr. Breckenridge in the statement?

21 A That's right.

22 Q And, as well, he was not asked to make any  
23 inquiries concerning Breckenridge's period of  
24 employment with the A.G.'s department; I think you  
02:14 25 agreed with that?



1 A Yes.

2 Q If we could go to 054607, please. And this is the  
3 RCMP report of their interview with  
4 Mr. Breckenridge, and I want to ask you some  
02:14 5 questions to see whether you agree with what his  
6 recollection was, as reported here. It says:

7 "Breckenridge stated",  
8 and this is in 1992:

9 "Breckenridge stated that he told  
02:14 10 Mrs. Milgaard he was with the department  
11 in the early 1970's and that he might  
12 have told he was there in 1972. He  
13 states that he had a copy of his service  
14 with the department when he met with  
02:14 15 Mrs. Milgaard and Mr. Perry, however, he  
16 did not have it with him when they met  
17 and he did not give her the exact dates  
18 of his employment. In stating this he  
19 said that he would not have given  
02:14 20 specific dates unless he had the  
21 document in front of him."

22 And it says:

23 "(This is not consistent with  
24 Mr. Perry's date of this meeting."

02:15 25 Again, let me just pause there. Do you accept



1           what Mr. Breckenridge had to say about what was  
2           discussed between you and he at the June 1992  
3           meeting?

4           A       Well, whatever we discussed at that meeting is  
02:15 5           what I came back with to the lawyers and gave them  
6           that information.

7           Q       So are you saying you, due to your inability to  
8           recall what was discussed, you are not able to say  
9           whether or not this is or isn't factual?

02:15 10          A       That's right.

11          Q       And, again, according to -- it says:

12                   "Breckenridge was questioned about  
13                   whether or not he met with Mrs. Milgaard  
14                   again after the meeting with her and  
02:15 15                  Perry and he stated that he did not. In  
16                   pursuing a possible contact of any kind  
17                   after the meeting with Milgaard & Perry,  
18                   it was very unclear whether or not he  
19                   talked with Mrs. Milgaard or anyone else  
02:16 20                  after the noted date in June.)  
21                   Breckenridge did state that he told  
22                   Mrs. Milgaard that his employment  
23                   history was available through the public  
24                   service."

02:16 25                  Do you recall whether that happened, or are you



1           able to agree or disagree with that?

2       A       I have no recollection of it at this time.

3       Q       And then he goes on to say, Mr. Breckenridge:

4                        "For Mrs. Milgaard to say that they

02:16 5                       verified his period of employment with

6                       the department, he believes that she

7                       would have had to have requested it from

8                       the department."

9       And, again, I think you are saying that, if that

02:16 10           was done, it would have been done through your

11           lawyers?

12       A       Yes, it would, and then we wouldn't have had a

13           press conference.

14       Q       Pardon me?

02:16 15       A       I -- we wouldn't have had a press conference.

16       Q       If?

17       A       If we found out he wasn't employed at the time.

18       Q       Okay. And why not?

19       A       Well if he wasn't, if he hadn't been employed at

02:16 20           the time he was telling us all of these things, I

21           mean it wouldn't be right to bring them out, to

22           bring it up at a press conference, would it?

23       Q       Okay. So what about when you later found out, or

24           people in your group found out that he didn't work

02:17 25           there, would the same apply; that it would not be





1 right to bring forward that information as well?

2 A Well I think they brought forward that  
3 information, if I'm not, if I'm not wrong.

4 Q I'm sorry, "they"?

02:17 5 A Well, the government brought forward that  
6 information to us, well *The Globe and Mail* brought  
7 it forth --

8 Q So --

9 A -- so that it was out in the public.

02:17 10 Q Yeah. So, no, I guess what I thought I heard you  
11 say is that you wouldn't have had the press  
12 conference because it would not be appropriate to  
13 put forward the Breckenridge allegations at a  
14 press conference if you knew he didn't work there;  
02:17 15 right?

16 A That's right.

17 Q And so when you did find out that he didn't work  
18 there -- and we're not clear on when that is, but  
19 if we assume that it was on September 22nd when it  
02:17 20 was in *The Globe and Mail*, around that date -- my  
21 question was, okay, well when you did find out  
22 that he didn't work there, I'm trying to  
23 understand what did that mean to you, did you  
24 still think it was inappropriate to --

02:18 25 A I still felt that he must have got that



1 information from somewhere because it fit so well  
2 with what we had.

3 Q So let me just back up. So when you found out  
4 that he didn't work there your position would be  
02:18 5 that it was still appropriate to put forward his  
6 information?

7 A I think it was appropriate because I believed the  
8 information. However, if I had known in advance  
9 that he didn't work there, I think I would have  
02:18 10 stopped the idea of the press conference right  
11 there, gone back, and checked him out thoroughly,  
12 or had him checked out thoroughly, before we put  
13 that forward. But because I had the meeting with  
14 the man, I felt he was sincere, I felt it fit with  
02:18 15 everything that I had had in my feelings all  
16 along, so I just ran with it, and it was something  
17 that we needed at the time.

18 Q Okay. So it was something that you needed, why,  
19 you needed to get something in the public domain?

02:19 20 A Yes, and we needed to get an inquiry, we needed to  
21 get --

22 Q Okay. So you said "it was something that we ran  
23 with", and you said "I think that, had I known he  
24 didn't work there, I wouldn't have ran with it";  
02:19 25 is that fair?



1 A Yes, I think that's fair, --

2 Q Okay.

3 A -- I think we'd have stopped and checked it.

4 Q So you don't -- I think you're saying "at the time  
02:19 5 we ran with it I didn't know that he didn't work  
6 there"?

7 A Yeah.

8 Q After you started to run you became aware of it;  
9 is that fair?

02:19 10 A Yeah. The *Globe and Mail* had that information out  
11 there, so everybody else knew about it too.

12 Q Did you stop running with it at that time, though,  
13 was my question?

14 A No, because we felt he got his information from  
02:19 15 somewhere.

16 Q Okay.

17 A And possibly from -- we found out, then, that he  
18 had worked in the department later, so naturally I  
19 assumed he'd got it from somebody else.

02:19 20 Q So am I correct that, once you learned that he  
21 didn't work there at the time, that even though he  
22 said he was present and observed Mr.  
23 Kujawa/Mr. Romanow doing certain things, and that  
24 he heard certain things from them, since he didn't  
02:20 25 work there at the time you assumed that, okay,



1 well he must have heard it from someone else and  
2 is trying to take credit for it?

3 A That's right.

4 Q So that he would have, when he started in 1973,  
02:20 5 heard from someone else who told him this, and  
6 that he lied to you and said "well, lookit, even  
7 though I wasn't there at the time, I didn't hear  
8 it, someone told me this happened, I'm going to  
9 tell you that I was there and saw it and heard  
02:20 10 it"?

11 A That's, that's a possibility.

12 Q And so that's what you were thinking, that that  
13 must have been the case?

14 A I -- it was the only logical explanation I could  
02:20 15 --

16 Q Okay.

17 A -- sort of glean for it, because it fit in so  
18 perfectly with my belief of what really happened.

19 Q Okay. But did you ever go back to Michael  
02:20 20 Breckenridge and say --

21 A "Why did you tell me this?"

22 Q Yeah?

23 A No.

24 Q And "is it possible that maybe you are remembering  
02:21 25 this from someone else?"



1 A No.

2 Q Did you ever go to any of the other people that he  
3 named in the statement and find out whether they  
4 may have been the source of the information that  
02:21 5 he relied upon, in other words Mr. Wollbaum,  
6 Patricia Styles, Mr. Herauf?

7 A No, because it was at that point turned over to  
8 the government, and they were going to look into  
9 it.

02:21 10 Q But it --

11 A So I wasn't getting involved in it then.

12 Q No, but as far as what your -- and I think your  
13 words were "I was running with it", and so what I  
14 am trying to understand is once you learned that  
02:21 15 he didn't work there at the time, --

16 A Yes.

17 Q -- I want to try and understand what your thinking  
18 was and what your position was as far as  
19 continuing to make the allegations that you made  
02:21 20 on September 19th?

21 A I don't think there was a continuation of the  
22 allegations, Mr. Hodson. I think we had the press  
23 conference, we turned it over to the government,  
24 and we left it with them to sort out at that  
02:21 25 point.



1 Q And so again, that after you learned about  
2 Mr. Breckenridge's employment in *The Globe and*  
3 *Mail*, are you saying "I don't think I would have  
4 gone out and repeated the allegations" or "I would  
02:22 5 have said them differently"?

6 A I don't know exactly, I -- I can't remember  
7 exactly what happened so I can't tell you, other  
8 than the fact that even though the employment  
9 record *The Globe and Mail* gave indicated that he  
02:22 10 wasn't there, because I felt that he had actually  
11 heard it from somewhere, because, as I said, it  
12 fit with what I knew or what I felt I had known  
13 all along and suspected all along, that I  
14 continued to believe that the information was  
02:22 15 correct, and so that it should be pursued, yes.

16 Q Okay. But let's -- and I guess I'm sorry if I'm  
17 not understanding it. His first statement to Mr.  
18 Wolch was "I remember delivering both cases to  
19 Serge at the same time"?

02:22 20 A So then what if someone else had delivered both of  
21 those to someone else --

22 Q Okay.

23 A -- and told him about it, and told him about the  
24 reaction that had happened that particular day,  
02:23 25 after he'd been in the department? He didn't come



1 forward and tell me that story because he didn't  
2 hear it, I wouldn't believe it, he came forward  
3 with a story to tell me that I would believe and  
4 he would get credit for it.

02:23 5 Q Okay. So your thinking --

6 A I guess that's where I was coming from.

7 Q So your thinking at the time was, okay, he -- even  
8 though he said he delivered both cases to Serge  
9 Kujawa at the same time he really didn't, someone  
02:23 10 else did, and they told Breckenridge this two  
11 years later and he is now telling me that he did  
12 it because; why?

13 A That he wants the credit for it.

14 Q Okay.

02:23 15 A He wants to help.

16 Q So is it fair to say -- and you tell me if I'm  
17 wrong in summarizing your thinking at the time --  
18 that even though you discovered that  
19 Mr. Breckenridge wasn't working with the  
02:23 20 government in 1971 as he stated to you, and  
21 therefore what he said he saw and observed in 1971  
22 could not be true, you believed or assumed that  
23 what he took credit for, that someone else in his  
24 shoes did the same things and simply reported it  
02:24 25 to him two years later, and therefore the



1 substance of what he said was true, it's just that  
2 someone else saw and heard it?

3 A I did.

4 Q And that -- and you believed that to be true at  
02:24 5 the time?

6 A I did.

7 Q If we can just go to the bottom, to here, this  
8 also relates to your discussions with Mr.  
9 Breckenridge. It says:

02:24 10 "In talking to Breckenridge about his  
11 meeting with Mrs. Milgaard he states  
12 that he was shown memo's, letters and  
13 police reports in an attempt to have him  
14 find his initials and others working in  
02:24 15 the department at the time. He stated  
16 that Mrs. Milgaard had a lot of  
17 material. That out of the material that  
18 he was shown he was able to pick out his  
19 initials on two or three of the  
02:24 20 documents. I explained to Breckenridge  
21 that to date I have been unsuccessful in  
22 finding any of his initials on any  
23 documentation that I have reviewed.  
24 Breckenridge subsequently wrote on a  
02:25 25 piece of paper the two ways he feels





1                   that his initials would have appeared on  
2                   what documentation he initialed."

3                   And it -- and do you have a recollection of  
4                   showing Mr. Breckenridge documents at your  
02:25 5                   meeting and trying to get him to identify his  
6                   initials?

7           A       That does, somehow, ring a bell that he had had  
8                   his initials on something of -- of the documents.  
9                   You know how the files were marked with initials  
02:25 10                  by various people, and it seems to me that -- but  
11                  it's very, very vague.

12          Q       Okay. If we can go to 036145. And this is an  
13                   interview January 4, 1994 by the RCMP with you  
14                   relating to the Breckenridge matter. Do you have  
02:25 15                  a recollection of, after your initial meeting with  
16                   the RCMP, of having subsequent meetings or  
17                   discussions with them?

18          A       I know I met with them quite often.

19          Q       And so, here, what the RCMP report:  
02:26 20                                "In a response from Mrs. Joyce Milgaard,  
21                                she states she has been unable to locate  
22                                the documents in question."  
23                   And they had asked you to go through your records  
24                   and find the documents that had Michael  
02:26 25                   Breckenridge's initials on them?



1 A Okay.

2 Q Do you remember doing that?

3 A Yes, I believe I do.

4 Q She says --

02:26 5 A That may be what I am thinking about.

6 Q Yeah. She says:

7 "She recalls the incident and indicates  
8 that she was not really trustful of  
9 Breckenridge at the time. On checking  
02:26 10 Breckenridge's initials against his  
11 signature she found that they matched.  
12 Mrs. Milgaard does not indicate whether  
13 or not the identifying of Breckenridge's  
14 initials changed her feelings about  
02:26 15 him."

16 Again, this is what the RCMP officer wrote, do  
17 you have a recollection of telling them that you  
18 were not really trustful of Breckenridge at the  
19 time?

02:26 20 A I don't remember telling them that, but I think it  
21 was probably one of the reasons that I was doing  
22 these checks, that I wanted to make sure.

23 Q Okay. And what checks are you talking about?

24 A That I was checking the files, and looking for his  
02:27 25 initials, and to make sure that he was there.



1 Q And so, again, this would have been at your June  
2 12th, '92 meeting you would have been checking  
3 your documents to see if his initials were on  
4 there?

02:27 5 A Yes.

6 Q And what would that tell you if they were not on  
7 there?

8 A I guess that I had felt that would just be  
9 additional proof.

02:27 10 Q Okay. Was it a case -- and, again, I'm not sure  
11 if I understand, were you saying "lookit, I didn't  
12 trust him, so when I showed him a bunch of  
13 documents I tried to get him to show me his  
14 initials on the documents because, if they were on  
02:27 15 there, then I might believe him a bit more"?

16 A I think that was probably part of the rationale  
17 but I don't remember.

18 Q Do you have any recollection at the time you met  
19 with him -- and I think the record and your  
02:28 20 evidence is that you only met with him once;  
21 correct?

22 A Yes, I think that's right.

23 Q And do you have a recollection of not being really  
24 trustful of Mr. Breckenridge at any time?

02:28 25 A Well I think I went in wanting to be sure, I mean,



1           that -- because you do get some kind of  
2           off-the-wall people calling you about various  
3           things, and I had in the past, so I really wasn't  
4           very trustful of a lot of people when I first went  
02:28 5           in to meet with them until I could sort of verify  
6           something they were saying, and I think that at  
7           the start I really wasn't trusting anyone. I had  
8           had so many things go down -- up the river or down  
9           the wall, if you want to say it that way, that I  
02:29 10          wanted to be sure, and once I worked with him for  
11          a little while I felt -- I would never have gone  
12          ahead with that press conference unless I felt  
13          that it was true.

14        Q           And is it a case of saying "okay, I was not  
02:29 15                   trustful, I had my concerns, but I ultimately  
16                   satisfied myself that he was telling the truth"?

17        A           That he was telling the truth, yes, I did.

18        Q           After the Breckenridge press conference, did you  
19                   become aware that the Saskatchewan Attorney  
02:29 20                   General announced that the RCMP would be  
21                   investigating allegations of criminal conduct made  
22                   by you and Mr. Wolch against Serge Kujawa, Mr.  
23                   Caldwell, Mr. Romanow, and others?

24        A           Yes.

02:29 25        Q           And I think that that's been called, termed the



1           Flicker investigation we talked a bit about this  
2           this morning, and I think you told -- told us that  
3           that's not really what you had in mind when you  
4           went public with the Breckenridge allegations and  
02:30 5           you sent the letter to the Federal Minister; is  
6           that correct?

7           A       No, it was not.

8           Q       And that would be that, if the RCMP investigated  
9           and found criminal wrongdoing by these people,  
02:30 10           that didn't give you the exoneration for your son  
11           and the compensation; is that correct?

12          A       Well, --

13          Q       Or --

14          A       -- Mr. Hodson, at that point I didn't really  
02:30 15           believe in the RCMP, I didn't believe in anybody  
16           in that area, and I felt that it had to be  
17           something that was scrutinized completely by  
18           someone completely separate.

19          Q       Okay. You were prepared to have the Federal  
02:30 20           Justice Department, who you didn't trust before,  
21           call an inquiry?

22          A       Yes, but I had felt that it would be an  
23           independent inquiry.

24          Q       Was there anybody left that, in the system, that  
02:30 25           you did -- I mean you had the Federal Justice who



1           you said you didn't trust, Saskatchewan Justice  
2           you didn't trust, here's the RCMP, and you are now  
3           saying "I didn't trust them"; who was left?

4           A       There was no one left.

02:31 5           Q       Okay.

6           A       I wasn't trusting anyone. After all the years  
7           that I had gone through knocking on doors and  
8           banging down, and trying to get information, I got  
9           to the point where I didn't trust anybody.

02:31 10          Q       Okay. But you did, your lawyer did write to the  
11          federal Justice Minister, saying --

12          A       Of course, because that was the only option we  
13          had.

14          Q       Okay. And so contrast that with what the  
02:31 15          provincial government did in getting the RCMP to  
16          investigate. The RCMP is a federal police force?

17          A       Yes.

18          Q       And so I'm trying to understand what your  
19          objection or concern was with the RCMP  
02:31 20          investigating the matter, was it who was doing the  
21          investigation, or was it whether or not they could  
22          give you the remedy you wanted?

23          A       A bit of both.

24          Q       A bit of both? So back to my earlier question  
02:31 25          then; was the concern with the RCMP criminal



1 investigation the concern that lookit, this is not  
2 going to give David his exoneration nor is it  
3 going to give David compensation, it's an  
4 investigation of wrongdoing against people?

02:32 5 A That's right.

6 Q Whereas, if it were a federal inquiry, what you  
7 were hoping to get from there would be  
8 compensation, an inquiry into wrongdoing, and some  
9 finality, is that -- and exoneration?

02:32 10 A Exoneration.

11 Q So was it your position at the time then, or your  
12 group's position, were you against the RCMP going  
13 and investigating the matters that you had raised  
14 at the press conference?

02:32 15 A Umm, I can't say I was against it because I wanted  
16 the truth out there, I wanted to know what the  
17 true story was, and I felt that, I think, that  
18 anyone going in there to look at it would find  
19 that the coverup had taken place.

02:33 20 Q And, again, did you have a concern, though, you  
21 made allegations about wrongdoing being committed  
22 by senior people in the Saskatchewan Government;  
23 did you not expect that a police force would go  
24 and investigate, because if there was wrongdoing,  
02:33 25 criminal wrongdoing, that a police force is going



1 to have to investigate and prosecute, like someone  
2 in government is going to have to do some  
3 investigation?

4 A Yeah. I don't think that I, I thought steps  
02:33 5 ahead, the way you were thinking. It's easy in  
6 hindsight to go back and say "what were you  
7 thinking", but at that time I was taking it a step  
8 at a time.

9 Q I see.

02:33 10 A You do something and then you go for it.

11 Q Now I think, after the RCMP were put in place, I  
12 think you spent a couple of days with them, with  
13 Inspector Sawatzky, I think February 25-26, 1993  
14 in Regina?

02:33 15 A I did.

16 Q What --

17 A And he was very good with me.

18 Q If we could call up 331214. And this is the doc.  
19 ID of the transcript of the very first tape that  
02:34 20 has -- that it's got Inspector Sawatzky, Sergeant  
21 Williams, and Constable Jorgenson present; do you  
22 remember meeting with three RCMP officers?

23 A Yes, I do.

24 Q And I think your son Chris was with you for part  
02:34 25 or all of the interviews; is that right?





1 A I believe he was.

2 Q And I think, as well, you had with you volumes of  
3 documents; is that correct?

4 A I believe I did.

02:34 5 Q And you provided to the RCMP your documents and  
6 some of the tapes that you had; is that correct?

7 A Yes.

8 Q And a fair bit of information?

9 A Yes. I tried to give them everything they would  
02:34 10 have need of.

11 Q And is it correct to summarize it this way; the  
12 RCMP said "tell us everything you want us to  
13 investigate", basically?

14 A That's right.

02:35 15 Q And I think the record shows that there are nine  
16 tapes of the conversations, that you met with them  
17 for 6 hours and 40 minutes, the doc. IDs, I'll  
18 just put them on the record for the tapes, are  
19 038020 all the way through to 038028 inclusive, so  
02:35 20 those are the nine tapes, and the transcript is  
21 the doc. ID I just read. I don't propose to go  
22 through much of this other than to say that this  
23 would have been sort of you providing to them all  
24 of your theories, thoughts, conclusions, beliefs  
02:35 25 of what you thought went wrong, who you thought



1 had done wrong, areas that you thought needed to  
2 be investigated; is that fair?

3 A That's fair.

4 Q And I think that this had followed, I think back  
02:35 5 in November of 1992 Mr. Wolch, Robert Bruce and  
6 Greg Rodin also had a five-hour meeting, or  
7 thereabouts, with the same RCMP, or some of the  
8 same RCMP officers, where they, too, gave their  
9 version of events?

02:35 10 A Yes. We were trying to co-operate as best we  
11 could.

12 Q And at the time before, right at the outset, what  
13 was your understanding or expectation of what the  
14 RCMP were doing?

02:35 15 A Well, I believe I was hoping that they would  
16 uncover the cover-up.

17 Q And so the cover-up you are talking about is  
18 authorities, whether it be Crown individuals or  
19 police officers who had connected Larry Fisher to  
02:36 20 the Gail Miller murder back in 1970 or --

21 A And done nothing about it.

22 Q And had done nothing about it?

23 A That's correct.

24 Q And so you thought the RCMP would probe that?

02:36 25 A Yeah.



1 Q And find evidence to substantiate what you thought  
2 had happened?

3 A I did.

4 Q And did you think they were going to investigate  
02:36 5 the Michael Breckenridge allegations as well?

6 A I did.

7 Q And was it your understanding that it was the  
8 Breckenridge allegation that prompted the RCMP  
9 investigation?

02:36 10 A Well, I think it must have been.

11 Q Yeah. Okay, that was your understanding?

12 A Yes.

13 Q Okay. If we could call up 038239, and this is a  
14 document prepared by Inspector Murray Sawatsky  
02:36 15 that outlines -- if I can maybe just quickly  
16 summarize what is in the documents. I think what  
17 the record reflects and what we will hear from Mr.  
18 Sawatsky is that the RCMP interviewed Mr. Wolch  
19 with Mr. Rodin and Bob Bruce, they then  
02:37 20 interviewed you, they had a short interview with  
21 David Asper and then basically set out a list of  
22 allegations and it was in excess of I think 68 or  
23 70 allegations that formed what they were  
24 investigating and that those allegations, I think  
02:37 25 for the most part, came from you or Mr. Wolch.



1           Would that be your understanding of what they did  
2           or are you able to comment on that?

3           A           68?

4           Q           Well, there's at least 68, yes, and they lumped  
02:37 5           some together. I mean, it's their document, but  
6           what their report suggests is that after meeting  
7           with you and meeting with Mr. Wolch, they  
8           collected all of the complaints, if I can call it  
9           that, grouped them into 68, or thereabouts,  
02:37 10          different allegations, and then sent about with  
11          about 12 police officers and investigated each of  
12          these allegations or complaints. Do you have any  
13          -- was that your understanding or were you aware  
14          of that?

02:38 15          A           No, I don't think I was.

16          Q           Did you understand that when you gave this  
17          information to the RCMP, that they would be  
18          investigating what you told them?

19          A           Yes.

02:38 20          Q           And so here, and you'll see here, and again this  
21          isn't your document, this is Inspector Sawatzky  
22          saying generally -- it talks about the interview:

23                       "Generally, I will attempt to precis

24                       Mrs. Milgaard's comments and identify

02:38 25                       those areas which will require follow-up



1 investigation."

2 And then just to scroll down:

3 "Much of what Mrs. Milgaard identified  
4 are issues which have been raised by Mr.  
02:38 5 Wolch. In some areas she was able to  
6 add her views and provide us with  
7 further information. However, the  
8 general thrust of her concerns parallels  
9 that of Mr. Wolch."

02:38 10 And you would have been aware that Mr. Wolch had  
11 already gone to the RCMP with her concern?

12 A Yes.

13 Q If we can scroll down to paragraph 5, it says:

14 "She advises that a man named Dan Lett  
02:39 15 of the Winnipeg Free Press tried to get  
16 information on the Fisher matter and  
17 came upon missing documentation. This  
18 issue has already been raised and will  
19 be covered in two areas: 1) the  
02:39 20 examination of the missing Saskatoon  
21 Police files, and 2) our investigation  
22 into the handling of the Fisher files."

23 And this, I think, is a bit at odds with what I  
24 think the record reflects. I'm not sure -- or  
02:39 25 let me ask you. Do you have any recollection of



1 Dan Lett being involved in determining missing  
2 documentation in the Saskatoon City Police files?

3 A I really don't.

4 COMMISSIONER MacCALLUM: Do you find any  
02:40 5 ambiguity in that sentence? Did Dan Lett come  
6 upon the missing documentation or did he come  
7 upon the fact that documentation was missing?

8 BY MR. HODSON:

9 Q Well, that was my question, but I'm not sure --  
02:40 10 yeah, I mean, what this suggests is that Dan Lett  
11 either found that there were documents missing or  
12 found the missing documentation, and based on our  
13 evidence to date, I don't think Dan Lett was  
14 involved in any direct contact with the city  
02:40 15 police on this matter and I'm wondering if you can  
16 shed any light on that.

17 A No, unless he came upon facts that there was  
18 missing documentation.

19 Q Do you have any recollection of Dan Lett having  
02:40 20 any information about the missing police files?

21 A No.

22 Q And then to the next page, 038241, and this is a  
23 discussion about, it says:

24 "Mrs. Milgaard also spoke about the  
02:41 25 length of time to get Fisher through the



02:41

02:41

02:41

02:42

02:42

1 court process and finally convicted on  
2 the Saskatchewan charges. This is being  
3 examined already as the result of Mr.  
4 Wolch's meeting. However she advises  
5 that the judge in Regina who was at that  
6 time the Hon. F.W. Johnson, former Lt.  
7 Governor of the Province, did not know  
8 about the Winnipeg crimes and the  
9 sentence he received. Therefore  
10 enquiries should be conducted with  
11 Justice F.W. Johnson - retired, to  
12 determine if he recalls or has access to  
13 his notes to verify whether or not he  
14 was told about the crimes and sentence  
15 and also to see if anyone on the  
16 prosecution side spoke to him about  
17 imposing a lighter sentence on Fisher."

18 And my question here is that the judge who  
19 sentenced Fisher in 1971 in Saskatchewan, I think  
20 it's fair to say, had to have been aware that Mr.  
21 Fisher had been sentenced in Winnipeg because he  
22 imposed a concurrent sentence and Mr. Fisher was  
23 in custody on those charges, and I'm wondering,  
24 can you shed any light on this comment as to what  
25 you might have been referring to?



1 A No, I can't.

2 Q Did you think that the judge in Saskatchewan may  
3 not have known about the Winnipeg crimes?

4 A It sounds as if I thought that he hadn't known  
02:42 5 about it, but I don't recall.

6 Q Do you recall having any concerns about Judge  
7 Johnson who had presided over Mr. Fisher's charges  
8 in 1971 and the fact that he then became the  
9 lieutenant governor of the province, do you  
02:42 10 remember that being an issue that you or anybody  
11 else in your group had looked at?

12 A I don't think so.

13 Q And then scroll down, number 15, it says:

14 "Mrs. Milgaard advises that Caldwell  
02:42 15 says in one of his letters to the Parole  
16 Board that he and Tallis put "another  
17 guy away". She advises that this term  
18 indicates collusion on the part of  
19 Caldwell and Tallis, possibly the  
02:43 20 assumption of Milgaard's guilt and  
21 therefore he was only given a token  
22 defence. Mrs. Milgaard also alleges  
23 Caldwell's letters to the Parole Board  
24 were unusual. This point has already  
02:43 25 been raised by Mr. Wolch."





1 And so is it correct to say that you told the  
2 RCMP you thought that Mr. Caldwell and Mr. Tallis  
3 had colluded to convict your son David by having  
4 a token defence given?

02:43 5 A Yes, and it wasn't until here at the Inquiry that  
6 I learned that the two counsels had worked  
7 together at one point in time.

8 Q Right, but is it fair to say that you asked the  
9 RCMP to investigate wrongdoing on the part of Mr.  
02:43 10 Caldwell and Mr. Tallis?

11 A Because of that, oh, yes.

12 Q And you believed at that time that they had  
13 colluded together to put David away?

14 A Because of his remarks to Peter Carlyle-Gordge  
02:43 15 about the time that they had worked together.

16 Q Right.

17 A Or something.

18 Q And that's a document we referred to earlier?

19 A Yes.

02:44 20 Q And then the next page, the comment here:

21 "Mrs. Milgaard also alleges that Tallis  
22 went to court for the preliminary  
23 hearing without any file material. That  
24 it was later that week that he got some  
02:44 25 disclosure from Caldwell and that Tallis



1                   was not able to provide Milgaard with a  
2                   proper defence."

3                   Do you know where you would have got that  
4                   information from?

02:44 5           A           Other than the fact that I was there and if he  
6                   said he hadn't anything from Caldwell, that's all  
7                   I could know of.

8           Q           Do you have any recollection of where this  
9                   information came from?

02:44 10          A           No, I don't.

11          Q           And just scroll down, paragraph 17:

12                   "Mrs. Milgaard made several references  
13                   to the fact that Mr. Tallis gave David  
14                   Milgaard a very poor defence. In order  
02:44 15                  to satisfy this aspect of her enquiry, I  
16                   feel it would be necessary to research  
17                   the transcripts of the Supreme Court and  
18                   append their comments to this report to  
19                   answer this issue."

02:45 20                  So is it correct to say that one of the things  
21                   you wanted the RCMP to investigate was  
22                   Mr. Tallis' defence that he provided to your son,  
23                   that you thought it was not a proper defence?

24          A           Yeah, because at that point in time I thought that  
02:45 25                   Mr. Tallis and Mr. Caldwell had, were together in



1           trying to get my son convicted, worked together.

2           **Q**       Okay. And you wanted the RCMP to investigate  
3           Mr. Tallis?

4           **A**       To check it out, yeah.

02:45 5           **Q**       If we can go to the next page, and at the bottom  
6           here there's a reference to Howard Shannon, we've  
7           been through this before, but here you appear to  
8           ask the RCMP, you say, you speculate:

9                   "... that the reason Merchant was  
02:45 10           involved in this matter is because Colin  
11           Thatcher knew Gail Miller and Colin  
12           Thatcher may have committed this murder  
13           and Merchant's enquiries were launched  
14           to determine how much evidence the  
02:46 15           Milgaard investigation now had."

16           And so that was something in February of 1993 you  
17           had asked the RCMP to investigate as well?

18           **A**       I think what I -- when you say that I had asked  
19           the RCMP to investigate this as well, I think what  
02:46 20           I was doing with the RCMP, I wasn't asking them to  
21           investigate everything, I was giving them all the  
22           information that I had, so I was going section by  
23           section of the things that I had worked on and  
24           done and one of the things that I had worked on  
02:46 25           was Merchant and Thatcher. Any thoughts that I



1           had, I felt that I needed to give them everything  
2           so that they would have an idea of where I had  
3           gone and what I had done and that's what Mr.  
4           Sawatsky had wanted from me, he wanted everything.

02:46 5           Q           And so --

6           A           So when you look at it, 19, 20, 21, 22, 23 and you  
7           are saying this is what you want done, it looks  
8           like I went in there and specified I want this,  
9           this and this investigated. That was not the  
02:47 10          case.

11          Q           Okay.

12          A           I went in there giving them everything that I felt  
13          we had done so that they would know about it.

14          Q           And so, okay, let me try and restate it this way.  
02:47 15          Inspector Sawatsky would have said lookit, we're  
16          investigating wrongdoing?

17          A           Yes.

18          Q           Tell us everything you know that might be relevant  
19          that we need to investigate or just tell me  
02:47 20          everything relevant?

21          A           Yes. He just said we need to know everything  
22          you've done.

23          Q           Okay. Was it your expectation that they would  
24          investigate the information and the allegations  
02:47 25          you provided to them?



1 A I thought they would investigate what they felt  
2 needed investigating, yes.

3 Q Okay. So your understanding was lookit, I'll tell  
4 them everything?

02:47 5 A Uh-huh.

6 Q And they can decide what they should or should not  
7 investigate?

8 A Yes.

9 Q And did you want them to investigate everything  
02:47 10 that you thought had been done wrong; is that  
11 fair?

12 A I probably did feel that they would if, you know,  
13 if they were doing that.

14 Q Do you recall at this time whether you would have  
02:48 15 still had concerns about Colin Thatcher as a  
16 suspect in February of 1993?

17 A No, and that's what sort of twigged me to saying I  
18 was telling them everything at this point because  
19 I don't think I would probably have still had  
02:48 20 that.

21 Q Okay. And then here, number 22, it says:

22 "Like Mr. Wolch, Mrs. Milgaard is  
23 alleging the Crown's prime witnesses  
24 Cadrain, Nichol John and Wilson were  
02:48 25 influenced by the Saskatoon Police to



1 say what they did. Mrs. Milgaard  
2 provided us with a copy of a taped  
3 interview between Cadrain and Peter  
4 Carlyle which was taken at Dalmeny,  
02:49 5 Saskatchewan in 1981 or 82. She advises  
6 this tape contains conversation  
7 indicating Cadrain was coached to say  
8 what he did."

9 And I think that's probably the 1983 tape that  
02:49 10 we've heard in this Inquiry; is that right?

11 A I believe that's correct, yes.

12 Q And is this accurate, that you would have given  
13 that to the RCMP, saying lookit, this helps  
14 support our contention that Mr. Cadrain was  
02:49 15 coached what to say?

16 A That's right.

17 Q Is there any reason that you would have given the  
18 Cadrain tape to Inspector Sawatsky but not to  
19 Eugene Williams and not to the Supreme Court for  
02:49 20 the reference?

21 A Well, mostly because the lawyers dealt with  
22 everything for the reference. This was something  
23 I was dealing with.

24 Q Okay. Go to the next page, paragraph 23, it says:  
02:49 25 "Further to the above, Mrs. Milgaard



1 states that Father Murphy also assisted  
2 the police and that during an interview  
3 with the Milgaard investigative team,  
4 Murphy stated he was instrumental in  
02:50 5 solving the case and had helped the  
6 police put someone away for murder.  
7 Mrs. Milgaard also advises that Father  
8 Murphy put undue pressure on Cadrain to  
9 go to the police."

02:50 10 Now, we had touched on this subject before and I  
11 think there was some maybe shifting position on  
12 what role Father Murphy had played with Albert  
13 Cadrain based on information he had provided. It  
14 appears in February of 1993 you still have some  
02:50 15 suspicions that Father Murphy may have somehow  
16 been involved with the police in getting Albert  
17 Cadrain to go into the police with his original  
18 story; is that fair?

19 A Yes.

02:50 20 Q Next page, and here you advise, or it appears it's  
21 reported you advise the RCMP:

22 "... that when Paul Henderson  
23 interviewed Wilson, Wilson stated that  
24 after discussing it with Nichol John, he  
02:51 25 and Nichol made the decision to give



1                   them David. This will require  
2                   clarification."

3           And then:

4                   "Mrs. Milgaard also says the motel room  
02:51 5                   reenactment was made up by Lapchuk and  
6                   Melnik because Melnik was facing charges  
7                   of armed robbery in Regina and he was  
8                   given a lighter sentence in exchange for  
9                   his testimony."

02:51 10           And so it would appear in February of '93 that  
11                   you still had some -- you recall us earlier  
12                   talking about two potential positions, one is  
13                   that Melnik and Lapchuk lied and made it up, the  
14                   other is that the event did happen and it was  
02:51 15                   simply misconstrued?

16           A           Yes.

17           Q           And so here in February of '93 it appears that you  
18                   are still, at least in part, saying lookit, Melnik  
19                   and Lapchuk lied?

02:51 20           A           Yes.

21           Q           Go to 038247 and here it says:

22                   "Mrs. Milgaard advises that Breckenridge  
23                   may not have been in the Justice Dept.  
24                   at the time that the Milgaard/Fisher  
02:52 25                   files were on the chief prosecutor's





1 desk. However, Breckenridge has heard  
2 comments and conversation to support his  
3 claim that Mr. Kujawa suppressed  
4 evidence."

02:52 5 And this, I think, is similar to what you told me  
6 a bit earlier; is that right?

7 A Yes, that's right.

8 Q So by February of 1993 is it fair to say you would  
9 have known that, at least there was some  
02:52 10 information that suggested Breckenridge was not in  
11 the Justice Department in 1971?

12 A Yes.

13 Q And the position you are taking with the RCMP is  
14 okay, well then he must have heard comments and  
02:52 15 conversation --

16 A That's right.

17 Q -- similar to what he had told you?

18 A Yes.

19 Q Go to the next page, and here:

02:53 20 "Mrs. Milgaard stated that in the  
21 Supreme Court Ron Wilson stated George  
22 Lapchuk went to get a gun when he heard  
23 David had escaped from jail. Mrs.  
24 Milgaard claims this is because Lapchuk  
02:53 25 had lied and framed David and he felt



1 David may be coming after him."

2 And so again, as far as the Lapchuk evidence, it  
3 appears that at this time you are saying to the  
4 RCMP you believed that Lapchuk had lied and  
02:53 5 framed David; is that fair?

6 A Yes, that's fair.

7 Q Scroll down to paragraph 41:

8 "Mrs. Milgaard not understanding legal  
9 processes advised that the Crown only  
02:53 10 introduced exhibits into court which  
11 indicated David may be involved in the  
12 crime and that they excluded those which  
13 tended to exonerate him. However, she  
14 was specific in that she stated the lump  
02:54 15 of yellow substance found in the snow  
16 was dog urine."

17 And again, would that have been your thinking at  
18 the time, that what was the frozen semen tendered  
19 at David's trial in 1970, your view at this time  
02:54 20 was that it was dog urine?

21 A Yes.

22 Q And that would be based on what?

23 A On the reports that we had got.

24 Q From Dr. Markesteyn and Dr. Merry?

02:54 25 A Yes.



1 Q And then here, paragraph 42, you indicate, or it's  
2 reported:

3 "Mrs. Milgaard advises that there are no  
4 police reports indicating the police  
02:54 5 went below 20th Street in their  
6 neighbourhood enquiries in the Miller  
7 murder. Yet Linda Fisher and  
8 Mrs. Cadrain both stated they talked to  
9 the police during this investigation.  
02:54 10 However, Mrs. Milgaard does admit that  
11 these people may have times confused in  
12 their mind and it could be that  
13 enquiries were conducted concerning the  
14 rapes taking place in the area as  
02:55 15 opposed to the murder. The statements  
16 given by both of these people should be  
17 reviewed."

18 And is it my understanding that -- I think both  
19 Mrs. Cadrain and Linda Fisher reported to the  
02:55 20 RCMP or to authorities that at the time of the  
21 Gail Miller murder, the police were around to  
22 their door in and around that time or after the  
23 murder to make inquiries?

24 A Yes.

02:55 25 Q And is it correct that what you told the RCMP,



1           that you thought both Linda Fisher and  
2           Mrs. Cadrain might be mistaken in that you  
3           believed the police had not been to the Cadrain  
4           house?

02:55 5           A       Yeah, because all of the police reports and  
6           everything that we had been able to get hold of,  
7           none of them were interviews below 20th Street.  
8           It was as if they had cut that as a dividing line.

9           Q       And so is it fair to say you told the RCMP lookit,  
02:55 10          I don't think Linda Fisher and Mrs. Cadrain were  
11          thinking about the police going to the door for  
12          the Gail Miller murder, it must have been for the  
13          earlier rapes?

14          A       That's correct.

02:56 15          Q       And that would be based on your review of the  
16          police reports and your conclusion that since the  
17          police reports don't reflect anybody south of 20th  
18          Street, they must not have gone there?

19          A       That's right.

02:56 20          Q       And did you have any other information other than  
21          your review of the police reports?

22          A       No.

23          Q       Next page, and this is the last one in this  
24          document, 45:

02:56 25                        "Mrs. Milgaard brought up the issue of



1 the Saskatchewan Police Commission  
2 investigation into the missing Saskatoon  
3 Police Department files. She advises  
4 that their source who is within the  
02:56 5 Saskatoon Police Dept. saw material in  
6 the Saskatoon Police files which was  
7 later removed. This information  
8 related, of course, to the Fisher rape  
9 files. For this reason, I now feel it  
02:56 10 is imperative that the identity of the  
11 source in Saskatoon Police be revealed  
12 to us."

13 Do you have any recollection of telling the RCMP  
14 this information, that your source in the  
02:56 15 Saskatoon Police Department -- who I presume was  
16 Tom Vanin; is that right?

17 A That's right.

18 Q -- that he saw material on the Saskatoon police  
19 file which was later removed?

02:57 20 A I must have told it to them.

21 Q Do you have any recollection of what Mr. Vanin  
22 told you or what you told the RCMP?

23 A No, I do not.

24 MR. HODSON: This is probably an  
02:57 25 appropriate spot to break for the afternoon.



(Adjourned at 2:57 p.m.)

(Reconvened at 3:23 p.m.)

BY MR. HODSON:

Q If we could just go back to the RCMP interview of  
Inspector Sawatzky, and I think the doc. ID is  
331214, and if we could go to page 331292, please,  
and this is your interview with Inspector Sawatzky  
of February of 1993 and here there's a discussion  
about meeting with your David and they say:

"... you know we're prepared to meet  
with him but if on the same token he  
chooses not to, that's fine."

You answer:

"That's fine. Well, you know, I, at the  
Supreme Court they took him through uh  
... both his version of the events at  
that time and one of the things that he  
talked about there uh, and it's  
interesting because um, it was about the  
heater, about (break in tape), they  
pounced on him when he said that they  
got the heater in the car fixed.  
...think that probably they never have  
got the heater in the car fixed, but  
what happened, if you'd ever driven on



1 the prairie and you're out in the  
2 country driving, it's quite cold in the  
3 car. As soon as you get into town you  
4 know how the heater gets really hot, and  
03:25 5 you turn it down. So, he said, well I  
6 don't know, I just remember being really  
7 hot so he was thinking they got the  
8 heater fixed but they made it sound  
9 like, at the Supreme Court that he was  
03:25 10 adding something that wasn't there. But  
11 later he and I talked about it and he  
12 said, no mom, he said I suddenly just  
13 remembered that my feet and everything,  
14 that we got really hot. And, so I just  
03:25 15 assumed that the... I said, well you  
16 made it sound like you got the heater  
17 fixed, and he said, well, I didn't mean  
18 that, I meant that it got hot in car.  
19 And I got thinking well that is like  
03:25 20 what would happen if you were out  
21 driving the car quite (break in the  
22 tape), thought it had got fixed. But,  
23 that was really all that he added, I  
24 think at the Supreme Court, then, it was  
03:25 25 different from anything."



1 And am I correct, it appears here, Mrs. Milgaard,  
2 you are telling the RCMP that after the Supreme  
3 Court hearing you talked to your David about this  
4 evidence; is that correct?

03:25 5 A Yes.

6 Q And I think his evidence at the Supreme Court was  
7 he described, when they arrived in Saskatoon,  
8 stopping the car and getting the heater fixed and  
9 getting some chicken soup?

03:26 10 A Yes.

11 Q Do you remember him giving that evidence?

12 A I remember that.

13 Q And I think that that was the first time that that  
14 evidence had been given, or that version of events  
03:26 15 I think had been given, Mr. Tallis said lookit,  
16 that's the first I've ever heard of that?

17 A Right.

18 Q And I think as you say here, some lawyers maybe  
19 pounced on that in their examination of David;  
03:26 20 correct?

21 A Correct.

22 Q That how could he be now saying this when he  
23 didn't say it before; correct?

24 A That's correct.

03:26 25 Q And am I reading this exchange correct, did you





1 talk to your David and conclude that David maybe  
2 had wrongly assumed that they got the heater  
3 fixed --

4 A Yes.

03:26 5 Q -- and maybe had been mixed up?

6 A I think that's what it was.

7 Q And so that when he got to the Supreme Court, in  
8 his mind trying to think back to that time,  
9 thinking that he took his shoes off at the motel;  
03:26 10 right?

11 A Yes, that's correct.

12 Q And therefore the car was hot and it was cold  
13 before, that they must have got the heater fixed?

14 A I think that's what he assumed in his mind.

03:27 15 Q And do you recall a discussion with David after  
16 the Supreme Court where he basically said to you  
17 lookit, that's why I thought we got the heater  
18 fixed, but maybe we didn't, I assumed we did?

19 A Yeah, we did talk about it afterwards, and that  
03:27 20 was the reasoning he gave, so I think -- I guess I  
21 was wanting Mr. Sawatsky to know that David really  
22 didn't have much of a real memory of any of it and  
23 that I really didn't think he would be helpful to  
24 them.

03:27 25 Q And would it be also fair to say that his memory



1           might not be reliable and that this heater/chicken  
2           soup thing might be an example where he at the  
3           Supreme Court said something that --

4           A           -- didn't really bear out.

03:27 5           Q           That maybe wasn't true, but that he had thought  
6           had happened, but really didn't happen?

7           A           That's right.

8           Q           And that was your understanding of what David told  
9           you after?

03:27 10          A           Yes, it was.

11          Q           Go to 218218, please, and this is a letter  
12          November 19th, 1993 from the RCMP, Inspector  
13          Sawatsky to you, and scroll down:

14                       "Recently, Mr. Michael Breckenridge  
03:28 15          advised Cst. Jorgenson that during a  
16          meeting between yourself and Bob Perry,  
17          he was able to identify his initials on  
18          papers that you showed him."

19          And then:

03:28 20                    "Could you please advise, at your  
21          earliest convenience, which  
22          papers/documents Mr. Breckenridge  
23          identified to you as bearing his  
24          initials."

03:28 25          And:



1 "Should you be able to locate --"

2 Them,

3 "-- we would appreciate receiving copies  
4 of them."

03:28 5 And then if we can go to 054603, actually the  
6 doc. ID is 054602, this is your reply of December  
7 20th, 1993 to Inspector Sawatsky, you say:

8 "I have been through all the boxes of  
9 papers that I have here and have not  
03:29 10 been able to locate the papers you asked  
11 for.

12 I do recall the incident, and  
13 because I was not really trustful of him  
14 at the time, checking the initials he  
03:29 15 showed us against his signature and they  
16 matched. It would probably have been  
17 some of the files that were released to  
18 us by the Supreme court and would have  
19 had to have been the Attorney General  
03:29 20 files otherwise his initials would not  
21 have been there. I know that I had all  
22 the rape victim files with me and the  
23 Greenburg correspondence but I honestly  
24 can't remember what else."

03:29 25 And I think this is maybe where the RCMP, in the



1 report I showed you earlier, --

2 A Wrote --

3 Q -- attributed to you the fact that you thought he  
4 was not trustful?

03:29 5 A Yes, that's probably it.

6 Q So does this assist your memory at all as to  
7 whether or not, when you met with Michael  
8 Breckenridge in June of 1992, that you were not  
9 too trustful of him?

03:30 10 A That's what I have said, --

11 Q Yes.

12 A -- and that must have been what I believed at the  
13 time.

14 Q If we can go to 023193 -- sorry, 023167. Is this  
03:30 15 the full RCMP report? And this is the RCMP  
16 investigation report, I believe it came out in  
17 1994, and I think it was a lengthy, I'm not sure,  
18 I think about 300 pages. Are you -- you are  
19 familiar with the Flicker report or the RCMP  
03:30 20 report that came out 1994, I think, thereabouts;  
21 you are aware of what that report is?

22 A I don't know that I am.

23 Q Okay. In 1993, after the RCMP investigation led  
24 by Inspector Sawatzky, after they had done all  
03:31 25 their interviews they prepared a report and



1 followed up --

2 A Would I have been given a copy of it?

3 Q I believe so, or your counsel would have been.

4 Could you call that out, please? And it was *THE*

03:31 5 *RCMP INVESTIGATION INTO ALLEGATIONS OF WRONGDOING*

6 *BY THE SASKATOON CITY POLICE AND THE SASKATCHEWAN*

7 *DEPARTMENT OF THE ATTORNEY GENERAL (SASKATCHEWAN*

8 *JUSTICE) IN THE INVESTIGATION AND PROSECUTION OF*

9 *DAVID EDGAR MILGAARD*, and they prepared a lengthy

03:31 10 report, they provided it to two individuals at

11 Alberta Justice who then gave a report to the

12 Saskatchewan Attorney General, and basically --

13 and I'll take you to parts of it -- but basically

14 said that there is no substance to any of the

03:31 15 allegations of criminal wrongdoing against

16 government officials and police, that was the

17 bottom line of the report; and do you know which

18 report I'm now talking about?

19 A Yes.

03:31 20 Q And would you have -- do you know if you ever read  
21 that report?

22 A I honestly don't remember but, if it was given to

23 me, I probably read it. If I was given it and

24 they said "the bottom line, it says nothing", I

03:32 25 might not even have read it.



1 Q Okay. Well, we'll go through that. If we could  
2 go to 023194. And, again, this is an excerpt from  
3 the report, allegations -- and, again, Inspector  
4 Sawatzky will be here to address these issues --  
03:32 5 but basically he refers to the interviews with Mr.  
6 Wolch, Robert Bruce, and to your interview, and  
7 then outlines the issues. And then, if we can go  
8 to the next page, sets out:

9 "The issues or objects of our  
03:33 10 investigation are listed below under the  
11 three principle subjects.

12 ... The Issues have been numbered for  
13 the purposes of investigation and  
14 reporting ... 1 to 68 inclusive."

03:33 15 And, if we can just scroll down, there's -- no,  
16 actually go back to the full page, the full --  
17 and so here, just for example, the Saskatoon City  
18 Police issue is issue 1, the allegation:

19 "That Saskatoon Police Department  
03:33 20 connected the Fisher rapes and the  
21 Miller murder investigations together  
22 from the outset."

23 And I think what the RCMP say in their report,  
24 and certainly what I anticipate Inspector  
03:33 25 Sawatzky saying here, is that essentially these



1           allegations that formed the basis of their  
2           allegation were given to them by you and Mr.  
3           Wolch as well as Mr. Bruce, Mr. Rodin, and to  
4           some extent Mr. Asper, in other words --

03:34 5       A       Right.

6       Q       -- your group gave them all of the issues that  
7           they then went and investigated for their report?

8       A       Okay.

9       Q       And was that your understanding of what they were  
03:34 10       doing?

11      A       Yes, it was.

12      Q       And so, when you met with them in February of  
13           1993, that would have been, is it fair to say,  
14           your understanding, that everything you were  
03:34 15       telling them, they were going to follow up  
16           whatever they thought they should?

17      A       Yes.

18      Q       If we can go to 032805. And this is a report  
19           August 15th, 1994. Do the names Neil McCrank,  
03:34 20       Bruce Fraser, do they have any meaning to you, do  
21           you remember those names --

22      A       No.

23      Q       -- at all? If we can go to the next page. And  
24           what this document is, this is the -- when the  
03:35 25       RCMP investigation was set up, because they were



1 investigating members of the Saskatchewan  
2 Government and Justice officials, they were asked  
3 to report to the Alberta Justice officials.

4 A I remember that now.

03:35 5 Q And do you remember being made aware of that at  
6 the time?

7 A Yes.

8 Q And the Alberta Justice officials received the  
9 information from the RCMP and then made a report  
03:35 10 as to whether or not any criminal charges ought to  
11 be laid.

12 A That's right.

13 Q Do you remember that being what was in place?

14 A I do.

03:35 15 Q And so this is the report. Do you know whether  
16 you would have -- I think your counsel would have  
17 received a copy of this report; do you know if you  
18 ever read it?

19 A I'm sure I probably did.

03:35 20 Q Okay. And I just propose to go through parts. Go  
21 to the next page, and it says:

22 "Allegations of criminal

23 wrongdoing were made against the

24 Saskatoon City Police and the

03:35 25 Saskatchewan Department of Justice,





1 essentially suggesting a concealment of  
2 evidence by the police and prosecutors  
3 resulting in a cover-up and a  
4 miscarriage of justice relating to David  
03:36 5 Milgaard."

6 And, although those are someone else's words,  
7 that would be similar to what -- what you were  
8 alleging; is that right?

9 A Yes, that's true, correct.

03:36 10 Q And then, if we can just scroll down, under  
11 Process:

12 "The allegations of  
13 wrongdoing were referred by the  
14 Saskatchewan Department of Justice to  
03:36 15 the RCMP for investigation. An  
16 investigation team of 12 members was  
17 assembled under the direction of ...  
18 M.J. Sawatzky ...",  
19 and then it talks about:

03:36 20 "A prosecution team ...  
21 consisting of Neil McCrank ... and Bruce  
22 Fraser ...";  
23 were you aware, then, that two prosecutors were  
24 put in place to consider the police  
03:36 25 investigation?



1 A No, I was not.

2 Q And it talks about the investigation that these 12  
3 officers conducted, and if we can go down to the  
4 bottom, it says:

03:36 5 "The RCMP report details some  
6 68 allegations against:"  
7 the police, Mr. Caldwell, Mr. Kujawa -- next  
8 page -- and:

9 "other members of the Saskatchewan  
03:37 10 Department of the Attorney General  
11 including ... Roy Romanow ..."

12 So those would be similar to what -- the  
13 allegations you had made; correct?

14 A Correct.

03:37 15 Q And that:

16 "All of the allegations ...  
17 involving criminal wrongdoing, suggest  
18 only one possible offence, that being an  
19 attempt to obstruct justice, pursuant to  
03:37 20 ... the *Criminal Code*."

21 And would it be fair to say that, although you  
22 maybe didn't know specific provisions of the  
23 *Criminal Code* when you were making the  
24 allegations against police and Justice about a  
03:37 25 deliberate coverup, were you essentially saying



1           that they broke the law, that they --

2       A       I believe I thought they did, yes.

3       Q       Now if we can go to page 5, and here is one  
4           example of one of the allegations, I think the  
03:38 5           Alberta Justice people summarized them:

6                        "It is alleged the person responsible  
7                        for the so-called 'Fisher rapes'  
8                        committed the Miller murder, and the  
9                        police knew this and knew that person  
03:38 10           was not Milgaard, but charged and  
11                        prosecuted Milgaard while knowing he was  
12                        innocent."

13           And I think you've told us that that's not  
14           something that you believed; is that right?

03:38 15       A       That's right.

16       Q       And go to the next page -- actually, go to page  
17           032815. Here's one of the allegations against Mr.  
18           Caldwell, that he:

19                        "... consciously connected the Miller  
03:38 20           murder with the unsolved sexual assaults  
21                        and failed to disclose to Milgaard's  
22                        counsel any details of these alleged  
23                        offences."

24           And would that be something that -- was that  
03:38 25           something you had put forward back at the time?



1 A Yes, it would have been.

2 Q And then if we can go to page 032819. And here  
3 are the allegations that they looked into against  
4 Mr. Kujawa about the direct indictment, and if we  
03:39 5 can go down to paragraph 2:

6 "It is alleged that S. Kujawa  
7 (then the Director of Public  
8 Prosecutions for Saskatchewan), K. Lysyk  
9 (then Deputy Attorney General of  
03:39 10 Saskatchewan) and R. Romanow (then  
11 Attorney General of Saskatchewan)  
12 connected the Milgaard file with the  
13 Fisher file and knew that there was a  
14 miscarriage of justice."

03:39 15 And I think that, if we can just go down:

16 "This allegation stems from a  
17 former employee of the Saskatchewan  
18 Department of Justice, Michael  
19 Breckenridge ...",

03:39 20 so you would have been aware that the RCMP were  
21 investigating that?

22 A Yes.

23 Q Okay. If we can go to the next page. The RCMP,  
24 as far as the Breckenridge allegation, says:

03:40 25 "The RCMP investigation fails



1 to uncover any evidence to support this  
2 allegation and this allegation appears  
3 to be absurd."

4 Were you aware that that was the result of the  
03:40 5 RCMP investigation into the Michael Breckenridge  
6 allegations?

7 A No.

8 Q What -- would you have known, at least, that they  
9 didn't find merit in them, that they didn't --  
03:40 10 didn't give rise to any charges or anything of  
11 that nature?

12 A Well, I believe that part I knew, but, you know,  
13 at this time I was working in Ontario, in Kanata I  
14 believe, and so I wasn't sort of daily connected  
03:40 15 with the law office or anything like that, I was  
16 only home on very odd days.

17 Q And I'll show you a letter a bit later, I think in  
18 1993 you wrote a letter to the media basically  
19 saying "lookit, no more, I'm moving on, the  
03:41 20 support group will continue on but sort of I or we  
21 are getting on with our life"; do you remember  
22 that happening?

23 A I can't say that I do, no.

24 Q Actually, if we go to 212917, this is a letter  
03:41 25 February 7th, 1993:



1 "An open letter to all Support Group  
2 Members and others that have been  
3 helping in our fight for justice for  
4 David."

03:41 5 And here you say:

6 "Now the time has come to end  
7 our availability to the public and to  
8 get on with our own lives. I am  
9 withdrawing from the groups because I  
03:41 10 know as long as I am involved in Support  
11 Group work the media and public  
12 attention on the family will continue.

13 Some groups may decide to  
14 continue without me but I believe that  
03:41 15 people individually can now continue to  
16 lobby the government on their own."

17 Can you tell us what prompted this, or can you  
18 elaborate on that?

19 A Well I think it was because we felt the family, as  
03:42 20 a whole, needed to have a bit of privacy, and I  
21 was working as a Christian Science nurse in that  
22 area at that time. It's interesting, it's  
23 February of '93, and yet I continued to lobby the  
24 Prime Minister and others even after that, so --

03:42 25 Q Okay.



1       A       -- I guess I was trying to make a break and  
2               couldn't, I don't know.

3       Q       Right. If we can just go back to the RCMP report,  
4               032820. And just at the bottom, I don't think I  
03:43 5               need to go through them all, but essentially what  
6               the RCMP did is concluded that there was no  
7               credible evidence to support any allegation that  
8               the Saskatoon City Police, Mr. Caldwell, Mr.  
9               Kujawa, Mr. Romanow, or anyone else, had been  
03:43 10              involved in any criminal wrongdoing in the  
11              investigation and prosecution of David Milgaard,  
12              or in any coverup after the fact, and would you  
13              have been aware that that was the bottom line in  
14              their report in or about 1994 then?

03:43 15       A       So this would have been in or about 1994?

16       Q       Yes.

17       A       And when was the letter, my Kanata letter?

18       Q       Your letter, I'm sorry, your letter?

19       A       Yeah?

03:43 20       Q       Was February 7th of '93.

21       A       '93, so this is much before the end of this  
22               report.

23       Q       Yes.

24       A       Okay.

03:43 25       Q       And so here's, if we go to the next page, and I'll



1 show you, there is a few press clippings that  
2 maybe might assist you, but -- so here's the  
3 report dated August 15th, 1994. And I believe a  
4 copy of this report, at least the 16-page summary,  
03:44 5 was given to Mr. Wolch at the time; is it likely  
6 that he would have given you the copy of the --

7 A Oh, absolutely, I would have had a copy.

8 Q And that you would have read it as well?

9 A Yes.

03:44 10 Q If we can go to 147961. And I'll go through just  
11 a couple reports in the media around this date.  
12 This is -- can't see it -- August 17th, 1994 at  
13 the top, the *Leader-Post*, and just scroll up to  
14 the top part. It says:

03:45 15 "An independent investigation  
16 into the allegation that Saskatchewan  
17 police and justice officials conspired  
18 to suppress evidence in the original  
19 David Milgaard case has found no  
03:45 20 evidence of wrongdoing.

21 In fact, the allegation -  
22 originally made by former Saskatchewan  
23 Justice Department employee Michael  
24 Breckenridge - 'appears to be absurd,'  
03:45 25 according to the Alberta Justice





1 officials who reviewed the results of  
2 the RCMP investigation."

3 And is it fair to say that you would have been  
4 aware of the report and the media publicity  
03:45 5 around this time, then?

6 A Yes, I would have been.

7 Q And then down at the bottom of that page, please?  
8 It says -- talks about:

9 "Joyce Milgaard, David's  
03:45 10 mother, said Tuesday Breckenridge  
11 approached her with his story sometime  
12 in 1992. She and a lawyer later  
13 travelled to Regina from Winnipeg to  
14 take his statement."

03:46 15 Is that true, that part?

16 A No.

17 Q "Based on Breckenridge's  
18 statements and other evidence they had  
19 collected, they held a news conference  
03:46 20 demanding a public inquiry into the way  
21 the Milgaard case had been handled.

22 Hersh Wolch, another of  
23 Milgaard's lawyers, said he'd never met  
24 Breckenridge or put much stock in his  
03:46 25 story, but he'd hoped his allegations



1                   might have opened the door for a public  
2                   inquiry."

3                   Do you have any recollection of Mr. Wolch making  
4                   these, his views about Mr. Breckenridge, made  
03:46 5                   aware to you prior to the press conference?

6           A        I honestly don't. He may have, I couldn't say he  
7                   didn't, but I kind of think, when I read that  
8                   story, I was surprised.

9           Q        And why were you surprised?

03:46 10          A        Well, because I kind of figured that he did  
11                   believe in it too.

12          Q        That Mr. Wolch believed in it?

13          A        Yeah.

14          Q        And why, why do you think Mr. Wolch had believed  
03:46 15                   it too, why do you say that?

16          A        Well I just felt that he did, because he was with  
17                   me, he was there.

18          Q        And you're talking at the press conference?

19          A        Yes.

03:47 20          Q        If we can go to 147963. And here's a comment, and  
21                   this is the same day, August 17th, of the report.  
22                   And if you can just scroll up to the top of that  
23                   line, please, it says:

24                                       "David Milgaard is in such  
03:47 25                   fragile condition his mother was



1 reluctant to tell him the Alberta  
2 Justice Department had dismissed  
3 allegations of a cover-up involving  
4 Premier Roy Romanow, prosecutors and the  
03:47 5 Saskatoon police.

6 'It could be devastating to  
7 him,' Joyce Milgaard said in an  
8 interview Tuesday afternoon from her  
9 home in Kanata, Ont.

03:47 10 Milgaard had said she would  
11 talk it over with family members before  
12 she contacted David Tuesday afternoon in  
13 a Vancouver hospital.

14 'David's not doing so well at  
03:48 15 the moment. He's in a very fragile  
16 condition.' "

17 So it would appear that you got the results of  
18 the report and, according to this article, --

19 A Yes.

03:48 20 Q -- had some concerns about telling your David?

21 A Yes, that's correct.

22 Q Did you eventually tell him?

23 A Yes, we did, we had to.

24 Q If we can go to the bottom right, or the  
03:48 25 right-hand side of that article, the article goes



1 through and talks about the RCMP report and it  
2 says:

3 "Joyce Milgaard said the RCMP  
4 and the Alberta Justice Department had  
03:48 5 to ignore 'hard facts" in order to reach  
6 their conclusion.

7 'The RCMP were going out trying  
8 to justify the conviction. They were  
9 not going out trying to find the truth.'

03:48 10 She noted investigators tracked  
11 down her son's former cell mates to see  
12 if he confessed. There's no mention of  
13 the interviews in the report, but if  
14 they had succeeded 'it would be right  
03:48 15 out in the front of the report,' she  
16 said.

17 Milgaard's lawyer Hersh Wolch  
18 said the investigation didn't solve  
19 anything and he still wants a public  
03:49 20 inquiry."

21 He says:

22 "'We had no input, we weren't  
23 there, we don't even know who they  
24 talked to, what was said and there was  
03:49 25 nobody there to argue our case.' Wolch



1                   said he doesn't even know if Fisher was  
2                   interviewed.

3                   Wolch expects once the RCMP's  
4                   250-page analysis of the case is  
03:49 5                   released, 'it will be full of areas to  
6                   criticize and legitimately so.'

7                   And so it would appear, at this point, you and  
8                   Mr. Wolch would have been critical of the report;  
9                   is that right?

03:49 10          A           Yes, we definitely were.

11          Q           And would that be because the result did not agree  
12                   with what you thought the result should be?

13          A           Yes, and the fact that we really didn't have any,  
14                   as Mr. Wolch says, we had no input, we weren't  
03:49 15                   there, we didn't know what they were doing.

16          Q           Okay. Now, initially, you and Mr. Wolch both  
17                   spent a couple of days with the RCMP giving --

18          A           Oh, giving them information, yes.

19          Q           But as far as not being present when; when they  
03:49 20                   were out investigating?

21          A           When they come up with different things. They  
22                   were -- as he said, we weren't there, we don't  
23                   even know who they talked to, what was said, and  
24                   there was nobody there to argue our case.

03:50 25          Q           Now what I think we have heard and -- or seen in



1 the documents and will hear from Mr. Sawatzky is  
2 that, "as police officers investigating a crime,  
3 we would never bring someone along to argue their  
4 side of the case or to be part of the  
03:50 5 investigation", and I'm wondering, was that  
6 position ever conveyed to you that "lookit, this  
7 is a criminal investigation, you shouldn't expect  
8 to be riding shotgun with the police officers as  
9 they go around investigating the matter", anything  
03:50 10 of that nature?

11 A No, I'm sure that wasn't discussed.

12 Q So did you have an expectation then, when the RCMP  
13 were investigating this, that somehow you, you  
14 Joyce Milgaard, would be involved in overseeing  
03:50 15 what they were doing, having them tell you what  
16 they investigated, giving them input as to what  
17 further things they should look at?

18 A I thought that we would get some feedback before a  
19 report was finalized, yes.

03:51 20 Q And so that you would have -- let's --

21 A Maybe other alternatives that they could look at.

22 Q Let's try and compare your expectations of your  
23 involvement with Inspector Sawatzky and compare  
24 that to your expectation of your involvement with  
03:51 25 Eugene Williams; was it a similar type of thing,



1           that you thought you would work together with them  
2           to go out and investigate these things?

3           A       No, (laughs) because we were so disillusioned by  
4           what went on with Mr. Williams that I don't think  
03:51 5           that we really expected that.

6           Q       If we can then go to 147954. 147954, and this is  
7           an article July 13th, 1995, and I think what I  
8           showed you before was August 17th, '94, and that  
9           is when the Alberta Justice report was released,  
03:53 10          so they released their 16-page conclusion but the  
11          actual 250-page report that Mr. Wolch talked about  
12          in that article had not yet been made public?

13          A       That may be.

14          Q       And so now that report, with some privacy issues  
03:53 15          dealt with, I think a few names were taken out,  
16          but the report was made public around this time.  
17          And the headline, *Milgaard's mom blasts study*, and  
18          it says:

19                               "A Saskatchewan Justice  
03:53 20                           official says a report exonerating  
21                           police and prosecutors in the David  
22                           Milgaard case should restore public  
23                           confidence, but Milgaard's mother calls  
24                           it a 'whitewash'.

03:53 25                           'The public is not going to be



1 taken in. They know a whitewash when  
2 they see one,' Joyce Milgaard said in a  
3 telephone interview from her Ontario  
4 home.

03:53 5 She was reacting to the release  
6 Wednesday of an RCMP investigative  
7 report into allegations of wrongdoing by  
8 Saskatoon police and Saskatchewan  
9 justice officials in her son's case."

03:54 10 Do you know if you would have read the report  
11 before you made those comments, or would that --  
12 or would your comments be based upon the  
13 conclusion?

14 A Probably, my comments would have been based on the  
03:54 15 conclusions, because I was so certain that, if  
16 they had really looked at it, they would have  
17 found what we believed was true.

18 Q And so, again, do you think you ever read the  
19 250-page report?

03:54 20 A I'm sure I would have gone through it.

21 Q But at this time -- and, again, I think this is,  
22 this coincides with its release -- I think your  
23 evidence is you don't think you would have --

24 A I wouldn't have had it by then I don't think.

03:54 25 Q Right. And so, based on the bottom line, you were





1 prepared to say "lookit, it's a whitewash", --

2 A Uh-huh.

3 Q -- "no matter what's in the report, since they  
4 didn't agree with my thoughts on what had happened  
03:54 5 it's a whitewash"?

6 A That's right.

7 Q And then if we can just go back to the full page.  
8 And what did you mean by "whitewash"; what are you  
9 talking about there?

03:55 10 A Washing everybody clean.

11 COMMISSIONER MacCALLUM: Pardon?

12 A Washing everybody clean.

13 BY MR. HODSON:

14 Q And is it fair to say that you were -- you were  
03:55 15 casting doubt about the credibility of the RCMP  
16 and the report?

17 A Yes.

18 Q And, here, it talks about the report:

19 "'The facts do not support  
03:55 20 such a conspiracy; neither do they  
21 support the idea that one or the other  
22 acting separately carried out acts of  
23 wrongdoing in the investigation and  
24 prosecution of David Milgaard,' the  
03:55 25 report concludes.



1 Joyce Milgaard, who hadn't yet  
2 read the report, said the conclusion  
3 comes as no surprise.

4 'You have a police force  
03:55 5 investigating their bosses,' she  
6 charged."

7 And then over to the top of the next, and:

8 "However, deputy attorney  
9 general Brent Cotter said the inquiry  
03:55 10 was independent because the  
11 investigation by Saskatchewan RCMP was  
12 supervised by the Alberta Justice  
13 Department."

14 What -- if you can just go back, actually go back  
03:56 15 to the full page, please -- what did you mean by:

16 "'You have a police force  
17 investigating their bosses,'..."?

18 A Well I'm sure that I felt that at that time they  
19 were in Saskatchewan, they were Saskatchewan  
03:56 20 police, they were investigating their bosses, they  
21 were investigating the Attorney General, they were  
22 investigating that type of thing.

23 Q And so who -- let me just go back to a question I  
24 asked you earlier. You said before you didn't  
03:56 25 like, you didn't trust Federal Justice because



1           they were investigating Saskatchewan Justice, and  
2           they were both Justice; right?

3       A       Right.

4       Q       And so here you have the RCMP investigating  
03:57 5       Saskatchewan Justice, and you say that's not right  
6       because they, umm, they're their bosses?

7       A       I -- I know it sounds illogical, but all I can say  
8       is that when I have the information that they had  
9       in 1970 I would have seen a connection, and I felt  
03:57 10      so sure that they must have seen the connection,  
11      and you can't tell me that anyone could have those  
12      two reports in their hands and not see the  
13      connections. And I guess, because of that, as  
14      soon as they -- they said that they could find  
03:57 15      nothing, no wrongdoing in the investigation or the  
16      prosecution, I always go back to that, and I see  
17      it in my mind's eye and think, well, if I was the  
18      investigator there, or if I was Mr. Caldwell and I  
19      had those two files together, I would have seen  
03:58 20      the similarities, I would have said "eh, look,  
21      what's going on here", if I -- if I had been Mr.  
22      Kujawa and I had them, I would have seen that.

23                   And so if I, as a mum, could see  
24      it, I couldn't understand why these people  
03:58 25      could -- couldn't see it too, unless it's because



1           they're investigating their bosses and they're not  
2           prepared to say they did something wrong.

3           Q       Okay. So your premise going in was that whoever  
4           investigated this had to reach the same conclusion  
03:58 5           that you did, that the -- whoever looked at them  
6           had to have drawn a connection?

7           A       They would have to.

8           Q       And so that if they didn't --

9           A       I mean, if they'd gone down and visited Fisher and  
03:59 10          he told them all about these rapes that he did and  
11          you had been the detective that had just worked a  
12          year ago on a murder that was so similar in  
13          everything and, ah, it --

14          Q       So just so that I understand this, so you are  
03:59 15          saying that you were so certain that whoever  
16          looked at the Fisher and Milgaard files or the  
17          Miller files, Milgaard/Miller files --

18          A       Yes.

19          Q       -- had to have drawn a connection?

03:59 20          A       They had to.

21          Q       And, therefore, anybody who investigated that  
22          issue and reached a different conclusion had to  
23          be, number one, wrong or --

24          A       Or there was a reason for their conclusion.

03:59 25          Q       Well, wrong?



1 A Yes.

2 Q And, secondly, and therefore somehow involved in a  
3 coverup or something nefarious about their  
4 investigation?

03:59 5 A Right.

6 Q And so that unless you got that conclusion, that  
7 whoever made the inquiry you would cast out under  
8 credibility?

9 A I did.

03:59 10 Q And so just back to this comment about  
11 investigating their bosses, I'm trying to  
12 understand who, and I don't say this facetiously,  
13 but who is left to investigate this issue? You  
14 said the Federal Justice Department, you say you  
04:00 15 don't trust them to investigate anybody, in  
16 particular the Saskatchewan Justice because they  
17 are both governments?

18 A This is why, for instance, right now in England,  
19 okay, you have an independent board that you can  
04:00 20 go to when someone is wrongly convicted. They  
21 don't have the police doing the investigation,  
22 they have independent investigators going out and  
23 doing the investigation. That's what we need in  
24 Canada.

04:00 25 Q And if an independent board had come back and had



1 the same conclusion here as the RCMP did that  
2 disagreed with your contention, would you have  
3 accepted that?

4 A I would have.

04:00 5 Q And so --

6 A Because I don't believe they would have come back  
7 with that because it isn't logical or it couldn't  
8 possibly be reached.

9 Q But again --

04:01 10 A But if it was someone that was independent, then I  
11 would have had to accept it, yes. I wouldn't  
12 believe this because again I felt there was a  
13 motive to shade it another way.

14 Q And so the motive here for the RCMP would be that  
04:01 15 you thought they were investigating their bosses?

16 A Yeah. They are employed by them.

17 Q By whom?

18 A By the government.

19 Q Of Saskatchewan?

04:01 20 A Both of them.

21 Q Okay. I think the RCMP would be a federal --

22 A They were a federal.

23 Q And so again just so that when Inspector Sawatzky  
24 investigates Serge Kujawa, for example, did you  
04:01 25 think that there would be some motive on Inspector



1 Sawatzky to give Mr. Kujawa a break or to not  
2 find -- I'm not sure I understand what --

3 A I don't think I was going down that path, Mr.  
4 Hodson, I wasn't personalizing it to that extent,  
04:02 5 I just felt that there was more than enough  
6 information there that if it had been looked at  
7 correctly, it would be found.

8 Q And would it be a case of once the result comes  
9 out that instead of attacking the substance of it,  
04:02 10 you say lookit, I don't agree with the result,  
11 therefore, the people who are involved in the  
12 investigation must have been part of the problem,  
13 part of the conspiracy or some participant in a  
14 cover-up and therefore it's not valid?

04:02 15 A Yes. If it had been an independent board and they  
16 would come up with that, I would have had to  
17 accept it.

18 Q Okay. So that it was -- am I right, though, and  
19 again I think this article, you indicate you  
04:02 20 hadn't yet read the report, but you had concluded  
21 that it was a whitewash and that they were  
22 investigating their own bosses and I think  
23 implying that lookit, therefore there's  
24 something -- it wasn't independent?

04:02 25 A That's right.



1 Q If we can go to your book which is 269317, page  
2 54, and go to page 269381, and I think you said  
3 this book was published in 1999; is that right?

4 A I believe so, yes.

04:03 5 Q Or thereabouts, and here it looks as though, I  
6 just want to ask you about this comment, you say:

7 "I later learned that Crown Attorney  
8 Serge Kujawa signed Justice Department  
9 files out on David and Fisher at exactly  
04:03 10 the same time that fall. Kujawa had  
11 handled David's appeals and knew his  
12 case intimately. He also handled  
13 Fisher's prosecution."

14 And this comment here about signing the files  
04:04 15 out, would that have been -- were you relying  
16 upon the Breckenridge information when you wrote  
17 that in your book?

18 A Probably.

19 Q And so that would have been maybe okay, maybe  
04:04 20 Breckenridge wasn't there, but someone was?

21 A Someone.

22 Q And Breckenridge learned secondhand that Mr.  
23 Kujawa had signed the files out; is that --

24 A Yeah, but I think that he admitted, I think that,  
04:04 25 I believe he admitted that he had the files out





1 together, but he may never have made the  
2 connection.

3 Q Well, I think what Mr. Kujawa had said, certainly  
4 in the media, that he had never put two and two  
04:04 5 together.

6 A But he did have the files together.

7 Q I think, and I stand to be corrected, I think what  
8 he stated in the media, and certainly what he said  
9 before the Commission, is that these two files  
04:04 10 were two of hundreds of files that he would have  
11 handled and that he would have had responsibility  
12 for the David Milgaard appeal file and the Larry  
13 Fisher prosecution file?

14 A Yes.

04:04 15 Q At the same time?

16 A Yes.

17 Q I don't think he ever, and I stand to be  
18 corrected, I don't think he ever said in the media  
19 or before this Commission that he had both files  
04:05 20 on his desk physically at the same time, but he --

21 A But he was handling them both at the same time.

22 Q He was handling them both, yes.

23 A So if he was handling them at the same time, they  
24 would be in his mind at the same time.

04:05 25 Q Okay. And I'm trying to understand in your book,



1           though, when you say that he signed out the files  
2           at exactly the same time --

3       A       Well, at that point I could have been using that  
4           particular information.

04:05 5       Q       Okay. Now go to 218857, I want to talk about the  
6           DNA.

7       A       As this goes on in the book here, I really pointed  
8           out all the similarities and everything and how  
9           Fisher liked to use clothing to cover the faces of  
04:06 10          his victims so they could not scream out for help  
11          and sort of explained all of the connections that  
12          were so similar.

13       Q       218857. Now, this is an article, May 6, 1995,  
14          about "The DNA test will clear his name Milgaard  
04:06 15          says," and we'll be hearing some evidence I think  
16          from Ron Fainstein and perhaps some others on the  
17          DNA testing later on, but can you give us maybe  
18          just a general overview of what your recollection  
19          and understanding was of how the DNA testing came  
04:06 20          about? I think we know July, 1997 is when the  
21          actual test results were released in England and I  
22          do have a few documents to go through here, but  
23          I'm wondering if you can just give from your  
24          memory what you remember about how this came  
04:06 25          about?



1 A Well, I was working in Ontario, David had been  
2 picked up by the police on many occasions and at  
3 that particular time he was in my custody in  
4 Kanata and we were having an extremely difficult  
04:07 5 time. It seemed as if the only way to survive,  
6 David was going to survive was if his innocence  
7 could be proved. We had heard about the DNA  
8 testing, the costs at that time were staggering,  
9 there was no way that we could afford it, I just  
04:08 10 felt that our life was, we were being pulled into  
11 little bits and pieces, and I went to see the  
12 prime minister and talked to him about getting the  
13 case re-opened. This was Prime Minister Chretien.  
14 John Harvard went with me.

04:08 15 Q I believe Allan Rock, was Allan Rock the justice  
16 minister?

17 A Allan Rock was the justice minister then and he  
18 was there too, and I remember saying to Prime  
19 Minister Chretien that we had to have an inquiry  
04:08 20 and he was saying, "Well, why? Everyone knows  
21 that your son is innocent. You know he's innocent  
22 don't you?" To Allan Rock, and he said yes, and I  
23 said, "But the country doesn't know that he's  
24 innocent and David really needs a way of proving  
04:09 25 it."



1 We sat for some time and Mr.  
2 Chretien told me a lot about his son and the  
3 problems he had and the upshot of the conversation  
4 was he, Allan Rock told him he couldn't, he just  
04:09 5 couldn't get involved, and so he said to him,  
6 "Well, whatever you can do for this lady, I want  
7 you to help her in whatever way you can, do you  
8 understand," and he said, "Yes, prime minister, I  
9 do."

04:09 10 So I went away and decided to go  
11 back to Mr. Rock and I did and I asked him if they  
12 would do the DNA testing and he said, "Oh, we  
13 couldn't get involved in that, Mrs. Milgaard," and  
14 I said, "Well, do you remember when the prime  
04:10 15 minister said you should do whatever you could to  
16 help me?" And he said yes, and I said, "Well, do  
17 you think that that could maybe be part of that?"  
18 I said, "Maybe I should go and see him again," and  
19 he said, "No, why don't you leave it with me."

04:10 20 Q So sorry, was this another meeting with Mr. Rock?

21 A Yes, it was a separate meeting with Mr. Rock that  
22 I went back later. I took this information from  
23 my meeting with Chretien, went home, thought about  
24 it and went back.

04:10 25 Q Okay.



1 A So then I had been working with James Lockyer, we  
2 had been investigating where they were doing DNA  
3 cases in England and he had the information on it  
4 which we gave to Mr. Rock and the government  
04:11 5 decided to go ahead and get it done.

6 Q That would be the federal government?

7 A That's right.

8 Q And so again you would have gone back then through  
9 Federal Justice and through the Federal Justice  
04:11 10 Minister?

11 A Yes.

12 Q And was it at this time that Mr. Lockyer was  
13 engaged to assist you in the DNA?

14 A Yes, at that particular time, yes. Another time  
04:11 15 that I had gone to Chretien, it was when David was  
16 picked up and hospitalised and he was in really  
17 bad shape and I had gone to see him in his home  
18 and I had begged him to contact Mitchell because  
19 he knew him and to get him to do an inquiry, so  
04:11 20 while I was in Kanata, on my days off and times  
21 when I wasn't nursing I was down in the parliament  
22 buildings every day going and seeing one after  
23 another of the MLAs to get their help and support.

24 Q And you had mentioned earlier in your evidence  
04:12 25 about Mr. Mitchell's comments and I think it was



1           sometime in 1995 that he had made the comment in  
2           the media about, I can't recall the exact words,  
3           but about his thoughts that David Milgaard was  
4           guilty?

04:12 5           A           That's right, that's right.

6           Q           Did that play any part in your --

7           A           Of course it did, it was a big part of it. So  
8           anyhow, between Mr. Lockyer and Allan Rock, the  
9           arrangements were made, and also with one of the  
04:12 10          Americans that had worked on, another case we were  
11          working on, and the DNA testing was pursued and we  
12          got the great results and I'll never forget that  
13          day as long as I live. Guy Paul Morin picked me  
14          up at the station and, or at the airport, and he  
04:13 15          wanted me to sit in the car, to sit down because  
16          he was afraid, he said afterwards, that I might  
17          faint when he told me the news that the DNA had  
18          shown that not only was it not David, but that it  
19          was Fisher, and it was a tremendous day for all of  
04:13 20          us.

21          Q           Can you just go back, I think you earlier on said  
22          that your son David was having some trouble at the  
23          time, and I'm wondering if you can just shed a bit  
24          more light on the -- again, I think this is around  
04:13 25          1995, he would have been out of jail for I guess



1 three years --

2 A Every time he turned around he was being picked up  
3 by the police on one charge after another, and the  
4 amazing part of it was, and I have to tell you  
04:14 5 this because I have to give some credit, I know  
6 I'm blasting the RCMP and everything, but all  
7 these times he got picked up for one charge or  
8 another, and it was because I believed they really  
9 believed that he was guilty, some of them, okay,  
04:14 10 so they are out to get him, and once the DNA  
11 testing was done, one time he was in Calgary, he  
12 was parked beside the, by the side of the road and  
13 he was in bad shape, not drinking or anything, but  
14 mentally, because he would get into states at that  
04:14 15 point in time, and the police picked up the phone  
16 and called his sister and said, you know, David is  
17 not in very good shape and he's parked at such and  
18 such, would you like to come down and get him and  
19 she did, but normally he would have been thrown in  
04:14 20 the drunk tank or someplace else and charged.

21 Q Were his, were the concerns or your observations  
22 at the time the fact that he was having trouble  
23 adjusting to life outside prison because he had  
24 been in prison so long or -- I'm trying to  
04:15 25 understand the role of the fact that he had not



1           been declared innocent, how that impacted on the  
2           troubles, or were there a whole host of other  
3           reasons for them as well?

4           A       Well, I think if you look at it this way, he had  
04:15 5           been in prison all of these years and then  
6           suddenly he's let out, but unlike regular  
7           prisoners where they are let out and they get some  
8           help on the outside, David got nothing, he got no  
9           money, he got no help, no readjustment whatsoever,  
04:15 10          and so all of a sudden we had a 40 year old man  
11          with a 16 year old inside and what he wanted to do  
12          was hitchhike and travel across the country, he  
13          was back to the old days, and of course people  
14          would recognize him. Fortunately because of our  
04:16 15          support groups it was wonderful, I knew where he  
16          was pretty well all the time because if he got to  
17          another city, someone would phone me and say David  
18          just arrived and they would keep an eye on him,  
19          but there were lots of times, like, when he was on  
04:16 20          busses or something like that that something would  
21          happen and then the next thing you know I would  
22          get a call and the police had picked him up. It  
23          was a living hell in those years.

24          Q       Okay. Just back on the DNA, it appears from the  
04:16 25          documents that after the initial request was made





1 or the initial discussions with the Federal  
2 Justice Minister that Mr. Lockyer, and whether it  
3 was Mr. Fainstein, but your legal counsel and  
4 Federal Justice and some scientists spent a number  
04:16 5 of months or even years negotiating over to get  
6 this done, do you have any knowledge about what  
7 the delay was there or what the issues were or  
8 what was happening, or is that something you  
9 relied on your lawyers?

04:17 10 A No, I relied upon James on that because they were,  
11 you know, had worked on it in the past and they  
12 had freed someone with the DNA, so it was  
13 important for me to leave that with him.

14 Q And so what was your understanding of why it took  
04:17 15 18 months or two years to get the DNA testing set  
16 up?

17 A Well, there were a number of issues about getting  
18 the things together. I don't know what the issues  
19 were.

04:17 20 Q Okay. If we can go to 330076 -- actually, sorry  
21 217118 first.

22 A That's the day.

23 Q Yeah, I will come back to that. 217118, and this  
24 is an article in May of '97, so this would be a  
04:18 25 month or two before the DNA results came out, and



1           there's a discussion, and I think this is when the  
2           decision had been made that it was going to  
3           happen, and you say:

4                       "David has been going around with a  
04:18 5                       cloud over his head for many of these  
6                       years," she said.

7                       "The Saskatchewan government  
8                       and the (federal) Department of Justice  
9                       have always refused to acknowledge  
04:19 10                      David's innocence."

11           And would you agree that the reason that both  
12           governments refused to acknowledge his innocence,  
13           at least from and after April 14, 1992, was the  
14           Supreme Court of Canada decision that said he was  
04:19 15           unable to prove that he was probably innocent?

16           A           Yes.

17           Q           And so the government was relying on a court  
18           decision to say lookit, we can't acknowledge his  
19           innocence because the court has said otherwise; is  
04:19 20           that correct? That was the position they were  
21           taking?

22           A           That was the position they were taking, although  
23           they could have given him a new trial.

24           Q           Right. And they refused to go ahead with the new  
04:19 25           trial?



1 A That's right.

2 Q So that -- and would that be the cloud you were  
3 trying to lift?

4 A The cloud that they were putting on there. I  
04:19 5 mean, good grief, Bob Mitchell was saying that he  
6 believed that David Milgaard was guilty and if the  
7 Minister of Justice is saying that, how do you  
8 expect the population of Canada to feel, and I  
9 mean these other people in high-up places are  
04:20 10 saying all these terrible things.

11 Q Go back to the full page, please, and you say:

12 "If the test does exonerate her son,  
13 Joyce Milgaard hopes it will force a  
14 public inquiry and compensation for the  
04:20 15 years David spent behind bars.

16 "We have our hopes pinned on  
17 getting a result."

18 And I take it that that was, and we've talked  
19 about this a bit before, the exoneration and one  
04:20 20 of the collateral things that goes with that  
21 would be to get compensation to assist David in  
22 his reintegration into society; is that fair?

23 A Yes.

24 Q And so that would be one of the important pieces  
04:20 25 of getting the DNA evidence, would be to give you



1 a basis to go and get compensation?

2 A Right. However, we were still filing a civil suit  
3 as this article has pointed out right here at that  
4 time, because we still believed, regardless of  
04:20 5 that RCMP report, about what we were alleging.

6 Q Right. So then if we can go to 330076 -- just so  
7 that I'm clear on this, it's fair to say, though,  
8 that when, in addition to the Supreme Court  
9 saying, being an impediment to the government  
04:21 10 exonerating David, it was also an impediment for  
11 them to compensate him as well?

12 A Absolutely.

13 Q And is it correct to say that that was also a  
14 hardship for your family and for David, once he  
04:21 15 got out of jail, not only was he not exonerated,  
16 but he had not been compensated?

17 A Right, and we had been left without anything.

18 Q And then I think this is an article from the  
19 *Calgary Herald* on July 19th, and:

04:21 20 "Mrs. Milgaard, who led a tireless fight  
21 to clear her son's name, was not  
22 prepared to turn the other cheek to  
23 those who sent her son to prison when he  
24 was only 16. She called for a public  
04:21 25 inquiry and for criminal charges to be



1 brought against those who prosecuted  
2 Milgaard.

3 "Police and Justice officials  
4 crucified him," she said.

04:22 5 "They knew it wasn't my son  
6 that did this, and they withheld the  
7 evidence. And the people who were  
8 responsible have to be brought to  
9 justice."

04:22 10 And I wasn't clear whether this was July of '97  
11 that you were looking for criminal charges or  
12 whether this article was referring to the  
13 Breckenridge allegations that had been  
14 investigated. Are you able to shed any light on  
04:22 15 that?

16 A I'm sorry, I can't shed any light on that,  
17 although I was so happy that day that I really  
18 can't believe that I would have been saying that.  
19 I kind of think that that may have been just a  
04:22 20 reporter adding that as part where he said, "Mrs.  
21 Milgaard, who led a tireless fight," etcetera,  
22 etcetera, is sort of the background for the  
23 article rather than something I said right then.

24 Q Okay. If we can go to 217114, please.

04:22 25 A It was funny, that particular day James Lockyer



1 wanted me to walk into the place where they were  
2 having a press conference and he wanted me not to  
3 look excited or anything, that I wasn't to be  
4 smiling and dancing all over the roadway because  
04:23 5 he wanted the press conferencer to announce the  
6 DNA test and I had such a hard time keeping a  
7 straight face as I walked.

8 Q And this is an article by Gordon Sinclair Jr., an  
9 interview of Brian Mulroney. If we can go to page  
04:23 10 217116?

11 COMMISSIONER MacCALLUM: What was the doc.,  
12 please?

13 MR. HODSON: The doc. ID is 217114.

14 COMMISSIONER MacCALLUM: Thanks.

04:23 15 BY MR. HODSON:

16 Q And here, this is quoting you:

17 "Milgaard said she's convinced that the  
18 Justice Department's decision to pay for  
19 DNA testing, a course of action that  
04:23 20 ultimately cleared her son, was the  
21 result of a meeting over a year ago with  
22 another prime minister.

23 Winnipeg MP John Harvard  
24 arranged a meeting with Prime Minister  
04:24 25 Jean Chretien and then Justice Minister



1 Allan Rock.

2 "I really think Chretien did  
3 it," she said."

4 A He did.

04:24 5 Q So that was your view at the time, or is your  
6 view, that --

7 A Oh, yes. I mean, Brian Mulroney certainly helped  
8 me in the other areas as well.

9 Q Do you remember in 1992 considering getting DNA  
04:24 10 testing done at that time, or what happened, and  
11 don't take this in a negative way, but why from  
12 1992 to 1995 were there efforts not made to have  
13 DNA testing done?

14 A Because DNA testing at that time wasn't really  
04:24 15 that active, it wasn't a science that was well  
16 known or anything at that point in time, and it  
17 was right after David had just got out of prison  
18 that I received a call from James Lockyer and he  
19 said that he wanted me to come down and help him  
04:25 20 on the *Guy Paul Morin* case and I had said  
21 absolutely not because I'm just, we've just got  
22 David out of prison, and so he had Guy Paul  
23 Morin's mother call me and of course how could I  
24 say no to her, especially because I had sort of  
04:25 25 made a promise to the big guy that if he got David



1 out of prison, I would help anyone that was  
2 wrongfully convicted, so I had sort of made this  
3 promise and had to follow through, so when James  
4 called me, I got into the *Guy Paul Morin* case, I  
04:25 5 got involved with all of the lawyers helping in  
6 that particular group and it was as a result of  
7 that case and one case that we were working on in  
8 the States that they were starting to think in  
9 terms of DNA that subsequently put us into the DNA  
04:26 10 picture.

11 Q And so are you telling us that -- I think 1995  
12 when it was raised with the federal government,  
13 would it have been as a result of your involvement  
14 in AIDWYC or in other cases, in the *Guy Paul Morin*  
04:26 15 case?

16 A Yes, and the other cases, that's right.

17 MR. HODSON: Mr. Commissioner, this might  
18 be an appropriate spot to break for the day. I  
19 have left the systemic issues that I will deal  
04:26 20 with in the morning. I don't expect to be too  
21 long with those and then we'll be into  
22 examination by other counsel.

23 (Adjourned at 4:26 p.m.)  
24  
25





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We, Karen Hinz, CSR, and Donald G. Meyer, RPR, CSR,  
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notes taken herein to the best of my knowledge, skill, and  
ability.

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Karen Hinz, CSR

Official Queen's Bench Court Reporter

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Donald G. Meyer, RPR, CSR

Official Queen's Bench Court Reporter



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