

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

Transcript of Proceedings

and

Testimony before the Commission

sitting at

TCU Place at

Saskatoon, Saskatchewan

On Monday, June 19th, 2006

Volume 165

Inquiry Proceedings



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1 Transcript of Proceedings

2 (Reconvened at 1:05 a.m.)

3 COMMISSIONER MacCALLUM: Good afternoon.

4 ALL COUNSEL: Good afternoon.

01:05 5 MR. HARDY: Good afternoon, Mr.

6 Commissioner. I wanted to let you and the
7 parties know where we are proceeding this
8 afternoon.

9 We had planned to continue with
01:06 10 the evidence of Eugene Williams. Unfortunately,
11 for reasons beyond his control, including a
12 cancelled connecting flight, we will be
13 continuing with his evidence tomorrow morning,
14 and this afternoon we will continue with the
01:06 15 video that we have been playing.

16 I understand that we have
17 approximately 45 minutes left of the shorter
18 clips of video, and we will then break, and then
19 proceed with the hour and a half video entitled
01:06 20 *The David Milgaard Story*.

21 COMMISSIONER MacCALLUM: All right.

22 **(Clip VT41 played)**

23 MR. HERSH WOLCH: Regarding Mr. Caldwell's
24 conduct, you will note in the material a letter
01:07 25 he wrote to the Parole Board, which I don't think



1 David has even seen until today, which we
2 considered to be absolutely scandalous, a letter
3 quoting Mr. Cadrain, who was clearly mentally
4 ill, telling outrageous stories that would affect
01:07 5 David's parole and which David couldn't, wouldn't
6 even know was affecting his parole.

7 Finally, regarding Mr. Kujawa,
8 he had both files on his desk, he had the file
9 involving David Milgaard and he had the file
01:08 10 involving Larry Fisher both on his desk at the
11 same time, and he has now publicly admitted that
12 he was the final arbitrator as to whether or not
13 it was relevant. Because he doesn't agree with
14 the Supreme Court of Canada, he still doesn't
01:08 15 agree with the Supreme Court of Canada, so he
16 made the decision, consciously, that it wasn't
17 relevant, and he overrode the Courts and didn't
18 give David Milgaard's counsel a chance to use
19 that information.

01:08 20 Because, in the material you
21 have, or in the material we will show you if you
22 want to see the police reports, you will see that
23 the Larry Fisher assaults continue throughout the
24 Milgaard file, that the victims are there,
01:08 25 there's reports from Mr. Karst regarding those



1 victims, it's right throughout the file. It was
2 no secret to them, it was simply a secret to
3 everybody else, and that is why there should be
4 an inquiry.

01:09 5 If I can just deal briefly on
6 the issue of a special prosecutor and why there
7 should be one, the fact of the matter is the
8 Saskatchewan Crown took a position in the Supreme
9 Court that the Supreme Court didn't accept, and
01:09 10 that was that the evidence against Mr. Fisher was
11 not credible, or at least not probative, or
12 whatever it might be, but whatever position they
13 took certainly puts them in a conflict in terms
14 of prosecuting. How can they now make that kind
01:09 15 of decision having taken that position?

16 What we are asking for is that
17 an independent prosecutor be put in charge of the
18 file, that the independent prosecutor address the
19 issue of is there sufficient evidence to charge
01:10 20 Mr. Fisher, if he decides there is then of course
21 the government should follow the recommendation,
22 if he decides there isn't then we can clearly
23 live with that.

24 He may go to a third route, he
01:10 25 may -- he or she may decide that there are other



1 avenues of investigation that can be done. We
2 can think of several. We can think of several
3 that have been wasted, that could have been done
4 a year ago, there was evidence available that's
01:10 5 now no longer there. But there is -- the
6 prosecutor could, with the expertise of the RCMP,
7 go ahead and gather more evidence and keep the
8 matter open and -- but we, our position is it
9 can't be done by the very same prosecutors who
01:11 10 say the Supreme Court is silly, that innocence
11 isn't as important as preserving the system, and
12 we believe -- I've heard this morning that the
13 family of Gail Miller is also urging that the
14 matter not be closed and we totally agree that it
01:11 15 should be pursued.

16 Now I could spend, I suppose,
17 another hour reading my letter and reading all
18 the enclosures, but I think you can do that for
19 yourself, and in a nutshell those are the
01:11 20 comments that I wish to make.

21 I would just add one factor.
22 We have sent a copy of the material to Kim
23 Campbell. Now we are not asking her at this
24 moment for an inquiry in the sense that we don't
01:11 25 need two inquiries, and both governments should



1 work together, but clearly if Saskatchewan will
2 not, we will be more persistent with the -- with
3 Ottawa in terms of the very real need for looking
4 into this matter further.

01:12 5 Those are my comments and I
6 don't know if --

7 MR. DAVID ASPER: Just to follow up on what
8 Hersh said so that you all understand, because
9 this is in the package, there is a chart at the
01:12 10 back of the package and this chart was prepared
11 for the proceedings in the Supreme Court. Every
12 piece of information on this chart except for the
13 last column, which was the last offence of Larry
14 Fisher, was available to the Crown in 1970. This
01:12 15 is what the Supreme Court saw, and this is a
16 very, very detailed analysis of what Mr. Fisher
17 was up to and what happened and what he did to
18 his victims, and all but the last column would
19 have been available, and if you look at it very
01:12 20 carefully we're confident that you will reach the
21 same conclusion that the Supreme Court did. And
22 it makes, in our view, the inaction by the
23 Saskatchewan Government even more astonishing.

24 MR. HERSH WOLCH: Just one comment on that,
01:13 25 and that chart was prepared by amateurs, it



1 wasn't done by trained police officers with --
2 who are experts in profiling serial rapists or
3 who have been taught at the FBI Academy. I
4 wonder what they would have done in preparing the
01:13 5 chart.

6 MR. DAVID MILGAARD: But they did a very
7 good job.

8 MRS. JOYCE MILGAARD: I don't like being
9 called an amateur, I feel by now I'm a
01:13 10 professional, Hersh. I have been doing this for
11 23 years.

12 MR. HERSH WOLCH: Okay. I take it back.

13 MRS. JOYCE MILGAARD: Yes, that's fine. I
14 guess, from the family's point of view, we have
01:13 15 found the main issue with a lot of people, as
16 they have been directing questions to us, is what
17 about compensation. David made a comment to me
18 yesterday about compensation, and that was he
19 thinks it should be put in the back seat. I
01:13 20 agree with him, because we feel that what we are
21 interested in is an inquiry so that there will be
22 accountability, and I think David has a few
23 comments on that.

24 MR. DAVID MILGAARD: The simplest way to
01:14 25 kind of say the way we all feel as a family is



1 REPORTER: Mr. Milgaard, what did you do
2 this weekend?

3 MR. DAVID MILGAARD: I was out at a cottage
4 at the lake. Even though the weather here in
01:15 5 Winnipeg is amazing because it's snowing right
6 now, we were out at the lake, and it was nice.
7 It was nice and quiet. I just wanted a chance to
8 kind of get away from people and I had a good
9 time.

01:15 10 REPORTER: What is it like when you've met
11 people on the street?

12 MR. DAVID MILGAARD: I have trouble walking
13 very far, sometimes, without people stopping and
14 asking me and my mum as to how we are and
15 congratulating us, and it's nice, it's nice to
16 have that, I like the feeling.

17 I think the reason a lot of
18 people care and the concern sort of comes forward
19 for all this is because they hold the ideal of
01:16 20 what's good or what's just up, and it's not just
21 us as a family, it's the idea that there are
22 things that are right and good and they should be
23 done properly, and we appreciate that. We
24 appreciate the support we have from people right
01:16 25 across the country, and we hope we have that



1 support continue, because we need it and that's
2 important.

3 REPORTER: Over the weekend did you ever
4 have to pinch yourself to realize this was
01:16 5 actually happening?

6 MR. DAVID MILGAARD: It may sound kind of
7 weird, I still pinch myself, Sasha. I do. It's
8 --

9 MRS. JOYCE MILGAARD: And, if he isn't
01:16 10 doing it, I'm pinching him. It's been so
11 wonderful just having him home, it's been a dream
12 come true. And someone said "how was your
13 birthday", because it was my birthday on the
14 18th, and I said "actually, it's the best one I
01:17 15 have had in 23 years". I'll admit to that many
16 years, people, but no more.

17 MR. DAVID MILGAARD: Yeah, we're out and
18 we're happy with that, you know.

19 REPORTER: Do you feel the need to have the
01:17 20 inquiry now that you are innocent in the eyes of
21 the law, according to your lawyer, do you feel
22 now being -- that you must have the inquiry to be
23 vindicated at this time?

24 MR. DAVID MILGAARD: I think that it's,
01:17 25 there should be no fear of anybody having an



1 inquiry, I mean you want to -- why have something
2 to hide or something like that. I think people
3 should welcome the inquiry. There may be things
4 that are found out that can benefit a system, a
01:17 5 procedure, a way. Why not welcome an inquiry,
6 you know, it never hurts to have an inquiry.

7 MRS. JOYCE MILGAARD: Plus, we just don't
8 like the idea -- I remember a little cartoon of
9 someone, a fellow going around, I can't even
01:17 10 remember where it was, but it was like with a
11 cloud over their head, and I just don't want my
12 son going around with a cloud over his head.

13 REPORTER: Mrs. Milgaard, how do you expect
14 to get an inquiry, I mean the Saskatchewan
01:17 15 Government has said "no" already?

16 MRS. JOYCE MILGAARD: Well, they said "no"
17 before they saw what we have, we are presenting
18 to you today. I think, once the public sees
19 what's there, they are going to also demand an
01:18 20 inquiry as we have. We want to give the Attorney
21 General space. Now that he will see the reasons
22 that we're asking for it, maybe he's going to
23 reflect on those reasons and say -- the way Kim
24 Campbell did, you know, I mean she saw new
01:18 25 evidence and she changed her mind. So we'll let



1 the Attorney General see the new evidence and
2 hopefully he'll change his mind too.

3 REPORTER: You really think the
4 Saskatchewan Government has never really saw any
01:18 5 of these documents and things that you are
6 sending to them?

7 MRS. JOYCE MILGAARD: Well, it may be that
8 they haven't looked at them in the depth that we
9 have, and with the perception that we have.

01:18 10 MR. DAVID ASPER: The Saskatchewan
11 Government, I might add, has been known to
12 overlook things in the past, possibly 23 years
13 ago, so I'm not sure that you can reach the
14 conclusion that this is so obvious that they
01:18 15 would necessarily see it.

16 REPORTER: Do you think the reason they are
17 saying no to an inquiry is they're afraid of
18 things like Donald Marshall, or where he got
19 compensation for the time that he spent, and that
01:19 20 maybe it's a cost thing to them?

21 MR. DAVID MILGAARD: I think that in any
22 situation where you are looking for compensation
23 and stuff like that, like people kind of throw
24 that issue up, there isn't really any way that
01:19 25 you can compensate people for something that, you



1 know, goes a little bit deeper than money. If
2 you miss your sister getting married, or your
3 grandmother dies or something, there is no price
4 tag for that kind of stuff.

01:19 5 And, as far as Donald Marshall
6 is concerned, a lot of good came out of the
7 inquiry, a lot of people were helped. There was
8 all sorts of situations they found that were
9 very, very wrongful, and we don't have any doubt
01:19 10 in our minds that there are going to be
11 situations found that are wrongful in this
12 situation, because we have lived them and we want
13 it resolved.

14 REPORTER: Mr. Milgaard, can you support
01:19 15 yourself outside prison without the assistance of
16 compensation?

17 MR. DAVID MILGAARD: I'm going to have to.

18 REPORTER: What are you going to do?

19 MR. DAVID MILGAARD: Get a job, maybe go to
01:20 20 university for a while.

21 REPORTER: Have you had any offers?

22 MR. DAVID MILGAARD: Nope. Thanks for
23 asking.

24 REPORTER: Any idea, though, about what --
01:20 25 what -- if you go to university or get a job, any



1 sort of idea what you want to do?

2 MR. DAVID MILGAARD: I may do a little bit
3 of both. I may go to the University of Winnipeg
4 and see if I get a job with the city. That's
01:20 5 what I am considering at this point.

6 REPORTER: What kind of thing would you
7 like to do.

8 MR. DAVID MILGAARD: Just something that
9 I'm active physically, something to keep me
01:20 10 healthy.

11 JOYCE MILGAARD: Something that will keep
12 him outside.

13 REPORTER: You say people should pay that
14 did this to you, is that what you are saying?

01:20 15 MR. DAVID MILGAARD: Well, when you say
16 pay, it's almost like a retribution thing and I'm
17 saying that people that have legitimately done
18 wrong in this matter and those people that are
19 responsible for those people, whether it's the
01:20 20 Justice Department and Kim Campbell, everybody
21 inside that picture, all they have to do, right,
22 is take a look at their mistakes, is basically
23 acknowledge that they made those mistakes and do
24 so publicly and that way those mistakes won't
01:21 25 happen again because the people that are



1 responsible for making the mistakes will be held
2 responsible and maybe fired or whatever their
3 situation is. There's serious mistakes.

4 REPORTER: Would that be considered, would
01:21 5 you consider that revenge?

6 MR. DAVID MILGAARD: I wouldn't consider it
7 revenge, I would consider it a proper way to
8 clean house.

9 MS. JOYCE MILGAARD: And that would be
01:21 10 justice.

11 MR. DAVID ASPER: You have to appreciate,
12 all the way along, and I can say this for the
13 past whatever, five or six years, David's
14 objective, among other things, and among his
01:21 15 selfish objectives, were to have an effect on the
16 system itself so that the odds of this happening
17 to somebody else will be diminished by David's
18 success, as a result of David's success, and I
19 think that David has always been committed to
01:22 20 ensuring not only his own freedom, but that
21 others aren't wrongly imprisoned and that there
22 should be lessons to be learned, and I think the
23 whole question of the withholding of the evidence
24 in 1970, the rules of disclosure by the Crown at
01:22 25 their core are the same today as they were then,



1 meaning that the Crown had an obligation, the
2 state had an obligation to conduct a fair trial
3 and that didn't happen and one wonders is it
4 happening today and is somebody being convicted
01:22 5 as we speak while the Crown is sitting on
6 evidence it knows would tend to exonerate the
7 accused, and so that -- and it's been very
8 frustrating as counsel, you know, you try to
9 focus on a single objective. David's have been
01:22 10 quite varied.

11 REPORTER: ...the police files, I'm
12 wondering if your silence on that means you are
13 satisfied with the Saskatchewan Police Commission
14 report.

01:22 15 MR. DAVID ASPER: Not at all.

16 MR. HERSH WOLCH: No, no. As far as the
17 overall picture, if I didn't say it in the
18 letter, I must have overlooked it, and applaud
19 you for your perception, but it's clearly an
01:23 20 issue. In fact, it goes beyond that. As I
21 understand it, the -- if one was to check with
22 the statistics of offences in that period of time
23 in Saskatoon, you won't even find them in the
24 facts, that is, the attacks of Larry Fisher I
01:23 25 believe are not even in the list of people who



1 were victimized in that year, so if I missed it,
2 that's my error.

3 MR. DAVID ASPER: You'll see, I believe
4 it's on page 3, we make, of our letter to
01:23 5 Mr. Mitchell, we make specific reference to the
6 fact that we do have evidence that in 1974,
7 apparently three years after Fisher's confessions
8 and guilty plea, that some of his files were
9 missing.

01:23 10 MR. HERSH WOLCH: That actually contradicts
11 in our view the findings of that inquiry because
12 '74 was very recent to be missing files.

13 MR. DAVID ASPER: One wonders, and I guess
14 it's implicit in what I'm saying, but one wonders
01:24 15 whether the conclusions of the Saskatchewan
16 Police Commission might have been different had
17 that Commission been provided with the kind of
18 information that we have now.

19 REPORTER: In some ways you still, because
01:24 20 of the Saskatchewan government's reaction to
21 this, in some ways do you still feel like you are
22 a prisoner?

23 MR. DAVID MILGAARD: That's a pretty
24 interesting question. You live inside a system
01:24 25 and you may have a sense of anger towards a



1 system, but if -- if -- if you are a half decent
2 person, right, you can't really direct that
3 toward, to people as individuals. I have an
4 anger I guess towards the system in this country,
01:24 5 the criminal justice system. You see young
6 people walking out, any age of people, and to
7 predictable futures, coming back and forth.
8 There are proven models of justice that work
9 better in different countries that guarantee the
01:25 10 community's safety at much less cost and things
11 like that and it's not a matter of, you know,
12 maybe they do, they definitely do, and I'm
13 dismayed that people don't do something about
14 that and try a different kind of direction.

01:25 15 I don't hold anything against
16 anybody personally on a person-to-person basis.
17 I may have a sense of -- like, when Kim Campbell
18 walked away from my mom, I didn't particularly
19 like that. When people show to me that people
01:25 20 have made serious mistakes, Mr. Williams with the
21 Justice Department, people in Saskatchewan, and
22 when we get different reports that are legitimate
23 reports that show Mr. Fisher to be around and
24 doing terrible things and hurting women and
01:26 25 raping women and things like that and none of



1 this comes before a court, that I'm inside, and
2 it's very instrumental that this could be the
3 type of thing that I would never have had to even
4 go through a whole court proceeding and I would
01:26 5 never have spent 23 years in prison, I think
6 that's ridiculous, and people are now arguing
7 about it and saying is it true, isn't it true.
8 It's just a matter of looking at it, it's
9 something that you can feel, you can hold, why
01:26 10 aren't these facts coming out, why aren't the
11 people responsible doing something about it.

12 REPORTER: I would like to ask the lawyers
13 if they are uncomfortable having to prove someone
14 else did the crime in terms of a defence?

01:26 15 MR. HERSH WOLCH: No, I have no difficulty
16 with that at all. It's not a unique defence, you
17 know, sometime when you have two people held at
18 the same time, it's a lawyer's nightmare when
19 each one is pointing the finger at the other, you
01:26 20 just witnessed that in Winnipeg in a major trial
21 in the killing of a young girl, but no, I have no
22 discomfort at all. It's something that if it
23 exonerates our own client, you are happy with
24 that and --

01:27 25 REPORTER: But doesn't it set the tone that



1 people have to prove their innocence as opposed
2 to not being found guilty?

3 MR. DAVID ASPER: But wait a second, but
4 wait a second, let's keep it in perspective. We
01:27 5 don't have to prove that Larry Fisher did it
6 beyond a reasonable doubt, we wouldn't have to do
7 that in a trial against David Milgaard, all we
8 would have to do is establish that evidence and
9 tell the jury that it raises a reasonable doubt.
01:27 10 It's up to the Crown, it's up to the police to
11 investigate Larry Fisher and it's up to the Crown
12 to prove that he did it beyond a reasonable
13 doubt, and what's so frustrating about this case
14 is that if there was any meaningful chance to do
01:27 15 it, it existed in 1970, and when people talk
16 about the trail being cold, the trail is cold on
17 Larry Fisher, not on anybody else.

18 REPORTER: Mr. Wolch, as late as last week
19 Mr. Kujawa was saying that he didn't see what
01:28 20 Larry Fisher had to do with all of this. How do
21 you respond?

22 MR. HERSH WOLCH: Well, he is entitled to
23 be obtuse, he's entitled to be not very bright,
24 he's entitled to not be able to read, he's
01:28 25 entitled to do all those kind of things, but he's



1 not entitled to make the final decision. That
2 is, he can look at it and say to himself "I don't
3 think it's admissible, I think the Supreme Court
4 is dumb, I think the law is dumb, I think the
01:28 5 lawyers are dumb," but he has to present it and
6 let somebody else make that decision. That is
7 the distressing part of it. People are entitled
8 to be wrong, but they are not entitled to
9 withhold.

01:28 10 REPORTER: I have a question of disclosure.
11 The Supreme Court said that, you know, there was
12 adequate information disclosed by prosecutors in
13 Saskatchewan to Mr. Milgaard's defence counsel at
14 the time. Are you interpreting that to say that
01:28 15 there was adequate disclosure at the time of
16 trial and that at that point things fell apart?

17 MR. HERSH WOLCH: The Supreme Court said,
18 and they chose their words, I'm sure, carefully,
19 as they always do, they said there was adequate
01:29 20 disclosure by the rules as they were then. Now,
21 clearly not as they are today, and today are the
22 better rules, today that would not be adequate
23 disclosure, but back in 1969 I guess things were
24 done a lot differently, but they specifically did
01:29 25 not condone anything after 1970 when Fisher came



1 to light, there was not a reference in their
2 judgment to say that it was inadvertently looked
3 at, overlooked, it was handled properly, they
4 specifically said it came to light in October of
01:29 5 1970 and didn't go on to say those things they
6 said about the earlier handling of the matter.

7 REPORTER: What you are saying is that it
8 was incumbent upon the prosecution and the police
9 and everyone involved in this to shed light on
01:29 10 the fact that someone else possibly may have
11 committed the crime?

12 MR. HERSH WOLCH: Well, sure, that's what
13 disclosure is all about. The prosecution is not
14 supposed to judge and make the final decision,
01:30 15 they are supposed to bring it forward. Evidence
16 favourable to the defence is supposed to be
17 brought forward.

18 MR. DAVID ASPER: I mean, insofar as the
19 evidence is concerned, the state or agents of the
01:30 20 state investigated it, they prosecuted it, they
21 represented Milgaard's interest in it by
22 rejecting the connection and then ultimately
23 judged on it without Milgaard ever knowing about
24 it, and, you know, the appropriate course would
01:30 25 have been for the Crown to make the information



1 available to Milgaard's counsel and for
2 Milgaard's counsel to take it before the Court of
3 Appeal in Saskatchewan and argue in favour of its
4 admissibility and we're confident that that, that
01:30 5 the court would have ruled that it was fresh
6 evidence, would have at least ordered a new trial
7 and David at that time could have had a fair
8 hearing.

9 JOYCE MILGAARD: You in your question, and
01:30 10 David didn't quite answer it, you asked him --
11 he's getting to be almost a politician -- you
12 asked him if he still feels like he's in prison
13 sometimes, and I would like to answer that
14 because our whole family still feels like, that
01:31 15 we're in prison, we're in prison because we
16 haven't got a clear-cut answer, and we can't just
17 go home and celebrate the way a family ought to
18 be able to at this point in time, we're going to
19 have to get out there and we're going to have to
01:31 20 fight and keep on fighting, so yes, we do feel at
21 times we're still in prison. We're enjoying
22 having him with us, but we haven't got out of it
23 yet.

24 REPORTER: Mrs. Milgaard, you say you are
01:31 25 going to wait on compensation until you get an



1 inquiry, but will you get compensation without an
2 inquiry? Don't you need an inquiry?

3 MRS. JOYCE MILGAARD: Well, that of course
4 is up to the lawyers. Our -- we have asked them
01:31 5 to put the main focus on David's innocence and
6 establishing that and we believe that can be
7 done.

8 REPORTER: Surely you thought of some kind
9 of financial compensation for all these years. I
01:32 10 mean, I know it's tough to put a price tag on it.

11 JOYCE MILGAARD: No, that's one thing
12 the family --

13 MR. DAVID MILGAARD: No price tag.

14 JOYCE MILGAARD: -- has said, that there is
01:32 15 no price tag on it, and we just don't even want
16 to get involved in that. We've always done
17 things on a priority basis, it was, one, get
18 David out of prison. We've got him out of prison
19 now, that's been established. Now we want to
01:32 20 establish his innocence clearly before the land.

21 MR. HERSH WOLCH: If I didn't say it
22 earlier, I'll say it now, and that is we have
23 absolutely no objection to an inquiry dealing
24 with the issue of compensation; that is, if the
01:32 25 inquiry can look into it, fine, we don't have any



1 *problem with somebody independent looking at the*
2 *issue.*

3 *REPORTER: My question was though how*
4 *likely do you think it is that you will get*
01:32 5 *compensation without an inquiry?*

6 *MR. HERSH WOLCH: Well, there's always the*
7 *possibility of a civil lawsuit, but we hate to*
8 *even think about that right now. We're hoping*
9 *that common sense, good judgment will prevail*
01:32 10 *without, you know, putting the family through any*
11 *more turmoil. The thought of a civil lawsuit is*
12 *really distressing.*

13 *REPORTER: Hersh, is there any way at*
14 *all -- I mean, at this point the politicians have*
01:33 15 *all basically said, and people who are in charge*
16 *of this have said "no, as far as we're concerned,*
17 *the matter is closed," etcetera, etcetera. Is*
18 *there any way that you can force them to have an*
19 *inquiry? I mean --*

01:33 20 *MR. HERSH WOLCH: I think, yeah,*
21 *(inaudible) politicians I suppose, but the*
22 *politician is still accountable to the people and*
23 *they have to be cognizant of what people are*
24 *thinking and what people's sense of fair play is*
01:33 25 *and I'm not so cynical of politicians yet that I*



1 feel they will not be willing to re-look at
2 something so obvious or at least deal with it,
3 because, you know, we are willing to come in
4 front of you and answer whatever you want and I
01:34 5 can't see them turning us down and then facing
6 your questions, that they'd -- I mean, how can
7 they face a question of, "well, aren't you
8 protecting your caucus member," or "do you stand
9 by his comments and, if not, what are you doing
01:34 10 about it?" You know, I'd pay for a seat to watch
11 your questions of a politician that turns us
12 down.

13 REPORTER: So basically you are counting on
14 public pressure, that's really the only leverage
01:34 15 that you have?

16 MR. HERSH WOLCH: We're counting on
17 informed public pressure.

18 MR. DAVID ASPER: And don't underestimate,
19 and the politicians by now should know,
01:34 20 particularly with regard to this case, to not
21 underestimate the power of the people, you know.
22 All along the people who have become informed
23 about this case have become almost as passionate
24 as we are that there's been an injustice and, you
01:34 25 know, over the past few days we've been talking



1 to many reporters, many people phone our office
2 and Joyce's home and we've been on call-in shows
3 and the support is overwhelming and I think the
4 support exists because people are genuinely
01:35 5 interested in making sure that people don't go to
6 jail, particularly for long stretches of time,
7 and then the end of it the response of the state
8 is to sort of shrug its shoulders and say, well,
9 sorry.

10 **(Clip VT41 ends)**

11 **(Clip VT42 played)**

12 REPORTER: ...was felt not only by David
13 Milgaard, but certainly his whole family. Joyce
14 Milgaard was certainly front and centre in the
01:35 15 news for many, many months as she pursued this
16 case and indeed over the years and we take you
17 back now to the documentary, the David Milgaard
18 story, and this is the family recalling their
19 feelings at the time of David's conviction.

01:36 20 "JOYCE MILGAARD: I can remember being
21 just so scared, just so scared.

22 MR. LORNE MILGAARD: My wife was crying
23 a lot, which she had held back in the
24 courtroom, and she had looked like she
01:36 25 was ready when she heard the verdict and



1 I had her hand and I said, you know, try
2 not to, and I came close myself. And I
3 came even closer when Gail Miller's
4 father came over and he was crying and
01:36 5 he took my hand and said "I'm sorry",
6 so that was the tough part.

7 Then on the way home is when it
8 really affected us and I guess it was
9 the first time there were only the two
01:37 10 of us together and still, and still in
11 my mind I wasn't sure that this thing
12 had really happened.

13 MR. DAVID ASPER: In February, 1970
14 David was sent to the maximum security
01:37 15 penitentiary in Prince Albert,
16 Saskatchewan. There he began serving
17 his life sentence. He was 17 years
18 old."

19 REPORTER: David, I think one of the things
01:37 20 that's really significant about the entire story
21 of David Milgaard is that there were so many
22 mistakes made, and some of them seemingly minor,
23 some of them made by David himself right at the
24 very beginning of this. Where -- how did it
01:37 25 happen that someone can spend 23 years in jail



1 for a crime that he hasn't committed, how did it
2 happen in this case? Who failed him or what
3 failed him?

4 MR. DAVID ASPER: Everybody failed him. I
01:38 5 look at that clip and I, you know, my anger is
6 revived. He was failed every single step of the
7 way.

8 The police initially began the
9 investigation looking for a fellow who had been
01:38 10 raping women, many women in Saskatoon. A tip
11 fell out of the sky that David Milgaard might be
12 involved and they ignored the earlier leads
13 regarding the rapist and got tunnel vision toward
14 David Milgaard and they disregarded everything
01:38 15 that tended to show that he wasn't involved with
16 the crime and everything they did once they got
17 tunnel vision became a self-fulfilling prophesy,
18 so that when they talked to Milgaard's friends,
19 it wasn't in sort of, in this friendly
01:38 20 discussion, tell us, gee, we just want to know
21 what happened, they talked to his friends for the
22 purpose of having his friends implicate Milgaard
23 and they interrogated them that way and the
24 evidence in the Supreme Court made that quite
01:38 25 clear.



1 The trial process was a gross
2 failure in two respects. Number 1, the level of
3 disclosure, what Milgaard's counsel knew about
4 what the Crown had gotten through the
01:39 5 investigation was woefully inadequate. Secondly,
6 the conduct of the defence, you know, Ron Wilson
7 comes to the Supreme Court and recants and
8 admitted that he lied at the trial. There wasn't
9 anything that we had in 1992 that Milgaard's
01:39 10 counsel didn't have in 1970, it was a question of
11 the approach, and Wilson himself said that, you
12 know, if the lawyer had gone a certain way, he
13 might have been prepared in 1970 to fess up.

14 The appeal process, again, the
01:39 15 appeal court didn't know a lot of things that the
16 Crown and the police knew and so in passing on
17 whether the conviction had been fair, all the
18 appeal court had was what had happened at the
19 trial and what had happened at the trial was
01:40 20 flawed.

21 Then the Supreme Court refused
22 to hear the case, they wouldn't accept the
23 appeal.

24 Then we get to David going to
01:40 25 prison and the parole system failed him because



1 he wouldn't admit guilt and the Parole Board
2 fixated on trying to get a psychiatric
3 explanation for this unrepentant killer, never
4 accepting the possibility that maybe he wasn't
01:40 5 the killer.

6 Then the whole system of the
7 redress of a wrongful conviction, the Section 690
8 process. The Federal Department of Justice
9 showed itself to be dysfunctional, absolutely
01:40 10 dysfunctional in dealing with these kinds of
11 cases and I would dearly love to go on, and I
12 could do so for a long time, heaping criticism on
13 them, and they deserve every bit of it, so from
14 start to finish, until the day he was released,
01:40 15 the system failed him.

16 And then the ultimate insult is
17 the Supreme Court of Canada says to Milgaard,
18 look, what you've shown us convinces us that
19 there would be a miscarriage of justice if you
01:41 20 weren't given the opportunity to have a trial so
21 that a jury could get the whole picture this time
22 as opposed to what the Crown gave them in 1970
23 and Saskatchewan's response is to enter what's
24 called a stay of proceedings and to not have a
01:41 25 trial, deprive Milgaard of the right to get final



1 vindication with the jury, and that's the
2 ultimate insult, and then you start to find out
3 some of the details of the people that were
4 involved and how the investigation unraveled,
01:41 5 which I think gives adequate grounds for Milgaard
6 to say, hey, you know, maybe we should have an
7 inquiry, you know, I served 23 years in jail and
8 I'm a little curious about why the Supreme Court
9 can say that Larry Fisher was available in 1970
01:41 10 and you, Saskatchewan, didn't tell me about it,
11 it was correctible 22 years ago, now I would like
12 to know why.

13 Now, that's not an unreasonable
14 request, but the ultimate insult is Saskatchewan
01:42 15 says no, they put their heads in the sand and say
16 no inquiry, and so, you know, from start to
17 finish it failed him, and it's interesting,
18 because if you trace the Donald Marshall case
19 from Halifax, or from Nova Scotia, it's exactly
01:42 20 the same thing, exactly the same thing, and they
21 had a huge inquiry in Nova Scotia about what
22 happened and why it happened and how can we, what
23 can we do to make sure it doesn't happen again,
24 and the report went to the federal department of
01:42 25 justice and the dear Minister of Justice ignored



1 it, absolutely ignored it, and everything that
2 they predicted and everything that the Marshall
3 inquiry tried to prevent from happening again
4 happened again in Milgaard, and to this day they
01:42 5 won't admit that there's a problem with the
6 system.

7 **(Clip VT42 ends)**

8 **(Clip VT44 played)**

9 REPORTER: ...prison after 23 years. His
01:43 10 conviction for the murder of Gail Miller had been
11 overturned by the Supreme Court. The court said
12 he deserved a new trial because of new evidence.

13 That evidence involved this
14 man, Larry Fisher, a serial rapist who lived in
01:43 15 the same area that Gail Miller was killed.
16 Milgaard's supporters say information about
17 Fisher was known to Saskatchewan authorities 20
18 years ago, but was never revealed to Milgaard's
19 lawyer. They say that among the people who knew
01:43 20 of the similarities between Fisher's crimes and
21 the murder of Gail Miller were Serge Kujawa, the
22 chief prosecutor, and Roy Romanow who was
23 Attorney General of Saskatchewan at the time.
24 Hersh Wolch is David Milgaard's lawyer.

01:44 25 Mr. Wolch, what's your



1 understanding of the focus of this investigation?

2 MR. HERSH WOLCH: I'm told it will be broad
3 going into the question of cover-up and that is,
4 you know, why David Milgaard waited 20 years to
01:44 5 find out what the -- the evidence that exonerated
6 him.

7 REPORTER: So you don't think it will focus
8 solely on Mr. Romanow's knowledge or lack of
9 knowledge of the case?

01:44 10 MR. HERSH WOLCH: I'm hoping it doesn't,
11 it's far more wide ranging than that, and it may
12 very well be that there was a massive cover-up
13 without his participation.

14 REPORTER: What's your understanding of the
01:44 15 cover-up, if there is one?

16 MR. HERSH WOLCH: Well, you have to
17 understand that back in 1969 and '68 there was
18 a -- Larry Fisher to be specific, going around
19 raping women in the area where Gail Miller was
01:44 20 murdered and the police, when they found Gail
21 Miller's body, believed that it was the same
22 person who had committed the previous attacks and
23 they were focused on him. After David Milgaard
24 was convicted but before his appeal, the police
01:45 25 and the Crown were fully aware that it was Larry



1 Fisher who was committing those crimes.

2 REPORTER: Who had -- yeah, and in fact
3 admitted to them?

4 MR. HERSH WOLCH: He confessed to them to
01:45 5 the very same investigator, and David Milgaard's
6 appeal went on without David Milgaard's lawyers
7 knowing anything about Larry Fisher and that
8 specific evidence was the evidence that convinced
9 the Supreme Court that the conviction could not
01:45 10 stand. That evidence could have been given to
11 the Saskatchewan Court of Appeal in 1970 or '71
12 and presumably David Milgaard would have been a
13 free man back then.

14 REPORTER: All right. I guess it's
01:45 15 certainly provable that the investigators working
16 on those rape cases were never told that someone
17 had been convicted of the rapes and the victims
18 were never told, but how is that a cover-up, how
19 do you prove that's a cover-up?

01:45 20 MR. HERSH WOLCH: Well, it speaks for
21 itself that when something is handled in such an
22 unusual manner to begin with, it's kept away from
23 the investigators, and the Gail Miller
24 investigator is the one who suddenly is
01:46 25 parachuted into that case, it then goes to the



1 very same prosecutors who handled David
2 Milgaard's case, and instead of going to
3 Saskatoon where they all were committed, it goes
4 to Regina and is held in abeyance until after
01:46 5 David Milgaard's appeal is finished and the
6 victims aren't even told, so nobody even knows
7 about it.

8 REPORTER: What would be the point of a
9 cover-up?

01:46 10 MR. HERSH WOLCH: Because what happened in
11 the end result, that this --

12 REPORTER: He lost his appeal?

13 MR. HERSH WOLCH: Yeah, because when it was
14 uncovered, it was the evidence that turned the
01:46 15 Supreme Court around and turns anybody around in
16 terms of David Milgaard's innocence.

17 REPORTER: If the RCMP are able to prove
18 that there was a cover-up, what do you hope that
19 will accomplish for your client?

01:46 20 MR. HERSH WOLCH: Well, I think the
21 satisfaction of knowing that those who were
22 responsible for 23 years in jail are held
23 accountable. David has been very strong about
24 the word accountability.

01:47 25 REPORTER: Uh-huh.



1 MR. HERSH WOLCH: And it could lead of
2 course to compensation because if that kind of
3 wrongdoing meant an extra 20 odd years in jail,
4 certainly there should be some compensation.

01:47 5 REPORTER: You are hoping in essence that
6 it will prove he's innocent because that's
7 something the Supreme Court wasn't able to
8 suggest?

9 MR. HERSH WOLCH: Well, he is innocent. He
01:47 10 has not been convicted of the crime. He stands
11 innocent. He is no more legally guilty than you
12 or I.

13 REPORTER: Has he heard about this
14 decision? What was his reaction?

01:47 15 MR. HERSH WOLCH: Yes. He's cautious, you
16 know, his experience with the judicial system and
17 police investigations has not been the best, so
18 he doesn't look at it as the answer to all his
19 problems, but it's a wait and see.

01:47 20 REPORTER: How is he coping? We've heard
21 of his recent brushes with the law, if I can put
22 it that way.

23 MR. HERSH WOLCH: Well, I think he's coping
24 far better than I would in the circumstances and,
01:48 25 you know, there's obviously been some



1 *difficulties, but they were rather minor from*
2 *what I gather, and given the fact that he was*
3 *just thrown out on the street with no support*
4 *whatsoever, I think he's coping quite well.*

01:48 5 *REPORTER: All right. Well, thank you for*
6 *coming in today.*

7 *MR. HERSH WOLCH: My pleasure.*

8 ***(Clip VT44 ends)***

9 *MR. HARDY: Mr. Commissioner, I understand*
01:49 10 *that there's one shorter clip that we're having*
11 *some difficulty with. We will begin the longer*
12 *Global production that I mentioned, being The*
13 *David Milgaard Story.*

14 *COMMISSIONER MacCALLUM: All right.*

01:50 15 ***(The David Milgaard Story played)***

16 *(Preliminary credits)*

17 *REPORTER: How are you.*

18 *MRS. JOYCE MILGAARD: Great.*

19 *REPORTER: Is this what -- that you hoped*
20 *for?*

21 *MRS. JOYCE MILGAARD: I guess we're really,*
22 *really happy. It's a lifetime come true. Let's*
23 *go inside, and we don't want to wait, we want to*
24 *pick up our son and take him home. Isn't it*
25 *great, Dan?*



1 MR. DAN LETT: Not bad.

2 MRS. JOYCE MILGAARD: It's not bad? It's
3 terrific.

4 REPORTER: Did anybody sleep last night?

01:50 5 MRS. JOYCE MILGAARD: I slept like a baby.
6 So did my husband.

7 MR. DAVID ASPER: My baby didn't sleep.

8 This is the story of a
9 16-year-old kid and his family, and how they
01:51 10 challenged, and challenged again, the entire
11 Canadian system of Justice.

12 The story begins in the late
13 evening hours of January 30th, 1969 in
14 Saskatchewan. In those days, David Milgaard was
01:51 15 very much into the scene of the late 1960's, the
16 music, the drugs, and the free love. His
17 lifestyle attracted many friends, some of his
18 Regina friends included Nichol John and Ron
19 Wilson, with whom he shared a love of cars and
01:51 20 fast driving. Road trips were also part of the
21 lifestyle, and on an earlier trip to Saskatoon he
22 met and became friends with Albert Cadrain, who
23 lived there.

24 But, in spite of the fact that
01:51 25 he had all these friends and certainly his



1 family, David was restless and had a constant
2 urge to be on the move.

3 MR. DAVID MILGAARD: I think, for me, the
4 nicest times when I'm on the road is just by
01:51 5 myself. You didn't know what was going to happen
6 and you would always be meeting new people.
7 There were no rules, there was no sense of I have
8 to do this because this seems right. I want to
9 just be able to go out and feel free in the sense
01:52 10 that I could do whatever I wanted, you know, with
11 whoever I wanted to do it with, and being able to
12 step a step further and take a chance. That's
13 what made life worthwhile. That was freedom.
14 Some of the most beautiful times in my life was
01:52 15 when I was there.

16 Ron Wilson and myself sat down
17 in a place called the Hob-Nob, I think that's the
18 correct name for it, in Regina, and between the
19 two of us the idea was just to get away from
01:52 20 everything, to get away from Regina, just
21 something new, an adventure or something, and
22 that's what basically motivated us to go to
23 Saskatoon or points west.

24 We talked to Nichol, she was
01:53 25 working in Regina and decided to come with us,



1 and we went to Ron's place and fixed up his car
2 to make it roadworthy and left Regina, I figure,
3 about midnight, 12:30. And it was really cold
4 when we were leaving, it was wintertime.

01:53 5 We tried to break into a grain
6 elevator, not the best thing to do, but we did,
7 and we couldn't get in, and we got stuck. I
8 think we hurt the transmission, I think we lost
9 some of our reverse gear or all of it at that
01:53 10 point, and we went into Saskatoon very early in
11 the morning looking for Albert Cadrain.

12 It was eerie, you know, coming
13 into the City of Saskatoon in the morning. It
14 was really still, it was quiet, and we were
01:53 15 tired, I know I was tired, and after an awful lot
16 of, you know, being lost and feeling frustrated
17 we got to Cadrain's place.

18 MR. DAVID ASPER: January the 31st, 1969
19 was one of the coldest days of the year in
01:54 20 Saskatoon. It was minus 40. Early that morning
21 the trio arrived in Saskatoon. And that very
22 same morning a young girl was walking to school
23 and she encountered a body lying face-down in the
24 snowbank. Police were called and when they
01:54 25 arrived at the scene they immediately turned over



1 the body to discover a grisly sight. A young
2 woman had been stabbed several times, her
3 clothing had been torn and her dress was around
4 her waist, and her underwear torn down around her
01:54 5 ankles. Blood had seeped into the snow, the
6 woman's face was frozen, and snow was matted in
7 her hair and between her clenched fists.

8 The woman was wearing a nursing
9 uniform and on the uniform was a name tag.
01:54 10 Police were very quickly able to identify the
11 victim as 20-year-old Gail Miller.

12 This was a crime that shocked
13 the community and very soon the police developed
14 a theory that the killer of Gail Miller was a
01:55 15 rapist who had been terrorizing women in
16 Saskatoon. They had seized many physical
17 exhibits from the scene of the crime but really
18 couldn't connect them with anyone. They spoke to
19 all of the neighbours in the surrounding area,
01:55 20 they rode the busses that Gail Miller had taken
21 to work, but nothing concrete developed.

22 And while this was going on,
23 between January 31st and roughly the beginning of
24 March, Albert Cadrain had been arrested in Regina
01:55 25 on a charge of vagrancy. When Regina Police



1 learned that Cadrain had left Saskatoon on the
2 morning of the murder they asked him if he had
3 any information. At that point he said that he
4 had neither seen nor heard anything that would
01:55 5 implicate anybody in the murder.

6 A reward was posted by the end
7 of February by the Saskatoon police offering
8 \$2,000 to anyone to provide information that
9 would convict the killer of Gail Miller. On
01:55 10 March 2nd, 1969, Albert Cadrain went to see the
11 Saskatoon police and told them, for the first
12 time, that he had seen blood on David's pants on
13 the morning of the murder. Now the police had
14 something concrete to go on.

01:56 15 MR. DAVID MILGAARD: I was working for
16 McLean Hunter, and then I -- the sales supervisor
17 came to see me and told me that the RCMP were
18 looking for me, and that they were actually there
19 and they wanted to talk to me about something
01:56 20 serious.

21 They took me down to a station
22 house and they asked me questions, they told me
23 what they were asking about and asked me if I
24 would be willing to give some samples, they asked
01:56 25 me for some hair and for some saliva samples. I



1 said "sure". I felt really bad, you know, what
2 they were talking about was a really bad thing,
3 and I tried to help. I was 16 and I was doing
4 the best that I could, but --

01:56 5 MRS. JOYCE MILGAARD: And, at that time,
6 the first real inkling that we had of it was when
7 two detectives showed up at our door. It wasn't
8 that David had called us to say that he was in
9 trouble, it was detectives came and started
01:56 10 talking about this murder, and I mean there was
11 -- I knew that there is no possible way that
12 David could do anything as horrible as they were
13 talking about. And then, when we did talk to
14 David and found out that he had had these tests
01:57 15 done in April, I said "why didn't you tell us",
16 and he said "I didn't think anything of it, it
17 wasn't me, I had nothing to do with it", so it
18 just went out of his head.

19 MR. DAVID ASPER: Once Cadrain had provided
01:57 20 police with this solid lead they immediately set
21 out to interview Nichol John and Ron Wilson and
22 David Milgaard. They did that within the first
23 week of March and everybody, separately, without
24 knowing that the other had been interviewed, said
01:57 25 the same thing; nothing had happened.



1 The police thought that Ron
2 Wilson and Nichol John were lying either to
3 protect themselves or to protect David Milgaard.
4 By mid-May of 1969, both of those two were taken
01:58 5 to Saskatoon, and after two days of intensive
6 interrogation both dramatically changed their
7 stories.

8 MR. DAVID MILGAARD: I was in Prince George
9 selling magazines and my -- the boss came to see
01:58 10 me and he told me that the police were looking
11 for me again. I said "well let's go and see what
12 they want and, you know, get it over with and see
13 what they want", and it wasn't something that I
14 was really that concerned about, but -- because
01:58 15 they'd seen me a few times.

16 I walked into the police
17 station, identified myself as David Milgaard, and
18 this guy said "you're not David Milgaard, are you
19 really David Milgaard", and I said "yes, I'm
01:58 20 David Milgaard, what did you want to ask me more
21 about or what can I do to kind of help?" And he
22 said "don't move", and then he came all the way
23 around, and I guess the edge of the desk or where
24 there is a -- some sort of machines and stuff,
01:58 25 and he said I was under arrest for the murder of



1 Gail Miller in Saskatoon.

2 MR. LORNE MILGAARD: It didn't surprise me
3 that he was in trouble because, the type of life
4 that he was leading then, he was in trouble off
01:59 5 and on anyway, nothing serious. And my reaction
6 to this was that it was a, some fallout from some
7 other trouble and that he really wasn't involved
8 in anything as serious as murder, or anything
9 like that.

01:59 10 MRS. JOYCE MILGAARD: He was frightened, he
11 was really frightened. He was handcuffed. There
12 were two policeman in the room, and I couldn't
13 see him, I couldn't see him by myself, I -- they
14 made it quite clear that they would be there.
01:59 15 And he was handcuffed to this table and I just
16 thought, like, why are they -- he's not an
17 animal, like a wild animal or something that they
18 would have to do this, this is my son.

19 MR. DAVID ASPER: The trial began in
01:59 20 mid-January 1970 with the Crown calling over 40
21 witnesses. Its main witness was Ron Wilson. He
22 began by testifying that he had seen David with a
23 knife that was very similar to the murder weapon
24 before arriving in Saskatoon. He also said they
02:00 25 were driving in the area where Gail Miller's



1 house was, that the car had become stuck, that
2 the boys had gotten out to get the car unstuck,
3 they'd separated to go and get help, and when
4 Milgaard returned to the car he was out of
02:00 5 breath, had blood on his pants, and uttered words
6 to the effect of "I fixed her" or something like
7 that.

8 MR. DAVID MILGAARD: When Ron Wilson
9 started talking and saying the things that he
02:00 10 said in Court, when he was lying, I felt just
11 like that. I wanted to get up and say "Ron,
12 you're lying, everybody, he's lying", and it made
13 me feel scared. I felt like I couldn't do, I
14 couldn't get up, I couldn't say nothing because I
02:00 15 was told to just kind of stay there and sit there
16 and behave myself.

17 Step by step, you know, they
18 started talking about different things in
19 relation to blood on my clothes when there was no
02:00 20 blood on my clothes, I got more afraid, and it
21 was like people were standing there and they are
22 saying things that are not true; why? Why is it
23 happening like this?

24 MR. DAVID ASPER: Nichol John, who had
02:01 25 remained in the car, had told the police in 1969



1 that she had been an eyewitness to the murder,
2 but at the trial Nichol said that she couldn't
3 remember much of what had happened. But,
4 nonetheless, the jury heard that Nichol John, at
02:01 5 an earlier time, had said that she had seen David
6 kill Gail Miller.

7 Albert Cadrain testified that
8 when the group arrived at his home around 9:00 in
9 the morning, Milgaard appeared to be in a hurry
02:01 10 to get out of town, and that he had blood on his
11 pants. All three, Wilson, John and Cadrain,
12 testified that after they left Saskatoon somebody
13 found a woman's compact in the car, and that
14 Milgaard grabbed it and threw it out the window,
02:01 15 leaving the jury with the impression that this
16 had been Gail Miller's compact.

17 The next aspect of the Crown's
18 case was based on physical evidence. Four days
19 after the murder police found two frozen clumps
02:02 20 in the snow. They tested these and found it to
21 be human semen and that the human semen had come
22 from someone with type A blood. David Milgaard
23 has type A blood. Also, police eventually
24 located all of the contents of Gail Miller's
02:02 25 purse and it was strewn roughly in a direction



1 leading toward the Cadrain house, with the trail
2 ending with the discovery of Gail Miller's wallet
3 two doors away from where Milgaard had visited
4 that morning.

02:02 5 The final aspect of the Crown's
6 case that was presented to the jury focused on
7 Craig Melnyk and George Lapchuk, two friends of
8 Milgaard who had been at a party with him in May
9 of 1969. At some point during the party in a
02:02 10 motel room a news report came on the television
11 set announcing that the murder of Gail Miller
12 hadn't yet been solved. They told the jury that,
13 at this point, Milgaard jumped up from the bed
14 and, with a series of stabbing motions, admitted
02:02 15 to having committed the murder. If all of the
16 evidence up to this point hadn't been enough,
17 surely the evidence of Melnyk and Lapchuk sealed
18 David's fate.

19 The defence didn't call any
02:03 20 witnesses because David's lawyer thought it was
21 better if David didn't tell his version of
22 events. The jury deliberated for 11 hours before
23 reaching a verdict.

24 MR. DAVID MILGAARD: We walked into the
02:03 25 Court and I remember, you know, just waiting for,



1 I guess, a piece of paper to be passed to
2 somebody with very -- and I was confused, even
3 though everyone was trying to make me feel good
4 and comfortable, because of all the lying and all
02:03 5 the bullshit that was held in that Court. And
6 that's the way that I feel about it, and that's
7 the truth.

8 But I remember hearing sort of
9 like a body moan from my father at the time that
02:03 10 they read the verdict, and I turned around and I
11 seen him just, I have never ever seen him like
12 that, he was just totally collapsed in the sense
13 that he just looked weak. I mean he didn't fall
14 down or anything, but I've never seen my dad look
02:03 15 weak, and he is not weak today. I just knew
16 right then, I was scared, and that it was bad for
17 me, and I don't even remember walking out of the
18 courtroom.

19 MR. LORNE MILGAARD: I can remember David
02:04 20 turning to look at us, although I felt he was
21 looking at me no doubt he looked at both of us,
22 and I could just see or feel myself slumping. So
23 it's like you're six foot four and this thing
24 hits you and all of a sudden you're four-foot
02:04 25 six, and just no -- everything is, there is just



1 a space around you. I couldn't even look at the
2 jurors because I didn't believe this thing.

3 MRS. JOYCE MILGAARD: It was as if I was
4 caught into a vice and all the breath was being
02:04 5 squeezed out of me. I can remember being just so
6 scared, just so scared.

7 MR. LORNE MILGAARD: My wife was crying a
8 lot, which she'd held back in the courtroom, and
9 she had looked like she was ready when she heard
02:05 10 the verdict. And I had her hand and I said "you
11 know, try not to", and I came close myself. And
12 I came even closer when Gail Miller's father came
13 over and he was crying, and he took my hand and
14 said "I'm sorry", so that was a tough part.

02:05 15 Then, on the way home is when
16 it really struck us, and I guess it was the first
17 time there were only the two of us together, and
18 still, and still in my mind, I wasn't sure that
19 this thing had really happened.

02:05 20 MR. DAVID ASPER: In February 1970 David
21 was sent to the maximum security penitentiary in
22 Prince Albert, Saskatchewan. There, he began
23 serving his life sentence. He was 17 years old.

24 MRS. JOYCE MILGAARD: He was just a delight
02:06 25 to have, I mean he had this curly hair and big



1 blue eyes and I guess in a way he was a doll to
2 me, and then of course almost right away I was
3 expecting Chris, so that it was a constant flow
4 in the thing.

02:06 5 MR. LORNE MILGAARD: I can remember taking
6 the three children who were very close together,
7 the first three, and travelling around in the
8 summertime playing baseball in the country towns,
9 ball tournaments we would go. We always took the
02:06 10 children with us when they were -- even sometimes
11 when they could have stayed.

12 MRS. JOYCE MILGAARD: Lorne had an offer of
13 a job in Langenburg at the mine, so we packed up,
14 and we started in an apartment but we ended up in
02:06 15 a lovely little house. It seemed like such a
16 nice family circle that we had, and yet David
17 just wasn't fitting into it. It was, of course,
18 all of the kids at that time, a lot of them were
19 just on the move and they were going out and
02:07 20 having a good time and it was free love, and of
21 course mothers hate the idea of free love and I
22 hated it just as much as any other mother. But
23 he was gone, and then we would call the police
24 and we would get him brought back, and it seemed
02:07 25 like there was a lot of anxiety in that situation



1 for us.

2 MS. SUSAN MILGAARD: What I remember of
3 those days is David was cool in my eyes, and my
4 idol, and I wanted to be like him. And he was
02:07 5 very carefree, he loved everybody, he -- yeah, he
6 was a bit wild in the sense of not doing what he
7 was supposed to do, not listening to 9:00 curfews
8 and --

9 MR. CHRIS MILGAARD: David was a year older
02:08 10 than I, so at that age when you're a teenager
11 that's quite a big gap, he ran with his friends
12 and I ran with my friends sort of thing. But he
13 liked going out and having a good time, he didn't
14 maybe apply himself in school as much as all the
02:08 15 other kids in school, but neither did I that much
16 either so --

17 MRS. JOYCE MILGAARD: I think that he
18 probably started using drugs in Saskatchewan, in
19 that small town, and gradually met up with other
02:08 20 people that had a lifestyle that he envied
21 because they were free. He was very attractive
22 and he had all kinds of girls phoning him all the
23 time, so that he'd end up going off with a girl
24 somewhere here or there.

02:08 25 MS. MAUREEN MILGAARD: All I remember of



1 seeing David when I was younger was the
2 penitentiary, because I used to think they were
3 castles, and I used to get upset because they
4 wouldn't let him come home with me or they
02:09 5 wouldn't let me stay there with him.

6 MR. DAVID MILGAARD: When I first went to
7 Prince Albert Penitentiary, I had served about a
8 year at a provincial jail prior to this, before
9 my conviction, and I just -- it was a taste of
02:09 10 what penitentiary was, but the thing that
11 everybody would always talk about was, you know,
12 "penitentiary is worse, penitentiary is something
13 to be frightened", and when I actually walked
14 inside the doors of the penitentiary I was
02:09 15 scared. And I remember them shaving my hair, I
16 remember, you know, having to pick up different
17 things, you know, like for -- like a bed roll,
18 and just feeling, you know, what am I walking
19 into, you know. I'm looking at different people
02:09 20 as I'm walking by, guards and looking at other
21 cons, and just saying "I wonder who those people
22 are", you know. I mean are you going to end up
23 dead in this place, what's gonna take place,
24 that's how I felt.

02:10 25 MR. LORNE MILGAARD: When I went at times



1 to visit him in Prince Albert I can remember
2 especially, he told me, he said "dad", he says,
3 "that guard over there is really giving me a bad
4 time", and you could see the guard, he didn't
02:10 5 like us, he didn't like David, and he glared at
6 us, so -- and just made the point of letting us
7 know that he was in command. But when I left
8 that day he left with a very sore instep where I
9 had walked on it on the way out, so he knew that
02:10 10 his feelings had got through to me, but he also
11 knew what mine were to him. And things like
12 that, where I could see the helplessness of
13 David's situation, and basically of our own, but
14 even more so his. I mean, let's face it, his was
02:10 15 a much more helpless situation than ours.

16 MR. DAVID MILGAARD: I can remember seeing
17 things go down sometimes that, you know, I just
18 wish, you know, I had never seen some things,
19 like people actually getting stabbed. And at
02:10 20 times I wanted to kind of just block out
21 everything I had, so like with appeals and stuff,
22 because I wanted so much for that stuff to come
23 out and work out for me that it was hard to think
24 about it, and I'd get into things that I
02:11 25 shouldn't have been into with drugs and anything



1 I could kind of get my hands on to try to take
2 away from the reality of my situation because I
3 was convicted, I just wanted to escape.

4 MRS. JOYCE MILGAARD: They were, there were
02:11 5 all these doctors describing what the other
6 inmates were ganging up on him and doing, and
7 asking the warden to please transfer him out of
8 there because he had already tried to commit
9 suicide a couple of times, and that one of these
02:12 10 times he would succeed. He, umm, he was 16, he
11 was a good-looking boy.

12 MR. DAVID ASPER: Probably the main thing
13 that kept David going up to that point was the
14 hope that his appeal would be successful. On
02:12 15 January 31st, 1971 David had more bad news. His
16 appeal had been dismissed, and his reaction
17 perhaps was predictable, he spiraled into
18 depression.

19 MR. DAVID MILGAARD: I remember being in my
02:13 20 cell and I remember them saying that my Supreme
21 Court final appeal, like before all the other
22 different things that have happened since then,
23 came about. I was just sitting there and I felt
24 stunned and I figured, you know, this is it,
02:13 25 there's just -- there isn't any more that we can



1 do, everybody can do any more. And it wasn't
2 right away, it was just something I just kept
3 thinking about because, you know, in ways I used
4 to try and push away the street. I would just
02:13 5 try and think of penitentiary, and living inside
6 there, enjoying myself sometimes; right. But
7 every once in a while you can't help but think
8 about home and family, and I just put myself down
9 on my bed and I remember taking a whole bunch of
02:13 10 sheets and stuff and putting them underneath with
11 the floor so that where I cut myself, that it
12 would just kind of bleed and to kind of keep
13 soaking down and no one would see, and I remember
14 cutting my wrists. And I started with just some
02:14 15 razor blades, and actually just one razor blade,
16 and just kept bleeding. And I didn't seem to be
17 dying, I mean it sounds silly but I didn't seem
18 to be dyin', and so then I took a vein out, where
19 my vein was, and I cut that, and then I was
02:14 20 really bleeding. And I just lay over, and I
21 remember just getting really tired and feeling,
22 like, warm, and I woke up in the morning and I
23 wasn't dead.

24 MRS. JOYCE MILGAARD: I can remember one
02:14 25 time being called in when he was in, he had been



1 in solitary confinement for about 3 1/2 months,
2 and I'd been trying to get up to see him and they
3 said he was refusing to see me, and I wouldn't
4 believe them. And I remember going to the warden
02:15 5 and saying that I was going to sit on the steps
6 of the prison, if I had to, but that I was going
7 to see my son, and they had a bit of a
8 consultation and they decided to allow me into
9 solitary confinement, which is a place that,
02:15 10 apparently, no other women had been, and I was
11 taken down.

12 And he was not himself, his
13 eyes were wild, his hair was matted, he was
14 dirty, he -- he didn't know me, he just didn't
02:16 15 know me. And I remember thinking, "God, you've
16 got to help me now, just help him, help me", and
17 just about that time David said, "Mum? Mum? Is
18 that you?", and I said "yeah", "and he said "oh,
19 my mum can't be here, it's just another vision".
02:16 20 And I said "I'm here, David", and he shuffled
21 like an old, old man, he just shuffled over to
22 see me, and he put his arms around me, and we
23 both cried. And I told him that God loved him,
24 and that he would look after him, and that I
02:17 25 loved him, and that we were going to get him out



1 of that place, that we would get him out.

2 We just had to believe that
3 there was some way of getting our son out of
4 prison, and after the Saskatchewan Court of
02:17 5 Appeal dismissed his appeal in 1971, we knew that
6 we were going to have to leave Langenburg. We
7 needed more money, it wasn't -- getting jobs,
8 both of us, and I knew I could get a good job in
9 Winnipeg, because we needed to get other lawyers.

02:18 10 It was difficult for all of us,
11 but we just knew the time had come, if we were
12 going to help David it had to be then. So we
13 moved back to Winnipeg.

14 MR. DAVID ASPER: David wanted to be
02:18 15 transferred to Stony Mountain Penitentiary where
16 he could be closer to his family. Instead, he
17 was transferred to Dorchester prison, another
18 maximum security prison in New Brunswick. The
19 added isolation made him very restless.

02:18 20 MR. DAVID MILGAARD: I had a guy actually
21 walk into a jail cell, I was playing cards with
22 my friend, and he pulled out this plastic bag and
23 there was a .32, like a small pistol, and I just,
24 I just got scared right away and, you know, it's
02:18 25 not every day somebody will walk into a jail cell



1 or a penitentiary cage and throw a gun down on
2 the bed. And they said they were going to go,
3 and I said "well I want to go", and they said,
4 "no, you can't go, you know". You know, I was
02:19 5 pretty young and they were older, and eventually
6 they said I could go, I could go with them.

7 We ended up inside a gymnasium
8 of the penitentiary kind of hidden inside
9 cupboards, and kind of have things put in our
02:19 10 cells so they they would look like a situation
11 where they wouldn't notice a difference. We
12 finally got up on top of the wall, it's a feeling
13 of just accomplishment, you are going up against
14 something, you know, and winning. And it was
02:19 15 about, actually, 4:00 or 5:00 in the morning when
16 the sun is actually coming up, and we finally got
17 away from the penitentiary, ended up in the bush
18 for a while, and then we just pulled into a small
19 farmhouse. And there was this old woman and this
02:19 20 old man, and they basically said, "Lord lifting
21 Jesus, boy, put away that gun, come on in and get
22 something to eat. We've been listening about you
23 on the radio for the past few days", eh. And it
24 was a strange, strange feeling. And in leaving
02:20 25 the place we went to take some brandy with us, we



1 paid them for some food, we paid them for some
2 other, and right away the woman said "no, no, you
3 cannot take the brandy, and that is it", you
4 know, "you cannot take his medicine". And we
02:20 5 didn't, right.

6 I remember the old man trying
7 to sell us his TV and he says "boys, you are
8 going to need this TV when you go back to the
9 penitentiary because you are going to be caught
02:20 10 some day. Why don't you buy the TV?" We don't
11 need a TV with a crack in it, right, and so we
12 were kind of laughing at this, but we were
13 nervous too. And I even had more problems -- and
14 later we were captured, came back to the
02:20 15 penitentiary and they beat on us, all three of
16 us. That's the first time I ever had a real
17 serious beating. I think I was twenty -- 21
18 then, 22 years old.

19 MS. SUSAN MILGAARD: It's very difficult to
02:21 20 go in and see him like that. You could see the
21 scar that he had gotten on his forehead from a
22 knife cut and other times I've gone in and he's
23 had black eyes and his hands will be a mess or
24 something and there's nothing you can do about
02:21 25 it, and there's nothing he can do about it, to be



1 walking down the range and then have three or
2 four people jump you and pull you in the room and
3 kick the living daylights out of you, what are
4 you going to do.

02:21 5 MS. MAUREEN MILGAARD: Well, the clearest
6 trip I guess I remember was Dorchester, New
7 Brunswick and I would have been about maybe 11,
8 in that area, and visiting him there. That was
9 about the clearest one I remember. He had long
02:21 10 fuzzy hair, you know, he was still very much a
11 hippie. They tried to turn them always into a
12 good time, I remember mom and dad really working
13 at that, you know, they tried to make it like it
14 was a complete family summer vacation, it wasn't
02:22 15 just going into a penitentiary, you know. Once
16 the visiting hours were over, let's do this,
17 let's do that, let's do this. Even when you were
18 doing those things, you knew that David wasn't
19 there with you. He was close, but he was behind
02:22 20 bars and he can't come out and do these things.

21 MR. DAVID ASPER: The deal was simple
22 enough, if David behaved himself, he would get
23 transferred, and he did try to behave himself and
24 he did stay out of trouble. It look longer than
02:22 25 he expected and he was very frustrated, but by



1 1976 he was finally transferred back to Stony
2 Mountain Penitentiary where at last he could be
3 close to his family.

4 MR. LORNE MILGAARD: I don't know how many
02:22 5 years he'd been at Stony Mountain, but there were
6 years that probably I wouldn't miss, maybe three
7 or four Sundays a year, so yeah, it became my
8 role, I guess, if you want to call it that, and
9 it was the same thing, most visits were pleasant,
02:23 10 we'd play crib and talk and so on. Sometimes if
11 he had been causing trouble sometimes it wasn't
12 always good, a really pleasant visit, but we
13 always shook hands when I left.

14 MRS. JOYCE MILGAARD: David was getting
02:23 15 well, he was achieving good success in his
16 university courses, we had high hopes of his
17 parole.

18 MR. DAVID ASPER: David came before the
19 Parole Board in early 1979 and faced two
02:23 20 problems. The first was that the Parole Board
21 wanted David to admit his guilt as evidence of
22 him being rehabilitated and acknowledging the
23 severity of the crime. David refused to admit
24 guilt.

02:23 25 MR. DAVID MILGAARD: The time that I sat



1 down with the parole person I was talking to was
2 saying "David, if you go inside a parole hearing
3 and you just say you are guilty, all right, they
4 are not going to accept that you are not guilty."
02:24 5 She said, "If I had to do whatever I wanted to do
6 to get out of prison, I would do anything." She
7 says, "Why don't you go in and say you are
8 guilty," and I said I don't believe that you
9 really would do something like that. I don't
02:24 10 think any person would ever go into a situation
11 and say "I am guilty" when in fact what they are
12 trying to do is saying you are a different type
13 of person, you are a person that would commit
14 that kind of crime.

02:24 15 MR. DAVID ASPER: The second was that the
16 Parole Board wanted an explanation in psychiatric
17 terms as to why David was denying his guilt
18 without ever considering the possibility that it
19 might be true, that he wasn't guilty.

02:24 20 MRS. JOYCE MILGAARD: At one time they
21 actually certified him as insane so they could
22 send him off to an Ontario institution at
23 Penetang, this is what the Saskatoon psychiatrist
24 said, because he kept claiming he was innocent,
02:24 25 and he said whether he's guilty or innocent, he's



1 going to need psychiatric help, so they sent him
2 down there, but it didn't make any difference.
3 Then they wanted to send him to another
4 institution. It was just -- he was like a
02:25 5 ping-pong ball being bounced around by the
6 bureaucrats.

7 MR. DAVID ASPER: In May of 1979 the Parole
8 Board denied David's parole.

9 MR. DAVID MILGAARD: There were times that
02:25 10 I was freaking out, there were times that I was
11 locked down and I was lost and I was confused, so
12 just going round and round and round in circles,
13 so I just banged those walls and banged the door
14 and ended up bleeding, my fists would end up
02:25 15 bleeding. I didn't care. I was lost.

16 MRS. JOYCE MILGAARD: One day he was
17 really, really, really complaining to me about
18 his life and I was sorry about his life, but I
19 also knew that I couldn't join him in what he was
02:26 20 saying and that if I did join him in this feeling
21 of pity for himself, that I couldn't help him,
22 and I remember consciously or unconsciously being
23 very angry with him and saying, "David, you make
24 my sick, you just make me sick. Here you are,
02:26 25 you've got a mother that loves you and a father,



1 you've got sisters and brothers, you've got
2 everything. Look around you. See these other
3 people in this visiting room? They have
4 nothing."

02:26 5 MR. DAVID ASPER: In August of 1980 David
6 received a day pass as he occasionally did to
7 visit his family. He was escorted by a prison
8 guard.

9 MS. MAUREEN MILGAARD: This is Clear Ridge
02:27 10 (ph) where we used to live and that was on the
11 day, we lived here the day that David came out
12 for a visit on August 22nd, 1980, normal visit,
13 you know, a family barbecue, it was Chris'
14 birthday and we were all in there, and then the
02:27 15 guard decided to go play racquetball with my
16 sister over here in the country club. David I
17 knew had plans to leave that day, but I had no
18 idea that it was going to be with me, all of a
19 sudden he just came walking over and he said
02:27 20 something has gone wrong, you are going to have
21 to take me, so let's go.

22 MR. DAVID MILGAARD: I was trying to tell
23 myself maybe I shouldn't, maybe I should, but I
24 knew that I had to go, I felt I was dying a
02:27 25 little bit every day inside that penitentiary and



1 I just, I told Maureen "I'm going to take the
2 car" and she says, "Well, you can't take the car,
3 you can't drive," and I said, "I can drive," and
4 she said, "You haven't driven for years," and she
02:27 5 said, "I'll drive you," and we got in the car and
6 we were, like, two kids, very, very nervous and
7 very excited.

8 MS. MAUREEN MILGAARD: As I say, I was
9 constantly looking at the side mirror, the
02:28 10 rear-view mirror, like, my head was just going
11 like this and like this and like this, watching
12 for police, everything, and David, you know,
13 David is nonchalant, he's sitting in the car, you
14 can still see he's scared because, like, he's
02:28 15 just sort of tense, but he's sitting there with
16 his arm out the window because it's summer, you
17 know, we've got the windows down, as if, oh, just
18 taking a drive down Portage Avenue, the main drag
19 in Winnipeg.

02:28 20 MR. DAVID MILGAARD: I remember I had my
21 arm outside the window and I was trying to be
22 casual and cool in case there was cops or
23 something, I wanted to just make everything look
24 normal, and we were probably the two furthest
02:28 25 people away from being normal, and Maureen is



1 looking around out the windows and I'm saying
2 slow down, she says I'm not going too fast, and
3 --

4 MS. MAUREEN MILGAARD: I started thinking
02:28 5 about, you know, once it came out on the news and
6 everything, David would be fairly easy to
7 recognize and that's when we discussed getting
8 him something to change his looks, and the main
9 thing was his hair, because he's got very dark
02:29 10 hair, curly and so on and so forth, so when we
11 came down Academy we saw this pharmacy just up
12 here and I went into the pharmacy and, like, I
13 was running up and down the aisles trying to find
14 some hair dye for David because, like, I was
02:29 15 scared, he was out in the car. I remember even
16 standing at the cashier giving her the money
17 thinking, you know, I must look guilty of
18 something, like, I was shaking, I was scared and
19 everything else.

02:29 20 MR. DAVID MILGAARD: And she dropped me off
21 and before she took off we just kind of, I just
22 gave her a great big hug and just grabbed her and
23 told her I loved her very much. That was it.

24 MS. MAUREEN MILGAARD: So I went to a gas
02:29 25 station and phoned home and I guess by now, you



1 know, of course everyone was in pretty much of a
2 panic and I said "David just dropped me off and
3 would somebody come get me," and I was crying,
4 like, because I was scared because my dad got on
02:29 5 the phone and he was just screaming, and -- but
6 once he got there he said, "Okay, take it easy,
7 you know, don't get so upset."

8 "REPORTER: Police are still searching
9 for a convicted murderer who escaped
02:30 10 while on a day pass from Stony Mountain
11 Penitentiary yesterday. 28-year-old
12 David Milgaard slipped away from his
13 guard while at his parents' home in
14 Winnipeg."

02:30 15 (The David Milgaard story paused)

16 MR. HARDY: This is a good spot to break,
17 Mr. Commissioner, for the afternoon break.

18 (Adjourned at 2:30 p.m.)

19 (Reconvened at 2:46 p.m.)

02:46 20 (The David Milgaard story continued)

21 MS. MAUREEN MILGAARD: ...and I was crying,
22 like, because I was scared because my dad got on
23 the phone and he was just screaming, and -- but
24 once he got there he said, "Okay, take it easy,
02:30 25 you know, don't get so upset."



1 "REPORTER: Police are still searching
2 for a convicted murderer who escaped
3 while on a day pass from Stony Mountain
4 Penitentiary yesterday. 28-year-old
02:30 5 David Milgaard slipped away from his
6 guard while at his parents' home in
7 Winnipeg. Police are warning the public
8 that Milgaard may be armed and
9 dangerous."

02:47 10 MRS. JOYCE MILGAARD: I got a phone call
11 from my brother and he said "the package you sent
12 has arrived" and since I never heard from my
13 brother and I had never sent a package, I knew
14 instantly that he meant David was there, and I
02:47 15 said, "oh, great," so then I went away and got to
16 a pay telephone after driving around many, many
17 blocks, because I knew that I had been followed,
18 and I finally got to a pay telephone and phoned
19 and found out that he was there and he wanted me
02:48 20 to come and see him and to help and I went with
21 the idea that I would talk to him about coming
22 back. However, I was afraid that the police
23 would be following me, so I arranged for a ticket
24 under my maiden name and I borrowed someone
02:48 25 else's rain coat and I put on a red wig and I



1 went to the airport, and feeling very spyish if
2 you want, and flew away to see David.

3 MR. DAVID MILGAARD: And I guess I told her
4 that the only way I will see you is if you
02:49 5 promise me that you won't try and tell me I've
6 got to go back or give myself up, and basically
7 that's all she talked about.

8 MRS. JOYCE MILGAARD: Well, when I got to
9 Toronto my brother met me and he took me, after a
02:49 10 very circuitous type of a route to make sure we
11 weren't being followed off the plane, and yet I
12 was pretty sure we weren't, we sent to see David,
13 and the first moment that I saw him I just
14 couldn't believe it, there he was with his
02:49 15 orange-coloured hair and it was just dreadful, he
16 just looked so awful, but just to be able to hold
17 him and hug him and to see that he was safe.

18 MR. DAVID MILGAARD: She said the best
19 thing for me to do, she said this thing had to
02:49 20 end somewhere and the best way for it to end was
21 if I was to give myself up and we left, you know,
22 it was a real kind of tug-of-war between us, and
23 the same time we left we just kind of hugged each
24 other and I know it must have been really, really
02:50 25 bad for her to kind of walk away from the



1 situation.

2 MRS. JOYCE MILGAARD: It really wasn't
3 rational thinking, I realize that now, but at the
4 time when you, when you've seen your son just
02:50 5 being destroyed day by day by day and suddenly
6 you see him and he's alive and he's functioning
7 and he's doing well, it was like a minor miracle
8 in my life to see him like that and I just
9 couldn't, I just could not be the one to go and
02:50 10 have that door closed on him again, I couldn't do
11 it.

12 MR. DAVID MILGAARD: For me the most
13 important thing was to kind of chop any
14 connection between where I was at to where I'm
02:50 15 going and that way, with having an assumed
16 identification, another person's identity, that I
17 was safe and that I couldn't be traced. It was
18 good, it was my first chance of feeling some
19 freedom. I had good times in Toronto. I was out
02:51 20 77 days.

21 I'm staying at a retired biker
22 and his lady's place and I got a phone call and
23 he was, you know, just wondered if I wanted to
24 see him, if I would see him later, and I would
02:51 25 meet him down on Queen (inaudible), and when I



1 got down to that place it was closed and that had
2 me nervous and all of a sudden this car pulled
3 over and stopped in front of me, so I kind of
4 just casually walked, there's a doorway space, I
02:51 5 knew right then that they were heat, they were
6 police dressed in casual clothes, and I was
7 scared, so what I did is I started whistling in a
8 casual way and I ran right up the street in the
9 opposite direction that they were going, right,
02:52 10 and I'm just giving it everything I possibly can,
11 and there's all kinds of people, you know, still
12 walking the street and I'm hollering at them
13 saying get out of the way, I don't want to have,
14 cause no trouble or hurt nobody or nothing, and I
02:52 15 could see all these people chasing me.

16 I kind of came flat down on my
17 back like this and I'm laying down on the ground
18 and I'm all over the place because I don't
19 understand, then boom, you hear the noise, it
02:52 20 comes after you get --

21 MS MAUREEN MILGAARD: You didn't hear it at
22 the time?

23 MR. DAVID MILGAARD: No, you get hit first,
24 right, and I looked in my hand, it went right in
02:52 25 like this, like, where, like, one of the slugs



1 from the thing and it came out like a doobie on
2 the side, right, I'm looking at it, right, and I
3 can't figure out why I can't -- because I'm
4 laying down at this point like this. It looked
02:52 5 really funny, that big knob kind of sitting up
6 there and there's blood and stuff and I figured I
7 had been shot, right, but, you know, I can move
8 my hand, and why can't I move the rest of me and
9 I couldn't figure it out, and I said I'm not
02:53 10 going back, period, right, and that was it, I was
11 just like this, right, and I reached my hands
12 back down after looking, right, like this and
13 pulling myself trying to figure out what's
14 happening, there's stuff coming all over my back
02:53 15 and stuff, right, and all around here, and all
16 the rest, my side, and I just started screaming I
17 guess as loud as I could six times in a row, mom,
18 mom, mom, you know, or seven times, right, and
19 that was it, that's what happened.

02:53 20 MS. MAUREEN MILGAARD: I just remember the
21 first words, that he had been shot, and it was
22 hard, the first thought was he was dead, and then
23 when they said he wasn't, but he was hurt bad,
24 but the feeling then was like he was gone. For
02:53 25 that split second before they said the next words



1 that he wasn't dead, you know, type of thing, it
2 seemed like it was a lot longer than that split
3 second.

4 (Muffled conversation between Maureen
5 Milgaard and David Milgaard)

6 MRS. JOYCE MILGAARD: I went to the
7 hospital and there was a guard stationed outside
8 his door, a policeman. I walked into the room
9 and he was in the bed, he was handcuffed to the
02:54 10 bed and he was unconscious, he was so white, he
11 just looked like he was dying, and I had such a
12 -- I felt somehow that I was responsible for it.
13 If I had only told the police where he had been,
14 you know, turned him in, made him turn himself
02:55 15 in, and I know I prayed and I know I was
16 unconsciously, I think, probably just massaging
17 his feet and rubbing him and the nightmare I knew
18 was going to start again, he was going to have to
19 pay, and dearly, for what he had done.

02:55 20 As I sat there and prayed,
21 suddenly an idea came and I thought I know how
22 I'm going to help my son. In the hospital room
23 the thought that came to me was to offer a
24 reward. I had an RSP for \$10,000 and if I could
02:56 25 offer this reward for information leading to the



1 real killer, we might get just exactly the
2 information to get the case re-opened.

3 It would have been the
4 Christmas of 1980. We figured that there would
02:56 5 be a lot of people coming home for Christmas so
6 that people that sometimes were away would be
7 there. We got posters made up offering the
8 \$10,000 reward, we plastered the city with them,
9 we had little kids going out door to door and
02:56 10 putting them out.

11 One of the main things that
12 came out of all this publicity was Peter
13 Carlyle-Gordge, a journalist from Winnipeg.

14 MR. PETER CARLYLE-GORDGE: Umm, I first met
02:56 15 Joyce Milgaard in December, 1980. I had been
16 quite involved in another murder case, an unusual
17 murder case that had a long time period involved,
18 20 years between the act and somebody being
19 charged, and I read about this woman going around
02:57 20 Saskatchewan trying to re-open a 12-year-old, or
21 about 12-year-old murder case, and I became
22 intrigued.

23 MRS. JOYCE MILGAARD: So he called me and
24 he said I'm not interested in the reward, but I
02:57 25 would like to know more about your story, could I



1 have the transcripts and look through it, and so
2 naturally I wanted another advocate, so I went to
3 see him and gave him the transcripts and he and
4 his wife became very supportive and helpful in
02:57 5 it, and as I read through those transcripts with
6 Peter, I suddenly discovered that the timetable
7 was all wrong, what they were saying my son did
8 was just impossible and we realized that in order
9 to show people that the timing was all wrong,
02:57 10 that we should go and do a video of it, and so we
11 went to the scene of the crime in Saskatoon.

12 MR. CHRIS MILGAARD: It was my first
13 attempt of ever using a movie camera, so if you
14 ever see it, you'll see it bouncing along like
02:58 15 this because I wasn't very good.

16 MRS. JOYCE MILGAARD: And it was just
17 incredible. My son, my daughter-in-law, my other
18 daughter, we all went up there, Chris was running
19 the camera and it was an eight millimeter deal
02:58 20 and he was walking along. I was driving a car,
21 my daughter-in-law was walking and she took the
22 route of Gail Miller, and as she walked that
23 route and I drove along in the car it became
24 abundantly clear that girl would have been long
02:58 25 gone on the bus before my son could have turned



1 the car around and come into the alley where they
2 said he went, so suddenly now we have it on film,
3 we can show people that what I've known all the
4 time in my heart I now know with my head and it's
02:58 5 a fact.

6 It would have been about in
7 1981 Peter and I went out to interview witnesses.
8 There had been a lot of publicity, I had been on
9 TV a great deal, and the next thing we knew when
02:59 10 we got down to see these people, like, we were
11 wanting to find Nichol John, Ron Wilson and
12 Lapchuk and Melnyk, we found that the Saskatoon
13 police, not the Regina police, the Saskatoon
14 police had actually driven all the way down and
02:59 15 talked to them and said "you don't have to speak
16 to Mrs. Milgaard, just pick up the phone and the
17 Regina police will take her away." Now,
18 fortunately for me no one did that.

19 MR. PETER CARLYLE-GORDGE: We found it
02:59 20 quite difficult to find some of the witnesses; in
21 fact, they were spread out over a long period of
22 time, but one thing I do remember is after a lot
23 of work we finally found out where Nichol John
24 lived in an apartment and I'll always remember
02:59 25 going to visit her there. Joyce pressed on the



1 doorbell and this terrified person came to the
2 door and it was as if she had been expecting this
3 event for a very long time, it's like she was in
4 a waking nightmare. The look of fear and shock
03:00 5 and horror on Nichol John's face was a
6 revelation.

7 I remember in particular there
8 was some tantalizing glimpses of what might be --
9 for instance, she went to see Ron Wilson and I
03:00 10 helped her develop the questions and she had an
11 elaborate script of how she would get to the
12 subject matter and try and find out what really
13 happened that day in 1969 and the question she
14 had was, "Ron, was that the truth on the stand,
03:00 15 did somebody really see blood on David's
16 trousers?" And I remember his answer was, he
17 laughed and he said, "Mrs. Milgaard, it might
18 have been orange juice for all I know."

19 MR. DAVID ASPER: Joyce and Peter persisted
03:01 20 and slowly but surely they made progress. The
21 first break came with the discovery of Deborah
22 Hall. Whereas the jury at David's trial had
23 heard evidence from Melnyk and Lapchuk that David
24 had reenacted the murder and admitted to
03:01 25 committing the murder in this motel room, Deborah



1 Hall, who was also in that room and who had never
2 been interviewed by the police, and certainly
3 never testified at the trial, gave Joyce a very
4 different version of what had happened in that
03:01 5 room.

6 MS. DEBORAH HALL: In 1980 I was cutting
7 hair in a shop here in town and one of my clients
8 happened to notice my full name on a piece of
9 tape on the mirror that I had just stuck on there
03:01 10 a few days before and asked me, "Do you happen to
11 know a David Milgaard?" I didn't twig at first.
12 Then he remembered he had a nickname, that's what
13 I knew him as, Hoppy, and I said, "Oh, yeah, sure
14 I remember Hoppy, I haven't seen him in years."
03:01 15 And he says, "Do you know what happened with him
16 or anything?" And I -- we took it from there and
17 I was just flabbergasted, I couldn't believe he
18 was in jail or I had hadn't heard anything, in
19 all those years I didn't know anything, nobody
03:02 20 approached me about it or anything, and we then
21 went on to him showing me the transcripts, he had
22 transcripts of the trial and what George Lapchuk
23 and Craig Melnyk had to say the night that we
24 were at the motel room partying. I was shocked,
03:02 25 I just didn't agree with what they had to say



1 happened that night at all. It was totally
2 twisted.

3 George kind of cajolingly,
4 sarcastically turned around and said "Fess up,
03:02 5 Hoppy, you were the one that killed that nurse in
6 Saskatoon, you did it." Craig even chimed in on
7 this and David was jumping around on the bed and
8 flinging a pillow in the air and just being a
9 fool and he says, "Oh, yeah, right," you know,
03:02 10 sarcastic, you know, kind of remark back, and
11 flung this pillow back behind him and jumped back
12 on the bed and that was it. I took him to be
13 telling us a joke, joking manner, you know, it
14 was just nothing serious at all. I didn't think
03:03 15 it was serious.

16 MRS. JOYCE MILGAARD: You had to have been
17 in the courtroom that day to realize how
18 seriously it was taken by the jury. When they
19 said "I stabbed her 14 times and then she died,"
03:03 20 you could have heard a pin drop. Right there is
21 where I think they decided that David was guilty,
22 right at that point, it was a turning point in
23 the trial, and now this was the turning point for
24 us because we now had a new witness, something,
03:03 25 they kept saying just give us some new evidence,



1 but we didn't know what we were going to do with
2 it. David is sitting in Stony Mountain in the
3 prison and we have this evidence, how do we get
4 it out.

03:03 5 I remember that Peter and I
6 were getting very discouraged and Kathy because
7 everyone was disappearing on us and we just
8 didn't seem to be getting anywhere and, I mean,
9 it had been every week, any time I could get I
03:04 10 was out in Saskatchewan, and finally Peter said,
11 you know, Hersh Wolch was really good on the
12 Katie Harper case, why don't we take, why don't
13 you go see him and see what he thinks. I said
14 okay, so I took the transcripts down to Hersh's
03:04 15 office and I said, I told him who I was and that
16 my son had been in prison all this time and that
17 he was innocent and we were sure of it, but I
18 said I need to know am I banging my head against
19 a cement wall or is there any chance for us, how
03:04 20 much will you charge me to look at this, because
21 by this time I had spent so much money and I
22 didn't have a lot left.

23 MR. HERSH WOLCH: She wasn't just saying
24 everybody was wrong, she was almost saying, well,
03:05 25 I can see why the jury did it, which impressed



1 me, she was saying I could see where people may
2 come to the conclusion he's guilty and he's no
3 angel, but it was -- she was as objective as I
4 could imagine a mother might be and that combined
03:05 5 with the, my pure interest in the Milgaard case
6 as a legal principle just got me going on it.

7 MRS. JOYCE MILGAARD: So I went to wait for
8 him to call me and I guess at that time David
9 Asper walked by his office, a junior lawyer, and
03:05 10 he called him and he said, "David, take this
11 stuff, read it and tell me what's in it, if
12 there's anything worthwhile there." He didn't
13 even look at it himself, but, you know, that was
14 the best thing that ever happened to us, because
03:06 15 David Asper became my knight in shining armour.

16 MR. DAVID ASPER: The opportunity to
17 redress a horrible wrong was irresistible for a
18 young, idealistic lawyer. After weeks and weeks
19 of reading transcripts and Joyce's investigation
03:06 20 to date, I had to take the next step, which was
21 to meet David. I went up to Stony Mountain
22 Penitentiary and we had a very short first
23 meeting because I only had one question for him,
24 I said, "David, did you commit the murder?" And
03:06 25 he said, "No, David, I didn't."



1 That was enough to send me on
2 the next phase which was to go to Saskatoon, I
3 had to personally test the Crown's theory of what
4 it said happened on the morning of the murder.
03:07 5 We worked off a basic map. Gail Miller lived up
6 here. The Crown said that Gail Miller was
7 walking down Avenue N when she was attacked by
8 David Milgaard. That meant that Gail Miller had
9 to walk out her house, come down 21st Street and
03:07 10 then down Avenue N to the bus stop here. It
11 struck us, on a common-sense basis as well as on
12 the basis of Gail Miller's roommates, that the
13 more logical place for Gail Miller to go on the
14 coldest day of the year is to the closest bus
03:07 15 stop. The closest bus stop was straight down
16 Avenue O. That defeated the Crown's theory about
17 where David was supposed to be.

18 Then when we timed how long it
19 took to walk from here to here and here to here
03:07 20 and added up all the things that the Crown said
21 had to have happened within this time frame, it
22 became absurd, it was impossible.

23 Then came the task of
24 convincing Hersh that we really had to do
03:08 25 something here.



1 "MR. DAVID ASPER: All right. So we
2 keep going?

3 MR. HERSH WOLCH: We keep going."

4 MRS. JOYCE MILGAARD: And in the meantime
03:08 5 we had another sort of a breakthrough in that we
6 heard about this genetic testing.

7 DR. JAMES FERRIS: We had been doing some
8 research at the time in DNA and we had received
9 some national publicity about our research lab
03:08 10 and she must have been reading the press about
11 the DNA and what it could do and she was clearly
12 convinced that DNA testing would completely
13 exonerate David.

14 MRS. JOYCE MILGAARD: And I said to him
03:08 15 "you know, I don't have much money left, I'm
16 right now on a course to, learning to be a nurse,
17 and so I'm in school, but sort of how much would
18 you charge?". And he said "that's all right, you
19 just arrange to get these things for me, I'll do
03:08 20 it for you, Mrs. Milgaard." He was just a
21 wonderful man.

22 DR. JAMES FERRIS: We extracted DNA from
23 the blood sample, and we attempted to extract DNA
24 from the clothing and from the test tubes, but we
03:09 25 were unable to obtain any satisfactory sample



1 that we could have compared with the blood sample
2 from David.

3 MRS. JOYCE MILGAARD: And then the day that
4 he phoned and he said "I'm sorry Mrs. Milgaard,
03:09 5 but there's just not enough there, we've got
6 nothing from the tests", and we just so hoped
7 that it would be it. And then he said "but you
8 know, Mrs. Milgaard, I don't know why you need
9 this", and I said "what do you mean?", and he
03:09 10 said, "you have more than enough evidence right
11 here to prove that David is innocent." I said "I
12 do? I have? Can you tell me what it is? Will
13 you tell my lawyer what it is? Will you put it
14 on paper?" And he said "of course."

03:10 15 DR. JAMES FERRIS: The semen had been
16 recovered from the scene some several days after
17 the killing. That seminal stain was tested and
18 found to be type A. Now normally, if a sample of
19 semen is type A, it means that it has to have
03:10 20 come from someone who secretes their blood types
21 in their body fluids, and not everybody in the
22 population does that, something like 20 percent
23 don't do that. And David Milgaard, in fact, was
24 known as a non-secretor, which means that if it
03:10 25 was contaminated with blood, the semen still had



1 to come from someone who was a type A secretor,
2 and that couldn't be David Milgaard.

3 MR. HERSH WOLCH: Dr. Ferris is a very
4 respected individual, and we did have the Deborah
03:10 5 Hall material which contradicted the
6 interpretation of the motel room confession, but
7 I didn't think that would be enough. But when
8 Dr. Ferris indicated that David was innocent
9 based on the actual evidence, that the semen was
03:11 10 not David's, that was very powerful in my view.

11 MR. DAVID ASPER: We worked feverishly
12 through the year and by December 28th, 1988 we
13 filed our first application to the federal
14 Minister of Justice, and by mid-February of '89
03:11 15 the Minister of Justice had responded, asking us
16 to provide Court transcripts and further
17 documents. We felt very encouraged.

18 But by the summer of '89, with
19 really no other positive encouragement from the
03:11 20 Minister of Justice, it was decided that we
21 needed another ally. That's when Joyce decided
22 to mobilize public opinion.

23 MRS. JOYCE MILGAARD: (Singing)

24 Please, madam Minister

03:11 25 Listen to me



1 Please madam Minister

2 Let David free

3 MR. DAN LETT: The story was engaging
4 enough to look at it as a human interest story, a
03:12 5 mother crusading to get her son out of jail who
6 had, you know, who claims that he had been
7 wrongfully convicted. It was only after going
8 through transcripts and appeal testimony and
9 listening to David Asper and David Milgaard
03:12 10 explain themselves that you -- I started to
11 realize there was more to it than that.

12 RECEPTIONIST: Wolch Pinx & Company; may I
13 ask who is calling?

14 MR. HERSH WOLCH: I was sitting in my
03:12 15 office, never having heard the name of Larry
16 Fisher to my knowledge, when a male caller came
17 through and offered to identify the real killer
18 to me. This person sounded fairly straight and
19 gave the information very matter-of-factly that
03:12 20 Fisher has done this type of thing before, and
21 committed this crime, and he's in jail right now
22 for similar offences and I should check it out,
23 and if I need anything more I should phone a
24 radio station in Saskatchewan and leave a message
03:13 25 on a -- on the line, and this person would call



1 me back. And while I didn't take him that
2 seriously, I wasn't going to disregard it, and I
3 had contacted Joyce and told her, or gave her
4 that name, and it rang a bell with her.

03:13 5 MRS. JOYCE MILGAARD: "This guy by the name
6 of Larry Fisher, they say, did it". I said
7 "Larry Fisher?" And he said "yeah, do you know
8 him?" I said "no, but", I said, "Hersh, don't
9 laugh, it may be something". He said, "what do
03:13 10 you mean?" I said "I remember that name, I can
11 remember a police report with his name on it",
12 and I said, "he lived at the same house as
13 Cadrain". Because I'd remembered seeing the
14 address and thinking where could he have lived,
03:13 15 because I didn't know anyone else lived in that
16 house, and I had thought that they'd had the
17 wrong address down. So I said "I'm going to
18 follow that up", and he said "okay, but, you
19 know, be careful".

03:14 20 MR. DAVID ASPER: Now the hunt was on, and
21 what we needed most was professional help,
22 professional investigators, and what we got was
23 the good grace of Centurion Ministries, a U.S.
24 -based organization that's committed to freeing
03:14 25 the wrongly convicted. Jim McCloskey, who heads



1 the organization, assigned his top investigator,
2 Paul Henderson, to our case.

3 MRS. JOYCE MILGAARD: And he said, "I'm
4 going to see if Paul Henderson is free and, if he
03:14 5 is, I'll loan him to you for a week. Can you pay
6 for his expenses to get him up there?" And I
7 thought "well, I've got my charge card", I
8 thought "okay".

9 MR. DAVID ASPER: Once Paul Henderson was
03:14 10 on board Joyce and Paul decided to track down
11 Linda Fisher, the now-divorced wife of Larry
12 Fisher.

13 MRS. JOYCE MILGAARD: When I tried to track
14 Linda down I realized that she moved out of the
03:15 15 neighbourhood. Going from neighbour to
16 neighbour, finally locating one who had known the
17 family, and in fact still knew where they were
18 located, and so I was able to track her down into
19 a small town, that was in Cando, Saskatchewan.
03:15 20 So as soon as Paul arrived I went out there with
21 him, we pulled right up to the house because I
22 was afraid, if she was in there, I just didn't
23 want her to be able to get away, and we went and
24 knocked on the door and said, "I'm Joyce
03:15 25 Milgaard", I said, "I would like to talk to you",



1 and she said "oh, well, I've wanted to talk to
2 you for a long time".

3 MS. LINDA FISHER: On the morning of the
4 murder Larry had either been out all night or --
03:15 5 I heard a door slam anyway, and I thought he went
6 to work. So when I awoke properly here Larry
7 was, all dressed up in his dress clothes and at
8 home and, you know, like I expected him to be at
9 work. So I argued with him and, you know, it was
03:16 10 "what were you doing out all night or half the
11 night", or whatever, and "why didn't you go to
12 work", and on and on, and I -- I -- well we
13 argued right up until I was ready to make dinner.
14 So I went to look for my knife and, to peel the
03:16 15 potatoes, and it was missing, so -- so as I was
16 looking for my knife the news bulletin came on,
17 and when the news bulletin came on then I, then I
18 accused him, "now" I said -- because I always
19 accused him of everything anyway -- I just
03:16 20 accused him of "where's my knife", I told him,
21 "you were probably out killing the nurse and
22 stuff like that". You know, like I didn't
23 believe that he was out killing the nurse at the
24 time, but -- but -- but he had a shocked reaction
03:16 25 and his colour drained from his face and his



1 hands kind of dropped and he quit arguing with me
2 and -- and -- and he just stopped.

3 MR. DAVID ASPER: The Fisher tip was a
4 major turning point in the investigation. Up
03:17 5 until this time we were saying that Milgaard was
6 innocent because we said that everybody at the
7 trial had lied. Now we could say that everybody
8 had lied and, by the way, here's a suspect. And
9 this harkened to the newspaper headline that we
03:17 10 had seen from Saskatoon where the police had said
11 "killer possible rapist".

12 We could say that for three
13 main reasons:

14 Number 1, Fisher had a lengthy
03:17 15 related criminal record of sexual attacks, in
16 fact he was serving time in prison at that time
17 for an attempt murder and a rape;

18 Number 2, Fisher and his wife
19 lived in the basement of the Cadrain home, the
03:17 20 house that Milgaard had visited the morning of
21 the murder, and the house where the trail of
22 contents of Gail Miller's purse tended to lead;

23 And, finally, several of
24 Fisher's early attacks had occurred in the same
03:18 25 vicinity as had the murder of Gail Miller.



1 MR. DAN LETT: When Larry Fisher came in it
2 added a whole new element, and that was very
3 important to those of us in the media who were
4 trying to justify more time and more space for
03:18 5 the story, I think it immediately gave us a
6 complete picture of what happened on the morning
7 of -- that Gail Miller was killed that we didn't
8 have before, we only know what didn't happen, and
9 it was a remarkable change in the way the media
03:18 10 approached the story. Suddenly, it was a
11 complete drama, it had a whole plot line, it had
12 a villain now.

13 MR. DAVID ASPER: In 1970 Larry Fisher was
14 convicted of rapes he committed in 1969 and '70
03:18 15 in Manitoba and Saskatchewan, and after serving
16 ten years in Prince Albert Penitentiary, he was
17 paroled in 1980.

18 MS. LINDA FISHER: Well when I thought back
19 on it, this was the same year that Larry had
03:18 20 gotten out of prison for the rapes, and he raped
21 and attacked the woman in Battleford, you know,
22 like attempted murder, and then I thought "well
23 geez, if he did that that viciously to that woman
24 in Battleford I wonder, he could have had
03:19 25 something to do with the nurse because -- because



1 he didn't go to work that day, and I accused him
2 and he was so shocked and all of that, eh".
3 That's what I sort of put together. And then I
4 thought, "well, I'll go tell the police and then
03:19 5 it will be, it will be off, off our chest if
6 there was anything to it", so that was when I
7 went to the police station and gave them the
8 statement that my paring knife was missing the
9 morning -- and Larry hadn't went to work, and
03:19 10 basically what happened the morning of the
11 murder. And so they took the statement, and I
12 signed it, and then nothing more was heard until
13 Mrs. Milgaard showed up in 1990.

14 MR. DAVID ASPER: Between March and June of
03:20 15 1990 Paul Henderson not only provided us with a
16 new suspect, but also obtained recantations from
17 the Crown's key witnesses.

18 MR. PAUL HENDERSON: I called on Ron Wilson
19 cold, and I was probably the last world -- person
03:20 20 in the world that he wanted to hear from. He was
21 extremely, extremely nervous and reticent to meet
22 with me. One by one I went through the
23 transcript with him and he recanted, he confessed
24 to me that this testimony that he had given in
03:20 25 the trial had been false, false testimony that



1 had been coerced by police who were leaning on
2 him and telling him that if he didn't cooperate
3 they were going to go after him.

4 "David Milgaard was my friend, but I was
03:21 5 manipulated into lying against him,
6 manipulated into believing my own lies.
7 I've been haunted through all these
8 years by my role in helping convict
9 David. Although he has suffered the
03:21 10 most, I feel that I was also a victim in
11 this case."

12 That, when we finished the interview, that --
13 that evening, before I left this town and left
14 him, he told me that he had one request for me.
03:21 15 He said he wanted to be able, somehow, to talk
16 with David Milgaard and apologize for what he had
17 done to him.

18 MR. DAVID MILGAARD: David Asper arranged
19 for me to call Ronald Wilson, and my feeling
03:21 20 right off the top in talking to him, he was
21 saying it was a long, long time and that
22 basically he just wanted to tell the truth and
23 that he was really sorry. He was also really
24 nervous. I guess he had a feeling that I might
03:22 25 want to hurt him or harm him, and in all the



1 anger and the feelings that I had for years
2 because of this thing and him actually getting up
3 and testify against me, you know, I can't say in
4 some ways that wasn't too far from the truth.
03:22 5 But in talking to him, and before we ended the
6 conversation and talking to him about his mum and
7 -- because I remember being there with his mum
8 and her watching clothes for me and stuff -- I
9 said, "listen, Ron, as strange as this may sound
03:22 10 to you, right, you know, I don't -- I don't have
11 any, I don't have a sense, now, that I have to
12 repay some kind of debt or do something in some
13 way that it makes you have to worry any more, so
14 don't worry, you know." And that's how we left
03:22 15 it. It was a good phone call.

16 MR. PAUL HENDERSON: To the same, in the
17 same vein, in the same sense that Ron Wilson had
18 felt guilty all these years, Albert was also
19 haunted by his testimony in the Milgaard trial.

03:22 20 MR. ALBERT CADRAIN: I had ulcers so bad, I
21 was worried, I was scared. The police told me
22 "better hide away for a while, we don't want
23 nothing to happen to our star witness", and that
24 just put more wood on the fire, make me real
03:23 25 worried, and I started getting ulcers and



1 *spitting blood. Every five minutes I'd just*
2 *cough and spit and --*

3 MR. PAUL HENDERSON:

4 *"Before I walked into to that police*
5 *station ...",*

6 *this is back in 1969:*

7 *"... I was a happy, normal kid. But*
8 *everything changed after that. My life*
9 *has been ruined because of all of this.*

10 *From the evidence, it now appears that*
11 *David Milgaard is innocent. To know*
12 *that my testimony caused him to spend*
13 *all these years in prison only adds to*
14 *the stress and the burden I've been*
15 *carrying through all my entire life."*

16 MR. DAVID ASPER: *By the end of June 1990,*
17 *thanks to Paul Henderson, whatever was left of*
18 *the Crown's case had been entirely demolished.*

19 *Frustrated over the fact that*
20 *nothing was happening with the application, Joyce*
21 *took her case directly to the Minister.*

22 THE HON. KIM CAMPBELL: *I'm sorry, ma'am,*
23 *if you want your son to have a fair hearing don't*
24 *approach me personally. I'm sorry.*

25 MR. JOHN HARVARD: *David Milgaard has been*



1 in jail for 21 years for a murder he says he
2 never committed, and there is now serious doubts
3 as to his guilt. Even the RCMP are interviewing
4 a suspect in the case.

03:24 5 Despite the fact that the
6 Department of Justice was asked more than a year
7 ago to re-open the case, the file has yet to
8 reach the desk of the Minister. Why, Mr.
9 Speaker? What is behind this procrastination?
03:24 10 Is it sloth? Is it indifference? Is it hubris?
11 Is it the desire to protect the reputations of
12 certain individuals?

13 Whatever the reason,
14 Mr. Speaker, it's time for the Minister of
03:24 15 Justice to act now, to act on the David Milgaard
16 case, for justice delayed is justice denied.
17 Thank you.

18 THE HON. KIM CAMPBELL: Mr. Speaker, the
19 case is under investigation by the Justice
03:24 20 Department, as The Honourable Member has said.
21 The case is not ready for presentation to me, as
22 Minister, and when it is, and I am in a position
23 to make a decision, I will advise the House.

24 MR. LLOYD AXWORTHY: Madam Speaker, I wish
03:25 25 to speak of a travesty of justice.



1 I speak of the plight of David
2 Milgaard, who has spent the last 21 years of his
3 life in prison for a crime he didn't commit, yet
4 the last year the Department of Justice has been
03:25 5 sitting on an application to re-open his case.

6 The facts are overwhelming, but
7 rather than review these conclusive reports,
8 rather than appreciating the agony of the
9 Milgaard family, the Minister of Justice has
03:25 10 refused to act. I'm sure the House will join me
11 in asking the Minister to re-open the case. Too
12 many years have been wasted and a human life
13 irreparably affected.

14 THE HON. KIM CAMPBELL: And if Mr.
03:25 15 Milgaard's counsel comes forward with more
16 information, I am prepared to wait until I can
17 consider that as well, so that he may have the
18 fairest possible hearing based on the fullest
19 possible information that he can provide to us.

03:25 20 MR. DAVID ASPER: On February 27th, 1991 we
21 finally got an answer from the Department of
22 Justice. It came out of the blue because we
23 hadn't been having much contact with Ottawa, and
24 we all rushed over to the fax machine, and sure
03:25 25 enough the decision came out, and I think it was



1 the first or second paragraph which summarized
2 the Minister's decision that we weren't going to
3 get the case re-opened.

4 MR. DAVID MILGAARD: I was in the hole when
03:26 5 I heard about the decision from the Minister of
6 Justice. I was there because basically I just
7 told the warden, "I want some quiet time". I had
8 all my friends inside the institution that, out
9 of care and concern, you know, just kind of
03:26 10 stopping me and asking me, you know, "what is
11 happening with the decision, what's taking
12 place", and as much as that was nice, it was also
13 something, you know, I wanted to kind of get away
14 from.

03:26 15 MR. DAVID ASPER: I had allowed myself to
16 build up in the belief that we were going to win,
17 and when we didn't I crashed pretty hard, but I
18 had to get myself together because I had to go
19 see David and I had to tell him, and I only had
03:26 20 about 45 minutes before the whole thing was going
21 to be public.

22 MR. DAVID MILGAARD: And I got called out,
23 my lawyer was here to see me, and I didn't know
24 it was about the decision. And David walked
03:26 25 inside the room and he looked, he looked down,



1 you know, he looked distressed, he looked -- he
2 didn't look like himself, and I knew right away
3 something was important, something was happening,
4 and he told me the decision, and I just wouldn't
03:27 5 accept in it my thinking.

6 MR. DAVID ASPER: And then I started
7 apologizing to him, and I -- for letting him
8 down, and I was very upset.

9 MR. DAVID MILGAARD: I couldn't believe it.
03:27 10 I couldn't accept that no matter how. Everything
11 that we did, all the facts, everything
12 that common sense people have to look at, you
13 know, they just washed it away as if nothing was
14 there.

03:27 15 MR. DAVID ASPER: And he wound up he was
16 consoling me, he was saying "it's okay, David,
17 I'm still innocent, nothing's changed, we've just
18 got to fight harder".

19 MR. PAUL HENDERSON: In the face of
03:27 20 continuing stonewalling by the Canadian Justice
21 Department, Joyce and I embarked on a 3,000
22 kilometer trip across two provinces, looking up
23 Larry Fisher's 1968, '69, and '70 rape victims.
24 The similarities between the knife attack on
03:28 25 Miller and the knifepoint rapes on these other



1 victims were incredibly similar.

2 Larry had been in prison for
3 ten years and gotten out, released to, I believe,
4 to live in North Battleford. This woman, now in
03:28 5 her sixties, was walking home from bingo one
6 night and was accosted at knifepoint in front of
7 her, or very close to her home, taken in the back
8 yard, and brutally raped. After Fisher did this
9 to her he took her inside an, this abandoned
03:28 10 house, and slit her throat from ear to ear, left
11 her for dead. However, before he slit her throat
12 he told her, in so many words, that he -- that
13 this was no big thing to him because he'd
14 murdered someone else before.

03:29 15 MR. DAVID ASPER: In the second application
16 though, which was based essentially on the same
17 information as the first, the media took a keen
18 interest. Every reporter who took the time to
19 study the facts of our case concluded that it
03:29 20 wasn't frivolous and we were serious. Soon, we
21 had an army of reporters across the country, and
22 they were uncovering things that were totally
23 beyond our means.

24 MR. DAN LETT: The story, as the story
03:29 25 developed more people came on, CBC local came on,



1 did some really good work on the story, that in
2 turn prompted CBC network to get involved, The
3 Globe and Mail. That led to bringing in other
4 papers like the Toronto Star.

03:29 5 UNIDENTIFIED SPEAKER: ... to mind, and why
6 is it that the Minister of Justice in this
7 country cannot find it in her heart to grant this
8 man a retrial? If this man is innocent this is
9 one of the grossest instances of injustice in
03:30 10 this country.

11 MR. HERSH WOLCH: The media played a really
12 major role in this case. Absolutely. Without
13 the media, David Milgaard would still be in jail.
14 There's no doubt in my mind. The media played a
03:30 15 role in media awareness, in letting the public
16 know. Once we got down to the eastern media, the
17 politicians realized that they had a public to
18 deal with.

19 MR. DAN LETT: So, I mean, ultimately you
03:30 20 go from, you know, a good Winnipeg story to
21 having the Toronto Star drop on Brian Mulroney's
22 breakfast table, and the circle is complete. I
23 mean the message has gotten to the audience of
24 one, so to speak, that perhaps it should have
03:30 25 always been, you know, delivered to.



1 MRS. JOYCE MILGAARD: Thank you. I've been
2 trying to see you to ask you, David is -- his
3 mental situation is not good right now, anything
4 you could do for a speedy review. Because now
03:30 5 the Saskatoon police have apparently admitted
6 that they haven't given some information to the
7 Justice Department, that really the Minister was
8 working with just half of the things she should
9 have had, and I find that so difficult.

03:31 10 THE HON. BRIAN MULRONEY: How are you
11 getting along?

12 MRS. JOYCE MILGAARD: Just the fact that
13 you are talking to me makes feel better. I'm
14 trying my very best.

03:31 15 THE HON. BRIAN MULRONEY: Well I know you
16 are, you are working are very hard, you are very
17 courageous.

18 MRS. JOYCE MILGAARD: Thank you for that.

19 THE HON. BRIAN MULRONEY: And --

20 MRS. JOYCE MILGAARD: And you'll
21 appreciate --

22 THE HON. BRIAN MULRONEY: -- I'll take a
23 note of your other requests and we'll look at
24 them.

03:31 25 MRS. JOYCE MILGAARD: We are just asking



1 for Justice.

2 MR. DAVID ASPER: And the Prime Minister,
3 I'm sure first and foremost, is a lawyer, and his
4 meeting with Joyce was absolutely consistent with
03:31 5 the highest traditions of the Bar.

6 On November 29th, 1991, the
7 Minister of Justice re-opened the case, and
8 referred to the Supreme Court of Canada.

9 THE HON. KIM CAMPBELL: Well I hope that
03:31 10 Mrs. Milgaard will be very pleased that the case,
11 and all of the submissions that she supports so
12 strongly, will have an opportunity to be reviewed
13 by the highest Court of the land.

14 MR. DAVID MILGAARD: What I would like to
03:32 15 do at this point is that, say that we're more
16 interested in getting me out, and that's all for
17 the further questions and stuff, and we are going
18 to do well. It's that simple, you know.

19 MS. SUSAN OR MAUREEN MILGAARD: We did it.

03:32 20 MR. DAVID ASPER: And when we finally went
21 to Ottawa we were first hit with something that
22 we really didn't expect. When we came through
23 the doors there was this explosion of light and
24 cameras flashing and people yelling questions at
03:33 25 us, and I think David was totally bewildered as



1 to what was happening, couldn't understand why
2 the reporters were literally fighting each other
3 for position.

4 As confident as we had been in
03:33 5 the past, believe me, nobody felt any degree of
6 confidence when the case began. We were imbued
7 with a sense of history. Although several others
8 had appeared in similar kinds of cases in the
9 Supreme Court, no one had succeeded.

03:33 10 MR. DAVID MILGAARD: When I was sitting in
11 the Supreme Court and we have the hubbub of the
12 reporters in one section, you have the -- my
13 family stuck behind me, I was kind of tuned into
14 myself, a sense of -- a bit of nervousness.
03:33 15 Yeah. The lawyers basically just told me that
16 all I had to do was stay cool, you know, and just
17 tell them, just straight, exactly what is the
18 truth, and that's what I did.

19 MR. HERSH WOLCH: What happened with Ron
20 Wilson is that on the morning in question,
21 nothing occurred, and when he was questioned by
22 the police a month or whatever it was later, or
23 six weeks later, he had basically little or no
24 recall. It's 23 years later, he doesn't know
03:34 25 because they are innocuous things, so I can go



1 through the police report and actually see how
2 the ideas are planted in his mind and how it all
3 fits together. I went at him just looking for
4 the truth, that's all I wanted, and he agreed
03:34 5 with me, he agreed with me totally.

6 I -- when Nichol John first
7 took the stand I was prepared to really go at her
8 very heavily, but to my amazement her memory was
9 even weaker now than it was when Justice
03:34 10 interviewed her, and she said nothing that
11 implicated David in the crime. In fact, she said
12 that she has these visions of a right-handed
13 man -- now David is left-handed -- doing the
14 crime, and she added nothing to the case.

03:35 15 By the time Cadrain came, I --
16 he came late in the day, it was -- by then
17 anything Shorty was going to say was going be
18 comic relief, and so my strategy with Shorty
19 Cadrain was just to point out how unreliable he
03:35 20 must have been back then, and he agreed with me
21 that he was a basket case way back then because
22 of how the police treated him, and he was very
23 clear that the police ruined his mind.

24 In approaching Larry Fisher,
03:35 25 you know, it wasn't Perry Mason, it never entered



1 my mind that he was going to break down and say,
2 sobbing, "I did it, I did it", and I finally
3 thought, no, the best approach was to have him
4 point out the similarities between what he did
03:36 5 and what happened to Gail Miller. And the way it
6 worked out is I didn't have to go through every
7 crime one by one, I was able to say, you know,
8 "and then you", I said, you know, "and then you
9 would put a knife to the throat as you did with
03:36 10 Ms. A, B, C, and D", and what's he going to say
11 "no?" I mean, that was his pattern, I mean his
12 pattern fits Gail Miller's murder to a T.

13 REPORTER: The Supreme Court of Canada
14 heard closing arguments today in the Milgaard
03:36 15 review.

16 MRS. JOYCE MILGAARD: Looking for a good
17 verdict and --

18 REPORTER: David Milgaard's mother says her
19 son didn't do it.

03:36 20 NARRATOR: April 14th. Tonight, on the
21 National, the Supreme Court rules in favour of
22 David Milgaard.

23 REPORTER: Good evening. David Milgaard
24 has won his Supreme Court battle to have his
03:36 25 murder conviction overturned.



1 REPORTER: The Supreme Court of Canada says
2 David Milgaard's murder conviction should be
3 quashed and he should get a new trial.

4 THE HON. KIM CAMPBELL: In light of this
03:37 5 conclusion I have, today, signed a direction
6 under Section 690 of the Criminal Code providing
7 Mr. Milgaard with a new trial. It's now up to
8 Saskatchewan.

9 MR. DAVID MILGAARD: The decision was a
03:37 10 really screwed-up affair for me because I was on
11 the telephone while the Attorney General of
12 Saskatchewan was coming forward publicly with the
13 decision.

14 MR. PETER MANSBRIDGE: Two days ago, the
03:37 15 Federal Justice Minister ordered a new trial for
16 Milgaard on the recommendation of the Supreme
17 Court, but today Saskatchewan stayed the
18 proceedings saying a new trial is no longer
19 feasible.

03:37 20 MR. BOB MITCHELL: Given the decision of
21 the Supreme Court of Canada earlier this week we
22 have decided it is not in the best interests of
23 the people of Saskatchewan, or of the justice
24 system, to proceed with this case.

03:37 25 MR. DAVID MILGAARD: And I guess the bottom



1 line is that they never really cleared things the
2 way they were supposed to, they never cleared the
3 whole affair up, and they just left clouds
4 hanging over all of us.

5 MRS. JOYCE MILGAARD: Hi, how are you?

6 REPORTER: How are you?

7 MRS. JOYCE MILGAARD: Great.

8 REPORTER: Is this what -- what you hoped
9 for?

10 MRS. JOYCE MILGAARD: I guess we're really,
11 really happy. It's a lifetime come true. Let's
12 go inside, and we don't want to wait, we want to
13 pick up our son and take him home. Isn't it
14 great, Dan?

15 MR. DAN LETT: Not bad.

16 MRS. JOYCE MILGAARD: It's not bad? It's
17 terrific.

18 MR. HERSH WOLCH: The -- what caused David
19 Milgaard to be wrongfully convicted was not
03:38 20 because there was a villain out there or just
21 somebody basically dishonest. It starts with a
22 horrendous crime with tremendous pressure and
23 desire to solve it, and I see it happen in many
24 cases, that once the police get tunnel vision,
03:38 25 they are so anxious to solve it, they believe



1 they have the right person, they only look at
2 what convicts or incriminates, they don't look at
3 what excludes, they are in complete tunnel
4 vision.

03:39 5 MR. DAVID ASPER: We're very happy that
6 this is over and that David is getting out of
7 prison, make no mistake about that, but all --
8 this whole thing began as an effort to vindicate
9 David Milgaard and what the Saskatchewan
03:39 10 government did today was not to vindicate David
11 Milgaard, and the suggestion that it's too
12 expensive or not feasible to conduct a trial is
13 shocking. If economics is the basis for those
14 decisions, then why even have a democratic
03:39 15 justice system.

16 REPORTER: How does it feel, David?

17 MR. DAVID MILGAARD: It's good to be out
18 forever, right.

19 MR. DAVID ASPER: David Milgaard spent 22
03:39 20 years and 46 weeks in jail before his release on
21 April 16th 1992, just before his 40th birthday.

22 (Muffled conversation between Hersh
23 Wolch and David Milgaard)

24 MRS. JOYCE MILGAARD: David's out now and
03:40 25 everything and I guess I've always thought that



1 when he was out I was going to be so happy and we
2 were all going to be so happy and it was going to
3 be just beautiful, but he's not free, he's not
4 free. None of us are free.

03:40 5 UNIDENTIFIED SPEAKER: He'll be okay. It's
6 going to take him a lot of time. He's got a lot
7 to get over. I mean, we all have.

8 MR. LORNE MILGAARD: I would never have
9 lasted in the system as long as he has. I mean,
03:40 10 I would never have made it.

11 UNIDENTIFIED SPEAKER: I hope that some day
12 I can look into David's eyes and see a true
13 freedom. I can't do that now. I still see that
14 look.

03:41 15 MR. DAVID MILGAARD: It's funny, I like the
16 person I am today, yet who is to say I could ever
17 be the person I am today without the work that I
18 put into it, and also the bad experience, that
19 I've got to maybe say in some ways I'm happy with
03:41 20 things, but it sounds strange to say it. That's
21 what I'm saying. I like me.

22 **(The David Milgaard Story ends)**

23 **(Clip VT45 played)**

24 THE HON. JOHN NILSON: Based on this
03:42 25 report, it appears that a wrong of the most



1 serious kind has been done to Mr. Milgaard by our
2 justice system. For this, we owe him and his
3 family a most heartfelt apology and that is the
4 main thing that I want to say today. There is no
03:42 5 doubt that this wrongful conviction will require
6 compensation. We are beginning a process to
7 provide that compensation.

8 The police investigation into
9 this case was re-opened this morning. We are
03:42 10 also actively considering a full, independent
11 public inquiry into all aspects of this case,
12 including the question of how to relate this new
13 evidence to the evidence presented to the trial.
14 An inquiry can only begin its work after we can
03:43 15 be certain it would not interfere with the
16 investigation and subsequent criminal trial and
17 other litigation.

18 REPORTER: The Federal Justice Minister
19 also issued a statement late today. In a written
03:43 20 release, new Justice Minister Anne McLellan said:

21 "The results show that a
22 terrible wrong was done to David
23 Milgaard by his wrongful conviction.

24 To David Milgaard and his
03:43 25 family who courageously supported him



1 *throughout this ordeal, I express my*
2 *deepest sympathies and regret.*

3 *I would like to express my*
4 *admiration and compassion for David*
03:43 5 *Milgaard's mother, Joyce Milgaard,*
6 *without whose tenacity and unwavering*
7 *belief in his son's innocence, this*
8 *result would not have been achieved.*

9 *I am sure all Canadians share*
03:43 10 *the relief of the Milgaard family."*

11 *That release late today from Justice Minister*
12 *Anne McLellan.*

13 ***(Clip VT45 ends)***

14 MR. HARDY: That concludes the video
03:43 15 presentation, Mr. Commissioner, and we can
16 adjourn for the day.

17 COMMISSIONER MacCALLUM: Okay.

18 *(Adjourned at 3:44 p.m.)*

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1 OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATE:

2 We, Karen Hinz, CSR, and Donald G. Meyer, RPR, CSR,
3 Official Queen's Bench Court Reporters for the Province of
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5 contain a true and correct transcription of our shorthand
6 notes taken herein to the best of my knowledge, skill, and
7 ability.

8
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10
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