

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 the
Delta Bessborough Hotel at
Saskatoon, Saskatchewan

On Monday, January 16th, 2006

Volume 106

Inquiry Proceedings



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PETER CARLYLE-GORDGE, SWORN

- BY MR. HARDY

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Transcript of Proceedings

(Reconvened at 1:30 p.m.)

COMMISSIONER MacCALLUM: Afternoon.

MR. HODSON: Afternoon. Afternoon, Mr. Commissioner. Just a few brief introductory remarks before we call the first witness.

One introduction. We have joining us today, Marshall Hopkins, who is second counsel for Mr. Calvin Tallis, here for Mr. Pringle this week, his first day at the hearing.

COMMISSIONER MacCALLUM: Mr. Hopkins.

MR. HOPKINS: Good afternoon.

MR. HODSON: We are starting up the concluding phase of evidence. In 2005 we sat for 103 days with 96 live witnesses, 16 read-ins, for evidence of 112 witnesses. We have approximately 29 witnesses left. Some of them are significant and will be lengthy. We have 44 days scheduled so, hopefully, we will do our best to get the evidence done in the time frame set.

Just a couple of comments about where we are at in the phases. We completed the event witnesses, we completed the police investigator witnesses. We completed some of the trial witnesses, we deferred Mr. Tallis,



1 Mr. Kujawa and Mr. McKay from the trial phase and
2 they will be on the last two weeks of this
3 sitting, and in December we started up in the
4 Milgaard re-opening phase. So once we complete
5 the trial phase, the Milgaard re-opening phase,
6 we will hear from media witnesses, Federal
7 Justice witnesses, Saskatchewan Justice
8 witnesses, RCMP, and then Saskatoon City Police
9 witnesses for the post-conviction time frame.

10 I have a calendar that will at
11 least identify where -- what we have scheduled
12 for the coming month. We have Mr. Carlyle-Gordge
13 today and tomorrow, he is a writer that assisted
14 Mrs. Milgaard and David Milgaard in the 1980s;
15 Tom Vanin, who is a former police officer
16 Wednesday; Dr. Colin Merry and Dr. Ferris, Dr.
17 Colin -- both doctors. Dr. Ferris is a forensic
18 pathologist. Dr. Ferris resides in New Zealand
19 and we will hear his evidence by telephone.
20 Mr. Hardy declined the invitation to go down
21 there and take it by tape. The following week
22 Mr. Henderson, again for two or three days; Bob
23 Perry, an investigator involved; and then you
24 will see I have got the 26 th and possibly the
25 25th scheduled for David Milgaard's application.



1 I will refer to that in a moment. The week of
2 January 30th will be Mr. Tallis -- over to the
3 next page -- and I have him scheduled for five
4 days; followed by Ken McKay; Serge Kujawa on the
5 8th and 9th; we then have a week off; and then we
6 have David Asper confirmed for the week of
7 February 20th, again at this stage whether four
8 days is enough is difficult to say; and then the
9 next page we have Neil Boyd and Kim Rossmo
10 scheduled. So, again, we have some spots to fill
11 in.

12 One of the challenges we face
13 is that many of the remaining witnesses are from
14 out of the city or out of the province and have
15 counsel, so we will do our best to get -- make
16 sure we have witnesses here, and try to balance
17 that, that they are not around waiting.

18 Lastly, if I could just touch
19 on David Milgaard's application, you will recall
20 back in November-December Mr. Wolch advised that
21 he would be bringing an application to either
22 exempt David Milgaard and/or seek accommodation
23 for his giving evidence before the Inquiry and,
24 Mr. Commissioner, you directed that his
25 application be filed by January 16th, which is



1 today, and thereafter a date would be set to hear
2 the application including the possibility of viva
3 voce evidence. Mr. Wolch has filed with me today
4 a notice of motion and as well a report of a Dr.
5 Patrick Baillie filed in support of that motion,
6 and we are making copies of that for all counsel,
7 we will provide them shortly. Mr. Wolch has
8 asked that Dr. Baillie's report, at least for the
9 time being, have a publication ban due to its
10 contents. I've alerted some of the media of that
11 request and certainly if -- I'm not sure,
12 Mr. Wolch, if that's going to be a permanent
13 request but --

14 MR. WOLCH: I don't know.

15 MR. HODSON: We don't know. But I think,
16 if I can indicate this to media, if any media
17 party wishes to take issue, or in fact any party
18 with standing wishes to address that issue, we
19 can certainly bring it back, but I think for the
20 purposes of today, or until further notice, if
21 the Dr. Baillie report not be published.

22 COMMISSIONER MacCALLUM: Very well.

23 MR. HODSON: And then, as far as dates for
24 hearing the application, I have set aside next
25 Wednesday and Thursday. I'm not sure how much



1 time is needed and, to be honest, I'm not sure
2 which witnesses will be here. I think, in
3 fairness to the parties and to the Commission, we
4 should let everybody review the motion, review
5 the report, and perhaps tomorrow I can ask
6 counsel for the parties to address you, Mr.
7 Commissioner, about what our next step is. But,
8 again, I think at the outside I would like to see
9 Wednesday-Thursday of next week as the hearing of
10 the application, so if that's fine -- Mr. Wolch,
11 do you need to speak to that?

12 MR. WOLCH: No.

13 MR. HODSON: So with that I think I can
14 turn it over to Mr. Hardy who will be calling
15 Peter Carlyle-Gordge.

16 COMMISSIONER MacCALLUM: Just over there,
17 Mr. Carlyle-Gordge, please. That's it.

18 **PETER CARLYLE-GORDGE, sworn:**

19 **BY MR. HARDY:**

20 **Q** Good afternoon, Mr. Carlyle-Gordge.

21 **A** Afternoon.

22 **Q** Thank you for attending today to give testimony.

23 Mr. Commissioner, I would like
24 to introduce to you Tim Killeen, who is here as
25 legal counsel for Mr. Carlyle-Gordge.



1 COMMISSIONER MacCALLUM: Mr. Killeen.

2 BY MR. HARDY:

3 Q I understand, Mr. Carlyle-Gordge, that you current
4 reside in Winnipeg?

5 A That's correct.

6 Q And how old are you?

7 A I'm 58.

8 Q And what is your current occupation?

9 A I'm a self-employed writer.

10 Q And do I understand correctly that you have worked
11 as a writer or a journalist for most of your
12 career?

13 A Yes, broadcasting and writing, yeah.

14 Q Okay. I've obtained from your web site,
15 www.gordge.com, a printout of your biography. You
16 are familiar with the biography that is on that
17 web site?

18 A Uh-huh, yes.

19 Q And is it accurate and up to date?

20 A It is not quite up to date, but it is accurate.

21 Q Maybe we'll turn to the document, it is document
22 ID 331185 -- I may have misstated -- 333185. Does
23 that look like a section from your web site as I
24 spoke of?

25 A That's correct, yes, yeah.



1 Q And I won't review the entire document with you.
2 I see there is a biography portion at the top
3 generally reviewing your background, mention in
4 the middle of the page of an award received in
5 2003, the Queen's Golden Jubilee Medal for service
6 to Canada and the community?

7 A Uh-huh.

8 Q And under the career section, perhaps I'll just
9 read this out:

10 "Journalism: He began his career as a
11 feature writer, travel editor and
12 finally assistant foreign editor of the
13 Winnipeg Free Press. Later he was a
14 producer with Information Radio and CBC
15 Radio in Winnipeg and he also broadcast
16 frequently on the local, national and
17 international networks of CBC Radio and
18 of Radio Canada International. He also
19 used to do guest editorials on CJAY
20 Television and has appeared on
21 television many times.

22 He has been a former Manitoba
23 Correspondent for United Press
24 International, Time Canada, The
25 Financial Post and, from 1978 to 1983



1 was Manitoba correspondent for Macleans
2 magazine. In those five years he
3 covered many stories and wrote over 200
4 articles for Macleans."

5 I'll stop there. Is that generally accurate
6 information, Mr. Carlyle-Gordge?

7 A Yes, yes.

8 Q And the document continues on with an indication
9 of some of your writings. On the next page, under
10 the heading Books, I see there is mention of some
11 of your work on the Katie Harper murder case as
12 well as the Milgaard murder case?

13 A Right.

14 Q The document generally continues on. And I take
15 it you've already confirmed for us then, Mr.
16 Carlyle-Gordge, you have no concern with the
17 information and the accuracy of the information
18 contained in this document?

19 A No.

20 Q I would like to turn to a discussion of your work
21 on the David Milgaard case. Can you tell us
22 initially how you became involved in the matter?

23 A Yes. It was in late 1980 I was the Manitoba
24 correspondent for Maclean's and part of my job
25 there was to keep an eye out on the whole province



1 and look for possible story suggestions and in
2 November or December I seem to recall there was a
3 very short story I had clipped out from the
4 *Winnipeg Free Press*, just a few paragraphs talking
5 about this woman, Joyce Milgaard, who had
6 apparently been going around Saskatchewan offering
7 a \$10,000 reward for new information, her son had
8 been convicted of murder, and it sounded
9 intriguing, so I thought I would probably make
10 contact with her and find out more about it.

11 Q And what did you proceed to do?

12 A Well, she did live in Winnipeg, so that was
13 convenient. I phoned her, I told her who I was, I
14 said I wasn't calling about the reward, anything
15 like that, but I would be interested to meet her,
16 could she come over and tell me a bit more about
17 her case, and she agreed to do that.

18 Q Tell me where things went from there?

19 A Umm, well, I know she came over quite a few times
20 and eventually I taped her entire life story, I
21 was interested in her for another project, but she
22 did tell me briefly about the Milgaard case, she
23 told me that he had escaped from jail, I think
24 quite recently, and he had been shot in Toronto.
25 She filled me in briefly on the case and I think



1 what she more or less said, I have to do something
2 because they will throw away the key, something
3 like that, after this latest escape. It wasn't
4 his first escape.

5 So her position as his mother
6 was she believed he was innocent and he couldn't
7 admit to guilt or show remorse because he didn't
8 do it, so basically she filled me in a bit on the
9 case, and oddly at that time, I must be a glutton
10 for punishment because I was up to my ears in
11 another murder case, the Katie Harper case, which
12 I was involved with for four years, so I had some
13 familiarity with old murder cases, and the one
14 thing that intrigued me about her son, who I had
15 never met, I had never heard the name Milgaard
16 before, was his age, he was very young, 17 I
17 think, somewhere around there, when he went to
18 jail, and by the time I met up with Mrs. Milgaard
19 at my house, 11 or 12 years had passed and it
20 intrigued me that back then I think the average
21 for a murder conviction was roughly seven years
22 and 11 or 12 years later he was still there, so it
23 kind of grew from there, and I know she was really
24 without resources to investigate anything, but my
25 initial interest was simply from the Maclean's



1 point of view, could I suggest maybe -- not doing
2 the story about a reinvestigation of the case, but
3 the fact that this woman was going around offering
4 a reward, all this kind of stuff, and kind of a
5 relationship grew from that, and at some point I
6 said, well, I know you are his mother, therefore,
7 you know, you will have a bias, I will look at
8 anything you have and see what I think, any
9 documents you have, but the fact that you believe
10 he's innocent doesn't mean I will, so I drew a
11 boundary there, and it was always possible I could
12 find something that showed he wasn't innocent, so
13 she agreed to give me or loan me what she had at
14 that time, quite a lot of documents actually she
15 had written, it was a voluminous correspondence,
16 she had written to people like the Queen, the
17 prime minister, all kinds of people in authority.

18 What she also had I think at
19 that time was the, not the trial transcript, but
20 the preliminary hearing transcript which I
21 borrowed and there was a huge amount of personal
22 correspondence between her and David in prison and
23 it was very pathetic, and I mean pathetic in the
24 true sense of the word, it was quite moving, some
25 of it, so I kind of bit into this. I already had



1 my hands full with other work, but once I read the
2 trial transcript, I knew there was something
3 seriously wrong, and over the years, I think I was
4 involved for two years, it became almost, you
5 know, I got sucked into it more and more and my
6 intellectual curiosity was very challenged and I
7 had an awful lot of questions, and at some point,
8 not too long after I had serious, serious, serious
9 reservations about the Crown's case.

10 Q Am I hearing you correctly then, Mr.
11 Carlyle-Gordge, that you entered the situation
12 objectively, not necessarily previously of the
13 viewpoint that David Milgaard was innocent?

14 A Yes, I knew nothing about the case, and although
15 Mrs. Milgaard is a very persuasive lady, I have a
16 mind of my own and I told her I would keep my own
17 counsel and read whatever she had and come to my
18 own conclusion.

19 Q So in terms of that initial source of information,
20 was it solely the preliminary transcript as you
21 mentioned and the various correspondence or were
22 there other sources of information that you relied
23 upon initially?

24 A Well, it's a long time ago. I think at that time
25 she also had the statements of Nichol John, Ron



1 Wilson, probably Cadrain and I know I did read
2 those and I knew at some point that the statements
3 had changed. She also, and I can't tell you
4 exactly when I got every piece of this stuff, she
5 was very free about loaning me information, there
6 was an orange notebook which had belonged to David
7 and was written in his own hand and it was his
8 account of that, particularly of that day, January
9 31st, '69, of how they came into the City of
10 Saskatoon and what happened that day.

11 Q And that's something you had then in your
12 possession?

13 A I did.

14 Q Quite early on?

15 A Yes, I did.

16 Q And tell us a bit about then how the working
17 relationship with Joyce evolved?

18 A Well, I spent a huge amount of time just on the
19 transcript. I should mention, by the way, my
20 wife, or ex-wife now, was also quite involved, she
21 saw this as an interesting case too, so we kicked
22 ideas back and forth, and what I was really doing,
23 a lot of the theoretical work, was analysing the
24 Crown's case.

25 COMMISSIONER MacCALLUM: Excuse me, sir.



1 At one point you said you had the preliminary
2 transcript and then I heard you say the trial
3 transcript. Did you have them both?

4 A Later I had the trial transcript.

5 COMMISSIONER MacCALLUM: You had them both?

6 A Eventually, yes, I did, so at some point I did
7 have them both, and I noticed there were changes
8 from the preliminary. The thing that stood out to
9 me in the preliminary transcript most of all, and
10 I'm going again on memory, was Cadrain's
11 testimony, I found it quite fantastic, and I think
12 by the time it got to the actual trial, that had
13 been toned down quite a bit because in the
14 preliminary hearing he was quite strong on David
15 Milgaard's membership of the Mafia and I thought
16 something smells funny about this thing, and let's
17 say intuitively I felt there's something really
18 wrong with this witness, number 1, and then the
19 other aspects of it were I guess I applied
20 rigorous logic to a lot of the stuff I read like
21 was it possible that things happened this way, was
22 it reasonable and logical that, for instance, if
23 there had been a horrible murder that one of them
24 saw, Nichol John, what would likely be the human
25 nature reaction, I would think to get away from



1 the scene.

2 What actually happened was that
3 they went away, got a map of the city, then
4 offered to help some people who were, I talked to
5 them eventually, very credible people, offered to
6 help them push their stalled car, stuck car, the
7 Danchuks, and then not only that, they got stuck
8 themselves, but they went right back to where the
9 murder happened, one block away. That's an
10 example of the kind of odd logic I found.

11 BY MR. HARDY:

12 Q And these were observations you were making then
13 from the preliminary transcript and eventually the
14 trial transcript?

15 A Yes, yes. There a lot of things like that, lots.

16 Q And during your involvement, were you paid for
17 your efforts? How was that arrangement?

18 A I was never paid. I was technically the Manitoba
19 correspondent for Maclean's. I was never paid for
20 my time. I think I invested thousands of hours.
21 I wasn't paid expenses. Why did I get so
22 involved? I don't know. I think it was an
23 intellectual challenge and a desire to know the
24 truth because nothing about this case made sense.

25 Q And we'll be looking at some documents in a



1 moment, but would I be correct that the bulk of
2 your involvement took place between 1981 and 1983?

3 A Yes. Yeah, early 1983.

4 Q And just give us a sense, you've indicated
5 thousands of hours spent during that time. Was
6 this a part-time job for you, you were working on
7 other matters at the time as well?

8 A I certainly had no income of any kind from this.
9 Yes, I was writing for lots of magazines, doing
10 work for Maclean's. In a sense my wife and I
11 stole a lot of time from our family and I can
12 still picture her at two or three in the morning
13 in the kitchen typing up transcripts. It took
14 more and more time, it was very draining.

15 Q I'm going to turn your attention to the documents
16 now, Mr. Carlyle-Gordge, and there's quite a
17 number of them, and I'm going to try to proceed
18 chronologically for the most part. I'll turn you
19 first to a letter that's dated January 15th, 1981,
20 it's document ID 213139, you'll see it's a letter
21 to a Jim and Jackie and I believe it's from Joyce,
22 that becomes apparent I believe as you read the
23 correspondence. Do you know who Jim and Jackie
24 were at the time?

25 A They were friends of Joyce's I think who lived I



1 think in Regina or Saskatoon. Vaguely. I didn't
2 know them personally, no.

3 Q I direct your attention to the second paragraph,
4 I'll read that to you.

5 "I have spent a great deal of time in
6 with Mr. and Mrs. Carlyle-Gordge. He is
7 a writer from Macleans magazine and
8 recently he and his wife completed an
9 investigation into the Katie Harper case
10 and as a result of their efforts she is
11 now out on bail and will be granted a
12 new trial."

13 A Uh-huh.

14 Q Would that have been accurate information at that
15 time?

16 A Yeah, uh-huh.

17 Q And perhaps briefly, what was the Katie Harper
18 case and what had been your involvement in that
19 matter?

20 A It's a very complicated one that spread out over
21 20 years. In a nutshell, it involved the death of
22 a man in Winnipeg in about 1959, his naked body
23 was found below a bedroom window. It was ruled at
24 the time as an accident. About 20 years later,
25 his name was John Down, he was married to Katie,



1 and about 20 years after that when it had been
2 ruled an accident, she was prevailed upon by her
3 son-in-law who couldn't understand why she lived
4 with her second husband who was very brutal, his
5 name was Harper, why she stayed with him, and she
6 had confided in him that Sandy Harper had murdered
7 her first husband.

8 The son-in-law persuaded her to
9 go to the RCMP and tell all and she was reluctant
10 but she did finally and they confronted Mr. Harper
11 and he never would open his mouth on the subject,
12 so after a lot of investigation they turned around
13 and actually charged Katie Harper with first
14 degree murder. A trial was held, she was
15 convicted and I was at that first trial, actually
16 for Maclean's, I didn't know anything about the
17 case then.

18 What happened after that, it
19 appeared in Maclean's, she had been convicted of
20 first degree murder. Maclean's received a call
21 from the son-in-law and Maclean's asked me to go
22 and see him, his name was Doug Shelmody (ph), and
23 he met me at the door with a gun in his hand, that
24 was novel for me, and -- well, I don't want to
25 ramble on about this.



1 What happened, eventually the
2 case went to the Supreme Court who ruled the trial
3 was unsafe, ordered a second trial and Mr. Harper
4 still wasn't being co-operative, but as a result
5 of something I wrote in Maclean's, they were
6 eventually able to charge him. His son from his
7 first marriage read what was in Maclean's and it
8 stirred a memory in him of when he was a little
9 boy and his dad came home drunk and said I killed
10 a man.

11 He went to the RCMP, the RCMP
12 went to Sandy Harper, so finally the second trial,
13 they had them both charged with first degree
14 murder and they were both convicted eventually.
15 It was reduced on appeal, the Crown's case was
16 dreadful in my opinion and the Manitoba Appeal
17 Court reduced it from first degree murder to
18 manslaughter with a 20 year sentence.

19 Q And you and your wife then obviously conducted
20 some investigative work in relation to the matter?

21 A Over three or four years, yeah.

22 Q Look at the next paragraph, I'm going to again
23 read that portion to you, the first sentence or
24 so:

25 "They have agreed to work on our case



1 provided it can be done without anyone
2 knowing about their connection with it
3 at the start. They feel they would be
4 greatly hampered in their work if the
5 police knew what they were up to."

6 Again, was that accurate information as stated by
7 Joyce?

8 A Yeah. You know, I was kind of working on this for
9 myself at that point anyway, you know, I wanted to
10 know, but yes, what I knew was that Joyce and her
11 family had been, before I came on the scene, had
12 been going around Saskatchewan with a lot of
13 publicity and media involvement and it obviously
14 put the backs up of the police or the legal
15 establishment and there was a certain amount of
16 hostility, so I thought if I'm going to be
17 involved at all in looking into this, I want to go
18 about it quietly, and I really didn't want to be
19 seen in public with Mrs. Milgaard at that time, I
20 didn't think that would be helpful.

21 Q And perhaps you've described that already, but why
22 was that?

23 A Just that I was aware of some hostility out there
24 and I would assume, you know, many doors would be
25 slammed in your face if there were even a



1 connection suspected; in other words, if people
2 thought I was working for Joyce Milgaard, which is
3 not true, I worked alongside her, so it was just a
4 question of strategy I suppose. I wanted to do it
5 quietly on my own terms.

6 Q And were you aware of a position on the part of
7 the police that had led to this comment perhaps
8 relating to a specific concern?

9 A I do recall, I can't remember when though,
10 probably Joyce had hinted that she had had a few
11 negative feedback things, but I know we were in
12 Regina once looking for someone, I can't remember
13 now who, we were looking for a lot of people, and
14 the subject did come up that somebody she had
15 phoned or spoken to that we were interested in
16 seeing had already had a visit from the Saskatoon
17 police, and this was in Regina, not Saskatoon, and
18 had basically been told if this Mrs. Milgaard or
19 whoever comes pestering you about this whole case,
20 you don't have to talk to them, and if you call us
21 we'll make sure they go away. That was the gist
22 of it.

23 Q And who did you learn that information from?

24 A From Joyce, yeah, and that would have been early
25 on in the case.



1 Q I'm going to move down the paragraph starting at
2 that sentence, and again -- sorry, one sentence
3 forward from there, and I'll read this to you:

4 "He is happy that we have someone to do
5 the leg work and has agreed to
6 co-operate fully with Carlyle-Gordge."

7 And I believe he's talking of Mr. Young there,
8 and perhaps I should ask you, do you recall
9 working with Gary Young, legal counsel?

10 A Vaguely. I know I was in a conference call I
11 think with Gary Young and David and Joyce.

12 Q Did you have a direct --

13 A I think I met him, I certainly met him. I don't
14 remember a lot about it. I think Joyce dealt with
15 him mostly.

16 Q Okay. I'll just continue on from where I was
17 reading:

18 "He also agrees that we should be going
19 through the transcripts before any
20 interviewing is done. Once we have
21 completed that we will start seeing
22 people."

23 Do you recall that was the general plan?

24 A Yes, I think that was my own wisdom, my personal
25 wisdom at the time as to what should happen,



1 because every time I read something I came up with
2 20 other questions and I thought it was very
3 important to put a lot of thought into how people
4 should be approached and who should approach them.

5 **Q** Okay. And it seems by this time you are perhaps
6 being portrayed as a part of the team, so to
7 speak. Would that be accurate?

8 **A** Well, I might quibble about that. I mean, I had
9 my own objectives too, but, you know, in those two
10 years we did work very closely and co-operatively,
11 there's no question about that. Was I on Joyce
12 Milgaard's team? I didn't look at it that way. I
13 was on my own team.

14 **Q** Were you an advocate at this point in time?

15 **A** No, I was an advocate for getting to the truth and
16 we needed a lot more information.

17 **Q** Okay. Just the next sentence, it states:

18 "In their work on the last case they
19 always worked with tape recorders and
20 with someone else listening on the phone
21 when they were calling and he would like
22 to accompany me on any interviews."

23 I assume the last case that's being referred to
24 there is the Katie Harper case?

25 **A** Yes.



1 Q And was that the approach that had been taken on
2 that case and the approach you had wanted to take
3 on your involvement in this case, the Milgaard
4 case?

5 A Yeah. Well, I thought it was very important to
6 have accurate records for one thing, and because
7 people can say things face to face and something
8 very significant might be said and you want an
9 accurate record, so I was, yes, strongly in favour
10 of keeping good records.

11 Q And what were you anticipating might be the use of
12 those recordings?

13 A At that time I had a lot of things on my mind and
14 the timing is interesting. I was in fairly
15 constant contact with the managing editor of
16 Maclean's, he knew about my interest in this case,
17 even though they weren't paying me for this, his
18 name was Allan Walker, and I filled him in on
19 this, he knew I was working closely with Mrs.
20 Milgaard too, and on at least, I would think
21 between '81 and '83, at least three occasions in
22 writing I outlined the whole case and what was
23 wrong with it logically to him.

24 He was on my side, he had
25 respect for my integrity and judgment I think and



1 what used to happen at Maclean's was all the story
2 suggestions would go to an editorial board on
3 Friday morning and it was felt over those two
4 years that although this was a fascinating,
5 tantalizing case and the logic was there, there
6 wasn't quite sufficient, in terms of new evidence,
7 for them to run a story, and that was of grave
8 disappointment to me, because my preferred option
9 would have been to do something in Maclean's.

10 **Q** So you were intending perhaps on using those
11 recordings for that purpose?

12 **A** That, and also there were two other things, the
13 whole question of books comes up. I had already
14 had correspondence with Fitzhenry & Whiteside in
15 Toronto about doing a murder book and that stemmed
16 from the Katie Harper, particularly from that
17 case, and I'm not crazy about doing books, but I
18 was seriously thinking about doing that, and
19 eventually I opened it up and thought, well, maybe
20 I'll do one on two or three murders, you know,
21 this might be one of them depending on what we
22 found out, Katie Harper, this and another one, and
23 then I got approached to do, would I contribute an
24 essay to a book called *Winnipeg 8*, I think it was
25 a book done on a Canada Council grant, kind of a



1 creative thing, and I knew the editor, and
2 basically wanted eight writers to choose a
3 subject, an interesting personality, and I
4 thought, well, Joyce Milgaard fits the bill, so I
5 got her entire life story out of her and I kind of
6 wove a bit of the Milgaard case into it since I
7 was working alongside her at that time.

8 Q Going back a moment for your comment on the book,
9 you mentioned that you had thoughts of writing a
10 book on murder cases. Was that something that you
11 were thinking about prior to your involvement in
12 this case?

13 A Oh, yes.

14 Q Okay. And when you became involved in this case,
15 this was another murder that you thought you
16 perhaps could write on?

17 A Initially I was just going to do a book on Katie
18 Harper and Fitzhenry & Whiteside sounded quite
19 interested, and then for Lord knows what reason I
20 got mixed up in this one and it wasn't something I
21 was going to do immediately, but there was
22 certainly enough information at some point to do a
23 book, yeah. I hadn't set a date for when I would
24 do it or anything like that.

25 Q I'm going to show you some further documents, Mr.



1 Carlyle-Gordge, they appear to be typewritten
2 summaries of some of the preliminary hearing
3 evidence, and these documents were included in
4 materials that were provided to the Commission by
5 Joyce Milgaard, and I'm not sure if they are your
6 work or not, but we'll take a look at them. The
7 first one is 224990. I'll get you to take a look
8 at that document, it mentions Walter Joseph
9 Danchuk at the top. Does that document look
10 familiar at all to you?

11 A Well, I know I've read it, I've certainly read it,
12 and that looks like my handwriting in the
13 left-hand margin.

14 Q You are mentioning the handwriting here?

15 A Yeah, "she was not terrified", and yeah, I think
16 that's a document I read, I couldn't tell you
17 exactly when, and it looks like a summation of
18 things that were happening that day and I didn't
19 write it I'm pretty sure.

20 Q You didn't do the typewriting?

21 A No.

22 Q In respect to this document?

23 A No. It's somebody else's summation of what was
24 going on and I obviously read it and marked it.

25 Q So this was in your possession at some point in



1 time anyways during your review?

2 A Yup.

3 Q And do you recall considering that the Danchuk
4 evidence was important?

5 A Extremely. In fact, I contacted them and
6 interviewed them, yeah. It was very important.

7 Q And again, that began from your review of the
8 transcripts; is that correct?

9 A Yup. They seem like a very ordinary couple who
10 were quite credible and who had actually had
11 contact with Milgaard and the whole party very,
12 very soon after this Gail Miller murder, yeah.

13 Q Okay. I'm going to show you another similar
14 document, it's 224963, you'll see Henry George
15 Diewold is noted at the top of the document?

16 A Right.

17 Q Again, it looks like there's some handwriting on
18 the document. Is that your handwriting?

19 A That is my handwriting, and it says "probably the
20 murderer".

21 Q And I think you are taking note of Mr. Diewold's
22 evidence in relation to seeing a vehicle in the
23 lane where Miss Miller's body was found at the T
24 intersection, you've noted the time?

25 A Yes.



1 Q And I see another note here, "David at
2 Trav-a-leer"?

3 A Yes, at the same time.

4 Q And do you recall taking note of these aspects?

5 A Oh, yeah, yeah.

6 Q And again I assume you considered these
7 observations to be significant?

8 A The timing, the geography, everything was
9 significant. The logic was especially
10 significant.

11 Q Turn to the next page, I think you were -- again,
12 is that your handwriting and markings?

13 A Yes, it is.

14 Q It looks like you've noted in the --

15 A At 7:10 David was at the Trav-a-leer Motel many
16 blocks away, I think 18 or 20 blocks away, yeah.

17 Q And you noted in the cross-examination I believe
18 that Mr. Diewold commented that a person passed in
19 front of the headlights of the vehicle and he
20 noted that it was a small person?

21 A Very short, yes, and David isn't particularly
22 short.

23 Q So, again, this would be a document that you had
24 in your possession and obviously were considering
25 during your review and work?



1 A Yeah, I was going through it all logically, yeah.

2 Q There's one further document, it's 224961. It's a
3 similar document, I -- there is only an
4 underlining there perhaps could be yours, no other
5 writing.

6 A Yeah.

7 Q I'm not sure if this one was in your possession or
8 not?

9 A Yes, it probably was, and I probably did underline
10 that, yeah, more than likely.

11 Q I'm going to turn your attention next,
12 Mr. Carlyle-Gordge, to a transcript of a recorded
13 discussion between yourself, David Milgaard, Gary
14 Young, and Joyce. And just before we turn to it,
15 do you recall dealing directly with David Milgaard
16 during your work?

17 A Well, not very closely, no. I know there was one
18 conference call, I know I went out to ask him some
19 questions in prison once, I know I was there the
20 day he got out of prison. I know that. Umm, I
21 felt I had a familiarity with David even without
22 talking to him because I had access to quite a
23 large correspondence between him and his mother,
24 and what I was focused on was the logic, you know,
25 in this thing --



1 Q Okay.

2 A -- and I didn't have huge amounts of time with
3 David, no.

4 Q Okay.

5 A No.

6 Q I turn your attention to document ID 155260. And
7 as I mentioned, at the top it notes a conference
8 call, David, Joyce, Peter, lawyer Young, January
9 22nd, 1981. And firstly, just in terms of the
10 form of this document, the typed transcription, do
11 you recognize that transcription,
12 Mr. Carlyle-Gordge?

13 A Umm, yes, yup.

14 Q Is that your own?

15 A Umm, I think that looks like my typewriter, my
16 wife probably typed that.

17 Q Okay. And I see some notes as well on the page;
18 are those your notes?

19 A Yeah, it looks like my writing, yeah.

20 Q Okay. If we could turn to the next page, please,
21 just this first comment or it says in brackets:

22 "(says he'll try and do everything he
23 can to help. David sounds very polite;
24 calls him 'sir.')

25 I have a few brief
questions. I haven't yet located Nicky



1 or Wilson."

2 Sounds like perhaps this might be the first time
3 that you are talking with David in relation to
4 the case. Would --

5 A Oh yeah, I think it must have been, yeah. That's
6 early, yeah.

7 Q And do you recall this conversation,
8 Mr. Carlyle-Gordge?

9 A No, not from my own memory, no.

10 Q Okay.

11 A I know I had questions, a few, but I hadn't really
12 gotten into the case in a big way, in detail,
13 yeah.

14 Q Okay. You go on to ask David a number of
15 questions respecting his recollections, and I'll
16 just cover some of those with you. Just a short
17 ways down the page starting approximately here,
18 and I won't read this to you, but you are
19 inquiring about the woman that the group allegedly
20 stopped that morning for directions?

21 A Uh-huh.

22 Q Do you recall this area being an area of interest
23 for you at the time?

24 A Umm, well I was interested in wherever they had
25 stopped or spoken to anybody, you know.



1 Q If we turn to 155262 I note that beside the P
2 there, which I assume stands for yourself, you
3 indicate:

4 "You were likely in a quite different
5 area, because the woman you asked would
6 have know where Pleasant Hill was if she
7 was in that area."

8 A Yeah.

9 Q And is that the common-sense type of observations
10 you have been telling me about that you were
11 making in relation to your review?

12 A Yeah, yeah, that's logic. And now I don't know
13 when I actually had hold of David's own notebook
14 about that morning but I -- you know,
15 eventually there came a time when we followed his
16 notebook, Joyce Milgaard and I, and we actually
17 drove into the city and tried to follow that
18 route --

19 Q Okay.

20 A -- and we were sure it was nowhere near there.

21 Q And there is mention of the notebook a little bit
22 further on down the page. If we could go out to
23 the full page, I direct your attention to this
24 portion here, and you state:

25 "You had the name Anne Friesen in your



1 notebook."

2 A Uh-huh.

3 Q "Is it NB?"

4 A Yeah, is it important, yeah.

5 Q And you've talked to us about the notebook, and I
6 think you've confirmed that you had that notebook
7 in your possession?

8 A Yes, I did.

9 Q And I think you described it; was it an orange
10 notebook?

11 A It was like an orange exercise book, a school
12 book.

13 Q And I'm going to turn you to another document that
14 we have, it's document 301675. And to give this
15 document some context, Mr. Carlyle-Gordge, it is
16 an affidavit, a 1986 affidavit by David
17 Milgaard, --

18 A Uh-huh.

19 Q -- and appended to this affidavit at 301682 are
20 what David describes in the affidavit as his notes
21 that were contained in the original notebook, and
22 I believe what he indicates is that they had been
23 written out again by perhaps another prisoner for
24 David; do you recall looking at this particular
25 document during your work?



1 A Well I -- the numbering system, yeah, I remember
2 that was in the notebook, it was done that way.
3 Umm, it looks like it to me, it looks like a good
4 version of it.

5 Q Are you -- and first of all maybe I should ask
6 you; is that your handwriting at the top of the
7 page?

8 A Umm, yes it is, yeah, yeah.

9 Q Okay.

10 A Yeah.

11 Q Which indicates 'David's version, from notebook
12 (written in 1969 after David wrote this in 1969
13 from memory)'?

14 A Uh-huh.

15 Q 'Arrest' -- or I'm sorry -- 'written in 1969 after
16 arrest'.

17 A Yeah, that looks like my writing I think, yes.

18 Q And I just want to clarify this. Would this be,
19 then, the document that was in your possession at
20 the time of your work? Is this, in fact, the
21 orange notebook that was in your possession or is
22 this a different document?

23 A I -- it looks like it, it looks like it.

24 Q Okay. And I won't review the document with you, I
25 think there's further handwriting throughout it



1 that is similar to the handwriting at the top of
2 this page?

3 A Yeah.

4 Q I'll go back to the transcript, where we were, at
5 155262. Just at the bottom of the page you are
6 asking about the \$2,000 reward?

7 A Uh-huh, yup, I was interested in who got it.

8 Q That was an area of interest, obviously, for you?

9 A Absolutely.

10 Q And then if we just continue on in the next page,
11 at the top of the page, there is some
12 discussion -- and I won't read -- but there is
13 some discussion about the alleged motel
14 re-enactment scene, which I'm sure you are
15 familiar with Mr. Carlyle-Gordge?

16 A Uh-huh.

17 Q And was that an area of interest for you as well
18 at the time?

19 A Umm, yeah, I would say so. Umm, it sounded --
20 well these people came in at the very last minute
21 and, yeah, I think the way it was interpreted was
22 important, yeah.

23 Q Okay.

24 A Yeah.

25 Q I note David's comment here, he states:



1 "I remember being high in the hotel
2 room, but I don't remember those people
3 showing up in the hotel room."

4 A Right.

5 Q Do you recall anything further on what David's
6 position was on this event?

7 A Umm, no. I think, I mean I think they were
8 smoking pot and he probably didn't remember too
9 much about it, it obviously didn't strike him as
10 significant.

11 Q Do you recall what your own thoughts were on, and
12 maybe I'll ask, on whether --

13 A Well I --

14 Q -- on whether the event had happened?

15 A Did I believe anybody that this had even happened?
16 I think probably I did, but it was a question of
17 interpretation, of -- I know one of the things
18 that came up, maybe it was Mr. Caldwell who
19 brought it up, that he had reenacted this murder
20 stabbing the pillow however many times, umpteen
21 times, and I think the comment was "how could he
22 know that unless he were the murderer". Well it
23 was plain as day how you could know that, it had
24 been in the media, it had been widely publicized.

25 Q So you are referring to a comment made to you



1 later in time by Mr. Caldwell?

2 A Yeah, I think it was Mr. Caldwell, somebody
3 anyway. Yeah, umm, I think it was in the
4 interview with Mr. Caldwell.

5 Q But I hear --

6 A But it would be quite possible for people to know
7 what happened, you know, that Gail Miller was
8 stabbed multiple times, that would have been quite
9 possible.

10 Q Am I hearing you correctly, though, that you were
11 under the impression, during the time of your
12 work, that perhaps something happened in a motel
13 room as described by some of the witnesses, you
14 just disagreed with the interpretation placed on
15 it by certain witnesses?

16 A Well, obviously I wasn't there, and to say what
17 was in my mind at the time, it was possible
18 something had -- some reference had been made to
19 the murder. It was a big story. And I think I
20 was familiar that these characters also had
21 criminal backgrounds, I think I was aware of that,
22 so --

23 Q And are you referring to Mr. Lapchuk and
24 Mr. Melnyk?

25 A Uh-huh, yup.



1 Q Okay. Just if we go out to the full page, again,
2 it continues with some questions respecting
3 whether David had a knife on the trip?

4 A Uh-huh.

5 Q And just this portion here I'll direct your
6 attention to, Joyce states:

7 "But you'd told me that there was always
8 a paring knife; there was always
9 something in the car when you were
10 making sandwiches."

11 And David states:

12 "That was after Saskatoon. We bought a
13 bunch of stuff in a store."

14 And do you recall this being David's information
15 with respect to a knife that may have been in
16 their possession during the trip?

17 A Yeah, I think he said that, yup.

18 Q I'll turn you to the next page. I'm going to read
19 a portion to you, this one is a little bit longer,
20 you begin by stating:

21 "Other than what you've said to your
22 mother, can you recall anything else
23 about the woman you talked to? asking
24 directions?"

25 David states:



1 "Oh, just that it was an older woman,
2 OK? I think it was --"

3 Yourself:

4 "How old?"

5 David:

6 "-- it was like this. We turned around
7 alright but the tires were spinning on
8 the car. It was very old tires on the
9 car, and I'm not even sure if we went up
10 there to ask her directions. The idea
11 was to turn around, and I'll be honest
12 with you. The idea was to look her over
13 and to see if we could possibly grab her
14 purse, you know. Cuz we were short of
15 funds at the time. But as we turned
16 around, I'm not sure whether we asked
17 her for directions or whether we just
18 continued turning back again, around the
19 centre of the boulevard and then going
20 to the garage. We had some soup in the
21 garage... You know a little package of
22 soup? We had some soupl"

23 Yourself:

24 "Which garage are you talking about?

25 You went on to the motel after --"



1 David:

2 "This is as we were driving into
3 Saskatoon, initially. OK. There was a
4 boulevard that we were driving along; it
5 was very early in the morning, and we
6 happened to see a woman walking on the
7 street. We pulled over and I guess in
8 our thinking -- at least in my mind now,
9 I remember saying 'This would be a
10 perfect opportunity to grab her purse'
11 cuz we needed some money. But the idea,
12 I guess, was to ask her for directions.
13 I don't know for sure."

14 Yourself:

15 "So did you talk to her?"

16 Next page, David:

17 "No, I don't think we did. I'm almost
18 positive we didn't."

19 "OK-".

20 David:

21 "We did talk to a person, though, in the
22 middle of downtown."

23 Yourself:

24 "This was the old man --"?

25 David:



1 "Not sure if it was a streetcleaner or
2 something like that, but I couldn't tell
3 you what he looked like at all. I think
4 what's important, though -- even me
5 saying what I said about that woman and
6 stuff like that -- I think it's
7 important for me to be exactly and
8 perfectly honest."

9 A Uh-huh.

10 Q Do you recall receiving this information from
11 David?

12 A Yes, he did, he did say that, yup.

13 Q And I noted some notes on the previous page
14 besides portions, some notes to 'check'. Do you
15 recall looking, for example, for the garage that
16 David speaks of?

17 A Umm, probably, when we had the orange notebook.

18 Umm, I don't have a vivid memory of --

19 Q No specific recollection of that though?

20 A No, okay, no.

21 Q And just generally what did you think, at the
22 time, about the reliability of David's
23 information?

24 A Well, I thought it all had to be checked out, and
25 at what point did I -- what this amounts to is at



1 what point did I believe him I think. Umm, I
2 think I had an open mind for a little while
3 anyway, and one thing I needed to do was to check
4 out his personality and see. You know, this
5 murder was a frenzied, horrible attack, and was
6 there any history of psychosis in David Milgaard,
7 even though I knew his mother I had to know that,
8 and that is one reason I went and looked for
9 people who knew him, who he worked for at that
10 time, '69, to see if there were any skeletons
11 there I didn't know about, you know. Did he have
12 any violence in his past, things like that, was he
13 trustworthy, character in general. I could find
14 nothing really, really negative in two years. He
15 was a, I guess what you today would say,
16 hyperactive. He was a young hippie type, he did
17 smoke pot, umm, but there is a big difference
18 between that kind of lifestyle and the kind of
19 crime that was being investigated.

20 Q You go on, on this same page, to talk about the
21 issue of clothes being changed at --

22 A Uh-huh.

23 Q -- the Cadrain household?

24 A Yup.

25 Q And I assume, again, that would be an area of



1 interest for you, Mr. Carlyle-Gordge, in your --

2 A A very strong area of interest, because I found no
3 forensic evidence linking David, and these pants
4 were very important.

5 Q Okay. And if we continue on in the document to
6 page 155267 we'll see, at the top of the page,
7 there are some discussions respecting Nichol John
8 and Ron Wilson --

9 A Right.

10 Q -- and attempts to reach them?

11 A Uh-huh.

12 Q Do you recall what your early views were on the
13 evidence of Ron Wilson and Nichol John?

14 A Umm, not distinctly. I kind of attacked this
15 case, myself, on logical grounds; could this
16 Crown's case actually have happened? I came to
17 the conclusion it couldn't, and therefore the only
18 conclusion that could be drawn, I was interested
19 in the fact that all the key people involved had
20 initially given statements when they were
21 separated in time and space and they were all
22 pretty well identical, that nothing had happened
23 that morning, and then they changed. Nichol
24 John's changed radically and Wilson's certainly
25 began to implicate Milgaard and talk about knives



1 and blood and stuff like that. Umm, I'm trying to
2 go back to that time. Based on the logic, of
3 course, I came to doubt that they'd told the
4 truth, that's basically where it amounts to. And
5 even if we played devil's advocate, which I did
6 more than once with my wife, and said let's assume
7 that Nichol's statement, the one that she
8 retracted or whatever later, were true, let's
9 approach it from that angle; what's wrong with
10 this picture? Could she have seen this scene? It
11 was minus 40, it was dark, it was foggy, I don't
12 know what she could have seen. I've been to that
13 scene, I've been to the back lane. And then we
14 get to the whole thing of logic, well even if she
15 saw this horrible murder, what's the likelihood
16 that she would get back in the car afterwards with
17 this character? Not only that, but stay with him
18 right through to Edmonton? I think she had lots
19 of opportunities to escape. You know, I was
20 thinking along those lines.

21 Q These were your thought processes at the time?

22 A Yeah. They were very convoluted. Umm --

23 Q And just to interrupt you for a moment, you have
24 been talking about the statements and reviewing
25 the statements, do you recall where you had



1 obtained the statements from? And we're talking
2 at this time, and I know it's tough to go back and
3 place yourself in time, but this particular
4 conversation, I believe, was in January 22nd,
5 1981?

6 A Uh-huh.

7 Q And I think you've confirmed for us that you
8 likely had in your possession the statements of
9 the witnesses that we have been speaking of?

10 A Yeah, I would have got them from Joyce Milgaard.

11 Q Okay.

12 A For sure, yeah.

13 Q And you don't know where Joyce would have obtained
14 the statements from?

15 A Umm, I can't really remember at this time.

16 Q Okay.

17 A No.

18 Q Just on this same aspect, I'm going to refer you
19 to another document, 224965, and get you to
20 generally look at that document. You will see
21 it's titled at the top *Police Procedure*
22 *Picture/Nichol John, draft copy, based on trial*
23 *transcript?*

24 A Right.

25 Q Taking a look at the form of that document, does



1 that document look familiar to you at all?

2 A I have certainly read it, it -- I didn't write it.

3 Umm, that may have been something Mrs. Milgaard

4 had, actually. I have read it.

5 Q Okay. So you do recall reading it?

6 A Yeah, oh yeah, yeah.

7 Q It's not your work?

8 A No, no.

9 Q Just to the next page, I'll read a portion to you,
10 starting here the document indicates:

11 "Police brought Nichol to Saskatoon (1)
12 day prior to her having a statement
13 taken by Mackie. She said she saw Ron
14 Wilson at the Cavalier Motel and one
15 policeman, Det. Roberts was identified
16 as being in the room with them. The
17 murder was discussed (her being stabbed)
18 and exhibits or specifically a coat was
19 held up. A bunch of knives (5 or 6)
20 along with one with a broken blade were
21 part of this police procedures. It was
22 after all this she was driven around and
23 the funeral home was pointed out. This
24 is when she was looking for the
25 boulevard she never found. Next she was



1 taken to the Women's cells (2 minutes).
2 Not under arrest. She didn't want to be
3 there so they put her in a little room
4 where the matron stays. She stayed
5 there by herself. There was no matron
6 at this point at all. She could not
7 remember who took her from the cells to
8 the matron's room late that night. She
9 thought it was the detective who put her
10 in the cells. The room was inside the
11 cell block. Something happened in the
12 cell block that required bringing the
13 matron. She banged on the door to
14 attract attention. It was some little
15 time beofre the matron got there. There
16 were no other prisoners at all. The
17 matron saw that a mattress was taken
18 from the cell block and she slept on it
19 but never got any sleep to speak of.
20 She had some aspirins. In the morning
21 food was brought up. Part of the night
22 there was a matron. After breakfast she
23 remembers getting into a police car in
24 the garage portion and driving again
25 over the area where places were pointed



1 out to her.

2 She was brought back to the
3 police station, taken to the women's
4 cell block and place in the matron's
5 room. The matron was not there. Nichol
6 said she had no idea how much longer she
7 was going to be kept at the police
8 station. She was still unhappy about
9 being kept there and anxious to leave.
10 Somewhere along the line she was told
11 she would be taken up to get a statement
12 from her. Her recollection of the
13 events after this is very poor.

14 It is after the adversity
15 ruling during Nichol's testimony on the
16 actual statement taken by Ray Mackie
17 that the statement is not acknowledged
18 in its entirety as the truth. She said
19 she was brought up once after this cells
20 routine and again driven around etc."

21 A Hmm.

22 Q And do you recall considering this information
23 that I have just read to you?

24 A I recall Joyce telling me some of this stuff
25 verbally while I was kind of working alongside



1 her, that there had been some horrendous stuff
2 going on with Nichol and she was terrified out of
3 her mind and locked up alone, or something like
4 that, and I remember that.

5 Q And do you remember when this information --

6 A I don't remember when I read this, but this is
7 basically it, yeah.

8 Q But the aspect about Nichol being terrified and
9 horrendous goings-on, that was from Joyce, did you
10 just indicate?

11 A Yeah, yeah, yeah.

12 Q Okay.

13 A She had some knowledge of this, yup.

14 Q Okay. Turn to the next page. I see another "NB
15 strong stuff"; is that your handwriting?

16 A No.

17 Q That's not?

18 A No. No.

19 Q Okay. We'll go back to the transcript we were
20 reviewing, 155268. Starting near the bottom of
21 the page, the discussion is again in relation to
22 Nichol John, you indicate:

23 "If we reach Nichol, and she's afraid of
24 Wilson or perhaps the police -- If she
25 wanted to change her story or make a



1 statement, I don't think she perjured
2 herself at the trial -- what kind of
3 protection could we offer her?"

4 If we could skip ahead to 155270, just continuing
5 here, and again you are speaking:

6 "I checked the trial transcript and she
7 retracted the written statement, and I
8 don't think there's anything too serious
9 against you in what she did admit. The
10 problem was that the Crown managed to
11 get the statement in anyway."

12 A Uh-huh.

13 Q And do you recall considering this aspect?

14 A Oh yes. I think that statement convicted him.

15 Q And why do you say that?

16 A Well, if I had been on the jury, I might have
17 convicted him myself. I think the statement, even
18 though technically she retracted it the jury still
19 heard it, and I think it seriously prejudiced
20 them. It was blow-by-blow thing and it was not
21 nice, --

22 Q And --

23 A -- and I can't believe -- I'm just a layman, I'm
24 not a lawyer -- I can't believe that, considering
25 she had denied this statement basically even



1 though she had, under what circumstances we don't
2 know, at one time she had made the statement, I am
3 absolutely shocked that the jury was even allowed
4 to hear it.

5 Q And just so I understand fully, what do you mean
6 by your use of the word "retracted", you've used
7 it in your comment to me and also here in this
8 paragraph?

9 A Well she had made a very damaging statement about
10 witnessing a murder and then, as I recall, she
11 kind of didn't want it used and ended up basically
12 saying "well I can't remember anything about
13 anything", and what probably should have happened
14 -- I'm not a lawyer remember -- is that somebody
15 should have said "why did you make the statement
16 in the first place" -- maybe they did -- and "do
17 you really believe David did do it or you did see
18 it?", but she kept saying "I can't remember
19 anything, I can't remember anything." I think it
20 was extremely damaging --

21 Q Thank you.

22 A -- to have that statement.

23 Q Your concern was, then, that notwithstanding her
24 lack of memory the full statement was read out to
25 --



1 A I'm very -- yes.

2 Q -- the jury in any event?

3 A I don't think that's justice, actually, yeah.

4 Q Okay. I turn your attention to the next page,
5 which is 155271, start reading here, read this to
6 you. Joyce is speaking:

7 "Have you had any luck with the Police
8 Dept. yet, Gary? regarding Nichol or
9 the others?"

10 Gary states:

11 "I haven't heard any yet, Joyce. I
12 certainly can push in that direction,
13 and am. I don't have any negative
14 response from them, so they still may
15 help us ... I'll quickly phone the
16 police chief in Sask. as soon as I get
17 off the conference call & see if he's
18 reached a decision as to what he will
19 do."

20 Joyce:

21 "Tell him --- (etc.) and make it sound
22 like you're not sure if you're going to
23 go ahead with it."

24 David states:

25 "What was the initial reception by any



1 of the police there in Saskatoon upon
2 your enquiries?"

3 Gary states:

4 "Well at the lower levels it seemed to
5 be fairly positive. But the police
6 chief himself ultimately put his foot
7 down and said that unless we came up
8 with some valid reason for expecting to
9 find evidence that hasn't already been
10 dealt with, he didn't want his police
11 officers spending time on helping us
12 out."

13 And do you recall being aware of this position on
14 the part of the police at that time?

15 A Oh, vaguely. I was in on this conversation. I
16 didn't expect any cooperation, basically.

17 Q And that's what I wanted to ask you. Did you have
18 an interest in contacting the police service
19 yourself and requesting documents or requesting
20 the opportunity to interview investigators?

21 A Umm, I probably had a fairly negative view of
22 doing that. Umm, I certainly -- I can tell you
23 what I wanted to do; I wanted to find and talk to
24 the chief Crown witnesses and investigate.
25 Eventually when I came to an absolutely



1 100-percent-certain position that David couldn't
2 have done this I wanted to try, at least, to find
3 out who might have done it. So my focus was on
4 finding the main witnesses, finding the right
5 approach to them, and hoping perhaps their
6 conscience might have got to them by that time and
7 that the story might change.

8 Q So am I hearing you correctly, then, that part of
9 your plan was not to directly contact the police
10 service to ask for documents or to request
11 interviews with investigators?

12 A Well at some point I did contact the chief
13 prosecutor. In terms of phoning the police chief,
14 no, I don't. I think I would have nixed that
15 idea, I just -- just an intuitive feeling, don't
16 even try.

17 Q And you mentioned earlier you would have had a
18 negative feeling about that; what do you mean when
19 you say that?

20 A Well, I had already heard that there had been some
21 hostility, certainly. Umm, how can I put this.
22 It's very hard to go back into old cases. Now if
23 you are a citizen or a journalist or a lawyer and
24 you are aware that a crime may have been
25 committed, what do you do? You go to the police,



1 you go to the system.

2 I think the whole difficulty in
3 this case was at some point I came to believe a
4 crime had indeed been committed against David
5 Milgaard. Who do you go to to get help? Do you
6 go to the system that convicted him? That's the
7 problem.

8 Q And so would that have been your view at this
9 point in time?

10 A Well certainly, we're talking about January here,
11 no.

12 Q January, yes.

13 A No. Later on I would. I had to do a lot more
14 research at this point.

15 Q Okay. So you weren't of that view, yet, as at
16 January of 1981?

17 A Well I wasn't going to jump in anyway. Like I
18 said, I wanted to look at the transcripts really
19 thoroughly, and a lot of thought went into not
20 only how to approach people but what to ask them,
21 you know.

22 Q And the reason I'm asking, Mr. Carlyle-Gordge, is
23 I've observed from your answers you seem to be
24 interested in what I might refer to as 'objective
25 source material' --



1 A Uh-huh, uh-huh.

2 Q -- and so I was simply interested in where your
3 mindset was in terms of getting ahold of, as I
4 say, some of the original police reports or --

5 A Oh yes, yes. The problem for me, like when I
6 first went to Mr. Caldwell I had a problem between
7 the first statements given by the witnesses, which
8 tallied with what David had in his notebook,
9 nothing happened, and the later witnesses, changes
10 in witness statements that convicted him,
11 essentially. I wanted to find how the dots got
12 joined, what were the stages between March,
13 whenever they first got the first statements, I
14 think March after Cadrain had opened this thing
15 up, and May when everything suddenly changed and
16 it got -- looked much more serious for David
17 Milgaard. I wanted to find out if there were any
18 connecting blocks that could help me understand
19 how that could happen because my position
20 ultimately was they all told the truth the first
21 time. The Crown's position was no, they all lied
22 the first time, and once the statements had
23 changed and gone through polygraphs, now we
24 finally have the truth. But we now know today,
25 looking back, that they didn't have the truth, and



1 in fact the polygraph could in fact be used as an
2 instrument to create a perjured statement.

3 Q And just going back though to my question, Mr.
4 Carlyle-Gordge, and perhaps I'm not being clear,
5 as I say, I would have gathered from what you told
6 me that perhaps you would be interested in police
7 material, but I think you've told us that even at
8 this point in time you may have had a negative
9 view about contacting police authorities or
10 perhaps --

11 A Cautious, a very cautious view.

12 Q Okay. And have you told us everything you can
13 about the source of that negative view or what
14 that was based in?

15 A Well, I had dealings with the Katie Harper trial
16 too and I can assure you that people don't like
17 old cases being opened up, especially if they are
18 going to be embarrassing.

19 Q Okay. That page that we're looking at goes on to
20 some discussion about the Danchuks and their
21 evidence as we've referred to earlier, and I think
22 you told me a little bit earlier on that you
23 actually met with Walter and Sandra Danchuk?

24 A No. As far as I recall -- yeah, I interviewed
25 them by telephone.



1 Q Okay.

2 A Both of them, yeah.

3 Q And we don't have --

4 A As far as I recall.

5 Q And we don't have a transcript of that interview
6 or a summary of that interview. What do you
7 recall learning from the Danchuks?

8 A What do I recall? Well, they certainly still
9 remembered it because of course they had
10 testified. Well, I think my first big question
11 would have been did you see anything unusual like
12 blood on the pants and they didn't. They told me
13 they were normal, they are calm, they were kindly
14 offering to help them get their car out. I think
15 David may have asked for a drink of water. They
16 saw nothing strange or panicky or anything that
17 would suggest that a few minutes earlier he had
18 been stabbing some woman to death. In other
19 words, he seemed quite normal.

20 Q Turn to the next page, 155273, the comment here,
21 it's Joyce speaking, but in brackets at the end it
22 states:

"(More discussion re Prince Albert;
tells him to keep mum about P --"

25 I believe Peter,



1 "-- working on case)."

2 I assume this is Joyce telling David to keep mum
3 about your involvement, and again, why would
4 Joyce be telling, or stating that to David?

5 A Probably because I told her I really wanted to do
6 some of this quietly on my own and even though she
7 had supplied me with information I just, you know,
8 word spreads rapidly, there's a grapevine
9 everywhere, and I really didn't want the
10 connection made, I really didn't.

11 Q You thought that that would hamper your work
12 somehow?

13 A Yeah, it certainly could have done, yeah.

14 Q In what way?

15 A Well, it would -- some doors might be slammed in
16 your face for instance.

17 Q Just going to the bottom of the page, it
18 indicates -- sorry, I'm lost a little bit, but
19 I'll read it to you. I'm sorry, right here:

20 "And peter is sure of your innocence.

21 (think she said that .. bit faint) and I
22 am too."

23 And would that be a fair comment about your
24 perspective at this point in time?

25 A I think the fair comment would have been we had



1 extremely grave reservations about his guilt. Was
2 I 100 percent sure? No, I hadn't done all the
3 work by then, but I had very serious misgivings
4 about his conviction, you know, after going
5 through the transcript I did, yeah.

6 Q And that concludes that interview. And it
7 appears, if we follow chronologically, that you
8 went on to engage upon some interviews with
9 various other individuals, and some of the
10 earliest transcribed ones that we have found in
11 our database include an interview with Howard
12 Shannon?

13 A Uh-huh.

14 Q Perhaps correspondence or an interview with Roger
15 Renaud, and also an interview with Morris Serrato,
16 and do you recall being interested in these three
17 individuals?

18 A Oh, yeah.

19 Q And generally what was your interest in them?

20 A Well, they had seen Milgaard around the time he
21 was arrested and Milgaard had worked for them
22 selling magazines door to door and I thought they
23 might be, from my point of view, never mind what
24 Mrs. Milgaard might think of this, they would be
25 useful to me to get a clearer picture of David



1 Milgaard's character, whether they had seen
2 anything strange or dangerous or violent.

3 Q Okay. I'm just going to turn briefly to those
4 transcripts, the first one being with Howard
5 Shannon, 155237, and again would that be your
6 typewritten transcription?

7 A Yup, it looks like it.

8 Q And are those your notes at the top of the page?

9 A Yeah, that's my writing, yeah.

10 Q And it indicates Howard Shannon, February 3rd,
11 1981?

12 A Yeah.

13 Q And just here you indicate:

14 "(explains; says he's thinking of
15 writing a book on the Milgaard case."

16 A Uh-huh.

17 Q And would that have been the case at this point in
18 time?

19 A Well, I had a lot of things going on at that time.
20 There was certainly a thought that in the future I
21 might do a book and it might include Milgaard and
22 others. I was still interested in persuading
23 Maclean's that they ought to do something.

24 Q Okay.

25 A And of course there was the book *Winnipeg 8*



1 looming too, that came out in '82.

2 **Q** And Howard goes on to ask:

3 "Would my name be used?"

4 And you indicate:

5 "Not if it's against your wishes. Not
6 at all. I'm trying to reconstruct what
7 happened between Jan. and June 1 or late
8 May when he was in Prince George and
9 went to the police. I knew he worked
10 for Maclean Hunter. Were you with him
11 in Prince George at that time?"

12 And again I think you've already stated, but one
13 of your interests in speaking with Howard would
14 have been to obtain his observations of David at
15 or around the time of the arrest?

16 **A** Right, right, right.

17 **Q** If we turn to page 155239, middle of the page
18 here, you asked the question:

19 "Had Roger ever heard anything about
20 him, like sexually, or --?"

21 And it appears that you are making the inquiry in
22 relation to David, and I take it you are
23 interested in gathering information about David's
24 character at this point in time?

25 **A** Yes.



1 Q And that was in the vein that you described for us
2 earlier on?

3 A Yes.

4 Q Okay. Turn to page 155240, just down here, this
5 portion of the interview, you ask:

6 "Do you recall anything about that time
7 in Saskatoon? (Discusses rapes)"

8 Howard says:

9 "Yeah, there was a couple of very
10 similar, prior to this thing,,,2 of them
11 I believe. It was during those years
12 (60s). In Saskatoon there was a great
13 deal of hysteria about it, there really
14 was."

15 And do you recall what you were referring to here
16 when you mention rapes?

17 A Well, I know -- again the time line is a problem
18 for me because it's so long ago. I know I spent a
19 lot of time in the archives of the *StarPhoenix* in
20 '81 or two going back over old issues of the
21 *StarPhoenix* looking for rapes or stabbings or
22 murders, that kind of thing, involving women from
23 before -- probably I looked at the period from '68
24 maybe to, I don't know, 1970, and there were quite
25 a few, and there were some nurses involved, I know



1 that, and St. Paul's Hospital kept being
2 mentioned, so I must have done some looking at
3 some point into that.

4 Q And that information you just mentioned to me
5 about nurses and St. Paul's, you recall that being
6 from newspaper articles?

7 A Yeah.

8 Q Okay. There's one article I was going to show to
9 you, 003734, you'll note the title of that
10 article, "Killer possible rapist", February 4th,
11 1969, just the first paragraph indicates:

12 "Police are investigating the
13 possibility that the person who slashed
14 a 20-year-old nurses' aide to death
15 Friday may be the same person who
16 attacked three women here last fall."

17 And going down, skipping the next paragraph to
18 this paragraph, indicates:

19 "Last fall police said they believed one
20 man was responsible for two rapes and
21 one attempted rape of women on city
22 streets."

23 Would this be the type of article that you may
24 have had in your possession at the time?

25 A Yeah, I was looking for stuff like that, yeah.



1 Q And do you recall specifically being aware of this
2 particular aspect?

3 A You know, it's a long time ago, but I think I have
4 read that before, I think I have. I can't tell
5 you when, but --

6 Q Okay. And no other recollection beyond that?

7 A No, but there were quite a few if you are looking
8 at a three year period in Saskatoon of unsolved
9 sex crimes.

10 Q So you had come across information on other sex
11 crimes?

12 A That's before Gail Miller's.

13 Q Before Gail Miller's?

14 A Yes.

15 Q And you think that was from newspaper articles for
16 the most part?

17 A Yeah, uh-huh.

18 Q Okay. I turn you to 155241, this is in relation
19 to Roger Renaud, it's tough to see from this
20 vantage point, but just at the top it indicates
21 Roger Renaud, April/81, Peter wrote him February
22 9th and asked him to put thoughts down re David,
23 and then it looks to proceed with what Roger
24 perhaps provided to you, and again this would be
25 your transcription, typed transcription?



1 A Yes. I recognize the type, yeah.

2 Q Just that first paragraph:

3 "I'm glad if I can be of any help, if
4 this will be to you, in getting your
5 book and in gettin Dave back in society,
6 where he belongs, I would think."

7 And do you recall what you would have told Roger
8 about your involvement in this matter?

9 A I would probably have told him I write for
10 Maclean's, I might do a book on this and stuff
11 like that, and I was trying to flush out what was
12 going on back then, you know. This would be
13 important information, particularly for a book
14 rather than an article.

15 Q Had you perhaps advised him that you were
16 assisting David as an advocate, so to speak?

17 A I probably told him I talked to his mother and
18 stuff like that.

19 Q Okay.

20 A More than likely. I can't be certain.

21 Q Okay. I won't review this document with you.
22 We'll just look briefly as well at the transcript
23 of your discussion with Morris Serrato, that's
24 173877, again at the top you'll see it indicates
25 Morris Serrato, February 5th, '81, so right around



1 the same time you are speaking with Howard and
2 receiving the letter from Roger?

3 A Uh-huh.

4 Q And again this looks like your transcribed work?

5 A Yes, it is. Yeah.

6 Q I won't review it all, your interest --

7 A I'm looking for some jeans or --

8 Q Some pants that David had allegedly sold to Morris
9 Serrato --

10 A Yes.

11 Q -- that had blood on them. Do you recall how this
12 line of inquiry sorted itself out for you?

13 A Discounted the pants I think.

14 Q Okay.

15 A Yeah. You know, they were important. Wherever
16 they ended up, they were important.

17 Q I turn your attention next to a letter from Joyce
18 Milgaard to Gary Young, the document is 331977,
19 you'll see it's a letter dated April 20th, 1981
20 from Joyce Milgaard to Gary Young?

21 A Uh-huh.

22 Q And I won't read it out to you, but you see in the
23 first paragraph there there's discussion about the
24 appropriate case law respecting obtaining a
25 reference by the governor-in-council. I'm just



1 curious, do you recall having any knowledge about
2 what the legal process was at the time in terms of
3 addressing David's situation?

4 A No, not really. I think the area where I dealt
5 with that was when I met Tony Merchant eventually
6 at his house and I didn't like what he told me. I
7 thought, you know, logically we'll kind of solve
8 this crime and he did talk about, you know, it's
9 all fascinating, who's going to take the time to
10 read it, that kind of thing.

11 Q Right.

12 A You know, you've got 10,000 reasons why the
13 Crown's case is totally illogical, but that's not
14 good enough, we need a bombshell.

15 Q Okay. And we'll take a look at that in just a
16 moment, but just in terms of dealing with this
17 letter, if we can move to the next paragraph,
18 please, and picking up about the third sentence in
19 here, I'll read this to you:

20 "Also, I enclose a clipping that Peter,
21 in particular is keen on following up.
22 You will note the dates, and the fact
23 that Mr. Mahar was seeing a priest at
24 St. Mary's Rectory in August, the paring
25 knife, marks on the throat etc. led him



1 to believe there may be a connection
2 again going on the assumption that
3 whoever killed Gail Miller was sick and
4 would probably do it again."

5 A Uh-huh.

6 Q And do you recall your interest in Lorne Mahar?

7 A Yes.

8 Q And what were your thoughts in relation to
9 Mr. Mahar?

10 A Well, you know, I was struck by the remarkable
11 coincidence. I probably found a report about him
12 in the *StarPhoenix* and what struck me was it was
13 the same church, the same back lane, the Gail
14 Miller area, he had stabbed his girlfriend to
15 death, he had been incoherent in the church, the
16 priest had spoken to him, he had been I think
17 convicted of murder, I'm going on memory, just the
18 sheer coincidence of, umm, I wonder if it could
19 have been him, you know, so I wanted to find out
20 more, but I should tell you, if you came to the
21 conclusion that David couldn't have done it and
22 you couldn't get the chief Crown witnesses to talk
23 or say anything that they lied on oath, which is
24 what they did, what do you do next. Well, you try
25 and find who might have done it and it's like



1 looking for a needle in a haystack, so the
2 connection, why I got excited about Mahar, and I
3 should say right now I'm quite sure he didn't have
4 any involvement, was simply the area, the knife,
5 the same frenzied attack.

6 Q So am I hearing you correctly, your recollection
7 then was that the murder in the Mahar case had
8 taken place in the same vicinity?

9 A Yes.

10 Q Okay.

11 A No, sorry, not the murder. I think what happened,
12 and again my memory is a bit dimmer than it was,
13 he was found wandering in the church which is
14 right at the end of the back lane, St. Mary's
15 church, where Gail Miller's body was, that's a
16 very critical area, and he was an alcoholic and I
17 seem to remember the priest saying to me this guy
18 was crazy, and he was technically crazy, and he
19 had in fact stabbed his girlfriend, but not in the
20 back lane, I don't think so.

21 Q Okay.

22 A Yeah.

23 Q And perhaps for reference sake, I'm going to show
24 you a summary of that case. If we could turn to
25 document 306437, you'll see this is a 1969 annual



1 report of the Saskatoon Police Department. If we
2 turn to page 306453, starting midway down the
3 page, I'll read this to you:

4 "Murder of Marie Wingert

5 Shortly after noon on August 10, 1969,
6 police were called to the Connaught
7 block. On arrival they met Lorne
8 Raymond Mahar, who appeared upset and
9 directed the police to suite 310.

10 Marie Wingert, 57 years, was
11 found murdered, the naked body lying
12 face down, covered with a housecoat,
13 crossways on a bed. She wore only a
14 pair of shoes. There were six stab
15 wounds in the region of the left breast,
16 one had penetrated the left lung and two
17 the heart. In addition, there were
18 twenty-one punctures and skin breaks in
19 the neck area. Medical evidence
20 revealed the larynx cartilage was broken
21 and hemorrhages under the windpipe
22 indicated manual strangulation. A knife
23 was found in the bedding under the body.

24 As the Police were suspicious
25 of Mahar's actions, he was detained for



1 further questioning.

2 At Police Headquarters Mahar
3 gave a statement to the effect that
4 Wingert had asked him to get a knife,
5 that she had been in poor health for
6 some time and wanted to die. As she
7 could not do it herself, he therefore
8 assisted her in stabbing herself several
9 times with the knife. At this time she
10 got up, struck her head and he then
11 choked her.

12 Police investigations revealed
13 that Mahar had arrived at Wingert's
14 suite at 10:15 a.m. that morning, only
15 to find another male with her. There
16 had been some consumption of alcoholic
17 beverages and Mahar had gone into an act
18 claiming he was getting a vision and
19 stating the whole floor would blow up
20 shortly. The other male left about
21 11:00 a.m. and about 11:30 a.m. another
22 male taking a shower near the Wingert
23 suite heard a female in the suite cry,
24 "Don't, Don't". Mahar was then observed
25 leaving, coming from the direction of



1 the Wingert suite. A short while later
2 he was back in the hall shouting,
3 "murderer, murderer".

4 Mahar was arrested on a charge
5 of Non-Capital Murder, was committed for
6 trial and on January 16, 1970, a jury
7 found him not guilty by reason of
8 insanity. He is being held in custody
9 at the pleasure of the Lieutenant
10 Governor.

11 Psychiatric evidence at the
12 trial indicated Mahar to have some
13 history of mental disturbance, giving
14 the opinion that this offence was one in
15 which alcohol played a major roll and
16 describing it as an acute psychotic
17 episode."

18 And is that an accurate summary of that case from
19 what you recall and from what you knew at the
20 time?

21 A Yeah, as far as I know, yeah, he was an alcoholic
22 and he was detained at Her Majesty's pleasure.

23 Q And I think the date of this is August 10th, 1969.
24 You were --

25 A Well, the dates were interesting to me obviously



1 too.

2 Q And you were under the impression that he might be
3 a good suspect then in the Gail Miller murder?

4 A I came to the conclusion he wasn't, but yeah.

5 Q Initially at least?

6 A Uh-huh.

7 Q If we do back to 331977, I'll read a portion to
8 you:

9 "We noticed that a member of your firm
10 represented him. Perhaps you could
11 check this out with him. The priest,
12 one of them, that he saw has died and we
13 have not been able to run down the other
14 one."

15 And just in terms of mention of one of Mr.
16 Young's colleagues having represented Mahar, do
17 you recall whether this was a motivating factor
18 in contacting Gary Young?

19 A I don't recall, no.

20 Q And perhaps the first question is did you play any
21 role in retaining Mr. Young as legal counsel?

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

23 MR. HARDY: Okay. I see it's three
24 o'clock, Mr. Commissioner, this might be an
25 appropriate time for a break.



1 COMMISSIONER MacCALLUM: Okay.

2 (Adjourned at 3:00 p.m.)

3 (Reconvened at 3:21 p.m.)

4 BY MR. HARDY:

5 Q I'll turn your attention next, Mr. Carlyle-Gordge,
6 to a document from Tony Merchant's file, the
7 document is 332564, you'll see the name Howard
8 Shannon is mentioned at the top. Mr. Merchant has
9 already testified and confirmed that this is a
10 document on his file. Part of the way down the
11 page you'll see it states:

12 "Wants me to meet mother and the
13 reporter."

14 And you are mentioned near the bottom of the
15 page?

16 A Uh-huh.

17 Q Do you recall the decision to retain Tony
18 Merchant?

19 A Vaguely, yeah.

20 Q Did you have any role in that decision?

21 A I think he approached Mrs. Milgaard because he
22 knew David and offered money because she knew, he
23 probably knew she didn't have the resources and I
24 certainly didn't.

25 Q And you are speaking of Howard Shannon?



1 A Yeah.

2 Q Okay. And that's your understanding as to how
3 Tony Merchant came to be involved with the case?

4 A Yes. Yeah.

5 Q I'm going to move to a transcription of a
6 telephone conference call that took place between
7 yourself, Joyce and Tony, the document is 173964.
8 You'll see at the top of the page the parties that
9 I just mentioned, the date is May, 1981, and again
10 you recognize this as your typewritten
11 transcription do you?

12 A Yup, uh-huh.

13 Q Do you recall a telephone conference call with Mr.
14 Merchant and Joyce?

15 A Vaguely, yeah.

16 Q Okay. Is that your handwriting on this document?

17 A Yes, it is, yeah.

18 Q And I believe this discussion took place and
19 relates in large part to a meeting that had
20 recently taken place with Nichol John and it
21 perhaps was on the same day. Up to this point in
22 time, and we're looking May, 1981, had you had any
23 direct dealings with Nichol John?

24 A I don't think so. Let me think. I'm a bit messed
25 up on dates. I know I met her once with Joyce



1 Milgaard when we finally tracked her down.

2 Q And tell me about that?

3 A Well, it was a long goose chase to find her in the
4 first place because she had changed her last name,
5 she had married and so on. I do remember it
6 because she was so important in this case, and I
7 forget whether I pressed the bell or Joyce did,
8 but she was a very short women, came to the door.
9 I know they both ended up in tears, I do remember
10 that, and I do remember that Joyce had a lot of
11 empathy at that time and had looked at things from
12 Nichol's point of view; in other words, she didn't
13 come on angrily or aggressively, she said, you
14 know, I know you must have gone through a lot,
15 that kind of thing, she was kind of taking her
16 side, and we need to ask you some questions, and I
17 think I only spoke very briefly to her, I just
18 said you don't need to be afraid, but she had a
19 look on her face which I'll never forget, it's
20 like sheer horror and panic and fear and as far
21 as -- it was a very short meeting, I think she
22 agreed that Joyce would get back to her, something
23 like that, and I know she moved out very soon
24 after that, and there was an occasion in Regina
25 when I couldn't go out that way on the weekend, I



1 had a lot of other work going on, and my wife came
2 out instead with Joyce to try and have this
3 conversation with Nichol and I know eventually it
4 branched into, well, would you agree to be
5 hypnotized, all that kind of stuff, because she
6 had a mental block. I vaguely recall there was
7 some cloak and dagger stuff, they were moving out,
8 as soon as we located her she was on the move, and
9 I think my wife and Joyce actually followed the
10 moving van, something like that, to find out where
11 she was going. She was a very terrified person.

12 Q And just in terms of that first meeting that you
13 described to us, as you recall that now are you
14 under the impression that that was perhaps the
15 first contact that Joyce had had with Nichol John?

16 A Yeah, I think so.

17 Q Okay. Just moving down this page near the bottom
18 of the page, you indicate:

19 "I see 2 things; you can either believe
20 she has a mental block or that maybe
21 hypnosis would help; or, what are the
22 possibilities, that she IS afraid of
23 David NOW, if he were to be freed --
24 retribution."

25 And would that be accurate in terms of how you



1 were considering Nichol at the time?

2 A Yeah. I didn't really know what to make of her.
3 I remembered one other thing she said when we were
4 at the door, she said if only he would stop
5 escaping, perhaps he might get out sooner. To
6 this day I'm not quite sure what to make of Nichol
7 John.

8 Q Go to the next page, you state during the call:

9 "If we went ahead with hypnosis, do you
10 think you could become involved? Could
11 you be present?"

12 Can you recall this plan perhaps to proceed with
13 an hypnosis of Nichol?

14 A Vaguely, yeah.

15 Q And why did you want Tony to be involved in that?

16 A Umm, well, he was a lawyer and I'm not. I mean,
17 all I recall about this, it's a long time ago, is
18 I did draft an awful lot of questions if hypnosis
19 were going to take place, there were a lot of
20 things I wanted to ask through whoever was doing
21 it. Why did I want Tony Merchant there? I don't
22 know.

23 Q Okay. Move to the bottom of the page.

24 A He might have legal questions I wouldn't have.

25 Q Okay. And you indicate:



1 "We do know that this guy Cadrain, who
2 made the first damaging statement, got
3 some of the reward. Do you have any
4 connections with police or anyone, who
5 could find out if anyone else got some?"

6 A Uh-huh.

7 Q And how did you know at this point in time that
8 Albert had received at least a portion of the
9 reward?

10 A Good question. I found out eventually he received
11 all of it. I don't know. I might have been
12 guessing. I have no idea. I can't remember.

13 Q I'll read forward from that portion, Joyce states:
14 "Cuz apparently the newspaper account
15 indicated that 3 people got the reward."
16 Yourself:

17 "My curiosity will be directed to Melnyk
18 and Labchuk, I think."

19 A Okay.

20 Q Next page:

21 "They came in at the last moment with
22 crown evidence. I think it was awarded
23 '70 or '71."

24 Joyce:

25 "After the appeal was denied."



1 Yourself:

2 "It might be helpful to find out who got
3 the reward..."

4 Tony:

5 "In terms of writing the book --"

6 Yourself:

7 "Not just that. It's the motivation for
8 Labchuk and Melnyk, if in fact they
9 perjured themselves -- there are 2
10 possibilities: The money, plus the fact
11 that they were on charges for armed
12 robbery at the time."

13 And would that be an accurate account of your
14 thoughts on Mr. Lapchuk and Mr. Melnyk at the
15 time?

16 A At the time, yeah.

17 Q And again, do you recall how you were aware of
18 some of the information mentioned in that
19 paragraph, including the fact that they were on
20 charges for armed robbery at the time?

21 A I don't know where I -- certainly I would have
22 talked to Joyce about that.

23 Q And some of that may be --

24 A The trial transcripts obviously.

25 Q Okay.



1 A And I think I was looking for motive actually as
2 to why Cadrain would have turned in his friend, if
3 you like, David Milgaard, and it occurred to me,
4 well, maybe he did it for money, and I knew some
5 priest was involved at some point.

6 Q So is it your thought at this point that perhaps
7 you did not in fact have information that Albert
8 had received a portion of the reward at this point
9 in time?

10 A I don't think I would be certain that he had, and
11 if -- it's so hard to answer that. I don't think
12 I had any evidence for sure that he had, Joyce
13 Milgaard made that statement earlier, that she
14 thought three people got the money. I don't know.

15 Q Okay. And I notice as well in that portion that I
16 just read to you, Tony mentions the book that you
17 were planning?

18 A Uh-huh.

19 Q And was he then obviously aware of your intentions
20 in this regard?

21 A Probably. He knew I was a writer and I was
22 gathering lots of information.

23 Q Okay. Move to the bottom of the page, you state
24 right at the very bottom of the page:

25 "Or she may have seen nothing, just in



1 line with the first statement --"

2 And you are talking about Nichol John here?

3 A Okay.

4 Q "-- she ever gave, and the mental block
5 is connected to the police
6 interrogation, drugs, the trauma..."

7 A Yeah.

8 Q And do you recall these were the types of thoughts
9 you were having with respect to Nichol John at the
10 time?

11 A Oh, yeah, yeah.

12 Q Move to page 173968, there's a general discussion
13 on this page, I won't read any portions to you,
14 again to Nichol John, or relating to Nichol John
15 and hypnosis, and some names are mentioned,
16 including a Dr. Messer?

17 A Uh-huh.

18 Q Do you recall --

19 A I think I met him once, I think I met Dr. Messer.
20 I have a feeling I did.

21 Q I'll move to the next page, 173969. And some
22 thoughts are being expressed at this point in time
23 about the case and Tony states:

24 "All that is improving on the picky
25 little things. It's not a bombshell.



1 It doesn't open the door. Let's run
2 thru some things that are quite
3 conceivable to me to be picky little
4 things that don't matter. You put some
5 importance in the fact that she said she
6 didn't know where Pleasant Hill was.
7 She's stopped; there are a couple of
8 guys in the car; she thinks they are
9 trying to pick her up; she says 'I don't
10 know where Pleasant Hill is;', keeps
11 walking. That's quite possible."

12 And perhaps you were alluding to this earlier on,
13 but Tony seems to be minimizing some of, or the
14 importance of some of the common-sense-type
15 arguments that you've been telling us about?

16 A Yes.

17 Q Do you recall his position in this regard?

18 A Well, he has a legal mind and I don't. I had
19 probably talked to him about a lot of non
20 sequiturs, if you like, in the Crown's case, and I
21 do remember he said, "well yeah, that's very
22 impressive, but who's going to bother to read all
23 that stuff? You know, you've got to persuade
24 people to do that first because it's complicated,
25 and what you need is a bombshell, something like



1 And again, perhaps you've described it for us,
2 but you obviously had a concern with how the
3 Court had dealt with Nichol John's statement?

4 A Uh-huh.

5 Q And I think --

6 A I still do, yeah.

7 Q And I think we've covered that from what you've
8 told us earlier. If I turn to page 173973, and
9 again I won't read this to you, but it appears you
10 are still looking for Albert Cadrain at this point
11 in time?

12 A Uh-huh.

13 Q And I think Tony makes the suggestion that perhaps
14 a tracing service --

15 A Right.

16 Q -- be contacted?

17 A Yeah, yeah.

18 Q At the very bottom of the page, or close to it,
19 Tony indicates:

20 "But in your theories, Shorty is really
21 quite an ogre --"

22 And do you recall whether this was your view, at
23 the time, of Albert Cadrain?

24 A Well, I'm surprised that I use that word, but --

25 Q And of course these are Tony's words, but --



1 A Yeah.

2 Q -- was that a view that you had on Albert Cadrain
3 at the time?

4 A We'll, he certainly started this whole case. He
5 was certainly mentally unstable, even from the
6 preliminary transcript I thought there was
7 something kooky about him, and also all the
8 logical work I had done told me, anyway, that
9 David never was there and never did stab anybody,
10 and there never was any forensic evidence that put
11 him there, so where did this case come from? It
12 came from one slightly deranged person who went to
13 the police.

14 Q And you've indicated, when you reviewed the
15 transcript, you had a view that perhaps Mr.
16 Cadrain was mentally unstable; is that a specific
17 recollection you have?

18 A Uh-huh, yup.

19 Q Turn to the next page, 173974. Tony is speaking
20 in the middle of the page:

21 "It's that, but then I deal with do-do
22 baskets, and if I write them a letter
23 asking them to take a positive step and
24 phone me, it's very difficult. It's a
25 whole lot better if I phone them. And I



1 think if you had a tracing service find
2 out where he works and what he does, and
3 if you then want to impress him with
4 some novelty, you could be in Manitoba
5 and phone with a conference call. I can
6 be on the other end, and then he gets a
7 telephone call at work, saying will you
8 please stand by for a conference call
9 --"

10 You indicate:

11 "Take him by surprise."

12 And do you recall these sorts of discussions
13 where you were strategizing about how you might
14 reach Mr. Cadrain --

15 A Yes.

16 Q -- and get him to talk?

17 A Umm, yes I do, yup.

18 Q And do you recall whether there were any other
19 strategies proposed?

20 A Oh, I gave a lot of thought to this. Umm, some of
21 it was in -- like for instance Ron Wilson, I gave
22 a lot of thought to that, and I came to my own
23 conclusion that the best person to approach him
24 was, I shouldn't even be in the picture, should be
25 Joyce Milgaard alone. And the reasoning behind



1 that was Ron Wilson had been to the Milgaard home
2 before the Gail Miller murder, he knew
3 Mrs. Milgaard, he knew Mr. Milgaard, and a
4 mother's approach, it struck me, would be the
5 strategic, if he were ever going to say anything,
6 that would be the best one, rather than some nosy
7 writer/reporter.

8 Q Okay.

9 A So a lot of thought had to go into how to approach
10 people, yes.

11 Q And I'll turn next to page 173975. Joyce
12 indicates at the top of the page:

13 "I certainly don't want to do anything
14 that would hurt Nichol."

15 A Uh-huh.

16 Q "But I do feel that -- as I pointed out
17 to her, I think, in a sense she's been
18 living in a prison all these years, in
19 not knowing within herself what
20 happened -- if, in fact, that's what has
21 been. This may be a release for her."

22 A Uh-huh.

23 Q You commented on this a bit earlier, but I wanted
24 to ask you very generally, what were your
25 observations about the manner in which Joyce



1 generally dealt with witnesses and individuals
2 that you were speaking with?

3 A Well I think that statement you just read is very
4 typical of how she was as I knew her back then.
5 Umm, I don't think she had any -- I had more anger
6 probably, at that time, than the mother of David
7 Milgaard about some of these people. Umm, I think
8 her -- I know she has been -- how can I put
9 this -- she's a very determined lady, she's very
10 flexible, I don't think she's aggressive, and I
11 think that statement proves that. I think the
12 concern about these very young people, by the way,
13 they were very young people in '69, 16, 17, I
14 think she had a genuine interest in them, in their
15 welfare, and wasn't hateful or looking for
16 vengeance. And you know, about a year ago I saw
17 David Milgaard, and he had the same attitude. I
18 said "what do you want this Inquiry to do", and I
19 detected no vindictiveness at all about his former
20 friends who actually put him away, none.

21 Q And there's been some suggestion that perhaps
22 Joyce at times, obviously not intending to, that
23 -- but perhaps put certain witnesses or
24 individuals on the defensive in terms of her
25 manner in approaching them; --



1 A Uh-huh.

2 Q -- did you observe anything of that nature?

3 A Woo, that's difficult. Well, there were a lot of
4 people on the defensive at the time, people with
5 secrets. Umm, I think she's incredibly, from what
6 I know of her -- and I did that biographical
7 sketch of her -- I think she's very positive
8 thinking, and if one approach doesn't work, she
9 will try another. She's very persistent, I would
10 use the word 'persistent' and 'determined' rather
11 than -- well, it's perception, some people might
12 think she comes on very strong. After all, it was
13 her son anyway. I have two sons, I would have
14 been fairly determined, I think.

15 Q Turn to page 173976. And you are speaking of
16 Albert Cadrain and you state, near the top of the
17 page there:

18 "Well, the 2 things we know about
19 Cadrain are that he's not very
20 intelligent, ...",

21 A Uh-huh.

22 Q "... and that he likes attention -- likes
23 to be on stage."

24 Do you recall what the basis of these assertions
25 were at the time?



1 A Yeah. Probably a lot of my thinking and reading
2 around transcripts, and his self-dramatization
3 certainly came from my interpretation of some of
4 the stuff he had said in evidence. His
5 intelligence; now what date is this we're looking
6 at by the way?

7 Q This is May of '81.

8 A Oh, that's early on. I hadn't met Cadrain,
9 obviously. Umm, it was just an impression I had.

10 Q Okay. I'm going to read down. Just below that
11 portion it indicates:

12 "Gary Young is the lawyer I've been to
13 see in Sask. and he was the one who got
14 access to Tallis' files."

15 Tony:

16 "Tallis released his files? And did
17 Tallis talk to him about it."

18 Joyce:

19 "I don't believe --",

20 Yourself:

21 "Yes, they phoned him."

22 Joyce:

23 "But I don't believe they talked --",

24 Yourself:

25 "-- and he said they deleted any



1 inter-office memos, that was all. They
2 got the statements and official
3 documents."

4 And do you recall whether you had in your
5 possession a copy of Mr. Tallis' original defence
6 file at the time that you were working on this
7 matter?

8 A I really can't be certain. I really don't know.

9 Q And do you have --

10 A I know I have read that stuff, and I just don't
11 know when I got what, when, you know.

12 Q Okay.

13 A Umm --

14 Q And is it possible for example -- I don't know and
15 I'm only posing this -- that statements or
16 official documents, information of that nature,
17 could have come from Mr. Tallis' file, or you
18 being in possession of that file?

19 A Well anything I had that was kind of official
20 would have come through Joyce.

21 Q Okay. The rest of the page, there's some
22 discussion respecting Lorne Mahar again, and the
23 transcript ends shortly afterwards. And, again,
24 we're in May of 1981.

25 A Uh-huh.



1 Q And, as the group of you continue with your
2 efforts, how is the work being coordinated? And I
3 guess I'm interested in learning about what you
4 considered your role to be relative to Tony's
5 role, relative to Joyce's role?

6 A Well, 'coordinated' is quite a strong word. I
7 think, you know, I did a lot of work independently
8 talking to people that David had worked for for
9 instance, umm, and a lot of the analysis of the
10 transcripts I did independently, but I also worked
11 cooperatively and quite closely with Joyce too,
12 because we figured that three minds were better
13 than one. My wife was also quite involved in
14 that. So in terms of coordination, I would think
15 generally contact with lawyers, she was making
16 that, most of it anyway. Umm, I don't think there
17 was a grand plan.

18 Q Okay.

19 A We were still in the woods.

20 Q Yeah. And by no means, by my question, was I
21 suggesting that. In terms of communication with
22 Joyce, just give us a sense, as the two of you are
23 working on this matter, how often you are talking
24 and what extent the information -- or to what
25 extent information is being shared?



1 A Oh, there was a lot of sharing. She was very free
2 with private correspondence, with documents,
3 anything I could read to come to, you know, some
4 kind of conclusion. I certainly, later on, gave
5 her documents that I thought might be useful.
6 Umm, in terms of meetings, I went out to
7 Saskatchewan with her a few times, I went out
8 independently, I flew to Saskatoon without her.
9 Umm, she spent a lot of time at my home, she knew
10 my children, she may even have baby-sat
11 occasionally. You know, we had a close
12 relationship but I think it was almost, how can I
13 describe it -- umm, hmm, there is a word and I'm
14 trying to think of it -- symbiotic. In a sense we
15 were working for the same goal. I was interested
16 as a writer, obviously, but I think my role
17 eventually, over the years, changed, and the more
18 I got into this and the more consumed by it, I
19 think I was looking for the truth rather than a
20 big story. The big story would have been nice but
21 it was an intellectual challenge that drained a
22 lot of energy.

23 Q So that by the time of this discussion that I have
24 just referred to, May of '81, do you recall what
25 your mindset would have been at this point in time



1 respecting David Milgaard?

2 A Probably that he was innocent.

3 Q Okay.

4 A And proving that is another matter.

5 Q And just perhaps in terms of an example, when I
6 asked you about the sharing of information with
7 Joyce, we have seen a couple of your interviews up
8 to this point in time, for example with Howard
9 Shannon or Roger Renaud; what would you be doing
10 with that information after you received it?

11 A Umm, my interviews with Shannon, all that stuff?
12 I'd be storing it. I think at the end, before I
13 really got out of this case in an active way, I
14 probably had three if not four suitcases of
15 Milgaard material, including photographs of David
16 as a child, including early letters, including all
17 kinds of records, and probably including copies of
18 when he -- he had been assessed psychiatrically
19 before the Gail Miller murder, I had all my own
20 interviews, I had transcripts of the trial and the
21 preliminary, I was gathering quite a stockpile of
22 stuff.

23 Q And just back to my question, though. In terms of
24 again the example of Howard Shannon; would you be
25 sharing that information with Joyce --



1 A Oh yes, --

2 Q -- after you received it from Howard?

3 A -- I probably talked to her about it, and the
4 exact timing of when I gave everything over I
5 don't know, but certainly I went to England in '83
6 and I kind of made sure she had copies of
7 everything or tapes of everything, because I
8 wasn't going to be on the scene and I certainly
9 didn't want her to give up --

10 Q Okay.

11 A -- because I thought she was on the right track.

12 Q And we -- the transcript mentioned, briefly, the
13 discussion surrounding Mr. Tallis' defence file,
14 and I had some questions for you relating to
15 that, --

16 A Hmm.

17 Q -- and I want to show you a few documents that we
18 have in our possession and get your comments on
19 these documents that we understand come from Mr.
20 Tallis' original defence file. And the first one
21 I'm going to show you is document ID 153491, let
22 you take a look at that for a moment.

23 A All right.

24 Q Does that document look familiar to you?

25 A Yes, it does.



1 Q Is that your handwriting on that document?

2 A Umm, yes it is.

3 Q And markings?

4 A Yup.

5 Q Okay.

6 A I've obviously gone through it and made a few.

7 Q So when, if you were to make your best guess for
8 us, do you think you might have had this in your
9 possession for purposes of review --

10 A Okay.

11 Q -- and markings?

12 A I'm assuming that I must have got this from
13 Mrs. Milgaard, and she possibly got it through
14 Mr. Young or Tony Merchant, --

15 Q Okay.

16 A -- so it would be after that involvement with the
17 lawyers there. I certainly -- actually, I did
18 write to Mr. Tallis right at the beginning, and I
19 never had a reply. I was interested in
20 interviewing him, he had become a judge I think or
21 something, I never heard back from him. But I
22 never had direct contact with Tallis, no.

23 Q Okay. But these look like documents that you had,
24 then, in your possession at the time of your
25 review?



1 A Yup.

2 Q And, again, I guess we're talking about the time
3 period 1981 to 1983?

4 A Correct.

5 Q And I'll turn to the next one, which is 224933.
6 You will see it's another memo similar in nature
7 dated August 20th, 1969, this would be prior to
8 the trial, --

9 A Uh-huh.

10 Q -- and, again, is that your handwriting on this
11 page?

12 A Yeah, it looks like it, yup.

13 Q And I'll come back to this line of questioning
14 later on but is that -- the note here; what does
15 that state?

16 A It looks like 'Fisher', question mark, and there
17 is a circle around 'burning barrel'. It seems --

18 Q And, again, is that your handwriting?

19 A I think so.

20 Q Okay.

21 A Yeah, it looks like it.

22 Q If we move to the next page you will see some
23 handwriting, again, there?

24 A Yeah, that's my writing.

25 Q Looks like you've marked one portion which



1 indicates:

2 "If she was living on Avenue O and north
3 of 20th Street the logical route for her
4 to follow would be to go south on O to
5 20th Street and then cut west on 20th."

6 street. It looks like you've written:

7 "Correct.

8 But Crown

9 says they

10 met her on

11 Ave 'N'?"

12 A N.

13 Q N?

14 A Yes, uh-huh.

15 Q And do you recall reviewing this information and
16 making that comment as to --

17 A Well, it's my writing, and I don't know when I did
18 that or when I read it.

19 Q Okay. And if we just move down the page a little
20 bit further, paragraph 6, there's another portion
21 here I'll read to you:

22 "Furthermore, the alley where the girl's
23 body was found is an area where
24 visibility is fairly good and questions
25 should be raised as to whether or not



1 the scene as found was consistent with
2 the girl having been raped in a car or
3 house before being dumped in the alley
4 and probably killed there. There are
5 substantial fluorescent lights on the
6 west side of Avenue O north of 20th
7 Street and these should throw a good
8 light in that area during the winter
9 time."

10 Somebody has written "NB" beside that?

11 A Yeah.

12 Q Do you recognize that as your own?

13 A I think it might be, yeah.

14 Q Okay. Turn to the next page. Looking at this
15 paragraph 8 it states:

16 "In dealing with the cross examination
17 of Miss Nicole John reference should be
18 made to page 3 of her statement of May
19 24th. She refers to Dave speaking to
20 this girl and then states that they
21 started to drive away and went only
22 about half a block when they got stuck.
23 They ended up stuck at the entrance to
24 the alley behind the funeral home. She
25 then states that Dave went back in the



1 direction they had spoken to the girl
2 and this is very confusing in the light
3 of the physical evidence and should be
4 explored very carefully. Furthermore on
5 the basis of this girl's statement it is
6 hard to reconcile Miss Miller's dress
7 being down and rumpled with no punctures
8 in it."

9 Do you recall reviewing this information?

10 A Uh-huh.

11 Q Or sharing some of these thoughts?

12 A Uh-huh.

13 Q And then the handwritten portion, and you might
14 have to help me with this, but I'll --

15 A Yeah.

16 Q -- read it to you. I think it say:

17 "Nicol had said David stabbed her in the
18 back with coat on -- there should have
19 been holes in dress. There were none.
20 She was likely raped in car with dress
21 pulled down: she then pulled coat
22 around her and tried to run: killer
23 caught her & stabbed her. Holes in coat
24 + her back but none through dress, which
25 was still pulled down under the coat.



1 similar to the other page. I'm assuming you
2 likely won't be able to tell us whether this was
3 in your possession during the time of your review,
4 but I did want to bring it up as well, as it is
5 the third memo that we have that's similar in
6 nature to the first two that I've showed you.

7 A Uh-huh.

8 Q And perhaps, more in relation to the first two,
9 would it be likely then, Mr. Carlyle-Gordge, that
10 you had at least those first two memos --

11 A Oh yeah.

12 Q -- and perhaps this third one in your possession
13 during the time --

14 A Yeah, this is not marked by any of my
15 handwriting, --

16 Q No, I --

17 A -- but I can't say I didn't have it, or did, so --

18 Q And again relating to the first two memos, though,
19 do we have it from you that those likely were in
20 your possession during your review in 1981 to
21 1983?

22 A Yeah, I think so.

23 Q Yeah. Do you recall anything else obtained from
24 Mr. Tallis' file, or anything in particular, that
25 was in your possession that you reviewed from that



1 file?

2 A Not really, no.

3 Q I turn your attention next to a document 332565.
4 This appears to be a letter from yourself to Tony
5 Merchant --

6 A Uh-huh.

7 Q -- dated May 15th. I believe it follows the
8 discussion with Tony that we had just reviewed.
9 And the first heading is Tracers, Albert Cadrain
10 is mentioned, and it looks like you'd gathered
11 some information; do you know how you had obtained
12 this information --

13 A About the reward?

14 Q -- about Albert Cadrain?

15 A Oh, you mean his address, or the reward?

16 Q Just his general, some of his personal
17 circumstances that are noted here, do you recall
18 how you had gathered that?

19 A I really don't, no.

20 Q Okay.

21 A No, not at this distance.

22 Q Okay. Again, it looks like you are indicating
23 here that it was your belief that he had received
24 the full \$2,000 police reward?

25 A Uh-huh.



1 Q You were still interested, though, in whether
2 others perhaps shared?

3 A Uh-huh.

4 Q And, again, do you recall whether you had
5 knowledge, at that time, that Albert had received
6 at least a portion of that reward?

7 A Umm, I think, umm -- whenever I spoke to Father
8 Murphy, I think that's when I determined it.

9 Q Okay.

10 A And I also spoke to Dennis Cadrain, I think he
11 mentioned the reward too.

12 Q And we'll come to those discussions, but perhaps
13 just on Father Murphy -- and I'll ask you this
14 again likely -- but do you recall when that
15 discussion was? I know it's difficult to place in
16 terms of the time frame we're talking of, --

17 A No.

18 Q -- but can you give us any assistance on that?

19 A No, I really can't.

20 Q If you move down to this portion here it
21 indicates:

22 "We'll try the conference call idea.

23 I'll prepare questions and listen in ..

24 but don't want to be heard in case it

25 fails; in that case I'll approach him



1 independently as an author and try to
2 flatter him that way."

3 A Yup.

4 Q And do you recall that being your plan?

5 A Yes.

6 Q And the rest of the page it looks like you are
7 looking for Sharon Williams; do you recall that
8 name?

9 A Yup, yeah, I do.

10 Q Do you recall what your interest was in locating
11 Sharon Williams?

12 A Well she had been David's girlfriend, they were on
13 their way to see her that day of the murder, in
14 fact. Probably to ask if he had ever been violent
15 sexually, anything like that, anything I could
16 gather on the character. Stuff like that.

17 Q Okay.

18 A She knew David, they had lived together or been
19 together, so --

20 Q Okay. Mention as well in the next paragraph about
21 Ute Frank; do you recall looking for Ute?

22 A Vaguely, yeah, yeah.

23 Q And I see there is an indication:

24 "(one person has refuted it already)",
25 and I think it's the testimony relating to the



1 hotel room incident?

2 A Yeah.

3 Q Were you aware of Deborah Hall by this point in
4 time?

5 A I think so. I think so. I probably got some of
6 that information from Mrs. Milgaard, I think.

7 Q You didn't have any direct dealings with Deborah
8 Hall?

9 A I can't remember.

10 Q Okay.

11 A Probably not.

12 Q Turn to the next page, number 4, it looks like you
13 are looking for a Robert James Rasmussen, --

14 A Uh-huh, yeah.

15 Q -- the manager of the Trav-a-leer Motel?

16 A Yeah, uh-huh.

17 Q Number 5, I'll read that to you, it states:

18 "Though I'm convinced personally of
19 Milgaard's innocence, I realize it will
20 take much time, and probably money, to
21 get the case moving -- barring a
22 dramatic and dramatic break through by
23 Nicol. I'm not keen to write a book
24 having gone this route once before (it's
25 very costly) but in Milgaard's case I



1 suspect I shall have to. The laundry
2 list of problems with the Crown's case
3 is very extensive already, after only 5
4 months. In the event I do seclude
5 myself to write this public defence of
6 the convicted man, I shall have to get
7 to know you better: a short biography
8 would help and naturally I'll interview
9 you in more depth here or in Regina as
10 we proceed on the case."

11 Then he continues on, or you continue on, you
12 indicate at the last sentence:

13 "I wouldn't anticipate a book prior to
14 fall 1982, though I may well do a few
15 articles this year and that as my
16 convictions (and proof) deepen."

17 A Uh-huh.

18 Q And would that be an accurate account of your
19 thoughts at the time?

20 A Yes, I think so, yeah.

21 Q The next paragraph --

22 A I wasn't madly keen to start on a book. I mean I
23 had certainly enough stuff but my preferred route
24 on this whole investigation would have been to
25 persuade *Maclean's* that they should do something.



1 That doesn't mean I wouldn't have written a book
2 at some point.

3 Q Okay.

4 A Yeah.

5 Q And at least by this point, May 15th, 1981, you
6 are convinced of Mr. Milgaard's innocence?

7 A I think so, uh-huh, yup.

8 Q Paragraphs 6 mentions the hypnosis of Nichol and
9 you simply state the need to continue on with that
10 effort?

11 A Uh-huh.

12 Q We move to the next page, paragraph 8, I'll read
13 this to you:

14 "A day from now I hope to speak with
15 David Milgaard in Milhaven and to advise
16 him of your own involvement. He has
17 already been advised to transfer, in
18 writing, his legal representation. We
19 shall keep Mr. Young of Saskatoon
20 vaguely informed, since his partner
21 defended Lorne Mahar, a key suspect in
22 our own case. He has yet to speak with
23 his partner and provide much-needed
24 information on that case. One thing is
25 certain: Mahar was familiar with the



1 area where Miller was killed and spoke
2 to the priest at the local church of his
3 desire to murder; his killing of another
4 woman was almost identical, using a
5 paring knife; the killing was in August
6 1969, a few months after Miller's death.
7 "Voices" compelled Mahar to do it."

8 A Uh-huh.

9 Q And in particular, in relation to the plan to keep
10 Mr. Young vaguely informed, do you recall this
11 plan or thought process?

12 A Not really. Not in any detail. Umm, well I
13 certainly obviously was looking into Mahar at this
14 point, and that must be a part of it. Umm, I
15 don't remember much about this.

16 Q Okay. And were you in a position, I see -- I mean
17 this is a letter coming from yourself; do you
18 recall being in a position where you were in fact
19 instructing legal counsel?

20 A Well, it sure looks like it, doesn't it. Umm, I
21 wouldn't have thought of it that way myself,
22 actually. I'm not quite sure how I would describe
23 this letter. I was trying to tell him where I was
24 coming from. That was part of it. We had talked
25 to him and met him, and certainly I had no control



1 over any finances to do with lawyers and such.
2 That would have been Mrs. Milgaard's department, I
3 think, since she had been approached by Howard
4 Shannon. So the -- well, I'd put "instructions"
5 in quotation marks, that's what I would do.

6 Q Okay. Turn your attention next to document
7 331877, it's a letter from Joyce Milgaard -- or
8 I'm sorry -- to Joyce Milgaard from Gary Young,
9 you will see it's dated May 26th, 1981. And we
10 can turn to the next page, this portion here.

11 A All right, Mahar.

12 Q Mr. Young states:

13 "I have discussed the *Maher* case with my
14 partner, Mr. Sherstobitoff, and I have
15 located his file along with transcripts
16 from the Preliminary Inquiry. In
17 addition, photographs are on the file.
18 While some of the file material will be
19 privileged, the photographs and
20 transcripts from the Preliminary can be
21 made available. I am advised by
22 Mr. Sherstobitoff that Mr. Mahar was
23 released from custody a number of years
24 ago, however his whereabouts are not
25 known to Mr. Sherstobitoff at the



1 moment. In the event that you wish me
2 to put a tracer out in an effort to find
3 Mr. Mahar, please let me know."

4 And do you recall receiving this information in
5 relation to Lorne Mahar from Mr. Young or
6 indirectly?

7 A Vaguely, vaguely. This is a letter to Joyce
8 though; is it not.

9 Q Yes, it is. That's right, yeah.

10 A I knew there was a lawyer connection to the case
11 anyway, I knew that, and eventually I did find
12 Lorne Mahar, I can't remember how I did, but I did
13 speak to him on the phone.

14 Q And we'll come to that. I also note it looks like
15 you are still looking for Albert Cadrain at this
16 point in time?

17 A Yup, uh-huh.

18 Q And if we move to 216045, I'll just summarize,
19 it's a letter from Tony Merchant to yourself
20 likely in response to your previous
21 correspondence, and he's looking for some
22 direction in terms of spending money on traces?

23 A Uh-huh.

24 Q And it looks like you respond on June 11th, if we
25 turn to 332572, it appears to be a note from



1 yourself to Tony?

2 A Right.

3 Q And it looks like you confirm the instructions to
4 find Sharon Williams and Ute Frank --

5 A Right.

6 Q -- in paragraph 1?

7 A So Mrs. Milgaard would have approved that idea,
8 yeah.

9 Q Okay. And then in the second paragraph you give
10 instructions to proceed with the hypnosis of
11 Nichol Demyen?

12 A Right, right. We both discussed that, yup.

13 Q Okay. Turn to 331857, just continuing
14 chronologically, you'll see it's dated June 25th,
15 1981, it's to Gary Young from Joyce Milgaard,
16 Joyce Milgaard indicates:

17 "David, Peter, and I have decided, that
18 if he was willing to put up that kind of
19 money --"

20 Referring to Howard Shannon,

21 "-- for us to try that direction, that
22 it would be foolish not to accept the
23 help."

24 They are referring here of course to Tony
25 Merchant.



1 "We certainly appreciate all the help
2 that you have given us and may be
3 contacting you again in the future."

4 A Uh-huh.

5 Q And I guess your recollection on this particular
6 point isn't solid, but I'll ask in any event, do
7 you recall at this point in time whether a
8 conclusion had been drawn that Mr. Young could not
9 assist any further with the Lorne Mahar matter?

10 A I really can't recall.

11 Q Okay. No, that's fine. Take a look at 213626,
12 again this is a memo from Mr. Merchant's file, it
13 looks like an internal memo to Tony, just at the
14 very top it mentions:

15 "Dr. Messer called regarding Milgaard
16 and left the following message:
17 He met with Mrs. Milgaard and her
18 reporter friend on Sunday, September
19 13/81 for approximately 2 - 2 1/2
20 hours."

21 Do you recall this meeting with Mr. Messer?

22 A Very vaguely.

23 Q What do you recall of it?

24 A Not much. I can't even picture him. Oh, I guess
25 we were going to, trying to organize this thing



1 with Nichol basically. I really don't recall much
2 about that.

3 Q Okay. I'll move down to this paragraph, it
4 states:

5 "Also Mrs. Milgaard had contacted Demyen
6 and had set up a meeting with her in
7 Saskatoon (Messer doesn't know the exact
8 day of the meeting but indicates it was
9 just this week) and when Mrs. Milgaard
10 went to meet Demyen at the place agreed
11 upon she was greeted by two anti-social
12 thugs who threatened to beat her up if
13 she didn't leave Demyen out of it."

14 A Oh, yes.

15 Q And do you recall being a part of this?

16 A I don't think I was right there when she was
17 supposed to meet her. I was certainly in town at
18 that time. I vaguely -- I had forgotten all about
19 this actually. Yeah.

20 Q You recall now receiving this information though
21 from Joyce?

22 A Yup, yup. She wasn't co-operative, I know that.

23 Q And then it goes on to say:

24 "Also Messer says that Leslie implied to
25 Mrs. Milgaard that Demyen 'was not in



1 town any more'."

2 A Uh-huh.

3 Q And what do you recall of the attempts or what
4 became of, what do you recall became of the
5 attempts to have Nichol hypnotized?

6 A Not very much. I don't think it took place. I
7 just remember being totally frustrated, the whole
8 thing was being dragged out and she was obviously
9 very -- well, the perception I had was that she
10 was not going to co-operate and she was on the
11 run, she had been found, so -- I may not be fair
12 to her by saying that, I don't know, but I really
13 didn't have a lot of direct dealing. Obviously I
14 met Dr. Messer, although I can't recall much about
15 it.

16 Q Do you recall having any further direct dealings
17 with Nichol?

18 A No. My wife did though.

19 Q Okay. Turn next to 216058, and perhaps just
20 before we leave that topic, you mentioned your
21 wife did, and have you already described that for
22 us in terms of your wife's meeting?

23 A No. I know she went -- I was busy doing other
24 things one weekend and it was after Joyce and I
25 had already found Nichol and she wanted another



1 meeting and she was moving out and I think they
2 parked outside most of the day, my wife and Joyce,
3 I couldn't go that day, and I think maybe Joyce's
4 daughter was involved too, Susan, and they were
5 trying to find out what was going on, there was a
6 lot of cloak and dagger stuff, try and find out
7 where she was moving to, all that, and I'm trying
8 to think what role my wife played. I think -- I
9 don't know if it was my wife. Somebody went,
10 actually knocked on the door, it might have been
11 Susan Milgaard, of Nichol and asked if she could
12 use the phone, she was waiting for a mover or
13 something, and basically these three ladies were
14 trying to check out the scene of what was going on
15 with Nichol and ultimately to find out where she
16 was moving to, that's what was happening, and my
17 wife played some role, but I really can't recall.

18 Q I turn your attention next to 216058, and again
19 we're moving chronologically, it's a letter dated
20 October 5th, 1981 to Howard Shannon from Mr.
21 Merchant. It appears you were copied with the
22 correspondence and it's generally discussing
23 accounts?

24 A Yup.

25 Q I've just pointed out this letter, it would appear



1 that there is very little indication of your
2 involvement following 1981, the date of this
3 letter, until again in 1983, and would that fit
4 with your recollection in terms of direct
5 involvement --

6 A No.

7 Q -- in your investigative efforts?

8 A No. There's probably a lack of interviews with
9 people in '82 and I know I was busy with other
10 things, including the -- apart from my normal paid
11 work, including the book, *Winnipeg 8*, that would
12 have happened in '82. I think I probably still
13 would be doing a lot of mental work on it, yup.

14 Q Okay. We're going to turn to that book in just a
15 moment. Perhaps I'll show you, there was one
16 document, 219254, you'll see it's a letter to
17 yourself from Lloyd Axworthy, I think it's
18 generally discussing the issue of having David
19 transferred --

20 A Oh, that's right.

21 Q -- to a different institution. Do you recall
22 having some involvement in that aspect?

23 A Yes, I do. I had forgotten about that. I had
24 this one conference call with David, so I probably
25 was thinking I have a lot of questions to ask



1 David, but he's miles away, it would be convenient
2 if he weren't, so I probably wrote to Lloyd
3 Axworthy because I knew him anyway for one thing
4 and just wanted to try and push that along, if we
5 could get him a bit closer, and --

6 Q I would like to turn -- sorry, Mr. Carlyle-Gordge,
7 are you finished?

8 A That's fine.

9 Q I would like to turn now to a discussion of the
10 *Winnipeg 8* book that you've been referring to?

11 A Uh-huh.

12 Q And I think you've indicated that was in 1982 and
13 the copyright date on the book, as we'll see in a
14 moment, is in fact 1982?

15 A Uh-huh.

16 Q If we could turn to 020446, you'll see it
17 indicates *Winnipeg 8, The Ice-cold Hothouse*. Is
18 this the book that you've been referring to?

19 A Yes, it is. They had an editor -- I think it was
20 done on a council grant. I never actually got
21 paid, I should tell you that, for my contribution,
22 it's the 20,000, the longest article in the book.

23 Q Okay. If we turn to the next page, again as we
24 mentioned, the 1982 date?

25 A Right.



1 Q And if we could turn to 020448, the title of the
2 article or essay, Two Kinds of Liberty, Joyce
3 Milgaard, by Peter Carlyle-Gordge, and this is the
4 20,000 word essay?

5 A It's a biographical sketch of Joyce Milgaard which
6 is what the editor wanted, he wanted eight
7 Winnipeg, or Manitoba writers to find eight really
8 interesting people and I felt she qualified on
9 every account.

10 Q And can you tell us a little bit more then about
11 how this publication came about and how you came
12 to be involved in it?

13 A Yeah. Charles Wilkins I knew vaguely, he was the
14 man who set the book up, and probably applied for
15 a grant of some kind I would think to do it, and
16 he approached me because my name was fairly well
17 known through Maclean's and said this is what the
18 book is, we want some kind of creative writing
19 about interesting people, so he invited eight
20 different writers. I seem to remember these
21 deadlines were a bit short and I decided I would
22 do Joyce and there was a lot of pressure, I was
23 doing other stuff and this wasn't financially
24 benefiting me at all, but what I decided was this
25 would be an interesting look at an interesting



1 woman, but I also decided I would thread through
2 it some of the Milgaard case, nobody had ever
3 heard of Milgaard, and I came to a conscious
4 decision with this book, I knew it wouldn't have
5 wide circulation, you could say I went out on a
6 limb, and I know there are a few technical errors
7 in the book. This is the first time anywhere of
8 anybody anywhere said in black and white words to
9 the effect that I believe David Milgaard is
10 innocent and was convicted on perjured evidence.
11 Now, I was walking on egg shells when I put that
12 in because I could have been sued for liable of
13 course and my motive was I wish to God somebody
14 else would take an interest in this case, so that
15 is in there.

16 Q Okay. I'm going to turn to the portion of the
17 essay that deals with the David Milgaard case, if
18 we could go to page 020458, please, and in terms
19 of your writings, Mr. Carlyle-Gordge, would the
20 information that you were relying upon be based
21 and have been gathered from the sources that we've
22 been discussing thus far in your testimony?

23 A Yes, as far as I got. I mean, I was -- I still
24 had a lot more to do, I hadn't met Cadrain, I
25 don't think I had interviewed -- no, I hadn't



1 interviewed Mr. Caldwell, there was still a lot of
2 stuff to do, so what I needed to do, I didn't want
3 this to be about the Milgaard case because people
4 never heard of it, I wanted to put very concisely
5 in a nutshell what it was all about without song
6 and dance about elaborate stuff, so I tried to
7 condense the main facts, some of which I know are
8 technically wrong.

9 Q Okay. And I do want to review some of that with
10 you, and you are likely aware, Mr. Carlyle-Gordge,
11 that subsequently certain individuals, including
12 Mr. Caldwell, have suggested that the article
13 contained inaccuracies?

14 A Yes.

15 Q And I think you've indicated to me already that in
16 fact there were some inaccuracies that you are
17 aware of in this essay?

18 A Oh, yes, yeah, and I'm not going to blame the
19 editor for that either, I mean, it went through a
20 process, but there are some technical problems
21 with it, but the gist of it to me, the most
22 important thing in that whole chapter is probably
23 one paragraph saying he's innocent and perjury.

24 Q And I do want to review some of this with you and
25 take a little bit of time in terms of what your



1 information was based on at the time and what you
2 were considering, and if we start just at the very
3 outset in terms of an introduction, I'll read a
4 portion of this to you, it indicates:

5 "The story of David Milgaard's
6 misfortune would occupy a good-sized
7 book and one day perhaps will, but the
8 briefest facts should be laid out here."

9 You go on to describe the case and it continues
10 on to the next page, and just in summary in terms
11 of this portion here, you talk about the murder
12 and give a bit of a description in relation to
13 the murder, and then in the second last paragraph
14 starting "curiously" you indicate:

15 "Curiously, although she had stab wounds
16 in her back, she had on a black cloth
17 coat which had no puncture marks in the
18 back. All the physical evidence
19 suggested she had probably been enticed
20 into a car, raped (some of her buttons
21 were ripped off) and then had pulled her
22 coat back on and tried to make a run for
23 it. The missing boot was one clue, and
24 the marks in the snow suggested a
25 scuffle."



1 A Yeah, well, technically that's incorrect.

2 Q Okay. And again, firstly though, obviously you
3 were again expressing your thought in relation to
4 this matter that a vehicle was likely involved in
5 the attack?

6 A I believed that then and I believe it today, yeah.

7 Q And as you've mentioned, it looks like there's an
8 inaccuracy in terms of --

9 A About the coat and I mention that.

10 Q Yeah, the coat not having puncture marks, and you
11 were aware of that at the time?

12 A I don't know when that first really jumped out at
13 me, but I know I used to get confused about that
14 area, the dress pulled down thing, yeah.

15 Q Okay.

16 A To me it's not vitally important.

17 Q Okay, no, I'll read forward from there, it
18 indicates:

19 "The only witness, the caretaker of a
20 nearby church, had seen a car parked in
21 the area at about 7:00 a.m. that day.
22 Through the murk he had seen the outline
23 of a noticeably short man walking back
24 and forth in front of the headlights;
25 perhaps he was emptying the car of any



1 possessions the unfortunate nurse had
2 left, as she made her run. Several of
3 her possessions, including the purse,
4 were found in the lane later, some of
5 them buried in the snow.

6 David Milgaard is not
7 noticeably short."

8 We mentioned this earlier, but obviously you
9 considered this aspect significant in terms of
10 the caretaker's evidence?

11 A I think he saw the murderer, yeah.

12 Q Okay. If we continue on from there, it indicates:

13 "The public was horrified, the police
14 frustrated, for they had no leads. The
15 Saskatoon police commission posted a
16 \$2000 reward for information, but no one
17 came forward.

18 Several weeks passed and in the
19 melting spring snow a close neighbor of
20 Albert's family, a block away, found a
21 blood-stained blue toque. A child found
22 another of the nurse's possessions not
23 far from there.

24 Police inquiries in the area
25 turned up the fact that young David and



1 his friends had left Saskatoon the day
2 of the murder. The four had split up
3 not long after leaving Saskatoon. David
4 had finally got a license to sell
5 magazines for Maclean-Hunter and had
6 gone to Winnipeg. He was routinely
7 interviewed and asked for samples of
8 hair, blood and body fluids. A physical
9 examination revealed no scratches and he
10 was highly cooperative, thinking it was
11 some absurd mistake. He heard no more.

12 Police also interviewed Albert,
13 Ron and Nicol. Though the four had
14 split up some time ago, they remembered
15 January 31st well and their separate
16 account of events coincided perfectly.
17 David, Nicol and Ron all gave written
18 statements about their journey from
19 Regina to Saskatoon, detailing when they
20 arrived, how they went to the motel for
21 a map and how they got stuck outside the
22 Danchuks'. All the stories coincided in
23 every detail.

24 It should also be noted that
25 David wore a toque that day -- a brown



1 and green one. None of them had a blue
2 one, like the blood-stained one found
3 later.

4 David had left some of the
5 clothes he wore that day at Ron's home
6 in Regina. The police picked them up to
7 check them, but found no blood. No
8 physical exhibit linking him to the
9 scene was ever produced in court. The
10 police were baffled, but they kept up
11 their inquiries. Albert, Ron, David and
12 Nicol insisted they knew absolutely
13 nothing of a murder."

14 A Yeah, that's wrong.

15 Q And when you say that's wrong, what do you mean?

16 A Well, Albert shouldn't have been in that list. I
17 mean, the others made statements. He actually
18 initiated the case. Now, when I started writing
19 this I don't know, but that is definitely
20 incorrect.

21 Q Okay. And I think there's a comment earlier on,
22 the one that we've just referenced, and also the
23 earlier one in the paragraph:

24 "Police also interviewed Albert, Ron and
25 Nicol. Though the four had split up



1 some time ago, they remembered January
2 31st very well and their separate
3 accounts of events coincided perfectly."

4 A Yeah.

5 Q So you are recognizing the inaccuracy there to the
6 extent that Albert was in fact suspicious of David
7 and went to speak with the police?

8 A Absolutely, and then the police spoke to the other
9 three and, you know, there should have been three
10 on that list. Albert's name shouldn't have been
11 on that list.

12 Q And I'm not trying to be difficult with you on
13 this, Mr. Carlyle-Gordge, but just in terms of how
14 that would have occurred in terms of your writing,
15 how did that happen?

16 A Can you elaborate?

17 Q Just in terms of that particular inaccuracy, was
18 that an oversight on your part or --

19 A I was probably under a lot of pressure and
20 deadlines to get this done and you would think I
21 would pick that one out, but I didn't.

22 Q Okay.

23 A It is incorrect though. I don't think it really
24 changes the thrust of my arguments.

25 Q Okay.



1 A It is absolutely not what happened.

2 Q Okay. Just reading on from there:

3 "Ron meanwhile had got himself into
4 trouble for robbery. While in prison he
5 was visited several times by police, who
6 were under intense pressure to make an
7 arrest. They suggested he knew more
8 than he was saying about Gail Miller's
9 death. He told them flatly he knew
10 nothing. But the police persisted and
11 hinted that life was going to be very
12 difficult for him in the future."

13 Just in terms of that last statement, do you
14 recall where you had gathered that information
15 from?

16 A Let me think. This is 1982. When did Mrs.
17 Milgaard interview Ron Wilson? Probably from many
18 sources. I know they were under pressure to make
19 an arrest, you know, they put the reward out.
20 They suggested he knew more than he was saying
21 about Gail Miller's death. I don't really
22 recall --

23 Q Okay.

24 A -- what it was based on, but it was based on
25 something.



1 Q Just moving up to the next paragraph on the top of
2 the next page, it states:

3 "In May the police picked up Nicol in
4 Regina and took her to Saskatoon. They
5 drove her around the area of the murder
6 repeatedly, but she didn't recognize it.
7 They then took her to a motel room and
8 grilled her, showing her the dead girl's
9 clothing, as well as photographs and a
10 knife. She was close to hysteria and
11 actually did become hysterical that
12 night when they insisted she stay
13 overnight in the police station, though
14 she had not been arrested."

15 A Yeah. That could have been from Mr. Tallis' notes
16 possibly.

17 Q Okay. And I was going to ask you that, in terms
18 particularly of the information relating to Nichol
19 being hysterical at the station, do you recall in
20 particular where you obtained that information
21 from?

22 A Well, I heard about that verbally right at the
23 beginning I think.

24 Q And that was from Joyce?

25 A Probably from Joyce, but this seems to tie in with



1 the Tallis thing too, so -- and I don't know -- I
2 have trouble with the dates, that's the problem.

3 Close to hysteria? Well, I didn't invent it.

4 Q Okay. You had heard it from somewhere?

5 A Yeah.

6 Q Just read on from there:

7 "To cut a very long story short, Nicol,
8 terrified and just sixteen, finally
9 signed a statement saying that on the
10 morning of January 31st they had come to
11 Saskatoon and the car got stuck "in what
12 I have now come to know as the back lane
13 behind the funeral parlour near St.
14 Mary's Church." She said Ron went one
15 way to seek help, while David went
16 another and she stayed in the car. She
17 said she saw David grab a young woman,
18 drag her into the alley and start
19 stabbing her. She made no mention of
20 David pulling the woman's coat off, yet
21 there were no stab marks in the coat.

22 David is left-handed, and
23 medical experts said the wounds were
24 made by a right-handed person.

25 Ron, who had further legal



1 problems pending, also changed his
2 story. Though he didn't claim to have
3 witnessed a stabbing, he did now agree
4 that they got stuck behind the funeral
5 home. He also said that when they got
6 to Calgary, after leaving Saskatoon,
7 David had said something to him about
8 having 'got a woman' back in Saskatoon.

9 Curiously, according to these
10 new versions, Nicol had never mentioned
11 to Ron what she saw in the back lane and
12 had actually driven from Saskatoon to
13 Calgary with no discussion of the
14 stabbing having taken place.

15 Ron and Nicol were undoubtedly
16 scared and concerned that they might be
17 charged with murder. When the trial of
18 Milgaard did eventually begin, it made
19 little difference that Nicol adamantly
20 repudiated her damning statement of the
21 previous May. The Crown prosecutor
22 managed to have the entire statement
23 read out in front of the jury, setting a
24 precedent that became known as the
25 Milgaard Ruling. The jury heard it



1 all."

2 And we've talked about this previously, that was
3 your --

4 A Yeah. It's probably badly phrased. The thing
5 that jumped out at me is I put quotation marks
6 around something Nichol said in a statement.

7 Q "In what I have now come to know as the back lane
8 behind the funeral parlour"?

9 A Yeah. To me that's very significant, "what I have
10 now come to know," that's quite significant.

11 Q And perhaps just follow through with that, in what
12 respect?

13 A I think she was kind of -- she had never been
14 there before and I think she was driven around
15 there and any impression was drummed into her,
16 that this is where you were, that's what I
17 believe.

18 Q And I notice again you use the word repudiated in
19 terms of what you indicate Nichol did in relation
20 to her statement. What did you mean by the use of
21 that word?

22 A Well, I told you I'm not a lawyer. That's
23 probably the wrong word. Well, she hadn't -- she
24 just went -- she had made the statement, right,
25 the Crown had the statement, and then she didn't



1 say whether it was true or not true basically,
2 right, she couldn't remember anything about making
3 statements about where she was, was she even in
4 Saskatoon, so to me that was kind of undermining
5 in a way this very damaging statement, but she
6 didn't come right out and say the police forced me
7 to make it or anything like that, and it was an
8 opportunity for Nichol at that point I think to
9 defend David Milgaard and say, well, it's all BS,
10 nothing ever happened, but that didn't happen,
11 that never happened, so you can ask the question
12 why. Well, I don't know her mental state, but
13 it's often been said, well, she was just terrified
14 and it's often been said she was terrified of
15 Milgaard. I don't think so, I don't think she was
16 terrified of Milgaard. She drove to Edmonton with
17 him.

18 Q And what is your thought on that, or what was your
19 thought?

20 A She saw nothing and nothing happened to them.

21 Q I'll read on in the next paragraph, it states:

22 "Albert also played his part in getting
23 Milgaard convicted. He laid claim to
24 the police reward. Whereas he had
25 before insisted that there was nothing



1 abnormal about their journey from
2 Saskatoon to Calgary on January 31st, he
3 now wove a fabulous plot around it,
4 insisting that Milgaard was anxious to
5 flee the town. Why David had calmly
6 spent most of the day at Albert's home
7 just a block from the grizzly murder
8 scene wasn't explained. Now Albert
9 insisted David had changed his clothes
10 when he arrived that morning and
11 insisted he had seen blood on David's
12 shirt when he arrived."

13 A Uh-huh, it's a mistake.

14 Q Similar to the previous observation we made?

15 A Yeah.

16 Q Okay.

17 A He shouldn't have been in that particular way,
18 yeah, but I was still early into this, you know, I
19 hadn't talked to Albert or done a huge amount, but
20 that's a mistake.

21 Q Okay. It continues on, and I won't read all of
22 that, but it talks of David's arrest, and we get
23 to the top of the next page and it indicates:

24 "No witnesses were called in David's
25 defence and his lawyer advised that he



1 not give evidence himself, though he
2 wanted to. 'We didn't know anything
3 about courts or the law then. We were
4 helpless and couldn't afford a fancy
5 lawyer'."

6 And do you recall what your impression was of the
7 job that Mr. Tallis had done in defence of David
8 during the Court proceedings?

9 A I seem to recall it was okay, you know, to a
10 point, I don't know how he could have dealt with
11 the Nichol John thing, and I read the judge's
12 summing up too, I thought the judge was quite fair
13 in many ways, but again, I'm not a lawyer, so --
14 did Tallis do an adequate job? I wish David had
15 been on the stand, that's what I wish. I don't
16 think I'm qualified to tell you that.

17 Q Okay. I just took from that paragraph, I was
18 curious whether you had a specific thought on the
19 quality of Mr. Milgaard's defence during the Court
20 proceedings.

21 A All I know, it wasn't Legal Aid, I know they had
22 no money, I know his mother took a job as a
23 waitress in a restaurant in Saskatoon just to stay
24 up here for the trial, I know that they could
25 barely afford a decent suit for him to wear at the



1 trial. I really can't make a professional comment
2 on Mr. Tallis.

3 Q Fair enough. And I'm digressing for a moment, but
4 a question I meant to ask earlier on, what -- and
5 I'm going back to what you told us about sort of
6 your common-sense approach to reading the
7 transcripts, the prelim, the trial, what were your
8 impressions of the jury who had heard the case at
9 trial?

10 A Well, I think they were out for 24 hours if I
11 recall. I don't recall much else about them. The
12 jury?

13 Q Yes, and again I'm connecting it, you are making
14 the observations that you've talked to us about,
15 about sort of the logic of the matter, the common
16 sense of it all.

17 A Yeah.

18 Q Did you have concerns about how the jury had
19 perceived the case?

20 A Yeah, I think -- again, I'm not a lawyer, but I've
21 sat through many trials, including murder, and I'm
22 not being contemptuous, but I think it's fairly
23 easy to mislead a jury, specifically with
24 scientific, "scientific evidence", and there was
25 stuff in here that even I didn't understand about



1 antigens which I later, years later learned didn't
2 prove anything, you know. I think you can easily
3 bamboozle a jury with stuff like that, anything
4 technical. I still think though the Nichol John
5 statement, which they heard, had to bias and
6 prejudice them, it just had to.

7 Q Okay. Just a couple of further portions of this
8 article, if we turn to 020462, I think you've
9 confirmed this previously, but I'm looking at this
10 paragraph here, you are talking about Joyce's
11 efforts as they began in 1980, you mention:

12 "She hired a Saskatoon lawyer, printed
13 up thousands of leaflets and offered a
14 \$10,000 reward to anyone who could
15 produce new evidence leading to her
16 son's exoneration. She ordered a
17 transcript of the trial and the appeal.
18 She gave interviews to any Saskatchewan
19 media who would listen. She also upset
20 the powers that be. The Saskatoon
21 police quietly visited old trial
22 witnesses and told them not to talk to
23 her if she found them. If she pestered
24 them, they should just let the police
25 know and they'd see her off."



1 A And indeed that is exactly what I had been told at
2 that time.

3 Q And who had told you that information?

4 A Joyce.

5 Q Okay.

6 A Yeah.

7 Q Just moving down the page, this paragraph, it
8 states:

9 "After two years we have found every
10 critical witness but one. We have found
11 and interviewed Ron, who is cagey and
12 prefers to forget the whole thing. He
13 suggests that David may have a darker
14 side Mrs. Milgaard is unaware of. He
15 admits he was nervous when he heard
16 David had escaped. He is unable to
17 answer critical questions or to
18 reconcile obvious contradictions in his
19 evidence."

20 Would that be a fair summary of your view of Ron
21 at the time?

22 A Yeah, I think he was very cagey, I think that
23 would be a good word. My other view was simply
24 that he wasn't telling the truth, you know, I
25 could give you an example, and I helped prepare a



1 lot of the questions, I didn't interview Ron,
2 Ms. Milgaard did, I wasn't there, but I certainly
3 helped script a few questions, and I wanted it all
4 to lead up to the pants and the blood, did you see
5 blood. Now, his reaction, and you would have to
6 hear the tape to understand it, was kind of not
7 very serious I didn't think, he kind of laughed
8 and said, well, Mrs. Milgaard, it could have been
9 Cool-Aide. Now, I don't think that's a normal
10 response. He had been a senior witness in a very
11 serious murder case where his evidence of seeing
12 blood on David Milgaard was extremely important.
13 It's almost like he treated this as it could have
14 been anything, you know.

15 The other thing I remember was
16 he encouraged Mrs. Milgaard, although I don't
17 think he was totally sincere, go for it, go for an
18 inquiry, I remember, yeah. His attitude was very
19 clever and I wasn't sure if one day his conscious
20 would get the better of him, but I'm very grateful
21 eventually it did.

22 Q Turn to 020463, the last portion I'll read to you.
23 Starting here you write, 'The problems with the
24 evidence are obvious enough to a layman, but when
25 presented to Regina lawyer Tony Merchant, who has



1 been engaged to look into the case, he says that
2 only something dramatic would help re-open it now.
3 "The best thing undoubtedly would be for one of
4 the key witnesses to come forward and admit they
5 lied. If you could get something like that I
6 could petition the Governor-general-in-council to
7 re-open the case."

8 The details, he admits, are
9 fascinating and the sacrifice in time is
10 impressive. But if we have spent X hundred hours
11 unraveling inconsistencies, how can we possibly
12 expect a harried Justice Minister to spend the
13 same kind of time. Merchant's final assessment is
14 that a dramatic single fact, perhaps a confession
15 by the real killer, is needed. Cumulatively our
16 laundry lists of error, impossibility, and factual
17 alteration might be impressive but who will bother
18 to read them all.'

19 And was that what you had come
20 to understand was the reality of the situation
21 after your dealings with --

22 A Yup.

23 Q -- Mr. Merchant?

24 A Yes. And even, you know, when I got out of this
25 case actively I found it very depressing, to be



1 honest with you, and I was quite angry. But yeah,
2 that would have been my assessment, that we still
3 hadn't found the golden nugget, yeah.

4 Q This would be an appropriate time to break, Mr.
5 Commissioner.

6 (Adjourned at 4:33 p.m.)

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