

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
Ramada Hotel at
Saskatoon, Saskatchewan

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Volume 145

Inquiry Proceedings



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Mr. Pat Loran, Esq., **for** the Saskatoon Police Service
Mr. Chris Boychuk, Esq., **for** Mr. Eddie Karst
Mr. Bruce Gibson, Esq., **for** the RCMP
Mr. Eamon O'Keefe, Esq., **for** Mr. Larry Fisher
Mr. David Frayer, Q.C., **for** Minister of Justice
 (Canada), The Hon. Vic Toews
Mr. Marshall Hopkins, Esq., **for** Justice Calvin Tallis
 (Retired)



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JOYCE IOLA MILGAARD, SWORN

- BY MR. HODSON

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Transcript of Proceedings

(Reconvened at 1:00 p.m.)

COMMISSIONER MacCALLUM: Good afternoon.

ALL COUNSEL: Good afternoon.

MR. HODSON: The next witness is Mrs. Joyce Milgaard. Will you go up to the front, please?

JOYCE IOLA MILGAARD, sworn:

BY MR. HODSON:

Q Good afternoon, Mrs. Milgaard. Thank you for agreeing to testify.

A Did I have a choice?

Q Umm, no. For the record, you are here represented by counsel, Joanne McLean and James Lockyer, and you are a party with standing. And again, for the record, you are David Milgaard's mother; correct?

A I am.

Q You reside north of Winnipeg, Manitoba; is that correct?

A Yes.

Q And, before we get into some of the formalities, you have been kind enough to provide us with two documents; one is a biography, the 337709. And for the benefit of counsel, I received this this morning, so you will be getting copies of these. And again, I'll go through just parts of this,



1 this will assist in a bit of the background. If
2 we can go into the second paragraph? And, again,
3 if you want to, maybe just based on this biography
4 tell us a bit about your background,
01:03 5 Mrs. Milgaard, particularly as it relates to the
6 matters mentioned in this biography?

7 A It's been a while since I've really looked at it.
8 Umm, I am involved with the John Howard Society of
9 Manitoba and I'm an honorary board member there.
01:04 10 I am active with the Association in Defence of the
11 Wrongly Convicted, we have a Manitoba branch that
12 I'm a director in as well as in the national
13 branch, and yeah, I have been called the "mother
14 of AIDWYC".

01:04 15 Q And maybe just elaborate a bit on your involvement
16 with AIDWYC? And maybe you can tell us a bit
17 about what that organization is and when you
18 joined it?

19 A Well AIDWYC is called -- is the Association in
01:04 20 Defence of the Wrongly Convicted, and just after
21 David got out of prison I got a call from James
22 Lockyer and he wanted me to help him in the Guy
23 Paul Morin case, and at that point I said "forget
24 it". I just needed a holiday, and I had no
01:05 25 intention of getting involved, and the next thing



1 I knew I got a call from Guy Paul Morin's mother,
2 and how could I turn her down.

3 One of the things I had always
4 said, I made a promise to God that if he helped me
01:05 5 to get David free I would help anyone else that
6 was wrongfully convicted, and Guy Paul Morin I
7 didn't know much about at that point, but I went
8 to see them, got the information, and felt he was
9 wrongfully convicted, and so I put my support
01:05 10 behind him.

11 At the end of that we had the
12 nucleus of lots of people that had been involved
13 in that, and they got together, and AIDWYC was
14 formed.

01:05 15 Q And so I take it since the early 1990s, then, you
16 have been associated with AIDWYC in one form or
17 another, and acting as advocate on behalf of
18 wrongfully convicted persons; is that correct?

19 A Yes. And, since that time, the association has
01:06 20 actually been responsible or associated with 20
21 people who have had their convictions overturned,
22 so they're doing excellent work.

23 Q If we could have just put on the screen, please,
24 your curriculum vitae. This is a document you
01:06 25 provided me shortly before we started here, and



1 I'll make copies for counsel, but we'll just get a
2 bit of background information for you. And,
3 again, this document will become part of the
4 record, but I think we have seen reference in
01:06 5 various publications, Mrs. Milgaard, to your -- I
6 think, would it be fair to call it your occupation
7 as a Christian Science nurse, trainer, and program
8 leader involved in being a Christian Science
9 nurse; is that correct?

01:07 10 A Well, this was when I was actually applying, I put
11 this CV in at the time I was applying to become a
12 director of nursing in New York at a Christian
13 Science facility there. Since that time, after
14 becoming the administrator as well as the director
01:07 15 of nursing and working in New York for a couple of
16 years, I came home and have subsequently become a
17 Christian Science practitioner. So you are not
18 both a nurse and a practitioner, I am now a
19 practitioner.

01:07 20 Q And if we can just go to the next page, please, of
21 the CV. And, again, this would accurately set
22 forth your work history; is that correct?

23 A Yes. The Concorde Lodge visiting nurse service in
24 Ottawa was a wonderful opportunity for me to work
01:07 25 in the area, and when I wasn't nursing I was at



1 the Parliament Buildings hassling MPs.

2 Q And we see, if you could just elaborate a bit, we
3 have seen from some of the other documents and
4 heard from, certainly, some of the other witnesses
01:08 5 who had contact from you, and I think probably in
6 the late 1980s-early 1990s, that you were out of
7 the country, I think in New Jersey for a while and
8 in England for a while; is that correct?

9 A That's correct.

01:08 10 Q And can you just generally tell us when, what time
11 periods you would have been out of Canada in the
12 sort of late '80s-early '90s, was there a
13 significant period in there?

14 A Well I am not sure of the exact date that I went
01:08 15 out of the country, but it was at the time when
16 we'd put in the first application, and I felt my
17 work was done.

18 Q Right.

19 A I turned it over to the Justice Department, and I
01:08 20 went off on a trip, and it was while I was in
21 England on this trip that I met a young lady that
22 was a nurse and the thought came that I should
23 become a Christian Science nurse. And I rather
24 boo-hoed that idea, because I felt I was a
01:09 25 property administrator and I wouldn't do bedpans,



1 but it seemed the right thing to do, and I applied
2 over there and started my nurse's training,
3 actually, in England, in Bath.

4 Q Are you able to tell us, and if it's easier to go
01:09 5 through when we're going through chronologically
6 in the late 1980 period, but I'd like to get some
7 sense; I think December 28th, 1988 was when the
8 first application was filed?

9 A Right.

01:09 10 Q Did you then move to New Jersey or to England?

11 A No, I went to England at that time.

12 Q And how long were you there for?

13 A Umm, well my nursing course was approximately
14 three months that I'd be there, and then I went to
01:10 15 Tenacre in Princeton, New Jersey to take the --
16 like the one was a nurse's aide training course
17 and then I was accepted at Tenacre in New Jersey
18 for the nurse's training course. Now that's a,
19 normally a three-year course, it took me five
01:10 20 years because I was constantly flying up to
21 Manitoba to work on David's case.

22 Q And so, after December 28th, 1988, is it fair to
23 say that you would have -- you would have spent a
24 significant amount of your time out of the country
01:10 25 in pursuit of your Christian Science nurse



1 vocation?

2 A The reason that I was in pursuit -- well, I would
3 be working as a Christian Science nurse in order
4 to make enough money to go back and work on
01:10 5 David's case, so I would work one month on and one
6 month off, pretty well, and I had special
7 permission to extend -- like normally they
8 wouldn't allow that to happen, you had to complete
9 your nursing in a three-year period, but because
01:11 10 of the situation with David they allowed me to do
11 that, which was just great.

12 Q So, again, in that time frame -- and we'll spend
13 some more time dealing with what was happening
14 then later -- but after the application was filed
01:11 15 with the Minister, then, you would spend,
16 intermittently, months at a time, then, away from
17 Canada; is that correct?

18 A Usually one month at a time. I wasn't very -- I
19 -- that's all it would take to earn enough money
01:11 20 to go ahead a bit.

21 Q We're done with that document. I want to spend
22 just a bit of time, Mrs. Milgaard, before I get
23 into some of the specific questions, just
24 explaining to you where I -- the areas I intend to
01:11 25 cover and why I intend to cover them.



1 Now you are a party with
2 standing and your counsel can certainly, and will,
3 make submissions on your behalf with respect to
4 the matters that are before the Commission of
01:11 5 Inquiry, and although there is a bit of overlap
6 between your evidence and what is submission, my
7 focus is going to be to ask you questions and get
8 your evidence and information that's relevant to
9 the terms of relevance. And let me just tell you,
01:12 10 again, the areas I intend to cover and why.

11 Firstly, on the Terms of
12 Reference, this Commission is looking into the
13 conduct of the investigation and trial; and you
14 were present at the trial, is that correct, back
01:12 15 in 1970?

16 A Yes, I was.

17 Q And certainly have some personal knowledge about
18 what was happening with your son at that time and
19 some observations you made during the course of
01:12 20 the investigation and trial; is that fair?

21 A That's fair.

22 Q And so I'll cover that. Secondly, this Commission
23 is to seek to determine whether the investigation
24 should have been opened -- re-opened based upon
01:12 25 information provided to the police and Justice.



1 And I think it's fair to say, Mrs. Milgaard, that
2 for a considerable period of time you would have
3 been involved in -- your efforts were towards not
4 only reviewing the investigation and trial and
01:13 5 critiquing it -- is that fair, that was one of the
6 things you did?

7 A Absolutely.

8 Q And, secondly, would be to gather information to
9 provide to the authorities to urge them to re-open
01:13 10 the investigation; is that fair?

11 A Yes.

12 Q And so I propose to go through, chronologically,
13 to identify the information that you gathered.
14 And again, that would be witness interviews, your
01:13 15 analysis, new information? And I will be touching
16 on -- and let me just tell you what I intend, what
17 areas I intend to cover; number 1 the source,
18 where you got it from; 2 what you did with it; 3
19 who you shared it with; and 4 when and how the
01:13 20 information was provided to the authorities or, if
21 it wasn't provided to the authorities, the reasons
22 for that. Do you understand that?

23 A Yes, I do. But, Mr. Hodson, I will put on the
24 record the fact that, I think it's the end of this
01:13 25 month, when I started out, that was 37 years ago,



1 --

2 Q Yes.

3 A -- and I may not remember all of the first few
4 years --

01:14 5 Q Yes.

6 A -- as well as you might like me to.

7 Q I appreciate that, Mrs. Milgaard. I'll just ask
8 for your best recollection and, where I can assist
9 you with documents, I will do so. And let me tell
01:14 10 you that some of the documents that I have read,
11 and certainly that I intend to put to you from
12 time to time to assist you, would be number 1 the
13 book that you wrote in 1992; is that correct,
14 '91-'92?

01:14 15 A '99, actually.

16 Q Was it '99?

17 A Yes.

18 Q And was there an earlier version in the early '90s
19 where --

01:14 20 A No, you are probably thinking of the story that
21 Peter Carlyle-Gordge wrote --

22 Q Okay.

23 A -- about me.

24 Q I'm sorry, 1999, and that was *A Mother's Story*
01:14 25 with Peter Edwards?



1 A Yes.

2 Q And it's my understanding -- please correct me if
3 I'm wrong -- that that would have been based upon
4 your recollection at the time, your review of
01:14 5 notes and review of the record, so to speak; is
6 that fair?

7 A And tapes.

8 Q And tapes.

9 A (Laughs)

01:14 10 Q I was coming to the tapes. The second area that I
11 intend to use to assist you with your recollection
12 is some of the audio tapes that you've provided to
13 the Commission. And maybe you can just tell us
14 generally, Mrs. Milgaard, what was your practice?
01:15 15 We've heard from a number of people who have
16 indicated that they were parties to the taped
17 conversations, some said they knew, some said they
18 didn't. Can you just tell us generally, when did
19 you start recording some of the interviews and
01:15 20 conversations, and what was the purpose of that?

21 A I started it almost immediately because before I
22 became a Christian scientist I had a tendency to
23 exaggerate a great deal and story-tell and in
24 becoming a Christian scientist one of the things I
01:15 25 realized is the importance of telling the truth,



1 so I was concerned that if I didn't tape someone's
2 conversation and they told me something, because I
3 had a very vivid imagination, that I might put
4 something extra in there, and so by doing it that
01:16 5 way I could look back after I had had the
6 conversation with them or the interview and have
7 the actual facts there and it was important for me
8 to, if we were going to get David out of this
9 mess, that we really focus on the truth, of what
01:16 10 was true about him and everyone.

11 Q Okay. And certainly I think there's probably
12 close to 100 audio tapes, perhaps more, that this
13 Commission has received that would involve
14 conversations with you and your counsel, with
01:16 15 witnesses, with Paul Henderson and with some
16 others; is that correct?

17 A Yes.

18 Q So certainly as we go through, and I do propose to
19 go through somewhat chronologically, Mrs.
01:17 20 Milgaard, and I will, where possible, provide you
21 with documents to try and assist your memory, and
22 certainly what I'm looking for is your best
23 recollection, or if you are not able to recall, we
24 may in some cases take a look at a document and
01:17 25 see if you can shed some light on what you might



1 have been thinking at the time.

2 Now, again, just in the
3 re-opening efforts, I want to state that we've
4 certainly heard a fair bit of evidence already
01:17 5 from the people that were working with you or
6 assisting you in the gathering and presenting of
7 information; namely, Peter Carlyle-Gordge, Chris
8 O'Brien, Gary Young, Tony Merchant, Paul Henderson
9 and David Asper and you've been present I think
01:17 10 during most of their evidence; is that correct,
11 Mrs. Milgaard?

12 A That's correct.

13 Q And so when we go through your evidence, from time
14 to time I may ask you to elaborate on what one of
01:17 15 those witnesses either said or attributed to you
16 or commented on. Okay?

17 A Fine.

18 Q And in going through chronologically, I just want
19 to ask you this question, is it fair to say that
01:18 20 in 1980 when you first, I think it's fair to say
21 that's when you would have started significant
22 efforts to gathering information; is that fair?

23 A Yes, I think -- well, yes and no. At that point
24 in time David had just escaped and had been shot
01:18 25 and as I sat in his hospital bed, or beside his



1 hospital bed with him and not knowing whether he
2 would ever walk again, I really prayed as to what
3 I was to do and by this time I did have some money
4 in an RRSP and I called the family and I said to
01:18 5 them, look, they are going to throw away the key,
6 there's no way David is going to get out on parole
7 now, the only way we're going to get him out is
8 we're going to have to find out who really did it,
9 and so it was at that point that the thought of
01:19 10 using my RRSPs for a reward and we offered a
11 reward at that time.

12 Q And I'll certainly take you through that, but the
13 question I have for you, and I want to talk about
14 the evolution, if I can call it that, of
01:19 15 information gathering, would you agree that
16 certainly the information that you gathered by
17 1990 was more information than you had in 1980?

18 A Oh, definitely.

19 Q And certainly would it be fair to say the
01:19 20 information that the Commission has heard to date
21 might well be more, in certain areas, more
22 information than you would have had in 1990; is
23 that fair? So in other words, as we get on in
24 years, there seems to be more information that
01:19 25 comes to light?



1 A Everything was just pouring forth.

2 Q And in going through this, Mrs. Milgaard,
3 sometimes it's difficult in going back to, for
4 example, 1980 and 1981 and focusing on what you
01:19 5 knew at the time not to be influenced by hindsight
6 and information you learned later, so I'm going to
7 try to go through and get an understanding of what
8 you knew at the time and what you were basing your
9 decisions on at the time, and without the benefit
01:20 10 of hindsight initially, and then from time to time
11 I might ask you that lookit, we've now heard
12 evidence or you later learned some more
13 information, if you would have known that earlier
14 would you have done things differently. Do you
01:20 15 understand?

16 A I understand.

17 Q And in going through this evolution, if I can call
18 it that, of gathering the information, I propose
19 to go through chronologically so we can understand
01:20 20 what you knew at sort of each of the important
21 stages and as well to have you elaborate on some
22 of the issues and challenges you faced in the
23 gathering and presentation of that information.
24 Okay?

01:20 25 A Okay.



1 Q Now, the next phase of this Inquiry is we're going
2 to be hearing from the authorities, the federal
3 government, provincial government and the RCMP and
4 a significant part of that will be to ask them
01:21 5 what they did with the information you provided,
6 you and others provided to them, so from time to
7 time in my questioning of you I will be asking
8 questions relating to the source of information
9 and questions aimed at the reliability of the
01:21 10 information. Okay?

11 A Yes.

12 Q Now, the term authorities, maybe we should just
13 make sure we're on the same page here. When I use
14 the term authorities, I'm referring to government
01:21 15 and police, whether it be federal, provincial,
16 RCMP, Saskatoon City Police; is that fair? Do you
17 understand when the term "authority" is used that
18 that's what I'm referring to?

19 A All right.

01:21 20 Q And secondly, you've heard from time to time in
21 this Inquiry, we've talked about the Milgaard
22 group that I think has included everybody
23 associated with the efforts on behalf of David.
24 Is it fair to say that the participants in that
01:21 25 group didn't always agree on matters; is that



1 fair, in the sense that there wasn't one unified
2 position always put forward?

3 A I would say that was very fair.

4 Q And so when I put to you questions, when I refer
01:22 5 to you or to the Milgaard group, what I'm really
6 getting at is information or steps that were taken
7 on behalf of David Milgaard and if there are areas
8 where you are not sure or where you have a
9 different view than, for example, Mr. Wolch or Mr.
01:22 10 Asper had, please tell me. If not, I will try to
11 use, in the form of questionings, the collective
12 group.

13 A Okay.

14 Q Do you understand?

01:22 15 A Yes, I do.

16 Q I will also be asking you, as I alluded to
17 earlier, we've heard evidence from various people
18 who were involved in the gathering and
19 presentation of information and from time to time
01:22 20 I will be asking you questions about differences
21 between your version of events and other
22 witnesses' version of events and I want you to
23 understand that that's one of the issues before
24 the Commission, is to try and gather in and find
01:23 25 out what happened. Do you understand?



1 A Yes, I do.

2 Q And I also want to state, Mrs. Milgaard, that none
3 of the questions that I ask you are intended to in
4 any way challenge the question or relate to the
01:23 5 question of your son's innocence. Do you
6 understand that?

7 A Well, it would have to be because he is innocent.

8 Q Yes, and so I don't want you to -- I'll be asking
9 you questions, for example, would it be fair to
01:23 10 say that in your efforts to convince the
11 authorities to re-open David's case, you would
12 raise questions or facts which the authorities
13 from time to time would either dispute or not
14 agree; is that fair?

01:23 15 A Many times.

16 Q And you would perceive that as the authorities
17 challenging David's innocence; is that fair?

18 A Yes, I did.

19 Q And so to the extent that I ask you questions
01:23 20 during the course of your evidence where I might
21 say this piece of information -- let's take the
22 compact, for example, that we're not concerned,
23 the compact -- I'm asking the question not because
24 I'm dealing in any way with David's innocence, but
01:24 25 rather in trying to find out what facts existed so



1 that we can look at the conduct of others. Do you
2 understand?

3 A I do.

4 Q And so if I ask a question that you think because
01:24 5 it's a similar question to what the authorities
6 previously asked you that I'm somehow disputing or
7 in any way touching on David's innocence, I want
8 you to understand that I'm not. Do you
9 understand?

01:24 10 A I do understand.

11 Q If we could call up 337704. And, Mrs. Milgaard,
12 this is an outline that I think we went over last
13 week or parts of it with you and your counsel
14 that's just going to guide me through the
01:25 15 evidence, roughly guide me through the evidence
16 that I'm going to try and get from you during the
17 course of this week, and just so you know where
18 we're getting to, and you can rest assured that
19 you will get an opportunity to speak about every
01:25 20 subject matter that's of importance to you and if
21 I don't cover it, I'm sure your counsel will
22 before we're done. Okay?

23 A Fine.

24 Q And so again, what I will go through
01:25 25 chronologically, the investigation, the trial



1 proceedings and then in the post-conviction phase
2 what I propose to do is divide it up into time
3 frames, the first one is the 1971 to 1980, the
4 next is 1980 to '85 and the various people that
01:25 5 you were involved with. Next page. And then
6 through until 1986, then we'll deal with your
7 engagement of Mr. Wolch, Mr. Asper. Next page.
8 Then we'll spend some time on your application to
9 the minister under the 690 procedure and that
01:26 10 information and then the second application, the
11 minister's order for the reference, the Supreme
12 Court reference itself and the Supreme Court
13 decision and then some matters post Supreme Court
14 decision, the matters relating to Michael
01:26 15 Breckenridge, the RCMP investigation, the DNA and
16 lastly systemic issues that once I think we've
17 gone through during the course of your evidence,
18 Mrs. Milgaard, I will be asking you questions
19 relating to systemic issues, but certainly at the
01:26 20 end you'll have an opportunity to stand back and
21 go through any other matters that you wish to
22 bring forward. Understood?

23 A Understood.

24 Q Now, let's just go into a bit of background. Can
01:26 25 you -- I understand that you have four children;



1 is that right?

2 A Yes.

3 Q And can you tell us -- let's go back to 1969, at
4 that time can you tell us what their ages were,
01:26 5 names and ages, please?

6 A Well, David was our oldest, Chris was next in
7 line. Like, David was 15, actually 16 at the
8 time, Chris would have been 15, Maureen would --
9 Susan would have been 14 and Maureen was seven.

01:27 10 Q And we have certainly heard some evidence and seen
11 in the record, Mrs. Milgaard, that from time to
12 time not only during the original investigation,
13 but certainly during your efforts to re-open the
14 investigation, that matters relating to David's
01:27 15 childhood and teen years, his background before
16 January, 1969, was delved into; is that fair? You
17 are aware of that?

18 A Yes, I'm aware of that.

19 Q And I don't propose to go through any of the
01:27 20 documents, we've gone through that with other
21 witnesses, but I do want to just touch on a couple
22 of areas, and in particular we have seen reference
23 to school records, social work records in the
24 early to mid 1960s including right up until 1969,
01:28 25 and we've heard evidence from, in two respects,



1 one, we've heard that in the course of the
2 investigation into Gail Miller's murder, that the
3 police and/or Crown certainly had some information
4 on David Milgaard's background and we heard
01:28 5 reference to the hippie lifestyle, things of that
6 nature, and that that information may have
7 influenced some of the work that they did and --

8 A I think it definitely did.

9 Q Yeah, and we've heard some evidence about that,
01:28 10 and secondly, that after David's conviction during
11 the course of your efforts to re-open, that again
12 David's childhood or his social, school and
13 perhaps psychological background was relied upon
14 by some authorities to support his conviction; is
01:28 15 that fair? You would have been aware of that,
16 that was --

17 A Yes.

18 Q Is it fair to say that that would have been one of
19 the challenges you faced in the course of your
01:29 20 efforts?

21 A It definitely was a challenge because as far as I
22 was concerned they had it all wrong. In 1969 when
23 this attack on Gail Miller took place, at that
24 point my son had left the hippie lifestyle, he had
01:29 25 a short hair cut, he was working. We had gone



1 through a great deal of difficulty during his teen
2 years in that, because it was the hippie era, he
3 and his girlfriend, they would just simply take
4 off and hitchhike and I would call the police and
01:29 5 he would be brought back, they would be brought
6 back because they were both under age, but it just
7 seemed that everyone was doing it at that time, or
8 a lot of people were, but in the small town that
9 we were in it wasn't that prevalent, so that's why
01:30 10 he would end up in Regina, and I felt that -- I
11 remember one weekend, I used to work for Maclean's
12 Magazine selling magazines and I did very well at
13 it. At the time David was very outgoing as I had
14 been and we had a Maclean's man come and try to
01:30 15 sell magazines and I said tell your supervisor to
16 come and see me, so the supervisor came and I
17 explained to him that I had a son that was really
18 outgoing and I thought could do a terrific job, so
19 he said he would interview him and he did and
01:30 20 David got the job and at that point all the things
21 that he liked, the travel, the excitement, the
22 money, it was all there for him and he started
23 travelling with Maclean's.

24 He had been working at that for
01:31 25 some time and doing very well, he was one of their



1 highest selling employees, when they decided that
2 they would go out to B.C. and he needed a special
3 permit for that, so David had the weekend off and
4 he wanted to go and see his girlfriend Sharon, so
01:31 5 he headed to Regina and that's where he met up
6 with Ron Wilson and that's when they took this
7 fateful trip that has ended here 37 years later.

8 Q And as far as, you made a comment earlier that you
9 were of the view that the investigating, the
01:31 10 police and/or Crown who investigated the matter
11 may have been influenced by David's background, if
12 I can call it that?

13 A Well, his background prior to that had been
14 skipping school and taking off with Sharon and
01:32 15 going all over the countryside. His background
16 had been, at one time he and a friend were coming
17 home from a movie and they saw a truck sitting
18 there running and the two of them got in it and
19 took it for a joy ride and he was charged with
01:32 20 that. For a mom with three other children and in
21 a small town, it was a difficult situation to be
22 in and we had felt that if we could get David into
23 a special school, because most of his problems
24 stemmed from the fact that when he was in school
01:33 25 he was bored, he was very quick at learning



1 things, nowadays he would have been classified
2 differently and moved to accelerated classes, but
3 they didn't have that in those days, so as a
4 result he would be disciplined and kicked out of
01:33 5 school for this, that and the other thing for
6 fooling around.

7 We used to joke about this
8 episode, about the kindergarten because it seemed
9 so ridiculous, but later on it suddenly has a very
01:33 10 doomed type of history when the police look at it
11 in a different way, but he was expelled from
12 kindergarten, and it was just a church basement,
13 not a real kindergarten, and the girl that was
14 doing the class, it wasn't because David was bad
01:34 15 -- well, he was bad, his little foot would go out
16 automatically and trip someone if they were
17 walking up the aisle, but his main problem was
18 that he got all the other kids doing what he
19 wanted and they wouldn't listen to the teacher, so
01:34 20 as a result of that, and we sort of joked about
21 that for years, that became part of his history,
22 and then when we were at the court, they sent a
23 representative of the welfare to that hearing and
24 we had talked with her and explained how we had
01:34 25 been trying to get David into this special school



1 and she said, well, you know, if you were prepared
2 to give the welfare authority for him for a year,
3 we could place him in a special school, we could
4 get that done for you, and so my husband and I
01:34 5 talked it over and we decided that this would be a
6 good course of action, never realizing that what
7 would happen was that they got him to Yorkton and
8 because they couldn't find a place for him to stay
9 right away, they put him in the Psychiatric Centre
01:35 10 and he was going to school from the Psychiatric
11 Centre and not really liking it at all, so that's
12 how the psychiatric business started up.

13 Well, then they weren't able to
14 find the school, or to get him into a special
01:35 15 school and they finally got a foster home for him
16 where the kids in the foster home, he learned a
17 lot of wrongdoing from, because they were people
18 that had been in prison and doing a lot of bad
19 things as well, so he got involved with them, and
01:35 20 I often look back and wonder if we hadn't allowed
21 that year, if that would not have changed his life
22 considerably, but it was as a result of that and
23 the fact that he was hyperactive and so was given
24 drugs to sort of calm him down, I don't think that
01:36 25 the police would have had a record that they could



1 look at and say, oh, see, he's such a bad guy,
2 he's had this, that and the other, and they were
3 always talking about this terrible psychiatric
4 record. Well, believe me, I've seen all the
01:36 5 records there were and I haven't seen anything --

6 Q Would it be fair to say, and I don't recall during
7 the course of the trial that that information was
8 put in, would that have been mostly after his
9 conviction, that people would be commenting on the
01:36 10 psychiatric background and things of that nature?

11 A Oh, yeah. Mr. Caldwell in particular talked about
12 it in the letter he wrote --

13 Q I'm sorry, I just --

14 A -- to the Parole Board.

01:37 15 Q Let's just divide in time before and after --

16 A Uh-huh.

17 Q -- his conviction. Before his conviction I think
18 the evidence we've heard is that the police may
19 have had some information and the Crown may have
01:37 20 had some information, I don't believe any evidence
21 was tendered at trial; is that --

22 A I don't think -- no, nothing was tendered at the
23 original trial.

24 Q And then after your son's conviction, would -- and
01:37 25 I think in fairness, Mrs. Milgaard, you were



1 fairly open in subsequent years about your family
2 background and you were discussing this type of
3 information; is that fair?

4 A Yes, and guess who I'm discussing it with,
01:37 5 psychiatrists, because David is in prison, they
6 have to look at him as if he's guilty and he's
7 saying I'm innocent and so right away they are
8 figuring out what sort of psychosis he has that's
9 causing him to think this way and it was just
01:38 10 terrible.

11 Q If I can summarize, and I think you've stated this
12 on a number of previous occasions in a number of
13 different forums, but I think, and please correct
14 me if I'm wrong, that your view was that after he
01:38 15 was convicted, the stigma of being convicted of a
16 rape and murder caused medical officials and other
17 authorities to view David's childhood background
18 differently than you might have viewed it; is that
19 fair?

01:38 20 A They definitely had a completely different view.

21 Q And is how I stated it, is that a fair way to
22 summarize it?

23 A I think that's a very fair way.

24 Q Now, let's talk about, again back to 1969, I think
01:38 25 you said at the time David was, had got a job and



1 he was waiting for a license and then went on this
2 trip with Mr. Wilson and Miss John?

3 A Uh-huh.

4 Q Did you know Ron Wilson at the time, was he
01:38 5 someone that David had chummed around with?

6 A No, I did not know him. I did know Shorty
7 Cadrain.

8 Q And what did you know about Albert Cadrain at the
9 time?

01:39 10 A Well, he had been to Winnipeg -- or been to our
11 home in Langenburg and I just thought he was a
12 very tender young boy and we would now call him
13 mentally challenged, but I was really upset when I
14 found out that David was going to see him to get
01:39 15 money from him because I felt he was taking
16 advantage of him if he did that.

17 Q That David was taking advantage of Albert?

18 A That he would be taking advantage of Albert if he
19 went there to get money.

01:39 20 Q And this is on the January 31 trip?

21 A That's right.

22 Q And when did you -- did you know David was going
23 on this trip with these people?

24 A I knew that he was going up to Regina and that he
01:39 25 and a friend were possibly going to go and see



1 Sharon, but that he would be back because he was
2 going to be back for work as soon as his license
3 came through.

4 Q And Sharon would be Sharon Williams who lived in
5 Edmonton at the time; is that correct?

6 A That's right.

7 Q Now, just back at the time, and I want to get your
8 recollection if I can about 1968, 1969 and Albert
9 Cadrain, you said mentally challenged. Did you
10 notice anything, that he may have been under,
11 suffering any mental illness at the time?

12 A I don't think so. Albert I would classify as
13 slow, he seemed to be a slow learner and -- but
14 just quite a nice, sweet young boy.

15 Q And what about Nichol John, did you know Nichol
16 John at all?

17 A I did not know her at all.

18 Q And George Lapchuk, Craig Melnyk, were they people
19 that you had met before?

20 A No.

21 Q And Deborah Hall or Ute Frank?

22 A No.

23 Q Now, when and how did you first become aware that
24 David was being investigated by the police in
25 connection with the Gail Miller murder?



1 A That would have been in May I guess of '69. I
2 would have to look in my book.

3 Q I have some documents that might assist you. And
4 how did you become aware of it?

01:41 5 A Well, there was a knock at the door and there were
6 two policemen there and they said, "Are you David
7 Milgaard's mother?" and I sort of always equated
8 that day with becoming David Milgaard's mother and
9 never just being Maureen's mom or Susan's mom or
01:41 10 anything, that was the day it started. These two
11 policemen were there, I know now one was Detective
12 Karst because I recognized him here, and, you
13 know, the two of them came in and they started
14 talking about this murder, my husband was there, I
01:42 15 think it was just before he was going off to work
16 for the three to 11 shift, he worked at the potash
17 mine in Esterhazy at the time, and so we invited
18 them in for coffee, I mean, we had nothing to fear
19 from police, and when they started to talk about
01:42 20 this murder, I know my husband groaned and it was
21 like we're going to hear some bad news, never
22 thinking that they would be coming to see us about
23 David murdering someone, but that he was involved
24 in some trouble where someone else was involved in
01:42 25 it, because we've always told David that you are



1 known by your friends and it's really important to
2 pick good friends, so later I read what the
3 policeman said my husband said and I was there and
4 that's not true.

01:43 5 Q And I'll go through -- and I'll go through some
6 documents with you on that. Did they -- I think
7 the other officer was Lieutenant Short?

8 A That's right.

9 Q And that would be, I think you said, early May you
01:43 10 think?

11 A Yes, I think about May 19th or something like
12 that.

13 Q Had David told you that he had been seen by the
14 police on a couple of occasions prior to that
01:43 15 visit?

16 A No, and when I talked to him I said "David, why
17 didn't you tell us about it?"

18 Q And what did he say?

19 A And he said "Because I had nothing to do with it,
01:43 20 mom, I had nothing to hide, I told them
21 everything."

22 Q And would it be fair to say when the police
23 visited you, that they informed you that David was
24 a suspect?

01:43 25 A Yes.



1 Q If we can just go to 006799 and if we can go to
2 page 006802, and this is a document, Mrs.
3 Milgaard, that we've seen on a number of
4 occasions, it's a summary of information from the
01:44 5 police, and this indicates May 5, 1969.

6 A Can you blow it up a bit?

7 Q Yes, I can, yeah. And it says:

8 "Lt. Short and Det. Karst -"

9 It says:

01:44 10 "Father of Milgaard made statement to
11 effect that he was not surprised and had
12 suspected something like this might
13 happen."

14 And again it's not a -- I don't think it's a
01:44 15 direct quote, but to the effect that, and I think
16 you said earlier you disputed that or what is
17 your recollection?

18 A Well, my recollection of it was he groaned. Taken
19 in this context it could look like you were
01:44 20 suspecting like something like a murder was going
21 to happen and, I mean, that was certainly not my
22 husband's intention. He felt that because of the
23 lifestyle that he had, at some point he might be
24 involved with people that were in trouble and
01:45 25 that's what we had strongly recommended, that he



1 be careful of his friends.

2 Q And so it may have been, again I think this is how
3 at least the author of this document construed the
4 comments, and I think what you are saying is
01:45 5 that --

6 A He was way off base.

7 Q And, but, what -- do you recall the words your
8 husband would have used or -- and I've got some
9 documents that come a bit later where it's
01:45 10 discussed, and I can go through those with you, if
11 that would assist?

12 A Yes, if you can give me an approximate comment, --

13 Q Sure.

14 A -- I'd be glad to see it.

01:45 15 Q If we can go to 004819. And this is a December
16 8th, 1969 (sic) newspaper article, and you comment
17 to this a week later, so I'll just call this up.
18 And we've heard evidence on this, I believe it's
19 -- it doesn't name who -- who the -- who
01:45 20 Mr. Fuller is talking to, but it's either
21 Lieutenant Short or Mr. Karst, and Mr. Karst has
22 testified that it wasn't him, so I think the
23 assumption is that this would be Mr. Short talking
24 the ex-officer said he remembers going there:

01:46 25 " 'She was crying most of the



1 time, didn't want to say that her son
2 wasn't a good boy.'

3 Lorne's reaction, however, was
4 quite different.

01:46 5 'He looked at us and he said
6 'well, I figured it had to happen
7 sometime'.'"

8 And, again, if we could go to 004818. This is
9 December 15th, 1989, and it looks like
01:46 10 Mr. Fuller, who wrote the last article, talked to
11 your husband and said -- actually, if we can just
12 scroll up a bit, a couple lines, you say:

13 "'I know my husband would
14 never, ever say anything like that. If
01:46 15 he had said anything like that it would
16 have been seared into my mind forever,'
17 Joyce said."

18 A I would have killed him if he'd said anything like
19 that.

01:47 20 Q And then:

21 "In a separate interview from
22 Winnipeg, Lorne said: 'I may have said
23 something to the effect that I wasn't
24 totally surprised they were there.'"

01:47 25 And, again, is that -- do you take issue with



1 what your husband says in this article as sort of
2 his response to that?

3 A Yes, I do, and as it goes on to say:

4 "No one ever denied that

01:47 5 David had a wild streak, ...",

6 'There was no doubt about it

7 that he was travelling a lot, and I

8 wasn't ... happy with the ...",

9 Companions that he was with, but -- and does it

01:47 10 go on, farther, to say a little more?

11 Q Well sure, we can scroll down if you want to take
12 a look at it, yeah. It says:

13 "'There was no doubt about it

14 that he was travelling a lot, and I

01:47 15 wasn't all that happy with the guys he

16 was travelling with.'

17 The Milgaards also dispute the

18 officer's view that Joyce cried when she

19 heard their suspicions.

01:47 20 'I don't cry easily and I

21 remember when I cry, and I didn't cry

22 then,' ..."

23 And then Lorne:

24 "'The only time Joyce ever

25 cried was when the verdict was read (at



1 the trial).'"

2 And, again, --

3 A And that's true.

4 Q -- I just want to go back to what comments were
5 attributed to your husband Lorne. And again, if
6 we can scroll up, I'm just wondering, you were
7 present when he spoke the words, do you take issue
8 with what is reported here, as he said in 1989,
9 that:

01:48 10 "... 'I may have said something to the
11 effect that I wasn't totally surprised
12 they were there.'"

13 A Yes, he could have said something like that, that
14 he wasn't surprised that the police were coming
01:48 15 knocking at our door, however it -- the way they
16 have said it, it -- I would have been really upset
17 with my husband if he'd said anything like that.

18 Q Okay. Now can you tell us, you think it was --
19 this earlier note said May 5, 1969, and I think
01:48 20 you said you thought it was sometime in May; is
21 that right?

22 A Uh-huh, that's right.

23 Q And then did you follow up with David and talk to
24 him?

01:48 25 A Oh yes, I called him right away, and that's when



1 he said that he'd had nothing to do with it, and
2 he told me about the police coming to see him and
3 how he'd given samples and everything and tried to
4 help them and, you know, the whole story about
01:49 5 what he'd gone through.

6 Q Did you have any discussion with him, at that
7 time, about the events of January 31, '69;
8 anything you recall at that time?

9 A Well, other than the fact that he said that he had
01:49 10 been on the trip and they had been in the area,
11 but that he certainly had had nothing to do with
12 the crime.

13 Q And then I take it at a later date, perhaps at the
14 end of the month of May or early June, you would
01:49 15 have become aware that David had been arrested and
16 charged with the murder; is that correct?

17 A Yes. He actually went into the police station
18 when they heard that they were looking for him.

19 Q And I think that was in Prince George?

01:49 20 A In Prince George.

21 Q And then did you have some discussion with him at
22 that time, or did he call you, or were you made
23 aware of that?

24 A Yes, he called us, and we talked.

01:49 25 Q And then did you -- I -- there's some documents I



1 want to go through -- did you then go into
2 Saskatoon to meet with him; is that correct?

3 A Yes, I did.

4 Q If we can go to 006762. And this is a police
01:50 5 report, or a letter from Detective McCorriston to
6 the chief of police June 2nd, 1969, and I'll go
7 through just parts of this. And it details your
8 meeting with David in the jail cells at the police
9 station, and I take it that you would have visited
01:50 10 David on a number of occasions while he was in the
11 Saskatoon Police cells, is that correct?

12 A Yes. I actually, we didn't have any money to
13 speak of, and so I came, I was staying at the Y,
14 and I got a job in a Chinese restaurant working at
01:50 15 night so that I could afford to stay up here, and
16 so I would have the odd, like I'd have visits with
17 him, but they were usually quite short.

18 Q And, and when you --

19 A I had no idea that they were writing down
01:51 20 everything I was saying and doing.

21 Q And would it be fair to say that, every time you
22 visit David in the prison cells, that there would
23 be a police officer present in the cell with you?

24 A Oh yes, yes, sometimes two. Sometimes he was
01:51 25 handcuffed, sometimes they were quite nice, other



1 times it was awful.

2 Q And did you have an opportunity -- and I'll talk
3 later about when Mr. Tallis became involved -- but
4 am I correct that, before Mr. Tallis became
01:51 5 involved or when he was present, that you would
6 not have an opportunity to talk to David
7 privately; is that fair?

8 A That's right, they wouldn't let me talk to him
9 privately.

01:51 10 Q And so is it fair to conclude from that -- or let
11 me ask it this way. Would you have talked to
12 David directly while the police officers were
13 present and say, "lookit, tell me what happened
14 that morning", and go through events with him with
01:52 15 the police present?

16 A No. What we did talk about was I wanted to know
17 who was involved and what his friends, how to get
18 in touch with his friends, because I thought, you
19 know, we couldn't afford to hire anyone to help
01:52 20 him at that point so I thought maybe I could go
21 and talk to his friends and find out what was
22 going on and what made them say these things that
23 weren't true.

24 Q And then at a later stage, when Mr. Tallis was
01:52 25 retained as counsel, were there then opportunities



1 to meet with David and Mr. Tallis when the police
2 were not present?

3 A Yes.

4 Q And at that time did you have an opportunity to
01:52 5 hear David's version of events?

6 A Yes.

7 Q And so you would have been present when David
8 would tell his recollection or version of what
9 happened that morning?

01:52 10 A Yes. Nothing happened.

11 Q No, I appreciate that, as far as what his
12 activities were with Ron Wilson and Nichol John
13 that morning?

14 A Yes.

01:52 15 Q Like where he went, what he did, what he
16 remembered doing?

17 A Uh-huh.

18 Q So you would have been present when those matters
19 were discussed?

01:53 20 A Yes.

21 Q Now there is a reference here about:

22 "An application for legal aid
23 was completed by Mrs. Milgaard and
24 signed by David. She mentioned the name
01:53 25 of Walsh, a prominent Winnipeg lawyer,



1 ...",

2 and we've already confirmed for the record that
3 that is not Hersh Wolch, not that he wasn't
4 prominent at the time, but it was a different
01:53 5 Walsh. And:

6 "... however indicated preference of
7 Mr. C.F. Tallis in Saskatoon".

8 Can you tell us your recollection about how you
9 came to engage Mr. Tallis as David's counsel,
01:53 10 what happened and why he was retained?

11 A No.

12 Q You have no recollection?

13 A I know that he had a reputation as a good lawyer
14 and I believe he was one that was suggested by
01:53 15 Legal Aid.

16 Q And I think his evidence is to the effect that he
17 did Legal Aid work and when a Legal Aid lawyer was
18 required, that on a serious case such as this I
19 think he said more senior members would be called
01:54 20 upon, and he was called upon and then met with
21 David, and it appears from this letter, if this is
22 accurate, that you would have indicated a
23 preference to Mr. Tallis as compared to a Winnipeg
24 lawyer?

01:54 25 A Yes, I believe because he was right there.



1 Q And did you know this Mr. Walsh in Winnipeg, or
2 I'm not sure how that came into the picture?

3 A Well, I knew there was a prominent lawyer in
4 Winnipeg, but when I heard that Mr. Tallis had a
01:54 5 good reputation and that he was available through
6 Legal Aid, it seemed to me it was better to have
7 someone that was right there locally than in
8 Winnipeg.

9 Q And did you have any concerns, at the time, about
01:54 10 the fact that Mr. Tallis was being provided
11 through Legal Aid as opposed to you paying him
12 directly? I think you told us you didn't have any
13 money, but --

14 A Well, we didn't have any money to pay him.

01:55 15 Q Right. But did you have any concerns, at the
16 time, that, because he was being provided through
17 Legal Aid, that he would be providing different
18 services to your son than if he had been -- was
19 being paid by you?

01:55 20 A No. I had a very high opinion of the Justice
21 system and I felt that Legal Aid representation
22 was good, that, you know, I really felt that we
23 were going to be looked after well.

24 Q And during the course of your dealings with Mr.
01:55 25 Tallis through until the end of his involvement in



1 1970, did you have any concerns about the -- about
2 the job he did, or the efforts he put forward on
3 behalf of your son?

4 A Right through the time I felt that Tallis was
01:55 5 doing a very good job. There were occasions,
6 afterwards, when I started questioning his work.

7 Q And would that be much later, in the 1980s?

8 A Much later.

9 Q And would that be when -- and we'll get to that in
01:56 10 more detail --

11 A Yes.

12 Q -- but would that be when, I think, you started to
13 question a number of things; is that fair?

14 A I questioned everything.

01:56 15 Q Everything?

16 A Yes.

17 Q And if I can call the system, if we talk about
18 'the system' being the courts, the justice system,
19 the government, etcetera, would it be fair to say
01:56 20 that at some point you began to question
21 everything; is that fair?

22 A Yes, I became extremely disillusioned, because I
23 knew my son was innocent and no matter how hard I
24 tried to knock on all the doors they were being
01:56 25 shut in my face and I wasn't able to prove it.



1 Q And did that cause you to start to consider, more
2 broadly, what might have gone wrong than you did
3 initially?

4 A Yes.

01:56 5 Q Is that a fair way to put it?

6 A Because I thought this isn't normal, something --
7 somebody is behind this, and that somebody became
8 many somebodies.

9 Q And we'll spend some time, and I think when we go
01:57 10 through the chronology I'll come back to that
11 point with you. It talks here about you
12 contacting Nichol John and Ron Wilson, and I think
13 this is correct -- please correct me if I'm
14 wrong -- is it fair to say I don't think you ever
01:57 15 did contact any of the witnesses at that time; is
16 that right?

17 A No, because I was informed by the police that I
18 mustn't do that, that it would be contravening
19 somebody's rights.

01:57 20 Q And what about Mr. Tallis; do you recall him
21 giving you a similar caution not to --

22 A Yes.

23 Q And so is it fair to say that you wanted to talk
24 to Cadrain and Wilson and John at this point but
01:57 25 you were told --



1 A I backed off because the lawyer said I shouldn't
2 do that.

3 Q And then, as well, it looks as though you wanted
4 to talk to David privately and this was disallowed
01:57 5 at this time? I think you've told us about
6 that, --

7 A Uh-huh.

8 Q -- that it came later. Now there is also mention
9 here about you didn't want David to be examined by
01:58 10 a doctor or a psychiatrist prior to her
11 consultation with the lawyer, and concerns about
12 religious beliefs; do you recall that discussion
13 with the police, about not wanting David to be
14 examined by a psychiatrist?

01:58 15 A Umm, I don't recall that, but I -- I certainly, in
16 looking at that, I would think that I, unless the
17 lawyer wanted it, it was not something that I
18 particularly would have wanted done because I
19 didn't have a high opinion of psychiatrists at
01:58 20 that point.

21 Q And was -- why was that?

22 A I think because of what went on with him in
23 Yorkton.

24 Q With David?

01:59 25 A Yes.



1 Q And so the record shows that a Dr. McDonald did,
2 in fact, spend I think about an hour or maybe a
3 little more than an hour with David around this
4 time?

01:59 5 A Uh-huh.

6 Q And that Mr. Tallis, I think, advised David not to
7 talk any further to Dr. McDonald?

8 A Right.

9 Q Would that be correct?

01:59 10 A Yes.

11 Q And 006763. Again, I think this relates to
12 questioning witnesses, and looks like the police
13 indicate that you were going to try and get ahold
14 of Shorty Cadrain, and the police told you that
01:59 15 before she attempts to interview any police
16 witnesses she either speak to the chief or her
17 son's lawyer or the agent for the Attorney
18 General, and would it be fair to say that you did
19 talk to Mr. Tallis, then, after that and were
01:59 20 discouraged from doing so?

21 A Yes. And who knows how it might have ended if I
22 had just gone ahead and interviewed them anyhow.

23 Q 006767. I'm going to test your memory, here, back
24 to -- and I showed you this document last week.

02:00 25 And this relates to, again, information that the



1 police recorded about what you would have said to
2 David about getting some information that Shorty
3 Cadrain -- or had learned that he'd come home on
4 the morning of the murder only a short time before
02:00 5 Milgaard had arrived at Shorty's place; do you
6 have any recollection of that?

7 A Absolutely none, but I presume it said that I
8 would pass it on to Mr. Tallis, and I probably
9 did. I would expect that I would have felt that
02:00 10 was important.

11 Q But do you have any recollection of --

12 A But I have no memory of it.

13 Q 006797. This is July 3rd, 1969, and just to help
14 you out on some dates here, June 2nd I think is
02:01 15 when David was arrested, and the preliminary
16 hearing started August 18th, and I think around
17 early July I think Mr. Tallis has told us, or told
18 the Commission that he would have received some
19 information from Mr. Caldwell, and in particular
02:01 20 some information about what Ron Wilson, Albert
21 Cadrain, and Nichol John were saying about David.
22 Do you remember finding out about that, finding
23 out what the evidence was going to be against
24 David, just generally? And let me put it this
02:01 25 way; did you at some point learn, either from



1 David or from Mr. Tallis, that Ron Wilson, Albert
2 Cadrain, and Nichol John were giving evidence that
3 incriminated David?

4 A At some point I learned that, I don't know at
02:02 5 exactly what date.

6 Q And at this time, July 3rd, I think Mr. Tallis
7 told us that he would have had some private
8 conversations with David by this point, and
9 received some information from the Crown, and this
02:02 10 is a police report that comments on your
11 discussions with David, and it says:

12 "Mrs. Milgaard advised David
13 that Mr. Tallis thought it unwise to
14 apply for bail at this time. She also
02:02 15 confirmed her belief to him that he is
16 innocent of the charge, to which he
17 replied 'there were many things that
18 happened and evidence that would come
19 out at the prelim that they were not
02:02 20 aware of'."

21 Do you have any recollection about whether that
22 discussion took place or what that might be
23 referring to?

24 A No, but I'm sure that it's probably quite
02:02 25 accurate.



1 Q And that, at some point, would it -- did you
2 attend the preliminary hearing?

3 A Yes.

4 Q And is that, around that time, that's when you
02:02 5 would have heard some of the evidence that was
6 being presented against your son?

7 A Yes.

8 Q Is it possible that, prior to that, Mr. Tallis or
9 David might have shed some light on that for you;
02:03 10 do you remember?

11 A I did know a little of it going in, but of course
12 what happened with Nichol John was spontaneous, it
13 wasn't -- or no, she wasn't on the stand at the
14 prelim, she was -- was she?

02:03 15 Q Yeah. I think Nichol John, if I may assist,
16 Nichol John gave the statement to the police --

17 A Right?

18 Q -- on May 24th, '69 indicating she witnessed,
19 basically witnessed the murder; at the preliminary
02:03 20 hearing she testified but indicated that after
21 they got stuck, between then and I think their
22 arrival either at the motel or at --

23 A Right.

24 Q -- Danchuks', some later date she did not have a
02:03 25 recollection of anything happening, so she did not



1 repeat --

2 A What she had said?

3 Q Right, she did not repeat the incriminating parts
4 of her statement at the preliminary hearing, and
02:03 5 nor was she asked about them, it was at the trial
6 she was asked about them.

7 A Right.

8 Q Does that assist you?

9 A Yes, it does.

02:04 10 Q And so would it be fair to say, at the preliminary
11 hearing you would have known that -- what Nichol
12 John had said in her statement?

13 A Yes.

14 Q And that, at the prelim, she didn't repeat it?

02:04 15 A Yes.

16 Q I take it that's what you were referring to as
17 being the --

18 A Yes, that she didn't repeat that part of it.

19 Q And, at the time, did you think that was a good
02:04 20 thing?

21 A Yes, I did.

22 Q And you would recall being aware of the
23 implications of that at the time?

24 A Yes.

02:04 25 Q And if we could just go to 007009. This is a



1 police report of September 1, 1969, of an Officer
2 Mildner, and it details discussions with David
3 while he's in the police cells, and I can read
4 this all for you if you'd like, but we have been
02:04 5 through it I think with Mr. Tallis. And this is
6 where David talks about a pair of pants that he
7 changed in Regina:

8 "... that his defence lawyer will bring
9 the woman from Regina to testify to that
10 effect."

11 And:

12 "'Cal Tallis will bring my pants, my
13 mother asked me what the key was doing
14 with my belongings in Langenburg, I told
02:05 15 her just yesterday or the day before
16 that this key belonged to a locker in
17 the Bus Depot in Humboldt where my
18 suitcase was both the pants including
19 the striped pair of pants I changed in
02:05 20 S'toon are.'"

21 And I think this is referring to the pants that
22 he would have been wearing when he arrived in
23 Saskatoon --

24 A Right.

02:05 25 Q -- and changed out of at Cadrain's house, the



1 pants that Mr. Cadrain, and later Mr. Wilson, said
2 they observed blood on?

3 A That's right.

4 Q And do you have any recollection of what's
02:05 5 referred to in this report?

6 A I can't recall any of it. And I would have
7 thought that, in seeing this, that I would
8 probably have gone to that place to get it.

9 Q Do you have any recollection of trying to find the
02:05 10 pants that David was wearing that morning?

11 A No, no I do not.

12 Q And, again, anything further on the bus depot or
13 the key in Langenburg; does any of that --

14 A None of it rings a bell.

02:06 15 You know, I was so convinced
16 that the Canadian justice system would see through
17 this picture, and I have such hazy memories of it,
18 I just had a lot of belief that the system was
19 good and that David would be all right, and --
02:06 20 because he hadn't done anything wrong. And so
21 when I look back at some of this stuff, it's
22 upsetting for me, because I feel should I maybe
23 have been doing more then, should I not as a mum
24 have been out researching all this stuff instead
02:06 25 of leaving it to the police, who didn't do a good



1 job.

2 Q And we'll come back to those concerns a bit later.
3 But again, as far as legwork at the time, if I can
4 call it that, do you have any memory of doing
02:07 5 anything during 1969, up until the trial, as far
6 as investigating matters on your own?

7 A No, because Mr. Tallis made it -- I do remember
8 that, that he just said I was there to support
9 David and he'd look after the rest of it.

02:07 10 Q Now we went through with Mr. Tallis, and I can
11 bring up the documents if you wish, but we went
12 through some of his legal accounts that
13 confirmed -- and he testified to this effect --
14 that he would have had three, at least three
02:07 15 meetings in Prince Albert, where David was being
16 housed pending the trial, where he would have gone
17 through information with him, just alone with
18 David; do you have a recollection of that or do
19 you take issue with that?

02:07 20 A No, I think that would have been correct. You
21 know, I remember David telling me about seeing
22 Tallis, but I wasn't there for those.

23 Q And do you have a recollection, today, as to
24 what -- the details of what David's version of
02:08 25 events was back then, that -- about -- we heard



1 from Mr. Tallis, before this Commission, describe
2 what David told him back in 1969 and 1970 about
3 the events of January 30 and 31; do you recall
4 hearing Mr. Tallis' evidence about that?

02:08 5 A Yes.

6 Q And do you have your own recollection about
7 hearing about those events back then, or what,
8 would you have had the same types of discussions
9 with David?

02:08 10 A I have my own recollections about them. I don't
11 even want to go there in a sense, because it's
12 involving the compact, which is nothing, but I
13 remember thinking that that's something that
14 David, if he found something in the car, he could
02:08 15 throw out, because it's the kind of thing he might
16 do. But my recollection of it was that he didn't
17 say that to Tallis, and yet I believe Mr. Tallis'
18 evidence was that he did.

19 Q Okay. And do you recall being present, then, when
02:09 20 David said that didn't happen or he didn't think
21 it happened?

22 A No.

23 Q And so what is it that you're saying that you
24 don't think David said that?

02:09 25 A I just had the feeling that he hadn't said that,



1 because he looked surprised.

2 Q And when did he look, I'm sorry, when did he look

3 --

4 A At the trial.

02:09 5 Q Okay. Now Mr. Tallis has testified that when he
6 met with David on one or all three of these
7 occasions, he would have gone through the case
8 that the Crown was presenting, --

9 A Uh-huh.

02:09 10 Q -- and that David told him that yes, he recalls
11 that happening, and he did grab it and he did
12 throw it out the window, but he didn't know why.
13 And, again, are you saying David told you
14 differently than that?

02:09 15 A My understanding from him was that he didn't throw
16 the compact out, and yet, as a mum, I could
17 understand that he could have.

18 Q And would that be based on a discussion you had
19 with him at the time?

02:10 20 A Yes.

21 Q And who else would have been present during that
22 discussion, or would that --

23 A I think just David and I.

24 Q Now, again, you said you think that's something
02:10 25 that he could have done?



1 A Like sometimes we talked, when Tallis was there,
2 that the three of us were together and David and I
3 would just talk together while Tallis was going
4 over things, and I believe it was at that time. I
02:10 5 have just a snippet of remembrance there.

6 Q And would it be fair to say that, at that time,
7 the compact was a piece of evidence that was
8 certainly viewed by some as being incriminating?

9 A Yes, and it was up until the time that I saw Gail
02:10 10 Miller's purse, and heard the testimony that it
11 was a purse with other things in it and realized
12 that there wasn't room for another makeup purse to
13 go in her purse when we put all the things in it.

14 Q And I think Mr. Tallis argued before the jury that
02:11 15 point, saying --

16 A Yes.

17 Q -- that if that event did happen with the compact
18 it couldn't have been Gail Miller's, because her
19 purse was full?

02:11 20 A That's right.

21 Q Do you recall that being -- so again, just back on
22 whether David did or did not throw the compact
23 out, you recall something about him saying he
24 didn't think he had?

02:11 25 A That's right.



1 Q What about the balance of what -- and I can go
2 through, I'll go through just the key points in a
3 moment -- but do you recall anything else from Mr.
4 Tallis' evidence that struck you as being
02:11 5 different than what you remembered about David's
6 version of events back then?

7 A No.

8 Q And maybe I'll just go through, what -- what Mr.
9 Tallis told the Commission is that on the trip
02:11 10 from Regina to Saskatoon, that David hold him that
11 he had a knife, and I think he called it a, not a
12 paring knife, not a jackknife, but a soft blade or
13 some type of blade that might be used to get -- to
14 break into a door or something like that. Again,
02:12 15 do you recall having that --

16 A I was very surprised when I heard that, him give
17 that evidence, because I was not aware of that at
18 all.

19 Q And do you have any recollection of talking to
02:12 20 David about that, is --

21 A No, none at all.

22 Q And so is it a case where, did David tell you back
23 in 1969 or '70 that he didn't have a knife, or is
24 it a case that it didn't come up?

02:12 25 A It didn't come up.



1 Q And, secondly, the elevator break-in in I think it
2 was Aylesbury; do you have a recollection of
3 talking to David about that back then?

4 A No.

02:12 5 Q And Mr. Tallis told the Commission that when he
6 spent a fair bit of time with David trying to
7 figure out where in Saskatoon their vehicle was
8 when they arrived, and he said based on those
9 discussions he believed that David and Ron and
02:12 10 Nichol would have been driving between 20th and
11 22nd Street somewhere on the west side, he
12 couldn't pinpoint the avenue; again, do you have
13 any recollection of talking to David about that in
14 any detail?

02:13 15 A I remember talking about it in some detail, but I
16 can't remember the details, other than he kept
17 talking about the garage and the soup and the
18 various -- like the kind of soup that he had, and
19 it was a package, and that surely we could go out
02:13 20 there and find it, and my understanding was that
21 Tallis was going to check all those.

22 Q Okay. The documents, certainly that I have seen
23 in any event, I think the soup reference comes
24 quite a bit later, I think in 1981 and then again
02:13 25 at the Supreme Court. I don't recall seeing in



1 any of the -- I'm not suggesting --

2 A No, no, but he did tell me that, you know, that
3 when they -- when they came into town, that -- and
4 he described a big building downtown and stuff
02:13 5 like that, I can remember that, but my -- you
6 know, maybe I'm being influenced by later memory,
7 I don't know. That is a possibility. But I would
8 have thought it was at the time of trial.

9 Q And then again, would it be fair to say that
02:14 10 your -- your interview -- maybe we can do it this
11 way. When you talked to David about the events of
12 that morning, as far as the details, would you
13 have gone into less detail than Mr. Tallis might
14 have for his preparations for the trial than you
02:14 15 would have?

16 A No, I think at that time I was really letting Mr.
17 Tallis run the show, because I'm -- I'm just a
18 mum, you know, that didn't know much about
19 anything except --

02:14 20 Q Let me --

21 A -- David was innocent.

22 Q Yeah. And let me restate it. Is it fair to say
23 that, at that time, you left it up to Mr. Tallis
24 to get all the details from David?

02:14 25 A Yes.



1 Q As opposed to you?

2 A Yes, that's right.

3 Q And --

02:14 4 A Because I had been pretty well told by Mr. Tallis
5 that he would do that and he would look after
6 that, and that I shouldn't be thinking about going
7 out to see witnesses or doing anything, that
8 that's what we had him for.

9 Q And would it be fair to say that Mr. Tallis would
02:15 10 have received more and more detailed information
11 from David, in his interviews with him, than you
12 would have in your discussions with David?

13 A Absolutely.

14 Q Let's talk a bit about your recollection of the
02:15 15 motel room incident and what you remember from
16 your discussions with David, and I'll go through
17 this a bit later, but you will recall at trial
18 Mr. Melnyk and Mr. Lapchuk testified about an
19 incident involving David in a motel room a number
02:15 20 of months after the murder and testified about his
21 conduct with the pillow and words that he spoke
22 after a newscast came on about Gail Miller; do you
23 know -- you recall that?

24 A I do.

02:15 25 Q And did you have any discussion with David at the



1 time about (a), whether he was in the motel, and
2 (b), whether he remembered or whether he thinks he
3 would have done something with the pillow and said
4 the words attributed to him?

02:16 5 A I don't have any real memory of talking to David
6 about that. I remember being shocked by the
7 testimony when it came out, I remember thinking
8 that's David, he could easily do something like
9 that as a joke, but not the way it was being
02:16 10 presented.

11 Q And there's a document, and I'll show it to you
12 when we get to the Melnyk and Lapchuk part, where
13 I think you subsequently stated you talked to
14 David about that and he said he was in the motel
02:16 15 room, he was certainly there and he was stoned and
16 he couldn't recall --

17 A Anything.

18 Q -- making it, but that if he did, it would be a
19 joke?

02:16 20 A Uh-huh.

21 Q Do you recall having a discussion with him about
22 that?

23 A I think that's where the discussion came from,
24 yeah.

02:16 25 Q Let's talk about the scribbler for a moment, we've



1 heard some evidence on that, that -- let me just
2 call up the document, 301682. Sorry, it's 301675
3 is the doc. ID and go to 301682. Do you have a
4 recollection of David putting together a scribbler
02:17 5 for Mr. Tallis?

6 A Yes, I do.

7 Q And tell us what you remember about that.

8 A Well, I thought it was a scribbler that I turned
9 over to you --

02:18 10 Q Okay.

11 A -- that someone else had rewritten out for him.

12 Q And is this the document? This was appended to
13 his affidavit in 1986.

14 A Yeah.

02:18 15 Q So this is the document?

16 A But is that document that you are picturing right
17 there, is that a yellow notebook?

18 Q We don't know, we simply have a photocopy.

19 A Oh, okay.

02:18 20 Q And I believe there's a reference in 1981 that
21 Peter Carlyle-Gordge had the original --

22 A Notebook?

23 Q -- notebook.

24 A Yeah.

02:18 25 Q And let me just back up, and I think what



1 Mr. Tallis, what his evidence was is that he had
2 asked David to write out matters while he was in
3 Prince Albert, in jail there --

4 A Uh-huh.

02:18 5 Q -- about the events, and it included some
6 information about his family life and background.
7 Mr. Tallis at the Supreme Court and before this
8 Commission looked at this document here and said
9 no, that's not the document I received, not only
02:19 10 is it not the form I received it in, but it's
11 different information than I received, I received
12 something different in David's notes and what I
13 got from David would be on my file which has since
14 been destroyed.

02:19 15 I think what David's version of
16 events, certainly before the Supreme Court and his
17 affidavit, was I was asked to write out my
18 recollection, I put it in a scribbler, I may have
19 got someone to rewrite it because my handwriting
02:19 20 wasn't neat, but this is what I think I gave to
21 Mr. Tallis.

22 A Uh-huh.

23 Q And again, I'm just wondering if you have any
24 knowledge of that or any recollection about the
02:19 25 scribbler or this document or where it came from



1 other than what we've already heard?

2 A No. I think that looks like the document that I
3 got copies from him, like, that -- I remember a
4 yellow scribbler and it looking like that and
02:19 5 realizing that someone else had written it for
6 David.

7 Q And did you get that from David then?

8 A Yes, I did.

9 Q And so it may well be, I think what Mr. Tallis
02:20 10 said is the document that he got from David he
11 kept --

12 A And that's possible.

13 Q -- on his files, and so one suggestion is that
14 there might be two sets of notes that David made,
02:20 15 one that was given to Mr. Tallis and one that he
16 prepared and kept. Is that possible?

17 A Yes, that's possible.

18 Q Let's turn now to the trial itself and we've heard
19 some evidence from Mr. Tallis, some from Mr.
02:20 20 Caldwell about the trial itself, we've got the
21 transcript, we know what words were spoken, but I
22 would like to just go through and get your
23 observations if I may on a few matters. Can you
24 tell us first, you were obviously present when
02:20 25 Nichol John testified; correct?



1 A Yes.

2 Q And can you tell us your recollection of that
3 evidence and, in particular, when the, her May
4 24th, 1969 statement was put to her?

02:20 5 A And you are talking about the trial as opposed to
6 the prelim?

7 Q Yes, this is when the jury was present and this
8 would be when the statement that she gave to the
9 police about witnessing the murder was read out to
02:21 10 her and we've gone through on a couple of
11 occasions her exchanges with the judge at the
12 time.

13 A It was such a drama, it was just amazing, and I
14 can remember it because it frightened me, I
02:21 15 thought what in the world is a jury going to think
16 about this woman. It was just -- the way she was
17 saying it and crying and the judge intervened and
18 spoke to her, that hearing -- and I know that
19 afterwards he said, you know, don't listen to it,
02:21 20 but if I had been on that jury and hearing what
21 she was saying, I would certainly be condemning
22 David and so I was frightened, it scared me to
23 death.

24 Q Can you -- and I'll ask you this question as we go
02:22 25 through 1970 through 1980 through 1990, but back



1 at that time did you have any -- what were your
2 thoughts about how was it that Ron Wilson, Nichol
3 John, Albert Cadrain were saying these things that
4 were, for lack of a better word, inconsistent with
02:22 5 David's innocence and incriminating him?

6 A I really -- I think it was about that time that I
7 started to realize that the way their stories were
8 changing, that the police had something to do with
9 how they were changing what they were saying. I
02:22 10 mean, originally they all said that nothing had
11 happened and Mr. Tallis brought that out and then
12 suddenly they are all turning around and saying
13 that something did happen, so I really felt that
14 they had been pressured.

02:23 15 Q Okay. And that was a thought you would have had
16 at the time of trial?

17 A Yes.

18 Q And what about Ron, Albert and Nichol themselves,
19 did you talk to David or have any conclusions as
02:23 20 to why you thought they might lie?

21 A Well, no, because of the way it happened, it came
22 up so swiftly, it wasn't something you got to talk
23 about.

24 Q So again just back on Nichol John. Mr. Tallis --
02:23 25 and I appreciate what you said about your



1 observations -- Mr. Tallis testified that his
2 concern, or his take on the matter was that the
3 jury may conclude that Nichol was trying to help
4 David and that someone on behalf of David had got
02:23 5 to her to cause her not to repeat the
6 incriminating evidence?

7 A Yes, that was certainly something that we thought
8 about.

9 Q And was that --

02:23 10 A And that it might look that way to the jury.

11 Q And again, was that an observation that you would
12 have made at the time, that if you were on the
13 jury, I think you said you would condemn David?

14 A I would have, yes.

02:24 15 Q What about Ron Wilson, do you recall anything that
16 stands out in your mind about the manner in which
17 he testified?

18 A No, except that he, you know, didn't seem to look
19 at David or me.

02:24 20 Q What about Albert Cadrain, did you notice
21 anything, did you notice anything unusual about
22 his evidence while he testified?

23 A I can't remember his.

24 Q Any concerns about his mental condition or mental
02:24 25 illness at the time, do you recall anything of



1 that nature?

2 A No, I can't.

3 Q Let's talk about Craig Melnyk and George Lapchuk,
4 I think we can probably deal with them together.

02:24 5 Now, that evidence came in at the very end of the
6 trial; is that right?

7 A Yes, and it was a bombshell.

8 Q And can you explain that, elaborate on that?

9 A Well, I mean, it was something we knew nothing
02:24 10 about and then suddenly -- and I just, I really
11 felt that it was made up, that I just didn't
12 believe it.

13 Q Now, let me just pause there for a moment. When
14 you say you thought it was made up, I think you
02:25 15 earlier said that the conduct and incident was
16 something you thought David could have done
17 jokingly?

18 A Yes, but the way it was being presented was not in
19 a joking fashion.

02:25 20 Q Okay. So again, just back to your reaction at the
21 time, was their evidence something that, again I'm
22 just looking for your observation at the time,
23 what was your reaction and what concerns did you
24 have as to how a jury might consider that
02:25 25 evidence?



1 A Up until Lapchuk and Melnyk had come on the stand,
2 I had high hopes for David's exoneration at that
3 point, but once they were on the stand, it seemed
4 to me that it was going to be much more difficult,
02:25 5 and yet I can also remember the judge giving this
6 tremendous charge to the jury and it was almost
7 like he was saying you can't find him guilty, and
8 we went back, David and I, we went back and played
9 cards in the jail cell in behind with the guards,
02:26 10 we were just so high, we were sure that he was
11 going to be freed, and so when we got back in
12 there and got that --

13 Q Do you have a recollection of, again Mr. Tallis
14 talked about when this evidence came up from
02:26 15 Melnyk and Lapchuk about his efforts to interview
16 Ute Frank. Do you remember Mr. Tallis telling the
17 Commission about that?

18 A Yes, I do.

19 Q And again, do you have any recollection back in
02:26 20 1970 being aware about what Ute Frank would say if
21 she was called to testify?

22 A No.

23 Q Is that something that maybe wasn't shared with
24 you by Mr. Tallis?

02:26 25 A I don't think that it ever was.



1 Q And again, is it fair to -- and please tell me if
2 I'm wrong -- is it fair to say that as far as the
3 conduct of the defence at the time, that
4 Mr. Tallis was handling that and your role at that
02:27 5 time was, I think as you state, to provide support
6 to David?

7 A That's it.

8 Q And so that Mr. Tallis wouldn't be consulting with
9 you and your husband about strategy and about
02:27 10 witnesses and things of that nature?

11 A No. We were leaving that entirely to him.

12 Q Now, I just want to call up if we can, just to
13 talk about this motel room reenactment, from your
14 book, and it's page 269369. I'm sorry, I'm not
02:27 15 sure I have --

16 A What page in the book?

17 Q It is page 42, but it will come up on the screen.
18 I think the -- do you have the doc. ID for that?
19 And so this would be your 1999 version and I just
02:28 20 want to read this part and ask you about it. It
21 says:

22 "It came as a complete surprise --"

23 COMMISSIONER MacCALLUM: What's the doc.
24 ID, please?

02:28 25 MS. BOSWELL: 269317.



1 COMMISSIONER MacCALLUM: Thank you.

2 Q And you say:

3 "It came as a complete surprise when the
4 Crown introduced two witnesses who
02:28 5 hadn't testified at the preliminary.

6 The witnesses, George Lapchuk and Craig
7 Melnyk, told of a bizarre confession
8 made by David, supposedly during a party
9 in a room at the Regina Park Lane Motel
02:28 10 in May 1969. They said David re-enacted
11 the murder after seeing it on the
12 television news. According to Lapchuk
13 and Melnyk, David joked that he raped
14 her and stabbed her fourteen times, then
02:28 15 re-enacted the crime, stabbing a pillow
16 repeatedly. No one asked them whether
17 David was joking or sarcastic."

18 And let me just pause there. I think that would
19 be -- that's an accurate statement of what you
02:28 20 would have observed at the trial?

21 A Yes.

22 Q And I think Mr. Tallis' evidence was that he did
23 not ask them if they thought David was joking or
24 sarcastic because he felt that their evidence
02:28 25 would be unfavourable. Do you remember Mr. Tallis



1 saying that?

2 A Yes, I do, and I know that at the time, as I said
3 here, I looked at the jurors' faces and I knew
4 that they believed it and yet knowing David, I
02:29 5 knew that if he did do it, it would have been
6 joking, it would have been to shut them up.

7 Q And that's what you say here:

8 "The ironic part was I could easily
9 imagine how David might have jokingly
02:29 10 re-enacted the incident just to stop his
11 friends from asking him about being
12 questioned by police. I badly wanted to
13 stand up and say, "Hey, my son would
14 have said that just to get them off his
02:29 15 back," never, ever dreaming that it
16 could be said in a courtroom about him."

17 And would that accurately reflect what you knew
18 and thought at the time?

19 A Yes.

02:29 20 Q Now, I want to, and again just as far as -- does
21 this assist you at all in your recollection about
22 what you may have talked to David about as far as
23 that incident, about whether he felt that he may
24 have spoken those words and committed those
02:30 25 actions in a joking manner?



1 A He didn't remember anything about it, but he said
2 he could have.

3 Q And again at that time, putting aside I think
4 whether it was -- let me ask it this way. At that
02:30 5 time, at the time of trial, did you have any view
6 or belief as to whether or not at least the
7 conduct and words attributed to David did or did
8 not happen?

9 A You are going to have to rephrase that.

02:30 10 Q Sure. I'm sorry, I didn't ask it very well. At
11 the time when you heard this about what Melnyk and
12 Lapchuk said, and I think here in your book you
13 said I could easily imagine how David might do
14 that in a joking manner --

02:30 15 A Uh-huh.

16 Q -- and at the time of trial did you think that,
17 okay, David either did or probably did do
18 something with a pillow and utter the words, but
19 he did it in a joking manner, or did you think no,
02:31 20 that entire incident is made up, nothing happened?
21 Are you able to help us out as to what you thought
22 at the time?

23 A At the time I really thought that, yes, it could
24 have happened, but that it would have been in a
02:31 25 joking manner, that would be the only way that I



1 could ever see my son doing anything like that,
2 and it would be to get them off his back.

3 Q Right. And I guess the other explanation
4 consistent with David's innocence would be that
02:31 5 the event didn't happen at all; right? One of two
6 explanations would be they are outright lying,
7 there was no incident in a motel, there was
8 nothing with a pillow and no words spoken by
9 David; correct? That would be one possibility?

02:31 10 A Uh-huh, uh-huh.

11 Q But the other possibility consistent with his
12 innocence is that it was said in a joking manner?

13 A But then I would wonder why these guys would come
14 forward and say it, and at the time I believed in
02:31 15 people.

16 Q And so again I'm just trying to understand, am I
17 right that at the time of the trial that you
18 thought, okay, he probably did do it?

19 A Yeah, and it could have happened.

02:32 20 Q In the motel room, but in a joking manner?

21 A Yeah, in a joking manner.

22 Q Now, with some trepidation I want to get into the
23 secretor issue at the time of trial, and again, I
24 appreciate that we've heard lots of information
02:32 25 and evidence later about Dr. Ferris and other



1 matters, but can you go back to the time of
2 trial --

3 COMMISSIONER MacCALLUM: I wonder if we can
4 take a break?

02:32 5 MR. HODSON: Oh, sure.

6 *(Adjourned at 2:32 p.m.)*

7 *(Reconvened at 2:54 p.m.)*

8 BY MR. HODSON:

9 Q Mrs. Milgaard, when we adjourned for our afternoon
02:54 10 break we were just getting into the secretor issue
11 and I would like to know what you recall, again
12 from the time of trial if you are able to, as
13 opposed to what you learned later, but what do you
14 remember about the frozen semen and that evidence
02:54 15 and this whole issue of antigens and the secretor,
16 do you have any recollection that might assist us
17 about what you knew at the time?

18 A I was very confused at what they were, the
19 information that they were giving and I felt that
02:54 20 if I didn't understand it, that the jury wouldn't
21 understand it either. I don't remember a lot of
22 the evidence that was given, but on the one hand,
23 our lawyer was saying this shows it couldn't be
24 David and yet the way the prosecutor was
02:55 25 explaining it, it sounded the opposite.



1 Q And --

2 A And I found it very confusing.

3 Q Okay. And I think what we saw from certainly the
4 closing addresses to the jury and what we heard
02:55 5 from Mr. Tallis before the Inquiry is that he felt
6 that on the evidence, that David was a
7 non-secretor, that unless there was evidence that
8 somehow blood got into the semen, that it would
9 exclude David. Do you remember that being one of
02:55 10 his grounds, do you remember talking to him about
11 that as being --

12 A Oh, that was the really good news, that he was
13 excluded.

14 Q But do you remember that being part of the
02:55 15 evidence that he was putting forward through Crown
16 witnesses, that lookit, some physical evidence
17 will exclude or might exclude David?

18 A Yes.

19 Q Do you remember that being an argument?

02:56 20 A I do.

21 Q And a significant argument at the time?

22 A A significant argument.

23 Q And at the end of the trial do you have any
24 recollection about -- again you sat and heard the
02:56 25 evidence, I think you said you were confused by



1 it; is that right?

2 A Totally confused by it.

3 Q And what do you -- you talked about, and again I'm
4 trying to get your memory at the time, was there
02:56 5 something that Mr. Caldwell had said or done that
6 caused you to think that he was saying it did
7 belong to David or was that your impression?

8 A My impression was in the way that he was
9 presenting it, although the evidence excluded him,
02:56 10 he was somehow going around saying that although
11 if there's no blood, that it would exclude him,
12 but there is blood and so it doesn't exclude him.

13 Q I think what we saw he said to the jury in his
14 closing address is that it neither implicates him
02:57 15 nor does it exclude him was his position at the
16 end.

17 A Yeah.

18 Q Do you remember that being the case, that it
19 doesn't say it's David, but it doesn't exclude
02:57 20 him, and Mr. Tallis was saying it excludes him?

21 A It excludes him, and my feeling at that time was
22 this was my take on it, what I got from him was
23 that he was saying it could be him.

24 Q And who are you referring to when you say he?

02:57 25 A Caldwell was saying it could be him.



1 Q Now let's talk about the -- just hang on one
2 minute -- about David's decision to testify. Can
3 you tell us what you recall about that and how
4 that came about? David's decision -- at the end
02:58 5 of the trial I think there was, at the end of the
6 Crown's case there would have been a discussion
7 about whether or not David would testify. Do you
8 remember being part of that discussion?

9 A I do, and I remember Lorne and I telling him to go
02:58 10 by the advice of his lawyer.

11 Q And I think what Mr. Tallis has told us, and I
12 think David even confirmed this in his evidence,
13 that he wanted to testify, but that Mr. Tallis'
14 advice was that he should not testify but that it
02:58 15 was his decision, and that after he consulted with
16 you and Lorne, he came back and instructed
17 Mr. Tallis, based on his advice, that he would not
18 testify; is that a fair --

19 A That's right.

02:58 20 Q I want to go ahead to the -- after the Queen's
21 Bench Court was done, the matter was appealed to
22 the Saskatchewan Court of Appeal I think in
23 November, 1970; is that right? I think that's the
24 date.

02:59 25 A I think so.



1 Q Did you attend at the Court of Appeal when the
2 matter was argued?

3 A No, I did not.

4 Q Did you have discussions with Mr. Tallis around
02:59 5 that time or David or were you simply informed
6 that that was going on?

7 A We were simply informed that that was going on.

8 Q And then as well --

9 A At that point I had moved into Winnipeg with my
02:59 10 two girls.

11 Q Okay.

12 A We left shortly after because of what was going on
13 in the small town where we were.

14 Q Would it be the repercussions from David's
02:59 15 conviction; is that --

16 A That's right.

17 Q And so what -- after the Court of Appeal matter
18 was argued, I think then an application was made
19 by David personally to, for leave to the Supreme
02:59 20 Court of Canada. Do you remember that happening
21 or --

22 A Yes, I do.

23 Q And were you assisting him with that at all or do
24 you remember much about that?

02:59 25 A I don't remember all of the details on the appeal,



1 but I know we had worked somewhat together on it,
2 that I had gone up to see him. We were -- he was
3 in Prince Albert at the time.

4 Q Can you tell us again, after he was convicted by
03:00 5 the jury, after trial did you discuss with him
6 appealing the matter or were you aware that there
7 were appeal options? Tell us what you were
8 thinking at the time.

9 A Well, we didn't know how the justice system worked
03:00 10 and so when this happened and when we talked to
11 Mr. Tallis about it, he said we could appeal, and
12 I guess as a mom I was so shattered when this
13 happened, I remember the day after the verdict
14 going back to Langenburg and wondering how I was
03:01 15 going to tell the children and it was a difficult
16 time, and then we shortly moved out of there and
17 we went to Winnipeg, I took the two girls and went
18 to Winnipeg because I knew that we would have to
19 start again, it was obvious. There were some
03:01 20 people that were definitely supporting us in
21 Langenburg, but there were some that definitely
22 weren't and it was hard on the other children.

23 Q And would you have been generally aware that David
24 had some legal recourse after the verdict to try
03:01 25 and appeal the matter?



1 A Yes, I knew that, but didn't really get involved
2 in it because I went to Winnipeg with the two
3 girls and I held down three jobs just to start out
4 in a new location. We didn't want to give up our
03:01 5 home in Langenburg because we were told that if we
6 were to go to another trial and if we needed to
7 get David out on bail, that we would need to have
8 the house, so we were trying to keep the house and
9 also get another house in Winnipeg and at that
03:02 10 time we didn't have the money to do it, so --
11 actually, we just sold the house, I just gave the
12 house to the United Church about two years ago, so
13 we've had it all these years, but none of our
14 children ever wanted it again, nobody wanted to go
03:02 15 back to it.

16 Q And so again after the conviction, though, you
17 would have been aware generally that there was
18 recourse to try and appeal the verdict; is that
19 fair?

03:02 20 A Yes, because David was trying to do that and --
21 but I was so tied up with three jobs at the time
22 and in another city and not up to see David that
23 often because it was such a long drive to Prince
24 Albert, that I wasn't as involved in it as I think
03:03 25 now I should have been.



1 Q And why do you say that?

2 A Well, because in hindsight you can go back and you
3 can think, well, maybe if I had started
4 investigating right then, but I had my whole
03:03 5 family falling to pieces around me and I had to do
6 first things first and look after them.

7 Q And did you have any expectation that David's
8 conviction would be fixed somehow by this person?

9 A Somehow I felt that, you know, I believed in the
03:03 10 justice system, I believed that he would somehow
11 get through to them his innocence.

12 Q And so I think what the record shows is his appeal
13 was dismissed in November of -- January of 1971
14 and then later that year the Supreme Court
03:03 15 dismissed his application for leave and you would
16 have become aware of that?

17 A Yes.

18 Q So at the end of 1971, is it fair to say that you
19 would have been aware and David would have been
03:04 20 aware that certainly all of his legal avenues or
21 appeals had been exhausted; is that correct?

22 A And the only way, at that point we felt of getting
23 him out, was on parole.

24 Q And so let's just talk about that a bit, and let's
03:04 25 go through if we can again just generally the



1 period 1971, from the time David's appeals were
2 concluded until I think, is it fair to say, in
3 1980, late 1980 you began significant efforts to
4 re-open the case; is that a fair way to put it?

03:04 5 A Yes, because we felt, we kept feeling that it
6 would have to be investigated and we just didn't
7 know where to start. I had started by going
8 through newspaper clippings of any of the rapes or
9 any violent crimes in the area and I spent hours
03:05 10 at the public library reading about things in
11 Saskatoon.

12 Q I'm sorry, would that be in the '70s then?

13 A Oh, yes.

14 Q And is that when you would have got copies of the
03:05 15 articles that we've seen in this Inquiry, the
16 December, 1968 article about the rapes?

17 A Yes.

18 Q And so in the '70s you would have had those
19 newspaper articles?

03:05 20 A That was just prior to the time I think those
21 particular -- that particular article I did not
22 find until, I think Bob Bruce found that as a
23 matter of fact when he was doing his research, but
24 I had not seen that. The ones that I had
03:05 25 primarily got involved with were Mahar and a few



1 other people that came up on my radar.

2 Q Okay. And what about, there is the February 4th,
3 1969 -- and I'm sorry, I don't think, I can't
4 remember --

03:05 5 A I know 'rapist', that one, that's Bob Bruce's, --

6 Q Did that --

7 A -- the one that he found.

8 Q And that's the one that talks about the Gail
9 Miller murder?

03:06 10 A Yes.

11 Q Would that have been something you would have
12 looked at in the '70s?

13 A Oh no, this wasn't about the Gail Miller murder,
14 this one. The one I'm talking about was the one
03:06 15 that says 'rapist' in the title or --

16 Q Okay. And maybe a bit later I'll bring those up
17 and we can try and get some more information on
18 that.

19 A Uh-huh.

03:06 20 Q Is it correct to say, you talked about parole, and
21 maybe I can summarize it this way -- and you
22 please tell me if I'm wrong -- that after David's
23 appeals were exhausted in 1971, was there some
24 expectation that he would get out of jail on
03:06 25 parole, I think within seven years was the norm at



1 that time; do you remember that?

2 A Yes, we did.

3 Q And so was it a case of saying, "okay, well he'll
4 be out in seven years, and once we deal with some
03:06 5 other things that we'll then take a look at the"

6 --

7 A Well we thought that we had to save our money and
8 put money together to have so that we could hire
9 investigators and do something with it, and David
03:07 10 felt that we should do it together, --

11 Q And --

12 A -- as a family.

13 Q Okay. And I'm going to ask this question, and
14 please don't take it as me being critical, but
03:07 15 it's the question that a number of the witnesses
16 asked you in 1981 when you went to see them, and
17 it was "why, why now, and why not ten years ago?"
18 Do you remember, I think Nichol John and perhaps
19 even Ron Wilson, said that to you in 1981; do you
03:07 20 remember that question being asked of you then?

21 A No, I can't recall it exactly, from what you
22 describe.

23 Q And again, just to that, what was going on during
24 the 1970s that either prevented from you or caused
03:07 25 you not to pursue the re-opening with the same



1 vigour you did starting in 1981?

2 A Well, it started in 1980.

3 Q Or 1980?

4 A Yeah. And the reason I started in 1980 was

03:08 5 because I knew that there was no way David was
6 going to get out on parole any more. The idea was
7 that he was going to head up the investigation, I
8 was a mum, I didn't know, you know, how to even
9 start something like this at that time, we had the
03:08 10 other children growing up, and there were lots of
11 difficulties because of what they had gone
12 through. The whole family was in bad shape.

13 Q Okay.

14 A And so nothing really was done, except for the
03:08 15 work that I was doing at the library and going
16 through and pulling up documents, and trying to
17 see if I could find a more likely suspect than
18 David --

19 Q Okay.

03:08 20 A -- at that time.

21 Q So what were you looking for, what newspapers and
22 what time frames?

23 A Oh, all the *StarPhoenix*, all the Saskatchewan
24 papers, that's what I was going to the library to
03:08 25 look at.



1 Q And from what time period; around the time of the
2 murder?

3 A Well, yes, and before. But I missed the one about
4 the warning of the possible rapist, --

03:09 5 Q And is that --

6 A -- because that was one that Bob Bruce found
7 later, and I had never seen that before.

8 Q So is it a case -- and, again, we'll get to that
9 when we deal with it in the late '80s -- but is
03:09 10 that a case where you didn't see the article at
11 all or you didn't realize the significance of the
12 article until later?

13 A No --

14 Q You may have seen it but didn't see the
03:09 15 significance of it?

16 A I think I would have seen the significance if I'd
17 seen the article, I don't know, because it was
18 pretty significant when we finally found it.

19 Q Okay. But, again, you would be looking in *The*
03:09 20 *StarPhoenix* and the *Leader-Post* --

21 A Yes.

22 Q -- around '68-'69, for other suspects?

23 A And well this was mostly, I must say I was looking
24 back at those dates, but this was in '72 and '73
03:10 25 and '74.



1 Q Right. So again, just for the decade of the '80s,
2 I think what you've told us is, number 1, you
3 thought David would get out on parole in seven
4 years and then he could focus his efforts, when he
03:10 5 got out of jail on parole, --

6 A Uh-huh.

7 Q -- to try and undo the conviction; is that fair?

8 A Right. And we were corresponding back and forth
9 about the ones that -- the people that I did find
03:10 10 and the things, you know, at that time.

11 Q And, secondly, I think you've told us as well
12 that, with your other children and other matters,
13 that you had to devote time to your family and
14 other responsibilities during that time period?

03:10 15 A Yeah. And I was working, travelling, I was away a
16 lot, and they were difficult times.

17 Q Now I understand, and there is a couple of, I
18 think, significant events that happened in the
19 '70s involving David's escape from prison that
03:11 20 caused you to rethink matters, is that a fair way
21 to put it -- or not to rethink matters, but caused
22 you to rethink when he might get out of jail; is
23 that fair?

24 A Yeah. Well, that was when he escaped in
03:11 25 Dorchester, New Brunswick. And the thing was you



1 never heard about anything like that. I came home
2 one night and read about it in the newspaper, that
3 they were out searching for him with dogs, and I
4 phoned the prison the next day but they wouldn't
03:11 5 tell me anything, and it wasn't until the
6 following Monday, and so I didn't tell my husband
7 or the children about what was happening to David.
8 But he had just got to a stage where he couldn't
9 stand it, and he'd heard about somebody that was
03:11 10 breaking out and he said "I'm going with you", and
11 he'd gone.

12 Q Maybe, just so that we can get to some dates
13 around this, I'll call up 332798.

14 A That's another thing that's so wrong with the
03:12 15 prison system and everything. He's in Dorchester,
16 New Brunswick, we're in Manitoba, the only time we
17 would be able to get to see him was when we were
18 on hol -- having holidays. I mean it's such a
19 long way and, unfortunately, that's what happens
03:12 20 with prisoners a lot of time, that they're
21 separated from their families.

22 Q Okay. 332798. And just, I think this document
23 maybe summarizes just the dates, I don't think we
24 need to go through it in great detail. It's
03:12 25 September 26th, '73, so this would be I guess



1 three years after the conviction, and it just
2 talks about the escape on March 25, 1973, and it
3 says:

4 "... although not the instigator of the
03:12 5 escape, is considered capable of any
6 offence.",

7 and talks a bit about it. So that's the incident
8 you described to us earlier?

9 A Yes, in Dorchester, New Brunswick.

03:13 10 Q Okay. And then if we could go to 190437. 190437.
11 And again, this document is a penitentiary
12 placement report, I think it's dated maybe 1986,
13 but I think what this shows is -- and it's my
14 understanding that, as a result of the escape in
03:13 15 1973 -- actually, I'm going to have to redo that,
16 can we get the full -- that as a result of the
17 escape in 1973 some time was added, I think he got
18 some concurrent time, that would have affected his
19 parole eligibility; is that correct?

03:13 20 A Yes.

21 Q And so that, as a result of his escape, instead of
22 parole in let's say 1976-'77 it was now going to
23 be later; is that fair?

24 A Yes.

03:14 25 Q A number of years later?



1 A A number of years later. Although I honestly
2 don't know that I was aware of that at the time.

3 Q Okay. And then, again, I think; would that have
4 been a factor, again, when David escaped in 1973,
03:14 5 with -- did -- was that a factor or tell me how
6 that affected your thinking about your plan about
7 tackling this after he got out of jail?

8 A Well, the biggest problem with David was that he
9 just would not settle down. He was innocent, he
03:14 10 wanted out, he -- he just refused to accept what
11 was happening to him, and we're talking to him and
12 saying, "you know, David, if you would just settle
13 down and be a good prisoner you'll get out faster
14 and we will be able to prove your innocence
03:14 15 faster", but he was just railing against the fact
16 that he shouldn't be there, and it, it made it so
17 difficult.

18 I can remember taking, like for
19 her holidays, summer holidays, we took Maureen
03:15 20 down to New Brunswick, and how she used to think
21 she was visiting her brother in castles, but she
22 didn't know why they wouldn't let him out of the
23 castle to come home with her. I mean she was just
24 a little child and, as a family, we were so split
03:15 25 as well. It seemed that I was getting nowhere on



1 my own. Other than trying to put some money
2 together to be able to go to someone, we knew that
3 we'd need thousands of dollars, it wouldn't be
4 done. And my wages were being taken up in just
03:16 5 raising the kids and just looking after Maureen
6 and Susan and Chris, and yet, I mean, Susan
7 started to work as well, Chris started to work
8 too, and we pooled money together to try to sort
9 of start, but it -- expenses and everything in the
03:16 10 city were high and we weren't really getting
11 forward that much with a lot of money to help him
12 with.

13 Q If we could go to 029236. And, again, I just want
14 to go through a couple of documents that might
03:16 15 assist you in shedding some light on what was
16 happening to David in his situation leading up, I
17 think 1980 was when he escaped --

18 A And was shot.

19 Q -- and was shot?

03:16 20 A Uh-huh.

21 Q Okay. And so this would be about a year prior.
22 And after I go through this I'm also going to ask
23 you about what was happening to David right before
24 his escape, I think you had some discussions with
03:17 25 him about his situation, was he frustrated about



1 what was happening in jail at the time?

2 A Yes, he was.

3 Q And this is a letter, again, from you to I think
4 Claire Hoffer at the institution, and it talks
03:17 5 about a recommendation that David be sent to Oak
6 Ridge for treatment. You say:

7
8 "It is a mental institution,
9 not associated with the federal
10 penitentiary system, but a provincial
11 hospital, and so you had to check with
12 regional to make sure that this
13 recommendation would be acceptable to
14 them. When this was done and approval
15 granted, you then, with further
16 checking, found in order that David be
17 sent there, he would have to be
18 certified. This was the standard
19 procedure taken, since a prisoner could,
20 if not certified, walk out at any time
21 and they could not stop him."

22 And you say:

23 "I am writing this letter to
24 go on record as being violently opposed
25 to this suggestion, even though you have



1 said, there is no alternative if David
2 ever wishes to be released. I cannot
3 understand a system that would
4 countenance this type of action. David
5 is presently working through the
6 University education program as well as
7 doing good work in his own courses and
8 other extracurricular activities and to
9 label someone like this as certifiable
10 even as a convenience or whatever, is
11 just unthinkable."

12 And then it goes on to talk about asking for
13 legal counsel. So I take it, at this time, there
14 were issues, significant issues going on with
03:18 15 David and his treatment in prison; is that a fair
16 statement?

17 A Yes, and because of the psychiatric label that
18 they had picked up and were dealing with, that
19 became a huge issue at the parole hearings. And
03:18 20 of course, at the time I didn't know why that was,
21 and it wasn't until much later I found out that it
22 was because of the letters Mr. Caldwell was
23 sending to the parole board about David.

24 Q And where did you get that information from?

03:18 25 A I believe it happened at one of the hearings, the



1 man just about leaped over the table at me because
2 he was saying "and that girl has been dead all
3 this time and these are the pictures of her".

4 Q And this would be at a parole hearing?

03:19 5 A Yeah. And he was, oh, so upset, be -- and
6 naturally anyone seeing those pictures of Gail
7 Miller would get upset -- but we started to ask
8 the question "well, how come he has pictures of
9 Gail Miller", and it was with further
03:19 10 investigation through David Asper, I believe, that
11 we found out that they'd been sent by Mr.
12 Caldwell.

13 Q If we can just go back to, I think it was 1980 and
14 I believe that David escaped, and I can't recall;
03:19 15 which prison was he in at the time, was it --

16 A In Kingston.

17 Q Kingston? In Kingston, and then he was
18 apprehended by the police, shot, and hospitalised
19 for a while, and then -- is that correct? Yes?

03:19 20 A He actually escaped from Stony Mountain.

21 Q Oh, I'm sorry. Pardon me? He was on a day pass,
22 I understand?

23 A Yes.

24 Q In any event, so --

03:20 25 A Yes, he was coming home, we were having a birthday



1 party for Chris.

2 Q Okay. So he -- on a day pass. So, in any event,
3 he was --

4 A And my daughter helped him escape.

03:20 5 Q And so he was out for a number of months, I
6 understand, and then he was apprehended in
7 Toronto; is that correct?

8 A That's right.

9 Q And I recall, in one of the documents, reading,
03:20 10 whether it was you or David spoke about prior to
11 this, based on what was going on in the prison
12 system, he felt that he had to get out of there or
13 something like that; do you recall that? Do you
14 recall discussing with David, prior to his
03:20 15 leaving, about --

16 A Well what had happened, --

17 Q -- what had prompted that?

18 A -- what had prompted that was four days before we
19 were having Chris' birthday party we had a meeting
03:20 20 with the classification officers, and they had
21 indicated to David -- and we had been at, at the
22 point with them where we thought that he'd be
23 getting parole within a matter of, within a year,
24 and that he'd be starting day passes and
03:21 25 everything -- they indicated to us that it would



1 be a minimum of four years, maybe longer. Well,
2 David went back that day and started planning to
3 escape, he just couldn't handle another four
4 years. And unknown to me, I had no idea, but when
03:21 5 I -- we had the party that day and all of a sudden
6 he disappeared with his sister and the other
7 sister was conveniently playing with the guard,
8 playing tennis, and they had set it up.

9 Q And so, after he was apprehended, I recall reading
03:21 10 somewhere that that's when you and your family
11 decided to become more active than you had been?

12 A Because we knew he was never going to get parole
13 after that because of that escape. They more or
14 less indicated that they would throw away the key.

03:22 15 Q And so tell us, then, what you and your family
16 did?

17 A Well we decided to take the money that we had and
18 add it to my RRSP that I had and offer a reward,
19 and the whole family, we went back to the scene of
03:22 20 the crime and we re-enacted the crime, and I
21 believe that you may have a film of that, that my
22 son took the film and --

23 Q Yes?

24 A -- my daughter-in-law, didn't like her doing it,
03:22 25 but she pretended to be Gail Miller and walked the



1 walk, and I was driving the car. And it was the
2 most amazing thing, because as we did this
3 re-enactment we suddenly saw that what they said
4 had happened couldn't possibly have happened,
03:23 5 because there was just no time. By the time my
6 daughter-in-law got to where they said she was
7 dragged into the alley, by the time the car got
8 down there and tried to make the U-turn, she would
9 be at the bus stop. And so where we had known it
03:23 10 with our minds, intellectually we had known he
11 didn't do it, now we knew it with our hearts and
12 we knew he just couldn't have done it, it --
13 intellectually, we knew it. And so we started, at
14 that point, to really fight back --

03:23 15 Q Okay. And tell me --

16 A -- and advertised a reward.

17 Q Okay. And let's just maybe go through that. The
18 reward, if we can call up 159706, and I think this
19 is the document.

03:23 20 A That's it.

21 Q That would be a -- and I think the date, if I
22 could call up 219425 -- 219425? And this is a
23 news release December 23rd, 1980:

24 "Attached you will find a copy of the
03:24 25 \$10,000 reward poster that will be



1 delivered to the residents of Saskatoon
2 on Tuesday, December 24th",

3 and it goes on to talk about some further
4 information. So did you actually deliver it to
03:25 5 all houses or how was it distributed?

6 A The whole family, we went door to door.

7 Q And how many did you distribute; do you recall?

8 A Thousands.

9 Q And what was your, what were you hoping to
03:25 10 accomplish by both the offering the reward and
11 distributing them, what were you hoping would
12 happen?

13 A Well we were hoping that someone would come
14 forward that maybe saw something. We didn't know,
03:25 15 of course, about the witnesses that were in Mr.
16 Caldwell's file that had come forward and said
17 they saw nothing, and we had no access to that
18 kind of documentation, so I guess we were hoping
19 that by offering this reward, that's the kind of
03:25 20 information that we would get, although the police
21 already had that but we weren't aware of it.

22 Q So at the time, December 1980, what information
23 would you have had -- when I say "you" I'm talking
24 about your family -- about the case itself?

03:26 25 A Very little, other than the fact that David didn't



1 do it.

2 Q But as far as, I guess, information at the trial;
3 you would have been familiar with some of the
4 evidence, I take it, from the trial?

03:26 5 A Yes, from the trial and what Mr. Tallis had, but
6 of course he didn't get full disclosure so that he
7 didn't have the kind of information that we
8 needed.

9 Q And so, at this time, did you have any
03:26 10 understanding about what might be out there by way
11 of police files or prosecutor files or anything of
12 that nature?

13 A No idea at all, but what we hoped to do by
14 offering that reward, we hoped that someone would
03:26 15 come forward and that could help us in that
16 department, and it did.

17 Q And who came forward, was -- do you recall who
18 would have responded to this?

19 A We had all kinds of people come forward at that
03:27 20 time, people that didn't think that he did it told
21 us about other people that might have done it, we
22 had a number of people.

23 Q If we could --

24 A And some police officers, of course, came forward
03:27 25 at that time.



1 Q And who --

2 A But I can't tell you who they were.

3 Q Oh, so, and what did they tell you?

4 A Well, that there had been a definite belief in the
03:27 5 department, of a number of the officers, that
6 David was not the real killer.

7 Q And when would they -- when would you have
8 received this information?

9 A During our investigation.

03:27 10 Q So, I'm sorry, this was back in 1981 --

11 A Yup.

12 Q -- or much later?

13 A Probably '81, '82, maybe '83.

14 Q Okay, and I haven't seen any documents, and there
03:27 15 may be some out there; was this information
16 recorded anywhere, do you remember?

17 A I have a vague recollection of talking about it
18 with the children, but there was nothing that we
19 could document because I didn't have any documents
03:28 20 to look at.

21 Q If we could go to 162192, it's doc. ID 162186,
22 page number 162192.

23 A One call that we got as a result of -- and I -- as
24 a result of this was from a lady, and she said she
03:28 25 wasn't interested in the reward, --



1 Q Just, sorry, one moment, 162192 please? I'm
2 sorry, carry on.

3 A That she wasn't interested in the reward but that
4 she knew about someone that, the day the nurse was
03:29 5 killed, had come home, and he was a patient in a
6 mental institution in North Battleford, and he'd
7 come home and he was covered with blood and he had
8 said that he had killed a rabbit, and she said
9 this was the time that the nurse was killed. And
03:29 10 so she gave us the background information and I
11 went out to see the parents, and they really had
12 believed that -- the story of the jackrabbit and
13 had just changed his clothes and taken him back to
14 the institution, and apparently she had told us
03:29 15 that this man had escaped 25 times from the
16 institution. So a friend of myself and I went up
17 to this institution, and I remember wondering how
18 I was going to get in there and still tell the
19 truth, and the truth was very important to me, so
03:30 20 it happened that the girl at the desk, when I
21 mentioned the Aunt Mary that had sent us, she
22 said, "oh, he has so many relatives, just put your
23 names down", and so both of us were truly able to
24 write our real names down and go and see him.

03:30 25 Q Is it fair to say, Mrs. Milgaard, that, starting



1 in 1980 and onward, that you would have pursued
2 many leads that turned out --

3 A Yeah.

4 Q -- not to bear fruit; is that fair?

03:30 5 A Yeah. And this particular one, we were so sure
6 that he had done it, I can remember going back to
7 Gary Young's office and getting Gary to call back
8 to the institution and found out that this man had
9 not been out on that particular day, and I said
03:30 10 "it can't be true", and he said "I have a listing
11 of meds". He admitted that the man had escaped 25
12 times, but that he hadn't been out that particular
13 day, and when I went back to his aunt it turned
14 out that he was out on the day that the other
03:31 15 nurse in Saskatoon was murdered.

16 Q Okay. So again, just back on information that you
17 pursued, would -- again, on a number of occasions
18 you go down a path and interview a number of
19 people --

03:31 20 A Yeah.

21 Q -- where you think you might have information that
22 would be of assistance?

23 A Relevant, and it wasn't, and so you spend your
24 days, and something like that would take a long
03:31 25 time to do.



1 Q And would it be fair to say that not only were
2 those avenues or leads that you pursued were, I
3 think in your words, searching for the real
4 killer, --

03:31 5 A Right.

6 Q -- but if you go down that path there were also
7 cases where you would follow up information with
8 respect to the evidence against David and the
9 witnesses that sometimes led to dead ends as well;
03:31 10 is that fair?

11 A Right, many dead ends there too.

12 Q And so you would have some information that you
13 think might be significant and might be relevant
14 to the re-opening, and that later you'd find out,
03:32 15 with further information, that that wasn't the
16 case; is that fair?

17 A Yes, that's fair.

18 Q And again if we talk with hindsight, if we were to
19 look back to 1980 with the information that you
03:32 20 now know, is it fair to say you would do things
21 differently with the benefit of what you now know?

22 A Well, if I had the experience that I've had since
23 that time I probably would have done a lot of
24 things differently, but, you know, I would have
03:32 25 thought that the police could have done this.



1 Q I'm sorry, I didn't mean to talk about your
2 experience, just the information. So in other
3 words, when you find out information in 1990 that
4 you didn't know in 1980, that might have affected
03:32 5 what you did in 1980 if you would have known?

6 A Absolutely, if I'd known what I knew in 1990.

7 Q So again, when we go through some of the
8 information that you are collecting throughout the
9 '80s, try and keep -- I'll try and keep that in
03:32 10 mind when we look as to what you knew at the time
11 and what you found out later.

12 Just on this article, this would
13 be -- and I'm not sure if this was in the
14 *StarPhoenix* as well, this has got the
03:33 15 *Leader-Post* -- and this would be, I think would it
16 be fair to say, the first piece in the media on
17 behalf of David or you seeking to get help from
18 the public; is that fair?

19 A It could be.

03:33 20 Q And here you:

21 "She also accuses the
22 national parole board of refusing to
23 give her son a break because he
24 continues to insist on his innocence.
03:33 25 She said the board wants him to say he's



1 guilty."

2 And I think that's consistent with what you told
3 us earlier?

4 A Yes.

03:33 5 Q Now if you scroll down a bit, please, just a
6 couple lines:

7 "'Of course, I don't like the
8 publicity,'...",

9 about the leaflets; can you -- what was the
03:33 10 concern at that time?

11 A I'd to have read more in the article.

12 Q Oh, sure.

13 A I don't know what it's saying. I can't remember
14 this article at all.

03:33 15 Q Yeah, no, if we can -- no, go back to the full
16 page. It's just talking about the information
17 going out and, I'm not sure, it just talks about
18 the leaflets that were distributed.

19 A Oh, I know, I know what I'm probably talking
03:34 20 about. I mean when I phoned David, phoned from
21 the hospital room at David's to the children, I
22 knew what I was asking them to do. They'd pretty
23 well buried the fact of their brother under the
24 table, I mean Maureen didn't tell her friends that
03:34 25 her -- she had a brother in prison, for instance,



1 or Susan. Chris had a difficult time because he
2 was living in Regina, and I can remember if he had
3 a credit card or something at a gas station that
4 they'd say "are you any relation to that rapist
03:34 5 and murderer", you know, because his name was
6 Milgaard and it's an unusual name. So I am:

7 "It's a chapter that I would
8 like to push under the carpet."

9 As I say here:

03:34 10 "But that would mean pushing my son
11 under the carpet, and I ...",
12 we can't do that.

13 We decided as a family, even
14 though it was going to be a lot of pain for
03:35 15 everyone to have this all come back out and have
16 the publicity again, because we'd left that
17 behind in Langenburg, that we would do it because
18 we weren't getting anywhere with the parole board
19 for David.

03:35 20 Q Okay. If we can go back to there, please. And
21 you state here:

22 "Milgaard believes police and
23 the Crown were eager to have her son
24 found guilty because the murder was the
03:35 25 third of its type in Saskatoon in a



1 brief period.

2 The other two murders were
3 never solved."

4 Do you recall what this was about or what --

03:35 5 A I honestly don't know what I was talking about
6 there.

7 Q Were --

8 A There obviously were two other murders in
9 Saskatoon.

03:35 10 Q And then you go on:

11 "I know in my heart that he's innocent,"
12 she said. "He was never a violent
13 person and to think that he could go and
14 attack someone like this is incredible."

03:36 15 And:

16 "She said she would like information
17 about unsolved mysteries related to the
18 crime, including the disappearance of
19 one of the knives found at the scene
03:36 20 from a police locker."

21 And I think this is the first occasion where we
22 see this. What information did you have about
23 the missing knife from the police locker?

24 A Well, that came out at the trial, that there was a
03:36 25 knife, but it wasn't important and it was missing



1 from a policeman's locker and I remember that,
2 coming out of the trial and thinking that was very
3 suspicious.

4 Q What --

03:36 5 A I think we subsequently found out that it had been
6 given to a detective, but the importance of the
7 knife in my thinking at that time was the fact
8 that Gail Miller was found and a knife blade was
9 underneath her in the snow, so -- and that was
03:37 10 not, the knife wound that killed her was from
11 another knife, and so obviously another knife was
12 involved.

13 Q And, I'm sorry, and where did you or how did you
14 reach that conclusion?

03:37 15 A I think from the medical testimony.

16 Q And so your view was that there were two knives
17 involved?

18 A Yes.

19 Q And I think Dr. Emson's evidence, and I stand to
03:37 20 be corrected, is that he thought the knife wounds
21 were consistent with the paring knife. I don't
22 think he was able to say whether there was one,
23 two or whatever.

24 A And someone else said that they were consistent
03:37 25 with a double-edged blade.



1 Q Right.

2 A And that was a double-edged blade that was in the
3 policeman's locker.

4 Q And so this information you are talking about
03:37 5 here, this would be your recollection of something
6 you heard at the trial during the course of
7 evidence?

8 A Uh-huh.

9 Q About the missing knife?

03:37 10 A Uh-huh, and so we wanted -- "She would also like
11 information about ... the disappearance of one of
12 the knives," I thought maybe one of the other
13 officers would come forward or something because
14 we're offering this reward.

03:38 15 Q Now, we've heard some evidence before the Inquiry
16 that, to the following effect, that the second
17 knife was there, it was available at the time of
18 trial and it wasn't tendered by the Crown and I
19 think on January 28th, 1970, it was a couple of
03:38 20 days left, it was returned to the police station
21 because the Crown wasn't going to put it in and
22 Mr. Tallis didn't want it in, and I'm wondering --

23 A That was something I didn't know.

24 Q And so this, the fact that it was -- and I stand
03:38 25 to be corrected on this, I didn't see anything in



1 the transcript about the disappearance of a knife
2 from a police locker and I'm wondering whether it
3 was something said outside of the courtroom or was
4 it something on the transcript that you remember?

03:38 5 A I think it was in the transcript.

6 Q And so this would be based on your recollection?

7 A Yes.

8 Q And at the time you thought it was suspicious; is
9 that fair?

03:38 10 A Yes.

11 Q I'm done with that document. If we could just
12 talk again -- I think we'll go shortly into your
13 engagement of Gary Young in 1980.

14 A Can I just go back to that document there?

03:39 15 Q Sure, yes.

16 A At the very end of the document --

17 Q Sorry, where?

18 A At the very end, just finishing off where you
19 were.

03:39 20 Q Okay. No, no, sorry, back here?

21 A Yeah.

22 Q Okay.

23 A Milgaard said -- I was talking about the
24 publicity:

03:39 25 "Milgaard said publicity following her



1 revival of the case will hurt the family
2 and might put her job with the Winnipeg
3 property management firm in jeopardy.

4 "We've got no choice," she
03:39 5 said. "We have to fight back now."

6 Actually, I went to my boss as a property
7 administrator and offered to quit because I knew
8 that it would be, you know, the Milgaard name is
9 going to be out there in the public, and he
03:40 10 supported me completely and said that I would
11 keep my job and he actually gave me extra time
12 off to go out and do investigative work.

13 Q Okay. If we can again, just back to the 1980, end
14 of 1980-'81 period, I think we've heard from Mr.
03:40 15 Young, and I'll go through some of those documents
16 with you, he would have been the first lawyer you
17 engaged post conviction; is that right?

18 A Yes.

19 Q And so if we can just go back as to where to
03:40 20 begin. What did you understand the process to be,
21 I mean, how did you figure out what to do or where
22 to go to try and set aside his conviction?

23 A That's why I went to Gary Young, I really didn't
24 know what, you know -- there are no guidelines for
03:40 25 those people that are wrongly convicted, there



1 isn't a handbook that says you do one, two, three,
2 four and five.

3 Q So is it fair to say that you would have gone to
4 Mr. Young as a lawyer to give you advice on --

03:41 5 A On what to do.

6 Q What legal steps to take?

7 A Yes.

8 Q To set aside the conviction?

9 A Yes.

03:41 10 Q And would you have been familiar with -- it was
11 section 617 at the time. Were you familiar that
12 there was --

13 A No, I wasn't.

14 Q So you went to Mr. Young and said lookit, he's
03:41 15 wrongfully convicted, find me a way to undo it?

16 A That's right.

17 Q And give me advice on the law about how to do it;
18 correct?

19 A Uh-huh, and advice on how to find out who
03:41 20 really -- we felt that we would have to find out
21 who really did it.

22 Q And what caused you to think that?

23 A Well, because the police hadn't found the person,
24 so we felt that we would have to find the person
03:41 25 that really did it and that's why we wanted to get



1 all the things from the file that we could and
2 find out any information that we could about what
3 happened at that time.

4 Q So again as far as information, I think what we
03:42 5 will see when we take a look at what Mr. Young did
6 when he was engaged, was one of the reasons you
7 retained him was to assist you in getting
8 information from other sources to assist you in
9 figuring out what happened?

03:42 10 A Yes, police reports, things like that we were
11 asking about.

12 Q And what Mr. Young testified to is that sort of
13 almost immediately after being engaged, that he
14 took steps to, number 1, contact Mr. Tallis and
03:42 15 arrange to get his file; is that correct?

16 A That's correct.

17 Q Two, he made contact with Mr. Caldwell to get
18 arrangements to look at his file?

19 A Yes.

03:42 20 Q And three, he contacted the city police to make
21 arrangements to get access to the police file?

22 A That's right.

23 Q And again, would that be something that you had
24 asked him to do or he told you you should do or
03:42 25 was it a joint --



1 A I think it was a joint decision.

2 Q Is it fair to say that at that time you wanted to
3 see what was on the Crown file and the police
4 file?

03:43 5 A Yes.

6 Q And for what purpose?

7 A Well, because David was innocent, so there's got
8 to be somewhere proof there that somebody had and
9 that somebody had seen or something that we could
03:43 10 use.

11 Q Okay. So again, is it fair to say that when you
12 went to Mr. Young, in addition to getting some
13 advice on how to legally proceed, number 2, you
14 wanted some help from him as a lawyer to get
03:43 15 information from those sources, Mr. Tallis, Mr.
16 Caldwell and the police?

17 A Yes.

18 Q Now, the next area, and we'll see this when we get
19 into it, would be to get to talk to the witnesses,
03:43 20 and I think that it was another part of the, I
21 guess plan, if I could call it that, at that time?

22 A Yes.

23 Q Was to then go out and gather information and talk
24 to witnesses; is that right?

03:43 25 A That's right.



1 Q And the fourth matter, if I can put it that way,
2 would be to inform the public and try and get
3 information from the public and that was the
4 purpose of the reward?

03:44 5 A That's right.

6 Q Now, let's just talk about the witnesses for a
7 moment and focus on those who gave incriminating
8 evidence. When you went out to try, to start
9 talking to these people, would it be fair to say
03:44 10 that Ron Wilson, Nichol John and Albert Cadrain
11 would be the three main witnesses that gave
12 incriminating evidence against David, and I'm
13 talking about Nichol John's statement even though
14 it wasn't adopted at court --

03:44 15 A Yes.

16 Q -- but those were the three key people who gave
17 incriminating evidence; is that correct?

18 A Yes.

19 Q And then Melnyk and Lapchuk would be there as
03:44 20 well, but maybe in a different way; is that fair?
21 They were people who gave incriminating evidence?

22 A Yes.

23 Q And did you have as a starting point to try and,
24 before you approached these people, say, okay,
03:44 25 well what you've told us -- I mean, your obvious



1 starting point is, well, David is innocent, but
2 what about sort of the rest of the facts as to
3 what happened that morning to try and get your
4 base starting point as, well, here's what we know
03:45 5 from David as to what happened, so therefore go
6 and challenge the other witnesses. Do you know
7 where I'm going with that?

8 A Yes.

9 Q And so what did you identify, saying okay, apart
03:45 10 from David's innocence, what about the rest of the
11 events of that trip, you know, as to whether they
12 got stuck, who they saw, where they went, did you
13 have a starting point from David as to we know
14 this is what happened?

03:45 15 A Well, I think our starting point really came back
16 to when we did the video. When we got there and
17 actually saw -- I mean, the Crown theory was that
18 it was on Avenue N and when we went back to this
19 house and started walking along, I mean, we could
03:45 20 see, I mean, that doesn't make any kind of sense,
21 that a girl in that icy cold is going to be
22 walking down a back alley or farther to the bus
23 stop than she has to go, so we started from the
24 common-sense things first of all. When we found
03:46 25 things that just didn't make sense to us, we then



1 started to question all of these areas.

2 Q Okay. And, for example, though, let's talk about
3 which, where they were travelling that morning.

4 A Yes.

03:46 5 Q I'm talking about events that are not directly
6 related to the evidence about an interaction
7 between David and Gail Miller, that evidence at
8 trial, what I'm talking about is the rest of it,
9 for example, the compact, the motel room, where
03:46 10 they got stuck, whether they got stuck.

11 A Oh, we went through the area there, we followed up
12 on what David was saying, we tried to visualize
13 where they really had come in, we drove round and
14 round, looked at maps and did all sorts of things
03:46 15 in those areas. Is that what you are meaning?

16 Q Yes. I'm trying to understand whether your
17 starting point was in 1981, well, here's what
18 David has told us actually happened that morning,
19 start to finish --

03:47 20 A Let's try to figure out where they were and what
21 really happened.

22 Q Or was it a case where David's memory or
23 recollection in 1980 about the significant events,
24 putting aside any interaction with Gail Miller,
03:47 25 but everything else, was that, did you find that



1 to be reliable, was David able to tell you,
2 lookit, here's where we drove, here's what we did,
3 here's what time we did it, or --

4 A Well, we were going by what he originally said.

03:47 5 Q And where did you get that from, though, from
6 Mr. Tallis?

7 A From Mr. Tallis.

8 Q And so you had an original set of here's David's
9 version of events, this is the truth, to the
03:47 10 extent that other people are inconsistent with
11 this, they are either mistaken or lying?

12 A Yes.

13 Q And so I'm trying to figure out where that base
14 line facts -- did you go to Mr. Tallis and say
03:47 15 tell me what David told me or --

16 A No, I was there when David told him, so I knew
17 what David was saying, I knew what his story was,
18 and of course, you know, we discussed it as well.

19 Q So if we can just go through a couple of these
03:48 20 witnesses. Let's start with Albert Cadrain whose
21 evidence at trial was that on that morning he saw
22 blood or what he thought was blood on David's
23 pants, and would it be fair to say that you would
24 approach his evidence to say, okay, well, anything
03:48 25 that is inconsistent with David's innocence must



1 either be a lie or a mistake; is that a fair way?

2 A Uh-huh, that would be fair.

3 Q So you go back and say -- and I take it one
4 explanation you might pursue is that he was lying;
03:48 5 is that fair, that Albert was lying?

6 A Yes, because later on, I mean, the testimony from
7 him as a witness with the incredible things that
8 he said he saw and everything.

9 Q But again, just as far as your approach with him,
03:48 10 to try and say, okay, well, we know David is
11 innocent; therefore, Albert Cadrain seeing blood,
12 one explanation would be he's lying?

13 A Could be, yeah.

14 Q The second explanation might be he's mistaken; in
03:49 15 other words, he saw something he thought was
16 blood?

17 A And it wasn't.

18 Q And that's consistent with David's innocence;
19 right?

03:49 20 A Uh-huh.

21 Q And a third one would be that he did see blood,
22 but it had nothing to do with Gail Miller; in
23 other words, an innocent explanation for blood on
24 his pants, which was contradicted by David, but
03:49 25 that would be another scenario where Albert's



1 evidence might be true, but it doesn't -- but it's
2 consistent with David's innocence. Is that fair?

3 A Yeah. I don't know that we thought all these
4 things in such an orderly fashion, I mean, you are
03:49 5 aware of all the things that go on in --

6 Q I have the benefit of hindsight, Mrs. Milgaard.

7 A Yeah.

8 Q And I appreciate that.

9 A But we weren't professionals, let's face it.

03:49 10 Q But is it fair to say that you would approach
11 Albert and say, okay, well, how could he say what
12 he said if David is innocent?

13 A Right.

14 Q And either he's lying or he's mistaken and let's
03:49 15 figure out why?

16 A Yeah.

17 Q Fair?

18 A Yeah.

19 Q And Ron Wilson, I think his evidence, the same
03:50 20 thing, you would go and say -- now, let me back
21 up. Would it be fair to say that some of Ron
22 Wilson's evidence about the events of that morning
23 were likely true, I mean, the fact that they were
24 in the city and certain things happened?

03:50 25 A Yeah, and certain things that Ron Wilson said at



1 first, I mean, he changed his testimony quite a
2 bit.

3 Q So his evidence where he directly incriminated
4 David; namely, that I fixed her, the conversation
03:50 5 in Calgary, things of that nature which are
6 inconsistent with David's innocence, you would be
7 pursuing those as well to say okay, well --

8 A Yeah, why did he change.

9 Q Yeah, why did he lie?

03:50 10 A Uh-huh.

11 Q Now, what about, were there some things that when
12 you went and looked at it that were incriminating,
13 or that might be viewed as suspicious, but that
14 might be true and consistent with David's
03:50 15 innocence? Do you understand what I'm saying?

16 A Like the break-in --

17 Q Yeah.

18 A -- at the elevator, yeah.

19 Q Or the compact, for example?

03:51 20 A Yes.

21 Q If the compact happened, it's suspicious and
22 incriminating, but it could have happened and
23 could have been consistent with David's innocence?

24 A Yes.

03:51 25 Q Is that fair?



1 A That's fair.

2 Q And was that something you thought about at the
3 time, that lookit, there might be some things that
4 just unfortunately pointed the finger at David, it
03:51 5 doesn't say he did it, but maybe looked like that?

6 A Yes.

7 Q And how did you approach those?

8 A Well, we tried to break them down to find out what
9 was true and what wasn't true.

03:51 10 Q What David your son said when I asked him
11 questions of that nature, he said that later on
12 when he thought back, he said okay, well, I know I
13 didn't kill her, therefore, anything that might
14 suggest that I did must not be true or I would
03:51 15 take issue with, and again, is that something that
16 you and your family -- did you think that as well
17 or was that your approach?

18 A Yeah, I think it was our approach to a great
19 degree, because we know he's innocent and that he
03:52 20 didn't do it, so therefore X didn't happen that
21 way.

22 Q And, for example, if Mr. Tallis, as he says, that
23 David had a knife, not a paring knife, but a knife
24 on the trip to Saskatoon, that might be
03:52 25 incriminating or suspicious if that were true, but



1 that doesn't mean that that was a knife used to
2 kill Gail Miller?

3 A That's right.

4 Q And so would your approach tend to be to maybe be
03:52 5 a little bit suspicious about all those facts that
6 were incriminating against David?

7 A Yes, we were very suspicious of a lot of them.

8 Q And I take it there's another group of facts that
9 were more than suspicious, that they were directly
03:52 10 incriminating; namely, Nichol John saying I saw
11 him do it, things of that nature?

12 A But the point was, even though she said that she
13 saw David do it, the way she described him as
14 having done it didn't sit with the facts. I mean,
03:52 15 she said I saw him grab a girl and stab her, but
16 in the meantime this girl's dress was around her
17 waist and there was no stab wounds in the dress.

18 Q But again, I take it that there were certain facts
19 that, those that were inconsistent with David's
03:53 20 innocence; in other words, more than suspicious
21 but directly linking him to that, those were the
22 ones where you said lookit, that --

23 A That couldn't have happened.

24 Q It couldn't have happened?

03:53 25 A Well, yeah, her statement couldn't have happened



1 the way she said it happened just on the physical
2 facts.

3 Q Now, again, if you are able to, and I appreciate
4 that with the benefit of, or with hindsight, and
03:53 5 we know what happened later, but if you can go
6 back to when you first started, are you able to
7 tell us back in 1980, '81 when you first started
8 to, after your family did the video and you
9 started to look at this, did you in your own mind
03:53 10 come to any conclusions as to what may have caused
11 the evidence to come out like it did or what may
12 have happened to Ron Wilson, Nichol John, Cadrain,
13 did you have any theories or thoughts?

14 A Yes.

03:54 15 Q And what were they, and again at the time just
16 your initial thinking?

17 A If David was innocent and he was in prison, then
18 somebody put him there and twisted the facts into
19 what they were not to put him behind bars and the
03:54 20 only ones that could be the twister of facts were
21 the police.

22 Q And so that would have been your view sort of
23 right from the outset?

24 A Yeah.

03:54 25 Q Now, let's just talk about the last group



1 of witnesses, sorry, I didn't cover these, would
2 be Melnyk and Lapchuk. When --

3 A And the others, Melnyk and Lapchuk, for personal
4 gain.

03:54 5 Q And let me just go back. But again in 1980 when
6 you approach the re-opening and you look at what
7 Melnyk and Lapchuk said at trial, did you approach
8 it saying okay, well, they lied -- let me back up.
9 Is it fair to say that if Melnyk and Lapchuk
03:55 10 described David's conduct as to the words and what
11 he did with the pillow, putting aside their
12 perception for a moment, that those facts could
13 still be consistent with David's innocence if he
14 did it as a joke?

03:55 15 A Yes.

16 Q And so when you approached the Melnyk and Lapchuk
17 in the motel room incident evidence, did you go
18 into it saying okay, well, David didn't commit the
19 crime; therefore, Melnyk and Lapchuk must have
03:55 20 lied about what they said David did and said, or
21 how did you approach that?

22 A I think I approached it with the idea that what
23 did they get out of it and that got me looking at
24 the fact that the one got the lightest prison
03:55 25 sentence for armed robbery ever given and so to me



1 that indicated that he lied for a reason.

2 Q And what did you think his lie was?

3 A That he was making this -- I didn't know whether
4 they made it up entirely or had presented it, I
03:56 5 really didn't know, but I just knew that they were
6 doing it for a deal.

7 Q And why did you think that?

8 A Well, because I felt that it was just too weird
9 the way they just happened to come at the last
03:56 10 minute and be the ones that hammered the nail in
11 the casket, so to speak.

12 Q And so you were suspicious about not only what
13 they said, but how they arrived in court to say
14 it?

03:56 15 A Absolutely.

16 Q And so again the fact that the words and conduct
17 they described, I think you told me earlier at the
18 time of trial you thought, you know, that quite
19 possibly could have happened --

03:56 20 A Right.

21 Q -- and it was their impression or how they
22 described it -- I guess I'm trying to understand
23 in 1980 and '81 when you went out and approached
24 this issue, whether in your mind you were saying
03:57 25 lookit, Melnyk and Lapchuk lied, they made up that



1 incident, it never happened, they made it up about
2 what David said and did and they did so because
3 they got a deal with the Crown?

4 A I tried to look at it objectively, I tried to look
03:57 5 at it both ways, they either did it that way, you
6 know, it's an absolute lie from the beginning, or
7 they used a situation with David -- I mean, the
8 idea is you are supposed to support your friends,
9 you don't rat on your friends, and that would
03:57 10 normally be the way these type of people would
11 behave, they would not rat David out, but you also
12 hear about people ratting people out for a deal
13 with the police, so whether they made it up out of
14 the whole cloth or whether it actually happened
03:58 15 and they saw an opportunity to get a deal with the
16 police, I was open on either way, but I felt that
17 it was definitely presented in a manner and it was
18 certainly very influencing to the jury that day
19 after what Nichol John had said.

03:58 20 Q And again just back, I think what Mr. Melnyk told
21 this Inquiry, that, you know, he saw what he saw,
22 whether it was a joke or not he wasn't asked the
23 question, and I think your impression at trial was
24 based on what you heard, that a jury would believe
03:58 25 that it wasn't a joke; is that --



1 A Right, and I believe if he had been asked at the
2 trial, just the way Mr. Tallis said, he would
3 probably have said it wasn't a joke.

4 Q Right. But he wasn't asked the question. What
03:58 5 I'm trying to understand, that would there not be
6 a scenario in 1981 that Melnyk and Lapchuk didn't
7 lie about the conduct and the words, how it was
8 perceived they weren't asked --

9 A Uh-huh.

03:59 10 Q -- they described the action and that it wasn't a
11 lie, is that something you considered, and that it
12 was said as a joke, but David didn't get an
13 opportunity to tell the jury lookit, I might have
14 done that, but it would have been a joke, was that
03:59 15 something on your mind at the time as a way to
16 deal with the Melnyk and Lapchuk evidence?

17 A It could have been.

18 Q Or was it a case, and I think this is what David
19 said, that lookit, that was such terrible
03:59 20 evidence, it must not have happened and there must
21 be a reason or there must be something wrong as to
22 how that got there and you were suspicious of that
23 and you pursued that evidence to say, well,
24 something is amiss here?

03:59 25 A I think we were very suspicious of it and that's



1 why we pursued it.

2 **Q** Now, if we could just talk a bit about Peter
3 Carlyle-Gordge because I think he entered the
4 picture around this time, didn't he, 1980, '81?

04:00 5 **A** Yes.

6 **Q** And can you tell us about Mr. Carlyle-Gordge, how
7 you came to meet him and what role he played in
8 your efforts?

9 **A** Well, he was a journalist and I had offered the
04:00 10 reward. He was interested in the story I think
11 more than anything. He made a point of telling me
12 that he wasn't calling about the reward, but that
13 he had just been involved in the *Katie Harper* case
14 and it was a Winnipeg murder case and in helping
04:00 15 get her off, or trying to get her off, and so he
16 was very interested in the story and would I come
17 and meet with him, which I did, and I was very
18 impressed by both he and his wife.

19 **Q** And his wife's name, I'm sorry, was Susan?

04:00 20 **A** Kathy.

21 **Q** Kathy, I'm sorry.

22 **A** Yeah, and Kathy just became involved
23 wholeheartedly, she spent hours typing up
24 transcripts and notes and documents and everything
04:01 25 for us, she worked until two or three in the



1 morning at times because they had small children,
2 and she came out and interviewed Nichol John in
3 Regina and she travelled with me at different
4 times when I was out investigating as well as the
04:01 5 ones, the times that Peter did.

6 Q And we heard Mr. Carlyle-Gordge's evidence about,
7 I think he had, he was wearing his journalistic
8 hat, but he was also wearing, I think he
9 acknowledged that wearing the hat that he was
04:01 10 trying to assist you and assist your son; is that
11 fair?

12 A That's right. I think when he first started out
13 he was just looking at it straight on, but
14 after -- and that was the case with most people
04:01 15 that started with it, once they started to look at
16 the evidence and go through it, they got to the
17 stage that we were at, that hey, there's something
18 really badly amiss here. I mean, that was Dan
19 Lett at the *Winnipeg Free Press*, that was Peter
04:02 20 Carlyle-Gordge, that was Peter Edwards, any of
21 them that got really in-depth involved, they all
22 came to the same conclusion.

23 Q Would it be fair to say that you and Mr.
24 Carlyle-Gordge and Kathy Carlyle-Gordge worked in
04:02 25 many respects and on many projects as a team?



1 A Yes, we did.

2 Q So you would go out and gather information?

3 A Yes.

4 Q And would it be fair to say that Peter and Kathy

04:02 5 Carlyle-Gordge would have shared with you all of

6 the information that they recovered whether it was
7 with you or without you?

8 A Yes.

9 Q In other words, there was sharing back and forth?

04:02 10 A There was sharing back and forth. I remember the

11 night that, the day that we had actually gone to

12 see Nichol John, we were trying to get in and my

13 daughter actually went into the apartment

14 building, got inside with someone that was walking

04:03 15 in and put her coat in the laundry room and went

16 and knocked on Nichol's door and said she was

17 moving into the apartment and she needed to call

18 her movers, would she mind if she used the phone,

19 and she went in and used Nichol's phone, because

04:03 20 we had been trying to get her phone number but it

21 was enlisted, so she phoned me where I was staying

22 and I answered Atlas Moving Company and my

23 daughter then said this is so and so and I'm

24 moving into this apartment building and could you

04:03 25 tell me what time the movers are coming, and she



1 said -- then I gave her a time and said I would
2 call back, so then she asked Nichol could you give
3 me your phone number, please, they are going to
4 call back, and so she gave the phone number. So
04:04 5 then I was able to call Nichol.

6 Q And this would be the early 1981 time period?

7 A Yes, right, and we ended up, Peter Carlyle-Gordge
8 and I, sitting outside all night and at three
9 o'clock in the morning she packed up and moved out
04:04 10 to another address and we were able to follow her
11 and find out where she went and then contact her
12 again.

13 Q And so from the outset then it would appear that
14 Mr. Carlyle-Gordge was assisting you in your
04:04 15 efforts?

16 A Yes, he was.

17 Q And as far as the location where information was
18 kept, can you tell us, did you have, you know, we
19 have seen tapes and interviews and transcripts,
04:04 20 we've also heard evidence from Mr. Carlyle-Gordge
21 that in 1983 when he went to England that he left
22 a copy of everything with you. Prior to his
23 departure how did you collect and manage all this
24 information?

04:04 25 A Well, I'm surprised that he said he left



1 everything with me because I don't think he did.

2 Q Well -- and I'll take you to his evidence when we
3 get to the 1983 phase.

4 A Yeah.

04:05 5 Q I think he said he left copies of everything.

6 A Well, because my feeling -- although I probably
7 wouldn't have gone through it all because I would
8 have thought that we had gone through it all
9 because we shared the information back and forth,
04:05 10 but when you came up with that document about
11 Fisher, you just about blew me out of my chair
12 because I had no idea that Peter had anything like
13 that in his possession.

14 Q Okay. So again, putting aside whether or not you
04:05 15 looked at everything he had, where was the
16 information and how was it kept as between you and
17 Mr. Carlyle-Gordge?

18 A Well I don't know whether, at that time I probably
19 kept it all in my -- like I was living in the
04:05 20 basement of my husband's place at that time, he
21 provided me a place to stay when I came up, and
22 I'd keep a lot of the stuff there, or whether we
23 had it at -- what date would that be -- I don't
24 know, it could have been at Hersh Wolch's, if we'd
04:06 25 already got him.



1 Q Prior to that, for example, you'd talked about
2 Kathy Carlyle-Gordge typing up these transcripts
3 of Peter's interviews; did you get copies of those
4 or did you get the tapes?

04:06 5 A I would imagine I got copies of those because I
6 have, in what I gave to you or to the Commission,
7 --

8 Q Right.

9 A -- I had copies of those.

04:06 10 Q Okay.

11 A And I think we just kept everything in boxes.

12 Q And so again, as far as Mr. Carlyle-Gordge, other
13 than the Fisher information -- and we'll get to
14 that a bit later --

04:06 15 A Yeah.

16 Q -- I think you're saying you don't remember any of
17 that being --

18 A No.

19 Q But, apart from that, do you think most other
04:06 20 information that he would have gathered --

21 A Oh, yeah, --

22 Q -- he would have discussed and shared with you?

23 A -- we would have discussed it and it would have
24 been shared.

04:06 25 Q And what were you relying on him to do, was he



1 like an investigator in the sense that he could
2 get information that maybe you couldn't or others
3 couldn't?

4 A Well, sure, because of his newspaper status and
04:07 5 the fact that he was doing stories, that was what
6 enabled him to get into Caldwell's office and to
7 look through Caldwell's file and find those things
8 that were in there.

9 Q So did you rely on Peter Carlyle-Gordge as someone
04:07 10 who had an ability, because of his journalistic
11 hat, to get into places that you might not?

12 A That I wouldn't be able to, absolutely.

13 Q And, too, the fact that he was a journalist, that
14 that might give him some ability to question
04:07 15 witnesses and assist you in that regard?

16 A Oh, I think he -- it made a vast difference,
17 because he was trained in that way as a
18 journalist, and I think that journalists and
19 police officers, and things like that, have the
04:07 20 training that I, as a mum, didn't have.

21 Q And what about his analysis? I think what he told
22 us as well, that he would spend a fair bit of time
23 with you and others, brainstorming or going over
24 facts and --

04:08 25 A Possible scenarios, we went through them all.



1 Q And I take it there would be a fair bit of
2 discussion back at that time, in fact throughout
3 the '80s and early '90s -- and 'brainstorming' is
4 maybe the best word -- about "could this have
04:08 5 happened" or "could that have happened", and
6 exploring the possibilities?

7 A Absolutely.

8 Q Let's talk a bit about Chris O'Brian who was
9 involved, I think, in the late 1980-early 1981;
04:08 10 what did you remember about Mr. O'Brian, where did
11 he fit in?

12 A He was a friend of my daughter Susan, and he knew
13 about the case, and I think he was the one that
14 found Debbie Hall. It turned out he was -- she
04:08 15 did his hair, and he ended up getting an interview
16 with her.

17 Q And so, again, would he have been -- I'm just
18 wondering how he would have got -- did Susan ask
19 him to become involved in helping, or how did he
04:09 20 become --

21 A Well you must realize, at that time the whole
22 family was out investigating, so Susan was up
23 here, like, and she was investigating, and so you
24 naturally talk to your friends about what you're
04:09 25 doing, and I think as a reporter he had an



1 interest in the story, and so the fact that Susan
2 would go to him is not surprising because we were
3 trying to enlist whatever help we could get, and
4 it was just a, really a coincidence that it turned
04:09 5 out that Debbie was his hairdresser.

6 Q Right. And as far as retaining Mr. Young -- and
7 I, please correct me if I'm wrong -- was there
8 some, the fact that his firm had been involved in
9 the *Mahar* case, was that one of the reasons you
04:10 10 went to Mr. Young?

11 A No, I found out about that later.

12 Q Okay. So, and I think we saw that on the file,
13 that I think Mr. Sherstobitoff, his partner at the
14 time, had acted for *Mahar*?

04:10 15 A Yes.

16 Q And so that's something you found out after you
17 retained him?

18 A Yes it is.

19 Q I'm wondering, Mr. Commissioner, I know it's 4:15,
04:10 20 we're getting into the Mr. Young area, I'm
21 wondering if it might be wise to start in the
22 morning?

23 COMMISSIONER MacCALLUM: All right.

24 (Adjourned at 4:10 p.m.)
25



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Official Queen's Bench Court Reporter



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