Commission of Inquiry

Into the Wrongful

Conviction of David Milgaard

before

THE HONOURABLE MR. JUSTICE

EDWARD P. MacCALLUM

****

<u>Transcript of Proceedings</u>

and

Testimony before the Commission

sitting at the

Ramada Hotel at

Saskatoon, Saskatchewan

****

On Wednesday, May 10th, 2006

Volume 147

<u>Inquiry Proceedings</u>

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Mr. Hersh Wolch, Q.C.,   **for** Mr. David Milgaard

Ms. Joanne McLean,   **for** Ms. Joyce Milgaard

Ms. Lana Krogan-Stevely,   **for** Government of Saskatchewan

Ms. Catherine Knox,   **for** Mr. T.D.R. (Bobs) Caldwell

Mr. Garrett Wilson, Q.C.,   **for** Mr. Serge Kujawa

Mr. Pat Loran, Esq.,   **for** the Saskatoon Police Service

Mr. Aaron Fox, Q.C.,   **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

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1   ***Transcript of Proceedings***

2   *(Reconvened at 9:00 a.m.)*

3   COMMISSIONER MacCALLUM: Good morning.

4   ALL COUNSEL: Good morning.

09:01   5   **JOYCE IOLA MILGAARD, continued**:

6   **BY MR. HODSON:**

7   Q   Morning, Mrs. Milgaard.

8   A   Good morning.

9   Q   I just want to pick up on a topic we touched on

09:01   10   yesterday. You indicated that I think in 1980

11   when you started, or not started but turned your

12   attention to interviewing witnesses, etcetera, I

13   think you told us that your thinking at the time

14   was that at least the key witnesses, being Wilson,

09:02   15   Cadrain, John, and possibly Melnyk and Lapchuk,

16   had lied, and that the lies were as a result of

17   police influence; is that correct?

18   A   That's correct.

19   Q   And I'm wondering if you can tell us at that time,

09:02   20   again 1981, around that time frame, what were your

21   thoughts. Let me put two scenarios to you and you

22   tell me which, if you can, would be your thinking

23   at the time. Was it a case where you thought,

24   number one, that the police believed that David

09:02   25   was the perpetrator of the crime and had set out

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1   with these witnesses to get evidence to support a

2   prosecution and conviction of someone who they

3   thought had committed the crime; or was it a case

4   where -- and, again, I'm asking for your belief at

09:02   5   the time -- where the police either knew or felt

6   that David was innocent of the crime but,

7   nonetheless, went out and sought to get these

8   witnesses to lie to convict David? Do you

9   understand the two distinctions there? And I'm

09:03   10   wondering if you can tell us, back in 1981,

11   whether, when you thought about your theory that

12   the police had influenced these people to lie,

13   which of those two thoughts did you have, if

14   either?

09:03   15   A   I think that, originally, I thought that the

16   police thought that David had done this, but in

17   seeing the evidence that they had, the original

18   statements of Nichol and Ron Wilson, it was

19   obvious to me that -- and then on the other hand

09:03   20   they had Cadrain's statement, and they had

21   Rasmussen that didn't see blood, they had -- at

22   that time neither Nichol or Ron had seen blood.

23   It concerned me that they were focusing in on

24   David and on this blood and they weren't -- and,

09:04   25   of course, the Danchuks. So there were many

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1   credible witnesses that didn't tell the same story

2   as Cadrain, and nobody seemed to ever challenge

3   him with -- like I don't even remember if they

4   ever asked him what clothes he was wearing, like

09:04 5   you know, what, to describe the clothes that David

6   was wearing.

7 Q   No, and let me just, if I can assist you, I

8   appreciate I think what you are saying is here's

9   some of the reasons I thought that the police did

09:04 10   not do a proper job in their investigation, and

11   we're gonna turn to that later on and I'll get you

12   to expand on what your beliefs then were, but just

13   back when you went into this in 1981, was it a

14   case of -- and again, for all of the things you've

09:05 15   said, you may have thought, lookit, the police in

16   my view didn't do a very good job for the

17   following reasons -- but was your belief at the

18   time that the reason they didn't do a very good

19   job is because they knew David was innocent but

09:05 20   they were trying to convict him anyway, or was it

21   a case of, for a whole bunch of reasons, they just

22   didn't do the job they should have?

23 A   I think, at that time, I was probably sure that

24   somebody had done something wrong, and that they

09:05 25   had deliberately done it wrong, and I guess the

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1   only reason I could base it would be my son is

2   innocent, so if the system had worked the way it

3   was supposed to work he shouldn't be in jail. If

4   they had done their jobs the way they should have

09:05   5   done, he wouldn't have been in jail, and so I

6   guess I was blaming the system for him being there

7   when he was innocent.

8   Q   And so let me just try it from a different

9   approach. One response -- and I think we've heard

09:06   10   some of that from, in this Inquiry -- is that,

11   lookit, we were mistaken, we pursued the wrong

12   person, we know that now, we didn't know that

13   then, we thought he was the person who committed

14   the crime for a whole bunch of reasons, some of

09:06   15   which we still think are valid, some we now say

16   aren't valid with the benefit of hindsight, but in

17   any event we thought we pursued the right person,

18   we were wrong, and in that sense the focus is on,

19   okay, what -- why did they pursue the wrong

09:06   20   person?

21   A   Uh-huh.

22   Q   Another scenario that has been put forward, and I

23   think was later put forward by you, that, no, the

24   police knew that David Milgaard was innocent but,

09:06   25   nonetheless, went and gathered evidence to convict

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1		him anyway, knowing that he was innocent and
2		knowing that the real killer would be out there
3		when he was convicted, and that --
4	A	I don't think I ever thought that they would
09:07 5		deliberately leave the real killer out, that they
6		knew who the real killer was, I mean I've never
7		said anything like that --
8	Q	Okay.
9	A	-- about the police, and I wouldn't think that,
09:07 10		because for the most part they're very decent
11		people, --
12	Q	Yeah.
13	A	-- and so I wouldn't be about to say anything like
14		that.
09:07 15	Q	Okay.
16	A	I don't think I've ever said anything like that,
17		Doug.
18	Q	Yeah. And if we go a step further and say, okay,
19		I think if that's the case, then if the police
09:07 20		were to knowingly convict someone who's innocent,
21		would you agree then that that would have to mean
22		that the guilty person is still out there?
23	A	Yes, --
24	Q	You see?
09:07 25	A	-- that would have to mean that, --

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1	Q	Right.
2	A	-- but I never, I never ever saw it in that
3		fashion.
4	Q	And so -- please correct me if I'm wrong -- then
09:07 5		was your thinking, okay, people may have done
6		wrong, may have done deliberate wrong, may have
7		made mistakes -- and we'll get into that a bit
8		later -- but was your thinking at the time, and
9		maybe still today, that lookit, they -- they
09:08 10		mistakenly thought that David was the killer when
11		they shouldn't have, and he wasn't?
12	A	That was probably my thought up until what
13		happened later on, because when Fisher appeared,
14		as far as I was concerned, at that point, there
09:08 15		was no excuse for not following up on him.
16	Q	Okay. And let's just pause there for a moment.
17		So, up until the Fisher information came forward
18		in 1990, are you saying at that point you started
19		to think differently about --
09:08 20	A	No, I'm saying that up 'til the point of 1970 --
21	Q	Yes.
22	A	-- when Fisher appeared on the scene, from that
23		point on, there was no excuse --
24	Q	Okay.
09:08 25	A	-- for the Saskatoon Police department. They had

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1		sent an investigator down, he interviewed Fisher,
2		he was the same one that worked on my son's case,
3		and there is no way that I could have been
4		convinced otherwise, when I found that information
09:09 5		out, --
6	Q	Okay. Well --
7	A	-- that they didn't do something wrong at that
8		point in time.
9	Q	No, and I'm sorry, when I said 1990 I'm talking
09:09 10		about your views. Okay? And is it fair to say
11		that, up until you learned in 1990 about Larry
12		Fisher, I think you are saying after you learned
13		in 1990 --
14	A	Yes.
09:09 15	Q	-- about Larry Fisher your views, at that time,
16		about what happened in 1970 changed; is that fair?
17	A	Yes, that's right.
18	Q	But, prior to learning about Larry Fisher, your
19		views were different, is that fair, about --
09:09 20	A	I still felt they'd done wrong because my son was
21		innocent and he was in prison, but I didn't have
22		the ulterior motive, if you will, for it, I didn't
23		know what the ulterior motive was. I couldn't
24		understand why they would pursue my son and let
09:09 25		the real killer walk free.

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1 Q   Okay. Just so that if I have this, so let's --

2   and again, Mrs. Milgaard, I'm talking about, when

3   I talk about dates, what was going through your

4   mind at the time. So up until before you learned

09:10 5   about the Larry Fisher information in 1990, is it

6   correct that your thinking was that the police had

7   done wrong in pursuing David because he was

8   innocent?

9 A   Right.

09:10 10 Q   And as far as the mistakes, etcetera, that may

11   have been made, I think you looked at some of

12   those and put forward your thoughts about what you

13   thought they did to the witnesses, etcetera?

14 A   Uh-huh.

09:10 15 Q   Yes?

16 A   Yes. That would have been in 1980.

17 Q   Yeah. And then again, your mindset before you

18   learned about Larry Fisher, would it be fair to

19   say that your thinking, at the time, was as to why

09:10 20   the police did this with the witnesses or

21   influenced the witnesses?

22 A   And I think I could understand it in a way,

23   because I felt that they were under a great deal

24   of pressure to get someone for the murder, and I

09:10 25   think we see that in the Association in Defence of

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1   the Wrongly Convicted a lot, that it's often when

2   a police department is under pressure that they

3   develop tunnel vision, and I think that's what

4   happened in my son's case.

09:11   5   Q   And so again, if we could capture your mindset

6   before you learned about Larry Fisher, is it fair

7   to say that your thinking -- your thinking was

8   generally that the police had tunnel vision, that

9   they thought David Milgaard was the killer, they

09:11   10   set about and interviewed these witnesses thinking

11   that David Milgaard was the perpetrator?

12 A   And they forced them, the witnesses, to tell

13   whatever would fit their theories.

14 Q   And believing, at the time, that David Milgaard

09:11   15   was the perpetrator?

16 A   Yes.

17 Q   And then, so after you learned about the Larry

18   Fisher information, did your thinking about -- and

19   let's just, just break this up, because I think

09:11   20   you said earlier when they learned about Larry

21   Fisher in October '70 was a defining moment -- and

22   you tell me if I'm correct in what you've said --

23   that your view of what the police did during the

24   course of the investigation up until David's

09:12   25   conviction, did that change at all when you

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1   learned about Larry Fisher, or was it simply what

2   they did or didn't do after the police learned

3   about Larry Fisher?

4   A   After the police learned about Larry Fisher.

09:12 5   Q   Okay. So that, as far as your view that in the

6   course of the investigation of David leading up to

7   his conviction, your view that the police had

8   tunnel vision, but that they believed David was

9   the perpetrator, that view didn't change after you

09:12 10   learned about Larry Fisher; is that correct?

11 A   No, I think that I still held that view.

12 Q   Right. And that what changed though, after you

13   learned about Larry Fisher in 1990, is that at

14   that time you said "okay, in October of '70,

09:12 15   police, Crown, government, someone knew about

16   Larry Fisher, and at that point you started to

17   have concerns that, I guess, a different set of

18   wrongs had been committed?

19 A   Absolutely.

09:12 20   Q   Is that fair?

21 A   That's fair.

22 Q   And so that at that point you started to believe

23   that, lookit, somebody should have done something

24   and they didn't; is that a fair way to put it?

09:13 25   A   That's a fair way to put it.

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1	Q	And at the time when you learned about Larry
2		Fisher -- and I'm gonna deal with this later when
3		we get through the chronology -- is it fair to say
4		that, in February of 1990, that you would have
09:13 5		been at it for ten years; correct?
6	A	Yes.
7	Q	Trying to -- and I don't mean, Mrs. Milgaard, when
8		I say you started in 1980 I appreciate your
9		evidence where you did work in the '70s, I don't
09:13 10		mean to say you did nothing in the '70s, but when
11		I say 'starting in the '80s' is I think when you
12		started to interview witnesses?
13	A	Yes, --
14	Q	Right?
09:13 15	A	-- and really campaign.
16	Q	And so then again, by February of 1990 you had
17		been starting the campaign, you'd been at it for
18		ten years?
19	A	Yes.
09:13 20	Q	Would it be fair to say you were fairly frustrated
21		at that point?
22	A	Exceedingly frustrated.
23	Q	And you used the word yesterday, you talked about
24		suspicions and paranoia about what you were
09:14 25		thinking and what was going on, would it be fair

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1   to say that in February of 1990 that was much more

2   heightened than it was when you started in 1980?

3   A   Oh, definitely.

4   Q   And what you would consider in 1990 as a

09:14 5   possibility of what might have happened, you'd

6   consider far more things in 1990 than you would

7   have in 1980?

8   A   Yes.

9   Q   And your thinking would have been influenced by

09:14 10   what you had seen, what you had heard, what you

11   perceived the authorities weren't -- were and

12   weren't doing; is that fair?

13   A   That's correct.

14   Q   And in fact, in February of 1990, that would have

09:14 15   been about 15 months after -- sorry -- 12, 14

16   months after you filed the first application --

17   A   The first application.

18   Q   -- with the Minister?

19   A   Uh-huh.

09:14 20   Q   And would it be fair to say that the, at least

21   from your perspective, the fact that you had not

22   received a response, or a favourable response or

23   any response to the application, did that

24   contribute to your thinking that something must be

09:15 25   wrong here?

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09:15 1   A   Oh yes, because once the application was

2   submitted, that's when I headed off to England and

3   felt, you know, that it was finally happening,

4   they had the application in, David was going to be

09:15 5   freed, and I was going to be free and I could

6   travel and do things, and when David Asper called

7   me in England and said "Joyce, you've got to get

8   back here, things are not going well", I mean

9   that, it was hard to come back into the fray

09:15 10   again.

11   Q   And would it be fair to say that how, and when I

12   use the word authorities, I think we talked about

13   this Monday about the government, how people

14   responded to what you put forward or didn't

09:15 15   respond, that influenced your thinking didn't it?

16   A   It did.

17   Q   And so if we want to understand Joyce Milgaard's

18   thinking in February of 1990, and I think we'll go

19   through chronologically and get there, that the

09:16 20   information you gathered and the fact that it had

21   been 10 years and things hadn't happened, would

22   that have been one of the most significant things

23   on your mind when you looked at other people's

24   conduct?

09:16 25   A   Yes.

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1   Q   Okay.

2   A   Can I bring up something from yesterday?

3   Q   Yes, you may.

4   A   I felt badly because I sort of, may have given the

09:16 5   wrong impression of the Town of Langenburg when --

6   Q   Are they going to apply for standing here?

7   A   (*Laughs*) No, but when David was convicted there

8   were so many good people in that town. The Kitch

9   family, for instance, had taken the children in

09:16 10   and looked after them when I was up here and there

11   were many people at the mine that were supportive

12   of my husband, and my son Chris still has many

13   good friends and goes back to Langenburg, so there

14   were lots of good people in Langenburg and I just

09:17 15   didn't want to leave the impression that, you

16   know, that the town was all bad. It certainly

17   wasn't.

18   Q   Okay. And I think what you said yesterday was

19   that the environment there after the conviction

09:17 20   and because of the conviction made it difficult

21   for you and your family to stay there?

22   A   Yes, it did.

23   Q   Is that fair?

24   A   But that was just some of the population, not all.

09:17 25   Q   And again, would it be fair to say that in other

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1   places you went to you had similar reaction from

2   some of the people in those communities?

3   A   No, because we moved to Winnipeg and we really

4   didn't, they didn't really know anything about it,

09:17 5   so that they were able to, the children were able

6   to drop that part of their history.

7   Q   Okay. If we could -- is there anything else on

8   that?

9   A   No.

09:17 10   Q   Okay, thank you. If we could just go back,

11   331992, and we'll just pick up where we left off

12   yesterday and we were in April of 1981 and we were

13   right on the transition between Gary Young and

14   Tony Merchant and we spent a fair bit of time

09:18 15   yesterday going over the interviews you had done,

16   and you'll remember, I think you told us that you

17   had a couple of unsuccessful attempts to talk to

18   Nichol John, she was -- you talked to her, but she

19   didn't give you anything meaningful?

09:18 20   A   Right.

21   Q   And then yesterday I showed you the letter from

22   her lawyer that I think you described as the cease

23   and desist?

24   A   Yes.

09:18 25   Q   But invited you to write out some questions?

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1	A	Yes.
2	Q	And I think this is your letter back to her, if we
3		can just call up that part, April 15th of 1981,
4		and this is where you request a meeting with you
5		in your lawyer's office and you would be happy to
6		pay your lawyer's fee to have him present and will
7		leave immediately if he should so request. So
8		this was your sort of proposal back and I think
9		this is what ultimately led to the meeting isn't
10		it?
11	A	That's it.
12	Q	If we can go to 332564, please, and I want to now
13		talk about Tony Merchant and your engagement of
14		Tony Merchant, and we've heard from Tony Merchant,
15		we've heard from Howard Shannon and we have been
16		through these documents. Can you give us just
17		your quick recollection about how that came about,
18		and certainly I'll go through some of these
19		documents with you, and if you rather me do that
20		before you answer I will.
21	A	No. Actually, what happened was I was in a bank
22		on Portage Avenue and I walked in and Howard
23		Shannon was there who had been one of the
24		supervisors of David's with Maclean's and I told
25		him, you know, we talked and I told him what had

09:18 (line 5)
09:18 (line 10)
09:19 (line 15)
09:19 (line 20)
09:19 (line 25)

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1   been happening and what I had been doing and

2   Howard seemed to have a keen interest in helping

3   and actually had offered at that point that what

4   he thought we needed was political help, someone

09:20   5   that had connections, and so he talked about

6   Anthony Merchant being Otto Lang's son-in-law and

7   he thought that he would be the person I should be

8   going to, and at that point he offered, I think he

9   told me $5,000 towards, he would be prepared to

09:20   10   put that money forward to help David, and I think

11   back now and how I even became suspicious of

12   Howard Shannon, I felt so badly about that later,

13   but that was much later with my involvement with

14   Anthony Merchant and I guess we'll get to that

09:20   15   point too.

16   Q   Okay.

17   A   So at this time when I met him and he suggested

18   it, I thought that was a great idea. I talked it

19   over with Peter and I liked Gary Young and thought

09:21   20   he was doing a good job, but here is the money to

21   go somewhere else, and because Anthony Merchant

22   had these other connections, I thought it might be

23   helpful, so that's how I got with Anthony

24   Merchant.

09:21   25   Q   And is it fair to say that Mr. Shannon said

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1		lookit, I'll give you the money, but I would like
2		you to use Tony Merchant?
3	A	Oh, definitely, it was predicated -- he would give
4		me the money predicated on the fact that I went to
09:21 5		Tony Merchant. That's why I became suspicious
6		afterwards.
7	Q	Okay. Had you ever heard of Tony Merchant before?
8	A	No.
9	Q	And so again as far as Mr. Young's efforts, I
09:21 10		think we see at this point, April 28th, and I
11		think this is the call that Howard Shannon made to
12		Tony Merchant, so he had been on the file for
13		about four months; is that right?
14	A	That's correct.
09:21 15	Q	And so you talked about Peter Carlyle-Gordge. Was
16		this a decision that you and Peter would have made
17		jointly saying lookit, we think this is the
18		direction to go?
19	A	Yes. I mean, I talked to Peter about it and he
09:22 20		thought, wow, that's terrific, and he knew, you
21		know, what kind of shape we were in financially,
22		so he thought that was a good idea.
23	Q	Now, when you went to Tony Merchant, can you tell
24		us what -- we talked yesterday about what it was
09:22 25		that Gary Young was engaged to do and you told us,

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1		I think, basically you went in there saying I'm
2		starting from square one, I need a lawyer, tell me
3		what is the legal remedy to get my son out of
4		jail, to assist me in getting whatever information
09:22 5		I can so that I can understand what went wrong and
6		give me some leads to pursue; is that correct?
7	A	Uh-huh.
8	Q	The court reporter needs yes.
9	A	Yes.
09:22 10	Q	Sorry.
11	A	Sorry.
12	Q	And to give you advice on the legal avenues, and I
13		think what you said, but you and Mr.
14		Carlyle-Gordge would do the leg work on the
09:23 15		investigations?
16	A	That's correct.
17	Q	And so with Tony Merchant, was there any
18		difference in what you expected out of him or what
19		he was engaged --
09:23 20	A	No, but he really made it very clear I believe
21		from the outset to me that I maybe hadn't really
22		understood as well before, that it had to be new,
23		that we had to get -- if we were going to open,
24		re-open this case, we were going to have to have
09:23 25		something new and he really stressed that.

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1   Q   I think he -- we'll see the word bombshell used in

2   a number of the transcripts?

3   A   Yes. That was one of his words.

4   Q   And do you recall your first meeting with Tony

09:23 5   Merchant or how that came about?

6   A   No. I remember going there and meeting with him,

7   but --

8   Q   And he -- let's just talk about that. We've heard

9   his evidence, and I may refer to parts of it, but

09:23 10   it would seem from his evidence that his approach

11   to David's situation was a little bit different

12   than Gary Young's; wouldn't you say?

13   A   Quite different.

14   Q   Or quite different?

09:24 15   A   Yes.

16   Q   Okay. And what Mr. Merchant said, and you please

17   tell me if this was your understanding, that,

18   number one, I have limited funds from Howard

19   Shannon?

20   A   Right.

21   Q   I think it was $3,000?

22   A   Yes.

23   Q   It's a waste of my time to read through the

24   transcripts because if there was a problem in the

09:24 25   transcripts, Cal Tallis would have found it;

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1   correct?

2   A   That's correct.

3   Q   And it's a waste of my time to go and see if you

4   can find inconsistencies, etcetera, to convince me

09:24 5   that David is not guilty or innocent because

6   that's not enough?

7   A   Uh-huh.

8   Q   Correct?

9   A   Correct.

09:24 10   Q   And that he seemed to focus most of his efforts on

11   parole and getting David out of jail I think was

12   what he said?

13   A   Yes.

14   Q   But as far as coming up with the bombshell, what

09:24 15   was your recollection, what did he do as far as

16   reviewing witnesses' evidence, new information and

17   identifying, for example, whether you had the

18   basis to go to the minister for a remedy?

19   A   He didn't, and basically I think that's why I

09:25 20   became suspicious of him and Howard later was

21   because once we got to Tony Merchant, it seemed

22   that all of the things that were happening started

23   to go down the drain, like, the interviews with

24   Nichol, things he worked on, they all ended up

09:25 25   being dead-ends and it was like we were being shut

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1		off, and I think it was at that stage at that
2		point in time that Peter and I started talking
3		about this famous Hersh Wolch, the lawyer in
4		Winnipeg that had worked on the *Katie Harper* case.
09:25 5	Q	I remind you you are under oath, Mrs. Milgaard.
6	A	But that's what Peter said. (*Laughs*)
7	Q	That's hearsay. And just -- would that have been
8		in 1985, that time frame? I think that's the
9		latter part of '85?
09:26 10	A	Yes, it would have been, yeah.
11	Q	And so just back with Mr. Merchant, for example,
12		did you ever go to him and say lookit, here's my
13		two interviews with Ron Wilson, the 1981
14		interviews, give me your opinion as to whether or
09:26 15		not this is a bombshell or whether this is enough
16		to apply to the minister, did that ever happen?
17	A	No, I don't believe so. I remember talking to him
18		about the interview that I had had, but I wasn't
19		impressed with the interview that I had had at
09:26 20		that time, but I was really keen to get Nichol
21		John and so we worked on that primarily.
22	Q	Would it be fair to say that the role that Mr.
23		Merchant had played when he was engaged as your
24		counsel would be, number one, I think he initially
09:26 25		gave you advice as to what he thought you needed

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1   to get a remedy from the minister?

2   A   Right.

3   Q   Number one. Number two, he assisted and

4   facilitated the Nichol John interview and took

09:27 5   some steps after that to try and get her

6   hypnotized or to get some --

7   A   Correct.

8   Q   And third, I think we'll see he did some tracing

9   of people for Peter Carlyle-Gordge?

09:27 10   A   Yes.

11   Q   Finding some people?

12   A   Yes.

13   Q   And fourth, he did some parole work for David, I

14   think he met David a couple of times and tried to

09:27 15   get him out on parole?

16   A   Yes, he did.

17   Q   But as far as giving, reading the transcripts, I

18   think his evidence was that he never did read the

19   transcripts?

09:27 20   A   That's correct.

21   Q   And as far as all of the interviews that you and

22   Mr. Carlyle-Gordge had done to that date, I don't

23   believe --

24   A   I don't believe he ever saw them.

09:27 25   Q   Right. And I guess the fifth one as well, he did

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1		talk to Mr. Tallis; is that --
2	A	Yes, I understand he did.
3	Q	And as well I think what Mr. Merchant said in his
4		evidence, and I certainly, we'll see this in the
09:27 5		documents as we go through it, that he reminded
6		you that lookit, we have a limited amount of funds
7		from Mr. Shannon, therefore, my time is limited
8		and I should only be doing that which is
9		appropriate for me to do and don't use up all of
09:28 10		Mr. Shannon's money having me do things that I
11		don't think are necessary. Is that a fair way to
12		put it?
13	A	That's fair, and then of course it was about at
14		the end of the Merchant time, if I can put it that
09:28 15		way, that in the investigation I found out from
16		someone that Thatcher had been his client.
17	Q	This is Colin Thatcher?
18	A	Colin Thatcher, and that Colin Thatcher had known
19		Gail Miller, in fact, had dated her, and that the
09:29 20		day after Gail Miller was murdered, that he was
21		sent away to the States to school.
22	Q	This is Colin Thatcher?
23	A	That's correct, and when I checked out these facts
24		I suddenly thought, oh, he's Colin Thatcher's
09:29 25		lawyer, he's trying to keep us from discovering

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1   that Colin Thatcher is the real killer, and I

2   figured I had been set up, so that's where my

3   suspicions were at that particular time.

4 Q   And this would have been around 1985, thereabouts?

09:29 5 A   That's right.

6 Q   And just, if this may assist you, I think Joanne

7   Thatcher, I think the murder was January 21, 1983,

8   or thereabouts?

9 A   Right.

09:29 10 Q   I'm sure Mr. Wilson will correct me if I'm wrong,

11   and that Mr. Thatcher would have been convicted I

12   believe in 1984; is that correct?

13   MR. WILSON: November, '84.

14 A   And he had a reputation for a temper and I

09:30 15   thought, well, he knew her, there was that

16   connection, so we subsequently investigated

17   further and found out that was not the case, but

18   that was the information we started with and those

19   were the suspicions that I had.

09:30 20   BY MR. HODSON:

21 Q   So just so that I have it right, would it be fair

22   that these suspicions would have been around the

23   time that Mr. Thatcher was going through his own

24   proceedings relating to the murder charge against

09:30 25   him?

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    1   *A*   Yes.

    2   *Q*   And so you, would it be you and Mr. Carlyle-Gordge

    3   or just you and perhaps some others then that

    4   would be following up on this?

09:30 5   *A*   It was Peter and I primarily that were following

    6   up on it, yes.

    7   *Q*   And was there a point there where you felt quite

    8   strongly that Colin Thatcher may have been the

    9   perpetrator of Gail Miller's --

09:30 10   *A*   Yes, and I was connecting him with Anthony

  11   Merchant and that's primarily why, when Peter and

  12   I discussed this and discussed Hersh Wolch, that

  13   we decided let's go and see Hersh Wolch.

  14   *Q*   And so as far as -- let's just talk about your

09:31 15   relationship with Mr. Merchant. Was he -- Mr.

  16   Shannon was paying him. Who was instructing him,

  17   were you instructing him or was Mr. Shannon or how

  18   did that work?

  19   *A*   He was instructing me.

09:31 20   *Q*   Mr. Merchant was instructing you?

  21   *A*   Yes.

  22   *Q*   And as far as things that -- elaborate on that,

  23   I'm not sure what --

  24   *A*   Well, whereas with Gary Young I felt that I was

09:31 25   instructing him, with Anthony Merchant he was

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1   definitely instructing me, like, he sort of set

2   the parameters and everything right from square

3   one and I felt more a sense of him being in charge

4   than I was in charge, and so that's why I viewed

09:31   5   it very suspiciously later because I thought he

6   was leading us down the garden path.

7   Q   Would that have, and again if we just look at the

8   time frame, 1984, 1985, and we'll go through that

9   time frame, but it appears that during that time,

09:32 10   I think Mr. Carlyle-Gordge had gone to England and

11   it appears that there was not much in the way of

12   witness interviews, and I'm not being critical,

13   Ms. Milgaard, about -- I'm not saying you weren't

14   doing anything at that time, but certainly from

09:32 15   the documents and Mr. Merchant's file, it doesn't

16   appear that there was the same activity in 1984

17   and 1985 as there was in '81.

18   A   No, because we were waiting always, it was always

19   going back to Nichol and it would take this long

09:32 20   and then it would take so much longer and I was

21   being totally frustrated by the time it was taking

22   to get any of these things done, and eventually

23   they didn't even get to the -- you know, we

24   eventually got her to a meeting and that, but

09:32 25   nothing was accomplished from any of it and I --

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	1	Q	And I think we'll see this when we go through the
	2		documents, I think Mr. Merchant, as far as the
	3		witnesses that he dealt with, Nichol John would
	4		have been the primary one?
09:33	5	A	Yes.
	6	Q	And I think he attended the interview and then did
	7		some work trying to get Dr. Messer to see her?
	8	A	That's correct.
	9	Q	Did you ever, and again just back on your
09:33	10		objective, presumably what you were seeking to do
	11		when you went to these lawyers was to bring an
	12		application to the minister; is that correct, to
	13		get a remedy?
	14	A	I really didn't know that I was seeking to get an
09:33	15		application to the minister. Like, I had no idea
	16		of what the legal steps that I was having to take
	17		would be.
	18	Q	Would it be fair to say that --
	19	A	I just wanted to find something to open up the
09:33	20		case.
	21	Q	Right. So that you wanted to get information that
	22		would show somebody in the authorities that they,
	23		that David had been wrongfully convicted?
	24	A	Yes.
09:34	25	Q	And that you were relying on your lawyers to

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1   figure out --

2   A   -- how to do that.

3   Q   Who to go to, when to go, what to put and how to

4   do it?

09:34 5   A   Yes.

6   Q   And is it fair to say that you knew there was

7   something out there, you knew there was some

8   remedy somewhere?

9   A   But I didn't know what it was or that it had a

09:34 10   number.

11   Q   Okay. But you did have -- but is it fair to

12   say -- you talked about Howard Shannon and the

13   political connection of Tony Merchant. Actually,

14   in fairness, I'm going to show you a letter in a

09:34 15   moment from Gary Young where he gave you an

16   opinion, I think in June of '81, that talks about

17   690 and just the section and it sets out that

18   there is a remedy, make an application and you

19   have to show some evidence.

09:34 20   A   Okay.

21   Q   And so is it fair to say that you had a general

22   understanding that you could get some type of

23   remedy from the government?

24   A   Yes.

09:34 25   Q   Okay. And how and what and what you needed to

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1   prove was something you left to others at that

2   time?

3   A   Yes.

4   Q   Let's go to 048643, please. Sorry, just -- and

09:35 5   this is the interview with Nichol John and Tony

6   Merchant, and just back on Mr. Merchant, in his

7   evidence, and we don't need to bring it up, but

8   he, what he indicated is that he -- what he said

9   is in his discussions with you he said:

09:35 10   "I came over time to the sense that

11   Joyce had difficulty understanding that

12   it wasn't a matter of trying to raise a

13   reasonable doubt."

14   And that's at page 20477 of his evidence, we

09:35 15   don't need to bring it up, but I think what Mr.

16   Merchant's evidence was is that he said he

17   felt you were trying to convince him, that going

18   through all the transcript and saying lookit,

19   David should have been acquitted, you know,

09:35 20   there's a reasonable doubt, he's innocent, but

21   lookit, the evidence shouldn't have convicted him

22   and here's why when you go through the

23   transcript, and he was saying basically, well, so

24   what, that's not enough, even if you convince me,

09:36 25   you'll never convince the minister, that's not

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1		enough, you've got to come up with something far
2		more significant, so don't come to me with all
3		these things, it's not a good use of your time
4		and Howard Shannon's money for me to listen to
09:36 5		your analysis because it won't get us anywhere.
6		Is that a fair summary of --
7	A	That's a very fair summary of it.
8	Q	And so is it fair to say that as a result you did
9		not -- let's compare what you did with Mr. Asper
09:36 10		and Mr. Wolch later and even maybe with Mr. Young
11		before where you would sit down and say okay,
12		here's what I've got from this witness, let me
13		explain to you why I think this helps us --
14	A	Uh-huh.
09:36 15	Q	-- and why it shows David's innocence and why
16		there's a problem at trial. Is it fair to say
17		that that type of discussion didn't take place
18		between you and Mr. Merchant?
19	A	Absolutely it did not.
09:36 20	Q	So here's the transcript, and I think this was a
21		Saturday either in Larry Leslie's office or Mr.
22		Merchant's office and this was recorded I think, I
23		think by both you and Mr. Leslie perhaps, and can
24		you tell us, I'm going to go through just parts of
09:37 25		this, but can you tell us your general

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1   recollection of this interview and your

2   observations of Nichol John at that time? This

3   would have been the first time you got a chance to

4   talk to her --

09:37 5   A   That's correct.

6   Q   -- in detail.

7   A   I was very nervous, I had been told that I must

8   back off and not come on strong with her.

9   Q   And who told you that?

09:37 10   A   I think Anthony Merchant, and that I was really

11   looking forward to the opportunity of pointing out

12   to her what other options there were out there for

13   what she thought she had seen.

14   Q   Just on that point, and sorry to interrupt your

09:38 15   train of thought there, but would you be -- would

16   part of what you were doing with Nichol John is

17   trying to convince her that David is innocent and

18   there might be other reasons to explain how she

19   gave the initial incriminating statement?

09:38 20   A   Yes. I was trying to give her an out.

21   Q   And did you think she needed that?

22   A   Well, I thought she had been manipulated by Wilson

23   and the police and the polygraph operator, all of

24   that situation, I thought that -- and, you know,

09:38 25   when I heard about her being left alone in the

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1   women's prison all by herself up on that empty

2   floor and how they had to call a matron in, the

3   mother part of me just, I ached for her and I

4   pictured what she was going through at that time

09:39   5   and how terrified she must have been, so I guess

6   what I was trying to do was put myself in her

7   shoes and see if I couldn't give her some

8   assurance because she had been through so much

9   already, and I felt that all the time she must

09:39 10   know in her heart that David didn't do it, and

11   so -- and she knows David's in prison. I mean,

12   one of the first things she said so me, "Well, why

13   does he keep escaping?" It was like he was doing

14   something wrong in trying to get out of there.

09:39 15 Q   And so your thinking was that she knew she had

16   lied in her statement?

17 A   Yes.

18 Q   That was your thinking going in?

19 A   Yes, it was.

09:39 20 Q   Now, there was also, and I think we'll see this in

21   the transcript, but certainly in your earlier

22   letters your other theory, if I can call it that,

23   was that she actually witnessed Lorne Mahar?

24 A   At one point.

09:40 25 Q   Or Lalonde, one of those two, that that may have

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1   been --

2   A   -- what she saw.

3   Q   What she saw?

4   A   Uh-huh.

09:40   5   Q   So is it fair to say it could have been -- one of

6   two explanations was that she saw someone else

7   commit the crime other than David, or two, she

8   just lied for whatever reason and I think you

9   thought the police had something to do with it?

09:40 10   A   Yes.

11   Q   And so part of the interview would be to try and

12   probe and push and see if you could get her to

13   explain one of those?

14   A   Yes.

09:40 15   Q   Now, what did Mr. Merchant tell you before going,

16   he told you to not come on too hard I think you

17   said?

18   A   That's right.

19   Q   Did you have any concern, and we've heard

09:40 20   witnesses in this inquiry, Mrs. Milgaard, and I'm

21   sure you have as well, about sort of interviewing

22   techniques and sort of hearing the witness' story

23   first, etcetera, I'm talking about police

24   interviews. Did you have any concerns or any

09:41 25   discussion with Mr. Merchant about how your

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1		questioning might influence her, was that
2		something on your mind?
3	A	I don't recall that.
4	Q	I mean, as far as did he say -- when he said to
5		back off, was it anything related to -- because
6		we'll see in the transcript there's one point
7		where Mr. Merchant I think says he's not
8		interested in what you think. Do you remember
9		that, having an exchange with Mr. Merchant?
10	A	Yes, I do.
11	Q	And do you know what that related to?
12	A	Well, I think he was, at that point, saying keep
13		out of it, Joyce.
14	Q	Okay. If we could go to 048646, and I note in the
15		interview, it appears that you conducted the
16		interview for the most part, Mr. Merchant came in
17		at the end?
18	A	Yes.
19	Q	What was the thinking there, what was the -- was
20		that a decision you made or Mr. Merchant made or
21		jointly?
22	A	I don't remember.
23	Q	Is it fair to say that you wanted to talk to
24		Nichol John?
25	A	Yes.

09:41 (line 5), 09:41 (line 10), 09:41 (line 15), 09:42 (line 20), 09:42 (line 25)

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1   Q   And --

2   A   I had been after her for years and wanted to talk

3   with her.

4   Q   Okay. And I think you told us, as well, that I

09:42   5   think you felt, as David's mother, you may be able

6   to get information from her that someone

7   unconnected to David might not; is that fair?

8   A   Yes, I did believe that.

9   Q   And would it be fair to say -- and you've already

09:42   10   mentioned it -- about appealing to her as David's

11   mother and what David was going through and her

12   friendship with David, that that might have some

13   influence on her; --

14   A   Yes, I did.

09:42   15   Q   -- is that fair? Would it also be fair that you

16   would have known the facts of the case in far more

17   detail than Mr. Merchant at this time?

18   A   Yes.

19   Q   And we've been through this with Nichol, I don't

09:43   20   propose to go through it in detail, I think, I

21   think what you did -- and please correct me if I'm

22   wrong -- is you would have gone through her

23   evidence, or the statement and all the various

24   incriminating things, in trying to get her

09:43   25   response to that; is that fair?

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1   A   That's fair.

2   Q   Go to 048649. And here is where you go through

3   with her again -- so this is 1981, this would be

4   11 years after the trial, and I think she, she

09:43 5   more or less gave the same version of events that

6   she did when she testified; didn't she?

7   A   Yes.

8   Q   Yeah.

9   A   Umm, but I can't remember, is this where she also

09:43 10 added church bells, or was that later on?

11   Q   Umm, you know what, I can't answer. We'll maybe

12   see when we go through. The church bells, I

13   think, certainly came in in 1989 in an interview

14   with Mr. Williams, and I stand to be corrected, I

09:44 15 think that --

16   A   That was probably the first time.

17   Q   -- that was it.

18   A   Yes.

19   Q   But here she says that she remembers seeing the

09:44 20 church at the end of the alley, then the next

21   thing walking or running down an alley and it's

22   daylight, so in other words nothing in between the

23   time that they stopped -- and she does, you do ask

24   her:

09:44 25   "... did David and Ron leave the car to

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 1              get help?"

 2   A     Yeah, but --

 3   Q     Scroll down, please?

 4   A     -- I said to her here:

 5              "So you're saying you were actually out

 6              of the car?"

 7   Q     Yes.

 8   A     And, you see, she hadn't said that before.

 9   Q     Okay, I thought she had, I could be wrong on that,

10         that she was later, in daylight, getting back into

11         the car.  But, in any event, I'll check on that.

12   A     Okay.

13   Q     But here you say:

14              "... did David and Ron leave the car to

15              get help?"

16              "Yes they did."

17         Would that have been an important fact that you

18         were probing, whether or not David had left the

19         car on his own --

20   A     Yes.

21   Q     -- that morning?  And that was the opportunity

22         that the Crown put forward at trial?

23   A     Correct.

24   Q     And, again, I guess there'd be two issues, one

25         would be if David left the car, and two, if he did
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1		how long he left for?
2	A	Yes.
3	Q	Correct? And so obviously, if he didn't leave the
4		car, then that wouldn't have given him an
09:45 5		opportunity to commit the crime; correct?
6	A	That's correct.
7	Q	Or if he did leave the car but was gone for a
8		couple of minutes, that also would not give him
9		the opportunity to commit the crime, is that fair?
09:45 10	A	That's fair.
11	Q	And I think that was, would that be fair to say,
12		the focus was on the opportunity, either he didn't
13		leave or, if he did leave, he wasn't gone for 15
14		minutes?
09:45 15	A	Right, so it's saying he didn't have time to do
16		this.
17	Q	And then the next page, and here you say to
18		Nichol -- and I think you've gone through and she
19		has basically said, lookit, I don't have much of a
09:46 20		recollection of matters -- and you say:
21		"They told about ... the fact that you
22		were ...",
23		and then you say:
24		"... you see I have my own impressions
09:46 25		of what happened ..."

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	1	A	Uh-huh.
	2	Q	And then she says:
	3		"Go ahead."
	4		And then you go on, and we'll go through this.
09:46	5		It would appear that after you ask Nichol what
	6		she recalls you then say, lookit, I have my own
	7		impressions of what I think happened to you; is
	8		that fair?
	9	A	That's fair.
09:46	10	Q	And then we'll see as the record, you go through
	11		and you tell her what you think happened to her
	12		and what resulted in her giving the statement that
	13		you say -- that you told her was a lie, the May
	14		24th statement?
09:46	15	A	Right.
	16	Q	And so that, what was your purpose in doing that?
	17	A	To give her an out.
	18	Q	Okay. And then you say:
	19		"You know and ... they told that you
09:46	20		were taken to a cell in the women's part
	21		of the jail upstairs. Do you recall
	22		that? And that there was no-one else
	23		around that you were left there all
	24		alone."
09:47	25		And she says:

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1   "I don't remember that."

2   You say:

3   "That you became very hysterical. They

4   had to actually call a ... woman officer

09:47 5   to come in and she ... she put her

6   mattress down on the floor in the cell

7   with you. Do you remember that?"

8   She says:

9   "No."

09:47 10   And let me just pause there. Where would that

11   information have come from about what happened to

12   Nichol in the cell? And I think, let me, if I

13   may assist, certainly at the trial Mr. Tallis

14   questioned Nichol John --

09:47 15   A   It must have been from the trial, I mean we knew

16   this, but it seemed to me -- I could be wrong, but

17   it could have been from the matron.

18   Q   Okay. Let -- let --

19   A   I believe that I interviewed the matron.

09:47 20   Q   Let me just see if I can assist you. At the

21   trial -- and we've been through this evidence a

22   couple of times and I can go through it if you

23   like -- what she testified at the trial was that

24   she was not happy being there and that she banged

09:48 25   on a door, she was in there a couple of minutes

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1		and banged on the door and then was moved, but in
2		the transcript itself there is no, at least she
3		doesn't say she became hysterical, she says she
4		was upset and banged on the door. In --
5	A	I believe I did interview, as I think back, I
6		interviewed, I believe, the matron, I believe she
7		came forward at some point and told me this, --
8	Q	Okay.
9	A	-- and how hysterical Nichol was, and I can
10		remember her saying, "I couldn't just leave her, I
11		had to, I actually had to put a mattress on the
12		floor in there with her", and that was my --
13		that's my recollection of that.
14	Q	And do you remember the name of the matron, or her
15		--
16	A	I have no idea.
17	Q	And would that have been, again this is May of
18		1991, so it would have been prior to this
19		interview?
20	A	Oh yeah, it would have been long before that I had
21		had that information, so, you know, that's why I
22		felt she'd been under -- that she was scared out
23		of her mind that night, according to this woman
24		that I talked to.
25	Q	And just tell us your recollection then, again, of

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1		what the matron told us, as best you can?
2	A	Well that she was called in, it was in the middle
3		of the night, and I think she explained to me that
4		what had happened was they were doing a rebuilding
5		in there at that time, and so where she was
6		situated was on the top floor, and I remember her
7		saying that there was no one else there. So I'm
8		picturing, in my mind, this young girl being taken
9		up to an empty floor in a building and left there
10		all alone after being driven round and round the
11		scene of the crime and everything with those
12		police officers, and that she finally, she just
13		couldn't stand being alone, and probably with
14		everything that had been said to her. And so the
15		matron told me that she got a call to come in, and
16		she explained about the place being --
17	Q	Sorry --
18	A	-- being rebuilt at that time --
19	Q	Sorry, if I can just; called to come in, like
20		called from home to come to the police station, --
21	A	That's right.
22	Q	-- or from within the police station to come in?
23	A	No.
24	Q	No.
25	A	To come in from home. And she actually came in

09:49 (line 5)
09:49 (line 10)
09:50 (line 15)
09:50 (line 20)
09:50 (line 25)

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	1	from home and she said, by the time she got there,
	2	she was just absolutely hysterical.
	3	Q That Nichol John was?
	4	A Yes. And she said, "I tried to calm her down and
09:50	5	everything but," she said, "I couldn't even leave
	6	her, so what I had to do was actually get a
	7	mattress and put it right in the cell with her,"
	8	and she stayed with her, right there, until
	9	morning.
09:51	10	Q And that would have been the night --
	11	A The --
	12	Q I think she was in there for two nights, do you
	13	know which of the two nights it was, or just one
	14	of the nights? I think she was in there for two
09:51	15	nights.
	16	A I don't know. I had the feeling it was after
	17	she'd been driven around by the police.
	18	Q Okay. She --
	19	A Because I think the matron talked about that, how
09:51	20	they had taken her out and driven her around.
	21	Q Okay. If I may just assist on some dates, on May
	22	23, '69 is the date that she was interviewed by
	23	Inspector Roberts and, according to Inspector
	24	Roberts' evidence at the Supreme Court in '92,
09:51	25	that's when she verbally advised him, gave him

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1		incriminating information about David. The next
2		day, May 24th, is when she signed the statement in
3		front of Raymond Mackie. And was it that night,
4		or was it the night before? She had been driven
09:51 5		around the day before, I think on the 22nd, and I
6		believe the record indicates she may have been in
7		there for two nights.
8	A	So it would probably be the first night that she
9		was in there.
09:52 10	Q	Okay. And so again, as far as the matron, do you
11		recall whether you would have made any notes of
12		this discussion?
13	A	I don't recall having done that, but I remember it
14		happening at the time.
09:52 15	Q	And, again, who would you have shared that
16		information with about the matron? I mean, other
17		than Nichol John here, do you remember giving that
18		to Mr. Carlyle-Gordge?
19	A	Oh, I'm sure we talked about it, and I'm sure that
09:52 20		Anthony Merchant was aware of it.
21	Q	And what about Mr. Asper and Mr. Wolch, did --
22		would you have given that information to them?
23	A	Probably.
24	Q	So let's just carry on with the -- yes, here:
09:52 25		"... I guess they kept you two nights or

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1   overnight and then they took you out the

2   next day. They drove you around and

3   around the scene. And then you came

4   back and they were going to put you in

09:52 5   the cell again and that was the time

6   that you gave the statement regarding

7   what you'd seen about David."

8   And would it be fair to say that this information

9   that I have read to you, and the previous

09:53 10   paragraph, that would be information that you

11   got, number one, from the trial transcript, and

12   number two, from your discussion with the matron?

13   A   Yes.

14   Q   And Nichol told you she didn't remember that?

09:53 15   A   That's correct.

16   Q   What was your, again, your general observation

17   when she was answering the questions? Did you

18   think she was being truthful and open with you, or

19   did you get the sense that she was trying to hide

09:53 20   something, what was your reaction?

21   A   I thought she was trying to hide something, I -- I

22   felt -- how can I explain it. It's almost like

23   she'd put up a wall against me. I felt that I

24   was, like talking to the wall, it was -- she

09:53 25   wasn't really communicating with me, I wasn't

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1		getting through to her.
2	Q	And did she seem frightened to you or reluctant to
3		talk?
4	A	Cold.
09:54 5	Q	Okay. If we can go to the next page. Here she
6		says:
7		"I know something happened. I know that
8		I saw something but I don't know what I
9		saw. You want the truth? That's the
09:54 10		truth."
11		And, again, what was your reaction to that
12		statement; did you believe that?
13	A	I think, at that point, I believed that she
14		believed that.
09:54 15	Q	That she believed she -- that she saw something?
16	A	Yes.
17	Q	If we could go to the next page, actually just
18		right down to the bottom, and I think this carries
19		on -- and we won't go through all of it -- but I
09:54 20		think in this transcript you are telling Nichol
21		what you think might have happened, is that right,
22		and to try and give her the out?
23	A	Yes.
24	Q	And so here's where you tell her:
09:54 25		"They did tell Ron that they found blood

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1   or hair belonging to Gail Miller in the

2   ... back seat of that car. Now that

3   wasn't the truth. They never found

4   anything."

09:55   5   So would part of this be trying to explain to

6   her, lookit, here's some other evidence that I

7   have uncovered that suggests that David is not

8   guilty, that David is innocent, --

9   A   Uh-huh.

09:55 10   Q   -- and therefore give her some comfort that maybe

11   she didn't see what she -- that she didn't see

12   David?

13   A   Yes, I was trying to explain to her how she'd been

14   manipulated, I felt.

09:55 15   Q   Okay. And then if we could just scroll down a

16   bit, please, a bit further. And you say here, and

17   then you go through and explain what you think

18   happened in the morning, and then:

19   "And possibly could have seen something

09:55 20   at that point. And then of course in

21   your mind thought it was David. And

22   this would certainly have terrified you

23   all that time if you were carrying

24   around something like that inside. So,

09:55 25   if that's the case, I mean if you my

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         1   thought too was I know you would like to

         2   know. Wouldn't you really like to know

         3   what you saw?"

         4   And so the approach here would be, lookit, maybe

09:56   5   you did see something and you assumed it to be

         6   David because of what you later came to know, --

         7   A   Yes.

         8   Q   -- and maybe you are wrong, and wouldn't you like

         9   to know what you saw?

09:56   10   A   Yes.

        11   Q   And this is where -- if we can scroll down --

        12   where you offer to pay to get a doctor:

        13   "... willing to pay for everything to be

        14   done ... to ... go back through and find

09:56   15   out what happened that night."; --

        16   A   Correct.

        17   Q   -- correct?

        18   A   Because if she really was having a mind block,

        19   that she was saying she had, I felt this would be

09:56   20   a way of getting that opened up so that she could

        21   see the truth.

        22   Q   And then, the next page, you say to her:

        23   "I believe that maybe you did see

        24   something ...",

09:57   25   "I believe that maybe you did see

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1   something and I really believe that, you

2   know, your mind is, is protecting you at

3   this time, from what you're afraid of

4   and I don't know if you ever thought of

09:57 5   it but if it wasn't David, what an

6   injustice is being done right now, not

7   by you consciously because you're not

8   consciously doing anything about it.

9   Would you consider something like that?"

09:57 10   And you talked yesterday about your efforts with

11   these witnesses to (a) not blame them, I think

12   you said, --

13   A   Yes.

14   Q   -- for -- and (b) to give them an out; is that --

09:57 15   A   Correct.

16   Q   And would this be consistent with that, your

17   approach to Nichol, that lookit, you didn't do it

18   on purpose, somehow --

19   A   Yeah.

09:57 20   Q   -- subconsciously it happened?

21   A   Yes.

22   Q   And 048657. Here you ask her about:

23   "Do you remember when you were leaving

24   Saskatoon about a compact?"

09:58 25   She says:

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1   "That I remember."

2   "You do remember that?"

3   "I remember that."

4   "And what exactly do you remember

09:58   5   about?"

6   And she goes on to describe it. We talked

7   yesterday how this compact, at least in 1981, was

8   an issue in that I think you said you believed it

9   was incriminating of David?

09:58   10   A   Yes.

11   Q   Even though, I think you said, Gail Miller's purse

12   was full, the fact that, if he did do that, that

13   would be incriminating; correct?

14   A   Yes.

09:58   15   Q   And, at this time, you're probing this with Nichol

16   because, if it didn't happen and people lied about

17   it, that would be helpful to David?

18   A   Yes.

19   Q   What was your reaction, here, when she said "I

09:58   20   can't remember any of the real incriminating

21   evidence, the stuff that's inconsistent with

22   anything about David's guilt, you know, that the

23   eyewitness, I can't remember any of that, but on

24   this fact, on the compact, I actually do remember

09:59   25   that"?

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1	A	Yes, and then she started saying it was a cosmetic
2		case and there was identification in it and all
3		the other stuff, and as soon as she said that I
4		remembered the grocery shopping cart in the
09:59 5		exhibits, I remembered Gail Miller's purse and all
6		the stuff that was in it and how you couldn't have
7		jammed another cosmetic case into there, it would
8		have been impossible because it was jam-packed
9		full.
09:59 10	Q	So did you think, okay, she's telling the truth,
11		David did throw out a cosmetic bag, but it
12		couldn't have been Gail Miller's because her purse
13		was full?
14	A	I thought she was lying.
09:59 15	Q	You thought Nichol was lying?
16	A	At this point I thought she was lying.
17	Q	And why did you think that?
18	A	Because it didn't -- it -- I just felt that it
19		wasn't consistent with what had gone on before.
09:59 20	Q	And would it be fair to say that anything
21		incriminating -- and when I say "incriminating,"
22		just so that we're clear here, something that the
23		jury or the police or the authorities might think
24		tends to suggest that David may have had something
10:00 25		or did have something to do with the murder.

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 1     A      Yes.

 2     Q      And I think --

 3     A      I understand.

 4     Q      -- and it doesn't mean that it -- there's types of

10:00  5            incriminating information that, that could be out

 6            there for an innocent person, you understand that?

 7     A      I do.

 8     Q      Yeah.  And so here, this is incriminating, it's

 9            not inconsistent with David's innocence, in other

10:00 10            words he could have had nothing to do with Gail

 11            Miller's murder and thrown out a compact?

 12     A      Correct.

 13     Q      Or a cosmetic case?

 14     A      Or a cosmetic case.

10:00 15     Q      Umm --

 16     A      And, as a woman, I make a real distinction between

 17            a cosmetic case, or bag, and a compact.  A man

 18            might not but women would.

 19     Q      I think if I can -- from what -- perhaps shed some

10:01 20            light on that, I think every time witnesses were

 21            questioned by men about a compact and a cosmetic

 22            bag they did the same as I just did, --

 23     A      Yes.

 24     Q      -- because I don't know the difference.  But, so

10:01 25            you draw a distinction between the two, one being
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1   bigger than the other; I take it that's the

2   significance?

3   A   Yes, and the cosmetic bag is a little bag all by

4   itself and you unzip it and you have a bunch of

10:01 5   things inside of it, and you couldn't have got a

6   cosmetic bag inside Gail Miller's purse.

7   Q   Let's just talk about the two types of

8   incriminating evidence, then, that was against

9   David at trial. There would be incriminating

10:01 10   evidence that would be inconsistent with any other

11   conclusion than David's guilt, and that would be

12   the eyewitness account of Nichol John where she

13   says "I saw David grab the woman and stab her"?

14   A   Yes.

10:01 15   Q   So that's incriminating, obviously, and that's

16   inconsistent with David's innocence; correct?

17   A   Correct.

18   Q   And there's other types of incriminating evidence,

19   for example throwing out the cosmetic bag, --

10:02 20   A   Right.

21   Q   -- that is suspicious, the jury might think is

22   incriminating, they might think "well, where did

23   he get it from, why did he throw it out, that's

24   suspicious, that might be Gail Miller's", and it's

10:02 25   incriminating; agreed?

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1	A	Correct.
2	Q	However, there might be an innocent explanation
3		for that, so it could have happened but it could
4		be inconsistent -- but it could be consistent with
5		David's innocence?
6	A	Right.
7	Q	In fact, David having a knife on him in the car on
8		the trip up, incriminating but could have happened
9		but David still be innocent; correct?
10	A	Right.
11	Q	So when you focused on these matters in 1981 here,
12		when you looked at the incriminating evidence,
13		were you saying, lookit, I'm going to challenge
14		every piece of it, because everything that's bad
15		or suspicious, I think I have to get to the bottom
16		of it, and I think it all may be a lie; is that
17		fair?
18	A	That's fair.
19	Q	And then did, over the course of time, you
20		discover that some of the incriminating evidence
21		that had another explanation may, in fact, have
22		been true?
23	A	I think, over time, that happened in some cases.
24	Q	And just to get your mindset in 1981, is it fair
25		to say that the cosmetic bag was one that you knew

Timestamps: 10:02 (line 5), 10:02 (line 10), 10:02 (line 15), 10:02 (line 20), 10:03 (line 25)

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	1		the police and the authorities relied upon to say
	2		"okay, well if your son's innocent, explain why he
	3		would throw out a cosmetic bag" --
	4	A	Right.
10:03	5	Q	-- "and where it came from"?
	6	A	Right.
	7	Q	And that was a question that you felt --
	8	A	Had to be answered.
	9	Q	Because, if you had other information that said
10:03	10		"lookit, lookit this, my son is innocent", there
	11		was a number of different things where they would
	12		come back and say, "okay, but tell me where this
	13		came from and why did this happen"?
	14	A	Right.
10:03	15	Q	And so did that cause you to say well, okay, well
	16		I better knock down that --
	17	A	Yes.
	18	Q	-- straw man too?
	19	A	Right.
10:03	20	Q	Okay. If we can go to the next page. And here's
	21		where, on the compact, I think you were coming up
	22		with an ex -- sorry, cosmetic bag -- if I say one
	23		or the other I'm referring to women's makeup
	24		products; how's that?
	25	A	A good eye.

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1   Q   They both begin with C. You say here:

2   "Now, and I give you my thought on that

3   just for your own information. They

4   cleaned the car out in the garage. Now

10:04 5   say they came across, Ron or Dave or

6   somebody, came across, one underneath

7   the seat, it was Ron's car O.K. And

8   they stuck it in the glove compartment

9   at that point. It had never been in the

10:04 10   glove compartment before. But all of a

11   sudden you discover it. And you pitch

12   it out. I saw Gail Miller's purse. She

13   had two cosmetic bags. I saw the

14   contents of her purse and I tried to jam

10:04 15   them into that purse. There was no way

16   she could get more than another compact

17   or something. This is why they kept

18   saying, is it a compact? She had

19   lipsticks ...",

20   etcetera. And then scroll down. You say --

21   further -- Nichol says:

22   "He literally grabbed it from me and

23   threw it out the window."

24   "So that if you were connecting this

10:05 25   with the other, afterwards, in your

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1   mind, you would certainly think that it

2   belonged to her. Did you?"

3   And then:

4   "Say that again?"

10:05 5   "In your own mind, like did you think

6   that this was Gail Miller's?"

7   And she says:

8   "I don't know."

9   So, here, is it fair to say that you're -- you've

10:05 10   come up with an innocent explanation --

11 A   Yes.

12 Q   -- of the cosmetic bag --

13 A   Yes.

14 Q   -- that would not make Nichol, Ron Wilson, and

10:05 15   Albert Cadrain liars with respect to this fact,

16   but would be consistent with David's innocence?

17 A   Yes.

18 Q   And you are trying Nichol John out on that,

19   saying, lookit, this is maybe what happened;

10:05 20   correct?

21 A   Correct.

22 Q   Go to 048662. And you spend a bit of time telling

23   her about what you think, how the police may have

24   been involved in the -- in getting the statement,

10:06 25   and she says:

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1   "My impression of my to to do with the

2   police was that they treated me good,

3   O.K.? That ... they no. I don't think

4   they ever believed that I had anything

10:06 5   to do with it."

6   "And they treated you very well?"

7   "Yes. As much as I can remember."

8   And what was your reaction to that statement in

9   light of the fact that, going in, you were

10   saying, thinking that, lookit, I think it was the

11   police that -- you were trying to tell her that,

12   lookit, the reason you lied in the statement was

13   because the police made you lie; correct?

14   A   Uh-huh.

10:06 15   Q   Yes? The court reporter needs "yes"?

16   A   Yes.

17   Q   Yeah. And what did you make of this answer when

18   she said, "no, the police actually treated me

19   quite fine"?

10:06 20   A   Well, in light of what I knew about her being put

21   up there all by herself, and in light of the fact

22   of the times that they drove her round and round

23   the alley and pointed out the garbage can and

24   various things to her, I knew that she hadn't been

10:06 25   treated well, and I just felt that she had blocked

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1   a lot of this stuff from her mind.

2   Q   Okay. If we can go to 048665. And, again, this

3   is, again, your discussion with Nichol. Actually,

4   if we could just go to the previous page, I'll

10:07 5   just put this in context. At the bottom you are

6   telling her, here, you checked with the priest

7   regarding another lead. And just to help you out,

8   this is after you've talked to Father Murphy the

9   first time, okay?

10:07 10   A   Okay.

11   Q   And then if we can go to the next page, 665, and

12   the "he" here is Father Murphy, you say:

13   "He talked quite freely how that he had

14   brought Shorty in and told him there's a

10:08 15   two thousand dollar reward out for this

16   and if you co-operate with the police

17   you'll have and tell them exactly what

18   happened and what you saw you could get

19   this reward. Now up until this point,

10:08 20   Shorty's testimony had that statement

21   that we'd been given to the police had

22   not indicated any blood on David's

23   clothing or anything. And it was at

24   this point he started to tell a

10:08 25   different story. First of all he said

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1   that you and David and Ron, all three of

2   you, were covered in blood when you came

3   in. And then he changed it to say no,

4   it was just David. Ah and then, you

10:08 5   know, his testimony ... he sort of

6   indicated that David was almost a Mafia

7   type ..."

8   Now I'll just pause there. Can you tell us where

9   that information would have come from, that you

10:09 10   are putting here to Nichol John? Maybe if, if

11   you want, maybe we can just go back up and I'll

12   tell you the parts. We talked yesterday about

13   the $2,000 reward, and I think you told us that

14   based on Peter Carlyle-Gordge's first discussion

10:09 15   with Father Murphy you believed that Father

16   Murphy phoned Shorty Cadrain, --

17 A Yes.

18 Q -- told him about the reward before Shorty Cadrain

19   went in on March 2nd; correct?

10:09 20 A That's right.

21 Q So that would be, obviously, where that

22   information came from; correct?

23 A Uh-huh, correct.

24 Q You say:

10:09 25   "Now up until this point, Shorty's

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	1		testimony had that statement that we'd
	2		been given to the police had not
	3		indicated any blood on David's clothing
	4		or anything."
10:09	5	A	That would be the statement from Regina.
	6	Q	Okay, that would be the statement in Regina, and
	7		then:
	8		"... it was at this point he started to
	9		tell a different story. First of all he
10:09	10		said that you and David and Ron, all
	11		three of you, were covered in blood when
	12		you came in."
	13		Now where, do you know where that information
	14		would have come from?
10:10	15	A	No, but his, Cadrain's statement went all over the
	16		place at times, so I probably picked it up from
	17		somewhere, --
	18	Q	Okay.
	19	A	-- and I'm telling her that.
10:10	20	Q	So the March 2nd, at this time you would have had
	21		his March 2nd, '69 statement and his March 5, '69
	22		statement, I think from Mr. Tallis' file; correct?
	23	A	Yeah, and I would have had his testimony as well.
	24	Q	His testimony at trial?
10:10	25	A	Yeah.

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1	Q	And the reason I asked the question about the
2		blood, I don't think in the two statements or his
3		evidence at trial he indicated that he saw blood
4		on Ron and Nichol, and that's why I was wondering
10:10 5		if that came from somewhere else?
6	A	It could have been --
7	Q	Or was that a theory?
8	A	No, it could have been from his statement earlier,
9		you know, at trial. I don't remember exactly what
10:10 10		he said at trial, --
11	Q	Okay.
12	A	-- but he started to elaborate, that's when he got
13		into the Mafia and all the rest of the stuff.
14	Q	We talked yesterday about this issue with Ron
10:10 15		Wilson. Is it possible at this point,
16		Mrs. Milgaard, that you have -- again keeping in
17		mind that this is May of 1991, you have
18		interviewed witnesses for about three months, --
19	A	This is May of 1991? No.
10:11 20	Q	I'm sorry, May of 1981.
21	A	Thank you.
22	Q	I'm sorry.
23	A	Okay.
24	Q	Thanks for correcting that. So May of 1981 you've
10:11 25		had three months, I think at this time you've

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1   talked to Father Murphy, you've not talked to

2   Albert Cadrain, you have the statements, and I

3   think you told us yesterday that after you talked

4   to Father Murphy you and Peter Carlyle-Gordge may

10:11   5   have brainstormed and come up with, I think you

6   said, to fill in the blanks about how Shorty

7   Cadrain may have been influenced by the priest,

8   and that may have been the reason he ended up

9   changing evidence and adding the sighting of

10:11   10   blood?

11   A   Right.

12   Q   Do you remember telling us that yesterday?

13   A   Yes.

14   Q   And is it possible here, when you are talking to

10:11   15   Nichol John, that what -- and the second thing,

16   I'm sorry, you told us yesterday is that your

17   belief was that, when Albert Cadrain went in to

18   the police on March 2nd, 1969, you believed that

19   somehow the police had influenced him to say he

10:12   20   saw blood on David; correct?

21   A   Yes.

22   Q   And one of the things you said when you heard

23   about Father Murphy, you said "okay, well maybe

24   that's how it fit in". And I think you said a

10:12   25   similar thing to Ron Wilson, that the Regina

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1		Police actually phoned the Saskatoon Police, the
2		Saskatoon Police got ahold of Father Murphy,
3		Father Murphy got Albert to come in, and so that's
4		the connection that got Albert to make up the lie
10:12 5		about the blood on March 2nd?
6	A	Yes.
7	Q	And that was your thinking at the time; is that
8		correct?
9	A	It was.
10:12 10	Q	Yeah. And so is it possible that, when you are
11		suggesting this to Nichol John, that it's what you
12		and Peter Carlyle-Gordge think happened as opposed
13		to --
14	A	Had come up as a theory.
10:12 15	Q	Yeah, as opposed to what either Albert Cadrain,
16		Peter Carlyle-Gordge, or the trial transcript or
17		the statement says happened?
18	A	That's, that's quite possible.
19	Q	Okay.
10:12 20	A	I can't remember back to then to where I got it
21		from.
22	Q	And if we can go to 048666. And, again, this is
23		just carrying on your discussion with her, you
24		talk about:
10:13 25		"They got Ron's car and they just ...",

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1   next page:

2   "... stripped it right down and took it

3   all apart. There wasn't one hair or one

4   bit of blood or anything that they could

10:13   5   tie into it. I mean we talked to the

6   detective, so even investigated that

7   part, if there had, certainly it would

8   have appeared in court. But they found

9   nothing in that car."

10:13   10   Now would that have been Raymond Mackie do you

11   think; do you know which detective that was?

12   A   No, but I think it was someone that was helping

13   us.

14   Q   Okay. The -- yesterday, remember, I showed you

10:13   15   the reference to I think it was a discussion of

16   Gary Young where you said "I'm gonna get the

17   transcripts in from the various people including

18   Mackie", and Mackie's name was on there, and there

19   was a few other references. Would it have been

10:14   20   Raymond Mackie that you might have been talking to

21   at this time; do you know?

22   A   I don't know.

23   Q   And then just scroll down, please. And, again,

24   you say:

10:14   25   "That's why it came to me in going over

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1   the scene of the crime that in fact

2   maybe you did really see something and

3   if you did see the real murder happen,

4   no doubt that's what's inside, and

10:14 5   that's what's terrifying you. And

6   naturally you would have assumed in

7   hearing about a purse-snatching, you

8   would have assumed it was David. You

9   know. And you woulda, all these years,

10:14 10   you felt it must have been him."

11   Would that have been, again, one of your thoughts

12   at the time, that maybe she had -- she saw

13   someone else do it?

14 A   Yes.

10:14 15 Q   But I think there was some evidence that they had

16   talked about a purse snatching on the trip up; is

17   that correct?

18 A   Correct.

19 Q   And so your thinking or explanation to her was,

10:15 20   lookit, maybe you heard David talk about a purse

21   snatching, and you heard about this woman, you

22   knew that you stopped someone for directions, she

23   had earlier told you she thought it was a young

24   woman, that when you heard about the murder and

10:15 25   the purse snatching you assumed it was David, and

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1   you saw something, and maybe what you saw wasn't

2   David? That was your, one of your thoughts at the

3   time?

4 A That would have been one of my thoughts at the

10:15 5   time.

6 Q Go to the bottom of the next page, and you

7   remember yesterday or the day before I asked you

8   about the question about witnesses asking you

9   about why you waited, or not waited, but why 1981

10:15 10   and not sooner, and here's where you say to Nichol

11   John:

12   "Can you think of anything that you

13   would like to ask me?"

14   And she says:

10:15 15   "Just one question. Why did you wait so

16   long?"

17   And you say:

18   "Well you asked me that that day."

19   And this presumably was when you first met her,

10:16 20   and she said:

21   "And I don't remember the answer you

22   gave me."

23   And you say:

24   "... it's a hard question and Nicole

10:16 25   I've asked myself a thousand times. I

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1   guess we, we tried the various legal

2   steps first, you know. One time after

3   time after time. Ah nothing seemed to

4   happen for the first two or three years.

10:16 5   David absolutely refused to settle down

6   in prison and we had one heart ache

7   after another in prison. It wasn't

8   until he got to Prince Albert and he met

9   Mr. O'Sullivan, the warden there, who

10:16 10   was really good with him, that he said

11   now David, you did this, this, and this.

12   And this is what will happen. And we'll

13   get you to Stony Mountain. And this was

14   after five years and you know, he tried

10:16 15   to break out any number of things."

16   Again, so this is similar to what you told us the

17   other day?

18 A Yes.

19 Q And did you read anything into that, the fact that

10:16 20   Nichol was asking you why did you wait so long,

21   did you place any significance on that?

22 A No, I don't think so, because it was a question

23   that a lot of people asked me. A lot of people

24   didn't even know what I had been doing during the

10:17 25   course of that time.

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        1   **Q**   Go to 048673, and here's a discussion raised where

        2   Nichol John asks you about somebody named Chris

        3   going into Bartleby's where she worked, etcetera.

        4   I'll just go through this, she says:

10:17   5   "I wasn't very pleased about that."

        6   Her lawyer says:

        7   "Chris O'Brian's actions in my mind are

        8   actionable."

        9   You say:

10:17   10   "He was a radio announcer that had tried

       11   to help."

       12   And Leslie:

       13   "Unfortunately, Tony, he, he, he did it.

       14   Next page:

10:17 15   "Unfortunately he did it in the wrong

       16   way."

       17   "Did it in the wrong way."

       18   And you say:

       19   "And I'm very sorry."

10:17 20   He says:

       21   "He tried to intercede for Mrs. Milgaard

       22   but he, the very tone, and unfortunately

       23   he's done it writing and we have it, the

       24   very tone of his intercession was

10:18 25   threatening. If you don't do this, if

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1   you don't phone Mrs. Milgaard, I'm going

2   public, I'm going to do this. This is

3   going to happen to you. We'll expose

4   you.

10:18 5   "He does kind of an action line program

6   there."

7   "I don't know ah but it was unfortunate

8   that he did that because that was the

9   very ah thing that triggered um."

10:18 10   And do you recall concern -- well, obviously this

11   discussion about she was upset with what Chris

12   O'Brien had done?

13   A   Yes.

14   Q   Did you find that with some others as well, that

10:18 15   Chris O'Brien, I think there was some reference to

16   him with the police about a similar sort of, and I

17   can't recall where I picked that up from, but

18   something about to the police, give me this or

19   we're going to go on the radio and expose --

10:18 20   A   Yes, I think he was very young and inexperienced

21   in his job at that time and I, you know, out of

22   the eagerness to get a story I think that maybe he

23   did not go about it wisely.

24   Q   And would it be fair to say that his actions may

10:19 25   have turned off some of the people you were going

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1   to see?

2   *A*   Yes, I believe that actually had an adverse

3   effect.

4   **Q**   And certainly with Nichol John, do you think that

10:19 5   might have been one of the reasons that she was

6   reluctant to see you, was the fact that -- her

7   interaction with Chris O'Brien?

8   *A*   She felt threatened by it, yes.

9   **Q**   If we can go to 048686, please, this is still part

10:19 10   of the transcript, and there's a discussion right

11   towards the end with the lawyers about lie

12   detectors and I think there was some discussion,

13   just to give you some background, about what you

14   might do with Nichol, whether she would go to see

10:20 15   a doctor to see if she could get this memory out,

16   whether a lie detector test might be an option,

17   and I think Mr. Leslie and Mr. Merchant have a

18   discussion about the pros and cons of a lie

19   detector, and here Mr. Leslie gives his view and

10:20 20   he says -- I think what Larry Leslie says I'm very

21   concerned about is -- because I think what he's

22   saying is I don't want Nichol to take a lie

23   detector test because:

24   "The operator can manipulate the

10:20 25   individual who is going to answer. And

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	1		make the answers ah which are true
	2		appear untrue and their answers which
	3		are untrue appear true."
	4		And you say:
10:20	5		"This is what Ron Wilson claims they did
	6		with him."
	7	A	Yes.
	8	Q	And so in May of 1981 that would be based on your
	9		interview with him?
10:20	10	A	Yes, it would.
	11	Q	And so you understood Ron Wilson to be telling you
	12		in 1981 that you had understood that his
	13		incriminating statement against David had been
	14		tested by the lie detector; is that correct, that
10:21	15		was --
	16	A	That's what --
	17	Q	Or verified it?
	18	A	-- Ron said.
	19	Q	Sorry, was it your understanding that Ron Wilson's
10:21	20		incriminating evidence against David was somehow
	21		tested and proved by the lie detector test or --
	22	A	Well, what Ron Wilson claimed, that they did ask
	23		him questions and then say that, you know, it
	24		wasn't true, what he was saying was wrong, and so
10:21	25		yes, they had done to Ron just what it said here:

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1   "The operator can manipulate the

2   individual. And make their answers ah

3   which are true appear untrue and their

4   answers which are untrue appear true."

10:21 5   I mean, all they have to do is say hey, this line

6   shows it's not the truth and the person doing it

7   doesn't know that and that's what happened to

8   Ron.

9   Q   So your understanding at this time, and please

10:22 10   correct me if I'm wrong, would that be, for

11   example, with the sighting of blood, that if Ron

12   Wilson said lookit, you know, I didn't see any

13   blood on David and they say, well, the lie

14   detector says that's untrue and he says okay,

10:22 15   well, I guess I did see blood --

16   A   Yes.

17   Q   -- and that was your understanding, that he may

18   have arrived at his untruthful, incriminating

19   evidence by virtue of the lie detector test

10:22 20   telling him that his original version of events

21   that was not incriminating was not truthful?

22   A   That's right.

23   Q   In other words, the lie detector test was used to

24   move him from non-incriminating to incriminating?

10:22 25   A   Correct.

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1   Q   And that you believed, is it fair to say at this

2   time, that on the basis of what Ron Wilson told

3   you, that that's what Ron thought happened to him

4   and that's how he thought he got to giving

10:22 5   incriminating evidence?

6   A   I believed that at that time.

7   Q   Yeah. And in fact, I think we saw yesterday where

8   he even asked you, "Did I say I saw David do it?"

9   A   Yes.

10:23 10   Q   And so he was, seemed to be struggling as to know

11   what he had said at trial; is that right?

12   A   I think that's correct.

13   Q   Just for the record, 173880, this is the, another

14   transcript of the same conversation, this would

10:23 15   be -- maybe we'll just call up -- this would be a

16   transcript that you typed up or Kathy

17   Carlyle-Gordge would have typed up; is that right?

18   A   Correct.

19   Q   And again this has got some editorial comments on

10:23 20   it that would have been done either at this time

21   or at some later time; is that right?

22   A   Yes.

23   Q   If we can actually go to the last page, 173904,

24   get over to get the left side, please. Here we

25   have:

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1   "Typed: Cathy M. Carlyle-Gordge; May

2   25.

3   Read May 25; by P. Carlyle-Gordge.

4   Copies: Joyce; Tony M."

10:24   5   And then David, a question mark. Presumably

6   that's your son David?

7   A   Yes.

8   Q   And then note to TM, just scroll down:

9   "I would <u>definitely</u> prefer a hypnotist

10:24 10   (rather than an MD) do a lie detector.

11   If we had to settle for the latter it

12   would be a private operator, not

13   R.C.M.P. or City Police. The more

14   prestigious the MD the better. You <u>must</u>

10:25 15   be present - with tape."

16   And so that would have been his reaction to this

17   idea of a hypnotist or some type of lie detector

18   for Nichol; is that right?

19   A   Yes.

10:25 20   MR. HODSON: This is probably an

21   appropriate spot to break for the morning.

22   *(Adjourned at 10:25 a.m.)*

23   *(Reconvened at 10:45 a.m.)*

24   BY MR. HODSON:

10:45 25   Q   173964, and this appears to be a transcript of a

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1   meeting at Tony Merchant's house, I think the

2   night of, or later in the day of your interview

3   with Nichol John; is that right? I'm not sure if

4   the date matters. Do you remember going to Tony

10:46 5   Merchant's house with Peter Carlyle-Gordge --

6   A   Yes.

7   Q   -- and talking about the interview with Nichol

8   John?

9   A   Yes, I do.

10:46 10   Q   And I just want to go through parts of this

11   because I think this may assist us in identifying

12   what your understanding was at the time about what

13   you had to do, and I'm not sure if this tape is

14   right from the start, but what he says, "T" is

10:46 15   Tony Merchant:

16   "I don't think you've got anything

17   there, much. You see, we're not

18   fighting the case again. Unless we had

19   some real bombshells you wouldn't have

10:46 20   any real chance of fighting the case

21   again. That's what I meant earlier.

22   It's not a matter of deciding whether he

23   should have been convicted of the crime

24   the last time or not, and whether there

10:46 25   were significant inconsistencies which

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1   should have resulted in him not being

2   convicted the last time or not. The

3   question is whether things can be so

4   significant that the A*G of Canada would

10:47   5   authorize a new trial or some

6   investigation into the matter. Those

7   kinds of things--the time factor of

8   driving the car--that would be fine if

9   we could get by the bombshell, the

10:47   10   requirement for the bombshell. And

11   certainly she didn't say anything that

12   gives you any bombshell."

13   And let me pause there. If we can just actually

14   scroll to the top of that page, please. Would

10:47   15   this have been -- it's hard to tell what you are

16   talking about. It appears to be the time factor

17   for the crime to be committed; is that fair?

18   A   That's fair.

19   Q   And by this time you and your family, and I think

10:47   20   "S" is here, would that be Susan that was present?

21   A   Yes.

22   Q   Yeah. And I think in reading through the

23   transcript, that's one of the things that, you

24   know, comes out about the -- you had already done

10:47   25   the family reenactment or going out there?

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 1   A   Yes, and taking a movie. We didn't have videos at

 2   that time, we had a movie camera and taking a

 3   movie of it.

 4   Q   And so is it fair to say that what you are saying

10:48 5   to Tony Merchant is lookit, read the transcript,

 6   David couldn't have committed the crime, here's

 7   why, the time factor doesn't work, and he's

 8   saying, well, so what --

 9   A   Yes.

10:48 10   Q   -- that doesn't get it re-opened. Whether there

11   was inconsistencies or not, the question is you

12   need something significant that the AG of Canada

13   would authorize a new trial and he talks about the

14   word bombshell. What did you understand bombshell

10:48 15   to be?

16   A   Some new evidence, something new that would shock

17   everybody, and we got it when we got Fisher.

18   Q   And so again at this time, what about the work

19   that you had done to date with respect to

10:48 20   interviewing witnesses and, for example, Dale

21   Wilson or Ron Wilson, the information you had from

22   him, what was your thinking at the time as to

23   whether or not that might be considered a

24   bombshell?

10:49 25   A   Well, my feeling of what I got from Ron was based

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1   on the fact that he was drinking at the time, he

2   didn't seem to be sincere. There was no way that

3   I would consider putting -- like, putting him

4   forward as a reliable witness at that point of

10:49   5   anything because he just didn't strike me that he

6   would be, would stand up to any kind of scrutiny,

7   so I don't think that I felt he was significant at

8   all at this time.

9   Q   And what about the fact though, what if he did

10:49   10   stand up and the fact that he appeared to be

11   backing off and saying lookit, the lie detector

12   test made me say some untrue things that I ended

13   up either believing to be true or said were true

14   when I knew they weren't?

10:50   15 A   Well, I think that I had to take it on the feeling

16   that I got from him at the time and my feeling was

17   that he would not stand up, and the way Tony was

18   directing me was saying it doesn't matter what

19   Nichol says, it doesn't matter what Ron says or

10:50   20   even Shorty Cadrain, what you have to have is

21   something new, you've got to get a bombshell.

22 Q   And then the next page, please, and again I think

23   most of the tape talks about the interview with

24   Nichol and what to do with her, and here's where

10:50   25   Tony says:

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1   "But I think by and large she has a

2   mental block."

3   And is it fair to say at this time that the view

4   of you and Mr. Merchant and Peter Carlyle-Gordge

10:51   5   was that Nichol had something in her mind that

6   she was blocking?

7   A   Yes.

8   Q   And that you were trying to find out what it was?

9   A   Correct.

10:51 10   Q   And that was the efforts, that you were to see

11   what it was that she actually saw?

12   A   Yes. We felt that if we could get her hypnotized

13   and it could come out and then be related to her,

14   that that might be our bombshell.

10:51 15   Q   And is it fair to say that you didn't know what it

16   was she was blocking other than you knew it

17   wasn't -- you, Joyce Milgaard, knew it wasn't

18   witnessing David committing the crime?

19   A   Yes. I had no reservations that she would be

10:51 20   hypnotized and say she saw David doing this.

21   Q   But at this time is it fair to say your thinking

22   wasn't, well, I think she's just outright lying

23   and trying to cover up?

24   A   No, after meeting with her that time I really felt

10:52 25   that, well, maybe there is something here, and

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1   that's why, even though it was going to cost a lot

2   of money, I was prepared to go ahead and have her

3   hypnotized.

4 Q   And then if we can go to the next page, again just

10:52 5   some discussion here, and PP, whom I'm assuming is

6   Peter Carlyle-Gordge, says:

7   "It might be helpful to find out who got

8   the reward..."

9   And Tony:

10:52 10   "In terms of writing the book--"

11   Peter:

12   "Not just that. It's the motivation for

13   Labchuk and Melnyk, if in fact they

14   perjured themselves--there are 2

10:52 15   possibilities: the money, plus the fact

16   that they were on charges for armed

17   robbery at the time."

18   And again, at this time, we talked about this

19   yesterday, you would have had the Deborah Hall

10:52 20   information by this time, so would it be again a

21   case of, well, lookit, at this point they would

22   have -- you thought they had perjured themselves?

23 A   Correct.

24 Q   And the reward money and the armed robbery charges

10:53 25   at the time, that would have come out of the

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1   transcript; is that correct?

2   A   Correct.

3   Q   And that would have been what you were thinking

4   was the motive for Melnyk and Lapchuk lying?

10:53 5   A   Yes, I did.

6   Q   And then down at the bottom, Peter Carlyle-Gordge

7   says:

8   "Let's suppose she said that. That's

9   the kind of thing you'd need."

10:53 10   I'm sorry, I think that's Tony Merchant. Here

11   Tony says:

12   "'I thought all along it was Wilson who

13   did it'-- let's say, as an example, 'and

14   I was covering up and I'd gone out with

10:53 15   Wilson and then they picked me up and

16   all this evidence against David and they

17   told me about all this other evidence,

18   and I didn't believe it at the

19   beginning, and I gave them that

10:53 20   statement, but they kept after me and

21   kept pushing me, and then they kept

22   driving me around and said I was going

23   to be charged unless I co-operated, and

24   they said they knew David had done it

10:54 25   and was I going to co-operate --"

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1   Etcetera.

2   "But I'm so confused now I don't know if

3   it was Wilson or David because

4   everything pointed to David, but I

10:54   5   thought then it was Wilson and I said

6   that to them.' Let's suppose she said

7   that. That's the kind of thing you'd

8   need."

9   So that's Tony Merchant telling you what an

10:54   10   example of a bombshell is?

11   A   Correct.

12   Q   And then Peter says:

13   "Or she may have seen nothing, just in

14   line with the first statement she ever

10:54   15   gave. And the mental block is connected

16   to the police interrogation, drugs, the

17   trauma..."

18   And then Tony says:

19   "OK, that's probably tougher. If all

10:54   20   she does is go back to saying I don't

21   remember anything; I didn't see

22   anything, that's not--I don't think

23   that's far enough along the line of a

24   bombshell, because somebody could come

10:54   25   along and say 'She doesn't remember

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10:55 1   anything right now, but she remembered

2   11 years ago.' That's not good enough."

3   Again -- so that would be some of the discussion

4   about how do you take Nichol John's current

10:55 5   thinking and try and get it into something that's

6   a bombshell; is that fair?

7   A   Yes.

8   Q   Go to page 173972, and I think there's some

9   questions here -- Peter Carlyle-Gordge was not at

10:55 10   the interview; correct, of Nichol John?

11   A   No, he was not.

12   Q   And it says here:

13   "Because Peter in listening to the tape

14   has reservations. As I explained, I

10:55 15   think it was important in see her face,

16   because I read a lot."

17   Tony says:

18   "Did you think she was being truthful?"

19   You say:

10:55 20   "Yes I did. As I said, I felt you'd

21   have a better chance of doing that. I'm

22   not in this business, and you've

23   interrogated a number of people, I'm

24   sure, and been able to observe...and

10:56 25   because I was thinking ahead and trying

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1   to jump ahead to know where I was

2   hitting, maybe I wasn't as cognizant of

3   what was coming at me knowing the tape

4   was there to go back over after. I

10:56   5   agree with Susan that I missed a real

6   opportunity, when they asked the girl

7   what time it was --"

8   And I think that was Nichol that said when they

9   stopped the girl for directions, she asked for

10:56 10   the time?

11   A   Right.

12   Q   And again, is it fair to say that after your

13   interview with Nichol John, you believed her, what

14   she said in the interview?

10:56 15   A   Yes.

16   Q   Next page, and here we see a discussion about

17   Albert Cadrain. By this time you've tried with

18   Mrs. Cadrain, she has run interference I think you

19   said, Albert is up north and you know he's up

10:56 20   north but you don't know where and you can't reach

21   him; is that fair?

22   A   Correct.

23   Q   And here, this is where Mr. Merchant talks about a

24   tracing service, they're excellent, Empire Skip

10:56 25   Tracing, 75 or 90 bucks and they find people.

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1		Would this have been your first introduction to
2		skip tracers?
3	A	Yes.
4	Q	Tracing services? And that's something that Mr.
5		Merchant coordinated for you and Peter
6		Carlyle-Gordge; is that correct?
7	A	He did.
8	Q	173975 --
9	A	Up until that time, the Henderson Directory was my
10		constant companion.
11	Q	For finding people?
12	A	For finding people. It was heavy to lug around.
13	Q	If we could go to -- here's just a discussion with
14		Mr. Merchant about following up, if we can just
15		scroll up a bit, please, and this is a discussion
16		here about Psychiatrist Messer coming to see Tony
17		Merchant, and I think shortly after the interview
18		with Nichol John, Tony Merchant arranged for a
19		psychiatrist to be engaged to possibly meet with
20		Nichol John?
21	A	Yes.
22	Q	And you say:
23		"I certainly don't want anything that
24		would hurt Nichol. But I do feel
25		that--as I pointed out to her, I think,

10:57 (line 5)
10:57 (line 10)
10:57 (line 15)
10:58 (line 20)
10:58 (line 25)

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	1	in a sense she's been living in a prison
	2	all these years, in not knowing within
	3	herself what happened--if, in fact,
	4	that's what has been. This may be a
10:58	5	release for her."
	6	And so that, I think that's what you talked to
	7	earlier, that you felt she wanted to find out
	8	what she had seen?
	9	A Yes, and I didn't want to do something that was
10:58	10	going to hurt her though and I felt that by having
	11	a psychiatrist, that he would be able to assess
	12	that.
	13	Q Now, here you talk, you say, this is you talking:
	14	"We've made a number of calls, using the
10:59	15	telephone, and Peter transcribing on the
	16	other phone, and we have taped those
	17	calls for our own records so that we
	18	could type them up accurately. I would
	19	like to send you copies of all of those
10:59	20	because they do deal with the witnesses
	21	we've talked to like Wilson and
	22	Labchuk."
	23	And Tony says:
	24	"It's not necessary. The only way we're
10:59	25	going to 'turn the case around' is if we

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1   have a major witness who says 'I lied'

2   or 'I now know something different.'

3   You might, with all the transcripts,

4   material and a whole lot of work

10:59 5   convince me he wasn't guilty. But what

6   difference would it make? See, even if

7   I were convinced that he were not

8   guilty, I wouldn't be able to convince

9   the A-G of Canada without getting the

10:59 10   A-G Can. to do all the things that I had

11   done--which he'll never do. He'll never

12   spend 20 hours on it. The best I can

13   hope for is--from Nichol you wouldn't

14   need a confession, but what I really

10:59 15   need is something pretty powerful from

16   one of the key witnesses."

17   So it would appear that at this point you offered

18   to give Mr. Merchant the transcripts of your

19   interviews, including the interview with Ron

11:00 20   Wilson, and he said it's not necessary because

21   it's not going to get us anywhere?

22   A   Correct.

23   Q   And do I take it from that that you never did

24   provide the transcripts to him?

11:00 25   A   I never did.

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1   Q   And then if you scroll down, Susan says:

2   "OK, you take Ron Wilson, and he's not

3   denied--"

4   Peter says:

11:00 5   "He's turned around his testimony. He

6   testified he saw blood, in great

7   detail--Now he tells Joyce it could have

8   been Kool-ade."

9   You say:

11:00 10   "On the stand he said he wasn't on drugs

11   at the time, all the way to Saskatoon.

12   He swore blind he wasn't taking drugs--"

13   And then it's got etc.

14   "Now he tells us he was stoned right out

11:00 15   of his mind."

16   Tony says:

17   "Now he says, what he described as blood

18   could have been grape juice."

19   And you say:

11:00 20   "Could have been Kool-ade. He said 'I

21   was so stoned out of my mind it could

22   have been anything'."

23   And Tony says:

24   "But it could have been blood too! OK.

11:00 25   So it's not big news. You are still

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1   back in the world of proper examination.

2   If he said 'I lied. There wasn't

3   blood.' That's different."

4   And then Peter says:

11:01 5   "I think he's told friends over the

6   years it could have been Kool-ade. I

7   think he's told you somewhere on tape he

8   doesn't remember, period, seeing

9   anything."

11:01 10   And then the next page, Tony says:

11   "I guess I'd want to see all your

12   interviews if I were making a petition,

13   but not right now."

14   And I take it that -- I mean, Mr. Merchant never

11:01 15   did make a petition?

16   A   No, he did not.

17   Q   And do you know why that was?

18   A   Because we didn't have the bombshell.

19   Q   And it got to the -- when you departed company

11:01 20   with Mr. Merchant, was that at the point where you

21   felt you didn't have enough evidence, or what did

22   you think when you left him as far as where you

23   were at with gathering evidence?

24   A   What I thought when I left him was that he was in

11:02 25   collusion with Thatcher.

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1	Q	Okay.
2	A	And that's why I was going elsewhere.
3	Q	But as far as the question of whether or not your
4		interviews with Ron Wilson in 1981 were
5		significant enough to form at least part of a
6		petition, I take it that Mr. Merchant had never
7		looked at them for that purpose?
8	A	No, but even what he said about what we got from
9		him in this interview here was indicative of the
10		fact that he didn't think it would have been
11		enough.
12	Q	Based on this discussion with Mr. Merchant, would
13		you have concluded, okay, the interviews I have
14		with Dale Wilson are not enough --
15	A	-- to do anything.
16	Q	To do anything, okay.
17	A	Correct.
18	Q	Then if we can scroll down, it talks a bit about
19		Cadrain, it says:
20		"Gary Young is the lawyer I've been to
21		see in Sask. and he was the one that got
22		access to Tallis' files."
23		Tony says:
24		"Tallis released his files? And did
25		Tallis talk to him about it."

11:02 (line 5)
11:02 (line 10)
11:02 (line 15)
11:03 (line 20)
11:03 (line 25)

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1   You say:

2   "I don't believe--"

3   And Peter says:

4   "Yes, they phoned him."

11:03 5   A   I can't -- I'm sorry, I can't see that.

6   Q   I'm sorry, right here:

7   "Tallis released his files?"

8   And then you say:

9   "I don't believe--"

11:03 10   Then Peter says:

11   "Yes, they phoned him."

12   This is talking about Cadrain. And you say:

13   "But I don't believe they talked--"

14   Peter says:

11:03 15   "--and he said they deleted any

16   inter-office memos and, that was all.

17   They got the statements and official

18   documents."

19   A   Okay.

11:03 20   Q   And I'm wondering here about, there seems to be

21   some suggestion here that on Mr. Tallis' file you

22   learned that Mr. Tallis had phoned the Cadrains.

23   Peter says here:

24   "Yes, they phoned him."

11:04 25   Or maybe that's referring to --

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1	A	No, no.
2	Q	-- I'm sorry, to Gary Young phoning Tallis.
3	A	No, that's Gary Young phoning.
4	Q	Okay. And I see, when you say "I don't believe
11:04 5		they talked," you are referring to Gary Young
6		and --
7	A	Yeah.
8	Q	Okay, I'm sorry.
9	A	I don't believe he talked to Tallis. He talked to
11:04 10		Tallis' office is my recollection.
11	Q	Okay. They got the statements and official
12		documents, so what would be on the file then, at
13		least according to Peter -- did Peter
14		Carlyle-Gordge have a chance to look at
11:04 15		Mr. Tallis' file in Gary Young's office?
16	A	No, but -- he wasn't there; however, I copied many
17		documents and Peter would have had access to them.
18	Q	Then the next page, this is just again the
19		discussion where Mr. Merchant tells you he doesn't
11:05 20		think it's worthwhile for him to review the
21		transcripts, he says:
22		"Frankly, I spent a couple of hours on
23		transcripts and I'll spend more time,
24		then I'll send it back to you. But if
11:05 25		there was something that could have

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1   acquitted him in the transcript, the

2   court of appeal would have noticed it.

3   I don't really think he did you great

4   favours --"

11:05 5   And he's talking about Gary Young,

6   "-- by reading the transcript. He's not

7   going to find something that Tallis and

8   the Chief Justice missed."

9   And again, you mentioned that a bit early, that

11:05 10   Mr. Merchant's view was that it wouldn't be a

11   valuable use of his time?

12   A   That is right.

13   Q   To go through the transcripts?

14   A   Yes.

11:05 15 Q   If we could go to 331877, please. This is May

16   26th, 1981 from Gary Young to you, so this is

17   after -- after you've engaged Mr. Merchant but

18   before you've advised Mr. Young that you don't

19   need his services any more, and I think -- I think

11:06 20   you had asked him early on to give you an opinion

21   and give you a letter saying, okay, what do I need

22   to do legally?

23   A   Okay.

24   Q   Is that fair?

11:06 25 A   That's fair.

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1   Q   And he says, in this paragraph, about your request

2   about what the case law says pertaining to a

3   reference. He says:

4   "As I believe that I had mentioned to

11:06 5   you earlier an application can be made

6   to the Governor General, through the

7   Minister of Justice for a reference to

8   the Supreme Court, under the Supreme

9   Court Act, or for a new trial, or to the

11:07 10   Provincial Court of Appeal under the

11   Criminal Code."

12   And then:

13   "In the discretion of the courts, new

14   evidence can be heard. In order to

11:07 15   satisfy the Minister of Justice that a

16   reference should be directed, it would

17   be necessary to submit evidence of a

18   very strong nature pointing in the

19   direction of the innocence of your son.

11:07 20   The evidence would have to be submitted

21   in Affidavit form."

22   And so would this have been your understanding,

23   at the time, as to what you needed to do to get a

24   remedy from the government?

11:07 25   A   Yes.

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1	Q	And so in other words:
2		"... evidence of a very strong nature
3		pointing in the direction of the
4		innocence of your son."
11:07 5		Those were Mr. Young's words?
6	A	Yes.
7	Q	And so you understood that, to get David's
8		conviction set aside or to get some relief, that
9		was your task?
11:07 10	A	I did. And that's why I feel we have so many
11		wrongful convictions.
12	Q	Pardon me?
13	A	That's why I feel we have so many wrongful
14		convictions.
11:08 15	Q	And why is that; sorry?
16	A	Because of the fact that this is what's required,
17		and I think that if we had an independent board
18		where someone could go with some evidence or of --
19		or of their innocence or to get them to help them
11:08 20		to get hold of evidence. Because, like, we didn't
21		have the money to go out and research and get the
22		investigators and do all the things that should
23		have been done in David's case and, you know,
24		that, to me, is what's happening in many of the
11:08 25		cases that I am working with in AIDWYC. And it's

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1   frustrating. So that, if there was an independent

2   board we could go to, it would make a great

3   difference.

4   Q   And are you talking about going to -- and let's

11:08   5   compare it to your efforts starting in 1981 and

6   onward; at what stage do you think you would have

7   liked to have a board that you could have gone to?

8   A   Probably right from the very first. Once the

9   Court of Appeal had turned it down, if we could

11:09   10   have gone back and -- you see, an independent

11   board would have access to all of the documents,

12   the police documents and everything. Now they

13   could look at something like that and say "here,

14   this wasn't disclosed, that wasn't disclosed, this

11:09   15   is really" -- I mean there was so many things

16   there when we went back.

17   Q   So, just on that point, are you telling us that,

18   as part of your efforts to re-open your son's

19   case, getting access to the information in the

11:09   20   police and prosecutor files was important?

21   A   Would have been essential if -- it could have

22   saved all those years of my running around blindly

23   trying to find information.

24   Q   And so I think what you are saying -- and before

11:10   25   you're done giving your evidence we're going to

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1		spend some more time on the systemic issues, but
2		just on this point -- one of the benefits you see
3		of this independent commission would be that it
4		would give access to --
11:10 5	A	To everything they needed.
6	Q	-- to -- access for a person who is claiming
7		wrongful conviction to get access to police and
8		prosecutor records?
9	A	Correct.
11:10 10	Q	And I take it you would agree that the police and
11		prosecutor records would be valuable and important
12		information for you to figure out what might have
13		gone wrong?
14	A	Yes.
11:10 15	Q	And so you see the independent commission as a
16		remedy for that concern you have in that that
17		would allow you to get information sooner than you
18		did in your case; is that fair?
19	A	That's fair.
11:10 20	Q	If I could just go to the next page, please. And
21		here there is a bit of a discussion about the
22		*Mahar* case, and it looks as though you had asked
23		Mr. Young to talk to Mr. Sherstobitoff, who had
24		been involved in that case; is that right?
11:11 25	A	Yes I did.

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1	Q	So, at this time, Mahar was still on your list --
2	A	Radar.
3	Q	On your radar screen?
4	A	Yes.
11:11 5	Q	And he then asks about -- just scroll down --
6		about whether he wants to -- no.
7		"... that you still have not located
8		Shorty Cadrain and in the event that you
9		wish me to put out a tracer on him,
11:11 10		please let me know."
11		And so I take it, at this time, you were still
12		trying to find Albert Cadrain?
13	A	Yes, I was.
14	Q	219531, please.
11:11 15	A	And, you know, we're going through this very
16		quickly, but just that statement that you made
17		about going to find Albert Cadrain, you have no
18		idea how many doors I went up to and knocked on,
19		classmates of his, and things like that, that
11:12 20		might have heard about him or knew where he might
21		be, using the Henderson Directory. I spent weeks,
22		every weekend, coming up and going through and
23		trying to find him, and do things like that, which
24		is not even in any of these transcripts or
11:12 25		records.

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	1	Q	Right. And I think what you're telling us, then,
	2		in addition to the documents that we have to
	3		assist us in guiding us through and trying to
	4		identify what happened, what you are telling us is
11:12	5		that there's an awful lot more there that wasn't
	6		reduced to paper?
	7	A	Absolutely.
	8	Q	That --
	9	A	Hours and hours and weeks and weeks and months.
11:12	10	Q	And so, again, let's just talk about that a bit,
	11		about finding the witnesses. And certainly by
	12		referring to the documents, I'm doing it to assist
	13		you with dates and time to try and jog your
	14		memory, --
11:13	15	A	Yes.
	16	Q	-- and I think what you are saying is, lookit, in
	17		addition to that there was an awful lot of work
	18		that may not have --
	19	A	That you would have no knowledge of.
11:13	20	Q	That bore no fruit?
	21	A	That never bore fruit.
	22	Q	And so again, as far as finding the witnesses,
	23		you've talked about Cadrain, you've talked a
	24		little bit about Nichol John and Ron, a bit about
11:13	25		Ron Wilson; is there anything else that you

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1   haven't told us about your efforts to find them

2   that we've not talked about?

3   A Well I think even just how Chris found, my Chris

4   found Lapchuk and Melnyk and the rest of them,

11:13 5   and, you know, and Susan was out researching and

6   doing things. The whole family was involved in

7   this, and that's not even mentioned, you know.

8   Q Okay. Well maybe tell us about that. Again,

9   we're -- would this be in the 1981 time period?

11:13 10 A Yes, it would.

11   Q Tell --

12   A And, you know, that was when we went up to

13   Saskatoon, or came up here to Saskatoon and did

14   the movie and realized what we'd found, and then

11:14 15   we kept coming back at various times, and we went

16   around the neighbourhood to talk to people that

17   lived in there at the time, and knocked on doors,

18   and did all sorts of things then.

19   Q And, again, would your family members also have

11:14 20   been involved in contacting people, trying to find

21   out information?

22   A Yes, they would have.

23   Q And so the documents that we have would show us,

24   would give us some -- some idea, but not the full

11:14 25   picture; is that right?

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	1	A	Only if there were some results that came forward,
	2		--
	3	Q	Okay.
	4	A	-- you would get it in the documents.
11:14	5	Q	And what about were there documents prepared for
	6		leads that didn't go anywhere, what happened to
	7		those, or were they not documented?
	8	A	They really, when we first started out they
	9		weren't being documented, it wasn't a -- I forget
11:14	10		when I really started documenting a lot of this
	11		stuff.
	12	Q	It would appear that at least the interviews that
	13		you and Mr. Carlyle-Gordge were involved in --
	14	A	I think it was because Peter said it was very
11:15	15		important to tape.
	16	Q	Okay. And so that his involvement, certainly when
	17		he was involved they were taped, and I think some
	18		of your own were taped as well?
	19	A	Yeah, and I think that made me look at it in a
11:15	20		more professional manner than just a mum.
	21	Q	Here is 219531, and this is a letter of the same
	22		date from Mr. Merchant to you saying "give me
	23		everything you have about Shorty and I will
	24		then" -- or then he'll -- if you could scroll down
11:15	25		-- talk to a tracing service. So this follows up

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1   from the interview that he is going to try to find

2   Albert Cadrain for you; is that right?

3   A   Right. And I see that at the top:

4   "What about doctor",

11:15 5   that I probably asked him about the doctor.

6   Q   And that related to Nichol John; is that right?

7   A   Yes.

8   Q   And then 216045. This is a letter June 3, 1981

9   from Tony Merchant to Peter Carlyle-Gordge. It

11:16 10   says:

11   "I only had authorization to

12   expend money to find Mr. Cadrain."

13   And I think, here, what he is talking about is

14   the money he got from Howard Shannon. He says:

11:16 15   "I suppose I have the freedom

16   to use the funds in my possession as I

17   see fit. I would like you and

18   Mrs. Milgaard to discuss whether I

19   should be spending $75.00 on each, and I

11:16 20   require the kind of information that you

21   gave me re:Cadrain in order to instruct

22   a trace on the others."

23   And if we can just scroll down to the P.S. he

24   says:

11:16 25   "My meaning may have lacked clarity. If

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1   you and Mrs. Milgaard consider the

2   expenditure of money to trace these

3   people to be necessary, then I will

4   spend it, but the source of my funds is

11:16   5   limited."

6   So it would appear, at this time, that Peter

7   Carlyle-Gordge had access to Mr. Merchant --

8   A   Yes, he did.

9   Q   -- to find people?

11:17 10   A   Yes.

11   Q   And you were fine with that, that if he dealt

12   directly with Mr. Merchant --

13   A   I had no problem with that.

14   Q   And it would appear, here, that Mr. Merchant is

11:17 15   saying, lookit, every person I fined for you costs

16   money, and funds are limited, --

17   A   Yes.

18   Q   -- so make sure you want to do it; is that --

19   A   That's correct.

11:17 20   Q   332572. And this is a June 11th memo back from

21   Peter Carlyle-Gordge to Tony, he says he talked to

22   you, and asked Tony:

23   "... to find Sharon Williams & Ute

24   Frank. All the info we have on both -

11:17 25   sketchy - was contained in my letter.

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1   Both are important."

2   So I think there is a letter from Mr.

3   Carlyle-Gordge that was sent to Mr. Merchant with

4   all --

11:18 5   *A*   With that information, yes.

6   *Q*   Yeah, and I don't have that letter, I don't think.

7   So, again, Ute Frank; why would you be wanting to

8   find her and Sharon Williams?

9   *A*   Well because he was going to see Sharon Williams,

11:18 10   and Sharon Williams was involved, and Ute Frank,

11   because she was in the motel incident.

12 *Q*   And, at this point, I think you told us yesterday

13   that that would have been one of the statements

14   you would have got off of Mr. Tallis' file, you

11:18 15   think?

16 *A*   Yes, --

17 *Q*   Yeah.

18 *A*   -- that's correct.

19 *Q*   So you would want to follow up with her and get

11:18 20   her version of events?

21 *A*   Yes.

22 *Q*   And then scroll down to number 2. It says:

23   "We'd like to proceed with hypnosis of

24   Nicol Demyen. If she somehow backs out

11:18 25   of it we'd like to take up her lawyer's

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1   idea of a polygraph test. We can

2   develop questions. My own view is that

3   there is no memory lapse - she gave a

4   lucid statement in March 69 which

11:18 5   dovetailed with David's own account.

6   The 'mental block' came only in May. We

7   feel she should be hypnotized or put on

8   polygraph."

9   So did Mr. Carlyle-Gordge, at this time he seemed

11:19 10   to have a different view about Nichol John than

11   you and Mr. Merchant, is that fair?

12 A Yes.

13 Q That there wasn't a mental block but something

14   else?

11:19 15 A Yes.

16 Q Do you remember what his thinking was?

17 A He felt she'd made it up.

18 Q And did he have a theory as to why or --

19 A No. I believe that he just felt that -- well, yes

11:19 20   he did, and I believe he gave it here when he

21   testified; he felt that it was the pressure that

22   she'd received from the police.

23 Q If we can go to 331857, please. Here's your

24   letter to Gary Young of June 25, 1981, and this is

11:20 25   where you tell him that you are using other

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1   counsel. And again, I think this is what you told

2   me, you ran into Howard Shannon and:

3   "... we needed ... someone with

4   polictical connections and clout ..."

11:20 5   And just talking about that, did -- when you went

6   to Mr. Merchant did he undertake any steps on the

7   political side of things for you?

8   A Not immediate, but we talked about it, and it --

9   Howard, in particular, had pointed out the Otto

11:20 10   Lang connection, in fact I did meet with him, and

11   --

12 Q With who?

13 A Otto Lang --

14 Q Okay.

11:20 15 A -- and Tony Merchant in Winnipeg at one time.

16 Q And was Otto Lang a Minister, at the time, in the

17   government?

18 A Yes, he was.

19 Q And do you know, was it Transport or Justice?

11:21 20 A I can't remember at the time.

21 Q Was he Justice Minister at one time?

22   MR. WILSON: He was both.

23 A He was both.

24   BY MR. HODSON:

25 Q So he may have been the Justice Minister at the

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1		time?
2	A	That's possible. But I know that I met with Tony
3		at his home.
4	Q	You met with Otto Lang?
11:21 5	A	I met Tony Merchant with Otto Lang's home in
6		Winnipeg.
7	Q	Okay.
8	A	I believe it was near Wellington Crescent or
9		around that area, I remember that, going there.
11:21 10	Q	And what was the purpose of that meeting or what
11		was discussed there?
12	A	The fact of David's innocence and how we were
13		attempting to get him out, and I think I had
14		things to go over with Tony at the time, that it
11:21 15		seemed an appropriate meeting, if you will.
16	Q	And did you discuss anything about the process,
17		the 690 or the 617, or --
18	A	I don't remember.
19	Q	And do you remember when that would have been,
11:21 20		approximately?
21	A	No, I haven't a -- I can't give you a specific
22		date, but it would have been after we'd had the
23		hypnosis session with Nichol.
24	Q	Okay.
11:22 25	A	I can pinpoint it that much.

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1	Q	So sometime in 1981?
2	A	Yes.
3	Q	If we can go to 216050. This is a letter from Mr.
4		Merchant to Justice Tallis; were you aware that
5		Tony Merchant was trying to reach Mr. Tallis to
6		talk to him at the time?
7	A	I probably was.
8	Q	And, again, --
9	A	Mostly he did, he did usually copy me on anything
10		he was doing.
11	Q	He did?
12	A	Yes.
13	Q	And, again, did you have any concerns with him
14		getting in touch with Mr. Tallis?
15	A	No.
16	Q	Do you recall any discussion with Tony Merchant
17		about contacting Mr. Caldwell, the prosecutor, or
18		having any concerns about that?
19	A	No, I don't recall any discussion about that.
20	Q	And what about any concerns or discussion with Mr.
21		Merchant about contacting the police for police
22		files, or the Attorney General, any discussion you
23		remember about that?
24	A	No, I -- and I think probably, because of the
25		reaction that we got from Gary Young, that

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 1              wouldn't be something I'd have pursued again.

 2        Q     And then here, if we can go to 216054, this is a

 3              letter from Tony Merchant to Dr. Messer.  And you

 4              became familiar with who Dr. Messer was, Charlie

 5              Messer?

 6        A     Yes, I did.

 7        Q     Did you ever meet with him or talk to him; do you

 8              remember?

 9        A     I have a vague recollection of having a meeting

10              with him at one point.

11        Q     And he was the doctor that Tony Merchant talked to

12              about meeting with Nichol John; is that right?

13        A     Yes.

14        Q     And this letter talks about you getting together

15              with Dr. Messer to give you -- to give him:

16                        "... the subject areas to be plumbed.",

17              I think are Tony's words?

18        A     Yes.

19        Q     And that would be the background information so

20              that he could interview her; is that right?

21        A     That's correct.

22        Q     And 213626.  And it looks, would it be fair to say

23              that from May of 1981 through until September of

24              '81 it looks like Nichol John is the focus, at

25              least the primary focus of you and Mr.
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1   Carlyle-Gordge; is that fair?

2   A   That's fair.

3   Q   And certainly, I take it there may have been other

4   avenues you were pursuing at the time that aren't

11:24 5   seen in the documents, but that you and your

6   family would be doing other things at this time?

7   A   Yes, we were.

8   Q   And so, here, this is a note on Tony Merchant's

9   file about a call from Dr. Messer, and he says he

11:25 10   met with you and presumably Peter Carlyle-Gordge:

11   "... on Sunday, September 13/81 for

12   approximately 2 - 2 1/2 hours. During

13   that time Mrs. Milgaard contacted Larry

14   Leslie and asked if and when Dr. Messer

15   could meet with Leslie and his client

16   Demyen. Larry Leslie indicated to

17   Mrs. Milgaard that he did not wish to

18   discuss anything about the case with Dr.

19   Messer at that moment."

11:25 20   And Messer says, hearing your side of the

21   conversation, it sounds like Leslie is reluctant

22   to get involved. And then scroll down:

23   "Also Mrs. Milgaard had contacted Demyen

24   and had set up a meeting with her in

11:25 25   Saskatoon (Messer doesn't know the exact

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	1		day of the meeting but indicates it was
	2		just this week) and when Mrs. Milgaard
	3		went to meet Demyen at the place agreed
	4		upon she was greated by two anti-social
11:25	5		thugs who threatened to beat her up if
	6		she didn't leave Demyen out of it."
	7		Do you recall any of that happening?
	8	A	Yes, I do.
	9	Q	And can you tell us what you remember about that
11:26	10		incident, how it came about, and what happened?
	11	A	Well, they were waiting for me when I arrived
	12		there to meet with Nichol.
	13	Q	Okay. Let me just back up. So would you have
	14		called -- this would be after the May 9, '81
11:26	15		meeting; would you have called Nichol, then, for a
	16		follow-up meeting?
	17	A	Yes, I had.
	18	Q	And what was the purpose of the follow-up meeting?
	19	A	To set her up with Dr. Messer.
11:26	20	Q	And so you just wanted to meet with her and talk
	21		about --
	22	A	Yes.
	23	Q	-- the process?
	24	A	Right.
11:26	25	Q	And where did you agree to meet?

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1   A   I can't remember, but where I went, and after that

2   my son Chris didn't want me to go out by myself

3   any more because he was frightened about what

4   could happen to me.

11:26 5   Q   And so, when you went there, was Nichol John there

6   when you went?

7   A   No, she wasn't.

8   Q   Okay.

9   A   They were waiting for me.

11:26 10   Q   Okay. And so you had a meeting place for her, you

11   went there, and two people were there?

12   A   Yes.

13   Q   And did you know who they were?

14   A   No I didn't.

11:27 15   Q   And what did they say to you?

16   A   Just threatened me and said that I had to leave

17   Nichol alone, and if I knew what was good for me I

18   would pack up my bags and leave and never come

19   back, and words to that effect. It was, it was

11:27 20   very frightening.

21   Q   Go to 216058. And this is October 5 of '81, this

22   is Mr. Merchant reporting to Howard Shannon saying

23   'here's how much money I've spent':

24   "You had indicated that you were

11:27 25   prepared to provide funds to a maximum

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1   of $3,000, and I will continue the work

2   on the basis of that commitment to us

3   ...",

4   etcetera. And:

11:28 5   "It is difficult to bring the threads

6   together, but I am not totally

7   discouraged by the progress to date."

8   So I take it that Mr. Merchant was reporting to

9   Howard Shannon about --

11:28 10   A   Yes, he was.

11   Q   216063. And we went through most of this

12   correspondence with Mr. Merchant, we can maybe

13   shorten it up a bit. It would appear that

14   arrangements were made for Nichol John to see Dr.

11:28 15   Messer and I think there was money paid of $1200

16   to fly her, I think, from Kelowna into Regina to

17   meet with Dr. Messer; --

18   A   Correct.

19   Q   -- that was the plan? And I think you had

11:28 20   arranged it through her lawyer, she'd agreed to do

21   it, Dr. Messer agreed to do it, a date was set up,

22   the money was sent, and she didn't show up?

23   A   That's correct.

24   Q   And then I think for the next number of months,

11:28 25   perhaps even longer, you continued your efforts to

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1   try and get that to happen?

2   A   I did.

3   Q   And what ultimately happened?

4   A   I ended up having to go after them to get the

11:29 5   money back because it never happened.

6   Q   And so Nichol, you arranged for Dr. Messer to

7   interview her, she agreed to the process, but when

8   it came time to actually go ahead with the --

9   A   She didn't go ahead with it.

11:29 10   Q   -- meeting she didn't go ahead? I wonder, 219542,

11   please. And this is a letter from David to Nichol

12   May 18th, '82?

13   A   Yes, I believe we discussed him writing to her,

14   because we felt maybe it might get her to help.

11:29 15   Q   And tell us, so this is May of '82, you have

16   been -- I think December of 1980 was when you

17   launched the campaign, if I can call it that, or

18   certainly went public and started the work, so

19   here we are about 16, 17 months later?

11:30 20   A   Yes.

21   Q   What, tell us, what involvement did your son David

22   have in what was happening, did you keep him

23   informed on a regular basis, or tell us what

24   interaction you had with him about what was going

11:30 25   on?

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1   A   Oh, we definitely kept him involved and told him

2   what we were doing, and I spent a great deal of

3   time with him with the transcripts and his

4   recollection of things, and we went through page

11:30 5   after page of the transcripts.

6   Q   And what was his memory like at that time, how did

7   you -- when you went through with him, as far as

8   his ability to recall what happened?

9   A   His memory at that time was excellent.

11:30 10   Q   Okay. And, what, tell us a bit about his, if you

11   can, what were his expectations as far as the

12   timing of these things? Can you tell us what you

13   and he were thinking about, I mean is this

14   something like okay, we've got some information,

11:31 15   we're meeting with Nichol, therefore next month

16   I'm going to get out of jail, this will all be

17   fixed, or next year, or --

18   A   Yeah, unfortunately that was what was happening,

19   he -- his -- he'd get his hopes up and then they'd

11:31 20   be dashed, you know, and it was sort of a vicious

21   up and down cycle and it was very, very hard on

22   him.

23   Q   And would you be experiencing a similar feeling,

24   as well, with the expectations that we have

11:31 25   something and then we don't?

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1   A   Yes. Every time I find -- found somebody that I

2   thought was it and then you were just, all your

3   hopes were dashed and you were down on the ground

4   again and it was like "okay, all right God, how do

11:31 5 we do this, let's start again".

6   Q   And just -- and again, I appreciate you've told us

7   already that at this time, and perhaps at all

8   times, the legal mechanics of who and how you

9   apply and how that all worked you left to your

11:32 10 lawyers?

11   A   Yes.

12   Q   But what was your understanding or your thinking

13   in the early '80s about, once you found the

14   bombshell or you found something, what -- what

11:32 15 were you thinking time-wise, what was your

16   expectation as to what would happen to --

17   A   Oh, it was totally unrealistic. I figured, you

18   know, you put in this magic paper and you give

19   them the information and the door opens and out

11:32 20 comes David. I had no idea it would take years.

21   Q   But again, just your thinking at the time was once

22   you got the information, give it to the

23   authorities or whomever --

24   A   Uh-huh.

11:32 25 Q   -- and they'd look at it, and then David would get

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1   out of jail?

2   A   That's it.

3   Q   And would that have been David's thinking and

4   expectation as well?

11:32 5   A   I believe it was.

6   Q   And when you found, for example when you

7   interviewed Dale Wilson, Ron Wilson, would you

8   have told David about that, saying "lookit, here's

9   what Dale now says and here's" --

11:33 10   A   Oh, yes, we kept him apprised of most things. It

11   wasn't until later on, and I can't even give you a

12   date on this, that he got to the stage where he

13   couldn't handle it. I think it would be more in

14   the next section, in the Hersh Wolch and David

11:33 15   Asper section, where we had to start hiding things

16   from him --

17   Q   And that --

18   A   -- because he couldn't handle it, he was too

19   fragile.

11:33 20   Q   And that would be after the application had been

21   filed?

22   A   No, that would be before the application was

23   filed, or during that time, you know, --

24   Q   Yeah.

11:33 25   A   -- where he was firing the lawyers every other

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1   day.

2   Q   Okay. If we could call up 332575, please. This

3   is another reporting letter June 4, '82 to Howard

4   Shannon, and it's just telling him that he hasn't:

11:34 5   "... been able to establish any sort of

6   a breakthrough. In order to obtain a

7   retrial or some re-examination of the

8   matter, we would require an order from

9   the Attorney General of Canada and we

11:34 10   could only obtain such an order if

11   something extraordinary happened. I

12   have in mind a witness indicating that

13   his or her testimony was untrue or that

14   some new evidence arose."

11:34 15   And, again, would that have been your

16   understanding of what you thought you had to get?

17   A   It was then.

18   Q   And he says:

19   "We have been pursuing the

11:34 20   various witnesses who gave the most

21   telling evidence against David at his

22   trial. We have been unable to find some

23   of the witnesses. We thought that

24   Nicole Demyen would assist us. She

11:34 25   appears to have changed her story and

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1   she agreed to submit to an examination

2   under truth drugs with the assistance of

3   a psychiatrist but then backed away at

4   the last minute."

11:35 5   And then at the bottom:

6   "I am continuing to work

7   under the direction of Mrs. Milgaard."

8   Was that --

9   A   Yes.

11:35 10   Q   -- what was happening then?

11   A   Yes.

12   Q   219528. This is a letter of September 29, 1982

13   from Mr. Merchant to Mr. Tallis, or to the

14   Registrar of the Court, and he was trying to get a

11:35 15   copy of Mr. Tallis' notes and, in particular, he

16   was trying to find out; do you remember him

17   telling you that he wanted to find out what David

18   had told Mr. Tallis at the time?

19   A   Yes, I believe I do remember that.

11:35 20   Q   That he -- I think that, Mr. Merchant said that

21   was important to him, to find out what --

22   A   -- David had actually said at the time.

23   Q   What about, from your perspective, was that

24   something you were interested in getting or to

11:35 25   find out what --

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	1	A	I knew what he had said.
	2	Q	What David had said?
	3	A	Yes.
	4	Q	Umm --
11:35	5	A	Other than when he had talked to Tallis and I
	6		wasn't around.
	7	Q	Right, and that's what I guess I'm getting at,
	8		what -- did you consider that, about I would like
	9		to find out what Mr. Tallis says David told him
11:36	10		back then?
	11	A	No, I don't think that was my concern, I think it
	12		was his.
	13	Q	Was Mr. Merchant's?
	14	A	Yes.
11:36	15	Q	And you were fine with David's recollection
	16		of events?
	17	A	And mine, yes.
	18	Q	And here we talk, if we can scroll down:
	19		"Mr. Milgaard is likely to be out on
11:36	20		parole by June of next year. He
	21		maintains his instructions that he was
	22		not guilty and wants the matter pursued
	23		further."
	24		We heard Mr. Merchant talk a bit about the
11:36	25		parole, and can you tell us, I think what the,

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	1		what his evidence and the documents suggest, that
	2		he, Mr. Merchant, thought he could get David out
	3		on a parole in 1983, in fact may have gone to one
	4		or two parole hearings?
11:36	5	A	He did.
	6	Q	And then --
	7	A	Went down to Kingston.
	8	Q	And then something happened that, I think
	9		something happened with David that he described
11:36	10		and as a result the parole hearing did not go as
	11		well as he had expected?
	12	A	That's correct.
	13	Q	And can you tell us, were you involved in those
	14		matters, can you give us just a short summary of
11:37	15		what was happening at this time with David and the
	16		parole?
	17	A	No, I can't.
	18	Q	Do you have a recollection of what was happening
	19		then?
11:37	20	A	He was having problems at the time. I remember
	21		Anthony Merchant going down there. My daughter
	22		Maureen actually at that period in time went down
	23		to Kingston, took a job there as a waitress and
	24		stayed with him for a number of months just so
11:37	25		that he would have family nearby and she would go

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	1		and visit him, but he was finding it very
	2		difficult to accept the length of time it was
	3		taking for all of this to happen and he had some
	4		really bad times and bad days there.
11:38	5	Q	And I don't want to get into too much in the way
	6		of details, but just to understand, I think what
	7		the documents or the records suggest is that he
	8		was having, David was having issues with the
	9		medical help that he was getting in prison?
11:38	10	A	Yes.
	11	Q	The psychiatrists, there was some issues there,
	12		and that his mental health may not have been very
	13		good at that time?
	14	A	No.
11:38	15	Q	Is that a fair way to put it?
	16	A	That's fair, and at one point, and I can't exactly
	17		document it where it was, but they sent him
	18		somewhere and his papers somehow got separated
	19		from him and he was in a mental institution, he
11:39	20		was in a room with a whole bunch of other naked
	21		people and the only way they could get clothing
	22		was by certain things that he had to do in order
	23		to get pieces of clothing and it was some time
	24		before they actually found his papers and he got
11:39	25		out of there, but he was submitted to some awful

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1   things, some terrible things happened to him, and

2   a lot of it flew back to the psychiatric reports

3   that started the whole thing out, and plus the

4   fact that because he claimed his innocence, the

11:39   5   psychiatrists would always look at him that he was

6   hiding something and that he didn't know himself

7   that he had done this, and so they were always

8   looking at him in this way, and so he found it

9   extremely difficult to do anything with them, and

11:40   10   that's the problem with the system.

11   When we were trying to get

12   parole, unless you would admit your guilt and say

13   you're sorry, they aren't going to let you out. I

14   mean, that has changed now, it's not a requirement

11:40   15   now the way it was in the past, but it was a

16   requirement of the parole board at that time.

17   Q   I think you were here I think when David Asper

18   gave evidence about the challenges David had with

19   parole?

11:40   20   A   Yes.

21   Q   And accepting getting out under their system as a

22   guilty person and that that caused him some

23   concern?

24   A   Yeah, and, I mean, he would not, he refused to say

11:40   25   that he had done it.

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1   Q   In addition to that refusal, was there as well

2   some conduct or behaviour of David that caused the

3   parole authorities to look at his applications

4   unfavourably as well, were there some -- did he

11:41 5   have a tough time with the parole board; is

6   that --

7   A   We all had a tough time with the parole board,

8   yes.

9   Q   And again, just -- the reason I brought it up is

11:41 10   when we get back at this point, in '82 and '83,

11   would it be fair to say that David's condition in

12   prison, did it deteriorate over time in a sense --

13   A   It did.

14   Q   And again --

11:41 15   A   He would have his up days, he would have his down

16   days, and that's the reason for Maureen leaving

17   home and the family and going down to spend the

18   time there with him, because he was very, very

19   fragile at that time.

11:41 20   Q   And am I correct that there was some frustration

21   obviously on his part that he felt he shouldn't be

22   there that caused him maybe to act up on occasion

23   that negatively affected his ability to get

24   parole; is that --

11:41 25   A   That's correct.

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1 Q   And when he didn't get parole, that again caused

2   him to be more upset, perhaps to act up, and maybe

3   that's the wrong word, but a bit of a cycle there

4   where --

11:42 5 A   He was fighting back in the only way he knew how,

6   and it's interesting because at this point Anthony

7   Merchant is trying to work with the parole board.

8   I had given up on the parole board at that time.

9 Q   I think what Mr. Merchant told us is that he

11:42 10   thought step number one would be to get David out

11   on parole because that would do two things; one,

12   it would give him the ability to help you, and

13   two, it might take some pressure off?

14 A   Yes, but, Mr. Hodson, that's what I thought in

11:42 15   1971 and '72 and '73 and all those years that I

16   thought, you know, we would get him out on parole

17   and it didn't happen, every time you went to the

18   parole board you were just slapped down, and then

19   we ended up in 1980 with David escaping because

11:43 20   the parole board had indicated it was going to be

21   another four years where they would even consider

22   him and he just couldn't wait that long.

23 Q   So what Mr. Merchant experienced in 1983 is what

24   you had --

11:43 25 A   I had already been there, done that and didn't

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 1                want to do it again.

 2         Q      And just again as far as your efforts to gather

 3                information and re-open, is it fair to say that

 4                every month or week -- every week, month, year as

11:43  5          this went on, it became a bit more difficult

 6                because perhaps David's expectations or his

 7                condition worsened?

 8         A      Yes.

 9         Q      And when I say expectations worsened, what I meant

11:43 10          is that the longer it took --

11         A      -- the more frustrated he got and we got.

12         Q      Okay.  219484, and this is a letter from you to

13                Mr. Merchant, I don't have a date on it, but I'm

14                going to suggest to you that it is in the fall of

11:44 15          1982 and there's a reference towards the end of

16                the letter about December and it talks about:

17                        "For over two years now we've been doing

18                        our best --"

19                So I think that's the time frame.

11:44 20   A      Okay.

21         Q      I want to go through parts of this with you, you

22                know, you say:

23                        "For over two years now we've been doing

24                        our best to go over my son's case and

11:44 25                  try to have it reopened.  David is,
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1   frankly, depressed about the progress,

2   as am I. We seem to have reached an

3   impasse and I think it urgent that we

4   draw up a timetable of action before

11:44   5   things drift further. After all our

6   work to track down Nicole Demyen, the

7   case seems to be going no further and I

8   feel we must contact her again. I am

9   writing separately to her Regina

11:45 10   lawyer --"

11   Etcetera. And then just scroll down to the next,

12   the secondly:

13   "Secondly, I feel it is imperative,

14   whatever the cost, that you locate the

11:45 15   critical witness, Albert Cadrain...

16   Christmas is fast approaching and it

17   seems likely he might visit his parents'

18   home in Saskatoon."

19   Can you tell us what was going on at this time,

11:45 20   does this letter refresh your memory about what

21   your concerns may have been?

22 A   Well, it just, it seemed once we got to Anthony

23   Merchant, that everything started to slow down and

24   it was just stalling, stalling, stalling and

11:45 25   nothing was happening.

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1	Q	Now, from the records, at least of the transcribed
2		interviews, it appears that all the people you
3		needed to talk to, other than Albert Cadrain, had
4		been talked to?
5	A	Yes.

11:45 5

6 Q And I think we heard from Peter Carlyle-Gordge, he

7 became frustrated in '83, sort of, I think his

8 words were, gave up or I think that's when he --

9 A Yeah, I think that he just became burned out over

11:46 10 the whole situation and I think that that was

11 happening to everyone, David included. I was

12 fortunate that with my philosophy, I'm born fresh

13 each day and I get up brand new and I never take

14 yesterday into today, so that helped me each day

11:46 15 to go ahead.

16 Q Were you frustrated with Mr. Merchant's efforts at

17 this point or just generally --

18 A No, I think it was at this point that we were

19 suspicious of Anthony Merchant.

11:46 20 Q Okay.

21 A And that this was the point where I'm starting to

22 back away from him.

23 Q Then if we can scroll down, you talk about

24 locating Cadrain:

11:46 25 "We supplied all the information we had

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1   on Cadrain and I would ask you to

2   consider immediately hiring a private

3   detective in Regina or Saskatoon to

4   follow up. Failing that, I would like

11:46 5   to hire an agency myself and have their

6   costs billed to David's account.

7   Cadrain is the key to the whole case."

8   When you say Cadrain is the key to the whole

9   case, what did you mean by that?

11:47 10 A   Well, I felt that if we could get his statement,

11   that if he recanted what he said and could tell

12   us, and we went through various scenarios of what

13   Albert might tell us, that he could be the key to

14   the whole case and get it re-opened. He could be

11:47 15   our bombshell.

16 Q   Was there -- was it because you had already been

17   to Ron and Nichol and you didn't get what you

18   thought was a bombshell with them, that Cadrain

19   was the last one left?

11:47 20 A   That's right.

21 Q   And there might have been a bit of pressure to say

22   lookit, find him because he's the last hope for a

23   bombshell?

24 A   That could be it, could have been my feelings.

11:47 25 Q   And then at the bottom you talk about interested

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1   in tracing Ute Frank, we talked about that before.

2   I take it you hadn't talked to her yet?

3   A   No.

4   Q   And next page, and here you say:

11:48 5   "She was present in the motel room when

6   David is alleged to have 'acted out' the

7   stabbing and to have said 'Sure I did

8   it'."

9   Is it fair to say that's taken from Debbie Hall?

11:48 10   A   Yes, I believe so.

11   Q   That's what she said, that's what she said in her

12   statement to Chris O'Brien?

13   A   Yes.

14   Q   And then:

11:48 15   "As you know, Uta was not called to give

16   her version of the motel events, but

17   Melnyk and Labchuk were and they made it

18   sound sinister. The testimony of both

19   has been vehemently disputed in a taped

11:48 20   interview by another female who was

21   present in the motel room at the time.

22   If Uta Frank confirms the taped denial

23   of events, the evidence of

24   Labchuk/Melnyk will be shaky indeed and

11:48 25   may give us lever to reopen the case."

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1   And again that would be looking at the motel room

2   reenactment as a bombshell, that if Debbie Hall

3   and Ute Frank said Melnyk and Lapchuk lied about

4   it, that would be your --

11:49 5   A   A good bombshell.

6   Q   And at this time did you think for a bombshell you

7   needed to have someone lying to establish that

8   there was false evidence?

9   A   Yes.

11:49 10   Q   And so would it be fair to say that if Melnyk and

11   Lapchuk were lying, you considered that to be a

12   bombshell, that that would be enough --

13   A   If we could prove that they were.

14   Q   If, however, they weren't lying and they described

11:49 15   the incident properly, as far as the conduct and

16   the actions, but that others viewed it as a joke

17   as opposed to being serious, did you view that as

18   being a bombshell or less of a bombshell?

19   A   Well, certainly less.

11:49 20   Q   And that that might not be enough to --

21   A   It wouldn't be enough.

22   Q   So the theory of a lie was much better than the

23   theory of a joke; is that --

24   A   Correct.

11:49 25   Q   Then the next page, you say:

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1   "We must exhaust all other avenues of

2   tracing people and getting things

3   moving."

4   Were things stalled at this point or were --

11:50   5   A   I felt they were, yes.

6   Q   And then if we can scroll down:

7   "David is hopeful by that March at the

8   latest we will have found enough holes

9   in testimony and witness credibility to

11:50 10   try for an official reopening. Whatever

11   it costs, we need action immediately or

12   another year will slip away."

13   So I take it at this time that, and again you'll

14   see December 15, I think that's '82, your son

11:50 15   David is thinking, okay, like, a three or four

16   month horizon to get the re-opening, and that

17   would have been your thoughts at the time as

18   well?

19   A   Yes, it would have been.

11:51 20   Q   Go to 213628. Actually, sorry, first go to

21   183639, and this is a letter to David from Tony

22   Merchant, there's a copy to you, but he talks

23   about I have now spoken with Mr. Tallis, we met on

24   the 29th, and then if we can go to 213628, and

11:51 25   these are Mr. Merchant's notes from his file of

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1   his discussion with Mr. Tallis, and I'll just go

2   through parts of them, and I would like to know

3   whether Mr. Merchant would have shared this with

4   you or whether this was consistent with what David

11:52 5   had told you as far as his version of events.

6   One:

7   "He gave written instructions - he would

8   not testify."

9   That being David, and I don't think there was any

11:52 10   issue with that; is that correct?

11   A   That's correct.

12   Q   And:

13   "He had a notebook of instructions to me

14   which I gave back to him."

11:52 15   A   I remember that.

16   Q   And he says:

17   "No question he was with his friends who

18   testified against him. He said - he got

19   out with Wilson to push car which was

11:52 20   stuck. Nicklejohn (Regina girl)."

21   And then:

22   "He was away from car. He confirmed."

23   And so again, and I think what Mr. Merchant

24   testified and Mr. Tallis, is that David confirmed

11:52 25   with Mr. Tallis in 1969 and 1970 that they did

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1		get stuck and that David was away from the car
2		for a short while?
3	A	But just for a matter of a few minutes.
4	Q	Yes.
5	A	Uh-huh.
6	Q	And would that be consistent with what David had
7		told you at the time?
8	A	Yes, it was.
9	Q	And that was your understanding of the facts, or
10		David's version, that after they had stopped a
11		woman for directions, the vehicle had been stuck
12		and that he and Ron left the car but only for a
13		short while?
14	A	That's correct.
15	Q	And:
16		"He confirmed changed his clothes at
17		Shorty Cadrain's\said there was no
18		blood."
19		And that was consist with what David told you?
20	A	Yes.
21	Q	And:
22		"Between Saskatoon and Regina he threw out a
23		compact which Nicklejohn found in glove
24		compartment and would have been tough
25		cross."

11:52 (line 5)
11:53 (line 10)
11:53 (line 15)
11:53 (line 20)
11:53 (line 25)

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1   Again, do you recall talking to Mr. Merchant

2   about that at the time, that at least according

3   --

4 A I don't remember talking to him about any of this.

11:53 5 Q Okay. But again, the compact, would that be, I

6   think you told us yesterday, you thought back in

7   1970 David had said he didn't think he had done

8   that, or he had some memory of that?

9 A Yes, I did, and yet I remember him also, I

11:53 10   remember my thoughts at the time was that with

11   David it's just a stupid kind of thing he might

12   do, that someone -- 'I don't know what it is,'

13   throw it out. He could do it.

14 Q And I think that's what Mr. Tallis said, the

11:54 15   concern he had is that David, at least when he

16   talked to him in '69, '70, didn't have an

17   explanation as to why he did it, he said I just

18   did it, I don't know why?

19 A Yeah, and that, with the way David was at that

11:54 20   time, would be quite possible.

21 Q And then as well:

22   "He said of people who testified when

23   drugs - who recounted his --"

24   I'm sorry, someone is going to have to --

11:54 25 A Saga.

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1   Q   "He stabbed her 14 times. He said of -

2   I could have said it."

3   I'm sorry, with respect to the motel room

4   incident, according to Mr. Merchant, Tallis told

11:54 5   him that when he talked to David, David said he

6   could have said it?

7   A   Yes.

8   Q   And again, I think that's consistent with what he

9   told you?

11:55 10   A   Yes.

11   Q   And what you believed?

12   A   That's correct.

13   Q   And then "Nicklejohn recant her" and then there's

14   some case names, her testimony. "Niechol John,

11:55 15   Wilson's crucial, Cadrain," etcetera. And I think

16   what Mr. Tallis told the Inquiry is that his, and

17   I think he shared this with Mr. Merchant, was that

18   the area he would focus on would be Wilson, John

19   and Cadrain as far as their evidence. Do you

11:55 20   remember discussing that at all with Mr. Merchant?

21   A   No, I don't.

22   MR. HODSON: This is probably an

23   appropriate spot to break for lunch.

24   (Adjourned at 11:55 a.m.)

01:32 25   (Reconvened at 1:32 p.m.)

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1   BY MR. HODSON:

2   Q   Good afternoon. If we could get 183639 up,

3   please. This is a December 10th letter from Tony

4   Merchant to your son after his discussion with Mr.

01:32   5   Tallis and he just, again, repeats here:

6   "More than ever, ...",

7   after talking to Tallis:

8   "... I believe that unless we can

9   persuade some witness to recant their

01:32 10   story, then very little can be done."

11   And again just back, this is a letter to David

12   December '82, December 10, 1982, and I think you

13   told us again this morning he had grown

14   frustrated with how long it was taking?

01:33 15   A   Yes, he had.

16   Q   Next page. And then he says to David:

17   "In summary, as a result of

18   talking with Judge Tallis, I don't have

19   any better ideas than we have been

01:33 20   pursuing for some months, namely the

21   fact that we have to get some of the

22   witnesses to testify differently."

23   And I think the only one left that you hadn't

24   talked to was Albert Cadrain and you had not, I

01:33 25   don't think, had given up on Nichol John; is that

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  1              correct?

  2       A      That's correct.

  3       Q      219530.  And this is a December 29th letter from

  4              Mr. Merchant to Empire Skip Tracing, and here's

01:34  5              where he is looking for Albert Cadrain, Nichol

  6              Demyen, I think by then Nichol Demyen had moved

  7              away and you couldn't find her; is that right?

  8       A      That's correct.

  9       Q      And Albert Cadrain you still hadn't been able to

01:34 10              find --

 11       A      No, we --

 12       Q      -- through his mother or anywhere else?

 13       A      -- we had not.

 14       Q      And, again, they talk about -- Mr. Merchant tells

01:34 15              the skip tracer that you could provide some more

 16              information.  Do you remember ever talking to any

 17              of, to Empire Skip Tracing, or any of these other

 18              companies, for information about these people?

 19       A      Yes, I do.

01:34 20       Q      And what do you remember about that?

 21       A      Well they were asking about anyone I knew that was

 22              related to them, and things like that, and I gave

 23              whatever information I had.

 24       Q      So, after Mr. Merchant would write to them, they'd

01:34 25              phone you and say "give us some background about
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1		what you have been able to dig up"?
2	A	Yes, and where we had already tried.
3	Q	And more than one occasion would you talk to them?
4	A	I can remember just a couple of calls. I don't
01:34 5		know if it was the same company or not.
6	Q	And then 219511. This is Mr. Merchant's letter
7		January 20th, '83 to you with a box number for
8		Cadrain indicating he lives in Dalmeny, and I take
9		it this is -- and this is the month before Peter
01:35 10		Carlyle-Gordge interviews him in Dalmeny?
11	A	That's right.
12	Q	And then they talk about who is going to do the
13		interview. Can you tell us, did you have a
14		discussion at the time, back in '81 there was a
01:35 15		discussion with you and Mr. Merchant and Peter
16		about which combination of the three of you ought
17		to go see him; do you remember that?
18	A	I do remember it, and I think we decided that
19		Peter was the logical one to go, that I might be
01:35 20		an intimidation to him.
21	Q	And was that based upon your experience with some
22		of the other witnesses?
23	A	Yes, it was.
24	Q	And so was that -- did someone advise you that,
01:36 25		lookit, you shouldn't be there because of the

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 1              reaction of some other witnesses?

 2      A       No, but I think we were logically discussing it,

 3              and that seemed to be --

 4      Q       Who, who went with Peter on that interview, do you

 5              remember?

 6      A       Just Peter -- umm, no.

 7      Q       Was --

 8      A       I can't remember his name, but I think someone

 9              just went along for the drive with him, type of

10              thing.

11      Q       Okay.  And then I think the plan here, that it

12              would be unannounced, so that Albert --

13      A       Couldn't skip.

14      Q       Right, and catch him -- or not catch him off

15              guard, but catch him before he has an opportunity

16              to come up with a response; is that fair?

17      A       Well, we thought he might run.

18      Q       Okay.  And then if we can go to 219490.  Here's a

19              letter from Merchant, Mr. Merchant to you, finding

20              Nichol Demyen in Qu'Appelle.  So, again, am I

21              right that this would have come from the --

22      A       The --

23      Q       -- skip tracers?

24      A       The skip tracers found this.

25      Q       And then 040654.  This is the transcript of the
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1   interview between Peter Carlyle-Gordge, Albert

2   Cadrain, and I think the unknown male at Dalmeny,

3   which is Mr. Carlyle-Gordge's friend; is that

4   right?

01:37 5   A   Friend, that's right.

6   Q   And we've listened to the tape of this and been

7   through parts of this transcript, and I don't

8   propose to go through any of it with you, but I

9   take it you would have been aware of the interview

01:37 10   and you would have talked to Mr. Carlyle-Gordge

11   before he went out to see Albert Cadrain?

12 A   Yes, we -- we formalised the questions together.

13 Q   And can you tell us just generally, what was your

14   plan with him, was it the same as the others, run

01:37 15   through what he had said to see if you could

16   figure out where there might be a weakness or what

17   might have caused him to lie?

18 A   Yeah, and a lot of it was that we wanted to find

19   out what happened to him all the times that he was

01:38 20   picked up by the police.

21 Q   And would it be fair to say again, and we saw this

22   in your interview of Nichol John and Ron Wilson,

23   where you told them your theory or thinking as to

24   what the police did to Albert Cadrain to get him

01:38 25   to lie?

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1   A   Yes.

2   Q   Correct? And so would that be, this interview

3   would be to test that with him and see what he

4   could, whether he could shed some light on some of

01:38 5   that?

6   A   Yes, it was.

7   Q   And do you remember listening to the tape and

8   reading the transcript, after, of this interview?

9   I presume you would have?

01:38 10   A   I'm sure I did.

11   Q   And talking to Peter Carlyle-Gordge about it?

12   A   Yes.

13   Q   And can you tell us what -- what -- what was the

14   reaction of your -- of you and Mr. Carlyle-Gordge

01:38 15   about what Albert Cadrain had to tell you?

16   A   Well, it depends on which tape this is --

17   Q   Okay.

18   A   -- that I'm commenting on, because is this the one

19   that has the, all the ramblings in it?

01:39 20   Q   That might describe more than one. I think this,

21   this is the very first tape, and we actually

22   listened to this, it's quite a lengthy interview,

23   and it's the very first one where he talks about

24   matters in Regina and back then, so it's quite a

01:39 25   lengthy interview.

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1   If this may assist you, the, the

2   other interview involving Albert Cadrain would be

3   in 1993 by the RCMP, so I don't think -- well, I

4   shouldn't say that. Paul Henderson told us last

01:39   5   week that he taped his interview with Albert

6   Cadrain and we don't have that.

7   A   And I remember listening to that one and it was

8   pretty wild.

9   Q   And that was between Paul Henderson and Albert

01:39 10   Cadrain?

11   A   Yes.

12   Q   And that would have been in 1990 then?

13   A   Yes.

14   Q   And so back, again, are you able to distinguish

01:39 15   the 1983 interview?

16   A   Well, you'd have to go to the part you want me to

17   distinguish.

18   Q   Yeah, no, and I hadn't planned on going through

19   any of it with you, I'm just --

01:40 20   A   There isn't anything that I can recall out of it

21   that was noteworthy.

22   Q   Sure. Just, do you recall any discussion about,

23   with Peter Carlyle-Gordge about his reaction or

24   observations about Mr. Cadrain at the time?

01:40 25   A   He thought he was a real nut case.

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1   **Q**   And that's what he would have told you at the

2   time?

3   *A*   Yes.

4   **Q**   Now Mr. Cadrain, in that interview, did not change

01:40 5   his story about the blood, --

6   *A*   That's right.

7   **Q**   -- he continued to maintain that? I think, going

8   into that interview, is it fair to say you were

9   hoping to get him to ideally say, "okay, I lied

01:40 10   about the blood and here's why, the police made me

11   lie and I recant", that's -- that was your, one of

12   your hopes; is that fair?

13   *A*   That would have been the top-of-the-list one, yes.

14   **Q**   And so he came back and said, "no, I absolutely

01:40 15   did see blood", and I think maybe added a few more

16   things, and came across convinced that David had

17   been responsible for the murder; is that a fair --

18   *A*   Right.

19   **Q**   And so did you take a, decide to take a different

01:41 20   approach with Albert, then, after getting this

21   information?

22   *A*   Well we felt we were going nowhere with that.

23   **Q**   Pardon me?

24   *A*   We felt that we were going nowhere with that

01:41 25   particular approach, and we knew that we'd have to

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1   find some other way, and we discussed many

2   avenues.

3   Q   And do you have any recollection of any -- and I'm

4   sorry, I don't have any documents to assist you,

01:41 5   at least in 1983, about what you might have talked

6   to with Peter Carlyle-Gordge?

7   A   Well the problem was Peter, at that time, and

8   Kathy, they, they'd been working for a long time

9   on this and they were just worn to a frazzle, and

01:41 10   I think it was about that time that they talked

11   about going to England. And so, really, I knew

12   that I wasn't going to have Peter along,

13   realistically, much longer, that he would be

14   leaving, and so I know we talked about various

01:42 15   ideas. And he said he would still be in touch

16   with me from England but I knew, you know, that --

17   that we weren't sort of really going anywhere at

18   that point, and I think it was after Cadrain that

19   we seriously decided that we would go to someone

01:42 20   else, and that's when he told me about Hersh Wolch

21   and the *Katie Harper* case. And I had met her, and

22   apparently she thought very highly of Mr. Wolch,

23   and so did Peter and Kathy, so, with them leaving

24   me, that seemed to be my only option.

01:42 25   Q   Okay. So, again, that, I think that would have

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1   been mid to late '83, is that right, when Peter --

2   A   Probably, yes.

3   Q   So just back with -- and maybe I'll go through a

4   few other, the interviews with Dennis Cadrain,

01:43 5   that might shed some light on this.

6   I want to now turn to the

7   interviews of Mr. Caldwell, and we have heard from

8   both Mr. Caldwell and Peter Carlyle-Gordge, and we

9   have gone through the partial transcripts of his

01:43 10   two interviews with him in some detail with both

11   of those witnesses. Can you tell me what, what is

12   your recollection, how did this come about and

13   what was the purpose of Mr. Carlyle-Gordge going

14   to see Mr. Caldwell?

01:43 15   A   Well, you have to see where we were coming from,

16   David was innocent so how was he convicted? The

17   prosecutor is usually one of the most influential

18   parts of a prosecution, and so my understanding in

19   law was that they tested their cases and they

01:44 20   tested their evidence, and so I guess we felt that

21   with all the -- all the tests that we had done,

22   like with Rasmussen, with the Danchuks, the

23   timing, like it just didn't fit, and even the fact

24   that he had Nichol going down Avenue N, that

01:44 25   didn't fit either, after we'd been out to the

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01:44

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01:46

1 scene of the crime. So -- and then the fact that

2 Cadrain had these, well, just increasingly weird

3 stories, I mean he started out fairly sensible and

4 -- but then he went to the Mafia and all of these

5 other claims of his that he was doing, and my

6 feeling was that the prosecutor would be the one

7 to know what was going on, and so I guess at that

8 point we thought that if Peter went to see him in

9 his role as a writer, that he might be able to get

10 access to what Mr. Caldwell had access at that

11 time.

12 Q And are you talking about the prosecutor's file?

13 A That's right.

14 Q And so you wanted to see what was in his file to

15 see if there might be anything in there that might

16 assist you?

17 A Yes, I did.

18 Q And you discussed this with Mr. Carlyle-Gordge?

19 A We did.

20 Q Did you discuss it with Mr. Merchant?

21 A I don't believe we did at that time.

22 Q And so again, recall earlier that we saw the note

23 from Mr. Young who had called Mr. Caldwell, and it

24 appeared from that note that your lawyer could get

25 access to Mr. Caldwell's file; do you agree with

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1		that?
2	A	Yes.
3	Q	Was there a --
4	A	But we weren't looking for something, for a lawyer
01:46 5		getting access to the file, we felt that we'd have
6		more success in getting it before someone would
7		try to hide something.
8	Q	Okay. And did you have a concern, at that time,
9		that someone would try and hide something?
01:46 10	A	Yes, I did.
11	Q	And what --
12	A	I was, as I said to you, I was suspicious about
13		everyone, so if -- you have to go back to that
14		time. If -- my idea of prosecution, whether it's
01:46 15		right or wrong but that's what it was at the
16		time -- if it wasn't unfolding in that way and
17		didn't seem to be done fairly, then I put a black
18		hat on the man, and as far as I was concerned he'd
19		done something wrong. So we would start from that
01:46 20		basis and think, well, if we get a lawyer to go in
21		he'll get rid of anything in the file that could
22		be a problem, so by having Peter go in before he
23		realized that Peter was there for the Milgaards,
24		then we'd have a chance to really see what was in
01:47 25		it.

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1   Q   And, apart from the fact that Mr. Caldwell

2   happened to be the prosecutor who prosecuted your

3   son, was there anything else, at that time, that

4   you had on your mind --

01:47 5   A   He --

6   Q   -- that caused you to think that he was wearing a

7   black hat or that he had done something wrong?

8   A   If his name was Joe Blow I would have still

9   thought that. I didn't know Mr. Caldwell from

01:47 10   Adam, or any of his reputation, or anything.

11   Q   So it was the fact that he was the prosecutor, it

12   was his position that put the black hat on him, is

13   that fair?

14   A   That's right.

01:47 15   Q   And again just, just, I think what you said is

16   that everybody, and I thought what you said was

17   that everybody who was involved in what happened

18   to David would be wearing a black hat, is that

19   right, or that you started out with that premise?

01:48 20   A   Yes.

21   Q   And so would that include all the police?

22   A   It would include the ones that weren't phoning me

23   and saying something bad was going on.

24   Q   Those that had been part of the investigation?

01:48 25   A   And were helping, they had white hats.

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1	Q	Okay. Did -- do you know the names of any of
2		those with the white hats?
3	A	No I don't.
4	Q	So those --
01:48 5	A	Other than the ones you already know.
6	Q	Mr. Vanin?
7	A	Yes.
8	Q	And was -- I --
9	A	Gus Weir.
01:48 10	Q	Gus, okay, we'll get to Gus Weir. Well, did you
11		talk to Gus Weir at this time?
12	A	I don't remember when our first contact with him
13		was.
14	Q	I think that may have been later with --
01:48 15	A	It could have been.
16	Q	Okay. So as far as just, again, your mindset in
17		'83, I think you said because of Mr. Caldwell's
18		position you would view him as someone who may
19		have done something wrong --
01:48 20	A	Yes.
21	Q	-- simply because he was part of the enterprise
22		that --
23	A	He would --
24	Q	-- put David in jail?
01:49 25	A	That's right.

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1   **Q**   And similarly the police who may have been

2   involved, or who were involved in the

3   investigation, would also be categorized as that

4   as well?

01:49   5   *A*   That's correct.

6   **Q**   And what about the witnesses?

7   *A*   Which witnesses?

8   **Q**   Melnyk, Lapchuk?

9   *A*   Well certainly, by this time, I felt that they had

01:49 10   been in it for their own gains.

11   **Q**   And just, when you talk about the black hat, was

12   it your thinking at the time that because my son

13   is innocent, therefore someone must have done

14   something deliberately wrong, or something wrong?

01:49 15   *A*   Well, something wrong happened, so -- and someone

16   did it, so -- and we couldn't seem to find out

17   what it was, so therefore you start looking very

18   closely and scrutinizing everybody.

19   **Q**   And so when you sent Mr. Carlyle-Gordge -- or I

01:50 20   shouldn't say you sent -- when it was decided that

21   Mr. Carlyle-Gordge would go in to see Mr.

22   Caldwell, one of the reasons you used him instead

23   of going through a lawyer is that you suspected

24   that Mr. Caldwell would destroy anything that

01:50 25   might be favourable to your position?

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1   *A*   That's right. And as it turned out, I mean, we

2   found a lot of things in those files that we had

3   had no knowledge about, and that have been

4   discussed here at the Inquiry, that Mr. Caldwell

01:50   5   didn't see significance in but we sure saw the

6   significance in them when we got them.

7   *Q*   Okay. So then Mr. Carlyle-Gordge, he went in I

8   think saying he was a writer for *Maclean's*, is

9   that right?

01:50   10   *A*   And he was, so he wasn't lying, and he did say

11   that he was doing a book on murders, and he

12   actually was starting that, so he -- he was above

13   board in what he was saying, and I think that if

14   Mr. Caldwell had been wearing a white hat and we'd

01:51   15   found that out, that he probably would have

16   followed through with a book.

17   *Q*   Okay. I'm not sure I understand that?

18   *A*   Well, I mean I think that Peter was really

19   seriously thinking about writing a book about

01:51   20   wrongful convictions and convictions across the

21   country, interesting convictions.

22   *Q*   And what, I'm sorry, I didn't understand; was

23   there something in his interview with Mr. Caldwell

24   that caused him to not write the book?

01:51   25   *A*   No, I think he just got very tired of it all.

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01:51 1   Like he wanted to write about Katie Harper, I

2   think when he went to England his thoughts were

3   that he might still do something, but I think he

4   just ended up backing away from it, he was burnt

01:51 5   out.

6   Q   And would the approach with Mr. Caldwell be to see

7   if you could get some insight into whether he had

8   any information that might assist you; is that

9   fair?

01:51 10   A   Yes, and to find out his thinking at the trial,

11   where he was coming from, what he was doing, why

12   he was doing it.

13   Q   And so would you have worked with Mr.

14   Carlyle-Gordge to discuss the areas that he should

01:52 15   be questioned on?

16   A   Yes.

17   Q   And what was -- is there anything else that we

18   haven't talked about as far as what you wanted to

19   get from him?

01:52 20   A   No, I think that about covers it, we wanted to get

21   whatever we could, anything that would help.

22   Q   And as far as his file materials, I think you said

23   you'd like -- you wanted to look at that and see

24   what was there to see if there was anything that

01:52 25   might --

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1   *A*   Would be helpful to us.

2   *Q*   Now when did your thinking change? You told me

3   yesterday morning that you thought that there'd be

4   no -- I think at one point you said there was no

01:52 5   reason for you to ask for the prosecutor's file

6   because you thought everything on that file was

7   given to Mr. Tallis?

8   *A*   Originally, that was my thought, but right at this

9   point I'm starting to get very -- more suspicious,

01:52 10   if you will, of everyone.

11   *Q*   Did you check with either Mr. Young or Mr.

12   Merchant to inquire whether or not the entirety of

13   Mr. Caldwell's file, for example his notes and

14   his, sort of his internal documents, those things,

01:53 15   whether those would have been disclosed --

16   *A*   I don't remember.

17   *Q*   -- to Mr. Tallis?

18   *A*   I don't remember checking with him on that.

19   *Q*   And just on one of the -- the evidence we heard

01:53 20   from Mr. Caldwell and Mr. Tallis was that, in 1969

21   and 1970, that it was not the practice of the day

22   for the Crown, the prosecutor, to disclose police

23   reports to defence counsel, it was not done in

24   those days; do you remember hearing that evidence?

01:53 25   *A*   Yes, I remember hearing that evidence.

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1   **Q**   And was that something that either Mr. Young or

2   Mr. Merchant would have told you back in the early

3   '80s, that lookit, police reports weren't

4   disclosed then and are not disclosed at this time

01:53 5   to counsel, so there might be police reports on

6   his file that Mr. Caldwell, based on what was the

7   standard of the day, would not have normally

8   disclosed those, so that there might be

9   information on his file?

01:54 10   *A*   It's possible that that was said to me, and that's

11   one of the reasons we were looking at it.

12   **Q**   So is it fair to say that, at least in early 1983,

13   you knew that Mr. Caldwell's file would have

14   information on it that would not have been

01:54 15   provided to Mr. Tallis, and for perhaps

16   appropriate reasons?

17   *A*   Yes.

18   **Q**   And that would be one of the reasons to send -- to

19   have Mr. Carlyle-Gordge go in?

01:54 20   *A*   That's correct.

21   **Q**   If we can go to 325653, please. I think this is

22   the first document, the first interview, do you

23   recall -- and I'll go through just parts of these.

24   We have been through these transcripts, but do you

01:54 25   remember Mr. Carlyle-Gordge's reaction based on

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1		his dealings with Mr. Caldwell, does anything
2		stand out about what he said about Mr. Caldwell?
3		Let's -- did he say he was cooperative?
4	A	He said he was eating his story up hook, line and
5		sinker.
6	Q	Eating up Peter's story?
7	A	Yes. I remember that.
8	Q	Okay. And anything else that stands out? I mean
9		the transcripts are here, we have been through
10		them, I'm just --
11	A	Umm, --
12	Q	-- going --
13	A	-- nothing that stands out, other than what we've
14		already gone through.
15	Q	And I think you said that you obtained information
16		from those files that you didn't previously have;
17		is that right?
18	A	Absolutely.
19	Q	And I'll go through some of that. Is there
20		anything that stands out in your mind as being --
21		again without looking at the documents -- that you
22		remember coming from Mr. Caldwell's file that you
23		hadn't had before?
24	A	Well, yeah, there was the one in there about I
25		believe it was (V5)-- (V5)---, there was one in

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1   there about "omit this one", there was -- there

2   were several that -- reports. There was, I think,

3   the Merrimans, I think the Merrimans were in

4   there.

01:55 5   Q   Okay. Now --

6   A   And they were the people that were looking right

7   down the alley and saw nothing.

8   Q   So, I'm sorry, back in 1983, though, when Mr.

9   Carlyle-Gordge went in and took a look at the file

01:56 10   --

11   A   Uh-huh.

12   Q   -- and that, at that time do you have a memory of

13   appreciating the significance of the lab report

14   that had (V5)-- (V5)---' name on it and a line

01:56 15   through it, --

16   A   Yes.

17   Q   -- or was that at a later date?

18   A   No, we noticed the significance of that right

19   then.

01:56 20   Q   Okay, in 1983?

21   A   Yes, we did.

22   Q   And what was the significance that you noted with

23   that?

24   A   Well, it's another, it's somebody else that's been

01:56 25   raped.

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 1    Q    Okay.  So in 1983, then, based on Mr.

 2         Carlyle-Gordge's review --

 3    A    And David wasn't in Saskatoon at that time, and

 4         they wouldn't ever be able to place him in that

01:56   5         place at that time.

 6    Q    Okay.

 7    A    So just think if Tallis had had that.

 8    Q    And, again, that's something that you remember

 9         from your meeting with Mr. Carlyle-Gordge?

01:56  10    A    I believe it is.

11    Q    If we can go to 325661.  Is it fair to say that

12         these interviews, you would have got the tapes and

13         the transcripts of these interviews around that

14         time, is that right?

01:57  15    A    Yes, I would.

16    Q    And you would have read through them?

17    A    Yes.

18    Q    And certainly some --

19    A    Well, sometimes I would read through them,

01:57  20         sometimes if, you know, Peter and I would talk

21         through them --

22    Q    Okay.

23    A    -- I would maybe not read them all.

24    Q    And there is a couple of comments here that I

01:57  25         think Mr. Caldwell says to Mr. Carlyle-Gordge
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1   about Kettles, the chief, and then:

2   "... there was, you know ... one school

3   of thought that didn't believe Milgaard

4   was guilty of course, like in the police

01:57   5   department ...",

6   and was this a piece of information that you --

7   A   Cherished, absolutely cherished.

8   Q   And could you tell us what this information meant

9   to you and what you did with it?

01:58 10 A   It meant that I started talking to policemen.

11   Q   From the -- based on this information?

12   A   Yes, I did.

13   Q   And --

14   A   I actually went out and interviewed some

01:58 15   policemen, and I know you are gonna ask me who but

16   I can't tell you who, and I sort of put my mother

17   hat on and said to them "you know, if you were in

18   trouble the way my son is, wouldn't your mum do

19   something about it for you?"

01:58 20 Q   So --

21   A   And that's when I found some of the people in the

22   department that had never believed in David being

23   guilty.

24   Q   And do you know who any of those people are?

01:58 25 A   No.

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1   Q   And so this would be around 1983, around the time

2   of this interview?

3   A   It was around the time of this interview that I

4   went out, and it was before I'd got involved with

01:58 5   Hersh and David, once I got involved with Hersh

6   and David I kept every name and every person, you

7   know, that I interviewed. But up until that

8   time -- and I honestly don't know whether,

9   subsequently, some of them were the ones that

01:59 10   worked with David and Hersh or not, they could

11   have been.

12   Q   Okay. And who were those that worked with David

13   and Hersh?

14   A   The ones that we've heard about here at the

01:59 15   Inquiry already.

16   Q   We've heard about Tom Vanin; what about Gus Weir?

17   A   Yes, I believe that was the other name.

18   Q   And what --

19   A   The other gentleman we met with.

01:59 20   Q   And who met with him; did you meet with him?

21   A   I believe I did at one point.

22   Q   And what do you remember about Gus Weir and your

23   meeting with Gus Weir?

24   A   I remember that he believed that David was

01:59 25   innocent.

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1   Q   And do you remember anything else?

2   A   No.

3   Q   Okay.

4   A   That was the prime reason for remembering that

01:59 5   man.

6   Q   Who else would have been with you at that meeting;

7   do you remember?

8   A   I have no idea. It could have been Paul

9   Henderson.

02:00 10 Q   Or Dave Roberts from *The Globe and Mail*; would

11   that have been --

12   A   Oh, that's a possibility. You see, I was out

13   doing interviews with Dave Roberts, I was out

14   doing interviews with Dan Lett, the reporter, I

02:00 15   would -- Peter Edwards, I managed to get him from

16   the *Toronto Star*.

17   Q   If we just go back to this time frame, '83-'84,

18   and these discussions with police officers; how

19   would you find them? Explain, tell us how, who

02:00 20   you would identify, which officers you would pick,

21   and how you would go about contacting them or

22   finding out who they are or whether they were

23   police officers?

24   A   I believe that some of them, I think it must have

02:00 25   been Peter that first found out who they were or

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1		got some information about them and thought that
2		someone might be appropriate for me to talk to,
3		I'm not sure. It -- or it just could have been --
4		it seemed to me that there was one time I actually
02:01 5		was in a coffee shop and met one of them, but I --
6		I have -- don't have a really strong memory of
7		this, I'm sorry.
8	Q	Was that Tom Vanin? There was some evidence that
9		Tom Vanin met with you briefly with Mr. Henderson
02:00 10		before he and Mr. Henderson --
11	A	That could have been then.
12	Q	How many police officers do you remember
13		personally visiting?
14	A	Two.
02:00 15	Q	And one would be Gus Weir?
16	A	Well, yes, I'm sure I did.
17	Q	And the other would be Tom Vanin?
18	A	Yes.
19	Q	Were there any other police officers you remember
02:01 20		visiting with or meeting personally?
21	A	There's someone there, but I can't tell you who it
22		is. I have no idea at this time.
23	Q	And so you think there might have been a third --
24	A	Yes.
02:01 25	Q	-- but you just can't remember?

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1   *A*   I think there was another one.

2   *Q*   And what about discussions on the phone then with

3   police officers, do you have any recollection of

4   discussions on the phone with police officers?

02:01 5   *A*   I was doing some phoning at that time, but I'm

6   sorry, I -- I did a lot of phoning to various

7   people and tried to talk to them at home and

8   things like that and ask questions, but I haven't

9   got a good recall on that.

02:01 10   *Q*   Apart from Gus Weir, and we'll come back to Gus

11   Weir when we get into that time frame in the late

12   '80s, early '90s, apart there Gus Weir and apart

13   from Tom Vanin, did any other Saskatoon city

14   police officer tell you either in person or on the

02:02 15   telephone that he or she believed that David

16   Milgaard was innocent?

17   *A*   Yes.

18   *Q*   And when did that take place?

19   *A*   It would have been around this time, but I cannot

02:02 20   tell you who it was or a date or anything like

21   that, but I can remember that very clearly.

22   *Q*   And how many, would it be one call?

23   *A*   I think it was one call that I talked to on more

24   than one occasion.

02:02 25   *Q*   And was this someone who called you or you called

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	1		him? I presume it's a him. Yes?
	2	A	It was a him, yes.
	3	Q	Yes. And did you call him or did he call you?
	4	A	He may have called me.
02:02	5	Q	And so did you --
	6	A	Like, I got calls -- like, at one time, 'you keep
	7		up the go work, you are going to find out the
	8		truth,' and a hang-up.
	9	Q	And did they -- did you attribute that to someone
02:02	10		who was a police officer?
	11	A	Not that particular one, but that's the kind of
	12		calls I'm talking about.
	13	Q	So again, back to the one police officer then,
	14		what was -- what did he say to you then when he
02:03	15		phoned you or when you talked to him?
	16	A	I honestly -- I'm pushing to even give you a
	17		conversation. I can't.
	18	Q	But you believed it to be favourable or --
	19	A	Oh, yes, definitely.
02:03	20	Q	And again, was -- I don't believe there's any --
	21		at least I haven't seen any record of that. Do
	22		you know if there would have been a note made of
	23		that conversation?
	24	A	As I said, that was before Hersh and David and
02:03	25		when I really started keeping track of everything.

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1   Q   And again, we've gone down this path about

2   discussions with police officers based on this

3   school of thought about the police department, so

4   we have one officer --

02:03 5   A   And I think it was as a result of this interview

6   that I started doing the questioning of other

7   police officers thinking that if I could find the

8   ones that were in this other school of thought,

9   that they might be helpful to our case.

02:04 10   Q   And that's where I was going before. When you say

11   when I started to question other police officers,

12   who did you -- who did you question?

13   A   I can't -- as I tell you, as I told you, I don't

14   know who I questioned at this time.

02:04 15   Q   And apart from the one telephone exchange, more

16   than one exchange I think you said --

17   A   Yes.

18   Q   -- with the one officer, were there any other

19   occasions where you contacted other police

02:04 20   officers other than Weir and Vanin and questioned

21   them about the Gail Miller case?

22   A   Yes, there were, but I have no recollection of

23   names or anything at this time and didn't keep

24   them.

02:04 25   Q   Do you have any recollection of what information

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	1		you received back, what they said?
	2	A	Well, a couple, you know, wouldn't give me -- I
	3		remember a couple of them wouldn't say because it
	4		was worth their job type of thing, but I remember
02:05	5		the one chap that did say that I should keep up my
	6		good work, that I might find out what went wrong
	7		and that he believed that he was innocent.
	8	Q	And again, would that -- would that be something
	9		that you would pursue to get a name, would that
02:05	10		not be something that might be a bombshell?
	11	A	Well, no, because it was his opinion.
	12	Q	Okay.
	13	A	And I don't think he was prepared to go on line
	14		with that opinion.
02:05	15	Q	Okay.
	16	A	I mean, this -- the sense that I had of it was
	17		that he'd tell me it, but there's no way in the
	18		world he's going to tell anybody else about it.
	19	Q	If we can go to 050033, and this is the second
02:06	20		interview of Mr. Caldwell I think, or a part of
	21		it, and Mr. Carlyle-Gordge talks to him about
	22		Nichol John, and I take it that would have been
	23		one of the areas where you would have been probing
	24		to see what he knew about the Nichol John
02:06	25		statements?

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1   A   Yes, correct.

2   Q   And then the next page, and here's where he asks

3   the question:

4   "Do you think that she did, she made

02:06 5   that statement of blow by blow

6   description, do you believe that she saw

7   that?"

8   Answer:

9   "Yes I do. I mean I wasn't there, I

02:06 10   wasn't in on the investigation, but I

11   believe ...."

12   And then it goes on. Do you have a recollection

13   whether one of the issues -- or one of the areas

14   that you and Mr. Carlyle-Gordge wanted to probe

02:06 15   was whether or not Mr. Caldwell as the prosecutor

16   believed that David was the perpetrator of the

17   crime, was that something you were interested in?

18   A   I think it was, yes.

19   Q   And again, that would be some of the questions

02:07 20   that he asked here?

21   A   Would be, yes, to dig that out.

22   Q   Do you remember reaching any conclusions, you and

23   Mr. Carlyle-Gordge, you, based on reading the

24   transcript or listening to the tape, and obviously

02:07 25   Mr. Carlyle-Gordge having been present, do you

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1   remember reaching any conclusions about what,

2   where you put Mr. Caldwell in or where you saw him

3   fitting in?

4   A   Yes.

02:07 5   Q   And what was that?

6   A   I felt that Mr. Caldwell really believed that

7   David was guilty.

8   Q   And that was based upon what Mr. Carlyle-Gordge

9   told you and what you read or --

02:07 10   A   Read in this interview, yes.

11   Q   Now, you went in saying whoever it was, I think

12   you said it was Joe Smith, he would have a black

13   hat on because he was the prosecutor. After Mr.

14   Carlyle-Gordge's interview, interviews with Mr.

02:08 15   Caldwell, did anything change in your mind as to

16   how you perceived Mr. Caldwell's role in the

17   prosecution?

18   A   Well, because of what he had in his file that

19   could have saved David, definitely I felt that he

02:08 20   didn't do his job as a prosecutor.

21   Q   And so that -- you are now talking about -- okay,

22   I think you said okay, he thought David was

23   guilty, but there was information on his file that

24   you thought was helpful?

02:08 25   A   Yeah, and just from the point of view of the

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1   timing and everything and the motel and the

2   Danchuks and the Rasmussens and, I mean, if he's

3   the prosecutor and he's supposed to look at the

4   whole picture, and the whole picture when we

02:08   5   looked at it just did not make sense.

6   Q   So in 1983 then, after you and Mr. Carlyle-Gordge,

7   after these two interviews, is it fair to say

8   that -- let me just take a step back. You'll

9   recall when we started in 1981 or 1980 you were

02:09   10   thinking, okay, these witnesses at trial lied;

11   therefore, I'm going to go out and find the

12   evidence, and we went through various scenarios.

13   A   And at that point I was zeroing in at the police.

14   Q   Yes.

02:09   15   A   Now I'm zeroing in on Caldwell.

16   Q   No, and that's where I wanted to go, so now is it

17   fair to say that in March of 1983 you are saying

18   'okay, now one of the reasons I'm putting forward

19   is that the Crown did not disclose information to

02:09   20   David that would have made a difference at the

21   trial'?

22   A   Yes.

23   Q   And would it be fair to say you had pretty strong

24   views in 1983, March, that that is one of the

02:09   25   things that was wrong and might be the bombshell

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1   that would lead to --

2   A   It might help, yes.

3   Q   So apart from a witness lying, based on Mr.

4   Carlyle-Gordge's interview, you were of the view

02:09 5   that lookit, we --

6   A   We had something.

7   Q   And would that have been shared with Mr. Wolch and

8   Mr. Asper in 1986 as one of the basis that you

9   thought could be attacked?

02:10 10   A   Yes.

11   Q   And as far as the -- and I don't want to rank

12   them, but as far as the importance, would that be

13   up there with --

14   A   Right up at the top.

02:10 15   Q   Right up at the top. Now, as well I think Mr.

16   Carlyle-Gordge had a chance to look at Mr.

17   Caldwell's file; is that right?

18   A   That's right.

19   Q   You talked earlier about suspicions, that if he

02:10 20   went through the lawyer, that Mr. Caldwell

21   might --

22   A   Purge it.

23   Q   Purge it. After Mr. Carlyle-Gordge interviewed

24   Mr. Caldwell, and I think the evidence is that he

02:10 25   was provided time alone to review the file -- was

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1   that your understanding?

2   A   That's correct.

3   Q   Did you reach any conclusions as to whether or not

4   Mr. Carlyle-Gordge had been provided with the

02:11 5   entire file? Let me phrase it this way. I mean,

6   in fairness, you wouldn't know what is and isn't

7   in the entire file.

8   A   No, I wouldn't.

9   Q   Was it your impression, based on your discussions

02:11 10   with Mr. Carlyle-Gordge, that Mr. Caldwell had

11   provided open access to the file?

12   A   I think he had, I think that was our impression.

13   Q   That there wasn't things that you looked for that

14   were missing, you didn't conclude that lookit,

02:11 15   he's suspicious of Mr. Carlyle-Gordge --

16   A   No, no.

17   Q   -- and he's taking something off it?

18   A   No, we didn't feel that.

19   Q   050044, one of the areas that Mr. Carlyle-Gordge

02:12 20   gets into is the antigen issue, and again at this

21   time do you remember -- I don't think you had

22   interviewed anybody on this yet, but had you come

23   to some conclusions about the secretor status

24   issue yet?

02:12 25   A   Oh, yes, because we had thought it was extremely

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1   confusing, but we thought -- at the trial -- but

2   Tallis had pointed out to us that it actually was

3   -- because they had David as a non-secretor, that

4   it was really proof that it wasn't him that did

02:12 5   it.

6   Q   So at the time of trial, Mr. Tallis told you

7   lookit, this semen found in the snow proves David

8   didn't do it?

9   A   That's right.

02:12 10   Q   And at trial the jury obviously didn't accept

11   that; is that fair?

12   A   That's fair, because Mr. Caldwell mixed things up

13   to such an extent in his closing and in his

14   argument and everything that I don't think -- I

02:13 15   think at that time not many people understood that

16   status and everything about it. I know I didn't

17   and I probably should have, we should have gone to

18   someone at that time I think before and known more

19   about it.

02:13 20   Q   And again, this -- your thoughts about this being

21   confusing, is that something that maybe you had

22   dealt with more in 1986, 1987 when Mr. Asper

23   reviewed it, and the reason I ask you that is that

24   he prepared I think a couple of lengthy documents

02:13 25   and spent a bit of time on this issue about the

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1   jury being confused and what the Court of Appeal

2   said?

3   A Yes, I think that's probably where I'm picking

4   that up from.

02:13 5   Q And so -- and again I'll go back to the '83, but

6   is it possible that the issue of confusing the

7   jury and the secretor issue --

8   A I think David Asper brought that out and Hersh

9   brought that out.

02:14 10 Q Okay. So prior it that, are you able to tell us

11   whether, what your thinking was about that issue?

12   A Well, my thinking was at trial that it was a very

13   important part of it, but probably it wasn't when

14   I was listening to what Peter and Caldwell had

02:14 15   said together.

16   Q And so is it fair to say that until Mr. Asper and

17   Mr. Wolch brought it forward, that the secretor

18   issue, although it may have been on your mind,

19   this notion of it being confusing to the jury,

02:14 20   etcetera, maybe wasn't as prominent in your

21   thinking --

22   A That's right.

23   Q -- until Mr. Asper raised it?

24   A Yes.

02:14 25 Q And at the time of trial, is it fair to say that

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1   again, I think you've told us, that your premise

2   in looking at everything is David is innocent,

3   therefore, if this semen was supposed to be to

4   exonerate him and it didn't, then the jury must

02:14   5   not have understood it because it should have

6   exonerated him; is that --

7   A   That's correct.

8   Q   And so would there be a bit of an assumption that

9   lookit, it must have been confusing because

02:15 10   otherwise they would have acquitted?

11 A   Yes.

12 Q   And did that --

13 A   But I was really confused at the time and I felt I

14   was a fairly intelligent person, but at the time

02:15 15   they went on and on and on about it. It was -- I

16   mean, if you read the transcripts, it was

17   confusing.

18 Q   Here Mr. Carlyle-Gordge probes Mr. Caldwell:

19   "Another really interesting area, I

02:15 20   figured it out, basically is the blood

21   type and the antigen argument. Did you

22   see those as a pretty important element

23   and the problem of explaining it to a

24   civilian jury?"

02:15 25   He says:

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1   "Yeah cause I didn't understand the

2   whole thing myself."

3   A   Well, welcome to the club. Either did I.

4   Q   So again, it looks like this was something that

02:15 5   Mr. Carlyle-Gordge and you had discussed about

6   how did -- I suppose if the evidence was

7   exculpatory, the question would be, okay, well,

8   why didn't the jury rely upon it?

9   A   That's right.

02:15 10   Q   And I suppose one option might be because they

11   didn't understand it; correct?

12   A   Right.

13   Q   Another option might be because they decided to

14   disregard it because of other evidence, that might

02:16 15   be --

16   A   Yes, I think the Nichol evidence and the others,

17   the motel incident, those overruled it.

18   Q   And in looking back at trying to figure out why

19   the jury convicted David when you knew him to be

02:16 20   innocent, I take if you spent a lot of time trying

21   to think what the jury might have thought; is that

22   fair?

23   A   Yes, I did.

24   Q   And that's a challenge when you don't get to talk

02:16 25   to the jurors isn't it?

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1   *A*   That's right. I did get to talk to one of them.

2   **Q**   Would that be Fernley Cooney?

3   *A*   Yes.

4   **Q**   We'll get to him.

02:16 5   *A*   I didn't think you'd miss someone.

6   **Q**   I want to go to 174037, and these are police notes

7   from Caldwell dictated from files by Peter

8   Carlyle-Gordge, and I think Mr. Carlyle-Gordge's

9   evidence is that he had some time, and I can't

02:17 10   remember the exact time, where he had a chance to

11   go through the files --

12   *A*   -- and make notes.

13   **Q**   Right. And his file would have contained a number

14   of police reports; is that right?

02:17 15   *A*   That's correct.

16   **Q**   And would you have known by this time that the

17   police would have prepared investigation reports

18   setting out work that they had done? In addition

19   to witness statements, they also had investigation

02:17 20   reports?

21   *A*   I wouldn't have known that.

22   **Q**   And would you have known it by this time when Mr.

23   Carlyle-Gordge came back and said lookit, there's

24   police reports about who they interviewed, or is

02:17 25   that something that maybe didn't register with

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1   you?

2   A   I don't think it registered.

3   Q   And do you know, what was Mr. Carlyle-Gordge

4   looking for when he -- did you have a discussion

02:18 5   about this when he was looking through the file,

6   was it anything that might jump out as being --

7   A   Anything that would be significant.

8   Q   And again, we've been through these, but here's

9   some examples of -- and I think these are all from

02:18 10   police reports that would not have been provided

11   to Mr. Tallis?

12   A   That's right.

13   Q   And did you understand at this time that it was

14   not the practice in 1970 to provide police reports

02:18 15   to defence counsel, was that something that --

16   A   I think I found that out at that time, yes.

17   Q   And do you remember from who?

18   A   It may have been from David Asper.

19   Q   Okay. So here, if you want to scroll down, just

02:18 20   again the, and we went through this with Mr.

21   Carlyle-Gordge and a few others. This is a police

22   report about an Audrey Odnokon, now Boutin, and

23   some information, and I believe this is where Mr.

24   Carlyle-Gordge, later Mr. Asper, followed up to

02:19 25   see if this might be a lead to another suspect; is

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1   that fair?

2   A   That's fair.

3   Q   And then on the next page, and I think he's

4   dictated this from the police file, he's got,

02:19 5   "Feb. 5/69 police report," -- and actually that's

6   the date of the report, February 3 is the date

7   that they talked to Mr. Fisher -- it goes on and

8   talks:

9   "At 6:49 a.m. police checked in 300

02:19 10   block in Ave. O South, Larry Fisher, 334

11   Ave. O South, works at Masonry

12   Contractors..."

13   Etcetera.

14   A   And this is the report that when Hersh Wolch

02:19 15   received the anonymous phone call in 1990 about

16   Larry Fisher, that I immediately remembered seeing

17   this report and I said don't you laugh at this,

18   Hersh, this could be something, I remember a

19   police report with that man's name on it and it

02:20 20   had the Cadrain address on it and I thought that

21   the policeman had made a mistake.

22   Q   So let's just -- okay, let's just go back to when

23   Mr. Carlyle-Gordge got these notes. I take it you

24   would have had a chance -- or he would have given

02:20 25   you a copy of this or you would have read through

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1		them with him at the time?
2	A	Read through them at the time.
3	Q	Do you remember at the time whether the address or
4		the name or this information was significant in
5		any way to you? Do you remember?
6	A	Yes, I remember that when I saw Larry Fisher, I
7		thought that the policeman had written the wrong
8		address down for him because 334 Avenue O South
9		was the Cadrain house and of course I knew that
10		address very well, so it stood out to me.
11	Q	So on March --
12	A	And I've never forgotten that.
13	Q	So in March of 1983 you would have looked at this
14		and the address would have stood out to you as
15		being the Cadrain address?
16	A	Yes, and it stood out to me that they had put down
17		the wrong address for the man.
18	Q	And so that was your thinking at the time?
19	A	That's correct.
20	Q	That they got the address wrong?
21	A	That's right.
22	Q	And had you considered that he might have lived at
23		the Cadrain house at the time, was that something
24		that --
25	A	Never even considered it because, you know, it

02:20 (line 5)
02:20 (line 10)
02:21 (line 15)
02:21 (line 20)
02:21 (line 25)

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	1	wasn't a big house and there were all the children
	2	there and Mr. and Mrs. Cadrain. I mean, it was
	3	not something you would think that they would have
	4	had anyone else in the house.
02:21	5	Q And the information about wearing a yellow hard
	6	hat, at that time did that --
	7	A Didn't mean anything.
	8	Q Didn't mean anything to you? Do you remember
	9	discussing this with Mr. Peter Carlyle-Gordge, the
02:21	10	significance of this?
	11	A No, I don't.
	12	Q Now, I will take you through some documents
	13	shortly where Peter Carlyle-Gordge follows up to
	14	try and find Larry Fisher and indicates that, at
02:22	15	least according to him, that he, Peter
	16	Carlyle-Gordge, knew that Larry Fisher lived in
	17	the Cadrain house in the basement and he went
	18	looking for Linda Fisher. Do you recall any --
	19	A I don't recall anything about that.
02:22	20	Q Okay. And we'll go through those documents, but
	21	it looks like, and I think Mr. Carlyle-Gordge's
	22	evidence was that, and it may have stemmed from
	23	this piece of information, that he followed up to
	24	try and find Larry Fisher and Linda Fisher at the
02:22	25	time, and I'll show you those documents, but he,

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1   certainly from the documents and what he prepared,

2   he was of the view that Larry Fisher lived in the

3   basement and it was the right address.

4   A   Oh, okay. Well, I wasn't aware of that at that

02:22 5   time.

6   Q   Then if we can go to 219125, and so again this

7   appears to be the closing address, it's Mr.

8   Caldwell's handwritten closing address, and we've

9   been through this on a couple of occasions. I

02:23 10   think Mr. Carlyle-Gordge may have copied it from

11   the file or got a copy of it from Mr. Caldwell do

12   you remember?

13   A   Yes, I think he did.

14   Q   And would this have been part of the transcript

02:23 15   that you had ordered at the time or do you know,

16   or do you remember when you first read Mr.

17   Caldwell's opening or closing address?

18   A   No, I do not remember.

19   Q   And would this have been something that you and

02:23 20   Mr. Carlyle-Gordge discussed at the time?

21   A   Yes, it would have been.

22   Q   And do you remember any significance about what

23   was in --

24   A   No, I don't.

02:23 25   Q   If we can go to 173869, and this is an interview

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 1              by Peter Carlyle-Gordge with Audrey Boutin, March

 2              of '83, and I think his evidence is that based

 3              upon his review of Mr. Caldwell's file and the

 4              police report mentioning Audrey Boutin, that Mr.

 5              Carlyle-Gordge followed up with Audrey Boutin?

 6      A       That's right.

 7      Q       Do you remember that happening?

 8      A       I remember that happening.

 9      Q       And she had some information about someone who

10              might have been a suspect and he followed up on

11              that; is that --

12      A       That's right.

13      Q       If we can then go to 225006, this is I think a

14              third transcript of Mr. Carlyle-Gordge, or part of

15              his discussions with Mr. Caldwell, and I'm not

16              sure we've got an explanation how it arrived on

17              its own page, but here you'll see at the top

18              Caldwell saying:

19                      "Are you going to try and see Karst, or

20                      phone him?"

21                      "Yes, tomorrow I hope to see Mackie and

22                      Karst."

23              And we have an interview where, after this, Mr.

24              Carlyle-Gordge talks to Raymond Mackie and we

25              have a partial transcript where he tried to reach
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1   Mr. Karst. I'm not sure if they ever did talk

2   after that, but would you have been aware that

3   Mr. Caldwell gave information to Mr.

4   Carlyle-Gordge to go and see these officers?

02:25 5   A   Yes, I was aware of that, and -- but can I draw

6   your attention to the circled part at the bottom?

7   Q   Oh, I'm getting there, yes.

8   A   Okay, okay.

9   Q   So again the interview with Mr. Caldwell, is it

02:25 10   fair to say -- I think Mr. Caldwell's evidence and

11   Mr. Carlyle-Gordge's evidence is that --

12   A   He was very open.

13   Q   And that he in fact --

14   A   -- encouraged the officers to talk.

02:25 15 Q   Right.

16   A   To him.

17   Q   Now, down at the bottom there is -- no, no, up --

18   and this is Mr. Caldwell talking, he says:

19   "He's a VERY conservative guy. Like he

02:26 20   and I got along just fine. In fact, we

21   combined forces to put away a guy called

22   Leslie Klassen who murdered a girl

23   here...It's a long story, but Tallis did

24   what turned out to be a manslaughter or

02:26 25   crim-neg. case and I did the 'dangerous

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1		sexual offender' on the guy; between us
2		we got him locked away forever. So
3		we've been allies on various things."
4	A	Can you understand why I was suspicious of Mr.
5		Caldwell when I read something like that?
6	Q	I would like you to tell me, please.
7	A	I mean, right away, that's when my thoughts turned
8		to Tallis had done something wrong with him, that
9		he had worked with him to put David away too. I
10		remember being very excited about it and thinking,
11		well, this is it, these guys worked together on
12		this case to put David away, Caldwell, really
13		believing that David is guilty, has talked to
14		Tallis and he's convinced him and the two of them
15		are working together to put him away, and I can
16		remember how excited I was by it because to me it
17		just seemed to be so clear that that's what they
18		had done, and I had totally forgotten about this
19		part of it, I really had, and so when I look back,
20		I maybe don't feel as badly as I did about being
21		suspicious of Tallis, because this was certainly
22		the start of it.
23	Q	Okay. Now, the evidence we've heard from Mr.
24		Caldwell and Mr. Tallis is that Mr. Tallis did
25		prosecution work, farm-out prosecution, and I

02:26 (line 5)
02:26 (line 10)
02:26 (line 15)
02:27 (line 20)
02:27 (line 25)

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	1		think that he and Mr. Caldwell as prosecutors
	2		worked together to prosecute an accused person
	3		together and that's what the reference was, is
	4		that they --
02:27	5	A	But that is not what I got out of those
	6		references.
	7	Q	Did you ever talk to Mr. Merchant, to Mr. Wolch or
	8		Mr. Asper and ask them to look at this and give
	9		their views as to whether or not Mr. Caldwell and
02:27	10		Mr. -- whether there might be an innocent
	11		explanation for what is said here as opposed to I
	12		think your perception that --
	13	A	-- it was sinister?
	14	Q	That it was sinister, yes.
02:28	15	A	No, I don't know that I did, because by the time I
	16		got to Hersh and David, we started at the
	17		beginning, we started to go through everything at
	18		scratch, and I don't even know that I brought a
	19		lot of these concerns up. I was starting fresh
02:28	20		again.
	21	Q	Let's just pause here. So when you read this in
	22		the transcript, what you read into that is that
	23		Mr. Tallis had defended a fellow Mr. Caldwell
	24		prosecuted?
02:28	25	A	Right.

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	1	Q	And they both agreed and got him locked away
	2		forever?
	3	A	That's right.
	4	Q	And again, who did you -- you thought this was a
02:28	5		bombshell?
	6	A	Well --
	7	Q	And when I say bombshell, what I'm referring to --
	8	A	I didn't think it was something that would open
	9		the case up, no, but I was thinking it was
02:29	10		something that we had to get more information
	11		about.
	12	Q	And what more information did you get, who did you
	13		go to to follow up on this to see if this was
	14		true?
02:29	15	A	Well, Peter and I talked about this and what he
	16		was going to do subsequently investigating this
	17		and then of course he left.
	18	Q	And did you appreciate that if this were true,
	19		that Mr. Caldwell and Mr. Tallis actually worked
02:29	20		together, prosecutor and defence, to convict
	21		somebody, that that would be a pretty serious
	22		matter?
	23	A	Absolutely.
	24	Q	And pretty serious misconduct on the part of Mr.
02:29	25		Caldwell and Mr. Tallis if that were to happen?

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	1	A	Yes.
	2	Q	And so who did you follow -- did you raise it with
	3		any lawyer that acted for you, to say lookit,
	4		follow up on this, is it possible that this may
02:29	5		have happened?
	6	A	I don't believe I did because at the time we were
	7		going through this, we started investigating every
	8		part of the statement, but I thought here was
	9		something -- I never thought of using it as a
02:29	10		bombshell, I thought -- I was thinking that this
	11		is what has happened to get David, but I never
	12		thought that it would be a way of getting him out.
	13	Q	Okay. So is it fair to say that, and again this
	14		would be March of 1983, that based on this
02:30	15		information here, would it be fair to say that
	16		your view of Mr. Caldwell's involvement and
	17		responsibility for David Milgaard's conviction,
	18		you may have become far more suspicious?
	19	A	Very suspicious at that point.
02:30	20	Q	And may have changed your view on his role in the
	21		prosecution; is that fair?
	22	A	I think so.
	23	Q	And would his black hat have gotten blacker after
	24		having read this?
02:30	25	A	It was very black at that point.

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	1	Q	And what about Mr. Tallis?
	2	A	The same thing, and, you know, it's sad because
	3		when I look at that now and see it, that he's been
	4		allies on various things, I wish I had a better
02:30	5		understanding at the time.
	6	Q	Do you wish someone would have said to you, Mrs.
	7		Milgaard, they were both prosecuting the same
	8		accused?
	9	A	Yes. If I'd known that, it would have made me
02:31	10		feel differently about both of them.
	11	Q	Okay. And when did you find out that that was the
	12		explanation for this comment?
	13	A	Today.
	14	Q	If we could go to 332997 -- or actually, I'm
02:32	15		sorry, 333009. And I only bring this up because I
	16		think it's an interview, Carlyle-Gordge and a Dr.
	17		Chorney. I'm not sure who Dr. Chorney is, I think
	18		a forensic pathologist at one of the hospitals,
	19		maybe St. Paul's hospital, and I just note -- if
02:32	20		you can go to the next page -- and there's some
	21		reference here about another case that I think Dr.
	22		Chorney was involved on an autopsy.
	23		And then to the next page,
	24		please. There is a reference here:
02:33	25		"Well, if tipped off Harry Emson and he

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1   told me he'd be happy to speak to you

2   ...",

3   and then down here as well discussions about Dr.

4   Emson. And what it appears from this document is

02:33   5   that Mr. Carlyle-Gordge is following up with

6   somebody at the hospital trying to get

7   information either about Dr. Emson or the autopsy

8   on Gail Miller; do you remember that?

9   A   Yes, vaguely.

02:33 10   Q   Yeah. And so that was --

11   A   We were following so many different avenues, both

12   of us.

13   Q   So this might have been an avenue to pursue to see

14   if Dr. Emson had any light to shed on possibly the

02:33 15   secretor issue?

16   A   Yes.

17   Q   If we can go to 325634, please. This is an

18   interview of Peter Carlyle-Gordge with Dennis

19   Cadrain, and this would be February 21, 1983, and

02:34 20   I think it is shortly after the interview of

21   Albert Cadrain. Do you remember how or why Mr.

22   Carlyle-Gordge called Dennis Cadrain for an

23   interview; do you remember how that came about?

24   A   No, but I -- I can only assume that we felt that

02:34 25   it was important to talk to his brother.

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1   Q   Okay.   And I think this is a telephone interview

2   and I take it that, again, would Mr.

3   Carlyle-Gordge and you have discussed the approach

4   to Dennis Cadrain and talk about it after?

02:34   5   A   Probably.

6   Q   And if we could just go down to the bottom I take

7   it, again, this tape and transcript would, like

8   the other witnesses then, would that be provided

9   to you or be part of what, I mean in the normal

02:34   10   course, of what would be handed back and forth?

11   A   Yes, I believe I would have received it.

12   Q   And here he says:

13   "Well, I've gone through some of the

14   press clippings ...",

02:35   15   at the start he says he's a writer from

16   *Maclean's* --

17   A   Uh-huh.

18   Q   -- and he says:

19   "Well, I've gone through some of the

02:35   20   press clippings and I talked to Albert

21   and he mentioned - what I am trying to

22   do is reconstruct the time when the

23   police had the first real break-through

24   and Albert told me about when he came

02:35   25   back from Regina he heard that this girl

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1   had been killed and things began to fall

2   into place."

3   Is it fair to say that you are pursuing with

4   Dennis, you are still trying to figure out what

02:35 5   caused Albert Cadrain to go into the police on

6   March 2nd, '69 --

7 A   Yes.

8 Q   -- and say "I saw blood"?

9 A   Yes.

02:35 10 Q   Is that fair? And I think your belief was that he

11   was lying and that somehow the police, whether it

12   be the Regina Police and/or the Saskatoon Police,

13   somehow they were involved in getting Albert to go

14   in --

02:35 15 A   Yes.

16 Q   -- and make that statement? If we can then go to

17   page 325636. And here, February 1983, Dennis

18   Cadrain says -- and actually the date is not on

19   the document, we've identified that from other

02:36 20   sources as February 21, '83, and I've got

21   supporting documents for that -- Dennis says:

22   "... well actually the police, well

23   actually they drove him, like, he is a

24   little bit, uhm, oh I guess you could, a

02:36 25   little bit like, mentally unstable."

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1		"And like ... the police, like they did
2		it to him, you know."
3		And so is it fair to say that in 1983,
4		Mrs. Milgaard, you would have been aware, from
5		Dennis, that he felt that Albert was mentally
6		unstable and --
7	A	Yes.
8	Q	-- and that his feeling was that the police likely
9		did it to him?
10	A	Yes.
11	Q	We haven't got there yet, but we will, in March --
12		or pardon me -- May of 1990 or June of 1990 when
13		the information about Albert Cadrain came out in
14		his statement about being mentally ill, and you'll
15		recall the conversation between Mr. Henderson and
16		David Asper that was quite excited that, lookit,
17		Albert Cadrain is mentally unstable, as if that's
18		an explanation, and it appeared from that exchange
19		and from their evidence that that was a revelation
20		to each of them that Albert Cadrain was mentally
21		unstable; would you agree with that at the time,
22		that at least from Mr. Henderson and Mr. Asper,
23		that this was news to them?
24	A	It could have been.
25	Q	That it --

02:36 (line 5)
02:36 (line 10)
02:36 (line 15)
02:37 (line 20)
02:37 (line 25)

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1   A   It could have been something, when I started fresh

2   with David, that, you know, some of the facts from

3   Peter didn't get transferred over to David.

4   Q   Right. And I guess that was my question; do you

02:37 5   have any, do you know why -- well, let me back up,

6   and maybe this isn't a fair question to you, a

7   better question to others -- but do you know why

8   this information that Dennis Cadrain gave to you

9   in 1983 would not have been on the minds or

02:37 10   available to Mr. Asper or Mr. Henderson?

11   A   I don't know, unless it was a document that we

12   didn't have, maybe this is one of the ones that

13   Peter took with him.

14   Q   Okay. Well --

02:38 15   A   Maybe it's one of the ones that, you know, like

16   Peter and I discussed a lot of these things --

17   Q   I -- and when we get to that part I will go

18   through and show you the evidence of both Mr.

19   Carlyle-Gordge and some taped conversations

02:38 20   involving you and Mr. Asper that suggest that the

21   transcripts and tapes were provided to Mr. Asper

22   and Mr. Wolch.

23   A   Uh-huh. But what I am saying is I may have seen

24   this at the time and not realized the significance

02:38 25   of it.

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	1	Q	Okay. That -- and I guess that's, yeah, is that a
	2		possibility, that in the --
	3	A	That is definitely a possibility, and then didn't
	4		pass it on to David Asper.
02:38	5	Q	Didn't pass on the tape?
	6	A	No, didn't pass the information on.
	7	Q	Oh, I see.
	8	A	I mean for him, you've got to realize for him to
	9		-- when I went to Hersh Wolch's, like I had this
02:39	10		homongous box that I could barely carry with all
	11		the transcripts in it, with all the tapes and with
	12		all this stuff and everything in it, I mean there
	13		was a mind-boggling amount of stuff for him to go
	14		through, so for him to actually see all of it, I
02:39	15		think, --
	16	Q	Okay.
	17	A	-- would be virtually impossible.
	18	Q	So -- and that assists. So it appears that one
	19		explanation might be that the tape and transcript
02:39	20		were part of the materials you provided to
	21		Mr. Wolch and Mr. Asper but this part of it, or
	22		the significance, had not been brought to Mr.
	23		Asper's attention or he didn't see it or --
	24	A	It's quite possible.
02:39	25	Q	Okay. But, again, this -- I take it there would

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 1              be no reason for you not to provide this

 2              information to Mr. Asper and Mr. Wolch?

 3        A     No, none at all.  And when you pull these little

 4              things out you -- I'm always second-guessing

 5              myself and saying "oh, but Joyce, you should have

 6              done something with that".

 7        Q     Well, I cautioned you on Monday that hindsight,

 8              with what we now know and going back --

 9        A     I know.

10        Q     But again, just at the time, do you recall you and

11              Mr. Carlyle-Gordge discussing the significance of

12              the fact that Dennis Carlyle -- or that Dennis

13              Cadrain was saying his brother was mentally

14              unstable?

15        A     I don't recall that.

16        Q     And then 325638.  Again, here's where Dennis

17              Cadrain says, he's talking about the police --

18              actually just scroll up two lines -- Peter asks

19              him -- scroll up, please -- Peter -- Peter asks

20              him:

21                        "Now I'm curious, they gave him the

22                        third degree.  Did the police interview

23                        you, too?  Were they suspicious?"

24              And he's talking about the police.  Dennis says:

25                        "No ... they never, they never, like I
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02:39 (line 5)
02:40 (line 10)
02:40 (line 15)
02:40 (line 20)
02:40 (line 25)

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1   ... talked to them once, like they came

2   just about every day for a, oh I guess a

3   couple or three months ..."

4   "But they were pointing the finger at

5   ..."

6   Scroll down, scroll down, please:

7   "Like they ... were, had him and

8   interrogating him there for eight-ten

9   hours a day just checking his story out,

02:41 10   you know?"

11   And so, again, it would appear that this was

12   information that Dennis provided about, again,

13   similar in nature to what --

14 A   To what he gave to Paul Henderson.

02:41 15 Q   In 1990; is that --

16 A   Uh-huh.

17 Q   That's fair?

18 A   Uh-huh.

19 Q   And next page. And, here, Dennis tells Peter

02:41 20   Carlyle-Gordge about Albert being committed?

21 A   Right.

22 Q   "... he had to go to the psychiatric ward

23   after, you know, a couple of, well a few

24   years after that because, I mean they

02:41 25   screwed him up, you know."

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1   And so again, in 1983, it would appear that you

2   and Mr. Carlyle-Gordge had been aware, from

3   Dennis Cadrain, that Albert Cadrain was committed

4   to the psychiatric hospital or psychiatric ward a

02:41 5   few years after the trial; is that fair?

6   A   Yes.

7   Q   And down at the bottom Dennis says:

8   "He went to work out of town ... like

9   ... you have to watch what he says too,

02:42 10   I wouldn't take everything Albert says

11   as gospel ..."

12   And I'm just wondering, again, at that time do

13   you have any recollection of your discussions

14   with Peter Carlyle-Gordge about this information

02:42 15   from Albert? We -- I didn't go through the

16   earlier tape with him, but a week prior Peter had

17   a lengthy interview with him where I think you

18   said he described him as being nuts --

19   A   Uh-huh.

02:42 20   Q   -- and stood by his evidence that --

21   A   At the time.

22   Q   -- not only had he seen blood, but he also added

23   the snapped aerial on the car, and a few other

24   things?

02:42 25   A   Uh-huh, uh-huh.

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1   Q   And would you have had discussions then, at that

2   time, to say "okay, well one way to explain

3   Albert's evidence, in other words to undo the

4   incriminating effect of it, is to say lookit, this

02:42 5   individual may have had some mental illness issues

6   at the time of trial and, therefore, his evidence

7   might be unreliable"?

8   A   Yes.

9   Q   Was that -- would that have been something you

02:43 10   might have discussed at the time?

11   A   I'm sure we probably did.

12   Q   Do you have any recollection of that or --

13   A   No, I don't.

14   Q   And then if we can go to 325644. And again, when

02:43 15   you talked to Mr. Wolch and Mr. Asper a few years

16   later, do you remember going through witness by

17   witness or talking about, sort of, here's where we

18   got with Ron Wilson, here's where we got with

19   Nichol, here's where we got with Albert Cadrain,

02:43 20   here's an approach to take, here's --

21   A   Somewhat, but it was more that we were almost

22   starting fresh and deciding where we were going to

23   go, it was like we have been there, we've done

24   that, now we're starting fresh.

02:43 25   Q   Okay. And I'll show you a few letters back and

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1   forth involving Peter Carlyle-Gordge where I think

2   Mr. Asper wrote to him and said, lookit, tell me

3   where you were at?

4   A   Uh-huh.

02:43 5   Q   Do you remember that, that Mr. Carlyle-Gordge came

6   back into the picture in '86 and '87 to

7   communicate some information back to Mr. Asper and

8   Mr. Wolch?

9   A   I believe that he was, David Asper, was writing to

02:44 10   him at that time.

11   Q   Yeah. Here, if we can, again, this is a

12   conversation between Peter Carlyle-Gordge and

13   Dennis Cadrain, and it is March -- I'm sorry --

14   February 21, '83, and he asks him:

02:44 15   "Do you know a Larry Fisher?"

16   And I believe -- and I stand to be corrected --

17   but I think Mr. Carlyle-Gordge may have got that

18   from his review of Mr. Caldwell's file. He says:

19   "Yeah ... he used to live in our

02:44 20   basement."

21   "Oh, did he?"

22   "Really. Why?"

23   "Oh. Albert mentioned him, I forget the

24   context exactly. Maybe he said he lived

02:44 25   there."

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1   Now let me just pause there. I went back to try

2   and figure out where Albert had told Peter

3   Carlyle-Gordge that, and I couldn't find it in

4   any transcript, and I'm not sure, it may be --

02:44   5   and I can't recall what Mr. Carlyle-Gordge said

6   about this, it may have been that he didn't want

7   to tell Dennis Cadrain that he had been in to see

8   the prosecutor because he had told Dennis that he

9   was writing a book, is that a possibility or do

10   you know?

11   A   I have no idea. I can't shed any light on it at

12   all.

13   Q   Okay. And then Dennis says:

14   "Well, I don't know, well at the time he

02:45 15   wasn't living there at the time. I

16   think he had lived there before. He had

17   lived there before ..."

18   Peter says:

19   "Yeah?"

02:45 20   "But ... he was quite a guy too ..."

21   And Peter says:

22   "I think he said they questioned,

23   possibly questioned him, I don't know."

24   And I'm speculating, I think this is Peter taking

02:45 25   that from the police report. And he says:

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1   "Yeah, you know like, yeah. Oh, I was

2   going to tell you like ...",

3   and they go on to talk about another subject.

4   So, again, would you have been aware, at this

02:45   5   time, that Peter was questioning Dennis Cadrain

6   about Larry Fisher possibly because they had the

7   same address in the police report?

8   A   I may have. I don't recall.

9   Q   If we can go to 325646. And then this is a

02:46   10   discussion about the reward and I think for some

11   time, Mrs. Milgaard, the reward played a part in

12   your thinking, didn't it, that you thought that

13   maybe the reward influenced people to lie; is that

14   --

02:46   15   A   I did.

16   Q   And here, and at some -- we now know that Albert

17   Cadrain got the reward, --

18   A   Yes.

19   Q   -- and I think for a while there you weren't sure

02:46   20   who got it but were trying to find out; is that --

21   A   I was.

22   Q   And here Dennis says:

23   "... you know you do a few things, just

24   a few things just to be in with the boys

02:46   25   and like the cops would pretty well know

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1   you, you know like they would talk to

2   you and that, you know? But, it was

3   hard on Albert, you know, like actually,

4   what, the cops gave him two thousand, or

02:46 5   the police or something, had put up a

6   reward for two thousand dollars or

7   something and with two thousand dollars

8   which my brother, he give it to my dad."

9   And:

02:46 10   "He didn't even want, like my dad needed

11   some money on the farm or something and

12   my brother didn't want it, he just give

13   it to him, you know. And people, or

14   people, some people might have said well

02:46 15   he did it for the God dammed money. He

16   didn't care about money."

17   "He gave it away?"

18   etcetera. And, again, is that something, do you

19   remember hearing -- finding out, at least at this

02:47 20   point, that Albert did get the reward?

21 A   Yes, it was prior to that we'd been trying to find

22   out who got it, and we found out here.

23 Q   This is probably an appropriate spot to break, I'm

24   moving to a different document.

02:47 25   (Adjourned at 2:47 p.m.)

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1   (Reconvened at 3:08 p.m.)

2   BY MR. HODSON:

3   Q   If we could call up 333001. And this is, I think,

4   shortly after Peter Carlyle-Gordge talked to

03:08 5   Dennis Cadrain. Now in one of the earlier tapes

6   it looks like, when Mr. Carlyle-Gordge interviewed

7   witnesses on the phone, would you be on the other

8   phone taping, is that how it worked if you were

9   together, or --

03:08 10   A   Sometimes, yes.

11   Q   And so you would listen in and --

12   A   At the same time.

13   Q   Do you remember if you did that with any of these

14   tapes, or which ones you did or didn't?

03:08 15   A   No, I have no idea.

16   Q   And so this is Peter Carlyle-Gordge and Albert's

17   parents, and I don't have an exact date but I

18   believe it is shortly after February 21, '83.

19   You'll recall that he asked Dennis Cadrain about

03:09 20   Larry Fisher living in the house, --

21   A   Yes.

22   Q   -- Dennis confirmed it, here he says:

23   "I'm trying to trace a Linda Fisher and

24   I believe she lived there in the 19...

03:09 25   late 1960's. Did she live at ... Avenue

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1   O South?"

2   "Yes, she lived in our basement, they

3   lived in our basement ... her husband

4   and her ... for a while."

03:09   5   "Do you know where they are now ...",

6   and then to the next page. Mrs. Cadrain says:

7   "Oh, yes, she was ...",

8   they're talking about Linda, and asked her:

9   "... this guy who lived there he ...

03:09   10   didn't say he lived there but ... I

11   guess ... he said Linda, he gave me her

12   name, Linda Fisher's here, and anyways

13   ... asked ... where's Larry, like her

14   ... husband, hey. And he said ... well

03:09   15   he's in PA. And I said what's he doing

16   in PA, I never thought, you know ... And

17   he said well he's making time. So he

18   was in jail at the time."

19   I'm not sure where the Linda came -- where Mr.

03:10   20   Carlyle-Gordge learned about Linda from the

21   conversation with Dennis, but it would appear

22   that somewhere in there he became aware of the

23   name of the spouse; do you have any recollection

24   of that?

03:10   25   A   I don't even recall this tape.

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 1   Q      Okay.  Well it's one that you gave us.

 2   A      So I must have had it?

 3   Q      Yeah.  And, again, so this would be -- you had

 4          talked to Albert's parents on a couple of

 5          occasions; is that right?

 6   A      Yes, I had, and knew that -- I mean, if we were

 7          ever trying to get any information from them, it

 8          would have to be with another source, because they

 9          weren't prepared to talk to me.

10   Q      And is that maybe why Peter would have phoned them

11          instead of you?

12   A      Could have been.

13   Q      And in fact I think if, actually, we can go back

14          to the first page, if we can go back here, he

15          says:

16                      "Yeah, I'm trying to trace a Linda

17                      Fisher and I gather she ... spent a

18                      short time living with you ...",

19          and she says:

20                      "Well, could I ask who's speaking,

21                      please?"

22          And you say:

23                      "...  I'm calling for a lawyer's office

24                      ...",

25          is what Peter Carlyle-Gordge says:
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1   "... but I can't disclose the nature of

2   ...",

3   "... the information ..."

4   So, again, would it be fair one of the reasons

03:11 5   might be, because she was suspicious of you, that

6   it appears she was suspicious of Carlyle-Gordge

7   as well?

8   A   Yes, I think so.

9   Q   If we can go to 333013.

03:11 10   A   But I have no recollection of this, about:

11   "You a private investigator or ...",

12   something or other here.

13   Q   Now here is Peter Carlyle-Gordge calling Albert

14   Cadrain again, and he says:

03:11 15   "... it's Peter Carlyle-Gordge, I'm the

16   writing who interviewed you two or three

17   weeks ago."

18   So, again, I'm putting this in, sometime in late

19   February 1983.

03:11 20   A   Right.

21   Q   And scroll down, please:

22   "I'm still doing some research and

23   trying to trace anybody who was ...

24   involved back in '69. One of the names

03:12 25   that I've come across is ... he was

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1   interviewed by police, is a Larry

2   Fisher."

3   And, again, you will recall that when Mr.

4   Carlyle-Gordge talked to Dennis Cadrain he said

03:12   5   "I got this from Albert", but it now appears he

6   is phoning Albert and raising with him, --

7   A   Uh-huh.

8   Q   -- which is why I told, said to you earlier it

9   looks like he may have got it from Mr. Caldwell's

03:12   10   file, but because he told Dennis Cadrain that he

11   was writing a book that maybe -- and I'm just

12   speculating -- that maybe that was on of the

13   reasons.

14   A   What did he say on the stand?

03:12   15   Q   I can't recall.

16   A   Thank you.

17   Q   Well, he didn't say "I can't recall", I can't

18   recall what he said on the stand.

19   A   Okay.

20   Q   But I'll check. And this occurred to me this

21   morning when I looked at it, it's just as to

22   where, because I went back to see if I could find

23   where Albert Cadrain had talked about Larry

24   Fisher, and this appears to be, at least from the

03:12   25   documents, the first time he did so. And he

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1   says -- if we can just scroll down to here, if we

2   can enlarge that, please, and just scroll up a

3   bit, scroll up -- and he talks about -- just a bit

4   further:

03:13 5   "One of the names that I've come across

6   is ... he was interviewed by police, is

7   a Larry Fisher."

8   "... and he's given the same address as

9   yours. Do you know where he is now?"

10   And that's where I'm assuming it came from the

11   police report on Mr. Caldwell's file:

12   "Wouldn't have no idea."

13   "... at all. This Larry Fisher ..."

14   "... was he, a lodger or something?"

03:13 15   And Albert --

16   A   He wouldn't understand the word "lodger".

17   Q   He says:

18   "A what?"

19   "A, a boarder."

03:13 20   Scroll down:

21   "Yeah, he was a, didn't even know the

22   guy, like he lived down in the basement

23   with his wife and kid, I guess."

24   Just right down to the bottom. He says:

03:13 25   "Yeah, I know from the records that they

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1   did interview him anyway. I just

2   wondered if you had anything to add."

3   Albert says:

4   "Well, I'm sure they interviewed quite a

03:14 5   few people."

6   Albert says:

7   "... I guess he was just a suspect ...",

8   and he says:

9   "I wouldn't know, I wouldn't have

03:14 10   nothing to do with the guy, he's a ...

11   real ... gangster type."

12   Next page:

13   "... from what I hear ...",

14   and then Peter says:

03:14 15   "You mean, you mean like, a criminal?"

16   "Yeah."

17   "Oh, really."

18   "Yeah, I suppose ... I guess they caught

19   him years later ... I don't know how

03:14 20   much longer, later, in ... rapes and

21   shit like that, hey."

22   "Oh, is that right."

23   "But he's a real weirdo."

24   So it would appear, in February of 1983, that Mr.

03:14 25   Carlyle-Gordge received, number one from Mr.

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1   Caldwell's file the police report, then from

2   Dennis Cadrain to Mr. and Mrs. Cadrain and then

3   from Albert Cadrain, that at the time of the

4   murder, Gail Miller's murder, Larry Fisher and

03:14 5   Linda Fisher lived in the basement of the Cadrain

6   house, and that Larry Fisher had been caught and

7   was in jail for some rapes; and do you have any

8   recollection of learning of that information at

9   the time?

03:15 10 A   No, I have none.

11 Q   Is it possible that that type of information may

12   have been discussed between you and Mr.

13   Carlyle-Gordge at the time?

14 A   I would have thought that was very significant. I

03:15 15   don't think that we discussed it.

16 Q   And why do you say that?

17 A   Because I think I'd remember it.

18 Q   Okay. It would be something --

19 A   I think I'd have done something about it.

03:15 20 Q   And again, looking back with hindsight, with what

21   we now know about Larry Fisher, are you saying

22   "okay, I would have done something with that", --

23 A   No, but --

24 Q   -- or even without the benefit of hindsight?

03:15 25 A   I think -- I was investigating Mahar because he

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1   was involved in a murder, raped -- or a murder

2   type of thing, I was looking for any kind of

3   person that was doing wrong in the neighbourhood,

4   and so I think I would have felt this was very

03:16 5   significant.

6   Q   If we can go to 332585. This is a letter February

7   25, '83 from Mr. Merchant to Empire Skip Tracing

8   and, again, the date is in and around the times

9   that Peter Carlyle-Gordge would have talked to

03:16 10   Dennis Cadrain, Mr. and Mrs. Cadrain, and Albert

11   Cadrain; okay?

12   A   Yes.

13   Q   So that's that time frame.

14   A   Yes, I remember when we looked at this with him,

03:16 15   at the time, wondering where he got that

16   information.

17   Q   At the Inquiry?

18   A   Yes.

19   Q   Okay. And Mr. Merchant's evidence is that Peter

03:16 20   Carlyle-Gordge would have asked him to find these

21   people?

22   A   Yes. And, obviously, it was based on that tape.

23   Q   Right. That's your -- is that your assumption or

24   your recollection?

03:17 25   A   No, that's my assumption.

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1   Q   And so, here, Mr. Merchant, on behalf of whomever

2   -- I think he said he got the instructions from

3   Peter Carlyle-Gordge, but presumably on your

4   behalf and David's behalf as well; is that fair?

03:17 5   A   Uh-huh. Well, it would have been on our behalf,

6   but I honestly was never aware of that particular

7   thing happening.

8   Q   And so here he is looking for Linda Fisher:

9   "In 1969 she lived at 334 Avenue O

03:17 10   South, Saskatoon, Saskatchewan. She

11   married Larry Fisher who is presently in

12   prison for a rape charge."

13   And let me just pause there. If, in February of

14   1983, you had been aware that, at the time of

03:17 15   Gail Miller's murder, there was an individual who

16   lived in the basement of the Cadrain house who

17   was in prison for a rape charge, or rape charges,

18   is that something that would have caused you to

19   look at that person as a suspect?

03:17 20   A   Yes.

21   Q   And do you think you would have done something

22   with that?

23   A   I think I would have done something with that. I

24   realize here it just says "for a rape charge", but

03:18 25   I think even then, because some of the people that

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1   I followed and looked up through the Henderson

2   Directory and everything were people involved with

3   molesting, you know, like just drunken and

4   disorderly and in the area that had been charged

03:18   5   with various things. I mean, when I had my

6   investigative hat on I was going around and I was

7   looking at everyone that I could find in the

8   newspapers that had been to Court for this, that,

9   or the other thing, just to see where they were

03:18   10   now and whether they could have been involved.

11   Like I -- Susan and I, too, we all followed up on

12   different people. So, given this, I -- I would

13   have thought we would have seen it as very

14   important.

03:18   15   Q   And so I think you've talked about Mahar, Mahar

16   and Lalonde being both --

17   A   Well --

18   Q   Mahar certainly had been charged with murder, --

19   A   Right.

03:19   20   Q   -- I'm not sure about Lalonde, but the fact that

21   they were in the vicinity at the time of the

22   murder, were people that were of interest for you,

23   and you would have followed up with them; is that

24   correct?

03:19   25   A   Yes. But besides those which -- and Mahar came

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1   from the newspaper, Lalonde came from a tip --

2   but, aside from that, there were many, many other

3   people that we followed up that were just little

4   brief notices in the newspaper about being charged

03:19 5   with this, that, and the other, and we would start

6   to go back and see if we could find out where they

7   were and, you know, what they'd done, had they

8   done time, you know, anything that could put them

9   in the area of this particular offence. We

03:19 10   followed up all kinds of things.

11   Q   And so, again, if this information -- I think what

12   you are telling us is you don't think you saw this

13   because, if you did, --

14   A   I think I'd have done something about it.

03:19 15   Q   -- you think you would have done something --

16   A   Yes.

17   Q   -- based on your other conduct; is that right?

18   A   Yes, I would say so.

19   Q   Now just back, and I think one of the things, I

03:20 20   mean Mr. Carlyle-Gordge said he was looking I

21   think to find Linda to see if she observed

22   anything at the house that morning. Looking at

23   this, would you have more to talk to -- would you

24   talk to Linda about more than what she observed

03:20 25   that morning, would you talk to her about her

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1		husband?
2	A	Oh yeah.
3	Q	In fact, would that be the most important thing,
4		looking at this now?
03:20 5	A	To me, looking at it now, I certainly would have.
6	Q	As opposed to "you lived in the basement, did you
7		see anything unusual that morning", but rather
8		"your husband is a rapist and he was in the
9		basement that morning"?
10	A	Yes.
11	Q	Tell me about --
12	A	"Where was he that morning".
13	Q	Right, okay. And do you have any -- and I'll go
14		through a few more documents -- do you have any
03:20 15		explanation about -- and "explanation" is a bad
16		word -- do you have any information that might
17		assist us in determining, if you did not have this
18		information in 1983, if you were not aware of it,
19		Mr. Carlyle-Gordge had it, and it was in the
03:21 20		documents that you provided to the Commission when
21		we started, as to how it may not have come to
22		Joyce Milgaard's attention back in 1983, or --
23	A	Unless -- and I would probably have to look at my
24		employment records, if I can resurrect them, to
03:21 25		find out -- I was working one month on and one

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1		month off, so -- to make money to pay for these
2		trips and things that we were doing.
3	Q	Uh-huh?
4	A	So it may be, at that time, I was away, I don't
5		know.
6	Q	If we can go to 216089. And this is a letter back
7		from Empire Tracing to Mr. Merchant. Now the
8		earlier letter that I showed you was a file copy
9		of Mr. Merchant's letter, it does not list you as
10		a carbon copy, if you would have received a copy
11		of the previous letter that had Linda Fisher's
12		name and the fact that she lived at 334 Avenue O
13		South and that her husband was in jail for rapes;
14		is that something you would think you would have
15		--
16	A	I think it would have flagged something with me.
17	Q	Flagged something?
18	A	Yes.
19	Q	So here's a letter back, again it looks like
20		Sharon Williams, that was someone who you had been
21		looking for since 1981; is that correct?
22	A	That's correct.
23	Q	And so they are just saying lookit, our normal
24		tracing procedures can't find them. I take it,
25		would you have been aware of that at the time?

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1	A	I don't remember.
2	Q	Next if we -- 213943. Do you have the doc. ID for
3		the *StarPhoenix* newspaper article March, 1983, the
4		one that Peter Carlyle-Gordge put up in the
5		newspaper? I just misplaced the doc. ID. If you
6		can just maybe look for that for a moment.
7		You'll recall, Mrs. Milgaard, in
8		these hearings we saw when Mr. Carlyle-Gordge
9		testified and when Linda Fisher testified, that
10		Mr. Carlyle-Gordge put an ad in the newspaper, the
11		Saskatoon newspaper, in March of 1993 looking for
12		Linda Fisher?
13	A	I recall that.
14	Q	And we'll get it up here on the screen in a
15		moment.
16	A	And she replied.
17	Q	Right. Were you aware at the time that Mr.
18		Carlyle-Gordge was looking for Linda Fisher and
19		put this ad in the paper?
20	A	I don't believe so.
21	Q	So this is the ad. Is this -- this is Bob Bruce's
22		handwriting at the top is it?
23	A	It looks like it.
24	Q	And so that would have been something prepared
25		much later, in '90 or '91; is that right?

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1   A   Yes. It would have been prepared when we were

2   doing files.

3   Q   And so this ad:

4   "Linda Fisher - would anyone knowing the

03:23 5   recent whereabouts of Linda Fisher (who

6   was married in 1969 to Larry Fisher) and

7   has a daughter, Tammy, please contact

8   Box 410..."

9   And I'm just going to call up 224990, I think the

03:23 10   name Tammy came from Mrs. Cadrain; is that right?

11   A   Yes.

12   Q   And go to page 224998, and I think Mr.

13   Carlyle-Gordge told us these were his notes from

14   the time trying to trace where Linda and Larry

03:24 15   would have moved to, and again I think this is a

16   document that you provided to the Commission. If

17   we can scroll down, Denise and Celine Cadrain,

18   marriage licenses, etcetera. Do you have any

19   recall looking at this at any time?

03:24 20   A   No. I recall when you had it on the stand here,

21   but it wasn't a document I was familiar with.

22   Q   And then as well if we can call up 213943, these

23   were the letters -- if you can go to 213947. This

24   is the letter that Linda Fisher wrote in response

03:25 25   to Peter Carlyle-Gordge's ad saying here's the

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	1		address -- just enlarge the bottom part, please.
	2		Do you know whose handwriting that is on this
	3		letter?
	4	A	Don't recognize it. That's my handwriting, the
03:25	5		phone number, 937-3245.
	6	Q	Okay. Do you know whose phone number that is?
	7	A	No idea.
	8	Q	Is it possible you would have looked at this back
	9		in March 27th, 1983, around that time when it was
03:25	10		received?
	11	A	I'm wondering if maybe, because of the Cando,
	12		whether I was, found it and was going, you know,
	13		when I went to find Linda Fisher.
	14	Q	In 1990?
03:26	15	A	'90, whether, you know, that was the time that I
	16		was writing on it or maybe had it or -- I have no
	17		idea.
	18	Q	When you went and talked to Linda Fisher in March
	19		of 1990, do you recall going back through the
03:26	20		files and finding information about Linda Fisher,
	21		contacting Peter Carlyle-Gordge in 1983?
	22	A	No, because I remember -- you are starting me on
	23		the thought process there. I remember when I was
	24		going to try to find her, that I knew the name
03:26	25		Tammy from Mrs. Cadrain and I went to the school

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1   and tried to locate her through Tammy.

2   Q   Okay. And when did Mrs. Cadrain provide you with

3   the name Tammy?

4   A   I have no idea.

03:26 5   Q   Would that have been in one of your -- back in

6   1983?

7   A   I think so, probably, but I knew that at one time,

8   you know. That's how I was going -- that's how I

9   actually did trace her and that's how I found out

03:27 10   that she was in Cando, so it wasn't from this.

11   Q   Okay. So let's just maybe, we'll skip ahead a

12   bit. So when you learned about Linda Fisher back

13   in 1990, that was the phone call from Sidney

14   Wilson to Hersh Wolch?

03:27 15   A   That's right.

16   Q   And so tell us, how did you go about finding Linda

17   Fisher then?

18   A   Well, we went back to the neighbourhood and I

19   ended up with Cam Fuller of the *StarPhoenix* and I

03:27 20   remember both of us going out in the neighbourhood

21   trying to get information about her near where the

22   school was because we thought that other children

23   might have known her and --

24   Q   And I think you said, and I'm sorry, you didn't

03:28 25   call Mrs. Cadrain at that time?

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1   *A*   I don't think so.

2   *Q*   If we could just go back, 333001, this is Peter

3   Carlyle-Gordge's conversation with Mr. and

4   Mrs. Cadrain in February of '83. If we can just

03:28 5   go to the next page, you'll see here Mrs. Cadrain

6   tells Peter Carlyle-Gordge about Tammy, she has a

7   little girl Tammy, went to Pleasant Hill School,

8   she was six by then.

9   *A*   Uh-huh.

03:28 10   *Q*   Is that the information that you -- you said

11   earlier you knew she had a daughter Tammy and that

12   came from Mrs. Cadrain. Would it be this

13   transcript then?

14   *A*   It could have been, and I remember going door to

03:28 15   door to -- and asking a neighbour to find her.

16   *Q*   In which neighbourhood?

17   *A*   In the neighbourhood of -- at the Pleasant Hill

18   School.

19   *Q*   So in 1990 you and Mr. Fuller went around the

03:28 20   Pleasant Hill School and looked to see if anybody

21   knew where Tammy Fisher was; is that right?

22   *A*   Yes, and I went to see the principal of the

23   school.

24   *Q*   And how was it that you found Linda in Cando then,

03:29 25   who put you --

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1   A   He told me about a neighbour that knew her or

2   something. I ended up going to a woman that knew

3   her and I remember going up to the door and saying

4   I was a friend of Linda's and I was trying to

03:29 5   locate her and she said that she was in Cando and

6   she said, well, she wanted to tell -- she wanted

7   to know who I was so that she could tell Linda I

8   was coming and I remember saying I wanted to

9   surprise her.

10   Q   Okay.

11   A   And I think part of the information how I got to

12   that woman was through someone at the school who

13   had the file and left the room so I could look at

14   the file.

03:30 15   Q   Okay. And so -- but going to the school, you knew

16   that Linda and Larry Fisher had a daughter Tammy,

17   so in 1990, February 28th, 1990, when you heard

18   about the Sidney Wilson call and heard about Larry

19   Fisher/Linda Fisher, at that time you had already

03:30 20   known from some other source previously --

21   A   Yes.

22   Q   -- that they had a daughter Tammy?

23   A   Yes.

24   Q   And that's what caused you to go to Pleasant Hill

03:30 25   School that caused you to find --

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1   A   And that's how I found Linda.

2   Q   Okay. So is it possible that back in 1983, then,

3   that you knew about Tammy because you would have

4   discussed some of this information with Mr.

03:30 5   Carlyle-Gordge?

6   A   It doesn't ring a bell at all with me.

7   Q   Okay. But is it possible that you may have had

8   those discussions and either didn't appreciate the

9   significance but forgot about it?

03:30 10   A   It's possible. Anything is possible.

11   Q   Okay.

12   A   I have, I usually have a fairly good recall of

13   things.

14   Q   And is it a case of saying lookit, I think I, if I

03:31 15   would have known this, I must have done something

16   with it, is that what's causing you to say lookit,

17   I don't think I did?

18   A   Yeah, yeah.

19   Q   Is that fair?

03:31 20   A   Yes.

21   Q   And is it also possible that for whatever reason,

22   that it did not have the significance --

23   A   That it has now?

24   Q   -- then that it has now and that maybe you did

03:31 25   have discussions with Mr. Carlyle-Gordge and were

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1   aware of his efforts to find Linda and you were

2   aware that Larry Fisher lived in the basement, but

3   the significance at the time was not what it

4   became later; is that a --

03:31   5   A   That's a possibility as well.

6   Q   And as far as this information, I guess the

7   transcripts, I think the evidence -- well, the

8   evidence of Mr. Carlyle-Gordge is that this

9   information that he obtained in the transcripts

03:32   10   would have been provided to you and as well

11   provided to --

12   A   -- David Asper.

13   Q   To David Asper and Mr. Wolch back in 1986; is that

14   correct?

03:32   15   A   Yes.

16   Q   Now, one last letter on this subject, 213627, this

17   is Mr. Merchant's letter, this is now October 12,

18   1983, and I think Peter Carlyle-Gordge may have

19   gone -- do you remember when he went to England?

03:32   20   I think he had gone by then, hadn't he, or --

21   A   I think he went in the summer didn't he?

22   Q   I think in the summer of '83.

23   A   Yeah.

24   Q   And I'm wondering, again Mr. Merchant is trying to

03:33   25   find these people, Ute Frank, Sharon Williams and

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1   Linda Fisher. If Mr. Carlyle-Gordge had gone to

2   England, would he be dealing with you on these

3   matters then do you know?

4   A   Yes, I would still be out working.

03:33 5   Q   And again here's another mention of Linda Fisher

6   and I think what Mr. Merchant said is that this is

7   a different process server, the other one hadn't

8   found them and he's now saying again:

9   "LINDA FISHER. In 1969 she lived at 334

03:33 10   Avenue O South, Saskatoon. She married

11   Larry Fisher who is presently in prison

12   for a rape charge."

13   And again -- I take it your answer with respect

14   to this is the same as the other information; is

03:33 15   that fair?

16   A   No, not any knowledge of this.

17   Q   And when you terminated your relationship with Mr.

18   Merchant and went to Mr. Wolch and Mr. Asper's

19   firm, I think the evidence from Mr. Merchant is

03:33 20   that he did not give you a copy of the file or

21   send his file until 1992; is that right?

22   A   That's correct.

23   Q   And do you recall having any discussion with him

24   or any discussion with Mr. Wolch or Mr. Asper

03:34 25   about getting Mr. Merchant's file materials to

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1   assist Mr. Wolch and Mr. Asper in their work or is

2   that something you left up to them?

3   A   I have no recall of any discussion about it. I

4   think it's something I would leave up to them.

03:34 5   Q   Go to 337710. This is the 1983 -- and I'm a bit

6   out of sequence here, I finished up on the Fisher

7   information, we'll just go back, again these are

8   some further interviews that Mr. Carlyle-Gordge

9   did with Father Murphy, and you'll see here this

03:34 10   is the third one, I showed you two earlier where

11   there's a bit of confusion, and this is the one

12   where he says:

13   "I talked to you it must be over a year

14   ago."

03:34 15   And then scroll down, and this is right around

16   the time he talked to Albert, or right after he

17   talked to Albert and to Dennis, and it appears

18   that he's gone back to Father Murphy because, I

19   think because the information he got from the

03:35 20   Cadrains wasn't consistent with what he and you

21   had thought about Father Murphy's involvement?

22   A   Right.

23   Q   Is that right? And so here he says:

24   "Now what I don't recall is how you knew

03:35 25   that Albert might know something about

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1   it."

2   And that's the murder. He says:

3   "Well I had been told that by somebody."

4   And:

03:35 5   "Do you know who that was?"

6   Next page, and it goes on to talk:

7   "You don't know."

8   "It was sometime after the...incident."

9   And Father Murphy:

03:35 10   "...quite a while after the incident."

11   Peter says:

12   "Okay, well that makes more sense. Uh,

13   now did Albert know about the reward or

14   did you tell him about that?"

03:36 15   Father Murphy says:

16   "I told him about it."

17   "Yeah. And you don't know if he got the

18   reward or did he give any donation to

19   St. Mary's."

03:36 20   Never saw that. So let me just pause here. At

21   this point you would have known in 1983 from

22   Father Murphy that at least according to Father

23   Murphy, before Father Murphy called Albert

24   Cadrain, Albert didn't know about the reward; is

03:36 25   that fair?

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1   *A*   That's fair.

2   **Q**   And it was Father Murphy's call that brought that

3   to Albert's attention?

4   *A*   Yes.

03:36   5   **Q**   And then he says:

6   "This was I would say well after he had

7   given his testimony and things like

8   that."

9   Peter:

03:36   10   "After he had given the testimony."

11   And he says:

12   "Well as far as my contact was

13   concerned, I received my information

14   from somebody else and ah there was

03:36   15   somebody in Prince George going

16   ...putting in for the um reward and uh

17   this person just remarked that if

18   anybody should get it young Cadrain

19   should get it."

03:36   20   Next page. And Father Murphy says:

21   "Well this was ah somehow or another the

22   word got around that different people

23   were putting in for the reward..."

24   "And uh this person remarked that

03:37   25   Cadrain had...had given more positive

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1   information than this fellow had."

2   And the next page, scroll down to the middle,

3   please, Peter says:

4   "Okay I think those were the main things

03:37 5   but anyways as far as you recall your

6   talk with Albert which is before he went

7   to the police...that was sometime after

8   the murder."

9   "Oh yes. It was quite a while after the

03:37 10   murder."

11   "Like weeks after..."

12   And then:

13   "It was after this lad was picked up."

14   "Oh, after he was picked...after they

03:37 15   got Milgaard?"

16   "Yes."

17   And Peter says:

18   "Ah, okay. I...I really misunderstood

19   what you were saying at first."

03:37 20   He says:

21   "Well no, it was after they got Milgaard

22   because that was the reason for the

23   reward that anybody leading up to the

24   arrest and so on...he was entitled to

03:37 25   that reward."

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1   Next page, Peter says:

2   "Okay so, but presumably the police knew

3   anyway before Cadrain saw you that uh

4   Milgaard had been staying with him or

03:37 5   had visited him."

6   He says:

7   "Oh yes, well he had given his testimony

8   before then."

9   "... you are talking about quite a

03:38 10   different time period. That makes more

11   sense to me."

12   And is it fair to say from this interview that in

13   February of 1983 you would have become aware of

14   two things, number one, that Father Murphy did

03:38 15   not contact Albert Cadrain until after David had

16   been convicted; correct?

17   A   Yes.

18   Q   And secondly, that when Father Murphy contacted

19   Albert Cadrain after David had been convicted,

03:38 20   according to Father Murphy, Albert wasn't aware

21   about the reward; is that fair?

22   A   That's fair.

23   Q   325504, this is Leonard Cadrain, that's a mistake,

24   it's Leonard Woytowich, and I think this is just

03:38 25   an interview, this was one of Albert's friends

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1		that Peter followed up with. Do you have any
2		recollection of that? Is this something that
3		would have been in the tapes and transcripts that
4		Peter provided you?
03:39 5	A	Probably.
6	Q	Go to 325516, and this is an interview of Peter
7		Carlyle-Gordge and Raymond Mackie, and do you
8		recall -- this is about 1983. Do you recall Peter
9		interviewing Raymond Mackie?
03:39 10	A	I have a vague recollection of it, but I don't
11		really recall what went on in the interview.
12	Q	And do you know who picked Raymond Mackie? I'm
13		going to suggest to you, did that come out of Mr.
14		Carlyle-Gordge's interview with Mr. Caldwell?
03:39 15	A	Yes.
16	Q	Where Mr. Caldwell said that Ray Mackie --
17	A	Ray Mackie and Karst.
18	Q	I think Ray Mackie was the chief investigating
19		officer?
03:39 20	A	That's right.
21	Q	And Mr. Karst interviewed Cadrain and Wilson, I
22		think Mr. Mackie did Nichol John. So is that
23		fair, that that's why those officers would be
24		picked?
03:39 25	A	Yes.

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1   Q   Did you ever talk to Raymond Mackie do you

2   remember?

3   A   I don't recall having spoken with him, and I think

4   I would have remembered if I had.

03:40 5   Q   Go to page 325621, and here Mr. Carlyle-Gordge

6   asks Ray Mackie, and again this is right around

7   February, March of 1983, he says:

8   "I notice too in the files the police

9   interview somebody at Cadrain's address

03:40 10   beforehand, someone called Larry Fisher.

11   Who is he?"

12   Ray Mackie:

13   "I don't recall Larry Fisher."

14   And then Peter:

03:40 15   "There was an address there. 335 it's

16   the same."

17   I think he's one number off. And then Ray Mackie

18   says:

19   "At Cadrain's it's on Avenue O, South

03:40 20   and 19th."

21   And then goes on to another subject. Again,

22   would you have been part of the discussions with

23   Peter about what would be asked of Mr. Mackie?

24   A   I think probably. I don't specifically remember

03:41 25   what he was doing with the police at that time.

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1 Q   And it would appear that he was inquiring of Mr.

2   Mackie whether he knew anything about Larry

3   Fisher?

4 A   Yes.

03:41 5 Q   And again that would have stemmed from, it

6   appears, the police report found in Mr. Caldwell's

7   file?

8 A   Right.

9 Q   I had asked you earlier, and you talked about

03:41 10   meeting Otto Lang I think in Winnipeg you talked

11   about; is that right?

12 A   Yes, I remember.

13 Q   And I had asked you whether he was a minister at

14   the time and I was advised by Mr. Wilson that Mr.

03:42 15   Lang was defeated in 1979, so I think in 1981 --

16   or when you met with him after you engaged Mr.

17   Merchant, it would have been after he was a

18   sitting member of parliament. Does that sound

19   right?

03:42 20 A   That's possible.

21 Q   It looks like --

22 A   I think if he had been the justice minister or

23   something, I would have remembered that.

24 Q   Yeah. Prior to 19 -- I think in 1979, prior to

03:42 25   that it's my understanding he had been the justice

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1   minister for a while.

2   A   Okay. When I heard that, I thought at the time

3   that I didn't think he could have been the justice

4   minister because I would really have been after

03:42 5   him then if he had been.

6   Q   In the 1983 time period, we went through with Mr.

7   Merchant his efforts about getting David parole.

8   I don't propose to go through that other than just

9   chronologically it looks like February, March of

03:42 10   '83 there was again a number of interviews

11   conducted by Mr. Carlyle-Gordge and you; is that

12   fair?

13   A   Yes.

14   Q   And then it looks like the mid part of 1983 or the

03:43 15   balance of 1983, that what may have been taking at

16   least Mr. Merchant's attention, and perhaps even

17   yours, was David's parole applications?

18   A   Yes.

19   Q   Is that fair?

03:43 20   A   That's fair.

21   Q   And I don't mean to say you weren't doing any

22   other things at the time, but the documents

23   suggest that that would have been the focus; is

24   that fair?

03:43 25   A   I think that was the focus at that time.

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1   Q   And was there an expectation -- again, if we can

2   just -- as we go through what's going on in your

3   life in 1983, David -- we heard from Mr. Merchant

4   or we saw in one of his letters where he said

03:43 5   lookit, I think David can get out on parole in

6   '83; we saw David's earlier letter where he said,

7   or you said, I think you wrote to Mr. Merchant

8   saying David expects to have a favourable

9   application by March of '83?

03:44 10   A   Yes.

11   Q   Do you remember that? So mid to fall of '83 the

12   parole hearing did not go as expected; is that

13   fair?

14   A   That's fair.

03:44 15   Q   And I take it that the frustration with that would

16   have been -- or you would have and David both

17   would have experienced frustration with that?

18   A   We did.

19   Q   And 219539, this is November 14th, a letter from

03:44 20   Tony Merchant, and I think this relates to the

21   parole, he says:

22   "In relation to the current problems

23   facing David it is futile to even

24   consider a further parole application

03:44 25   for at least six months and very likely

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1   something in the neighbourhood of a

2   year.

3   Howard quite properly has told

4   me not to waste energy needlessly at

03:45 5   this time. Moreover I indicated to him

6   that even if we were to get a parole

7   hearing at this time it would only

8   result in an unsuccessful decision which

9   would put David back even farther.

03:45 10   There really is nothing that

11   can be done for at least six months."

12   And it goes on about:

13   "... I thought we were making very good

14   progress but further progress will now

03:45 15   be delayed for quite some period of

16   time."

17   So I take it in November of 1983 this was not

18   very good news, at least from Mr. Merchant, about

19   what could be done on the parole side of things?

03:45 20   A   That's correct.

21   Q   And then 219540, this is a couple of days later,

22   November 16th, '83, it says:

23   "I have your message about hiring a

24   tracing service to find Mr. Wilson. The

03:45 25   cost of that might well be $200.00 and

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1   we are not sure of the success that

2   would be involved.

3   As I understand my instructions

4   from Mr. Shannon, he does not want me to

03:46 5   take any further action at his expense

6   until some time has gone by and he can

7   then assess the likely success of a

8   parole application.

9   If you want me to look into

03:46 10   finding Mr. Wilson and you are prepared

11   to pay our account in that regard, then

12   I will certainly undertake the work."

13   Do you recall this letter, Mrs. Milgaard?

14 A   No, I don't.

03:46 15 Q   And can you shed some light on a couple of things;

16   one, it looks like November of 1983 you are

17   looking for Mr. Wilson again. Is that right? Do

18   you remember that happening?

19 A   Well, it's obvious that I was looking for him

03:46 20   again, but I do not know for what reason.

21 Q   And it looks like Mr. Merchant is saying I can't

22   go look for you because Mr. Shannon has told me

23   not to spend any more of his money and that if you

24   want me to try and find him, and we're not sure it

03:46 25   would be successful, then you have to give me

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1		$200?
2	A	Right.
3	Q	And I don't think that happened did it?
4	A	It didn't happen.

03:46 5 Q   And what was your relationship with Mr. Merchant

6   at this time, November of 1983?

7 A   Well, I think it was at this that we were in the

8   backing-off stage of Mr. Merchant. I would have

9   to know what was the situation with Colin Thatcher

03:47 10   at that time.

11 Q   The murder was January 21 of 1983 and I think

12   Mr. Thatcher was charged in April of '84?

13   MR. WILSON: May of '84.

14   BY MR. HODSON:

03:47 15 Q   May of '84.

16 A   He was charged in May of '84?

17 Q   He may well have been a suspect from the day of

18   the murder onward, but he was charged in May of

19   1984. The murder was January --

03:47 20 A   So you could have been a suspect at this time and

21   that could have been the time that I was pulling

22   away from Anthony Merchant.

23 Q   Right. And maybe to assist you, your recollection

24   of having concerns about Tony Merchant and Colin

03:47 25   Thatcher, would it have been after the murder of

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1		Mrs. Thatcher?
2	A	Yes, because it was at that time that the story
3		was out there and I think it was at that time that
4		we found out that he knew Gail Miller and had
5		dated, I believe had dated Gail Miller, and so
6		because it was all in the news about his temper
7		and everything, that's how we related it to it.
8	Q	Okay. So it appears, and again just
9		chronologically, I think the end of 1985 or early
10		'86 is when you retain Mr. Wolch; is that right?
11	A	That's right.
12	Q	And Mr. Asper. For the time period 1984 and 1985,
13		at least with the documents we have, it appears
14		that Mr. Merchant wasn't doing much?
15	A	No. Everything was just falling by the wayside
16		and nothing was happening.
17	Q	There appears, and I'll take you to a few
18		documents, it looks as though the CBC *Fifth Estate*
19		became interested or perhaps you engaged them
20		about doing a story on David?
21	A	We did, and we were involved in that.
22	Q	Can you tell us how that came about and what that
23		was about?
24	A	I don't know exactly how it came about. The
25		first -- and that would be the first time and they

03:48 (line 5)
03:48 (line 10)
03:48 (line 15)
03:49 (line 20)
03:49 (line 25)

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1   decided not to run the episode, but we spent a lot

2   of time with them.

3   Q   And was this -- let me maybe back up a bit. Was

4   this one of -- an idea from you or David or Peter,

03:49 5   that lookit, it would be helpful if we got some

6   media exposure, or was it a case of the CBC coming

7   to you after hearing about you in the news? Are

8   you able to shed any light --

9   A   I think it was them, the first time they were

03:49 10   coming to us and then the next time we went to

11   them.

12 Q   Okay. If we could call up 213802, and this is a

13   letter July 22, 1985 from the CBC, Ron Haggart,

14   senior producer, and he's writing to David, and:

03:50 15   "... I have seen only an outline of your

16   case. I will be seeing more material

17   very shortly."

18   And:

19   "As you know, Sandra Bartlett has been

03:50 20   gathering information for us..."

21   So it appears at some point in mid '85, and I

22   understand she has --

23 A   She was a reporter, type of thing, for them.

24 Q   Right.

03:50 25 A   And, I remember, we worked rather closely with her

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1   for a while.

2   Q   "... and spoken to your mother in

3   England."

4   So at this time you would have been in England;

5   is that right?

6   A   Yes.

7   Q   And in '84-'85, what time period were you in

8   England, and was that full-time or was that -- I

9   can't remember what you told us on Monday -- was

03:50 10   that intermittent?

11   A   No, that would have been full-time at that time.

12   Q   And how long -- when were you in England, just --

13   A   Well, I was in England for about five months at

14   that time, --

03:51 15   Q   Okay.

16   A   -- five or six months at that time.

17   Q   And that would have been in 1985; is that right?

18   A   That was the first time, yes, and then I went

19   back.

03:51 20   Q   In '87 or '89?

21   A   Yes.

22   Q   Yeah. So again, in the years 1984 and 1985, can

23   you tell us just generally what -- where things

24   were at as far as the efforts to re-open, what

03:51 25   types of things you were doing and what types of

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1		successes you were having or not having?
2	A	Well I'd have to go by when we first got involved,
3		like, with Hersh and David.
4	Q	I think I'll show, I think January of '86,
5		although there may have been some discussions
6		at -- right towards the end of '85, at least by
7		the documents that we have?
8	A	I think it was '85.
9	Q	Okay. If we can call up 162436. This is January
10		22, '86, this is David's letter to Hersh Wolch, it
11		says:
12		"I would like to see you to
13		discuss my case. My mother told me that
14		I could retain you ...",
15		now we have that. We also have Mr. Asper's
16		evidence that I think in March of '86 is when he
17		would have got the file from Mr. Wolch, and I
18		have also seen documents that suggest you had
19		contact with him in '85?
20	A	Yes.
21	Q	So --
22	A	I think that's when I first went to Hersh Wolch.
23	Q	And do you remember when in '85 that would have
24		been?
25	A	Well it would have been in the fall.

03:51 (line 5)
03:52 (line 10)
03:52 (line 15)
03:52 (line 20)
03:52 (line 25)

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1   Q   Fall of '85?

2   A   The fall of '85.

3   Q   So, in '84 and '85, Mr. Merchant would still have

4   been your counsel?

03:53 5   A   Yes.

6   Q   And there is a few letters here dealing with the

7   *Fifth Estate*, but is it fair to say that in '84

8   and '85, as far as what Mr. Merchant was doing for

9   you, that there was not much happening?

03:53 10   A   Nothing was happening there.

11   Q   Nothing? And what about you and your family; do

12   you recall what types of things you might have

13   been doing, were you contacting people still? And

14   I'm sorry, I don't have any documents that might

03:53 15   assist you with that.

16   A   I have no memory of exactly -- I'd have to look at

17   my notes to see where I was at that time.

18   Q   Prior to going to see Mr. Wolch, would it -- would

19   it be fair to say that you were frustrated that

03:53 20   things had not progressed very well?

21   A   Oh, yeah, I -- we'd been following up on so many

22   things, and Peter was gone and it looked like we

23   were just at a dead end, and Merchant wasn't doing

24   anything, David was acting out, there were

03:54 25   terrible things going on as far as he was

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1   concerned as well, and I can remember feeling the

2   need of a break at the time. But in looking at

3   the document I'm surprised, with that *Fifth*

4   *Estate*, that I was in England at that time, and so

03:54   5   that's why -- I'll refresh myself on that --

6 Q   Okay.

7 A   -- this weekend when I get my diaries.

8 Q   Sure. So again though -- and I don't mean to be

9   -- but again, in '84-'85, is it -- are you telling

03:54   10   us that the things through -- may have fallen off

11   the rails a bit in the sense that, at least from

12   your end, things with were not happening like

13   you'd like them to happen?

14 A   Not the way we'd like them to happen, no, that's

03:55   15   for sure.

16 Q   And is that one of the reasons you went to

17   Mr. Wolch to say lookit, let's get this thing

18   re-ignited?

19 A   Yes, because we weren't going anywhere.

03:55   20 Q   And how is it that you came to contact Mr. Wolch?

21   Was that, I think you said, through Peter

22   Carlyle-Gordge?

23 A   Well Peter had told us about the work that he had

24   done on the *Katie Harper* case, and so I remember

03:55   25   calling and making an appointment and going up

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1   there with this huge case of all the materials and

2   everything that I had, and I asked him how much he

3   would charge me to look at the case and he told me

4      $2,000. And it was a lot of money to me at that

03:55 5   time but I said okay, I would like him to look

6   into it, and I told him that I -- I believe I had

7   taken all the documents with me that day.

8   Q Okay.

9   A And I guess I've said this before, and Hersh knows

03:56 10   it, but apparently it was right after I left that

11   David Asper walked by his office and he called him

12   in and he said "take that and look at it and see

13   if there's anything in it", and he didn't even

14   look at it.

03:56 15   Q Mr. Wolch didn't?

16   A No, he didn't. But David Asper became my white

17   knight in shining armour, because he did look into

18   it and he started to dig into it, and he kept

19   going back to Hersh and saying, "eh, I think we

03:56 20   really got something", and Hersh was saying,

21   "well, do something about it then". So at that

22   time we started to get excited about the various

23   possibilities and it was like we were starting

24   fresh again.

03:57 25   Q Okay. Just back on, I think you said you took in

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1   your documents, would that have been your tapes,

2   transcripts, everything that you had compiled?

3 A   Everything.

4 Q   And provided that to Mr. Wolch?

03:57 5 A   Yes.

6 Q   Now Mr. Carlyle-Gordge, in his evidence before the

7   Commission, said that when he went to England, I

8   think in 1983, that he would have left you with a

9   copy -- a copy of either the tape or transcripts

03:57 10   of all of the significant information; is that

11   correct?

12 A   Yeah, and they would probably have been part of

13   what I gave to Mr. Wolch.

14 Q   And so again, as far as what Mr. Carlyle-Gordge

03:57 15   did, are you satisfied that -- and I mean this was

16   his evidence -- that everything he had done, he

17   provided a copy for you before he left; is that --

18 A   I think he did.

19 Q   And that he --

03:57 20 A   Although --

21 Q   Oh, I'm sorry?

22 A   -- there was some question, afterwards, whether we

23   talked to him and got other things from him when

24   he was over there.

03:58 25 Q   Okay. If I might assist on that, just by the

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1   evidence we've heard, I think his evidence was

2   that he gave you copies of everything before he

3   left because he wanted to make sure that you had

4   everything?

03:58   5   A   Uh-huh.

6   Q   And that, secondly, you would have given

7   everything you had, including what Peter

8   Carlyle-Gordge gave to you, to Mr. Wolch and Asper

9   in 1985-'86; is that correct?

03:58   10   A   Okay.

11   Q   And then, I'll show you a bit later, I think then

12   Mr. Asper and Mr. Wolch both each wrote to Peter

13   Carlyle-Gordge for his information, and I think he

14   got back and said that he had given the

03:58   15   transcripts of his interviews to the CBC for the

16   *Fifth Estate* and they could get them directly, and

17   then there is a letter in early '86 from the CBC

18   to Mr. Wolch or to Mr. Asper saying "here are the

19   transcripts that Mr. Carlyle-Gordge gave us"?

03:58   20   A   Ah, okay.

21   Q   Does that sound right?

22   A   That sounds right.

23   Q   Do you have any reason to think that some of what

24   you did, or Mr. Carlyle-Gordge did from 1980 to

03:59   25   1983 or '84, did not get into the hands of

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1		Mr. Wolch and Mr. Asper?
2	A	No, I believe they got all of it. And I must
3		point out that although -- because I'll get killed
4		later if I don't -- that although David Asper
5		became my white knight in shining armour, it was
6		Hersh Wolch that took it to the Supreme Court of
7		Canada and got the case re-opened.
8	Q	If we could go to 213802. Just talk a bit more
9		about this *Fifth Estate*. Did the *Fifth Estate*, I
10		think when I looked at some of the documents
11		involving David, became a bit of an issue for him,
12		and the program was going to run, and then it
13		wasn't going to run, --
14	A	Yeah.
15	Q	-- and then it did run, and can you tell us; what
16		was the importance --
17	A	The first time it didn't run --
18	Q	Right.
19	A	-- and it was a different group when it run -- ran
20		the second time, and Sandra Bartlett had been one
21		of the ones that was really pushing for it, she
22		was a reporter that was investigating I think on
23		her own somewhat and then worked with the *Fifth*
24		*Estate*. And Peter had worked with Sandra, I
25		think, at one point as well.

03:59 (line 5)
03:59 (line 10)
04:00 (line 15)
04:00 (line 20)
04:00 (line 25)

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1 Q   And what was, from your perspective, what was the

2   value that the *Fifth Estate* program could add to

3   -- I take it it was something you wanted to happen

4   as part of your re-opening efforts?

04:00 5 A   Oh, yes, because it would make us more credible if

6   the *Fifth Estate* ran it.

7 Q   And elaborate on that; what do you mean by "more

8   credible?"

9 A   Well, they had a reputation for investigating and

04:01 10   doing things that were important kind of cases,

11   and so if you got onto the *Fifth Estate* it would

12   sort of lend you -- well, not only that, we wanted

13   to get it beyond the Manitoba border so it would

14   end up down east as well.

04:01 15 Q   And, again, at this time why would you want it

16   down east in 1985-'86?

17 A   Well, because that's where the Justice Department

18   was.

19 Q   Okay. And I guess at this time, though, you had

04:01 20   not filed an application yet to the Minister;

21   correct?

22 A   But we would be filing an application to the

23   Minister.

24 Q   Okay. So this was --

04:01 25 A   So you want it viewed in the proper way, and if

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1   it's already been on the CBC and on the *Fifth*

2   *Estate*, people are going to know about it ahead of

3   time.

4   Q   Were you -- you, and I say you and perhaps your

04:02   5   son David -- were you looking for some type of

6   validation from someone outside your group that

7   you were maybe right?

8   A   Yes.

9   Q   And can you just elaborate a bit on that, please?

04:02   10   A   Well I think we wanted to make it more public, to

11   get it out into the -- more into the public sphere

12   than it was at that time.

13   Q   One of the things that Mr. Asper testified to was

14   that by -- and I think he attributed this to you,

04:02   15   or one of the reasons was that if the media went

16   and looked at it and probed and prodded and came

17   up and themselves concluded that there might be

18   something there, that that might give you some

19   comfort that someone outside your group of people

04:02   20   looked at it and reached the same conclusion as

21   you; is that true?

22   A   Probably was.

23   Q   What about at this time -- and, again, we'll get

24   into the role the media played and your dealings

04:02   25   with the media tomorrow -- but what about -- did

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1   you see them at this time again, just 1985, that

2   the *Fifth Estate* might uncover some information

3   for you that might help you?

4   A   Oh yes.

04:03 5   Q   Was that one of the things?

6   A   You know, people will often talk to the press

7   about things and it would come out, so I was

8   hopeful of that.

9   Q   And what about David, what was he -- what was his

04:03 10   view on the *Fifth Estate;* was that something that

11   was pretty important for him?

12   A   Oh, it was very important.

13   Q   And --

14   A   It was giving him a voice. He not only wanted to

04:03 15   use the *Fifth Estate* for himself but he also

16   wanted to use it for his Justice Group inside the

17   prison. He had started a group called the Justice

18   Group and, where he had a lot of people would come

19   in and talk to the group, and he wanted the

04:03 20   concerns of the Justice Group put forward in the

21   *Fifth Estate* as well.

22   Q   Did that become a bit of an issue between David

23   and David Asper -- your -- David Milgaard and

24   David Asper, Hersh Wolch and you a bit later on,

04:04 25   about what ought to be put in the media about

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1   David's case?

2   A   Yes.

3   Q   And do I have it right that you and David Asper

4   and Hersh Wolch had views about what ought to be

04:04 5   put forward in the media to help David's

6   re-opening and David Milgaard had more of a

7   concern, or had concerns about putting his Justice

8   Group forward, and issues relating to other

9   prisoners; is that --

04:04 10   A   That was it.

11   Q   Was that the tension?

12   A   That was it.

13   Q   And when information came out that was related to

14   his re-opening, or there was a piece to be done on

04:04 15   his re-opening, he wanted to put the Justice

16   information in ahead or as part of it; is that

17   fair?

18   A   That's fair.

19   Q   And Mr. Asper, Mr. Wolch and/or you were of

04:04 20   concern that that might muddle up the message you

21   were trying to put forward for David?

22   A   Right.

23   Q   If we can call up 219493. And this is August

24   26th, 1985, a letter from Tony Merchant to David,

04:05 25   and would he still have been your counsel at that

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1   time?

2   A   I'd have to read what he was saying.

3   Q   Sure. The date is August 26th, 1985. I'm not

4   sure if much turns on it, but did you ever

04:05 5   formally terminate him and say --

6   A   No.

7   Q   -- "we're done", or did you just stop talking to

8   him?

9   A   Just stopped talking to him.

04:05 10   Q   Okay. So here he is writing, saying that:

11   "Eric Malling called me on the 22nd of

12   August ... called back ... He raised

13   with me the issue of whether I knew

14   anything about the Milgaard killing,

04:05 15   etc. I did not immediately tell him

16   that I was your lawyer, but in due

17   course came to the conclusion that you

18   had been in touch with the *Fifth Estate*

19   and had discussed with them some sort of

04:05 20   coverage. I decided that it would be

21   valuable for me to talk openly with Mr.

22   Malling. The fact that I represent you

23   is not a confidential matter in any

24   event and though I didn't tell him

04:06 25   anything that is protected by solicitor

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1   and client privilege, I did give him my

2   views of the matter and discussed some

3   of the other things that I knew about

4   the case which I thought would continue

04:06 5   to prick the interest of the *Fifth*

6   *Estate* in doing a story.

7   They may contact you for a

8   waiver of the solicitor and client

9   privilege. I think you should follow up

04:06 10   on trying to encourage them to publicize

11   the case."

12   Now I think, at some point, did David and/or you

13   have concerns about Mr. Merchant's dealings with

14   Eric Malling?

04:06 15   A   Well I had concerns about Mr. Merchant, as you

16   know, at this point in time anyhow, so whether I

17   didn't want him to be connected with Eric Malling

18   I don't know.

19   Q   There is a couple of letters that David had wrote,

04:06 20   I think in '86-'87, where he thought that Tony

21   Merchant was responsible for ending or causing the

22   *Fifth Estate* not to run a show on his case because

23   of his relationship with Eric Malling, or that he

24   did something; do you remember that coming up?

04:07 25   A   I do vaguely remember that, and I thought at the

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1   time that it was because of the *Thatcher* case, of

2   the --

3   Q   Right.

4   A   -- of that connection. I believe that's what we

04:07 5   were thinking at the time.

6   Q   And 213641 -- sorry, the doc. ID is 213635. And

7   this is a January 27th, 1986 account from Tony

8   Merchant to Sandra Bartlett, photocopying 60

9   pages, and is that:

04:08 10   "Sandra Bartlett copies",

11   is that your writing, do you know?

12   A   That's my writing there:

13   "Sandra Bartlett copies".

14   Q   And I'm wondering, it appears that Mr. Merchant

04:08 15   would have given her copies of information January

16   of '86; are you able to shed any light on what

17   this is about?

18   A   Obviously he has billed me.

19   Q   Or billed her.

04:08 20   A   Or, no, billed her. I can't shed any light on it.

21   Q   Would you have gotten copies from Tony Merchant's

22   file to give to Sandra Bartlett for her show, for

23   the *Fifth Estate*?

24   A   No, I think that Sandra Bartlett went to him.

04:08 25   Q   Oh, okay?

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1   *A*   I don't think I was involved in that at all.

2   **Q**   And this is maybe a note that you made later on?

3   *A*   Probably, yes.

4   **Q**   Okay. If we can go to 219247. So this is

04:08 5   September '85, and I think this is when you are in

6   England, and Sandra Bartlett writes to you saying:

7   "The fifth estate has decided to do a

8   film on David's and your story. They

9   will do a re-enactment of the murder in

04:09 10   Saskatoon, the tentative date for that

11   is the first two weeks of November (it

12   will depend on the snow of course). In

13   telling the story through the

14   interviews, the focus will be on your

04:09 15   efforts to get your son a new trial.

16   That will, of course, include a detailed

17   presentation of the evidence presented

18   at the trial. I won't have all the

19   details for another couple of weeks but

04:09 20   it seems that David and yourself and

21   Peter Carlyle-Gordge will be

22   interviewed. Some of the other

23   interviews will depend of course on

24   getting these people to agree to be

04:09 25   interviewed; people such as the

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1   prosecutor Mr. Caldwell, the Danchuks,

2   Nichol Demeyen. There was some

3   discussion about going to England to do

4   the interview with you, but I'm not sure

04:09   5   that the final decision on that will

6   be.",

7   etcetera. And then go to the next page. She

8   says she:

9   "... visited David in the company of a

04:09   10   fifth estate producer named Gordon

11   Stewart. ... also met your daughter

12   ...",

13   and:

14   "I must say that David

04:10   15   impressed us both with his intelligence

16   and sincerity and it is amazing that he

17   displays very little hardness or

18   bitterness after having grown-up, as it

19   were, in jail."

04:10   20   And then follow up with more information. So I

21   take it that Sandra Bartlett had been out to see

22   David, and here's the letter of September of '85

23   saying "we're gonna do a show"?

24   A   Right.

04:10   25   Q   And this was something that was viewed by you and

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1   David as being very important --

2   A   And very positive, yes.

3   Q   -- in the re-opening effort?

4   I think, Mr. Commissioner, we

04:10 5   might break a bit early today. I'm going into a

6   new area and it might be better to start first

7   thing in the morning.

8   *(Adjourned at 4:10 p.m.)*

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5 contain a true and correct transcription of our shorthand

6 notes taken herein to the best of our knowledge, skill,

7 and ability.

8

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13 Karen Hinz, CSR

14 Official Queen's Bench Court Reporter

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