

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

Transcript of Proceedings

and

Testimony before the Commission
sitting at the
Delta Bessborough Hotel at
Saskatoon, Saskatchewan

On Thursday, February 2nd, 2006

Volume 117

Inquiry Proceedings



Commission Staff:

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CALVIN FORRESTER TALLIS, SWORN

- BY MR. HODSON

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1 Transcript of Proceedings

2 (Reconvened at 9:05 a.m.)

3 COMMISSIONER MacCALLUM: Good morning.

4 ALL COUNSEL: Good morning.

5 MR. HODSON: The next witness,

6 Mr. Commissioner, is The Honourable Calvin Tallis
7 and I would ask Mr. Tallis to come up to the
8 witness stand, please.

9 COMMISSIONER MacCALLUM: Good morning,
10 Justice Tallis.

11 CALVIN FORRESTER TALLIS, sworn:

12 BY MR. HODSON:

13 Q Good morning, Mr. Tallis. Thank you for agreeing
14 to testify before this Commission of Inquiry. For
15 the record, we know that Mr. Tallis is a party
16 with standing, granted standing in March of 2005
17 and he is represented by counsel, Alex Pringle and
18 Marshall Hopkins.

19 And, Mr. Tallis, you were David
20 Milgaard's defence counsel during his original
21 trial and appeal to the Saskatchewan Court of
22 Appeal; is that correct?

23 A That's correct.

24 Q And I understand that you are currently 75 years
25 of age; is that correct?



1 A Yes, just about 76.

2 Q Will it happen during your evidence, sir, or you
3 can let us know.

4 A Well, it might.

5 Q I'm not sure if I want to know your birth date
6 then.

7 A That's up to you.

8 Q See, you've already intimidated me. Your
9 residence is Regina, Saskatchewan; is that
10 correct?

11 A That's correct.

12 Q I would like to just quickly go through a
13 curriculum vitae that we prepared based on
14 information you provided to us, and the document
15 number is 335413, and just for the record, this is
16 a document that the Commission prepared based on
17 information we gathered both from our sources and
18 from yours and I think we've had a chance to
19 review this with you. I just want to go through a
20 bit of your background here.

21 I think 1954, graduated from the
22 University of Saskatchewan with a combined degree
23 in arts and law, articulated with the law firm of
24 Goldenberg & Taylor and was admitted in 1955; is
25 that correct?



1 A Yes.

2 Q And then 1967 is approximate, received the Queen's
3 Counsel designation, and then admitted to the Law
4 Societies of British Columbia and Northwest
5 Territories in approximately 1973 and 1975; is
6 that correct?

7 A Yes. I haven't checked the precise dates, but
8 those are certainly in the ballpark.

9 Q And in 1969, 197 -- let's say 1970, at the time of
10 Mr. Milgaard's trial, you would have been a
11 practicing lawyer for approximately 15 years; is
12 that correct?

13 A Yes.

14 Q Approximately?

15 A Yes.

16 Q 15 or 16 years. And then 1976 you were appointed
17 to the Supreme Court of the Northwest Territories
18 which also included an appointment to the Supreme
19 Court of the Yukon Territory and the Courts of
20 Appeal for the Northwest Territories and the Yukon
21 Territory; is that correct?

22 A That's correct.

23 Q And then 1981 you were appointed to the Court of
24 Appeal of Saskatchewan and continued as a member
25 of the Court of Appeal of the Northwest



1 Territories and Deputy Justice of the Supreme
2 Courts of the Northwest Territories and Yukon; is
3 that correct?

4 A That's correct.

5 Q And then in 1999 appointed to the Nunavut Court of
6 Justice as a Deputy Justice; is that correct?

7 A Yes, and there's one addition that should be
8 there, I was appointed to the Nunavut Court of
9 Appeal just to flesh it out.

10 Q About the same time, 19 --

11 A On the same date.

12 Q And then in March of 2005 you retired from the
13 judiciary; is that correct?

14 A Yes.

15 Q Now, I just want to go back and talk a bit about
16 your experience and involvement in continuing
17 legal education prior to your appointment to the
18 bench in 1976. The first point I understand, sir,
19 that you lectured on civil practice and procedure
20 at the University of Saskatchewan for
21 approximately 20 years; is that correct?

22 A Yes, give or take a year.

23 Q And would that have been back in 1970, do you
24 recall if at that time you were doing any
25 lecturing?



1 A I was involved right up until I left practice to
2 take an appointment.

3 Q So in 1970 would you have been -- '69, '70, you
4 would have been lecturing at the University of
5 Saskatchewan?

6 A Yes.

7 Q And would that be through the College of Law then?

8 A That's correct.

9 Q I understand as well that you lectured at the Bar
10 Admission Course both before and after your
11 appointment to the bench; is that correct?

12 A That's correct.

13 Q And again, in 1970 would you have been lecturing
14 at the Bar Admission Course around that time?

15 A I can't be precise as to what I was lecturing on,
16 but I know I participated in the Bar Admission
17 Course over quite a number of years and I'm quite
18 sure that I was involved at that time as well.

19 Q Did any of your lecturing either at the College of
20 Law or the Bar Admission Course involve criminal
21 law?

22 A Certainly at various times at the Bar Admission or
23 related seminars or lectures I certainly was
24 involved in that type of work, but just let me
25 make this point, I was one of many. I don't want



1 to leave the impression that I was the only one
2 that was involved in this because there were many
3 of the lawyers here in Saskatoon and indeed in
4 other parts of the province that were involved.

5 Q The third point, I understand that you were a
6 Saskatchewan delegate to the Uniform Law
7 Conference of Canada; is that correct?

8 A Yes, for several years, and I can't tell you the
9 exact number of years, but I remember Mr. J.G.
10 McIntyre, Q.C. and I were I think the delegates
11 from the private bar, if I might use that, in
12 contradistinction to delegates that came from
13 various branches of government.

14 Q And again, that would obviously be then prior to
15 1976; is that correct?

16 A Yes, a number of years prior to '76.

17 Q Would it -- again if we use 1970, the time of Mr.
18 Milgaard's trial, would you have been involved in
19 the Uniform Law Conference of Canada at that time?

20 A I can't say that it was at that time. I don't
21 recall it at that specific time.

22 Q I see.

23 A I think it may well have been before that.

24 Q And what work were you doing for the Law
25 Conference?



1 A Well, the Uniform Law Conference at that time was
2 dealing, was considering amendments both on the
3 civil side and the criminal side in the context of
4 uniform legislation across the country with
5 respect to provincial statutes, but of course with
6 respect to the criminal law, we had a national
7 *Criminal Code* as we do now, so it was being
8 approached on a national basis.

9 Q And the last item, as I understand it you were a
10 faculty member of the Federation of Law Societies
11 of Canada, Criminal Law Program; is that correct?

12 A That's correct.

13 Q And can you tell us a bit about that, please?

14 A Well, I started out many years ago as a
15 participant; in other words, as a registrant, and
16 then as time went by I was asked to participate as
17 a member of the faculty and I was involved in that
18 for I think about 25 years. The reason I know
19 that is that in 1998 a group of us were given
20 watches that marked the occasion of our service
21 and I happened to have a look at the back of the
22 watch and that's what told me it was in 1998.

23 Q So 1973 would have been approximately when you
24 started your association as a faculty member; is
25 that correct?



1 A Somewhere in that neighbourhood, yes.

2 Q And what, can you tell us as a faculty member, and
3 again relating to the Criminal Law Program, what
4 did that entail?

5 A Well, it involved each year, and I think many of
6 you have probably seen the volumes that are given
7 to registrants, but it involved consideration of
8 many topics. For example, one year it might focus
9 on evidence, another year it might focus on
10 substantive criminal law and then another year it
11 might focus on the Charter and proceedings related
12 to the Charter and then probably criminal
13 procedure as such in contradistinction to
14 substantive criminal law.

15 Q And did you then teach -- I understand that
16 lawyers would attend this on an annual basis, is
17 that correct, lawyers from across Canada?

18 A Yes. The emphasis, I think, was on participation,
19 there were workshops after the panel presentations
20 and so on, and I was involved in that sometimes as
21 a moderator, sometimes as a -- as one who was
22 presenting a paper and various things like that.
23 I don't want to bore you with unnecessary details,
24 but --

25 Q And, but it would relate to criminal law matters,



1 then?

2 A That was exclusive to the criminal law. And,
3 during my time, Mr. Justice David Watt really was
4 the director of the program with, you know, able
5 assistance from many other people, but he was very
6 heavily involved in it and --

7 Q And how many people for example from Saskatchewan,
8 then, on the faculty were there?

9 A Umm, --

10 Q How many would be on the faculty from -- on a
11 year-to-year basis?

12 A I think my recollection is that there were two for
13 most of the years that I was involved. I remember
14 Mr. Kujawa was one of the members and then more
15 recently, after I stepped down as a delegate, as a
16 member from Saskatchewan, Mr. Michael Tochor --

17 Q Yes.

18 A -- became a member of the faculty, and Mr. Murray
19 Brown became a member of the faculty. Now I hope
20 I haven't missed anybody --

21 Q No, that's fine.

22 A -- because there may well have been one or two
23 others in there.

24 Q I have a number of areas that I intend to cover
25 with you, Mr. Tallis, relating to your



1 representation of Mr. Milgaard at the trial. One
2 of the Terms of Reference of this Commission of
3 Inquiry is to inquire into the conduct of the
4 criminal proceedings, and like most witnesses I
5 will try and do it in somewhat of a chronological
6 order, focusing on those areas that are important
7 to the Commission, but I have prepared an outline
8 of where I intend to go with you. If I could call
9 up 335414. And maybe, just for the benefit of the
10 Commissioner and counsel and for the parties and
11 for you, Mr. Tallis, I'll just quickly go through
12 an outline of where I intend to go, and when I
13 intend to go there, so we can get an idea of what
14 we're going to cover.

15 And, again, the first part,
16 we've already covered the curriculum vitae, but I
17 want to go through some experience, your
18 experience, Legal Aid, what would have been in
19 your file, what you did after the trial as far as
20 reviewing documents. Then I intend to go on to
21 your engagement to defend Mr. Milgaard, and I've
22 prepared a chronology of events that hopefully
23 will assist us in that. Then I want to spend some
24 time about -- on your meetings with Mr. Milgaard
25 -- go to the next page -- and we'll go through in



1 detail what your recollection is of what Mr.
2 Milgaard advised you of. We'll go through some of
3 his statements to the police, the scribbler, Mr.
4 Milgaard's evidence at the Supreme Court, we'll go
5 through your assessment at the time of various
6 matters relating to David Milgaard. The document
7 also sets out some of the documents.

8 Then I will turn to your
9 dealings with the Crown -- the next page -- the
10 disclosure standards and what was actually
11 received we'll go through. We'll then talk about
12 your preparation for the trial and various items
13 there.

14 Then, when we get to the
15 preliminary inquiry and trial, what I propose to
16 do is rather than go through the preliminary
17 hearing and then go through the trial, I propose
18 to do it together, and by way of the key
19 witnesses, and so we'll touch on what your view
20 was of the most damaging evidence at the time,
21 then we'll go through Mr. Cadrain, Ron Wilson,
22 Nichol John. And what I propose to do is to go
23 through the preliminary hearing and trial and just
24 touch on key parts, and how you approached these
25 witnesses and cross-examined them, and what



1 information you had at the time and what you were
2 trying to achieve with these witnesses.

3 The next page is the motel
4 reenactment. We'll then go through physical
5 evidence -- the next page -- and I'm afraid we're
6 going to spend a bit more time on the
7 blood-secretor issue which we've heard some
8 evidence about. Then, if we can just scroll down,
9 there is a few other witnesses that -- Art
10 Roberts, Shirley Wilson, Marie Indyk, and there
11 actually may be a few other witnesses that I will
12 go through with you, and then as well some of the
13 evidence of the other witnesses on points that
14 related to your defence. Then I propose to go
15 through with you in some detail what factors went
16 into both your advice to Mr. Milgaard regarding
17 his decision not to testify, or to testify, and
18 that decision itself. And then, as well, I'll
19 finish up with some questions relating to your
20 observations at the trial.

21 We'll then go to the appeal and
22 spend a little bit of time on that. And at this
23 point what I propose to do, Mr. Tallis, is, at
24 least for the first part, focus on what you did at
25 the trial with what you had at the time, so in



1 other words we will identify what information you
2 had and what you did. I then propose to go
3 through some information that we now have that
4 you, I believe, weren't aware of at the time or
5 may not have been aware of at the time, and we
6 will canvass with you what you might have done had
7 you known of that information. I think I'm
8 over-simplifying it, but that, that's generally
9 the subject area.

10 Then, the next page, we'll talk
11 a bit about Mr. Fisher's confessions and
12 convictions in October of 1970 and what might have
13 happened there.

14 Then we'll move into
15 post-conviction issues and your contact with
16 subsequent counsel for Mr. Milgaard, the Supreme
17 Court reference, RCMP, and then I will touch on
18 some post-conviction commentary that has been made
19 with respect to Mr. Milgaard's defence at trial.
20 And then, finally, just a short bit about the
21 media and miscellaneous. So that's hopefully
22 where I intend to go, sir, over the next few days.

23 If we can start with back in
24 June of 1969, it's my understanding that that's
25 when you would have been retained to represent Mr.



1 Milgaard, is that right?

2 A Yes. I couldn't give you the precise date but I
3 think you have a note of that.

4 Q Yes, and we'll see some documents that will
5 assist.

6 A All right.

7 Q I think there is no issue on that. And it's my
8 understanding that that would have been through
9 the Legal Aid program of the day; is that correct?

10 A That's correct.

11 Q And can you tell us a bit about your practice at
12 the time? Let's talk about 1969-1970, how would
13 you have described your law practice, what were
14 you doing at the time?

15 A At that time I was doing mainly counsel work, and
16 that would include quite a bit of work in the
17 criminal law field and, of course, work in the
18 civil law field too, in other words civil
19 litigation.

20 Q How many, again, how many murder trials would you
21 have conducted prior to David Milgaard's trial?

22 A You know, I really have never kept track of things
23 like that. I know that I'd been involved in a
24 number, and also attempted murder and rapes and
25 things and related types of crimes, but to put a



1 specific number on it, I couldn't. But I think
2 it's fair to say that, like a number of the
3 lawyers in the city here, I'd done a fair amount
4 of work in the field of criminal law as well as on
5 the civil side.

6 Q Okay. Just as far as -- I understand as well,
7 sir, that you did some prosecution work?

8 A Oh yes, I had done prosecutions, from time to time
9 I was instructed to handle cases of that nature.

10 Q It's my understanding, and I think we heard this
11 evidence perhaps from Mr. Caldwell, that at that
12 time certain rural areas had private lawyers that
13 acted as prosecutors from time to time, and is
14 that correct?

15 A That's correct.

16 Q And I think he said you may have had the Humboldt
17 area; is that correct?

18 A The Humboldt area.

19 Q And so you would then -- for example, did you
20 prosecute any murder cases?

21 A Near the very, near the end of my legal career I
22 -- Humboldt was an area, it was, I would call it a
23 very law-abiding area, and in all the times that I
24 can recall it -- and bear in mind that my wife's
25 family comes from that general area -- there was



1 one case.

2 **Q** Of murder?

3 **A** Of murder. And that was near the end of my
4 career, --

5 **Q** This --

6 **A** -- not too far anyway, and I remember it because
7 Mr. Halyk was counsel for the defence and he was
8 appointed under the Legal Aid scheme, he was
9 brought in as senior counsel on the matter.

10 **Q** And so again, as far as prosecuting, what other
11 types of case then? Let's just go back to 1970.
12 At the time of Mr. Milgaard's trial had you
13 prosecuted other serious criminal cases, then,
14 prior to that time?

15 **A** Well, before that I had been instructed and
16 brought in by the Crown prosecutor at that time in
17 Prince Albert, I couldn't tell you what year, but
18 there was a murder case in the penitentiary and I
19 was asked to handle that and I did assist, and
20 actually led for the prosecution, along with the
21 late Mr. Gordon Kirkby.

22 **Q** And that would be prior to 1970?

23 **A** I'm quite sure it was.

24 **Q** And then, again, as far as -- let's just go back
25 to your criminal defence work. Prior to 1970



1 would it be more than 10 cases, serious criminal
2 cases you would have defended, 20, 30; are you
3 able to give us some range?

4 A Oh, as I said, I couldn't give you the number.
5 But over the years it would be more than that,
6 because I had started doing criminal work,
7 although not of the heavy nature, even during my
8 articling year.

9 Q So in 1955 you started criminal work?

10 A Yes. And, as I say, even in those years, even
11 when we were articling, there was sort of an
12 informal arrangement that articling law clerks
13 were permitted to appear before the Provincial
14 Courts -- or then they were called Magistrate's
15 Courts -- even on matters that probably
16 technically required the services of an admitted
17 lawyer. But that was something, and that's how
18 many people started with their interest in Legal
19 Aid, because there was not a Legal Aid Plan in
20 existence at that time other than an ad hoc sort
21 of a plan that had been set up by the local bar
22 and with the blessing of the courts.

23 Q And can you tell us about, again prior to 1970,
24 had you appeared before juries or conducted jury
25 trials?



1 A Oh, I'd been in front of juries many times.

2 Q And so --

3 A I couldn't give you a number, but I think it's
4 fair to say -- and I've tried to reflect on
5 this -- I think I had appeared in front of every
6 Queen's Bench judge that was sitting on the Bench
7 at that time, and some of those cases would have
8 been non-jury, but many of them would have been
9 jury cases.

10 Q So would it be fair to say that, at the time you
11 conducted David Milgaard's trial, that you had
12 been involved in numerous murder jury trials?

13 A Yes, I think I can fairly say that I had had
14 extensive experience.

15 Q And, again, --

16 A But --

17 Q -- I'll try and come back to a number.

18 A Yes.

19 Q Could you give us a --

20 A I couldn't give you a number now, but once again I
21 want to emphasize there were other lawyers who
22 also had done extensive work --

23 Q Yes.

24 A -- in this area, so I don't want to misrepresent
25 my role in the local bar.



1 Q If we could turn to the Legal Aid Plan and can you
2 tell us, in 1969, what was in place as far as
3 Legal Aid?

4 A Well, as with everything that I have been asked by
5 you this morning, I have to rely on my own
6 recollection because I don't have any documents or
7 anything that --

8 Q Right.

9 A -- assists me, but by that time I know that there
10 was a Legal Aid Plan operating and that the
11 secretary was Mr. Heidgerken, who was the Local
12 Registrar of the Court of Queen's Bench, and my
13 recollection is that the assessment of eligibility
14 for Legal Aid was passed upon by a committee. I
15 don't recall how the committee was formed or
16 created, I don't think there was a statutory basis
17 for it but there may well have been something
18 under regulate -- government regulations, but on
19 that committee I know that members of the private
20 bar who were involved, and I think probably
21 members of the prosecution bar, and as I recall it
22 the members of the committee would vette the
23 applicant in terms of eligibility.

24 And that had developed from what
25 I will call the ad hoc arrangement that existed



1 earlier, and under that arrangement -- and that's
2 what was in place in 1955 -- members of the local
3 bar were asked to put their name on the list and
4 they sort of rotated in terms of phone calls, but
5 in case of more serious offences I think they
6 would go to the more experienced members on the
7 panel, if I may use that term.

8 For example, in 1955, I don't
9 think I would have been asked would I take a
10 murder case.

11 Q Okay. So --

12 A Umm, people like James Wedge, Q.C. or D.E. Gauley,
13 Q.C., or people like that would have been on it,
14 and I just mention their names to illustrate and
15 not to exclude anybody. But gradually the need to
16 have a more substantial plan evolved, because
17 under that ad hoc plan there was no funding, it
18 was just done -- handled by the local bar, and
19 each office was expected to do its bit, if I --
20 you may use that term.

21 Q In 19 --

22 A Now I don't know whether I've been --

23 Q In 1969 then --

24 A I don't know whether I'm being too long-winded
25 about this, or not, --



1 Q No.

2 A -- but you tell me if I am.

3 Q In 1969, then, was there funding in place then,
4 under the Legal Aid Plan, from the government?

5 A There was some government funding available,
6 although my recollection is that it was very
7 limited, but at least it was a start.

8 And of course I -- since you are
9 asking me, if you want it dealt with a bit more
10 comprehensively, even before this funded plan came
11 in there was also a system where, if the judge
12 said "this man needs counsel" and you were sitting
13 in the courtroom, he would probably look down and
14 say "Mr. so and so, I'd like to appoint you to
15 defend this man, will you accept the
16 appointment?", and the tradition was counsel, I
17 never heard them say "no".

18 Q Okay. If we can go back then to, again,
19 1969-1970; were you a proponent of Legal Aid?

20 A Very much so.

21 Q And were you involved in the promotion and
22 advancement of Legal Aid and the Legal Aid
23 program?

24 A I believe I was. I can remember that when the
25 creation of a more elaborate plan was being



1 considered I was interviewed by I think it was
2 Mr. Roger Carter, Q.C. and someone else as far as,
3 you know, what I thought should be included in the
4 Legal Aid Plan and various other things. I don't
5 remember all the details of it --

6 Q Right.

7 A -- but I can tell you that, the way you've asked
8 me the question, I was involved and I believed in
9 it, I thought it was only right.

10 Q And prior to your engagement by Mr. Milgaard
11 through the Legal Aid Plan had you conducted other
12 cases through Legal Aid?

13 A Oh yes.

14 Q Had you --

15 A Going, going back, you know, not only through the
16 funded Legal Aid, but prior to that I had.

17 Q Yeah. Unfunded pro bono cases; had you done some
18 of those?

19 A Oh yes. I remember, starting in 1955, having one
20 in particular and --

21 Q Was it --

22 A To start with.

23 Q Was it --

24 A I was representing an accused, it was a
25 co-accused, and that co-accused was represented by



1 Mr. Wedge.

2 Q Would the fact that you are being retained and
3 either funded or not funded through Legal Aid have
4 any influence on the manner in which you, as
5 counsel, would put forward a defence on the -- on
6 behalf of your client?

7 A No. I always took the position that when you
8 undertook a defence you undertook a committed
9 defence regardless of the station in life of an
10 accused person. I felt that anybody charged
11 deserved as good a defence as I could give them
12 and I didn't, in any way, feel that any other
13 approach was justified. And I think I should say
14 this, in my view, was the culture of the bar here
15 in Saskatoon, one that had been passed along to
16 me.

17 Q Would there have been any limits at that time,
18 monetary limits or limits on what you could or
19 couldn't do in the defence of Mr. Milgaard,
20 imposed by the Legal Aid Plan? And what I am
21 getting at is was there things that you could have
22 done or would have done but for the fact that the
23 Legal Aid Plan somehow limited you?

24 A Well I suppose that when you come to the issue of
25 whether -- you know, getting experts, they had to



1 be approved. But of course most of us that were
2 involved in the criminal law, you know, had a
3 network of friends in other professions or access
4 to people who -- and I know in my case some of
5 them, even though they weren't lawyers, were
6 committed.

7 Q If Mr. Milgaard had been a paying client, for lack
8 of a better word, as opposed to being through
9 Legal Aid, would you have defended him any
10 differently or done anything differently in your
11 defence of him?

12 A No. I think that's a fair way of putting it and
13 the answer is "no".

14 Q I want to talk generally about --

15 A I --

16 Q Okay.

17 A I should just say this; that whenever I was
18 appointed under the Legal Aid Plan and even before
19 with respect to a case, and particularly one, a
20 serious case, I did not fob off the responsibility
21 to juniors. I may have had them in with me, but I
22 did the work myself, and --

23 Q And we'll talk a bit more about that, because
24 there was a gentleman by the name of Ian
25 Disbery --



1 A Yes.

2 Q -- who was either an articling student or
3 first-year lawyer that attended the trial with
4 you?

5 A Yes.

6 Q And I think we'll see some correspondence where
7 you sought funding from the Legal Aid plan for
8 him, and they refused, and so you, your firm,
9 provided Mr. Disbery at no cost at the time; is
10 that correct?

11 A That's correct.

12 Q And we'll see some documents a bit later about
13 that.

14 A Yes, yes.

15 Q And, again, I'll come back to that, Mr. Tallis.

16 A Thank you.

17 Q About what role Mr. Disbery may have played. If
18 we can just talk generally about practices at the
19 time, in 1969 and 1970, and private investigators;
20 were private -- were there private investigators
21 at that time and did defence counsel use private
22 investigators in criminal matters?

23 A I don't recall there being private investigators
24 available at that time.

25 Q And I'll touch on this more specifically with



1 respect to the David Milgaard case --

2 A Yes.

3 Q -- and ask you what specifically you did. Did you
4 and other defence counsel, then, have other
5 sources to gather information, intelligence,
6 etcetera?

7 A Yes, that's what you developed through the years.

8 Q And then if we can go back to again just general
9 practices at the time. What was the use of
10 experts, and in particular forensic and medical
11 experts, to assist in criminal defence? Was that
12 prevalent at the time?

13 A Well, you know, from my personal perspective and
14 also from what I observed, regardless of whether
15 there was funding available or not, I had no
16 difficulty in getting medical opinions or doctors
17 who would direct me to other sources that were
18 helpful, and I can think of one particular doctor
19 that I often went to because he was very committed
20 in this area and would always take the time to go
21 over things with me and indicate to whom I might
22 go, people that he knew even outside of the
23 province.

24 Q And would there be cases then, sir, where you
25 might call an expert witness on a particular issue



1 in the defence of a matter?

2 A Yes. Psychiatrists were available and called from
3 time to time.

4 Q I would like to now turn to your file, or your
5 lack of file.

6 A Yes.

7 Q And you mentioned this, and I want to just start
8 off with maybe having you tell us, based on your
9 memory, and there's some documents I'll show you a
10 bit later, but if you could try and reconstruct
11 for us and tell us what would have been on your
12 physical file at the time, and maybe just walk us
13 through what would have been there, and I'm going
14 to take you later to what we now have, but can you
15 just generally tell us how you would have
16 organized the physical documents and what would
17 have been there?

18 A Are you thinking of at the end of the day or as
19 the case progressed?

20 Q Either way is fine, whatever is easiest to
21 explain.

22 A Well, I can just explain it in general terms to
23 you. Fairly early in my career I developed what I
24 would call a defence counsel's check list. Now,
25 I've looked to see whether I still had a copy of



1 it, but I haven't been able to find it, but later
2 that came into pretty common use, but then I would
3 of course set up a file and I had the practice of
4 taking very copious notes in my own handwriting.
5 I wasn't able to do it in shorthand because I
6 didn't have shorthand, but then I would, from
7 those notes, usually dictate a memo and put it in
8 the file, and I did that because if you dictate it
9 from your notes, you get it typed up in very
10 legible form and usually flesh it out a bit better
11 than if you go back and try to read your notes, so
12 that was -- and that of course would be a
13 continuing process as something came up. Now, I'm
14 not saying that I dictated the memo exactly, you
15 know, the same day or something like that, but
16 often the same day.

17 Q So, for example, and we'll see a bit later that
18 you had a number of meetings with Mr. Milgaard and
19 I think three one-day meetings, or part of a day
20 meetings when he was in Prince Albert; is that
21 correct?

22 A Yes. Now --

23 Q Or --

24 A I'm able to say that because you were able to dig
25 up some documents.



1 Q Yeah, and I'll take you to those a bit later.

2 A Okay.

3 Q But, for example, just generally, your meetings
4 with David Milgaard, would you have taken copious
5 notes then of those?

6 A Extensive handwritten notes.

7 Q And then what would you do with the notes?

8 A Then I would have them typed up for my file
9 because I always found at trial, or even at a
10 preliminary hearing, it was much easier to refer
11 to typewritten notes or memoranda than it was to
12 go back to your handwriting. It was a much more
13 disciplined process in my view.

14 Q So with respect to your discussions with Mr.
15 Milgaard, would you have had on your file a number
16 of pages of notes or memos or can you give us some
17 idea of what might have been on there at the time?

18 A They would have been quite extensive because just
19 to illustrate, I know that very early in the
20 going, now this would be before the preliminary
21 hearing, and particularly at Prince Albert the
22 first time I visited him, maybe even before --

23 Q I'm sorry, maybe just -- I'm not sure if our sound
24 is -- maybe if you can just --

25 A Oh, okay.



1 Q Yeah, that's fine.

2 A I would have handwritten notes typed up, but they
3 would be quite extensive. For example, I
4 discussed with him his background and a number of
5 other things. I don't know whether you want me to
6 go into that now?

7 Q Sure. Well, I'll go into the specific discussions
8 about the event, but maybe just generally.

9 A Well, I went in, I got all the background
10 information --

11 Q Yes.

12 A -- And wrote it up; for example, his education,
13 his work, although he was a youngster he did have
14 a work record, we discussed his conflict with the
15 law if I may, or his troubled youth, and various
16 things like that, and I would -- I know I wrote up
17 notes on all of that. Now, that's just part of
18 it, but I think that answers your question in the
19 sense that it illustrates the type of thing that
20 would be built up.

21 Q And I'll take you through a bit later this morning
22 specifically what you recall Mr. Milgaard telling
23 you about the events of January 30 and 31, but
24 would that have been captured in your notes and
25 memorandums?



1 A Oh, yes.

2 Q What about -- and we'll -- your thoughts about
3 other witnesses or strategies, things like that,
4 would you have memorandums regarding that?

5 A I'm quite sure I did.

6 Q Would you describe yourself as, or your practice
7 at the time, did you produce a significant number
8 of, if I can call them, internal memorandums with
9 you writing down your thoughts, observations,
10 opinions, things of that nature?

11 A Yes, that was my practice.

12 Q And so on -- and again I hate to do this to you,
13 but as far as a number, can you give us some
14 general idea, are we talking 10, 50 memorandums
15 that might have been on this file, 100?

16 A I would say that by the time I was getting ready
17 for trial, there was probably well in excess of
18 50. Now, some of them would be very short.

19 Q Yes.

20 A Some of them would be two or three pages and built
21 up, and I'll explain to you later when you get
22 into it what use I would have made of those in
23 preparing for the trial.

24 Q Can you tell us then on your file, what would have
25 been there as far as your trial brief, if I can



1 call it that?

2 A Well, in this case I prepared a brief for the
3 preliminary hearing to begin with and the purpose
4 of that was to develop questions that should be
5 put based on the information that I had obtained,
6 and here I think I'm thinking particularly of the,
7 in terms of detail, the questions that I put to
8 Mr. Paynter and, to a lesser extent, to Dr. Emson.

9 Q Okay, if I can just pause there. Would that be
10 related to the frozen semen and the secretor
11 issue?

12 A Yes.

13 Q And so are you telling us you would have prepared
14 in advance sets of questions for those two
15 witnesses on that issue before the preliminary
16 hearing?

17 A Oh, yes, and for some of the other witnesses too.

18 Q Okay.

19 A Based on the material that I had picked up, but
20 I -- but in terms of personal recollection --

21 Q Yes?

22 A -- I recall spending a great deal of time on what
23 I'll call the secretor issue before the
24 preliminary hearing.

25 Q Okay.



1 A And that was part of the preparation that I
2 undertook at that stage.

3 Q Would you have memorandums that would have set out
4 your thoughts and defence strategy on how to deal
5 with that issue?

6 A I would say potential strategy, yes.

7 Q Okay.

8 A Strategy for the preliminary hearing and, quite
9 possibly, leading to similar or perhaps other
10 strategy for trial.

11 Q And we'll touch on this in detail a bit later, but
12 the secretor issue and the frozen semen, was that
13 a matter that you, did you think that helped or
14 hurt David Milgaard's defence at the time you were
15 preparing for the preliminary hearing?

16 A Well, at that time I was certainly leaning to the
17 view, depending on how it came out, that it would
18 be of assistance to his defence.

19 Q And did it end up happening, the evidence coming
20 out in that regard?

21 A Yes, I would say so.

22 Q Okay. And again, we'll deal with that in a bit
23 more detail.

24 A Yes.

25 Q As far as legal research, what would have been on



1 your file as far as legal briefing?

2 A Well, I know that this was a continuing process as
3 well. If during the course of my reading and work
4 I spotted something that I thought would have been
5 of value, I would have made a memo to put in the
6 file. Suppose, for example, a case came out that
7 I thought might bear on certain issues, or I
8 spotted it, but I did prepare an extensive brief
9 for trial, that is, a brief of law we're talking
10 now, that drew upon the work I had done and I
11 tried to identify in my mind the points that I
12 thought that would possibly come up and which
13 called for argument in front of the judge, and you
14 have invited me to read over some of the trial
15 transcript --

16 Q Yes.

17 A -- and I noticed that some of those points are
18 there and were argued. I can't tell you all the
19 points that I had in the brief because you
20 sometimes think of things that may come up that
21 didn't necessarily arise. I tried to anticipate
22 them and have a disciplined brief of law that
23 covered points not only of substantive law, but
24 more important in this case points dealing with
25 issues of evidence, because that was -- for



1 example, I do remember the issue of bad, of bad
2 driving after leaving Saskatoon being raised along
3 with some other things, presumably with the idea
4 that it would be led by the Crown to establish
5 consciousness of guilt.

6 Q Yes.

7 A Well, that was the type of thing that I had
8 briefed in advance so that when the point came up,
9 I could address it, and secondly, the practice was
10 often, depending on the individual judge, but it
11 wasn't uncommon for the judge to indicate through
12 the registrar in advance that if counsel have
13 cases that they are going to raise with respect to
14 any issues or arguments, let me have the names of
15 the cases and the citations, so there was a
16 twofold purpose. You could make the citations
17 available in advance if you were asked for it.

18 Q And if I might just, and we'll see this a bit
19 later in the transcript when we go through it, but
20 I think some of the points, one was unsavoury
21 witnesses?

22 A Yes.

23 Q And I can't recall which specific witnesses that
24 related to, that was an issue that was dealt with.
25 Was that one that was briefed do you think?



1 A Well, I know it was. That's one that I remember
2 vexing over.

3 Q And section 9(2), which we'll spend some time on,
4 Nichol John, is that something that you would have
5 briefed in advance of the trial?

6 A Yes.

7 Q And when you say brief, would that be researching
8 the case law and developing a position to put to
9 the Court?

10 A That's correct. When I say a brief of law, I
11 refer to not only locating the cases, but
12 summarizing them and distilling the ratio of the
13 case and its applicability to the potential issue
14 that was coming up before the Court, or might come
15 up before the Court.

16 Q And what about the issue of leading evidence of
17 bad character, was that something --

18 A Oh, that was something that was very much on my
19 mind because of the risks of opening the door.

20 Q And what -- we'll talk about that a bit later, but
21 as I understand it, that would be that through
22 either, through your cross-examination of a
23 witness or if Mr. Milgaard testified and put his
24 character in issue as a person not of the type to
25 have committed an offence like this, that that



1 would allow evidence of character to come in from
2 the Crown; is that -- have I summarized that
3 correctly?

4 A There's the potential for that, and also early in
5 the going I didn't know whether or not the
6 prosecution were going to try to lead it as part
7 of their case, I didn't think there was any legal
8 basis for it, but I was very conscious of the need
9 to be ready to challenge the admissibility of,
10 what we'll call bad character evidence, if an
11 attempt was made to put it in as part of the
12 Crown's case.

13 Q If we can then go ahead then to trial, and I'll
14 have some documents that I'll show you in a
15 moment, can you tell us what, what would have been
16 in your trial brief or your binder as far as how
17 you prepared for each of the witnesses that was
18 going to testify?

19 A My practice was to prepare a draft
20 cross-examination for each witness and -- I don't
21 know how much detail you want here.

22 Q No, please tell us.

23 A All right. I took each witness and I prepared a
24 draft cross-examination of them based on the
25 preliminary hearing evidence and any other



1 relevant materials I had in my file, so the way I
2 did it was first of all I would prepare an index
3 and summary of the preliminary hearing which of
4 course would cover each of the witnesses and I
5 actually wrote that out on my own as I was going
6 through it. Then I would have it typed up, and I
7 know significant portions I would personally
8 underline, sometimes in red, sometimes in blue and
9 so on, so really what I had was a trial brief that
10 was subdivided into quite a number of sections,
11 each section being for a witness, and in that
12 section I would have a photocopy of that witness'
13 evidence at the preliminary hearing and I would
14 staple a copy of the portion of the index summary
15 covering that witness to the front of it.

16 Q Okay.

17 A And in addition, I would have the various
18 statements, various memoranda that had been
19 prepared earlier with thoughts that pertained to
20 that witness or might pertain to that witness, so
21 that when I was dealing with the witness in Court
22 I had all the information at my fingertips, and in
23 the cross-examination brief I did not just make a
24 reference to crucial areas at the preliminary
25 hearing where I had answers that I considered



1 favourable, I actually incorporated the question
2 and answer into my brief to supplement the
3 question that I was going to put and I did that
4 because it allowed one to keep the continuity, and
5 also because I had the exact page reference and
6 question reference there, I could very quickly, if
7 necessary, refer it to the Court and opposing
8 counsel.

9 **Q** And so this would be a case where a witness at
10 trial might be straying from his or her evidence
11 at the preliminary hearing?

12 **A** Yes.

13 **Q** Now, just -- let's talk about these memorandums
14 that you had put in there. For example, let's
15 take three of the key witnesses, Ron Wilson,
16 Nichol John, Albert Cadrain, would you have, in
17 that trial brief then, memorandums where you would
18 have given your thoughts about their evidence,
19 strategies on maybe how to deal with them, your
20 thoughts on the damaging parts, areas you might be
21 able to attack and things of that nature?

22 **A** Yes, I'm sure my reflections were there. I think
23 reflections is the best word I can use at this
24 stage to describe it.

25 **Q** Would these memorandums, let's just talk about the



1 memorandums, would they be -- how widely would you
2 share those, if at all?

3 A Well, they were private at that stage. I
4 certainly wouldn't be handing them out.

5 Q Would you, for example, have given them to David
6 Milgaard if he had asked?

7 A No, no, I'm quite sure that that was part of my
8 work product.

9 Q And were there things --

10 A And of course there would be tentative views in
11 some of the earlier memos that later would change
12 in the light of what I had learned or uncovered.

13 Q Would there be items in there that might be
14 construed as being unfavourable to Mr. Milgaard's
15 position?

16 A Well, I would have in those memos a recitation of
17 the things he had told me, so some people might
18 think that, but as you know, I was proceeding on
19 the footing that he had nothing to do with this.

20 COMMISSIONER MacCALLUM: He had what, sir?

21 A He had nothing to do with this.

22 COMMISSIONER MacCALLUM: Thank you.

23 A I'm sorry.

24 BY MR. HODSON:

25 Q And we'll get to that as far as the discussions.



1 Maybe we can deal with that right now. As far as
2 his involvement, David Milgaard's involvement with
3 Gail Miller in any way, what did Mr. Milgaard tell
4 you about that?

5 A Well, he denied it and never wavered from that
6 position.

7 Q Okay. And again, we'll come back to the
8 discussions with him.

9 A Yeah.

10 Q Just on these memorandums, let's talk about the
11 witnesses, and we'll deal a bit more specifically
12 with them later, but Ron Wilson, I understand,
13 sir, that prior to either the preliminary hearing
14 or trial you did some checking up or investigating
15 of Mr. Wilson at another proceeding; is that
16 right?

17 A Well, I did some background work in Regina, it
18 wasn't a special trip, but I was there and I made
19 it a point, and I don't have of course my file
20 memoranda on it, but I recall him being up in
21 Court or at something in Regina and that is why,
22 and it refreshed my memory when I read the
23 transcript, and I thought a great deal about this
24 before I asked the question, I found out about his
25 background and criminal record and there was one



1 item, a conviction I think for conspiracy to
2 defraud, and I remember making sure that David was
3 not a co-conspirator named in that and that's why
4 I was able to put the question to Wilson. He said
5 he -- I think he said he didn't remember who his
6 co-conspirator was and I knew that I was --

7 Q Did you go and observe Mr. Wilson in Court?

8 A I saw him in Court, I'm sure I saw him in Court.

9 Q This is in Regina?

10 A Yes. There was something on there where I saw
11 him.

12 Q And what was your purpose in going to see him?

13 A Well, I wanted to get background information and I
14 think I -- I'm quite sure I spoke to others about
15 what he was involved in.

16 Q Did you observe him in the courtroom, was he
17 giving evidence?

18 A No, no, he wasn't giving evidence, no.

19 Q Now, just as far as the file, and I'll come back
20 to this as we go through items, at the end of the
21 case can you give us some idea, are we talking
22 about boxes of documents that would have been part
23 of the file?

24 A Well, I know that all my handwritten notes and
25 everything, I didn't throw them out even though



1 they had been typed up.

2 **Q** Yes.

3 **A** And I think they were set aside separately
4 probably in those large envelopes.

5 **Q** So let's just pause there. Your handwritten notes
6 would have been retained, and what about your
7 internal memorandums, if we can call it that?

8 **A** Well, the internal memoranda would have been
9 retained, but many of them were probably, and I
10 can't recall whether they were duplicated or
11 replicated, maybe not, but many of them would end
12 up finding their way into my trial brief with --
13 in the relevant section of the trial brief.

14 **Q** So if you had a memorandum that dealt with Ron
15 Wilson and Albert Cadrain, a copy might be in Ron
16 Wilson's folio or tab and a copy might be in
17 Mr. Cadrain's?

18 **A** That's right.

19 **Q** And did you keep a separate set then of all of
20 your internal memorandums with your notes then do
21 you think?

22 **A** I can't remember that now. You know, when you are
23 under the pressure of getting ready for a trial,
24 I'm just -- I know where I wanted to have it for
25 the purposes of the trial, but --



1 Q And then when the matter was concluded then, what
2 did you do with your file?

3 A Well, it was kept at the office because -- well,
4 of course there was the appeal then after that.

5 Q Once the appeal period -- or once the appeals had
6 been completed and the matter was concluded, what
7 did you do with the file?

8 A Well, I'm sure it was still in the office when I
9 left.

10 Q In 1976?

11 A In 1976.

12 Q Would you have -- would you have destroyed any
13 part of that file as part of concluding it
14 yourself?

15 A No, I have no recollection of anything like that
16 being done. Unfortunately the person who would
17 know all about that is now dead, but --

18 Q Is that your secretary at the time, your
19 assistant?

20 A Yeah.

21 Q And her name, because we'll hear more about her
22 later?

23 A Miss Myrna Frances Wilson, and she was very
24 heavily involved in the work on this case.

25 Q Okay.



1 A I spoke to her not too long before she died, a few
2 years ago to see if she had any recollection or
3 could assist, as I had spoken to her before, and
4 she just didn't have any memory of it at that
5 time.

6 Q At the time of the trial, 1969, 1970, '71, up
7 until the file was concluded when the appeals
8 expired, would you have provided copies of any of
9 your internal memorandum to David Milgaard or to
10 his mother, Joyce Milgaard?

11 A No, I don't think any of the internal memoranda
12 were ever provided.

13 Q Would you have provided either David Milgaard or
14 Joyce Milgaard with any of your trial brief?

15 A No, I don't think so. I think that it was in the
16 office.

17 Q And when I say "trial brief" I'm talking about
18 your work product, your questions, things of that
19 nature?

20 A No.

21 Q There is a reference that I'll get to a bit later
22 about providing the court transcript, the
23 preliminary hearing transcript and I believe maybe
24 the trial transcript you may have provided to
25 them; is that correct?



1 A Well yes, I know that I provided a copy of the
2 preliminary hearing, because I wanted him to read
3 it. It's very difficult, I think, to remember
4 everything that was said at the preliminary
5 hearing and I wanted him to have an opportunity to
6 read it over in a more leisurely atmosphere. And
7 I did obtain, I think I obtained a second copy,
8 but if not it would have been a photocopy that we
9 made in the office, because I know that for my
10 trial brief I had to photocopy it to have segments
11 of it for each witness.

12 Q Now after 1976 you went to become a judge?

13 A Yes.

14 Q And the file stayed with your former law firm; is
15 that correct?

16 A Yes, it was there.

17 Q And you --

18 A I'm quite sure, when I left, it was there.

19 Q And --

20 A Now where it was I can't tell you because we had
21 various storage places.

22 Q Would there have been any specific or general
23 instructions you would have left with them
24 regarding retention of the file?

25 A No.



1 Q And do you recall, what would have been the
2 practice at that time as far as how long a file of
3 this nature would be retained?

4 A I can't recall any specific practice but I know
5 that it was probably retained for a number, you
6 know, the practice would be to retain it for a
7 number of years.

8 Q We've heard some evidence from Mr. Gary Young, who
9 is a lawyer that you are familiar with, is that --

10 A Oh yes, I've known Mr. Young for years.

11 Q And I think in late 1980-early 1981 he made
12 contact with your former firm -- and I'll take you
13 through some of these documents -- to get an
14 opportunity to look at the file, and I think what
15 the documents reflect, and Mr. Young's evidence is
16 that part of the file was provided to him, he said
17 no internal memorandums were provided, and that
18 the file was returned, and I think he said about,
19 if I'm not mistaken, 86 or 87 pages, he believes,
20 may have been copied by Mrs. Milgaard and then the
21 file returned.

22 Apart from that, that access to
23 your file, are you aware of any other times or
24 incidents where your file would have been provided
25 to anybody on behalf of David Milgaard?



1 A No, I'm not aware of any other instance. I think
2 Mr. Young was the first lawyer who contacted me.

3 Q And did anybody -- I think, at the time of the
4 Supreme Court reference, do you recall making
5 efforts to locate the file at that time?

6 A Oh, I made efforts then, but I -- I'd certainly
7 made enquiries after I talked to -- after I
8 realized that Mr. Young didn't -- that all my
9 notes and everything hadn't been located.

10 Indeed, what I did do, I'd taken
11 a lot of stuff to Yellowknife with me, --

12 Q Yes.

13 A -- and I checked through all of that to make sure
14 that I didn't have a copy of some of it there. I
15 didn't think I did, but it did occur to me that
16 perhaps I took a copy of the trial brief with me
17 because of the brief of law and everything that
18 was in it, but I had nothing of that nature.

19 Q If we could just --

20 A Then later I, you know, I had searched, I had had
21 some stuff out at the farm home and I -- and this
22 is particularly for the Supreme Court reference --
23 I searched everything there, and I know that I
24 spoke to Miss Wilson, and I think I spoke to one
25 of the other senior ladies who was then in the



1 office, and I think I mentioned I held out little
2 prospect of ever locating anything. Umm --

3 Q The evidence of Mr. Young suggests that in 1980 or
4 '81, that the file existed at your former firm,
5 and again I'm not sure, I don't think he saw all
6 of it, but the correspondence that he received I
7 think suggested that the file existed at that
8 time. Are you able to comment on that, as to
9 whether, based on your recollection or your
10 practices, do you think in 1980 or '81 the
11 complete file would have still been with your law
12 firm?

13 A Well from what I -- from having tried to locate it
14 I don't think it did, and I say that because I did
15 -- I know various things, with all the moves that
16 the firm had made, that a fair amount of stuff was
17 destroyed routinely. And I know that because when
18 I, years later when I went to look for a, what I
19 would call a family file, it had been destroyed.
20 That's --

21 Q I see.

22 A -- my own, on my own family's side, and I didn't
23 -- I just recognized that these things are
24 ultimately destroyed and, if I had known that that
25 one was in the process of being destroyed, I would



1 have asked to have it saved.

2 **Q** Yeah. After you concluded the file in, I'm -- I
3 presume it would be 1971 or thereabouts, once the
4 leave to appeal to the Supreme Court was
5 dismissed, would that be a fair assumption that
6 that's when the file would have been concluded, or
7 --

8 **A** Yes, but I think it probably, it may well have
9 been around for a while after that.

10 **Q** Yes. Would you have gone back, after you were
11 done with the file, did you ever go back yourself
12 and look at the file, review any documents, make
13 any copies, anything of that nature?

14 **A** No, no.

15 **Q** And so in 1980, 1980 and 1981 when Mr. Young was
16 making efforts through your former firm, am I to
17 understand that you had no direct involvement in
18 that?

19 **A** No, I wasn't involved in the searching or anything
20 like that. I was living, as you know, in
21 Yellowknife and there -- I did not conduct any
22 searches in the old office when I, on occasions
23 when I was back.

24 **Q** If we could call up 335423, please. And, Mr.
25 Tallis, what we have done with the assistance of



1 Mr. Agioritis and Commission staff is gone through
2 what we have collected, the Commission has
3 collected, to try and identify what might be
4 either your original file documents or copies of
5 them, and this is a listing that sets out three
6 different memorandums and the sources, and I'll go
7 to these, the June 10th, August 20th, and
8 September 8th memos.

9 And the June 10th we received
10 from David Milgaard's counsel, the August 20th and
11 September 8th we received from Mrs. Milgaard's --
12 or from Mrs. Milgaard, and the two RCMP documents
13 are the same statement or a copy of the -- pardon
14 me -- the memo that they would have received,
15 again. Either from Mr. Milgaard and Mr. -- and/or
16 David or Joyce Milgaard. If we can just call up,
17 let's call up the first one, 153491, and this is
18 your memorandum of June 10th, 1969; is that
19 correct?

20 A Yes. I think you showed me this one.

21 Q Yes.

22 A And it's certainly a memorandum that was typed at
23 my instructions.

24 Q Now the handwriting on here, at the top I think
25 that's Joyce Milgaard's initials, the "N" I



1 believe might have been Mr. Carlyle-Gordge's, and
2 I think Mr. Carlyle-Gordge testified that was his
3 writing; did you ever meet with Peter
4 Carlyle-Gordge?

5 A No.

6 Q Did you ever give him any copies of your file?

7 A No.

8 Q The handwriting down here, is that your
9 handwriting or is that -- are you able to tell?

10 A No, that's, that's not my handwriting.

11 Q Do you have any idea, Mr. Tallis, as to where this
12 memorandum would have come from and how it would
13 have got to either Joyce Milgaard and/or Peter
14 Carlyle-Gordge?

15 A No, I don't.

16 Q Is this --

17 A I just can say that the origin of this memorandum
18 would be my file, --

19 Q Okay.

20 A -- you know.

21 Q In the sense that you would not have given this to
22 anybody?

23 A No.

24 Q And would this be, again, one of the documents you
25 described before as being a private memorandum?



1 And we'll go through --

2 A Yes. This was June 10th, so it was a reflection
3 of some of the things that I immediately started
4 thinking about.

5 Q If you had been asked to provide this memorandum
6 or, in fact, all your memorandums by either David
7 Milgaard or Joyce Milgaard or their counsel would
8 you have provided them?

9 A I certainly would have provided it to their
10 counsel if I had them.

11 Q If you'd been asked?

12 A Yes. I mean I knew, I knew Mr. Young --

13 Q Yes.

14 A -- and had known him for years, and I wouldn't
15 have had any problem with them being under his
16 control.

17 Q Okay. Now Mr. Young's evidence before the
18 Commission is that he had the file in 1981, and
19 that he did not see any internal memorandums, and
20 I believe his evidence was to the effect that he
21 did not think he saw this document on what he
22 received. So, again, can you shed any light as to
23 how this memorandum was provided to Joyce Milgaard
24 or Peter Carlyle-Gordge?

25 A No, I have no personal knowledge about how that



1 happened, and I don't have any other information
2 that would assist on that. I know that my
3 position always was that -- to cooperate with Mr.
4 Young, I mean I --

5 **Q** Would -- and is this the type of document -- and,
6 again, we'll go into it -- is that of assistance
7 to you in trying to recall what you were doing
8 back at that time?

9 **A** Yes, it, it's part of the ongoing process and
10 work. And certainly, if I had my complete file
11 with all the memoranda and my handwritten notes
12 from which the memoranda came and my trial brief
13 it would be of great assistance to me, even after
14 this long lapse of time, to remember things with
15 more precision. But, as you know, I don't have
16 that and I'm doing the best I can to give you my
17 personal recollection.

18 **Q** Certainly. If we could go to 212231, please.
19 And, again, I'll come back to these memorandums
20 and go through them in detail.

21 **A** Okay.

22 **Q** I just want to deal with identifying them for now.
23 So 212231.

24 And while we're waiting for
25 that, the paper copy of the June 10th memorandum,



1 I believe you had a chance to look at that, is
2 that correct, the physical copy that we received
3 from David Milgaard?

4 A Yes, I -- you showed that to me.

5 Q And I think, please correct me if I'm wrong, but
6 you believed that to be a photocopy as opposed to
7 the original; is that right?

8 A Yes, I think it is.

9 Q Yeah. And so this is the August 20th, '69
10 memorandum and, again, this is a memo, one of your
11 file memos; is that correct?

12 A Yes it is.

13 Q And I don't think there's any handwriting. If we
14 could just go to the third page, and again that
15 would be your secretary's initials there, is that
16 correct?

17 A That's correct.

18 Q And again, same question, do you have any
19 knowledge as to how this memorandum -- actually,
20 this one was received from Joyce Milgaard, the
21 earlier one was from David Milgaard -- as to how
22 this memorandum may have been provided or may have
23 gotten to Joyce Milgaard?

24 A No, I have no personal knowledge or information on
25 that.



1 Q If we could then go to 212234. And again, we'll
2 touch on this a bit later, this is a September
3 8th, 1969 memorandum; is that your writing at the
4 top:

5 "preliminary"?

6 A No, that's not my handwriting.

7 Q And this one we have only got the first page. If
8 you can actually scroll down to the bottom --
9 actually just, pardon me, just go up to the top
10 for a moment. This is a memo about a meeting with
11 Mr. Caldwell for approximately an hour to review
12 the file -- and then scroll down -- and, again,
13 we'll deal with this later, but it talks about
14 various points, and then it ends, and the balance
15 of the document we don't have. And, again, would
16 this be, at least the first page, be part of a
17 memorandum?

18 A Yes, that's definitely my memorandum --

19 Q And are the --

20 A -- as typed up. This would be one where I
21 probably on -- was reflecting and wrote it out by
22 hand and then dictated it.

23 Q Okay. And would these memorandums, are these the
24 memorandums or the -- of the type you described
25 earlier for us that you would have prepared --



1 A Yeah.

2 Q -- on an ongoing basis?

3 A Yes. These illustrate, I think, the way I was
4 dealing with this aspect of it.

5 Q Okay. It's probably an appropriate spot to break,
6 Mr. Commissioner.

7 (Adjourned at 10:26 a.m.)

8 (Reconvened at 10:45 a.m.)

9 BY MR. HODSON:

10 Q Mr. Tallis, we'll just finish on the file
11 documents that we have been able to gather from
12 our Commission database. 335424, please. And I'd
13 gone through and shown you the three, the two
14 memorandums and one partial memorandum we have.

15 A Yes.

16 Q And this is a listing of transcript summaries that
17 you have authored by witness name, and you will
18 see we have the document ID and the source and the
19 box. I think these were all received -- and we
20 can maybe go to the next page -- three from Joyce
21 Milgaard, the rest from David Milgaard. And
22 perhaps we can go -- I've got the, actually the
23 originals here, and I think you have had a chance
24 to look through these documents, have you not, Mr.
25 Tallis, the physical documents?



1 A Yes, you --

2 Q I showed those to you.

3 A -- you were good enough to show them to me in
4 advance.

5 Q And they appear to be -- and, again, we'll go
6 through them in a bit more detail later -- they
7 appear to be photocopies as opposed to originals;
8 is that right?

9 A Yes, that's the way I look at them.

10 Q Yes. And we'll maybe call up the -- just hang on
11 one minute -- let's call up 179451. And this is
12 the one for Ronald Wilson. Maybe we can just
13 enlarge that top part. So this would be -- maybe
14 you could just explain briefly what this document
15 is? This is your -- you prepared this document?

16 A Yes. This illustrates what I was mentioning to
17 you before as part of my preparation for trial,
18 and while the handwriting in the left-hand corner
19 is not mine there is no doubt that this refers to
20 the preliminary hearing evidence, and this refers
21 to the witness Wilson.

22 Now as part of my preparation I
23 think I mentioned to you that I made a summary, or
24 you might say an indexed summary of the evidence
25 at the preliminary hearing, and that was of course



1 part of my preparation for the trial. And once I
2 got the, you might say the master summary
3 prepared, I would make copies of each portion of
4 the summary to affix to the testimony of the
5 specific witness which I had photocopied in the
6 segment for that witness. The underlining --
7 well, first of all, this would be typewritten by
8 my secretary and assistant, Miss Wilson, from
9 notes or a summary or index that I actually wrote
10 out by hand. Then when it came back to me typed
11 up, it's possible I did it even in my handwritten
12 notes, but I think the likely thing is that I then
13 would underline certain portions of it. In other
14 words this is not a typewritten underlining, --
15 Q Right.

16 A -- it's my underlining with a ruler, and in some
17 cases I know it was my practice to underline some
18 things in red to highlight them. Of course I
19 can't tell you which items I had underlined in red
20 from this copy.

21 Q So these would be the key parts of Mr. Wilson's
22 preliminary hearing evidence that you would
23 summarize and underline the most significant
24 parts; is that right?

25 A Yes. And that set the stage, of course, for when



1 I was preparing my brief for cross-examination. I
2 could refer to this and the transcript and
3 actually incorporate into my brief for
4 cross-examination certain questions and answers
5 for quick reference without having to go to the
6 preliminary hearing transcript, but I would be
7 able to in effect say, if I was referring to it,
8 "My Lord, page 271, question so and so".

9 Q And if we could then go to 179474, and this is
10 page 5 of the Ron Wilson summary, are you able to
11 tell us -- just call that part out.

12 A Yes. Could you enlarge?

13 Q Yeah. The "NB", checkmark, and then I think:
14 "How long till they got to Danchuk's";
15 is that your handwriting?

16 A I would say it is.

17 Q And so do I take it, from that, that you would
18 then make notes on this, then, after they were
19 typed up where you wanted to add things or --

20 A Well I think the most likely scenario is that I
21 made this handwritten note when I was preparing
22 the brief for cross-examination at trial.

23 Q And then if we can go to 179334. And again, if we
24 can just call out this middle part, this is part
25 of Ron Wilson's and then it talks, I think, Wilson



1 saying:

2 "all of them tired",

3 and then it says:

4 "would he rape, murder in such a frenzy

5 if he'd been up all night. Any proof

6 he's psychotic";

7 would that be your handwriting?

8 A No, that is not my handwriting.

9 Q Do you know whose handwriting it might be?

10 A I do not know.

11 Q If we can go to the next page.

12 A I certainly know that it wasn't Miss Wilson's.

13 Q Okay.

14 A I would have recognized her handwriting.

15 Q And then again, and we'll deal with the details of
16 this a bit later, but would that be your notes at
17 the end of that?

18 A Yes, that is my handwriting and notes,
19 undoubtedly, that I made. And, once again, I am
20 quite sure that that's the type of note or
21 questions or queries that I wrote up as I was
22 preparing for trial.

23 Q I should have asked you this before. You talked
24 about your trial briefs and your list of questions
25 for cross-examination of witnesses, and I think



1 you said you put all of the relevant information
2 into that folio or section, is that right?

3 A Yes.

4 Q Did you prepare one in the event that David
5 Milgaard was going to testify?

6 A Yes, I had, I had worked up a draft
7 examination-in-chief.

8 Q And what else would have been in that section of
9 your brief?

10 A It would be similar to the segments for the other
11 witnesses, like statements, memoranda.

12 Q Would the memorandum of your discussions with
13 David Milgaard be in that section?

14 A Oh, yes, yes. And, you know, when I say
15 "discussions" I include all the background
16 information that were mentioned earlier that I
17 took from him.

18 Q If we can then go to 335426, please. This is a
19 document that we prepared this morning, and this
20 is a listing of the exhibits and lab reports which
21 we've identified from our files that are your --
22 that I think were from your file, and again I
23 think the source of them are Joyce Milgaard. And
24 then it says:

25 "original handwriting",



1 and I think if we go through some of these, on
2 some of these lab reports, sir, you have been
3 able to identify your original handwriting; is
4 that correct?

5 A Yes. I am sure, though, you have the ones that
6 you showed me in advance, and I recognized my
7 handwriting, and I think it's original handwriting
8 on some of them.

9 Q And the fact that it would be original
10 handwriting; can we take it from that, then, that
11 these would be original documents from your file?

12 A That's right.

13 Q Do you have any idea how the original file
14 documents would have been provided to
15 Mrs. Milgaard or anybody on her behalf?

16 A No, I --

17 Q Maybe I'll just go through and show you some of
18 these. Maybe just put, we'll put them up here,
19 and I'll have you identify the handwriting. Okay.
20 Now that, actually I think that -- actually, John,
21 if we could go back to the front page of that and
22 actually just take the tab off. 225033, if we can
23 just go up to the top, we have seen this document
24 before. Can just slide the document down to show
25 us the top. This is, I think, a May 21, 1969 lab



1 report, and relating to various matters. If we
2 can just go down to the bottom, please, and is
3 that your handwriting, sir?

4 A Yes, it is.

5 Q And it says:

6 "Molchanko will check date of return to
7 Kleiv - should be May 22/69 rather than
8 May 25/69".

9 So, from that, can you tell us that this would
10 have been an original lab report on your original
11 file?

12 A Yes. I haven't actually seen the physical
13 document this morning, but if this is in the new
14 ballpoint, that's --

15 Q That's the actual document.

16 A Okay.

17 Q Would you like to see the document?

18 A No, you've checked it, we don't need to.

19 Q If we could then go to the next one, there's just
20 a couple more here, this is the May 21, '69 lab
21 report?

22 A Yeah.

23 Q Is there original handwriting on that, John?

24 A Yes, there is.

25 Q And that says:



1 "leave out";

2 is that your handwriting?

3 A No, that isn't my handwriting on that.

4 Q Okay. Next page. If we can scroll, and again I
5 think that's blue; is that your handwriting:

6 "back alley in Regina"?

7 A Yes.

8 Q And then:

9 "Bobs will not call"?

10 A That's right.

11 Q So, again, these would be original lab reports
12 from your original file?

13 A That's right.

14 Q Okay. And, again, on the left this is talking
15 about -- I think that -- is that your handwriting
16 right under Conclusion?

17 A Yes it is.

18 Q And:

19 "Bobs is not",
20 can you read that for us:

21 "putting this in at trial"?

22 A Yes, that's right.

23 Q And then above:

24 "blue blanket from funeral home";
25 is that right?



1 A Yes.

2 Q Okay. Is there anything -- okay, I think that's
3 the extent of it. These are all documents, Mr.
4 Commissioner, that are part of the database.

5 If we could then go to 331925,
6 and I'm just going to go through a few documents
7 that we went through with Gary Young. February
8 2nd, 1981, and this appears to be, at least from
9 the evidence we've heard and from the documents,
10 the only occasion when your file was provided to
11 anybody on behalf of David or Joyce Milgaard, and
12 it suggests a contact by Mr. Young February 2nd,
13 1981; would you have been in touch with Mr. Young
14 at this time?

15 A I can't tell you the date when he phoned me.
16 That's the only, the only contact I had with Mr.
17 Young was by phone. Now whether he spoke to me on
18 more than one occasion I cannot recall.

19 Q And would he have asked you, then, for an
20 opportunity to look at your file then?

21 A I'm sure he did, and I know my position was that I
22 was quite happy to cooperate with Mr. Young.

23 Q So would you have communicated with your former
24 law firm then and advised them to --

25 A I may have, or I may have told Gary Young that.



1 Q Okay.

2 A And then they may have phoned me for confirmation,
3 but I think if Mr. Young told them that, they
4 would have accepted it without reservation.

5 Q If we can then go to 331923, this is a letter back
6 from Mr. Buckwold indicating that your former firm
7 has no objection to your access to the file and
8 that he will have to review the file so that
9 internal memorandum may be removed, and would that
10 have been the practice at the time, Mr. Tallis, or
11 prior to you going to the bench, about providing
12 access to the files, are you able to elaborate on
13 that?

14 A No, I'm not, because I wasn't involved in that
15 discussion at all.

16 Q Okay.

17 A As far as I recall.

18 Q And then 331911, and I think this is the letter to
19 Mr. Young from your former firm saying:

20 "You are free to take the file on the
21 strict condition that you return the
22 file intact to this office upon
23 completion of your review of same."

24 Would you have been involved in any of those
25 discussions?



1 A No, but I think that was certainly the usual
2 practice, that if you made a file available, it
3 was to be returned with everything in it.

4 Q Now, was that --

5 A And that was an informal sort of understanding I
6 think among the law firms.

7 Q And then you touched on a bit earlier, did you
8 then get a later request from either Mr. Wolch or
9 Mr. Asper to try and locate your file?

10 A That's correct.

11 Q And then do you recall what steps you would have
12 taken at that time?

13 A Well, I know that one of the first persons that I
14 would have talked to, because of the work that she
15 had done on the file and familiarity with it,
16 would be with Miss Wilson, and she didn't have any
17 ideas as to where else I might look, because at
18 that time the office had moved as I recall it.
19 I'm just trying to think of the sequence here. We
20 were in the Avenue Building and then we moved to
21 the Canada Building and that's where I was when I
22 left practice. The material, as far as I know,
23 would have been moved to the Canada Building,
24 although I can't say that I checked everything.
25 Then there were a couple of moves after that, I



1 believe, of the office that I had nothing to do
2 with.

3 Q When you made those inquiries, am I correct to say
4 that you were not able to locate any part of your
5 file?

6 A That's correct, and I know that I, somewhere along
7 the way I spoke to I think the oldest employee in
8 the old office because I had some contact with her
9 and she had, she relayed to me that a lot of
10 materials had been routinely destroyed and she was
11 the one I spoke to about the family file --

12 Q Okay.

13 A -- as to what had happened to it, so that's why
14 that sort of rings a bell.

15 Q When you testified before the Supreme Court in
16 David Milgaard's reference in 1992, I think at
17 that time you said to the effect that you were
18 satisfied that you couldn't find the file and that
19 it didn't exist any more; is that right?

20 A Yeah. I held -- I think I said to counsel that I
21 held out little prospect in my discussions and I
22 didn't give up. I mean, I know that I, even after
23 I looked in places or relooked in places.

24 Q The --

25 A And even in recent, in March when I moved all my



1 stuff out, of this year, I went through anything
2 where there might have been any copies of a brief
3 or anything like that and I couldn't locate
4 anything.

5 Q When you testified before the Supreme Court, and I
6 believe you testified to this effect, that you had
7 not looked at any of your file documents in
8 advance of your evidence; is that correct?

9 A That's correct.

10 Q So the documents that I've gone through with you
11 this morning, being the three memorandums, your
12 part -- parts of your trial brief and the lab
13 reports, would it be fair to say that until you
14 saw them in the last few days you had not seen
15 those since 1970?

16 A That's quite correct.

17 Q And if we can just talk a bit about what knowledge
18 you would have acquired about this matter over the
19 years, and let's start in 1976 when you were
20 appointed to the Court, did you take any steps at
21 that point to avoid being informed of matters
22 related to David Milgaard and his quests to have
23 his conviction set aside?

24 A Well, I felt that I was no longer an advocate and
25 that it would be, you know, improper for me to get



1 involved in any public discussions or any other
2 types of discussion about it because the potential
3 was there for the matter either to go before the
4 Saskatchewan Court of Appeal or the Supreme Court
5 of Canada, so I did not participate in any way in
6 any discussions and felt that it would be, you
7 know, improper for me to continue.

8 Q What about, and again I'll put aside what you've
9 done to prepare for your testimony before this
10 Commission, but would you have followed the case
11 and read what was happening over the years?

12 A No, I didn't.

13 Q And was that done deliberately?

14 A Yes, it was.

15 Q And I think at the Supreme Court of Canada you
16 testified to the effect that you had not read
17 anything prior to your giving evidence; is that
18 correct?

19 A That's correct. I think I mentioned that before I
20 went there as a witness, I did speak to one of the
21 counsel, I believe it was Mr. Fainstein, but I
22 could be wrong on that, to ask whether or not I
23 should read any material in preparation for going,
24 and that included any evidence that had been given
25 before me. My recollection is that there had been



1 an order for exclusion of witnesses and under the
2 circumstances it would be improper for me to do
3 indirectly what I could not do directly, and so
4 that's the way, that's the way it unfolded, and --

5 Q So then as far as -- you retired as a judge, I
6 believe, in March, early March, March 5th of 2005
7 or thereabouts; is that correct?

8 A Yes.

9 Q And then after that point I provided you with
10 various materials to read, to assist you in giving
11 evidence; is that correct?

12 A Yes, you've provided me with material from time to
13 time and asked that I read it and I've endeavoured
14 to do that to the best of my ability, and with a
15 view to perhaps assisting in my recollection of
16 things because I didn't have my file.

17 Q Right. And so again generally I think what we
18 have provided to you is some of the original trial
19 transcripts, preliminary transcripts, witness
20 statements to the extent that we could reconstruct
21 your file from what we had?

22 A Yes.

23 Q And as well other documents that may have been in
24 your possession or you would have been aware of at
25 the time; is that fair?



1 A Yes.

2 Q And then secondly, we also provided you with some
3 police reports and some witness statements
4 relating to sexual assaults, etcetera, information
5 that I don't think you would have seen before; is
6 that correct?

7 A Yes. The first time I saw that was when you
8 provided copies of it and asked if I would be good
9 enough to read it over --

10 Q Right.

11 A -- in advance of giving testimony before this
12 Commission.

13 Q And my purpose in that was because I do intend to
14 ask you some questions during the course of this
15 examination about how you might have done things
16 differently had you known about those matters, so
17 again you've had a chance to look at that
18 generally; is that fair?

19 A Yes. I understood that that was your reason for
20 asking me to look at the material.

21 Q Yeah.

22 A And I have read it over, but I don't remember
23 everything I read, but I can tell you in general
24 terms that I read the materials that you supplied
25 on that topic.



1 Q And I think you've told us, Mr. Tallis, that the
2 fact that you do not have your original file, that
3 that would have been helpful in your recollection
4 of what you did at the time; is that fair?

5 A In my view very helpful because I know that I had
6 taken very careful notes that were later typed up
7 and it's -- I'm well aware of the treachery of
8 memory and I'm giving you my best recollection
9 when it is raised with me.

10 Q Right, and I will ask you questions and I will try
11 to be specific and say, ask you what you recall
12 about matters, and if you don't recall I may, as
13 I've done with other witnesses, ask you to tell us
14 what you think you would have done based on your
15 practices at the time or, based on some other
16 documents, whether you can tell us, shed some
17 light on what might have happened even though you
18 don't recall, and I'll try and distinguish that
19 for you when I ask the questions.

20 A Yes.

21 Q I would now like to go back and go through a bit
22 of a chronology and I want to start with some
23 source documents. We were able to find a copy of
24 your legal account to Legal Aid back in 1969. If
25 I can call up 065492, please, and this is a



1 September 12th, 1969 account to the Legal Aid
2 Committee and this would have been right shortly
3 after the preliminary hearing, and I want to go
4 through this because it may be instructive on some
5 dates, and you've had a chance to look at this,
6 Mr. Tallis, in the last little while; is that
7 correct?

8 A Yes, you made that available to me. I didn't know
9 that it was even around, so until you showed it to
10 me, I didn't have it.

11 Q So maybe we'll just go through parts of this. It
12 appears from this that June 7th, 1969 would have
13 been when you first met Mr. Milgaard; is that
14 likely correct?

15 A Yes.

16 Q And then an appearance in Court on June 9th, June
17 16th and the preliminary hearing adjourned until
18 August 18th, and then if we can scroll down, we've
19 covered this before with other witnesses, but the
20 preliminary hearing spanned over about three
21 weeks, but not sitting every day. And then here,
22 August 4th:

23 "Personal attendance in Prince Albert,
24 Saskatchewan to discuss this matter with
25 David Milgaard and obtain instructions."



1 And we'll see on a couple of other accounts
2 references to that. Do you have a recollection
3 of going to Prince Albert to meet with Mr.
4 Milgaard while he was there?

5 A Yes, I personally, you know, I definitely recall
6 going to Prince Albert before the preliminary
7 hearing. I can't say the date, but I certainly am
8 quite satisfied that August 4th would be the date
9 taken from my file records at the time, and I
10 recall that because it was very deliberate on my
11 part to want to review the matter in some detail
12 with him before the preliminary hearing and also
13 to explain to him the nature of a preliminary
14 hearing, its purpose and so forth, and also I
15 recall that the staff at the provincial jail where
16 he was held were very co-operative in terms of
17 making an office available to me to spend time
18 with him. In other words, it wasn't just in a
19 cell or a little room.

20 Q Would you have explained the case that you thought
21 existed against Mr. Milgaard?

22 A Well, I certainly would have reviewed everything
23 with him, and even before this, I'm quite sure
24 that I had, you know, told him very early --
25 perhaps you are going to go into that later --



1 Q You can deal with it now.

2 A I told him very early in the going some of the
3 things that I had learned and of course gave him
4 appropriate instructions and cautions, so this was
5 really part of the continuing process of keeping
6 him posted, and the other thing too is that I had
7 an arrangement, and he certainly never abused it,
8 I had an arrangement whereby he could phone me on
9 reverse and we had talked a time or two on the
10 phone, but frankly, I was cautious about
11 discussing matters on the phone with him, but in
12 terms of generals, some general things, yes.

13 Q Would these be calls from Prince Albert then?

14 A Yes.

15 Q Okay, and we'll go through that. Just on the
16 cautions that you would have given, what would you
17 have cautioned Mr. Milgaard about?

18 A Well, at the very first meeting I told him I did
19 not want him discussing matters with any police
20 officers unless he first spoke to me and I
21 indicated I didn't want him talking to anybody
22 about it unless I was there.

23 Q And what about friends?

24 A Oh, I knew very early, I picked up that his
25 friends were the ones that were pointing him,



1 pointing to him as the perpetrator and I always
2 sort of put friends in quotation marks because I
3 told him to be very leery of any visits by friends
4 because I thought -- I said, you know, they may
5 bring them in to see you and you may well be
6 confronted with innocent statements being
7 distorted.

8 Q And we'll go back to those meetings a bit later.

9 A Yes.

10 Q So this account, this is September 12th, so this
11 would be the day after the preliminary hearing is
12 finished, so would this reflect then the work that
13 you had done from June 7th, 1969 through until the
14 end of the prelim on September 11th; is that
15 correct?

16 A Yes, in general terms, but --

17 Q Just go back.

18 A -- it certainly wouldn't have all the leg work --

19 Q Right.

20 A -- in there.

21 Q So we've got the personal attendance. We then
22 have the numerous conferences in Saskatoon with
23 David Milgaard and his parents in connection with
24 this matter?

25 A Yeah.



1 Q And I take it those would be either telephone
2 conferences or meetings either in the Saskatoon
3 police cells --

4 A And the other thing too is that I recall
5 arranging, for the purposes of the preliminary
6 hearing, to have a little room set aside at the
7 main courthouse here so that we could use it; in
8 other words, David wasn't taken down to the cells
9 below every time there was a little break, and
10 that I arranged, I think, with the courthouse
11 registrar, to have that room made available. It
12 was separate and apart and just across the hallway
13 from the main witness room.

14 Q Prior to the preliminary hearing and for the
15 preliminary hearing, were you satisfied that you
16 had adequate time to meet with David Milgaard and
17 deal with him to prepare for the preliminary
18 hearing?

19 A Yes, I was. As I say, I think I received good
20 co-operation about the trip to Prince Albert and
21 things like that, but I can't remember all the
22 times I spoke to him, but -- and even throughout
23 the preliminary hearing, which was fragmented or
24 staggered --

25 Q Yes.



1 A -- there was time to discuss matters in a little
2 room, and I believe that I arranged to have him
3 brought down a day or so early, but that's my --
4 that's my sense of things, so that it wouldn't be
5 just a question of walking into the courtroom and
6 the opening of the preliminary hearing. In other
7 words, even though I had spent some time with him
8 in Prince Albert, I did talk to him again in
9 advance.

10 Q The next item is:

11 "To numerous conferences with Mr. T.D.R.
12 Caldwell, Agent to the Attorney General
13 to discuss this matter and agree on
14 certain items."

15 And we'll go through a bit later some of the
16 correspondence, but would there have been a fair
17 bit of communication between you and Mr. Caldwell
18 prior to and during the preliminary hearing?

19 A Oh, yes, I'm quite sure there was. Without my
20 file I can't give you specifics, but it wouldn't
21 just be talk about the date for the preliminary,
22 but that would be one thing, but various other
23 matters too.

24 Q Would you have had frank discussions with Mr.
25 Caldwell then about the evidence in the case prior



1 to the preliminary hearing?

2 A Well, I would certainly have talked to him about
3 what he had, what he was going to lead.

4 Q Yes.

5 A And so forth.

6 Q If we can just scroll down, it says:

7 "Drawing brief for preliminary hearing
8 with respect to both facts and law."

9 I take it from that that you would have prepared
10 a brief before the preliminary hearing?

11 A Yes. Of course I think I've already mentioned
12 some of that to you, part of it focused on the
13 secretor issue and the blood issue and that was
14 quite important, but I did also draft up questions
15 for the various witnesses based on information
16 that I had, and not only from David, but any other
17 materials that I had.

18 Q And then next you have:

19 "To necessary medical-legal
20 consultations in connection with certain
21 evidence that was adduced."

22 A Yeah.

23 Q Can you tell us what that generally would have
24 related to?

25 A Well, that generally related to what we've already



1 talked about, and that is the blood and secretor,
2 non-secretor.

3 Q And so prior to the preliminary hearing, had you
4 consulted medical experts?

5 A Yes, I had.

6 Q And do you recall who they were or --

7 A You know, without my file, I think the person that
8 I spoke to first, but this is just trying to
9 reconstruct as distinct from recollect -- maybe I
10 should back up. First of all, I had done a fair
11 bit of reading myself before I talked to the
12 doctor, but I think the doctor I spoke to
13 initially was Dr. Mel Langer whom I knew and had
14 known for quite a few years, and while he didn't
15 pretend to be a serologist, I always found him
16 very helpful in areas of medical jurisprudence,
17 and he also put me onto additional writings and
18 then he put me in touch with somebody that he
19 knew, a medical person, and I've racked my brain
20 to try and figure out, you know, recall who it
21 was, but to sort of distill my answer to your
22 question, I did this in advance and that is why I
23 had the ability, so to speak, to prepare questions
24 and what I thought would be hoped-for answers,
25 particularly from Mr. Paynter who was, he was



1 known to me as a person who had given expert
2 evidence in many proceedings in my career.

3 Q Now, the -- and I appreciate you said that this
4 doesn't cover everything and its got other
5 services and attendances. As far as the fee at
6 the time, was there a tariff that Legal Aid had or
7 how did -- how did they determine or you determine
8 what you would be paid by Legal Aid for the work
9 you did?

10 A I really don't recall now. I'm sure there was
11 some sort of a tariff that was in existence, but I
12 don't know the criteria or how it was calculated,
13 but -- and I may have even talked to someone about
14 it, but I can't say. That wasn't a primary
15 consideration on my part at the time. There was
16 lots of things to be done.

17 Q Would this amount, can you tell us how this amount
18 might compare to the work that you had done had it
19 been a non-Legal Aid client, as far as dollar
20 value?

21 A Well, if you were billing it on a regular basis,
22 it was a very modest sum compared to what -- but I
23 never liked to dwell on that in Legal Aid cases
24 because I thought that your obligation was to give
25 it full effort regardless of the fee.



1 Q Would this fee then, is what you are telling us,
2 that this fee would relate more to what Legal Aid
3 was prepared to pay for the work as opposed to --

4 A I think that's a very fair way of putting it.

5 Q As opposed to a calculation based on how much time
6 you put into it?

7 A Oh, I was never into hourly billing, so I wasn't
8 familiar with it at that time. It was just more I
9 think coming into being a bit when I left
10 practice, but I was never, as such, involved in
11 hourly billing, and I'm not saying that in a
12 derogatory way, but it wasn't part of the way it
13 was done at that time.

14 Q If we were to say, and maybe this isn't a fair
15 question, but June, certainly July, August,
16 September, can you tell us what portion of your
17 time was taken up with this matter or devoted to
18 this matter? Are you able to give us any sense of
19 the time you put in, at least during this time
20 period?

21 A The best I can say to you now, without the benefit
22 of my file, is that a major portion of my time was
23 put into it. I know I started working on it right
24 away, you know, from the first time I received
25 instructions and following up various things and



1 so on, but to -- and in those days I would have
2 spent, you know, a lot of time working at night
3 and weekends and so forth, but, you know, I don't
4 want to sound too noble about this because it was,
5 you know, just a style of practice in those days.

6 Q Okay. If we can go to 065426, and this is a
7 letter, December 19th, '69 about Mr. Disbery. Did
8 Mr. Disbery attend the preliminary hearing do you
9 recall?

10 A Yes, I believe he did.

11 Q And this letter, you are asking the Legal Aid
12 Committee to approve authorization of junior
13 counsel participating in the trial.

14 "My colleague, Mr. Ian Disbery has done
15 some work on the file and I would
16 request your authorization to have
17 second counsel appear on the matter."

18 And so I take it at this time you felt that you
19 should have Mr. Disbery appear with you at the
20 trial as second counsel?

21 A Yes, I did.

22 Q And was that due to the nature of the case then
23 and the amount of work?

24 A There were really two reasons I would say; number
25 1, is that the nature of the case, the importance



1 of it from the standpoint of the youngster that
2 was before the Court, and secondly, I was always
3 of the view that if you were going to have a
4 functioning Legal Aid plan, that it was incumbent
5 upon senior lawyers to take juniors into Court
6 and, in effect, let them move along to their
7 rightful place in the profession so that they,
8 they would have the advantage of having been a
9 participant and spectator at a trial from
10 beginning to end and at least involved in some of
11 the preliminary work.

12 Q If we can then go --

13 A Now, one could elaborate a great deal on that, but
14 I don't think that that's what you are looking
15 for.

16 Q You felt that having Mr. Disbery as, present at
17 trial was important for you and important for Mr.
18 Milgaard; is that fair?

19 A Yes. It's nice to have somebody there that is
20 taking notes and everything while you are on your
21 feet.

22 Q Can you tell us a bit --

23 A And of course in this particular case I went, I
24 should say I went a bit further than that because
25 at the preliminary hearing, there's at least



1 certain key parts of it, I had my secretary, who
2 was really a legal assistant, actually sat in, in
3 the spectators but the front area, she had
4 excellent shorthand and she would take shorthand
5 notes of key evidence and I could either get her
6 to type it up, which she would do at night, or
7 even read it to me during a break.

8 Q And would you --

9 A And --

10 Q Sorry?

11 A And the same thing was done at trial, although it
12 was done quietly, you know, not to be -- make a
13 production of it or anything.

14 Q If we can go to 065422. This is a letter January
15 7th, shortly before the trial, from the Deputy
16 Attorney General advising -- actually, I think it
17 might be to someone else -- but indicating that
18 advising you by telephone, 'The matter has been
19 discussed with the Attorney General and it is
20 agreed that we are not prepared to supply a second
21 counsel in a case such as this, and that our
22 present policy is not to authorize a second
23 counsel in any case where Legal Aid is being
24 supplied.'

25 So I take it you would have been



1 made aware of that around that time?

2 A I'm quite sure I was.

3 Q And, notwithstanding the fact that Legal Aid would
4 not pay for Mr. Disbery, did you have him
5 participate in the trial?

6 A Yes.

7 Q In a full-time --

8 A Well he was there, as I recall it, all the time.
9 Now I should make it clear he was a young lawyer
10 at the time and, you know, I assumed full
11 responsibility for what was done in the conduct of
12 the case. I wouldn't want to suggest that any
13 responsibility of it should be fobbed off, by me,
14 onto him.

15 Q Okay. If we can then go to 065407. And, again,
16 this is your second account, this is February the
17 2nd, 1970, so this would run from the preliminary
18 hearing conclusion through to the end of trial, I
19 believe. And if we can just call up some of these
20 items we've got:

21 "Perusing transcripts of evidence taken
22 at the preliminary hearing",
23 then we have November 12th and December 11th,
24 1969:

25 "Attending in Prince Albert,



1 Saskatchewan, at the Provincial
2 Correctional Centre for Man to interview
3 David Milgaard and discuss this case
4 with him."

5 And so from this account can you tell us, do you
6 have a recollection of going to meet with Mr.
7 Milgaard between the preliminary hearing and the
8 trial?

9 A I can put it to you this way. I was positive that
10 I saw him before the preliminary hearing. I
11 always thought, in my own mind, that I had seen
12 him at Prince Albert before the trial, and spent
13 time discussing it with him, but until you were
14 able to uncover this document I could never be
15 sure in my recollection as to whether or not
16 discussions took place there or by phone. My
17 thought was that I had attended on him, and this
18 confirms for me that I saw him and spent a fair
19 amount of time with him on two occasions before
20 the trial, and I'm quite satisfied that the date
21 of November 12th and the date of December 11th
22 would be taken from my personal file notes.

23 Q And then, if we can scroll down a bit:

24 "Preparing brief for cross-examination
25 of all Crown witnesses at trial."



1 I think you've told us about that?

2 A Yes.

3 Q And:

4 "Preparing brief of law for use at trial
5 and particularly in connection with
6 questions of admissibility of evidence."

7 And I think you've told us about that as well?

8 A Yes.

9 Q And then the trial, just the dates of trial. Did
10 you also have an opportunity to meet with Mr.
11 Milgaard prior to, I mean the day before and
12 during the course of the trial?

13 A Yes. The same -- during the course of the trial
14 we had the same little room that we used at the
15 preliminary hearing because the preliminary
16 hearing was conducted in the main courtroom, the
17 jury room, and then the trial was conducted there
18 so we had the same access. And I believe that I
19 have a recollection, it could be faulty on this,
20 but I think I arranged to have him brought down a
21 day or so early so that I could chat with him even
22 in the cells at the city police station where he
23 would be held before being brought over to the
24 courthouse for his trial.

25 Q Okay. If we can go to the next page, please.



1 And, again, it talks about meetings with the
2 prosecutor and the fee, and I just want to go back
3 to the covering letter of this, 065410. And this
4 is your February 2nd letter to Mr. Heidgerken, you
5 say:

6 "I would appreciate it if you would
7 submit this statement of account to the
8 appropriate department as soon as
9 possible and I might mention that I am
10 asking for an additional fee for
11 extensive preparation which was required
12 in this particular case. I might
13 mention that the allowance that I have
14 requested over and above the counsel fee
15 that is payable under the provisions of
16 the Legal Aid Plan is a very modest sum
17 when you consider the many hours that I
18 had to spend in preparation."

19 And, again, would that be an accurate statement
20 of your position at the time?

21 A Very much so.

22 Q It appears, from this, that there may have been a
23 tariff payable or a fee payable, like a fixed
24 dollar amount for a matter, does that --

25 A There may have been a counsel fee. Whether it was



1 a counsel fee per case or a counsel fee per day I
2 don't recall.

3 Q Okay. And, lastly, we'll just finish up 066593.
4 This is an account, I'm not sure if there is a
5 date on this or not, but it relates to the appeal
6 in November of 1970, and we'll maybe come back to
7 this a bit later. And I think, Mr. Tallis, those
8 are, at least from what we have been able to find,
9 the three accounts that provided some particulars
10 of what you did during this time period.

11 If we can then go to just a
12 couple of other source documents, 267787. And
13 this is the information, the original information
14 from the Court file, and I just want to touch on a
15 couple of items if we can go to the next page.
16 And the first appearance I think is June the 2nd
17 and Mr. Milgaard represented himself, then it was
18 adjourned to June 9th, 1969, which accords with
19 your account, and then you appear for the accused
20 and Wolff, who I understand is Ben Wolff, appeared
21 for the Crown; is that right?

22 A Yes. I wouldn't have any personal recollection of
23 who was there on any particular date but when we
24 looked, when I looked at one of the letters you
25 had I had put a copy to Ben Wolff, and I'm quite



1 sure, looking at this, that Mr. Wolff appeared on
2 the dates that are mentioned there. And, of
3 course, I knew him quite well from practice.

4 Q And we've heard some evidence that the practice at
5 the time was that Mr. Wolff, as a city prosecutor,
6 would appear in Magistrate Court for the Crown,
7 and then once the matter went to preliminary
8 hearing that an agent of the Attorney General,
9 usually Mr. Caldwell, would appear; is that
10 correct?

11 A Yeah, I think that's, I think that's the way it
12 worked.

13 Q And then again, if we could scroll down, it looks
14 like a second appearance on June 16th and then the
15 accused is remanded in Prince Albert on a couple
16 of occasions. And presumably, then, Mr. Milgaard
17 was moved to Prince Albert Correctional Centre; is
18 that right?

19 A Yes, that was the practice at that time.

20 Q Was -- the start of the preliminary hearing, it
21 went fairly quickly, I think within about two
22 months after you were first engaged; was that
23 normal at the time?

24 A I don't recall anything unusual about it.

25 Q If we can then call up 335 --



1 A It probably was -- you know, I'm just trying to
2 think here -- no, I -- I think -- I don't recall
3 anything unusual about it that --

4 Q Would you have been anxious to get the matter to
5 Court?

6 A Well, I know when you have a person, I'm sure
7 David was anxious to, you know, have matters
8 resolved, and I was, certainly. For whatever
9 reason I know that I started on it right away, you
10 know, on the case. The memoranda that you were
11 able to find certainly indicate to me, and that's
12 my recollection, that I realized that it required
13 attention, and I'm thinking particularly too of
14 the blood and secretor issue that I got -- did
15 work on even before the preliminary hearing.

16 Q Okay. If we can call up 335405, please. And this
17 is a document that we prepared, Mr. Tallis, based
18 upon documents in the database and information
19 provided by you, and we may refer to it from time
20 to time. I don't want to go, I don't propose to
21 go through it in detail now, but it outlines --
22 I'll maybe just go through parts of it -- outlines
23 when you were first retained, your dealings with
24 -- if we can just scroll down -- your dealings
25 with Mr. Caldwell, your appearances, meetings with



1 Mr. Milgaard, it was on August the 4th when
2 disclosure was made. And then, if we can scroll
3 down, you've also put in the dates that you
4 appeared and what witnesses were present. If we
5 can then just go ahead to the next page, again
6 setting out the dates and which witnesses
7 testified on each given day of the prelim. The
8 next page, we've got the two meetings in Prince
9 Albert, and then the next page, for trial we've
10 done the same thing and put the witnesses on
11 dates. So we may need to refer back to this as,
12 just as a guide, so I just want to point this out.

13 As well we have included
14 matters -- if you can go to page 410 -- we've
15 included subsequent correspondence with various
16 lawyers and the document IDs.

17 If we could then go to 006763.
18 And this is a letter June 2nd, 1969, I think this
19 would be about a week before you were retained,
20 and it's a letter from Detective Barrett. We have
21 seen some of these documents and heard some
22 evidence that the practice at the time was that
23 officers that were either guarding or observing
24 Mr. Milgaard would prepare reports about what
25 happened, and this one refers to a conversation



1 between David and Mrs. Milgaard where she was
2 inquiring about Shorty and that she was going to
3 interview Wilson and Nichol John regarding the
4 case, and then the officer advised her that before
5 she attempts to interview any police witnesses she
6 either speaks to the chief of police or her son's
7 lawyer or the agent of the Attorney General; do
8 you have any recollection of that, of being made
9 aware of that, at the time?

10 A No.

11 Q What was your practice as far as interviewing
12 Crown witnesses?

13 A Well, if you want to refer to this specific case
14 --

15 Q Yes?

16 A -- and the three "friends", I think there would be
17 real risks in me or anybody in the Milgaard family
18 approaching them. There is no doubt in my mind
19 that that sense was confirmed when we got to
20 trial.

21 Q Okay. In what respect?

22 A And when Nichol John was in the witness box, and I
23 can't give you the page or anything like that, but
24 I know that I think the Learned Trial Judge asked
25 if somebody had talked to her. And that is why,



1 of course, I later, in cross-examination, sought
2 to, and I believe did, establish that I had never
3 talked to her outside of the courtroom, and that
4 nobody from the Milgaard family had exerted
5 influence or talked to her.

6 Q And, again, just back either generally or
7 specifically with respect to these witnesses,
8 would it be your practice, as defence counsel, not
9 to contact key Crown witnesses before the
10 preliminary hearing or trial?

11 A I would certainly be very cautious about it and I
12 think, generally speaking, I wouldn't do it.

13 Q And, again, what would the risks be or why
14 wouldn't you do it?

15 A Well the illustration that I gave you would be one
16 matter that would be very significant. I mean it
17 can taint the whole trial if there's any
18 suggestion that I was being pressured by the
19 accused's counsel or his family or friends or
20 something like that.

21 Q Would that have been a general practice of defence
22 counsel at the time then, sir, that as far as
23 dealing with Crown witnesses -- and I appreciate
24 that every case is different and every counsel is
25 different -- but would that have been the



1 prevailing view at the time?

2 A I think most counsel would generally agree with
3 that at the time.

4 Q If we can go to 006764, please. And this is a
5 memo of June 2nd, 1969, I think it's Detective
6 Hanson if I'm not mistaken, but in any event it
7 refers to, on that date, Dr. McDonald, and I think
8 it says:

9 "... examined above person from 8:10 ...
10 to 9:30 p.m. in prisoner interview
11 room."

12 And we've heard from Dr. McDonald and we've heard
13 from Mr. Caldwell that, at this time, the Crown
14 retained Dr. McDonald to interview Mr. Milgaard.
15 Did you become aware of that after you were
16 retained?

17 A I'm sure I became aware of it. I'm not sure who
18 told me but I remember, looking back, that I know
19 I had discussed it with David.

20 Q And what did you discuss with him?

21 A Well, I can't recall all the details, but I know
22 that we did discuss it, and I know that very early
23 in the going I made it clear I did not want him
24 submitting to any further examinations without him
25 speaking to me, and I said I was quite emphatic



1 about that.

2 Q And did you find --

3 A And --

4 Q I'm sorry?

5 A And whether I would -- I might well have indicated
6 to him that I would want to be present if there
7 was any interview or -- because I viewed the
8 psychiatrist retained under those circumstances,
9 at that time, as a Crown agent. Maybe he didn't
10 appear like a police officer but --

11 Q Yes.

12 A -- there was certainly no guarantee that --

13 Q And what was it, what was your understanding of
14 the purpose of Dr. McDonald's visit, and was that
15 usual at the time for this to happen?

16 A Well, I suppose I likely assumed the worst, but
17 from talking to David I gathered that he was going
18 into his background and so forth and so I rather
19 thought that -- I may well have thought at the
20 time that, and I know later on I did, that they
21 maybe were thinking even of using him to call
22 evidence of bad character, which I would have
23 resisted strenuously. Now I, on that I have the
24 benefit of hindsight, I guess, in this sense; that
25 you showed me a document where I think Dr.



1 McDonald was under subpoena for trial?

2 Q Yes.

3 A Which means, since he wasn't on the list of
4 witnesses to be called on the indictment, it means
5 that he was to be available for potential
6 rebuttal.

7 Q And can you explain how that would come about?

8 A Well if character had been placed in issue,
9 David's character had been placed in issue, I
10 think that that might have been one of the
11 purposes for having Dr. McDonald available as a
12 witness, to relate the background information that
13 he had taken --

14 Q Okay.

15 A -- with respect to David.

16 Q And I think that --

17 A And, you know, assessed by a psychiatrist in terms
18 of his propensity to do certain things, and I
19 certainly didn't want that, because I thought it
20 would be detrimental to his case, detrimental to
21 the defence.

22 Q And we'll talk a bit more about that --

23 A Yes.

24 Q -- later. I think what Mr. Caldwell told this
25 Inquiry is that one of the purposes in having Dr.



1 McDonald or a psychiatrist interview an accused is
2 in the event that the accused is going to raise a
3 defence of insanity or diminished capacity or
4 something of that nature; do you recall that being
5 the practice of the Crown at the time, to get an
6 early assessment to --

7 A I think they probably did in some cases. You
8 know, I don't have any specific recollection on it
9 other than this particular one, but I think that's
10 a reasonable suggestion.

11 Q If we could go to 006762, please. This is a
12 letter June 2nd, '69 from Detective McCorrison to
13 Chief Kettles again reporting on a visit between
14 Mrs. Milgaard and David, and there is a reference
15 here to:

16 "An application for legal aid was
17 completed by Mrs. Milgaard and signed by
18 David. She mentioned the name of Walsh,
19 a prominent Winnipeg lawyer, ...",
20 and I understand that's Harry Walsh, is that
21 right, that --

22 A Well, that's the Harry, I'm sure it refers to
23 Mr. Harry Walsh.

24 Q And:

25 "... however indicated preference of



1 Mr. C.F. Tallis in Saskatoon."

2 Do you know how you were selected to be David
3 Milgaard's counsel?

4 A No, I don't. I know my name was on the list of
5 people that would defend under the Legal Aid Plan,
6 but I have no knowledge or second-hand information
7 as to on what basis I was asked. It may well have
8 been that whoever phoned me said "you know, you
9 are next on the sort of roster of lawyers in this
10 age group", but I can't, I can't say, I --

11 Q And if we can then go just down on the bottom
12 here, again there is a reference to -- no, scroll
13 up, please, to:

14 "Mrs. Milgaard stated she would be
15 contacting Nicole John and Ron Wilson to
16 find out their stories on this matter."

17 And this is similar to the last document. Do you
18 recall any discussion with either David Milgaard
19 or Mrs. Milgaard or David Milgaard's father about
20 not contacting witnesses?

21 A Umm, I don't recall any specific discussion about
22 it. I certainly had cautioned David against any
23 visits by them, but that was for, of course, a
24 different purpose.

25 Q If we can go back, I want to now go to sort of



1 your recollection of what you first heard about
2 this case and the evidence against Mr. Milgaard;
3 can you tell us what you recall about that?
4 A Well whoever phoned me on behalf of Legal Aid
5 emphasized the need to give him some advice
6 immediately and expressed the hope that I would,
7 in effect, drop everything and go down to see him.
8 I assumed at that time that perhaps there had been
9 duty counsel or something like that, but when you
10 bring up the original information it appears that
11 he was brought before the Court on his own,
12 whether or not somebody had seen him in the --
13 after that I don't know, but somewhere very
14 quickly. And now whether it was after I was at
15 the police station, and it could well have been
16 Mr. Wolff that told me about it, I learned that
17 the "friends" -- and I put "friends" in quotation
18 marks -- had pointed to him as being the
19 perpetrator. So that's why very early, at a very
20 early stage, I was able to caution him in that
21 regard, and I can't recall what particular
22 attendance it was that I was able to pass that on
23 to him, but having looked at the memo of -- or
24 letter of June 10th with a copy to Mr. Wolff, I'm
25 inclined to the view that Mr. Wolff was the one



1 who probably gave me the first indication of some
2 of this background. He -- his door was, you know,
3 generally open, and he was always very, very
4 receptive to telling you, and it may well be that
5 if he had -- if there were statements there on the
6 original file that he had that he said, he would
7 say "sit down and read them, I'll be sending them,
8 sending this file over to the prosecution, the
9 Crown prosecutor", but --

10 Q Okay.

11 A -- at the courthouse.

12 Q I think the letter, 007063 I think is the letter
13 you are referring to, and that's the c.c.?

14 A Yeah, yes.

15 Q And this is a letter to Mr. Caldwell?

16 A Yeah.

17 Q And I think we saw from the information that on
18 June 9th you appeared for the first time for Mr.
19 Milgaard and that Ben Wolff was the Crown?

20 A Yes.

21 Q Is that correct?

22 A Yes. Now I, but I think I saw David on the 7th,
23 according to the record here.

24 Q Yeah.

25 A I may well have gone to the police station to talk



1 to Ben Wolff and see what he had --

2 Q In your experience --

3 A -- before.

4 Q -- with Mr. Wolff did he provide or was he in the
5 habit of providing you with information about the
6 Crown's case?

7 A He was always very open with me and that's why,
8 when I noticed that I sent a copy of this to him,
9 and it is an indication to me that I had had some
10 contact with him over it.

11 Q I see. And we can --

12 A And, but to give you a personal recollection of it
13 I'm sorry that, without my personal file notes, I
14 couldn't.

15 Q If you can tell us, again, of your first meeting
16 with David Milgaard, would that have been at the
17 police station, then, on June 7th?

18 A Yes.

19 Q And what do you recall of that meeting?

20 A Well I, you know, recall a general introduction
21 and discussion. And at that time I had had an
22 indication that it was very important that he get
23 some advice, and I moved to the -- moved into that
24 aspect of it very quickly -- well, not quickly,
25 but "promptly" would be a better term -- so that



1 he understood his rights and the importance, at
2 that stage, of not discussing it with anyone
3 without first talking to me.

4 Q And would you have got a general description from
5 him, then, about his activities on the day of the
6 murder?

7 A Somewhere along the way, yes, but I -- one of the
8 things that he mentioned right away, or I elicited
9 from him, was that he denied any involvement in
10 it. I mean, he told me that he was simply not
11 involved in this, and he didn't suggest -- and
12 none of his "friends" were either.

13 Q And those would be the "friends" in quotation
14 marks?

15 A Yes.

16 Q Okay. Now this might be an appropriate spot to
17 break for --

18 A Yeah, okay.

19 COMMISSIONER MacCALLUM: Okay.

20 *(Adjourned at 11:59 a.m.)*

21 *(Reconvened at 1:33 p.m.)*

22 BY MR. HODSON:

23 Q Good afternoon, Mr. Tallis. I think when we broke
24 at lunch we were talking about, or you told us
25 about your first encounter with Mr. Milgaard, I



1 think you told us you got a call from Legal Aid
2 that he required some urgent assistance and that
3 you would have met with him I think on June 7th at
4 the police cells; is that right?

5 A That's correct.

6 Q And I think you told us as well that initially he
7 told you that he had nothing to do with the crime
8 and nor did any of the friends that were with him;
9 is that right?

10 A That's right.

11 Q At that point would you then have had, received
12 your instructions then as to what plea, for
13 example, or what steps you were to take on his
14 behalf?

15 A Yes. I went into it, you know, in much more
16 depth. I can't tell you the sequence of the
17 meetings and discussions, but certainly it was
18 very clear to me that the plea would be one of not
19 guilty.

20 Q And I think what I will do in a moment, sir, is to
21 have you go through -- is it fair to say that you
22 would have had discussions with David Milgaard on
23 a number of occasions from the time you were
24 retained on June 7th, 1969 through to the
25 conclusion of his trial?



1 A Oh, yes, that's quite accurate.

2 Q And that without specific notes and files, is it
3 fair to say that you may not be able to pinpoint
4 exactly what he told you on a given date?

5 A That's correct.

6 Q So maybe what we'll do, and I've just got a couple
7 of areas to touch on, but have you -- we'll go
8 through in detail what it is that Mr. Milgaard
9 told you about the events of January 30, 31, '69
10 and other related matters and without putting it
11 in a time frame, and then once we've gone through
12 it, go back and I'll try and have you tell us
13 whether it would have been before the prelim or
14 before the trial. Does that sound all right?

15 A Thank you.

16 Q If we can just -- would it be fair to say that the
17 initial meetings would have been -- would you have
18 got into a detailed discussion about the case or
19 would it have been more general discussions so
20 that you could appear in Court on his behalf?

21 A Well, on the very first meeting, or at least the
22 first portion of it, I of course discussed my
23 general instructions with him which we've already
24 mentioned in rather general terms, so that was
25 canvassed very early in our discussions, and I'm



1 sure that happened on the very first meeting with
2 respect to not discussing the matter with the
3 police or anyone else unless I was there and
4 consulted with him first, and with respect to the
5 psychiatrist, I think the same applied there. I'm
6 just not sure if, whether that was specifically
7 discussed then or not, but I know that my
8 instructions were very directed, he was not to
9 discuss matters with anyone. I think at that time
10 or shortly after I certainly emphasized the
11 possibility of a visit from his "friends".

12 Q And that would be Ron Wilson, Albert Cadrain,
13 Nichol John?

14 A That's right.

15 Q If we could call up 007063, please, and we talked
16 about this letter a bit this morning. This is
17 your June 10th, 1969 letter to Mr. Caldwell and it
18 appears to be your first piece of correspondence
19 with him, and at that time I think we've heard
20 evidence that for a serious matter, a criminal
21 charge that was going to go through Queen's Bench,
22 that Mr. Caldwell was the agent to the Attorney
23 General that would be handling it and --

24 A Yes, certainly his office would be the one that
25 would be handling it, and I think he may have been



1 the sole member of the staff then, but I think
2 there were other members. I believe Mr. Perras
3 was also on staff, but I'm not sure.

4 Q We've heard evidence to that effect.

5 A Yeah. I recollect there being at least two
6 members of the prosecution staff.

7 Q And so let's, a couple of points here in this
8 letter, you say:

9 "I have not had an opportunity to review
10 the matter in detail but it would assist
11 me if you could let me have copies of
12 any witness statements and related
13 reports on this matter. I realize that
14 I may not be entitled to them as a
15 matter of law but I can assure you that
16 I never try to abuse co-operation of
17 this nature when it is accorded to me.

18 I often find that it cuts down
19 unnecessary work at the preliminary
20 hearing. Accordingly I hope that you
21 will see fit to give my request
22 favourable consideration."

23 And we'll talk a bit later about disclosure and
24 standards of the day. At this point would you
25 have had any witness statements, do you know, or



1 any information?

2 A Without -- certainly I had some information
3 because I'm quite sure that by this time I had
4 already cautioned David with respect to his
5 friends.

6 Q Right. And as far as you saying, "At this point I
7 realize I may not be entitled to them as a matter
8 of law," what -- can you elaborate on that?

9 A Well, I can put it to you this way, that there was
10 a line of cases that I recall that indicated that
11 you were not entitled to witness statements as a
12 right before the preliminary hearing, or even at
13 the preliminary hearing, but the practice in my
14 view had developed here, perhaps it would be a
15 good thing to call it a convention, of making
16 witness statements available at an earlier stage.
17 I know, for example, Judge Cumming presided over
18 this preliminary hearing and I can remember an
19 issue coming up before him where, not in this case
20 but in another one, where he felt that the
21 *Patterson* case in the Supreme Court of Canada did
22 not give him the right to order production of
23 statements.

24 Q Right. And we'll see a bit later in your letters
25 to Mr. Caldwell the English authorities that you



1 presented to him that suggested otherwise; is that
2 right?

3 A That's right. As I recall it at that time, the
4 English authorities took a more generous view of
5 production of statements, or perhaps I should even
6 add to that, disclosure or production of
7 information that might be of assistance to the
8 defence.

9 Q When you talk about related reports, witness
10 statements and related reports, do you know what
11 that might have been referring to?

12 A Well, certainly in my mind I would be thinking of
13 any laboratory reports, things like that, and --
14 if there were medical reports of significance and
15 so on, that's what I would primarily have in mind,
16 because I knew at that time police reports were
17 not subject to production.

18 Q And what about police notebooks?

19 A And my recollection is they were not subject to
20 production unless an officer actually referred to
21 them to refresh his memory in the witness box.

22 Q And at that time, as defence counsel, if you
23 wished -- for example, if the Crown prosecutor
24 said no, I won't give you statements, what was
25 your -- what was your recourse?



1 A Well, your recourse was essentially to, under some
2 of the authorities, I'm thinking of the *Patterson*
3 case and so on, and I may be wrong in the name of
4 the case, so you can correct me, that your
5 recourse was to the trial judge, but of course you
6 like to get the information well in advance and,
7 in particular, you want to be able to have as much
8 as possible before the preliminary hearing.

9 Q And would those be witness statements then for
10 witnesses that the Crown proposed to call at the
11 preliminary hearing and trial?

12 A Well, I don't think it was -- if you took the
13 English authorities, I think that we're talking in
14 terms of disclosure of statements or information
15 that might be helpful to the accused even though
16 the Crown didn't intend to call that evidence, so
17 that's the distinction I would make in response to
18 your question, albeit in a very limited way
19 because -- I don't know whether you want me to
20 elaborate on it now or deal with it later.

21 Q We'll deal with it a bit later when we get to the
22 letter.

23 A Okay.

24 Q Just on this issue of the convention, were there
25 cases at or around this time that you were



1 familiar with where, either you were involved with
2 or aware of where Crown counsel may not provide
3 any witness statements to defence?

4 A I never ran into a situation like that that I can
5 recall.

6 Q And as far as the jurisprudence, I think you said
7 there was some authority that suggested the Crown
8 may not have an obligation to provide witness
9 statements?

10 A That's -- my recollection is that the *Patterson*
11 case -- now, I'm sure there were others, but I
12 haven't gone back and briefed the law that was in
13 that period, you know, for years. I remember
14 another case that we used to rely on, and His
15 Honour Judge Wakeling in the Police Court here, he
16 often leaned on it pretty heavily, and it was the
17 *Mohadeo* case out of the Privy Council, and in that
18 situation, speaking from memory, the fairness of
19 the proceedings dictated that an accused should
20 get a copy of any statement the co-accused gave
21 and that was sort of one of the building blocks
22 for later arguments about production, and you are
23 much more familiar with how the jurisprudence
24 developed than I am.

25 Q I'm not sure if I would agree with that. If we



1 could go down to the last paragraph here, you say:

2 "I should perhaps mention that I would
3 like copies of any psychiatric reports
4 that you may have obtained with respect
5 to this boy."

6 Can we take it from that that you would have been
7 aware at this time that Dr. McDonald had
8 interviewed Mr. Milgaard for the purposes of
9 possibly a psychiatric assessment or report?

10 A I certainly would take it. I don't remember
11 specifically, but I certainly take it from that
12 that I had that in my mind, that there may well be
13 something of that nature. You see, at this time
14 it's very early in the going and I was sort of
15 looking at, trying to look at every aspect of it
16 and I may or may not have mentioned to you that by
17 that time I had developed a check list for defence
18 counsel, that is, for myself --

19 Q Yes.

20 A -- various points that one always wants to look at
21 with respect to your role, and that would start of
22 course right at the beginning with getting a copy
23 of the information. That's relatively minor
24 stuff, but important.

25 Q We have not seen any report from Dr. McDonald and



1 I don't think he prepared a written report. Do
2 you recall ever getting anything in writing from
3 the Crown relating to Dr. McDonald and his
4 assessment or interview?

5 A No, I don't, I don't have any recollection of
6 receiving or seeing anything like that.

7 Q Now, this letter is June 10th, 1969, it's the day
8 after you appeared in Magistrates' Court on behalf
9 of Mr. Milgaard where Mr. Wolff appeared as the
10 city prosecutor, and I think you mentioned this
11 morning that the fact that you copied this letter
12 to Mr. Wolff suggested to you, and please correct
13 me if I'm wrong, but suggested to you that you may
14 have received some information from Mr. Wolff
15 about the case against Mr. Milgaard; is that
16 correct?

17 A That's correct. That signals at least to me, even
18 at this late date, that I had obvious -- I knew
19 that he was in the picture to some extent, but I'm
20 quite sure in my own mind, even though I have no
21 recollection, that I would have talked to him,
22 maybe even the same day I was down there to see
23 David and before the matter came up in Court or
24 the next day.

25 Q If we could go to 153491, please, and this is June



1 10th, 1969, so this is the same date as your
2 letter to Mr. Caldwell, copied to Mr. Wolff, this
3 would be one day after your first Court appearance
4 and three days after your first meeting with David
5 Milgaard, and I think just for the record, this
6 handwriting on here I think we've been told by Mr.
7 Carlyle-Gordge is his, where I've circled the JM
8 in the top right I think is Mrs. Milgaard's
9 initials. The balance of the underlining and
10 handwriting I believe would have been Mr.
11 Carlyle-Gordge's or someone else's. Are you able
12 to verify that? Is any of that yours?

13 A None of that is mine and I don't think any of the
14 underlining is mine either.

15 Q And I want to go through this in some detail.
16 This would appear to be your -- at least it's the
17 first memorandum of the three that we have. And
18 you've had a chance to look at this memo in these
19 proceedings?

20 A Yes, I did.

21 Q Can you tell us, and again I'll go through this in
22 detail, but where did this information come from?
23 It talks about your thoughts on the case and
24 things to do. Do you remember where you might
25 have got the information from?



1 A I have no recollection at this time, but trying to
2 piece things together in the context in which
3 you've advanced it to me, I more and more think
4 that some of it, if not all of it, must have come
5 from Mr. Ben Wolff.

6 Q Would any of this have come from David Milgaard,
7 and perhaps, if you like, why don't we go through
8 the memo and maybe I'll --

9 A I don't think that it would have because he did
10 not, until I told him, he did not know about,
11 anything about his friends possibly pointing to
12 him. That's my recollection.

13 Q And that would have been the first meeting or the
14 second meeting? Are you able to pinpoint?

15 A I can't pinpoint it, but, you know, I may well
16 have seen him on the 8th or 9th when he was in the
17 cells, but --

18 Q Let's go through this memo and we'll come back to
19 that point, so:

20 "In connection with this case it should
21 be noted for future consideration:

22 1. I gather that the Crown's case may
23 hinge to some extent on the statements
24 of two boys and a girl who was allegedly
25 in the car with the accused."



1 Now, I take it that would be Ron Wilson, Albert
2 Cadrain and Nichol John?

3 A Yes.

4 Q And as of June 10th, 1969 would you have been
5 aware that the three of them had given statements
6 to the police?

7 A I don't have any recollection of it, but that's
8 why I think the most likely source would have to
9 be Mr. Wolff.

10 Q Would it be, and again --

11 A Now, whether he had statements on the file that he
12 would have read to me or whether he would have
13 told me things based on what he had picked up at
14 the station I cannot say at this time. I would
15 have had very careful notes, you know, of that.

16 Q Would it have been unusual for Mr. Wolff to show
17 you or let you read a witness statement on a file?

18 A No, not at all.

19 Q So that's a possibility?

20 A A very good possibility. I mean, I had done that
21 many times with him when I went down there, make
22 it a point to get there early or wait until after
23 he was through in Court and deal with him.

24 Q Okay. The memorandum goes on to say:

25 "There are rumours that these people



1 were under suspicion and may have even
2 been told by the police that they were
3 under suspicion. If they by chance do
4 give evidence against the accused, then
5 it is of the utmost importance to
6 ascertain the nature of the various
7 statements that they gave to the police.
8 In other words it may well be that the
9 initial statements that were given to
10 the police denied any wrong doing on the
11 part of the accused but that in
12 subsequent interviews they may have
13 changed their mind after they had been
14 told that they were suspected of the
15 crime."

16 And let me just pause there. Would you have been
17 aware at this time, and we now know that
18 initially at least Nichol John and Ron Wilson
19 gave statements to the police that did not
20 incriminate Mr. Milgaard; Mr. Cadrain's first
21 statement did. Would you have been aware of that
22 at the time do you think or would this be
23 speculation on your part?

24 A My own sense is that it's more than speculation,
25 but I don't have any recollection of it.



1 Q And why do you think it would be more than
2 speculation?

3 A Well, I suppose this is always the danger of sort
4 of looking at things retrospectively, but the
5 nature of my comments are such there that I think
6 I must have been given some indication and the
7 most likely source would have been Ben Wolff,
8 because I knew Mr. Wolff well enough to say, well,
9 Ben, what have you heard.

10 Q I see.

11 A And --

12 Q Would he have -- and he would have told you?

13 A I think so.

14 Q Okay.

15 A I never, you know, I never doubted that he would.
16 I always found him to be helpful and candid.

17 Q The memorandum carries on:

18 "In this connection the City Police
19 Department apparently put some of them
20 through a lie detector test and I gather
21 that this might be a very fertile field
22 for cross examination. The Police
23 Commission paid out money to have a
24 polygraph brought in from Calgary,
25 Alberta in this connection."



1 And again, is this something you think you would
2 have obtained from Mr. Wolff?

3 A Yeah, I think, you know, the more I read it, the
4 more I think that he was the likely source.

5 Q Would you have talked to any police officers or
6 might have shared this information with you?

7 A No, and I didn't have any inside information.
8 That's why I think it would be Mr. Wolff.

9 Q And what about Mr. Caldwell, at this time would
10 you --

11 A Well, he wasn't in the picture at this time. You
12 see, this was -- we're talking about June 10th.

13 Q Yes.

14 A So I don't think the file even got over to him
15 until some little time later.

16 Q And next:

17 "From the newspaper reports as to the
18 nature of the stabbing and how the body
19 was dragged, it may be very difficult to
20 see how a boy of this age and size would
21 have had the strength to do what was
22 apparently done when you consider that
23 the girl was likely in reasonably good
24 physical condition. Her condition
25 should be carefully checked out in cross



1 examination of the doctors and
2 particularly on the question of the
3 weight and so forth."

4 And again, would you have gone and looked at
5 newspaper reports reporting on the murder?

6 A I'm sure I did, and if I didn't specifically dig
7 them out myself, I'm sure Miss Wilson did, because
8 she was a great reader and read the paper
9 diligently.

10 Q Are you able to tell us whether before you were
11 engaged by Mr. Milgaard, what knowledge you would
12 have had of Gail Miller's murder and his
13 subsequent arrest?

14 A At this stage I don't have any recollection other
15 than to say I remember, you know, hearing of the
16 arrest, but to have a recollection of the details
17 is simply beyond me. I have no doubt that I did,
18 you know, hear that there had been an arrest and
19 so forth, but that's the best I can do to assist
20 you on that aspect of the case.

21 Q Turn the page, please, paragraph 3:

22 "The police no doubt have fingerprints
23 of this young boy and a careful check
24 should be made to see whether or not his
25 fingerprints were discovered on any of



1 the items that were allegedly stolen and
2 subsequently located. If his
3 fingerprints were not located, then it
4 might be interesting to find out whether
5 or not the fingerprints of any other boy
6 or girl were located on them."

7 And can you tell us what you might have been
8 referring to about items that were allegedly
9 stolen and subsequently located?

10 A That would refer to some of the items that were
11 found, or allegedly found.

12 Q Belonging to Gail Miller?

13 A Yes. Now, I would characterize that paragraph as
14 just some reflections that I put down for future
15 consideration.

16 Q Okay. Now, paragraph 4 --

17 A I was making assumptions there that, you know,
18 fingerprinting and everything had been done, but
19 I'm quite satisfied I didn't have any information
20 on that at that time.

21 Q Yeah. I think here the first sentence is the
22 police no doubt have fingerprints of this young
23 boy.

24 A Oh, I see.

25 Q Yeah, you are presuming that they would have



1 done --

2 A That's an assumption that I made, that they would
3 have taken them even before he, probably before
4 his arrest.

5 Q Paragraph 4:

6 "It would be desirable to ascertain
7 whether or not any of the witnesses are
8 users of drugs because there is some
9 rumour that the girl believes she was
10 out of the car and simply does not ever
11 remember getting back into the car.

12 This sounds rather strange to me and
13 once again will have to be explored in
14 cross examination."

15 Again, can you tell us where this rumour may have
16 come from?

17 A I don't know, and I don't know where I picked that
18 up.

19 Q Would you have been, at this time, I think you
20 told us --

21 A You know, I had people that would give me
22 information and so forth, but to identify who
23 passed that rumour onto me I simply cannot recall
24 at this time.

25 Q If -- I think you've told us that certainly you



1 would have talked to Mr. Wolff to find out
2 whatever you could about, or you think you would
3 have to find out whatever you could about the
4 case. Did you have other sources or contacts
5 around that you might go to to see what they
6 heard?

7 A Well, there were certainly people on the west side
8 that I knew very well and would try to pick up
9 whatever I could from them.

10 Q And so might that be the source of the --

11 A It's quite possible I would say in this respect.
12 It might even be likely.

13 Q And then again, can you elaborate at all -- I'm
14 presuming this is referring to Nichol John and it
15 seems to be fairly specific information about what
16 she had told the police. Is this something that
17 you might have got from Ben Wolff do you think?

18 A I don't think so. I think it's a rumour that I
19 must have picked up somewhere.

20 Q Okay. And scroll down, paragraph 5:

21 "The boy has emphatically denied the
22 commission of this offence and I gather
23 that he has been interrogated by quite a
24 number of police officers. He was
25 apparently questioned some time ago in



1 Manitoba and then released because they
2 did not have sufficient evidence to hold
3 him. The interesting thing here is that
4 he is 16 1/2 years of age and apparently
5 he has not waivered from his denial even
6 though he has been interrogated by quite
7 a number of people. On the way back
8 from B.C. they apparently talked to him
9 quite a bit on the plane and kept asking
10 him "didn't it bother his conscious" or
11 words to that effort."

12 Or effect?

13 A It should be effect.

14 Q Effect.

15 "I gather that he reiterated that he had
16 not done it and while this might
17 technically be self serving evidence, it
18 does come within the exception to the
19 general rule when you deal with it
20 specifically at the time of his arrest
21 or charge."

22 And again, the source of this information, are
23 you able to tell us anything more than what
24 you've told us about the remainder of the memo,
25 as to where you would have obtained it from?



1 A Well, I think that there is information in there
2 that I would have only really have obtained. Much
3 of it would be from David just reading it in
4 context. Now, the other, the last part dealing
5 with self-serving evidence, that's just a
6 reflection or a thought that I highlighted and we
7 can deal with it later, but I changed my mind
8 about that particular point of --

9 Q And --

10 A -- law as applied to this particular case.

11 Q What significance did you place on the fact that
12 Mr. Milgaard had emphatically denied the
13 commission of the offence and that despite being
14 interrogated by quite a number of police officers
15 had not made any admissions?

16 A Well I proceeded on the footing that what he told
17 me in that regard was correct.

18 Q If we can then go to 065484, please. This is a
19 letter, again June 10th, 1969 to Mr. Kujawa, and
20 this is again dealing with -- just call out this
21 part. You say here:

22 "I have had the opportunity to speak to
23 this boy and his mother and also briefly
24 to Lieutenant Short of the Saskatoon
25 City Police."



1 Would Lieutenant Short have been the source of
2 any of the information that was in your June
3 10th, 1969 memorandum?

4 A I don't think so, because I recall, after I had
5 gone through this material, asking him some
6 relatively minor thing on one occasion and he told
7 me that any response would have to be handled
8 through the prosecutors office. I rather think it
9 involved discussing having him brought down a
10 little early --

11 Q I see.

12 A -- so that I could talk to him. But, certainly, I
13 think he generally observed the protocol that it
14 goes to the prosecutor and then the prosecutor
15 makes the decision.

16 Q And then here you ask the Attorney General, you
17 indicate you:

18 "... understand that the Crown have had
19 ..."

20 Mr. Milgaard:

21 "... examined by a psychiatrist of their
22 choosing. I would like to have a
23 defence psychiatrist appointed and I am
24 wondering if you could authorize such an
25 expenditure. I gather that the Legal



1 Aid Committee do not have authority to
2 permit me to make these arrangements
3 unless I can be sure that I am going to
4 call the man as a witness and then
5 witness fees can be authorized.

6 At this stage I feel that I
7 would like to have a very thorough
8 examination made."

9 Can you explain the purpose of that request?

10 A Well, at that time, I think that I had been
11 alerted to the possibility that the Crown might
12 attempt to adduce evidence of bad character, or
13 propensity evidence, and I wanted to be prepared
14 to deal with that. Now later, of course, I was
15 given to understand that they weren't going to
16 lead it in as part of their case, but I don't
17 recall all the discussions. But you are asking me
18 what I was concerned with, and that's my best
19 recollection, that I --

20 Q And I don't --

21 A -- that I wanted, I guess, to be ready to meet
22 this type of situation.

23 Q At this stage -- and I don't want to jump ahead,
24 Mr. Tallis, because we will go through this in
25 detail --



1 A Yeah.

2 Q -- your discussions with David Milgaard, but at
3 this point, June 10th, 1969, I think you've told
4 us you would have met with Mr. Milgaard on at
5 least a couple of occasions?

6 A Yeah.

7 Q Would you have had information from Mr. Milgaard
8 himself that caused you concern that there might
9 be something in his background that might give
10 rise to number 1, the Crown leading evidence of
11 bad character or of a propensity to commit the
12 crime; or 2, the need, that you might need to get
13 your own psychiatric evidence to assist you in
14 advising your client?

15 A I certainly had information from him very early in
16 the going about his background, I'll say his
17 troubled background, as a youth -- and he still
18 was -- his education, his work record, albeit
19 short. I remember the name *Maclean's*, I think
20 he'd been selling *Maclean's* magazine
21 subscriptions, but I don't know whether there were
22 other papers he was selling subscriptions for as
23 well. But I certainly was conscious of the
24 possibility, but I want to make it clear, I would
25 have strenuously resisted any attempt to adduce



1 evidence of bad character, but if it had gone in,
2 I had in mind I would like to maybe have our own
3 psychiatrist.

4 Q Right. And I'll go through in detail with you the
5 more detailed discussions that you had with him
6 and I can get you to elaborate.

7 A Yeah.

8 Q But, for the purposes of this letter, are you
9 telling us that fairly early on your antennae
10 would have gone up as far as the issue of Mr.
11 Milgaard's background, possibly his psychiatric
12 history, and the need to get your own evidence on
13 that?

14 A Yes. I was concerned that the Crown might attempt
15 to lead evidence of that nature even though I
16 didn't think it would be properly admissible.

17 Q And what prompted you --

18 A After all, I had been wrong before, and I could
19 have been wrong on that score too, but I felt I
20 should be ready.

21 Q And why, on June 10th, '69, what caused you to
22 think that the Crown might lead evidence regarding
23 propensity to commit the crime?

24 A Well, the possibility of leading the evidence.

25 Q Possibility?



1 A Particularly from what I -- from having found out
2 that he had been interviewed by a Crown
3 psychiatrist even before he had the benefit of
4 counsel.

5 Q I see. And was there anything that you recall,
6 again on June 10th, 1969 or your first couple of
7 meetings with Mr. Milgaard, that gave you concern
8 that the Crown might lead that evidence of
9 propensity to commit the crime?

10 A I guess it was just my sense of the possibility --

11 Q Okay.

12 A -- that I have already articulated to you.

13 Q Sure. If we could call 006795. This is a
14 handwritten note of Detective Sergeant Mackie to
15 Chief Kettles June 16th, 1969, and I think this
16 actually coincides with a Court appearance date as
17 well, it says:

18 "During conversation Mrs. Milgaard
19 relayed a message from Mr. Tallis to
20 effect that Dave should watch his
21 conduct as this could be used in court."

22 And, again, I think that's similar to what you
23 have told us before, that you would have given
24 that caution and advice to Mr. Milgaard?

25 A That's correct.



1 Q 007064, please. Now this is June 23, 1969, a
2 letter from Mr. Caldwell back to you responding to
3 your June 10th letter, and Mr. Caldwell says:

4 "I have not, as yet, received any
5 statements, reports ... in a written
6 form concerning this matter, however,
7 when the file arrives ... I will be in
8 touch with you ..."

9 And so again, at this point in time, it would
10 appear that Mr. Caldwell did not have any of the
11 written statements; does that sound correct?

12 A Well that's correct, that's right, that's exactly
13 -- that's what I -- that's how I read his letter.

14 Q And is it possible, based on your dealings with
15 Mr. Wolff, that Mr. Wolff may have had on his file
16 some statements that may not yet have gone to Mr.
17 Caldwell?

18 A Well, this was a letter of June 23rd, my own
19 feeling is that Mr. Wolff would definitely have
20 had some of that on his file.

21 Q Yeah. I think Mr. Caldwell's evidence was that
22 until he became involved in the setting of the
23 preliminary hearing, that that's when he would get
24 the file, and I think we heard evidence from Mr.
25 Ullrich that in early July was when the



1 comprehensive case went over to him.

2 A Yeah.

3 Q Mr. Wolff is deceased, we haven't heard from him
4 as to what he may have had, but are you telling us
5 that you think he may have had some of the
6 statements on his file?

7 A Let's put it this way, I'd be surprised if he
8 didn't, because the time factor enters into it
9 here. This is a letter of June 23rd, and by that
10 time I'm sure the statements would be on his file,
11 I think he probably had them, some of them before,
12 and that's why I think I either got information
13 from him based on statements or information that
14 he had from talking to people.

15 Q And when you are referring to "him" you are
16 referring to Mr. Wolff?

17 A Yes, Mr. Ben Wolff.

18 Q Yeah. Go to 007065. This is a letter June 25,
19 '69, you back to Mr. Caldwell talking about the
20 adjourn date and that you would like:

21 "... to speak to the question of a date
22 for the preliminary hearing at that time
23 and perhaps you could appear or have Mr.
24 Wolff give me some indication of a
25 suitable date."



1 And I understand, at that time, that that was the
2 process, the handoff between Mr. Wolff and Mr.
3 Caldwell would be the time the preliminary
4 hearing date is -- at the time of the preliminary
5 hearing; is that right?

6 A Yes. It was not unusual for Mr. Wolff to speak to
7 it on behalf of the prosecution.

8 Q Go to 006797. And this is a letter from Mr. Karst
9 to Chief Kettles reporting on a meeting between
10 Mr. -- Mrs. Milgaard and David Milgaard. She
11 says:

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

20 And a couple of questions on that. What about
21 the issue of bail for David Milgaard; was that
22 something that you considered or discussed with
23 him?

24 A Yes. At that time I don't think *The Bail Reform*
25 Act was in, and the prospect of getting bail in



1 these circumstances at that stage, I didn't see
2 any reasonable prospect of it.

3 Q Now this comment here, and again I appreciate that
4 these are someone else's words, but is it possible
5 that David Milgaard would be relaying information
6 that you may have told him that there were many
7 things that happened and evidence that would come
8 out at the prelim that they were not aware of?

9 A I don't think I would have put it in, quite in
10 that way.

11 Q Yes.

12 A But I certainly would have indicated that, you
13 know, "we know some of the things that are going
14 to come out, but that there may well be other
15 things that we're not aware of that will come
16 out."

17 Q Now this is July 3rd.

18 A Yes.

19 Q This would be about three weeks after you were
20 first retained?

21 A Yes, that's right.

22 Q Do you think, at this point, you would have been
23 aware of the contents of Ron Wilson's
24 incriminating statement, Nichol John's
25 incriminating statement, and Albert Cadrain's



1 incriminating statement?

2 A I certainly was aware of the con -- or, you know,
3 I can't say 'precise contents', because without my
4 file I wouldn't know, but I certainly knew that
5 they had given incriminating statements to
6 investigating officers and I think that I knew
7 that they had -- that they were at variance with
8 some of their initial statements.

9 Now without my file I couldn't
10 recall all of these details, but I'm quite
11 confident that I had a pretty good sense of the
12 main aspects of this.

13 Q For example one of the statements from Nichol John
14 of May 24th, 1969, in the statement which was
15 sworn before a Justice of the Peace I think on
16 that date, where she stated that she witnessed
17 David Milgaard grab I think either Gail Miller or
18 a girl and drag her down the alley with -- and
19 stabbing her; do you recall learning about that
20 evidence or statement early on in your retainer?

21 A Yes, I -- I -- and I think that some of it
22 probably came, if not all of it, from Mr. Wolff
23 the more I think about it.

24 Q And was that something that you -- would you have
25 conveyed that to David Milgaard, then, early on in



1 your dealings with him?

2 A Oh, yes, I was trying to keep him posted on what I
3 was getting and anything that I, you know, heard
4 or picked up anywhere else.

5 Q If we can then go to 065483, please. Just a
6 couple of documents here we'll go through for the
7 record. This is July 7th, 1969 to Mr. Kujawa
8 following up on your possibility of getting an
9 independent psychiatric -- psychiatrist, pardon
10 me, retained by the defence. And then as well
11 065355, which is --

12 A Yeah.

13 Q -- July 29th, another follow-up letter about the
14 psychiatrist. And I understand, sir, you may have
15 told us that at some point that you abandoned --
16 maybe "abandoned" is the wrong word -- did you
17 cease trying to pursue this getting your own
18 psychiatrist to examine Mr. Milgaard?

19 A When -- somewhere along the line of the time frame
20 I had an indication that the Crown wasn't going to
21 lead evidence of bad character and I didn't pursue
22 this. Now that doesn't mean that I hadn't
23 considered the possibility of getting a psych --
24 psychiatric assistance from a friend of mine --

25 Q Okay.



1 A -- which would be at no cost.

2 Q So let's just go back on the point, and I think at
3 some point did Mr. Caldwell then tell you "I do
4 not intend to lead psychiatric evidence or
5 evidence suggesting that David Milgaard has a
6 propensity to commit this type of crime"?

7 A I'm quite sure of that, that he indicated that to
8 me.

9 Q And, in fairness, --

10 A And I think I had indicated to him in our
11 discussions that I would vigorously oppose it if
12 he pursued it, so --

13 Q Right, and I think you've told us that --

14 A Yeah.

15 Q -- you did not view that as being properly
16 admissible; is that right?

17 A That's right, yeah.

18 Q So he is not going to call that evidence. Then
19 the other issue you raised, and we'll deal with
20 this in more detail when we talk about the factors
21 that went into your advice to Mr. Milgaard about
22 testifying, is this issue of bad character, and
23 perhaps you can explain to us under what
24 circumstances you thought you might need some
25 psychiatric evidence regarding David Milgaard,



1 either from a confidant/friend or from a
2 psychiatrist that you would retain?

3 A Well if the Crown psychiatrist had testified that
4 this individual, that David was a person of
5 violent disposition and likely to kill or maim, I
6 would clearly want to challenge that assessment,
7 and in order to do so one would want to have the
8 opinion of another practitioner in the field as
9 well as maybe lay people who knew him.

10 Q Okay. Now, given that the Crown said they were
11 not going to lead that evidence, what other
12 situation might you have found yourself in where
13 you might have needed psychiatric evidence
14 relating to Mr. Milgaard?

15 A Yeah. At this stage I can only say this; that I
16 had to consider the possibility that if he was
17 called, if I called him as a witness, that he
18 might inadvertently put his character in issue and
19 then the Crown might take the position that they
20 could now lead rebuttal evidence on that.

21 Q And can you give us an example of how that might
22 happen, how -- if you -- when you say
23 "inadvertent" I take it then, when you put his
24 evidence in, you would not put his character into
25 issue?



1 A That's right, I would try to control it.

2 Q And why?

3 A Well, because I don't think that it was a relevant
4 consideration, I didn't think it was a relevant
5 consideration with respect to the issue before the
6 Court. And propensity evidence, as I understood
7 it then, was that you don't convict a person on
8 the basis of his bad character, you convict him on
9 the basis of the evidence adduced with respect to
10 this crime. And that's something that I would be
11 very conscious of, not only in my
12 examination-in-chief, but also in
13 cross-examination. I have to -- you have to worry
14 about that too, because a person can be lured into
15 putting their character in issue on
16 cross-examination, and not appreciate the
17 consequences of it.

18 Q Let's just talk firstly about, if you had called
19 David Milgaard as a witness, if he would have
20 answered a question either from you or Mr.
21 Caldwell to the effect that "I'm not the type of
22 person that would commit that type of crime"; is
23 that something -- and I appreciate that there's
24 legal argument that goes into it -- but is that
25 the type of thing that might raise the prospect



1 that the Crown would be entitled to call rebuttal
2 evidence that suggested that he was the type of
3 person that might commit that crime?

4 A I think that's a good illustration of how it could
5 unfold.

6 Q And so, in that scenario, was one of the reasons
7 you were trying to gather this information would
8 be to assist you in the event that that type of
9 issue came up before the Court?

10 A Yes.

11 Q If we can now go ahead to August 4th, 1969, and I
12 just want to call up 065492 on the left side and
13 on the right side if you could put 065407, and we
14 touched on these earlier. And these are the two
15 accounts that talk about your three in-person
16 meetings with David Milgaard --

17 A Yes.

18 Q -- at Prince Albert being August 4th, December
19 11th, and November 12th right above. And I think
20 you've told us that that would have been three
21 meetings where you went to Prince Albert and met
22 in person with David Milgaard; is that correct?

23 A That's quite correct.

24 Q And August 4th would be before the preliminary
25 hearing, and the November 12th/December 11th would



1 be after the preliminary hearing but before the
2 trial, correct?

3 A That's correct.

4 Q I think in addition you have told us that
5 certainly June 7th, June 8th, June 9th, in that
6 time frame, you would have had meetings with Mr.
7 Milgaard in police -- when he was in police cells
8 in Saskatoon; is that correct?

9 A Yes. And I think it was spoken to on June 16th, I
10 believe, from what you indicated to me.

11 Q Correct.

12 A I'm not sure whether he was kept here in the cells
13 up until that time or not, but certainly I would
14 have spoken to him again on the 16th, or before
15 that.

16 Q Right. And then I think you also told us that
17 during the course of the preliminary hearing,
18 starting August 18th finishing September 11th,
19 1969, that you would have spent many occasions
20 both before, perhaps the day before, or during the
21 proceedings while the Court wasn't sitting,
22 spending time with Mr. Milgaard; is that correct?

23 A Yes, and during the breaks or after, you know,
24 before the proceeding got underway in the morning.

25 Q Would it be fair to say that August 4th, although



1 it wasn't your first meeting with Mr. Milgaard and
2 not your first discussion, but would this be your
3 first significant sit-down meeting with him where
4 you could go through everything?

5 A Yes. I think the other meetings were significant,
6 and in many respects even more significant, but on
7 this particular occasion I was able to go through
8 everything I had in a much more disciplined
9 fashion and --

10 Q Now I want -- yeah, I want to call up 007042 for a
11 moment. This is a letter August 15th, 1969 from
12 Mr. Caldwell to you enclosing copies of the
13 statements of Albert Cadrain, Ron Wilson, and
14 Nichol John and, as well, the autopsy report.
15 This would be August 15th, three days before the
16 --

17 A Yes.

18 Q -- preliminary hearing.

19 A Yes.

20 Q And August 4th, 1969, when you met with David
21 Milgaard in Prince Albert, did you have copies of
22 these statements from Cadrain, Wilson, and John
23 and/or were you aware of their contents?

24 A I was certainly aware of their contents, because I
25 was able to go through details with him that I



1 could not have gone through unless I was aware of
2 their contents. As I said to you earlier, whether
3 I got -- I don't think I got copies from Mr.
4 Wolff, but I may well have sat down and written
5 out essentially everything that was in them,
6 because by the time I went up on August 4th I
7 certainly had background information that enabled
8 me to review the whole thing with him, and this
9 was done deliberately to be ready for the
10 preliminary hearing.

11 Q And so on your meeting of August 4th, 1969 with
12 David Milgaard, and perhaps prior, would you have
13 gone through with Mr. Milgaard what Ron Wilson,
14 Albert Cadrain, and Nichol John were saying in
15 these statements --

16 A Yes.

17 Q -- about his involvement in the crime?

18 A Yes, I certainly had discussed, discussed that
19 with him even before August 4th.

20 Q Now there is also some record that suggests David
21 Milgaard, he provided two statements to the police
22 I believe on March 3rd, 1969 and I think the other
23 one was April 18th if I'm not mistaken, of 1969;
24 would you have been aware -- yeah, it is April
25 18th, '69 -- would you have been aware of the fact



1 that Mr. Milgaard gave two statements to the
2 police and, if so, at what stage in your
3 involvement would you have become aware of that?

4 A Well very early on I became aware that there were
5 two written statements, but I think that I also
6 became aware that he probably gave oral statements
7 or had been interviewed by the police even before
8 they took written statements.

9 Q Okay. And would that be from Mr. Wolff do you
10 think?

11 A I think it probably was.

12 Q Okay.

13 A Now I -- the other, and there would be another
14 source too, and that is David himself. I mean
15 early, very early on in one of the early meetings
16 I am quite sure that I asked him about his
17 involvement with the police, and I think I
18 remember him telling me in general terms that
19 there was one statement that he hadn't signed, and
20 of course later on when I looked at those
21 documents I see that there was one that wasn't
22 signed, he didn't wish to sign it as I recall.

23 Q And on August 4th, 1969, when you went to meet
24 with Mr. Milgaard, can you tell us at that time
25 whether you would have either had copies of his



1 written statements or been aware of the contents
2 of those written statements?

3 A I'm quite safe in saying that I would be aware of
4 the contents. Whether I had actual copies, I do
5 not recall, and the reason I say that is that I
6 don't recall Mr. Wolff actually giving me any
7 copies. I'm just a -- but I'm quite sure I must
8 have got information from him. And as I said to
9 you earlier, he may very well have said "sit down
10 and read it and make some notes", and everything
11 like that.

12 COMMISSIONER MacCALLUM: I'm sorry, Mr.
13 Hodson, was the witness asked this with respect
14 to Mr. Milgaard's own statements?

15 MR. HODSON: Yes, that was the last
16 question.

17 COMMISSIONER MacCALLUM: That was the last
18 one? Okay.

19 MR. HODSON: The March 3rd and April, I
20 think it's 18th, 1969 statements, his two
21 statements.

22 BY MR. HODSON:

23 Q And I think your evidence, sir, was that yes, you
24 would have certainly -- I think you said it's safe
25 to say that you were aware of the contents and



1 possibly may even have had some notes recounting
2 what was in the statement; is that correct?

3 A Yes, yes. And, also, I was aware from talking to
4 him of the fact that he had probably talked to the
5 police on occasions where no statement was
6 actually taken.

7 Q Now, we know that from some police reports that
8 we've had a chance to look at, that he talked to
9 the police on occasion. How would you have become
10 aware of that then?

11 A From talking to David, by asking him.

12 Q I see, okay.

13 A And here again, if I had my notes, I'm sure that
14 they would indicate the nature of the discussion,
15 content of it, but --

16 Q What I would now like to do, Mr. Tallis, is to
17 have you walk through and tell us what it was that
18 you can recall David Milgaard telling you in
19 preparation for the trial, and what I would like
20 to do, and I appreciate, sir, that other than what
21 I have shown you, you do not have your file notes
22 to indicate on what day he may have told you what
23 items, but I would like to go through it this way,
24 is to tell us generally what you recall him
25 telling you and then I will try and prompt you to



1 tell us one of two things; number 1, whether the
2 information would have been provided by Mr.
3 Milgaard to you prior to the preliminary hearing
4 or after, if you are able to tell us, and
5 secondly, whether the information was provided by
6 Mr. Milgaard to you early on in the sense of
7 initial meetings or whether it was information
8 that you had to, for lack of a better word, prod
9 or try and get from him on subsequent leaves,
10 okay, and so then that way we'll try and figure
11 out when you received the information and at what
12 point in the proceedings it may have come from.
13 And if we can start with, you told us about, I
14 think you said you would have talked about his
15 general background. What do you recall Mr.
16 Milgaard telling you about his background?

17 A Well, I think that I can sum it up this way as far
18 as difficulties he had had, he had had a troubled
19 youth, and from talking to him he certainly
20 described some conflict with the law, but I don't
21 recall any details at this stage. I think there
22 was something raised about sexual morality and
23 things like that, but that's the best I can do in
24 that area, but he certainly had had a troubled
25 background, and then of course I talked about his



1 schooling and I recall that he had had some
2 difficulties in that connection, and I know in
3 some of the material there's reference to what
4 social workers had said and so on, but I can't
5 recall those details. I know I had them and spent
6 a fair bit of time talking to him, getting to know
7 him, and then of course his work record, albeit he
8 was very youthful, he had been selling newspaper,
9 or Maclean's subscriptions, and whether there were
10 others, but in this area I spent, I know, quite a
11 bit of time talking about his background, but I
12 really can't assist you any more than that.

13 Q Sure. And would you have made notes then of what
14 he told you?

15 A Oh, yes, very copious notes.

16 Q Would you have obtained from third parties any
17 documents relating to Mr. Milgaard dealing with
18 social workers, psychiatrists, doctors, anything
19 of that nature?

20 A No, I didn't have anything like that. I know that
21 you were good enough to show me some
22 documentation, but I had never seen anything like
23 that or spoken to any of the people that were
24 involved.

25 Q And for the record, Mr. Tallis, what I showed you



1 is some of the documents I believe that Dr.
2 McDonald had and Mr. Caldwell may have had at the
3 time and I think, and please correct me if I'm
4 wrong, what you are telling us is that you would
5 not have seen any documents relating to Mr.
6 Milgaard's psychological background, any issues he
7 may have had at school with social workers,
8 anything of that nature; is that correct?

9 A That is correct. My source on that was David.

10 Q Did you talk to his parents at all about this
11 subject?

12 A I may have, but I can't recall any details. I
13 know David was very reluctant to have me discuss
14 certain matters with his parents and I could
15 understand that.

16 Q And what, just generally, what types of matters
17 was he --

18 A Well, there were, you know, questions of sexual
19 conduct and so forth. I could understand a boy of
20 that age not wanting me to discuss it either in
21 the presence of his mother or, you know, with her,
22 that was my feeling.

23 Q And so --

24 A And I respected his privacy.

25 Q And so these meetings and interviews of David



1 Milgaard on these subjects, would they take place
2 in the absence of his mother then?

3 A Yes. There may have been the odd time when things
4 were touched on, but basically that's the way he
5 preferred it. I respected his desire for privacy.

6 Q And do you recall, Mr. Tallis, what your sense was
7 after getting this information? Let me maybe just
8 back up. Why did you get this information from
9 him?

10 A Well, I guess, for one thing, it's always nice to
11 sort of have the background and history and in
12 this case it was no different from any other
13 because in my check list, things to check out,
14 that was certainly one of them, because very early
15 in the going you are always exploring potential
16 defence information, but in this case I was quite
17 satisfied that there was no basis on which to, you
18 know, raise a defence of insanity. I mean, it was
19 a not guilty plea was what was called for.

20 Q And would this information be gathered by you in
21 part to inform you when it came time to advise Mr.
22 Milgaard whether he should testify?

23 A Most definitely.

24 Q And so again we'll touch on that a bit later, but
25 this would be information to assist you in



1 informing yourself about what advice you should
2 give to him?

3 A That's correct.

4 Q And can you tell us, after having gathered this
5 information about Mr. Milgaard's background, did
6 you have concerns about that background coming out
7 at the trial if Mr. Milgaard chose to testify?

8 A I certainly would not have wanted the Crown to
9 adduce it and I would not want to have had that as
10 part of the case.

11 Q Yes.

12 A And one of the things of course that I do recall
13 going into, now that you raise it, was the
14 question of the use of drugs and alcohol, and
15 because of the information I had received about
16 the use of drugs and so on, I tried to take great
17 pains to establish that at the time of this trip
18 none of them were under the influence of alcohol
19 or drugs.

20 Q And apart from this trip, what information did you
21 get from Mr. Milgaard regarding his drug use and
22 alcohol use?

23 A Well, I recall that, you know, he was quite candid
24 about the use of drugs, that this had been going
25 on for a while, and he wasn't alone in that. I



1 mean, there were a lot of kids of that age in that
2 era that were doing drugs as they used to say.

3 Q We've heard the term hippie being used for these
4 young people in the late '60s. Can you tell us,
5 did you have any concerns about how that might
6 play with the jury?

7 A Well, it's certainly not something that one would
8 want to see run to the top of the flag pole
9 because it could deflect attention away from the
10 real issue.

11 Q And at that time, 1969, do you recall, Mr. Tallis,
12 whether there was any, sort of in the community
13 any issues with hippies and drugs and things of
14 that nature that might influence a jury?

15 A Well, the possibility was always there and I was
16 quite familiar with small town, rural
17 Saskatchewan, in that area the attitude was very
18 inhospitable to that type of conduct. Not that
19 I'm suggesting the cities cultivated it, but I'm
20 just saying that my recollection is that the view
21 was pretty strict in most of the areas.

22 Q It brings up a point, Mr. Tallis, that I had
23 intended to cover later but can ask you now. Did
24 you give any thought to seeking a change of venue
25 of the trial to another location within



1 Saskatchewan?

2 A Yes, this was certainly something that I
3 considered, but on balance I ended up rejecting
4 the notion that maybe one should do it.

5 Q And why was that?

6 A Well, I thought that one could get a conscientious
7 and fair-minded jury in Saskatoon where I would
8 certainly have a much better opportunity to vet
9 the members of the jury panel, and secondly, of
10 course, I knew that David had been around Regina
11 quite a bit and that the drug activities that he
12 was in had taken place there, whereas Saskatoon,
13 he hadn't been here very much. As far as outlying
14 communities, outlying judicial centres, I think
15 that it would have been very unwise.

16 Q And would that be because Regina, Saskatoon would
17 be the two urban judicial centres, beyond that
18 would be rural?

19 A More rural, yes, more rural, and less exposure to
20 drugs and the hippie culture, if I may borrow your
21 term.

22 Q I borrowed it from others, so yes, you may. What
23 about outside the province, was that a possibility
24 at the time?

25 A Well, I don't recall whether it was in or not. I



1 didn't consider that it was a realistic, that it
2 was a possibility. Now, the *Threinen* case here
3 involved an application to move a murder trial out
4 of the province and that was rejected and I think
5 is still considered an authority on the question,
6 that it simply was not permissible in law. I
7 cannot recall now whether that case was decided
8 after this case or before.

9 Q I think it was 1974.

10 A I see. Well, in any event, long before that I was
11 of the view, and I think that I had looked into it
12 on some occasion, that it simply was not a point
13 that would be successful.

14 MR. HODSON: Okay. This may be an
15 appropriate spot to break, Mr. Commissioner.

16 *(Adjourned at 2:44 p.m.)*

17 *(Reconvened at 3:09 p.m.)*

18 BY MR. HODSON:

19 Q Mr. Tallis, just when we broke we were talking
20 about the possibility of a change in venue and I
21 think you were telling us that you had considered
22 it and decided not to make that application; is
23 that correct?

24 A That's correct.

25 Q And were there any other matters that you



1 considered other than what you told us?

2 A Well, I think that I mentioned to you that later
3 on the *Threinen* case came along which dealt with
4 the issue, but before that I had certainly thought
5 about the issue and, among other things, I
6 concluded that it simply would not pass
7 constitutional muster, if I may use that term, in
8 terms of -- that is, in terms of trying to have it
9 transferred to another province.

10 Q And as far as within the province, I think you've
11 told us the various reasons why you considered
12 Saskatoon to be a preferable venue then; is that
13 correct?

14 A Yes, within the province I thought Saskatoon was a
15 preferable venue from the standpoint of the
16 defence, and just to go back, when we're talking
17 about change of venue to another province, and
18 when I say that I didn't think it would have ever
19 passed constitutional muster even before the
20 *Threinen* case, I do not think the law would have
21 enabled Saskatchewan, for example, to move the
22 case to Alberta and prosecute it in Alberta.

23 Q Okay. If we can then just go back, and I would
24 like to maybe start chronologically a bit from the
25 events of January 30 and 31, 1969 and have you



1 tell us what David Milgaard told you about the
2 events of those two days, perhaps starting in
3 Regina and getting the vehicle ready and the
4 purpose of the trip and how he knew Ron and
5 Nichol.

6 A I should preface my remarks by saying that the
7 details evolved over a period of time and I'm not
8 able, and I think you mentioned this, to pinpoint
9 exactly when certain information was given to me,
10 but of course my, on my first interview and when I
11 took instructions from him, I've made it clear
12 that he denied any involvement and also denied
13 that any person in the vehicle had anything to do
14 with that and I'm quite sure that I put those
15 questions directly to him, but then to back up, I
16 can't recall the time in which they left, at which
17 they left Regina, but my recollection is it was
18 sometime after midnight. Before they left they
19 had, had to get ready to go and there was some
20 difficulty with the battery in their car and they
21 got another battery and put it in, so we had a
22 discussion about battery acid.

23 Q Do you recall what he told you about where they
24 got the battery from?

25 A I'm not sure, but I think, to use the term that



1 some of the kids used then, I think it was
2 borrowed, but that's my recollection.

3 Q From someone who knew it was being borrowed?

4 A No, I took it to be that it was --

5 Q Stolen?

6 A Stolen.

7 Q And so was that something he would have told you
8 then?

9 A If not right then, not too long, you know, at one
10 of the subsequent meetings when I was fleshing out
11 things.

12 Q Okay.

13 A And I also asked about whether they were using
14 drugs or liquor on the trip. Now, before that
15 there's no doubt they had been using drugs in
16 Regina, but I don't know how long before, whether
17 it was the day before or not, I just don't
18 remember those details, but they did get on their
19 way, and my recollection is that he had known
20 Wilson for quite some time and they met, they knew
21 Nichol. I don't think he had known her that long,
22 but I'm not sure where he had met her, whether it
23 was in a restaurant or something like that and
24 that she then decided to come with them, that is,
25 I think he had known her before, but that



1 particular day, and so they started out and I
2 appreciated from talking to him that essentially
3 they didn't have any -- well, they didn't have any
4 money. Nichol I think had a little bit of money,
5 but she was the only one that had any funds at
6 all, and that was very modest.

7 Q And did you -- did he tell you what they planned
8 on doing to finance the trip or to pay for
9 expenses along the way?

10 A Well, I recall that they stopped at Aylesbury
11 which is, as you know, west of Chamberlain, and at
12 that time he entered the, what I would call the
13 elevator office. I don't recall the name of the
14 elevator, that is, of the grain company, but I
15 know that at that time there were a number of
16 elevators there, and I don't recall any real
17 details about the time in Aylesbury except they
18 didn't, he didn't get anything by way of money.
19 The purpose of going into the office was to try to
20 find some money in there just in case it was left
21 and then I think you or somebody or some of the
22 material suggested that a flashlight had been
23 taken out.

24 Q Yeah.

25 A I have no recollection of any mention of a



1 flashlight being taken, but I can't say one way or
2 the other on that without my notes.

3 Q Sure. And just the evidence we've heard and the
4 statements suggest that a flashlight was taken
5 that Mr. Wilson then later returned to the police.
6 Just back on the elevator, do you recall whether
7 he told you who went into the elevator?

8 A My recollection is that David was the one who went
9 in, but the others certainly knew the purpose of
10 going in and were there, I mean, in the vehicle.

11 Q And was the purpose of going in to try and find
12 some money?

13 A That's right.

14 Q Do you recall Mr. Milgaard telling you anything
15 about discussions that he and Ron Wilson and/or
16 Nichol John may have had about criminal activity
17 that might be undertaken to get money for the
18 trip?

19 A You know, I don't have any recollection of that at
20 this time, but he may well have told me about
21 that.

22 Q Okay.

23 A Because they didn't have any money and sort of the
24 subsequent conversation would tend to lend some
25 credence to that, but to say that I have any



1 recollection of him relating this discussion about
2 snatching purses or something like that to get
3 money, I simply don't recall it at this stage.

4 Q And in fact I think it was Mr. Wilson's evidence
5 and/or statements that indicated that on the trip
6 from Regina to Saskatoon I think he said that he
7 and David discussed purse snatching and I think
8 perhaps break and enters, although that may not
9 have been consistent with all of his statements,
10 but something along those lines to finance the
11 trip, and you're telling us I think that you don't
12 have a recollection of David telling you that; is
13 that correct?

14 A I don't have a recollection of him telling me
15 about that discussion, but it -- he may well have.

16 Q If we can just back up for a moment. In Regina I
17 think you talked about the battery and spilling
18 acid on his clothing. Do you recall what he told
19 you about whether he changed his pants in Regina
20 or not?

21 A I don't think he changed -- my recollection is
22 that he changed his trousers later in Saskatoon,
23 and that's sort of jumping ahead, but I don't
24 recall any mention of -- in fact, in my mind he
25 did not suggest that he changed his trousers in



1 Regina.

2 Q Okay. If we could -- what did he tell you was the
3 purpose of the trip, where were they going and why
4 were they going to Saskatoon?

5 A Well, I think that they were going to Saskatoon so
6 that he could look up his friend Shorty Cadrain
7 and then they were going to go on to Alberta, or
8 there was some talk I think of maybe even going
9 east, but I think the primary focus was on going
10 to Alberta.

11 Q And for what purpose, did he tell you?

12 A Well, it was just I think part of the lifestyle at
13 that stage and I believe that, you know, they knew
14 that they could find drugs and things along the
15 way.

16 Q And did you ask Mr. Milgaard whether he had a
17 knife on his possession or in the car on the trip
18 between Regina and Saskatoon?

19 A Yes, I recall him telling me that he had a knife,
20 this is before they were at Aylesbury, and the
21 knife he had -- first of all, he said it wasn't a
22 paring knife and in particular it was not the
23 maroon-handled knife that had allegedly been used
24 in the homicide, but he described the knife -- I
25 took it in terms of meaning it had a flexible



1 blade. I think he may have used the term soft
2 blade and that flexible is my interpretation of
3 it, and this was handy for slipping the lock on
4 many doors at that time, sort of like someone used
5 to use the heavy plastic to do it, but a knife
6 blade often was used.

7 Q Did he still have the knife?

8 A No, he didn't know what had happened to it.

9 Q And did he describe it any further as far as
10 colour, how big it was, anything of that nature?

11 A It wasn't a very long-bladed knife, but he was
12 quite clear in saying it was not a paring knife
13 type that was like the maroon-handled knife that
14 was presented.

15 Q Okay.

16 A Now, I know we discussed this in quite detail, a
17 bit of detail as to -- I was anxious to know what
18 might have happened to it and so on, but --

19 Q Did -- I'm sorry?

20 A -- he sort of lost track, he lost track of that
21 and was unable to tell me.

22 Q Did the fact that he told you he had a knife on
23 the trip between Regina and Saskatoon cause you
24 some concern?

25 A Well, I knew that it would be a relevant



1 consideration and would be a significant area of
2 questioning if he gave evidence. If not, if it
3 wasn't led in chief, it would have certainly
4 involved a significant cross-examination, along
5 with other matters.

6 **Q** Right. Now, the elevator entry, was that
7 something that Mr. Milgaard volunteered to you
8 early on or can you tell us when that would have
9 come out in the discussions?

10 **A** It didn't come out in the first meeting as I
11 recall it, it wasn't -- it was not too long after,
12 and I've gone through all the documents and
13 everything that you've shown me, and my best
14 recollection is that it came out in discussions
15 well -- before the visit to Prince Albert.

16 **Q** Okay. Now --

17 **A** And he -- I asked him, of course, you know, what
18 they did along the way because their arrival in
19 Saskatoon was quite a few hours after they left
20 and I have a vague recollection of some mention
21 being made of a stop in Craik, which of course is
22 the next town from Aylesbury if you are travelling
23 from Regina to Saskatoon, but I can't recall any
24 details of what happened there, I just remember
25 the Town of Craik being mentioned, but to fill in



1 details on that without my notes is just
2 impossible for me.

3 Q I think we've seen some mention of the fact that
4 their vehicle may have been stuck there and that's
5 where they stripped the reverse out of the car.
6 Does that assist your memory at all?

7 A No. I read that and it just doesn't assist me in
8 the discussion as to, number 1, why they were
9 there and, number 2, what happened there and so
10 on.

11 Q The elevator break-in I think is mentioned, and I
12 stand to be corrected, but I think it's mentioned
13 in Ron Wilson's, one of Ron Wilson's statements to
14 the police. Is it possible that that issue would
15 have been raised with Mr. Milgaard by you based on
16 what you knew was in the statement?

17 A It's quite possible, although it may, it's equally
18 possible that I was asking him, you know, very
19 deliberately about where did you stop, what
20 happened and so on.

21 Q Then let's talk about their arrival in Saskatoon.
22 What did he tell you about the time of day that he
23 arrived, or was he able to put a time to it?

24 A He didn't put a specific time. From our
25 discussions I took it to be early morning, and



1 from the, from our discussion I remember
2 concluding, although I can't recall the details,
3 that they basically came in the freeway route --

4 Q Yes.

5 A -- and that they -- and I say that because I think
6 I remember some reference to the Sears store.

7 Q Yes.

8 A Which would bring him into that, you know, that
9 they come off in that vicinity.

10 Q So would that be on 20th Street then?

11 A I -- that's right. But then there was -- I tried
12 to figure -- then from our discussion, and of
13 course he wasn't able to pinpoint anything that
14 much, I concluded that they did go to the west
15 side, which is essentially where he was looking to
16 find his friend Shorty.

17 Q Yes.

18 A Pleasant Hill District. I call, I use the term
19 "west side" to refer to the area west of Idylwyld,
20 or what we used to call Avenue A. And from
21 talking to him I gathered that at one point they
22 may have been on 22nd Street going west, and the
23 reason I say that is it was sort of a main
24 thoroughfare out of town so to speak, and I can't
25 tell you why I came to that conclusion but



1 certainly, from our discussion, I realized they
2 may well have been on there and proceeded west for
3 some distance.

4 Q If we could maybe call up map A. We have a couple
5 of maps here that might assist us, and I think
6 this was the map, I believe this may have been the
7 map that was used at trial; does this look
8 familiar?

9 A Well I can't say that it does, but it's certainly
10 accurate, it reflects the streets as I recall
11 them.

12 Q I'm just going to take a look, maybe map B or map
13 C, I can't recall. No, the next map. I'm
14 wondering if we could get one with the freeway on
15 it. Is there a map C? No, that doesn't help. If
16 we can go back to map A. For Monday, Mr. Tallis,
17 I will find -- we do have some city maps that
18 might assist you. And I think, if I may, I think
19 you said that they would have come in, there would
20 be a number of blocks to the east, this is north,
21 they would have come in on the freeway and turned
22 onto 20th Street I think you said; is that
23 correct?

24 A Yes, that's, that's my sense of things, that they
25 made the turn there and then later got over onto



1 22nd.

2 Q Do you know where? Based on your discussions with
3 Mr. Milgaard did you arrive or conclude in your
4 mind where -- and let me just pause here. This is
5 presumably before they visited the Trav-a-leer
6 Motel; is that correct?

7 A Oh, yes, we're talking about that.

8 Q So this is their arrival and before they get to
9 the Trav-a-leer Motel; correct?

10 A Yes.

11 Q And so I think you are saying you thought that
12 they were on 20th Street for a while; is that
13 correct?

14 A Turned off there near Sears and drove to the west
15 side, and I have a recollection that they ended up
16 at one point on 22nd Street, which is sort of a
17 main thoroughfare. Why I have that recollection I
18 cannot tell you, but they -- and then they drove,
19 they were -- moved in a westerly direction, and
20 then I think they were, as I recall it they were
21 driving north and south looking for landmarks that
22 David could see with a view to locating his friend
23 Shorty's place.

24 Q So if I have this correct on the map they would go
25 west on 20th Street, and then north to 22nd, west,



1 and back north and south on the avenues; is that

2 --

3 A Oh, I'm not saying on every one, but on some of
4 them, yeah.

5 Q And so somewhere between 20th and 22nd Street they
6 were travelling north and south down the avenues
7 looking for Shorty's house?

8 A Yes. And now they may have even crossed over 20th
9 in places, I -- in a southerly direction, I can't
10 remember how that --

11 Q And how far west were they; are you able to --

12 A No, I'm not able to pinpoint anything, because I
13 tried to orient it to landmarks. I remember
14 thinking that maybe St. Paul's Hospital would be a
15 significant landmark on the corner of P and 20th,
16 if I recall it.

17 Q Yes.

18 A But that didn't assist. And I'm sure I asked
19 about the funeral home and so on, if he remembered
20 that or anything, and it just didn't assist in
21 pinpointing anything like that.

22 Q And was he able to tell you precisely where, then,
23 which avenues he was going north and south on
24 between 20th and 22nd?

25 A No, he wasn't, and I wasn't able to identify them



1 based on any landmarks or anything that I knew.

2 Q Would it be fair in saying, Mr. Tallis, that in
3 doing this one of your concerns would be to find
4 out whether or not they were in the vicinity of
5 where Gail Miller's body was found; is that
6 correct?

7 A Yes, there is no doubt about that, I wanted to
8 know where they had been going and that, that was
9 certainly one of the things I was canvassing.

10 Q Was it your sense that their vehicle was or may
11 have been travelling in the vicinity between 20th
12 and 22nd between, for example, Avenue N, Avenue O,
13 and in that vicinity?

14 A Well certainly, on the basis of what he told me,
15 it was quite possible, but it could just as easily
16 have been another avenue a little more to the
17 east.

18 Q Okay. So it could have been over Avenue H, J, it
19 could have been S, Avenue T?

20 A I don't think it was Avenue H, because there would
21 have been landmarks there that I think would have
22 been quite identifiable.

23 Q In your mind, sir, did you narrow it down to where
24 you thought it might be, or where a jury might
25 believe it to be if Mr. Milgaard were to tell the



1 jury what he told you about the north-south
2 travels and the avenues between avenue -- 20th and
3 22nd Street?

4 A Well I think there was a good possibility that
5 they would conclude that the vehicle was in the
6 vicinity.

7 Q Of the murder?

8 A Of the -- yes. You know, not right there, but in
9 the vicinity. Umm --

10 Q And when you say "vicinity" are you talking within
11 a block, two blocks?

12 A Well within two, three blocks of the area.

13 COMMISSIONER MacCALLUM: A good possibility
14 the police would conclude that; is that what you
15 said?

16 A No.

17 MR. HODSON: I think my question was the
18 jury.

19 COMMISSIONER MacCALLUM: Oh, the jury?

20 A Yes, the jury. And during the course of this
21 attempt to locate something that would put them
22 onto Shorty's place -- and remember that David was
23 the one who had been to Shorty's, the others
24 hadn't, so he I think was sort of directing where
25 they might go -- they did stop in one of their



1 travels going I believe it was north and south,
2 we've talked about their -- they talked, pulled
3 alongside a lady and --

4 BY MR. HODSON:

5 Q Let me just pause for a moment.

6 A Okay.

7 Q So on the travels on the avenues between 20th and
8 22nd Street going either north or south, on one of
9 the avenues they, I think you said he told you
10 they stopped a lady?

11 A Yeah, they pulled alongside a lady, I guess that's
12 the better way to put it.

13 Q Okay.

14 A And he asked for directions.

15 Q Who did?

16 A David did.

17 Q Yes.

18 A Looking for Pleasant Hill.

19 Q Yes.

20 A And her answer, I believe, was that she didn't
21 know and kept walking.

22 Q Now we've heard the term "Peace Hill" as well as
23 "Pleasant Hill"; do you recall if David ever used
24 the term "Peace Hill"?

25 A I don't think David ever used the term "Peace



1 Hill" in talking to me. I think he knew the term
2 "Pleasant Hill" but I could be wrong in that.

3 Q Now at this time I take it, Mr. Tallis, that you
4 would have been aware of the statements of Ron
5 Wilson and Nichol John and the significance of the
6 woman being stopped and asked for directions?

7 A Yeah, yes.

8 Q Can you tell us, just on the exchange with the
9 woman seeking directions, did you try and identify
10 where that may have taken place?

11 A I tried to, but I was unable to pin anything down.

12 Q And I think you told us it was on one of the
13 north-south?

14 A Yes, that's my recollection.

15 Q And what about the description of this woman, what
16 did Mr. Milgaard tell you about that?

17 A Well this was a, of course a very cold morning,
18 and I don't think he got an opportunity to see her
19 face, but he described her as an older woman. And
20 I spent some time discussing this with him,
21 because age to a 16 or a 17-year-old person may be
22 something quite different to what I would think,
23 and I wasn't able to pinpoint an age but I do
24 recall trying to equate it "how would she compare,
25 say, to my age" or I believe I said "or to your



1 mother's", and for some reason I have the idea
2 that, or I concluded from the discussion the
3 individual was probably in the range of 35 to 40,
4 in his view, but he wasn't able to really see her
5 face because it was so cold that --

6 Q What did he base his -- did you ask him how he
7 could say that she was old if he didn't see her
8 face?

9 A Well I asked, I know I asked about that, and my
10 sense of things is that on the manner of walking
11 and so forth.

12 Q Okay.

13 A Now I know that's not of much assistance to you,
14 but that's the best I can do on that aspect of it.

15 Q And as far as the colour of coat this woman was
16 wearing, do you recall what he said about that?

17 A I think he said it was a dark coat.

18 Q And do you recall what Mr. Milgaard told you about
19 what he said to this woman?

20 A I don't recall whether he made any comment,
21 whether he told me that he made some comment about
22 her, or not, to his friends.

23 Q Okay. There was -- I'm sorry?

24 A But I do know that during the course of my
25 discussions with him, and I can't pinpoint the



1 occasion, I asked him, you know, "what was your
2 purpose" or "why did you pull alongside her and
3 ask her this", and there came -- there was a point
4 where he said, "well, I have to admit that I
5 thought of robbing her". Now by that I took him
6 to mean snatch her purse, and I don't recall
7 whether he used the term "rob" or if that's my
8 interpretation of what he said about snatching the
9 purse, but that was a point that I considered very
10 significant --

11 Q Okay.

12 A -- in terms of, later on, in terms of whether he
13 was called to give evidence.

14 Q And could you -- can tell us what would have been
15 your concerns about that piece of information?

16 A Well I thought the Crown would be advancing
17 robbery or purse-snatching as a motive for the
18 murder, quite apart from the sexual aspect of the
19 assault that took place in connection with the
20 homicide, and I realized that if he was called as
21 a witness this is evidence that I would probably
22 have to decide to lead in chief with a view to
23 taking the sting out of it, for want of a better
24 impression, because I knew that Crown counsel
25 would robustly cross-examine on the circumstances



1 of that, and what the real purpose was, and so
2 forth.

3 Q There was some evidence in the statement I think
4 of Ron Wilson, and perhaps others, that suggested
5 that as part of this exchange, or when the vehicle
6 left, that Mr. Milgaard either said to the woman
7 or said in the car, quote, "you stupid bitch",
8 quote; do you recall discussing that with Mr.
9 Milgaard and asking whether he said that or not?

10 A I have no doubt that I discussed it with him, but
11 I just cannot recall what was said on that point.
12 I have to say I think my focus ended up being on
13 the other aspect of it, but that, that's the best
14 I can do in terms of assisting you on that point
15 of --

16 Q At what point in your series of meetings with Mr.
17 Milgaard did the information about his thoughts of
18 robbing this woman; when did he tell you that?

19 A Well it came out, I can say it was before the
20 preliminary hearing, but I cannot pinpoint. It
21 did not come out, you know, in our first or second
22 meetings, you know, I know that.

23 Q So, after they stopped the woman for directions,
24 what did Mr. Milgaard tell you happened next?

25 A Well they continued driving, still looking for



1 Shorty or Shorty's place, and there came a time
2 when they got stuck. And it was very -- I was
3 never able, in discussions with him, to pinpoint
4 where they got stuck, but they did get stuck, and
5 each one of them got out and went a short distance
6 looking for help.

7 Q Sorry, would that be Ron Wilson and David
8 Milgaard?

9 A Yes.

10 Q Did Nichol stay in the car; did he tell you that?

11 A Well, as far as he knew she had stayed in the car.

12 Q Okay.

13 A And then they came back fairly soon because it was
14 bitterly cold, and a couple of fellows helped get
15 them out, just give them a push, they weren't
16 stuck that bad from what I could gather. And so
17 then they carried on and, as I recall it, they
18 ended up driving out to the Trav-a-leer.

19 Q Okay. If we can just pause there and go back to
20 the incident where they got stuck, this would be
21 an incident prior to getting stuck at the
22 Danchuks'?

23 A Oh, yes, this is a pre-Danchuk --

24 Q Okay.

25 A Umm --



1 Q And so do you recall what Mr. Milgaard told you
2 about, I guess two questions, both how far in
3 distance where they got stuck compared to where
4 they stopped the woman for directions, or how long
5 after; were you able to determine that?

6 A Well it was, it was further west, from what I
7 could determine, of the spot where he had asked
8 the lady for directions.

9 Q If we can just call the map up again for a moment,
10 and I appreciate you've told us you don't know
11 which avenue it was on so I'll pick one in the
12 middle, but I think you said they were travelling
13 north and south and then they were -- were they
14 travelling south or north when they stopped the
15 woman for directions; were you able to determine
16 that?

17 A I think it was south but I wouldn't be sure. I
18 can tell you when we were in Prince Albert, when I
19 met with him in Prince Albert I remember trying to
20 sketch out the path working with him, and we just
21 -- I just wasn't able to come up with --

22 Q Okay.

23 A -- anything readily identifiable.

24 Q So if he, they were going south on one of the
25 avenues, then where, where in connection to where



1 they stopped the woman for directions, where did
2 he tell you they got stuck?

3 A It was west of there, and I can't tell you how
4 many blocks.

5 Q And as far as time was it shortly after, minutes
6 after, are you able to --

7 A Not too long after, but not, you know, we're not
8 talking 30 seconds or a minute.

9 Q And do you recall him telling you in what -- did
10 they get stuck in the middle of the road, or
11 whereabouts were they that they were stuck, and
12 how were they stuck?

13 A Well I recall him indicating that their tires were
14 not good winter tires, in other words smooth
15 tires, and they -- now I don't recall specifically
16 where he said they got stuck, whether it was sort
17 of at the end of a block or, you know, in between.

18 Q Do you recall or would you have asked him whether
19 they were near an alley when they got stuck?

20 A Oh, I'm sure I asked about that and, you know,
21 when we -- I talked about whether, you know, they
22 went down an alley or anything, you know, in
23 connection with what I knew, and he said well
24 they, well -- he -- they weren't in any way
25 involved with the girl on the street or in an



1 alley, or anything like that, and in particular he
2 wasn't.

3 Q And as far as the time that he was away from the
4 vehicle; was he able to tell you how long that
5 was?

6 A Well, he said it was a very short period of time,
7 you know.

8 Q Did he tell you how far he had walked?

9 A I'm sure he did at the time, because I know that I
10 conducted some of my cross-examination at the
11 preliminary hearing on the basis of what he had
12 told me, and I was particularly interested in
13 Wilson and how far Wilson had walked.

14 Q Yeah. You would have known at the time you were
15 interviewing Mr. Milgaard, I believe from what you
16 have told us, that Ron Wilson's statement
17 indicated that it was after they stopped the woman
18 for directions, after their car got stuck, that
19 David left the vehicle, and for a longer period,
20 and that when he came back that's when I think Mr.
21 Wilson's evidence said he thought the murder was
22 committed, --

23 A Yes.

24 Q -- or words to that effect. You would have been
25 aware of that?



1 A Yes.

2 Q Would the fact of Mr. Milgaard's vehicle being
3 stuck then, after asking the woman for directions
4 and him leaving the vehicle, would that be an
5 important matter for you to probe with him?

6 A Yes, it was, and not only his leaving but also
7 Wilson's leaving --

8 Q Okay.

9 A -- was important.

10 Q And did you spend a fair bit of time with Mr.
11 Milgaard trying to pinpoint where they got stuck?

12 A Yes, I did. And as I say, I remember in
13 particular in Prince Albert trying to sketch it
14 out, even, at the working session that we had.

15 Q And would those sketches of yours have been on
16 your file then?

17 A Oh yes.

18 Q And would you have had a map that you would have
19 used to assist you do you think?

20 A Oh, I'm sure I did, because that was -- and I may
21 have even, I may well, I may very well have
22 sketched out a map a little bigger, sort of like
23 this but in much larger.

24 Q Let me ask you the same question I asked you about
25 where, where you ended up concluding the -- David



1 Milgaard's vehicle was when it stopped the woman
2 for directions. What about when they got stuck,
3 based on your discussions with Mr. Milgaard, where
4 did you end up concluding that it may have been in
5 relation to where Gail Miller's body was found?

6 A Well I, I really couldn't arrive at any conclusion
7 one way or the other where it had got stuck, but I
8 was told by him, by -- David told me that he had
9 had nothing to do with the victim and nothing to
10 do with any of her effects, and so he, he didn't
11 know, but he knew that he wasn't involved there.

12 Q Right. And if Mr. Milgaard had been called to
13 testify and given evidence about where they got
14 stuck, based on your discussion with him was it
15 possible, at least in your mind, that the jury
16 could conclude that it would have been in the
17 vicinity where Gail Miller's body was found, based
18 upon how Mr. Milgaard described to you where they
19 were when these things happened?

20 A Oh, I think that's a distinct possibility.

21 Q And as far as vicinity, I think, would it be the
22 same -- I think you said for the woman asking for
23 directions it would have been a little bit west
24 from that or --

25 A It would be some blocks to the east.



1 Q To the east?

2 A Well, to the east of where they got stuck.

3 Q I see. Right.

4 A Yeah.

5 Q So the, so the woman for directions, and then a
6 couple blocks west as to where they got stuck; is
7 that right?

8 A Yeah.

9 Q Okay.

10 A Well, I can't say two blocks west or not, you
11 know.

12 Q Okay.

13 A They -- but that's --

14 Q Now, next, I think you said they travelled to the
15 Trav-a-leer Motel; is that right?

16 A Yes.

17 Q And what do you recall about what Mr. Milgaard
18 told you about that?

19 A Well they pulled into the Trav-a-leer, now whether
20 there was a carport there or not I can't recall, I
21 think there probably was sort of a carport. I
22 know I drove out there at least a couple of times,
23 but I just don't recall now, and he went in in his
24 stocking feet to get some directions and get a
25 map.



1 Q Let me just pause there. You said you drove out
2 to the Trav-a-leer Motel a couple of times?

3 A At least a couple of times after I was retained in
4 this.

5 Q What about in this area; did you drive around in
6 this area as well?

7 A Oh, I drove that area any number of times.

8 Q And for what purpose?

9 A Well, to check over, and I even walked certain
10 parts and I drove back alleys to sort of try to
11 size things up and get some ideas, and then I
12 would talk to him about it again, and so forth.
13 But of course when I first drove over there for
14 that purpose it was no longer January conditions,
15 but I did go back there in the winter of 1970 to
16 look the situation over too.

17 Q And --

18 A Because of the, you know, the snowfall and
19 everything gave me a better indication of what it
20 would look like.

21 Q Were you trying to get a sense or some landmarks
22 to try and assist Mr. Milgaard in determining
23 where they might have stopped the woman for
24 directions and where they might have got stuck?

25 A Yes, and I wanted to get oriented myself in a



1 winter scene, which is what they faced. And,
2 coincidentally, the -- when the trial was on in
3 January it was bitterly cold, and there were a lot
4 of similarities in the weather to when this
5 homicide occurred.

6 Q And did you go out during that time?

7 A I did.

8 Q After the Trav-a-leer, what did Mr. Milgaard tell
9 you about their travels?

10 A Well they then turned, drove back, and from what I
11 could determine it was in an easterly direction,
12 and there came a time where they drove down a back
13 alley at his, really at his direction, he was
14 giving the directions, and that's --

15 Q That's David?

16 A -- yes -- and that's when they pulled in behind
17 the Danchuk vehicle, and Danchuk was stuck or
18 stalled and they, of course as you mentioned,
19 couldn't back out because there was no reverse
20 gear.

21 Q Did you have concerns with the fact that Mr.
22 Milgaard had given the instructions to go down the
23 back alley?

24 A No, I didn't attach any great significance to
25 that. I asked him why, and he thought well maybe



1 if he went down there he could spot something that
2 would --

3 Q Did the fact that Gail Miller's body was found in
4 an alley, did that -- were you asking him about
5 whether he was travelling in alleys that morning;
6 do you recall that?

7 A Oh, yes, we discussed that.

8 Q And again, travelling in the Danchuks' back alley,
9 did that cause you a concern in connection with
10 where Gail Miller's body was found and some of the
11 evidence that you thought might be presented
12 against Mr. Milgaard?

13 A I don't -- you know, I may have thought of it at
14 the time, but to reflect now, I can't really
15 recall it being a significant consideration in my
16 mind. I'm sure I asked why would you go down an
17 alley when you had smooth tires and you had
18 already been stuck once.

19 Q And what did he respond?

20 A Well, I don't -- I say I'm sure I asked him,
21 but --

22 Q Okay.

23 A -- I don't recall it.

24 Q If we can just go back to when he and Mr. Wilson
25 left the car back when they got stuck before they



1 went to the Trav-a-leer and he got, Mr. Milgaard
2 got back to the car, did you ask him about whether
3 there was any discussion with Mr. Wilson or Nichol
4 John or whether he observed anything unusual about
5 Nichol John in the car?

6 A I'm sure that I did along the way. Now, whether,
7 you know, at what meeting I can't tell you, but --

8 Q Do you have any recollection of what he might have
9 told you?

10 A I think that his indication was that he didn't see
11 anything unusual.

12 Q So just back at the Danchuks', what did Mr.
13 Milgaard tell you about what he did at the
14 Danchuks'?

15 A Well, I think that, you know, he and Wilson
16 decided to see if they could maybe help push out,
17 push Danchuk because they couldn't go backwards,
18 go in reverse, and then of course their vehicle
19 stalled too, and then I gather that, you know, he
20 certainly chatted with Mr. Danchuk and, you know,
21 they ended up going into the house at
22 Mr. Danchuk's invitation.

23 Q Were you able to, in your discussions with Mr.
24 Milgaard, able to pinpoint a time of the morning
25 when they would have been travelling in the



1 north-south avenues and when they encountered the
2 woman and when they got stuck, were you able to
3 get a time frame for that?

4 A Well, I know at the time I tried to work back from
5 the Trav-a-leer in terms of the time. I knew what
6 Mr. --

7 Q Rasmussen?

8 A Rasmussen -- I hear it's Mr. Rasmussen, not the
9 RCMP officer?

10 Q Yes.

11 A -- had said about the timing, he opened at seven
12 and shortly after that they came, so I worked back
13 from that.

14 Q And what did you conclude, based on your
15 discussions, as to, again based on what Mr.
16 Milgaard told you, as to what time frame he and
17 his companions would have been travelling in the
18 north-south avenues and encountering the woman for
19 directions and getting stuck, what time of day did
20 you conclude that would be?

21 A Well, it was certainly before seven o'clock, you
22 know, I couldn't pin it right down, but as a
23 result of all this discussion and the other
24 material that came to my attention, that gave rise
25 to the argument really that it was improbable and



1 unreasonable to conclude that, number 1, they had
2 been where it's alleged they were, and that he had
3 the time to do what it was alleged that he had
4 done.

5 Q Right. I think at the, in the charge to the jury
6 Chief Justice Bence suggested the window of
7 opportunity was 6:45 to 7:10, or thereabouts, as
8 to when, and I can't recall whether that's -- I
9 think that's when the Milgaard vehicle may have
10 been in the vicinity. Do you recall that?

11 A I think that that is probably accurate.

12 Q And does that accord with your recollection of
13 what Mr. Milgaard would have told you about the
14 times, or was he able to tell you about the times?

15 A Well, he wasn't able to tell about the times.

16 Q Okay.

17 A Any reconstruction or construction as to the times
18 was something that I had to do.

19 Q I see.

20 A Independent of anything that he -- because time
21 really didn't mean that much to these kids, if I
22 may use that term, who left about a little after
23 midnight --

24 Q Okay.

25 A -- and so on.



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MR. HODSON: This might be an appropriate
spot to break for the day.

(Adjourned at 4:00 p.m.)



1 OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATE:

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

8
9
10
11
12 _____, CSR

13 Karen Hinz, CSR

14 Official Queen's Bench Court Reporter

15
16 _____, RPR, CSR

17 Donald G. Meyer, RPR, CSR

18 Official Queen's Bench Court Reporter



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