

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

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Transcript of Proceedings  
and  
Testimony before the Commission  
sitting at the  
Delta Bessborough Hotel at  
Saskatoon, Saskatchewan

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On Thursday, February 2nd, 2006

Volume 117

Inquiry Proceedings



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*Ms. Joanne McLean,*                      **for** Ms. Joyce Milgaard  
*Ms. Lana Krogan,*                      **for** Government of Saskatchewan  
*Ms. Catherine Knox,*                  **for** Mr. T.D.R. (Bobs) Caldwell  
*Mr. Garrett Wilson, Q.C. and Mr. Jay Watson,*   **for** Mr.  
Serge Kujawa  
*Mr. Pat Loran, Esq.,*                  **for** the Saskatoon Police Service  
*Mr. Chris Boychuk, Esq.,*           **for** Mr. Eddie Karst  
*Mr. Bruce Gibson, Esq.,*           **for** the RCMP  
*Mr. Eamon O'Keefe, Esq.,*          **for** Mr. Larry Fisher  
*Ms. Jennifer Cox,*                   **for** Minister of Justice  
(Canada), The Hon. Irwin Cotler  
*Mr. Marshall Hopkins and Mr. Alexander Pringle, Q.C.,*  
**for** Justice Calvin Tallis  
(Retired)



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**CALVIN FORRESTER TALLIS, SWORN**

- BY MR. HODSON

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**Transcript of Proceedings**

(Reconvened at 9:05 a.m.)

COMMISSIONER MacCALLUM: Good morning.

ALL COUNSEL: Good morning.

MR. HODSON: The next witness,

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

COMMISSIONER MacCALLUM: Good morning,  
Justice Tallis.

**CALVIN FORRESTER TALLIS, sworn:**

**BY MR. HODSON:**

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

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

**A** That's correct.

**Q** And I understand that you are currently 75 years  
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 McCorriston 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 waived 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 effect."

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.



1 MR. HODSON: This might be an appropriate  
2 spot to break for the day.

3 (Adjourned at 4:00 p.m.)  
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notes taken herein to the best of my knowledge, skill, and  
ability.

\_\_\_\_\_, CSR

Karen Hinz, CSR

Official Queen's Bench Court Reporter

\_\_\_\_\_, RPR, CSR

Donald G. Meyer, RPR, CSR

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